

**CHILD CUSTODY EVALUATIONS:  
REVIEW OF THE LITERATURE AND ANNOTATED BIBLIOGRAPHY**

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## TABLE OF CONTENTS

The Maryland Judiciary Research Consortium.....	2
Executive Summary .....	5
Introduction.....	8
Review of the Literature .....	8
Overview.....	8
Terminology.....	8
Search Strategy and Organization of Annotations.....	9
The Practice of Custody Evaluations.....	11
Overview of Practice and Typical Components of an Evaluation.....	11
Maryland Overview .....	14
Specific Issues Investigated .....	16
Models and Frameworks of Custody Evaluations .....	17
Guidelines .....	17
American Psychological Association (APA) Guidelines .....	17
American Academy of Child and Adolescent Psychology (AACAP) Practice Parameters .....	18
Association of Family and Conciliation Courts (AFCC) Model Standards .....	18
Alternative Models.....	19
Protocols for Evaluations that Involve Domestic Violence.....	19
Frameworks for Evaluations Involving Substance Abuse.....	21
Analysis of Issues and Outcomes .....	22
Guidelines and Outcomes .....	22
Trends in Statutory Enforcement.....	23
Components of an Evaluation.....	25
Parents, Children, and Others Responsible for the Daily Care of the Child.....	25
Collateral Sources .....	25
Life History.....	26
Interviews.....	26
Observations .....	27
Psychological Testing.....	29
Projective and Objective Personality Tests.....	30
Intelligence Tests .....	30
Tests Designed for Child Custody Evaluations .....	31
Academic Achievement Tests.....	31
Scrutiny of Specific Tests .....	31
Recommendations From the Research for Psychological Testing .....	33
Other Considerations by an Evaluator .....	34
Protocols for the Court, the Evaluator, and the Evaluation Report/Testimony .....	34
The Judge’s Role.....	34
The Evaluator’s Role .....	35
Written Report Components and Testimony .....	37
What to Include in a Report.....	37
Written Reports vs. Testimony .....	39
Admissibility.....	39

Credentials, Training, and Continuing Education.....	39
Admitting Scientific Evidence.....	40
Problems Identified.....	41
Solutions to Admissibility Issues.....	42
Court Appointed Experts vs. Privately Retained Experts.....	44
Cost Factors .....	44
Gaps in Literature, Areas for Further Research, Challenges .....	45
Best Practices.....	48
Guidelines .....	48
Evaluation Components.....	49
Roles of the Judge and the Evaluator.....	51
Conclusion .....	52
Annotated Bibliography: Child Custody Evaluations.....	54
Guidelines for evaluation.....	54
Evaluation Procedure, Components, and Substance.....	55
Use of psychological testing in evaluations.....	59
Judge and attorney survey research .....	61
Evaluator qualifications .....	63
Statutory framework for evaluations .....	64
Other topics.....	65
Appendix.....	69
Web-Based Resources .....	69

## **Executive Summary**

This review of custody evaluation literature encompasses a number of perspectives gleaned from the following: practitioners who perform the evaluations; the professional organizations that recognize the necessity to establish performance standards for practitioners; and the judges who depend on the findings and recommendations in the evaluations to assist with difficult custody decisions.

General agreement exists among practitioners about the components of a comprehensive evaluation (interviews of adults responsible for child care, interviews of children and their preferences, life histories, observations, psychological testing, document review, and collateral source data), though little consensus exists about the details of performance concerning a given component. For instance, many authors recommend direct parent-child observations, but there is little agreement about observational protocols (Hynan, 2002). Choice of psychological test(s) is largely left to the discretion of the evaluator (Turkat, 2005), though evaluators are urged to choose tests that address issues of parenting capacity (AFCC Standards, 2006; DeWard, 2005). Stark differences of opinion exist concerning the suitability of using several commonly employed tests, including the Minnesota Multiphasic Personality Inventory (MMPI), the Thematic Apperception Test (TAT), Rorschach, and the Millon Clinical Multiaxial Inventory - III (MCMI-III). One author believes these tests were designed for other uses and should be excluded from the custody evaluation process (Ericson, 2007), while others assert that these tests are helpful to verify information reported by parents, children, and others in disputed custody cases (Jaffe & Mandeleew, 2008). Parent inventory tests designed for use in custody evaluations, such as the Parent-Child Relationship Inventory (Gerard, 2005) and the Parenting Stress Index (Abidin, 1995), are used more frequently since the inception of the American Psychological Association (APA) guidelines (1994) (Quinnell & Bow, 2001).

Though several organizations have published custody evaluation guidelines, including the APA, the American Academy of Child and Adolescent Psychology (AACAP), and the Association of Family and Conciliation Courts (AFCC), the majority of the authors surveyed in this report endorse the APA guidelines (e.g., DeWard, 2005; Tippins & Whittmann, 2005; Wah, 2002; Champagne, 2001; Quinnell & Bow, 2001). Though no empirical research supports one set of guidelines as more effective than another, and all are voluntary, the guidelines play a role in establishing a standard of care that ultimately can improve the quality of custody evaluations (Martindale, 2007). A generally uniform standard of care among practitioners also protects evaluators forced to defend their performance under threat of a malpractice suit from litigious parents disappointed with the evaluation recommendations (Martindale, 2007). A few states, including Florida, Pennsylvania, and South Carolina, have converted by statute the APA guidelines into enforceable standards of professional conduct.

Among the issues confronting judges in custody disputes are the issues of admissibility and weight given to evidence contained in custody evaluations. Evaluator's recommendations, which increasingly are based on methodologies lacking empirical validation for custody dispute populations, often are challenged in court on grounds of relevance and reliability. The literature suggests that evaluators avoid admissibility pitfalls by obtaining specialized training in evaluation protocols, domestic violence, child neglect, substance abuse, and the basic principles of child custody law (Elrod, 2001). The role of the judiciary is less settled in the literature, but one author suggests that judges consult with attorneys and evaluators to identify the areas to assess and then determine relevance and reliability for expert testimony and reports before addressing admissibility questions in court (Gould, 1999). Judges should give the greatest weight to reports that are internally consistent, i.e., reports with conclusions and recommendations that are supported clearly and convincingly by the evaluation data.

In addition to calling for more research generally on issues related to custody evaluations, this literature review supports the following specific recommendations for consideration by the Maryland Administrative Office of the Courts:

*(1) Develop and publish performance standards applicable to custody evaluators in Maryland that are based on the AFCC Model Standards of Practice for Child Custody Evaluations (2006).*

*(2) Directly limit the use of psychological testing to instruments empirically validated and specifically designed to evaluate parent-child relationships and or parenting capacity.*

*(3) Support an effort to establish statutory enforcement of the standard of professional conduct created in (1) and (2) above.*

*(4) Limit the use of custody evaluations in custody cases because the data collection methodologies lack empirical validation; or, in the alternative, create clearly defined evidentiary criteria for the courts to employ concerning admissibility and weight of significant factors such as domestic violence, substance abuse, mental illness, psychological testing data, child preference, collateral source information, inferences drawn from direct observation, and evaluator recommendations.*

*(5) Design and implement a research agenda incorporating rigorous and empirically-based methods to test hypotheses about the short-term and long-term effects of custody evaluation practice on the functioning of post-divorce family systems.*

## **Introduction**

In August 2008 the Maryland Administrative Office of the Courts (AOC) entered into a memorandum of understanding (MOU) with the University of Baltimore School of Law's Center for Families, Children, and the Courts (CFCC) to perform research assignments for AOC's Family Administration and Court Research and Development Departments. Among the research projects included in the MOU was a review of the national literature concerning child custody evaluations. In addition to synthesizing the information concerning child custody evaluations, CFCC was to develop a comprehensive annotated bibliography for this body of literature.

This report is the product of the research project. The report is organized into two sections. The first section represents an analysis of issues emerging from the literature search on child custody evaluation policies and protocols. The second section is an annotated bibliography of the sources used by the researchers in their review of pertinent custody evaluation literature.

## **Review of the Literature**

### ***OVERVIEW***

#### **Terminology**

- *Collaterals*: third parties used as sources of information in an evaluation. These individuals are generally neutral and may include teachers, school staff, physicians, therapists, and neighbors.
- *Collateral sources*: objective records (e.g. police reports, medical reports) or individuals who have been in a position to observe the parents and children.
- *Countertransference*: the therapist's inappropriate emotional response toward the patient generated by the therapist's prior experiences unrelated to the patient.



- *Conformity bias*: overvaluing evidence that supports one's hypothesis and undervaluing other evidence, particularly by evaluators.
- *Dual roles*: when an evaluator both plays a forensic role in the evaluation and provides therapeutic services to the child/family
- *Objective tests*: psychological tests in which the scoring system is independent of rater-bias. Examples include: the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Millon Clinical Multiaxial Inventory-III (MCMI-III).
- *Projective tests*: psychological tests in which the scoring system is dependent on rater interpretations. These typically involve the presentation of materials such as pictures or stories, such as: the Rorschach Inkblot Test, the Thematic Apperception Test, and the House-Tree-Person Technique.
- *Role delineation in consulting*: practitioners hired to review the work of child custody evaluators who restrict their role to that of a reviewer and avoid relationships with the participants.
- *Societal bias*: the evaluator's prejudice for custody arrangements supported by societal norms, which may include racial or gender bias and a preference for mothers over fathers.

### **Search Strategy and Organization of Annotations**

The search method was designed to identify literature demonstrating evidence-based best practices used in child custody evaluations. A broad search was conducted using various electronic databases (see Table 1) ranging from legal resource materials to social science references. Database searches were limited to literature published since 1996 in order to examine current research. The searches were designed to be sufficiently expansive to include articles that

examined and complemented the recommendations for child custody evaluations made by the American Psychological Association (APA) in 1994. APA recommendations included guidelines for the focus of evaluations, e.g., parenting capacity and the psychological and developmental needs of the child; for the role of the evaluator, e.g., impartial professionalism and special expertise; and for procedural performance of the evaluation, e.g., multiple data collection points and maintenance of written records. Keywords used in the search included "child custody evaluation," "custody evaluation," "psychological testing," "parent interview," "custody," "observation," "custody" with "high-conflict," and "custody" with "evaluator." The database search generated articles that were reviewed to find additional relevant articles. Web-based searches also were conducted on Google and Google Scholar (see Appendix 1).

Table 1. Bibliographic Data Bases

Academic Search Premier
ERIC
Heinonline
Index to Legal Periodicals
LegalTrac
LexisNexis Academic
MasterFile Premier
Psychology and Behavioral Sciences Collection
Psychinfo
Science Citation Index Expanded

Science Direct-Elsevier

Social Sciences Citation Index

Social Services Abstracts

Sociological Abstracts

The literature search revealed several dominant topics related to custody evaluations. The annotations are organized according to the following categories:

- custody evaluation guidelines promulgated by various professional organizations;
- custody evaluation protocols and substantive elements, including an examination of various standards; a discussion of flawed methodologies; an assessment of the limitations of evaluations; and an analysis of the overall formulation, design and structure of the custody evaluation;
- assessments and opinions specific to the use of psychological testing;
- recommendations to judges and attorneys;
- surveys of judges and attorneys;
- issues of admissibility and the qualifications of the evaluator;
- statutory mandates;
- informational articles geared toward parents;
- miscellaneous issues.

## ***THE PRACTICE OF CUSTODY EVALUATIONS***

### **Overview of Practice and Typical Components of an Evaluation**

When a psychologist conducts a child custody evaluation, the tasks typically executed are:

- interviewing key litigation participants
- administering psychological tests
- conducting observations of the parents and children
- conceptualizing the results of the above
- making recommendations to the court (Turkat, 2005, p. 9).

Ninety percent of custody disputes are resolved when divorcing or separating parents agree to an arrangement that clearly delineates parental rights and responsibilities in relation to children (APA, 1994, American Academy of Child and Adolescent Psychology [AACAP], 1997). In cases where parents are not able to reach an agreement, the court must determine the relative allocation of decision-making authority and physical contact allowed to each parent by applying a "best interests of the child" standard (Shuman, 2003). Increasingly, courts rely on expert witness testimony in high-conflict custody cases involving complex issues, such as; allegations of criminal conduct, domestic violence, child abuse, mental disorders, or substance abuse issues (American Bar Association, 2000).

Evaluators are typically mental health professionals who provide objective and impartial information to the court to assess the best interests of the child. The evaluation process requires knowledge of the "types of custody and visitation arrangements," "experience in the treatment of children," and "advanced skills in assessment of child and adolescent personality, mental illness, family dynamics, and parenting skills required to provide a healthy environment for growth and development of children." (Jaffe & Mandeleew, 2008, p. 16).

Because of the critical nature and complexity of custody evaluations, the custody evaluation process has been under scrutiny since its inception (Kirkland, 2002).

Such scrutiny, which has occurred over the past twenty years, has ranged from issues regarding the evaluator's credentials and the components of an evaluation to the admissibility of an evaluator's testimony.

Concerns about evaluators' credentials and admissibility of their testimony increased dramatically in the 1990s, when courts began to use custody evaluations more frequently, although less than one percent of evaluators faced disciplinary actions as a result of complaints related to evaluations (Kirkland, 2002, p. 185). Several sets of guidelines (e.g., "Guidelines for Child Custody Evaluations in Divorce Proceedings," APA, 1994 and "Practice Parameters for Child Custody Evaluation," AACAP, 1997) were published in response to these complaints and were designed to ensure consistency in the evaluation process.

As complaints and malpractice actions increasingly target evaluators, opinions about the utility of regulating mental health professionals in the court system tend toward polarization (Martindale, 2007b, Kirkland & Kirkland, 2001). Those resistant to regulation question the wisdom of imposing standards without empirical evidence demonstrating that one set of guidelines is superior to another or that a particular set of standards promotes the creation of evaluations that are associated with better outcomes for children. Proponents of regulation counter that such empirical evidence is impossible to obtain because self-selecting study participants have biases that ruin the sample measured against practitioners who choose not to abide by model standards. Standards that are clearly articulated, proponents argue, make it more likely that families and the courts are well served; standards that are fuzzy and allow latitude in practice parameters make it less likely that the courts and families can reach decisions that promote the best interests of the child. Additionally, proponents point out that measuring outcomes for post-divorce children is problematic at best and that it is impossible to know how

those children might have turned out had families followed recommendations conforming to a different model (Martindale, 2007).

However polarized the positions in the regulation debate, a national survey of 198 psychologists indicates that, while psychological testing continues to be used widely, it is no longer the primary procedure in custody evaluations. Current practice largely adheres to the professional parameters set forth in the 1994 APA guidelines for child custody evaluations (Bow & Quinnell, 2001).

### **Maryland Overview**

The AOC recently administered surveys to Maryland Circuit Court judges and court personnel and to child custody evaluators (MD AOC Courts Survey, 2008; MD AOC Practitioner Survey, 2008). Sixty-six percent (66%) of Maryland's 24 jurisdictions responded to the survey. From those participating jurisdictions, 26 evaluators responded to the survey.

The surveys indicate that both judges and evaluators rely on a wide array of activities in child custody evaluations, including document review, parent interviews, child interviews, parent-child observations, psychological testing, and collateral interviews. Courts also request and evaluators provide written reports, with 96% of the respondent courts asking for a written report and almost all (96%) of respondent practitioners providing a written report. The majority of evaluators (68%) follow the AFCC model standards. Although 62% of courts require continuing education for their evaluators, only a few courts actually offer it. Most continuing education courses are offered by AFCC. Courts also look for the evaluation report to be unbiased, concise, and thorough. Some courts require evaluation reports to be more structured. Baltimore County courts, for instance, provide an outline for practitioners to follow in preparing a custody evaluation report. The general categories covered in most reports are consistent,

including a history, background information, child interview, parental strengths and weaknesses gleaned from testing and interviews, collateral information (school reports, others interviewed), and a summary and recommendation.

Several inconsistencies and problem areas are evident from the survey results:

- Psychological testing: Forty-three percent (43%) of court personnel who responded expect practitioners to perform psychological testing in a custody evaluation; whereas, 100% of practitioners surveyed perform psychological testing.
- Recommendations in the evaluation report: Eighty-seven percent (87%) of the respondent courts also look for a recommendation for the ultimate court order; whereas, 100% of practitioners recommend what, in their view, the court should order.
- Guidelines: The majority of evaluators adhere to the AFCC Model Standards; however, 48% of evaluators follow other guidelines, 12% of whom follow guidelines, policies, and procedures of their local courts. At the court level, the majority (65%) of judges, masters, court administrators, and family service coordinators require practitioners to follow the AAFC model standards. Forty-four percent (44%) leave the choice of guidelines up to the practitioner, and of those court personnel, 22% are unaware of the standards used in the practitioner's evaluation.
- Admissibility: Eight percent (8%) of practitioners are unaware of the admissibility rules for experts in Maryland; 62% are somewhat familiar, and 31% are “very familiar” with the admissibility rules. Nearly all (92%) of the practitioners have

been qualified as an expert in court, and the average number of times a practitioner has been qualified as an expert witness is 34.

- Fees: The fees for an evaluation range from \$200 to \$6,000.

### **Specific Issues Investigated**

This literature review involved the examination of articles relevant to child custody evaluation protocols for contested child access cases. Maryland's AOC directed the search to address several specific issues:

- Standards for terminology used in child custody evaluation in family court proceedings;
- Standards for child custody evaluations developed by national organizations;
- Protocols for presenting custody evaluations to the court (written and testimonial);
- Current social science research, including any empirical evidence of effectiveness relevant to custody evaluations in contested custody cases;
- The components of and methodologies for custody evaluations in different jurisdictions and their relative effectiveness in assisting the court;
- The use of custody evaluators as settlement officers- ethical and practical issues;
- Cost implications, including cost-benefit studies;

The literature search uncovered other issues, including:

- Standards of admissibility for an evaluator's report or testimony;
- Court ordered evaluations versus private evaluations.



## ***MODELS AND FRAMEWORKS OF CUSTODY EVALUATIONS***

### **Guidelines**

Currently there are three frequently used sets of guidelines for custody evaluations, developed by national organizations. The components of an evaluation are similar for each set of guidelines:

- Assessment of children to identify their wishes and discover any developmental needs;
- Assessment of adult-child relationships;
- Assessment of adult by in-person and telephone interviews;
- Assessment instruments may include: psychological testing; parent-child observation; parent and child interviews; collateral interviews with teachers and doctors; reports from school, health care providers, and agencies.

All three sets of guidelines focus on ethics, the evaluation process, and the obligations of evaluators, but there are differences in their purpose and recommendations.

### **American Psychological Association (APA) Guidelines**

In an effort to alleviate the numbers of complaints and establish practice consistency, the APA promulgated "Guidelines for Child Custody Evaluations in Divorce Proceedings" (APA, 1994). The guidelines focused on the role of the mental health evaluator, specifically on competence, objectivity, ethics, determining purpose, and procedure. Evaluators were to "assess the individual and family factors that affect the best psychological interests of the child... [and other] specific questions [as] may be raised by the court" (APA, 1994, §1). These guidelines

were based in the belief that an evaluation should not have any therapeutic aspects, and should be forensic in nature (Herman, 1999; APA, 1994).<sup>1</sup>

### **American Academy of Child and Adolescent Psychology (AACAP) Practice Parameters**

The American Academy of Child and Adolescent Psychology (AACAP) published guidelines "Practice Parameters for Child Custody Evaluations" which expanded the 1994 APA guidelines by creating a more specific framework for the evaluation process (Herman, 1997). The AACAP Practice Parameters stressed continuity and other more specific, complex issues, including, e. g., parental alienation, sibling relationships, parents' physical and mental health, social support systems, cultural and ethnic issues, and relocation problems (Herman, 1997).

The AACAP Practice Parameters has a particularly practical focus and offers detailed explanations that guide an evaluation, preparation of a written report, and courtroom testimony (Herman, 1997, p. 153). The AACAP Practice Parameters also specify that psychological testing should be used only to confirm a psychologist's hypothesis (Herman, 1999).

### **Association of Family and Conciliation Courts (AFCC) Model Standards**

In 2006, the Association of Family and Conciliation Courts (AFCC) developed "Model Standards of Practice for Child Custody Evaluations" (AFCC, 2006). With a clear understanding of the interdisciplinary collaboration required of mental health professionals and legal personnel in custody cases, an AFCC task force designed the model standards to guide evaluators with

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<sup>1</sup> In February 2009, the APA published a revision of the 1994 "Guidelines for Child Custody Evaluations in Divorce Proceedings." The revised guidelines address custody disputes in marital or other relationship dissolution only and do not apply to custody disputes in child protection matters. The new guidelines are informed by the APA's code of ethics and distinguish the appropriate forensic role for evaluators from the inappropriate therapeutic role in custody evaluation practice. In recognition of an expanded group of litigants, the new guidelines apply the term "parents" generically to include persons seeking legal recognition as sole or shared custodians.

diverse professional backgrounds and to assist those involved in the adjudication of disputes concerning custody and access (Martindale, 2007).

These standards are intended to apply to any practitioner offering an opinion about the relative parenting strengths and deficiencies of the litigants or of the parenting plans under consideration (AFCC, 2006). Perhaps the greatest difference between earlier APA guidelines and the AFCC model standards is that the AFCC model standards require evaluators to have knowledge of the law, including family law statutes pertaining to custody, legal rights of parties, admissibility rules, and other rules governing experts (AFCC, 2006). The AFCC model standards promote clarity and professional conduct so that complaints against evaluators are likely to be adjudicated fairly (Martindale, 2007).

## **Alternative Models**

### **Protocols for Evaluations that Involve Domestic Violence**

When evidence of inter-parental abusive patterns of behavior emerges in the context of a custody case, custody evaluations must include an exploration of the situation aimed at ensuring the safety of the children (Dalton, 2006). The presence of domestic violence in custody disputes requires the court to fashion a custody arrangement defined by an assessment of the effect of the violence on the children and the quality of the children's relationship with the parents (Dalton, 2006). If financial resources are unavailable, information supporting a useful assessment can result from direct judicial inquiry from the bench. If resources are available, the court can order a more formal evaluation by mental health professionals with special training in domestic violence issues (Dalton, 2006).

Special familiarity with family violence issues is particularly useful in sorting out problems in families that present no initial allegations or record of domestic violence when the

case first comes to court, yet the family exhibits red-flag symptoms of violence (Dalton, 2006). Children exhibiting signs of posttraumatic stress disorder (sleep disturbances, bedwetting, excessive anxiety, hyperactivity, aggressive behaviors, or depression, among others), should be evaluated to determine whether the symptoms are the consequence of child abuse or exposure to inter-parental violence (Dalton, 2006). In other cases, domestic violence is masked by symptoms of depression and anxiety in the adult spouse, who may be afraid to report the abuse out of fear for his or her own safety or for that of the children. In other instances, the conflicted issue may be a proxy for family violence. For example, a case that appears to be a relocation dispute may actually be about the desire to escape from a violent spouse (Dalton, 2006).

When domestic violence is a known component of the custody dispute and the level of danger for the children and litigants is elevated, an emergency evaluation is indicated. Increased levels of danger are associated with factors such as the abusive partner's unemployed status, access to guns or drugs, the level of control exerted, or the presence of non-biological children in the home (Dalton, 2006). If the abused partner establishes a new relationship or if post-separation contacts between the litigants have been violent, the heightened risk of extreme violence demands action by the court to stabilize the dispute as quickly as possible (Dalton, 2006).

Standard psychological tests measuring personality, psychopathology, intelligence or achievement do not directly address the psycho-legal issues (e.g., parenting capacities or relationships with children) relevant to most child custody cases. They should be employed with caution in any custody dispute, but especially in cases where domestic violence is present (Dalton, 2006). These tests may confuse psychological distress related to abuse with personality disorder or psychopathology. If the tests are administered and yield pertinent information, the results are useful in the evaluation to the extent that the information is corroborated by and

integrated with data derived from real-life behaviors, data often found in medical, police, child protection, court, and school records (Dalton). Overall, domestic violence is a complicating factor in custody evaluations requiring specific expertise and critical interventions.

### **Frameworks for Evaluations Involving Substance Abuse**

Substance abuse issues should be integrated into a more overarching child custody evaluation, using specific assessment strategies designed to determine whether it exists and to what extent (Schleuderer & Champagne, 2004). Several considerations exist for evaluations of individuals who abuse alcohol and/or other drugs (Schleuderer & Champagne, 2004). Different levels of informed consent are mandated by federal law for substance abuse evaluations.

Consent must be sought and consent forms should include components similar to those contained in Title 42 of the Code of Federal Regulation (part 2). Both parents should undergo an evaluation to protect against evaluator bias (Schleuderer & Champagne, 2004).

Substance abuse evaluations should not be separate from the custody evaluations and psychological tests, and they can include physical tests and client interviews (Schleuderer and Champagne, 2004). Collateral information, such as motor vehicle records, pharmacy abstracts, and collateral contacts (e.g., teachers, neighbors), may also be useful in confirming the evaluator's hypothesis. A specific parenting plan is necessary if a parent is found to have a substance abuse problem. The plan should be tailored to individual problems created by the pattern of abuse. Recovery is dependent on a variety of factors, including the type and duration of the addiction (Schleuderer and Champagne, 2004).

## ***ANALYSIS OF ISSUES AND OUTCOMES***

### **Guidelines and Outcomes**

The majority of authors whose articles are surveyed in this report endorse the APA guidelines (i.e., DeWard, 2005; Tippins & Whittmann, 2005; Wah, 2002; Champagne, 2001; Quinnell & Bow, 2001), although they also offer criticisms of the guidelines. A number of experts believe that an ad hoc system is sufficient, so there is no need for new guidelines or standards of practice. The view of these experts is that standards and guidelines discourage "the involvement of treating practitioners in the adjudication of custody disputes" (Martindale, 2007, p. 186). The increasing number of complaints against custody evaluators does suggest that there are problems worth addressing, and many of these issues are resolvable (Martindale, 2007, p.184-185).

The standards/guidelines set forth by the APA, AACAP, and AFCC acknowledge that any set of standards or guidelines must be flexible enough to adjust to challenges of individual circumstances (Martindale, 2007). For instance, clinicians are given discretion to make decisions about the scope and framework of an evaluation. The APA states that their guidelines are "not meant to be mandatory or exhaustive" (APA, 1994, p. 52) and the AFCC "believes it to be advisable that [its] members conform their practices to these model standards" (AFCC, 2006, p. 2). The key to maintaining the boundary between discretion and obligation is the degree of specificity and clarity in the model standards. The standards should be clear enough to guide the evaluator's practice and to inform the expectations of the families evaluated (Martindale, 2001).

To date, no empirical research documents the outcomes of these guidelines, so it is difficult to determine which guidelines are most effective. The guidelines are designed to assist evaluators to perform their tasks more effectively and to standardize the evaluation process, but they also defer to the evaluator's clinical judgment regarding the scope of an evaluation (APA,

1994; AACAP, 1997; AFCC, 2006). Thus, certain tests and procedures may not be included in every evaluation. The tools used to conduct an evaluation depend upon questions raised by the court (Quinnell & Bow, 2001). In addition, it is also difficult to assess outcomes for children whose custodial relationships are the product of an evaluative scheme because a particular child's functional level and ultimate adaptation is dependent on multiple factors unrelated to guidelines and standards. No method currently exists to identify with certainty what might have occurred had an alternate evaluation standard been followed (Martindale, 2007).

### **Trends in Statutory Enforcement**

Even though the APA, AACAP, and AFCC guidelines are not enforceable, they have developed into standards of care (Martindale, 2007) and, in many cases, have evolved into obligatory protocols. Some states, such as Florida, Pennsylvania, and South Carolina, have transformed the APA guidelines into enforceable standards of professional conduct (Martindale, 2007), although there is no research to date on the implications or success of the statutory implementation of the guidelines in these jurisdictions. California Rules of Court § 5.220 provides uniform standards similar to the APA guidelines that apply to court-connected and private child custody evaluations (Herman, 1999). The California Rules focus on "data to be collected and in what manner, how a written or oral presentation is to be fashioned, ethical considerations for the evaluator, and fee arrangements" (Herman, 1999, p.140).

Several states, including Alaska, Illinois, and Wisconsin, have not adopted guidelines but have other requirements that are similar to specific sections in the guidelines. Alaska Civil Rule 90.6 states that a court-ordered custody evaluation should "reflect best practices" and "usually include individual interviews with the parents, children, and others, as well as observations of parent-child interactions and a review of relevant records" (Lord, 2002, p. 21). The commentary to Rule 90.6 allows evaluators to dispense with interviews or observations based on their clinical

judgment (Lord, 2002). This commentary has been criticized because interviews and observations are necessary and "critical components of a child custody evaluation" (Lord, 2002, p.21). Illinois has requirements for a written evaluation (Snyder & McDaniel, 2002, p. 38). Illinois statute, IMDMA §605(b), mandates that evaluators provide written evaluations to attorneys of record in a case within 21 days of completion. Further, IMDMA § 604.5 states that evaluations must include the evaluator's findings, the results of all tests administered, and the conclusions and recommendations of the evaluator. Wisconsin provides statutory guidance that is not exhaustive, allowing courts to extend beyond the statutory scheme to resolve a problem and to focus on the physical and mental health of parties and the child (Walsh, 2002).

Although Alaska, Wisconsin, and Illinois have provided some regulatory oversight, their statutes do not offer comprehensive guidance about the evaluation process itself. States should focus on the following areas with respect to developing statutory standards: evaluation strategy, collateral interviews, home visits, psychological testing, clinical interviews, standards of care and the report (Herman, 1999).

All states have incorporated the "best interests" standard into their child custody laws. (Emery & Otto, 2005). Generally, there is no other statutory guidance in child custody law, although some states may specify factors to determine best interests. Thus, the goal in a child custody evaluation is to conduct assessments with these best interests factors in mind (Emery & Otto, 2005). The child's best interest factors in the Uniform Marriage and Divorce Act include: "wishes of the parents; wishes of the child; interaction of the child with the parents, siblings, and other relevant individuals; the child's adjustment to the home, school and community; the mental and physical health of all involved parties; and other issues that may be relevant in individual cases" (Hynan, 2002, p. 215; Atwood, 2003, p. 632). Local versions of these factors often vary by jurisdiction (Hynan, 2002).



## **Components of an Evaluation**

### **Parents, Children, and Others Responsible for the Daily Care of the Child**

The APA, AFCC, and AACAP guidelines recommend that all parties be involved in the evaluation process, including, wherever possible, both parents and all children. Judges, too, prefer that all parties be involved in the evaluation rather than just one parent or the children (Jaffe & Mandeleew, 2008; Waller & Daniel, 2004).

### **Collateral Sources**

The APA guidelines (1994) recommend using collateral sources as needed. The AFCC model standards (2006), however, stipulate that collateral sources are such important sources of information that when collateral sources are not available, this should be mentioned to the court. Many authors note the critical relevance of collateral interviews (e.g., Austin, 2002, p. 177; Gould, 1999). These third party collaterals can include those who are "ostensibly biased" (other family members and friends) and/or those who appear to occupy more neutral interpersonal territory (e.g., school teachers, physicians, police) (Austin, 2002, p. 177). One study has found that 78% of collateral contacts in custody evaluations are therapists; whereas, school personnel are contacted in 62% of custody evaluations (Bow and Quinnell, 2002).

Caution is necessary because collateral information can be biased (Austin, 2002). Family members, in particular, may "distort, exaggerate, minimize, deny and possibly manipulate the information they present" (Austin, 2002, p. 177). Other conflicts may be present even with neutral collaterals. For example, there could be conflicts with a daycare worker who is concerned about losing his/her job or a psychotherapist who does not want to risk compromising confidentiality (Jaffe & Mandeleew, 2008, p. 17). Collateral information from third-party neutrals, however, remains of critical importance because it "provides the evaluator with the

means to discriminate the validity of disputed issues between the parties" (Austin, 2002, p. 183). The AFCC model standards (2006) recommend that sources should be validated when using collateral information. Several methods may be used to assess the credibility of the sources of data gathered, and the evaluator should acknowledge to the court how credibility is assessed (Austin, 2002).

Informed consent is an issue for collateral interviews. Specifically, the AFCC model standards stipulate that evaluators "shall secure authorization to contact collateral sources" by the parties or by court order and that evaluators shall "inform collateral sources that there is no confidentiality in the information that is being discussed between the collateral sources and the evaluator" (§11.6). Informed consent, however, is often not acquired (Bow & Quinnell, 2002).

### **Life History**

Parent perspectives are best understood through the lens of a comprehensive life history, which should be included in thorough evaluations (Jaffe & Mandeleew, 2008).

### **Interviews**

Given the variety of approaches and the absence of a scientifically accepted format, the merits or deficiencies of a particular interview design are difficult to identify. The evaluator has broad discretion over the breadth and depth of topics explored in an interview (Turkat, 2005). The AFCC model standards recommend an in-person interview with all of the adults performing caretaker roles with children. There are some recommendations from other sources to interview the parents together at least once (Halon, 2000, p. 498; AACAP, 1997, §1, C). Studies indicate that most evaluators interview both parents, but they seldom interview them together (Bow & Quinnell, 2002). The AACAP Practice Parameters (1997) suggest specific questions to ask

parents regarding history of the marriage and separation, perception of their relationship with the children, and plans for the future (§1, C).

When interviewing children, AFCC model standards recommend that evaluators structure questioning with regard to published research concerning the effects upon children's responses to various forms of questions. Clinical interviews with children are recommended if undue stress for the child can be avoided (Jaffe & Mandeleew, 2008). Several authors suggest that evaluators interview all children over five years old (e.g., Bow & Quinnell, 2002) if they have "reasonable receptive and expressive language skills" (AFCC, 2006, p. 20). There is a debate about whether a child's preference shall be ascertained in these interviews. Judges prefer this method of reporting as opposed to court testimony or in-camera interviews (Atwood, 2003).

In one survey, judges and attorneys are asked at what age a child's preference should be considered (Bow & Quinnell, 2004). Judges responded that the average age of the child at which children's preferences would be considered was 7.47 years old and attorneys responded 8.97 years old. Another survey revealed that 80% of judges consider the preferences expressed by older teenagers to be extremely significant (Atwood, 2003). Ultimately, it is up to the judge to assign appropriate significance to a child's wishes (Atwood, 2003).

### **Observations**

The purpose of an observation is to allow the evaluator to directly view interactions between the child, parents, and siblings (Hynan, 2002). Observations often reveal the presence of intra-psychic issues relative to the child and/or parent and problematic parent-child dynamics (Hynan, 2002). Most authors recommend direct parent-child observations in a child custody evaluation; however, there is little consensus on how to carry out such observations (Hynan, 2002).

Guidelines for observation sessions are addressed by several authors (e.g., Bow & Quinnell, 2001; Gould, 1999; Hynan, 2002). For instance, Hynan notes that "there is good rationale for conducting a minimum of two 45 to 60 minute observation sessions with each parent" (2002, p. 219). Other authors recommend up to ten sessions, but cost and time are factors, since observations can last up to two hours each (Hynan, 2002). Some recommend that each child should be observed separately; whereas, others recommend that all children be observed together in their interaction with a parent (Gould, 1999). One study indicates that evaluators observe a child individually with one parent and also observe all children with one parent (Bow & Quinnell, 2001). In addition, shorter sessions are "not likely to provide the evaluator with a good enough sample of family interactions to make valid inferences" (Hynan, 2002, p. 217-218). Research does not indicate whether home visits are a better observational venue than sessions carried out in the office, although home visits are used by one-third of evaluators (Bow & Quinnell, 2001). Home visits are more costly, so an evaluator should determine whether a home visit can produce unique information, such as physical information about the home environment (Hynan, 2002, p. 220-221).

Research has shown that observations can produce insights about family functioning and parental competence, including abuse or neglect, and child behavioral problems (Hynan, 2003). Two widely used methodologies for behavioral ratings of family interactions are the System for Coding Interactions and Family Functioning (SCIFF) (Lindahl & Malik, 2000) and the Family Problem Solving Code (FAMPROS) (Forbes, Vuchinich & Kneedler, 2001). SCIFF provides ratings of parental behavior based on observations of families discussing problems or arguments. FAMPROS is used to rate overall family functioning, producing behavioral ratings of both positive and negative behavior from parent to child (Hynan, 2003). Both FAMPROS and SCIFF

have been empirically validated in research (Hynan, 2003, citing Lindahl & Malik, 1999, and Vuchinich, Angelelli, & Gatherum, 1996).

Evaluators in an observation setting need to determine "whether each parent is offering suitable stimulation for the children while encouraging age-appropriate independence and avoiding acting in an overly controlling manner" (Hynan, 2002, p. 219). In one study, while 76% of evaluators observe parents with children, those evaluators fail to describe a methodology or structure for the parent-child observations that produces consistent data regarding, e.g., suitable stimulation or age-appropriate independence in the presence of parents (Bow & Quinnell, 2002).

The use of observations in custody evaluations is not without criticism. There are a variety of observation practices employed by evaluators. To date, there is no empirical evidence that direct observations are even needed (Turkat, 2005, p. 10). Others criticize the use of observations, since children may show positive behaviors toward parents even when they have been abused (Hynan, 2002).

### **Psychological Testing**

There is some debate about the use of psychological testing in custody evaluations (Jaffe & Mandeleew, 2008). APA guidelines (1994) and AFCC model standards (2006) recommend using multiple methods of data collection, including psychological testing, but they also offer strategies for dealing with the problems associated with the use of psychological testing (DeWard, 2005). The AFCC model standards specify that psychological testing should always serve to address issues of parenting capacity (DeWard, 2005). No guidelines establish a scientifically accepted protocol, leaving the choice of psychological tests to the discretion of the evaluator (Turkat, 2005). Psychological testing can diagnose certain mental illnesses, but it does not address how the psychological diagnosis has influenced parental capacity (DeWard, 2005).

Studies indicate that psychological testing is widely used, with 60% of evaluators performing psychological testing with children (Quinnell & Bow, 2001). Critics have argued that psychological tests should not be used to the exclusion of other methods, should not be interpreted too broadly, and may not be relevant to the legal proceedings (Quinnell & Bow, 2001). Due to the interface between mental health practitioners and non-mental-health professionals in the context of child custody cases, careful attention must be paid to the potential misunderstanding or misuse of data from psychological testing (Medoff, 1999).

### **Projective and Objective Personality Tests**

Early studies show the time spent on psychological testing is “greater than that spent on any other clinical procedure; after the APA (1994) guidelines, however, psychological testing is no longer the primary procedure in custody evaluations” (Quinnell & Bow, 2001, p. 498). Psychological testing now is used to “supplement other procedures or to create ‘working hypotheses’” (Quinnell & Bow, 2001, p. 498). Psychological testing is grouped into two categories: projective and objective. Many objective tests have questions that assess the test-takers’ honesty in their responses, a measure of the test’s validity (Carter & Sanders, 2001). Evaluators indicate that they use objective tests with adults, whereas, projective tests are used with children primarily because of the lack of appropriate tests for younger ages (Quinnell & Bow, 2001). This practice does raise questions, however, because projective tests lack the validity associated with objective tests (Quinnell & Bow, 2001).

### **Intelligence Tests**

While some evaluators use intelligence tests, the appropriateness of these tests in custody evaluations has been debated. Some authors urge that the “routine administration” of intelligence tests solely for the sake of testing is inappropriate, but that they may properly be

used to address special issues in the parent-child relationship or to determine the severity of a parent's depression (Quinnell & Bow, 2001). Several experts criticize intelligence testing as not being relevant to custody issues (e.g., Carter & Sanders, 2001), but evaluators do not frequently use intelligence tests (Bow & Quinnell, 2002).

### **Tests Designed for Child Custody Evaluations**

There are two tests specifically designed for use in custody evaluations as they are parenting assessments: the Bricklin Scales (Bricklin, 1984) and the Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT, Ackerman & Schoendorf, 1992) (as cited in Shuman, 2003). The Bricklin test is administered to children to yield custodial choices, whereas, the ASPECT integrates multiple tests such as MMPI-II, Rorschach, intelligence tests, Thematic Apperception Test (TAT), projective drawings, and others, and it incorporates interviews with children and parents. The goal of ASPECT is to assess parental fitness.

### **Academic Achievement Tests**

Academic achievement can be assessed by tests such as the Wide Range Achievement Test (e.g., WRAT4, Wilkinson & Robertson, 2006) and, for individuals who have a limited English-speaking ability, by non-verbal cognitive tests like the General Ability Measure for Adults (Naglieri & Bardos, 1997). The use of parent inventories also has been used more frequently since the inception of the APA (1994) Guidelines (Quinnell & Bow, 2001). The parent inventory tests used most often are the Parent-Child Relationship Inventory (Gerard, 2005) and Parenting Stress Index (Abidin, 1995).

### **Scrutiny of Specific Tests**

The MMPI, which screens for severe psychopathology but is not designed for custody evaluations, reportedly is used in 92% of child custody evaluations (Shuman, 2003). Criticisms

of the test's utility are that it does not assess parenting skills (Shuman, 2003), and the scales used to validate the test may be suppressed in the child custody population (Medoff, 1999). Parents undergoing custody evaluations commonly score higher than the normative sample on scales L and K, but not so high as to invalidate the profiles (Medoff, 1999). Psychologists frequently and falsely attribute these elevated scores as clinically significant defensiveness in the custody dispute context, thereby mischaracterizing the personality organization of a given individual and supplying inaccurate information (Medoff, 1999). For instance, there are misinterpretations of MMPI-1 and 2 results when used on women who have been battered, and scores of this population return to the norm over time (Ericson, 2006).

The Rorschach Inkblot (Rorschach, 1921) is the second most common psychological test used in custody evaluations. These tests rely on the subjective interpretation by the psychologist of an examinee's responses to a series of pictures, images, or open-ended questions (Ericson, 2006). Some criticize Rorschach Inkblot on grounds that "its scoring method is so flawed that the results are unreliable and probably invalid" because one single piece of data (one response) can indicate severe psychopathology (DeWard, 2005, p. 988). It also is criticized because it is a projective test, which is inherently biased as projective tests rely solely on the examiner's judgment rather than objective criteria (Shuman, 2003). Despite these issues, criticisms have generally been ignored by the legal system (Shuman, 2003).

The MCMI-III (Millon, 1996) is another test commonly used in custody evaluations, but it is criticized because it relies on theoretical and not empirical constructs (Shuman, 2003). Experts question its validity as a tool in custody evaluations (Shuman, 2003). The Bricklin Scales similarly is criticized, because its outcomes are based on hypotheses which have not been validated (Shuman, 2003).



The TAT (Murray & Morgan, 1935), another projective technique, largely relies on the evaluator's subjective interpretation of the subject's responses (Shuman, 2003). This test is viewed by some experts as unreliable or irrelevant because of its lack of validity or scoring procedures.

ASPECT incorporates Rorschach, MMPI, TAT and other forms of testing. Its designers claim that this test method is valid because the test's outcomes have coincided with 75% of courts' decisions in custody cases (Shuman, 2003). Critics argue that "research on the validity [of the test] is insubstantial" (Shuman, 2003, p.152).

### **Recommendations From the Research for Psychological Testing**

Many psychological tests may have inherent problems when used in custody evaluations. Some tests should be excluded altogether from the evaluation process, including the MMPI, TAT, Rorschach, and MCMI-III (Ericson, 2007). Several authors recommend that evaluators use psychological testing particularly as a way to verify information reported by parents, children, and others involved in the case (Jaffe & Mandeleew, 2008). Other recommendations include:

- identifying the purpose of the evaluation,
- specifying procedures used in testing,
- discussing any deviations from the standard use of a test,
- specifying recommendations, conclusions, and an explanation of how conclusions were reached,
- explaining the relationship of test data to other sources of information (Roseby, 1996).

Several articles recommend that psychological test results be coupled with explanations of what the results mean and how the results correlate with parenting capacity (DeWard, 2005).

## **Other Considerations by an Evaluator**

Research has demonstrated residential relocation following divorce is associated with several negative outcomes in children: lower academic achievement, increased teen pregnancy, and lower psychological well-being (Austin, 2008). Evaluators must be mindful of these effects, but moving should not necessarily be discouraged, since there can be practical and financial reasons for re-location (Austin, 2008).

## **Protocols for the Court, the Evaluator, and the Evaluation Report/Testimony**

### **The Judge's Role**

Aside from determining admissibility (as discussed below), judges need to decide when to order an evaluation and how to narrow the scope of the evaluation by specifying questions that are relevant to the particular case before the court. The three most frequent reasons for evaluation referrals are allegations of physical/sexual abuse, mental instability of a parent, and parental conflict/domestic violence (Bow & Quinnell, 2004; Waller & Daniel, 2004). An evaluation may be used when a judge suspects a case involves high-conflict between parents (Elrod, 2001). The ABA recommends interventions (e.g., mediation, parenting coordinators, mental health treatment) in high-conflict cases, along with a court-ordered custody evaluation (ABA, 2000). High-conflict custody cases are generally "marked by a lack of trust between the parents, a high level of anger and a willingness to engage in repetitive litigation" (ABA, 2000, p.1). Once judges order evaluations, they must provide questions for evaluators through a court order (Gould, 1999). The judge, attorneys, and the evaluator should develop these questions collaboratively (Gould, 1999). An evaluation should assess parenting fitness, the needs of the child, and the resulting fit between the parenting capacity and the needs of the child (APA, 1994). Questions should reflect the concerns of the court, the attorneys, and the parties to the

dispute, and should be framed so that they are suitable for use in evaluations by mental health professionals (Gould, 1999).

Judges are aware of many of the issues involved in custody reports and are mindful that they need to give them the appropriate weight when making a custody decision (Turkat, 2005). In order to assist with the many issues inherent in high-conflict cases, judges should obtain "specialized education and training on dynamics of high-conflict cases and effective ways to manage conflict" (ABA, 2000, p. 8). Despite the absence of scientific validation, judges should hold custody evaluators to the highest standards of performance by giving greatest weight to custody evaluations with unambiguous and precise supporting evidence and proportionately less credence to evaluations supported by weak evidence and imprecise generalizations (Turkat, 2005).

### **The Evaluator's Role**

The underlying goal of a forensic evaluation is to "gather information to answer specific psycho-legal questions about a family's functioning" and should be based on court-related issues (Greenberg & Gould, 2004, p. 259). The APA guidelines (1994) recommend the evaluator determine the scope of the assessment based on the "question or issue raised by the referring person or the court" (guideline 8). Alternatively, the AFCC model standards (2006) suggest that the court order, which specifies the questions to be addressed, must define the scope of the evaluation (standard 5.1). Further, if issues are presented outside the scope of the court order, the "evaluator shall seek approval of the court... prior to going beyond the originally designated scope" (standard 5.1).

The AFCC model standards (2006) dedicate standards 8.1 through 8.5 to maintaining objectivity, disclosure of potential conflicts, dealing with multiple relationships (dual roles),

avoiding therapeutic intervention, and role delineation in consulting. Several articles recommend prohibiting ex-parte communication between evaluators and attorneys (Halon, 2000, p.499), though the evaluator may have ex-parte communications with a child's Best Interest Attorney (BIA) when there is an issue that cannot be resolved between the parents' attorneys (Halon, 2000, p. 499).

The role of an evaluator can be difficult because the training of many mental health professionals is focused on attempting to ameliorate psychological distress (Picar, 2007), in addition to their training in clinical evaluations. Clinical judgment at best is only 60% accurate, which is unacceptable in any courtroom (Halon, 2000). It is important that evaluators in custody cases perform a forensic role and maintain neutrality (Picar, 2007). The goal is not to be therapeutic, but to "obtain information as objectively as possible" to aid the court in determining a custody plan in the best interests of the child (Picar, 2007, p. 104). The "forensically-informed" evaluator should make an effort to maintain a "balanced perspective and to support the child's appropriate relationship with both parents" (Greenberg & Gould, 2004, p. 248).

The APA guidelines (1994) require evaluators to overcome biases or to withdraw from the evaluation. In addition, evaluators should be aware of and curb their biases in favor of objectivity (Picar, 2007). Indeed, the primary concern of judges and attorneys is the lack of objectivity among evaluators (Bow & Quinnell, 2004). Even in the event that the evaluator believes he/she is not biased despite a previous contact with one of the litigants, the evaluator may be perceived as biased by one of the parents (Picar, 2007). Evaluators also must be aware of their bias in favor of an attorney who may be a good source for future referrals (Picar, 2007). Often evaluators may not be cognizant of conformity bias and societal bias (Picar, 2007). In addition, countertransference, in which a therapist's emotional reactions to the client are based on the therapist's own psychological history, can be a source of bias for therapists (Picar, 2007).

As with all sources of bias, custody evaluators need to be on-guard against countertransference and its effects.

## **Written Report Components and Testimony**

### **What to Include in a Report**

Each of the guidelines and standards presented in this literature review recommend that custody evaluation findings be presented in a written report (AFCC, 2006; AACAP, 1997; APA, 1994). The AFCC model standards (2006) and the APA guidelines (1994) do not have specific requirements, but the AACAP (1997) practice parameters' expectations are substantially more specific, recommending that the report weigh several factors:

- continuity of a suitable arrangement
- preference of the child
- quality of relationship between parents and the child
- impact of gender differences
- mental health of parent
- level of conflict and impact on the child (§II, A).

The AACAP practice parameters (1997) further recommend the following regarding a report:

- free of technical jargon
- detailed, yet concise
- in the form of a letter
- inclusive of the court-ordered questions; the individuals interviewed (including collateral sources); a diagnosis, if any, accompanied by an explanation of how the diagnosis will impact the custody determination; information derived from clinical interviews; and impressions of the parties, including those of collateral sources

- inclusive of conclusions, opinions, and recommendations (§II, A-O).

Judges report that the most important components of an evaluation are an explanation of the strengths and weaknesses of parents, child information (i.e., interview and history), and the recommendation for custody and visitation (Bow & Quinnell, 2004). Judges are not clear, however, on whether there should be specific custody recommendations in custody evaluations. One article calls for evaluators to cease making recommendations regarding specific custody arrangements and schedules because they lack scientific validity (Tippins & Whittmann, 2005).

Writing styles differ in custody evaluation reports, and evaluators tend to use a variety of methods to develop their written presentations to the court (Jaffe & Mandeleew, 2008). For instance, 83% of evaluators prefer a "classic report format versus a letter" to the judge/attorney (Bow & Quinnell, 2002). The median length of reports is 18 pages, but they range from 5 to 63 pages. There are several problem areas associated with evaluators' written reports:

- two-thirds of evaluators refer to collateral documents in their reports.
- one-third of evaluators document mental status information.
- twelve percent (12%) of evaluators fail to describe the reason for the evaluation.
- half of the evaluation reports include the child's history.
- half of the reports include a clinical description of the parties (p. 170).

The study also demonstrates that most evaluators make recommendations for therapy for children and parents and for physical custody; whereas, few make recommendations for legal custody and visitation (p. 170).

Reports should differentiate between parents' and children's overt behaviors (which can be objectively reported) and parents' and children's verbal behaviors (often subjectively reported) (Turkat, 2005). Research shows that "overt non-verbal behavior is less prone to

distortion than verbal reports of behavior" (Turkat, 2005, p. 11). Finally, reports should distinguish between facts and interpretations (Turkat, 2005).

### **Written Reports vs. Testimony**

Given that judges prefer in-court testimony by evaluators to written reports, special attention should be placed on the nature of this testimony (Waller & Daniel, 2004). The content in evaluator testimony varies widely according to one survey, including judicial requests for evaluator opinions on the ultimate custody decision (Waller & Daniel, 2004). Almost all of the judges surveyed reserve the right to assign weight to evaluator positions according to the reliability of the evaluator's in-court testimony (Waller & Daniel, 2004). Judges must use their discretion to exclude evaluators who simply report the comments of neighbors, parents, grandparents, teachers and others who are available to testify (Wah, 2002).

### **Admissibility**

Expert testimony "is guided by the rules of evidence that identify the circumstances under which such testimony is appropriate" (Emory, Otto & Donohue, 2005, p. 23). The judge's role is to determine whether expert testimony/evidence is admissible (Wah, 2002). This has been described as a "gate-keeping role" that calls for a judge to scrutinize closely expert testimony prior to trial.

### **Credentials, Training, and Continuing Education**

The first step in taking direct testimony is to have the expert witness qualified as such, which often results in limiting the scope of matters upon which the expert may give an opinion (Tippins & Whittmann, 2005). The Maryland Rules of Evidence, Rule 5-702 states:

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court

shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

The judge then needs to determine "whether an individual qualifies as an expert by considering such factors as the individual's 'knowledge, skill, experience, training, or education'" (Ramsey & Kelly, 2004, p. 14) (citing Federal Rules of Evidence, Rule 702). These factors are interrelated and should be considered in conjunction with the type of testimony to be given. Thus,

mental health professionals testifying about their evaluation of a parent in relation to a custody matter would need clinical training and experience in custody evaluations, as well as the ability to explain how their observations, assessments, instruments, inferences, and conclusions fit within a conceptual model that is based in scientific research and theory (Ramsey & Kelly, 2004, p. 14).

In determining experts' knowledge and training, judges should also assess the psychologist's familiarity with professional organization guidelines (Ramsey & Kelly, 2004, p. 14).

Attorneys and judges refer more often to doctoral level psychologists (51%) than to master's level psychologists (26%), master's level social workers (16%), and psychiatrists (7%). Judges and attorneys, however, note cost is a significant influence on the type of expert retained (Bow & Quinnell, 2004).

### **Admitting Scientific Evidence**

In determining the admissibility of scientific evidence, most states, including Maryland, follow the *Frye* test<sup>2</sup>, which requires the scientific evidence presented by an expert to be "generally accepted by the scientific community." Other states criticize the *Frye* test for being too conservative (Emory, Otto & Donohue, 2005, p. 23). These states generally follow the

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<sup>2</sup> *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).



*Daubert* test,<sup>3</sup> the basis for Federal Rule of Evidence 702, which requires a judge to evaluate whether the expert evidence (1) assists the trier of fact, (2) uses a tested methodology, (3) is based on a theory that has been subjected to peer review and publication, (4) is grounded in a method that has a known rate of error, and (5) is based on a methodology or theory that has been generally accepted by the scientific community.<sup>4</sup>

*Daubert* and *Frye* stand for the proposition that expert testimony must be both "relevant and reliable" (Shuman, 2003, p. 139). Regardless of the evidentiary standard, a judge must determine that the evaluation "methods are grounded in reliable and valid measurement tools and that the evaluation's scope and focus are relevant to the issues before the court" (Gould, 2002, p. 21). It can be difficult to determine relevance and reliability because evaluators use a wide variety of methods in custody evaluations (Shuman, 2003). In determining reliability and validity, judges must consider whether the expert "has applied the professional standards of the industry... in preparing a custody evaluation" (Wah, 2002, p. 155).

### **Problems Identified**

Because it is often difficult to determine relevance and reliability, judges typically admit psychological testimony and "formally state for the record that any objections as to the qualifications or relevance will merely go to the weight of the testimony rather than its admissibility" (Wah, 2002, p. 155). Judges are often lenient with respect to expert testimony and may be reluctant to exclude it out of a "fear of reversal" (Wah, 2002, p. 155). Problems with excluding experts' testimony may also arise because evaluators are not required to follow any of

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<sup>3</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

<sup>4</sup> Federal Rules of Evidence, Rule 702.

the proffered guidelines (Wah, 2002). Guidelines for expert testimony, such as those found in the 1994 APA guidelines, are not mandatory, so it is difficult to justify excluding non-conforming testimonial evidence. It is also problematic for a judge to determine whether an evaluator has followed any guidelines because there is a lack of specificity about the methodologies (Gould, 2002; Wah, 2002). In addition, the guidelines do not offer any recommendations about how to assess the scientific validity of evaluators' methodologies (Wah, 2002).

Although the validity of many psychological tests has been empirically verified, they are not always validated with child custody populations. For instance, the MMPI was designed to distinguish diagnostic personality groups (e.g., schizophrenia, paranoia, and depression) and contains eight clinical scales addressing psychopathology, but it contains no scales specifically designed for custody determinations (Shuman, 2003). Additionally, validity can be difficult to measure if the domain is not well defined. Tests designed specifically for child custody evaluations are intended to assess "the best interests of the child." Because the "best interests" standards are ambiguous, it becomes impossible to validate any predictive child custody tests. Nevertheless, judges often give some weight to the recommendations of evaluators and ignore the lack of scientific evidence (Wah, 2002). Evaluators should also assess the rate of error to give the judge an idea of the accuracy and/or validity of a test, but these validity measures are not available for some tests and are not reported in court for others (Wah, 2002).

### **Solutions to Admissibility Issues**

Several recommendations suggest ways that evaluators can overcome validity obstacles (Gould, 2002). Evaluators can use a semi-structured interview format, so that both parents are asked the same questions (Gould, 2002). Semi-structured interviews allow "specific questions to be asked to both parents about legally relevant areas of parental or family functioning" (Gould,

2002, p. 22). Questions also should relate to the pending legal issue to ensure relevance (Baeger & Galatzer-Levy, 2002). Evaluators must carefully consider and be prepared to explain to the court the weight they have assigned to the interview, observation, and test data supporting their custody recommendations (Gould, 2002).

When a psychological test is used in an evaluation, it should have a "clearly stated underlying theory of science, established reliability and validity statistics, normative data, and other measurement-related criteria" (Gould, 2002, p. 23). Some psychological tests, such as the Meyers-Briggs Test, would not be considered valid because there is no relevant literature that shows community standards, normative data, or a theoretical relationship to custody evaluations (Gould, 2002); whereas, others have undergone years of research validation. Studies show that judges are unfamiliar with psychological testing, so it is important to assist judges by explaining the reasons why a test is used, why it is considered valid, and under what conditions it is valid (Baeger & Galatzer-Levy, 2002; Gould, 2002). Intelligence tests, for example, are not directly relevant to the legal issue of custody and may imply that intelligence is a prerequisite to good parenting.

To assess the admissibility of the evaluator's testimony regarding parent and child observations, Gould (2002) recommends a more common sense approach: the judge should determine the evaluator's level of involvement in making the observations and selecting the areas to be assessed (p. 24). Another approach is to limit expert testimony only to scientifically validated findings (Emory, Otto & Donohue, 2005). According to this approach, evaluators should:

- abandon the use of all tests that purport to be custody specific (measure the child's "best interests" directly or indirectly)
- be precluded from testifying about any "syndrome" that lacks scientific support

- identify the specific nature and sources of inference based on interviews and observations
- use caution in interpreting established measures and integrating information across different areas of the assessment (Emory, Otto & Donohue, 2005, p.23).

### **Court Appointed Experts vs. Privately Retained Experts**

Although 88% of child custody evaluations are court-ordered (Bow & Quinnell, 2002), privately retained experts are used by attorneys. Because privately retained experts are selected by attorneys, they are open to several points of criticism: attorneys tend to "shop" for experts who will present their client in the most favorable light; a battle between private experts can be costly; and experts might sacrifice their objectivity to accommodate their client (Champagne, Easterling, Shuman, Thomkins, & Whitaker, 2001). In a survey of Texas judges and evaluators, the judges report that there are few downsides to court-appointed experts since they enable the court to exercise more control and to benefit from a neutral opinion at a lower cost (because parties do not need to hire two or more experts) (Champagne et al., 2001). Qualified experts themselves also have a favorable impression of court-appointed experts, although their opinions do not support the view that a court-appointed expert can provide a superior outcome (Champagne et al., 2001).

### ***COST FACTORS***

Costs associated with evaluation can vary greatly. One national survey reveals that the average fee for a custody evaluation in the United States is \$3,335, with a maximum of \$15,000 (Bow & Quinnell, 2001). Certain states, such as Wisconsin, are concerned about the high costs of psychological evaluations inhibiting investigations. One commentator posits that the courts may not ask about psychological assessments because of cost (Walsh, 2002). A Florida appellate

case questioned how a reported \$20,000 evaluation, which was equal to the net worth of both parties, could be beneficial to the “best interests” of the child<sup>5</sup> (Turkat, 2005). The national survey mentioned above found that, in 71% of cases, parties share the cost of the evaluation, divided equally or proportionally according to income (Bow & Quinnell, 2001). Judges also express a preference for parties to jointly request an evaluation and for each party to pay a share of the cost in order to eliminate evaluator bias in favor of either one (Waller & Daniel, 2004).

### **Gaps in Literature, Areas for Further Research, Challenges**

On the basis of the existing literature to date, there is a lack of empirical evidence supporting the efficacy of child custody evaluation practices and procedures. Professional organizations such as the APA, AFCC, and AACAP have developed standards and guidelines for practices, but the paucity of scientifically supported conclusions regarding child custody evaluation practices and the accuracy of their results makes it difficult to identify conclusively best practices. There is substantial debate about the appropriate components and methodologies for a custody evaluation, although there is no evidence that confirms or denies the various theories advocated by different experts. "With the exception of one study (Bow & Quinnell, 2002), all research examining child custody evaluation practices has been based on self-report of examiners" (Emery & Otto, 2005, p.6). The few studies that are referenced in this literature review are based on surveys of those involved in the evaluation process: evaluators, judges, attorneys, and children (Waller, Daniel, 2005; Bow, Quinnell, 2004; Waller, Daniel, 2004; Atwood, 2003; Bow, Quinnell, 2002; Champagne, Easterling, 2001; Bow, Quinnell, 2001). The studies that report on the experiences of custody evaluators may be useful, but self-reports "of their behavior may not accurately depict their actual practices" (Emery & Otto, 2005, p. 6).

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<sup>5</sup> *Higgenbotham v. Higgenbotham*, 857 So. 2d 341 (Fla. App. 2003).

Many articles suggest that studies are needed in the custody evaluation field (Austin, 2007; Baerger, Galatzer-Levy, 2002; Emory & Otto, 2005; Grisso, 2005; Martindale, 2007; Medoff, 1999; Tippins, Whittmann, 2005). The academic community has not responded yet to the call for empirical research, focusing instead on critiquing and challenging the evaluation process and those evaluators who rely on anecdotal evidence to support their conclusions (Grisso, 2005). In addition, researchers over the past thirty years have faced problems with funding, a scarcity of researchers in the field, and the absence of perceived value in the research (Grisso, 2005).

Experts have not conducted empirical studies of the practical effects of the guidelines developed by the APA, AACAP, or AFCC. This is due in part to the difficulty in determining or comparing outcomes concerning children involved in the divorce process, because every child's experience presumably is quite unique. In addition, the guidelines allow significant latitude in evaluation protocols, and evaluations differ, depending on the circumstances.

Custody evaluations lack any scientific validation because of research design limitations, due in part to the fact that the domains they measure are often ambiguous (Wah, 2002). There are no studies of objective instruments designed for custody evaluations (e.g., ASPECT, the Bricklin Scales). Moreover, there is some doubt that research on these tests can be conclusive because it is "hard to conceive of any psychological tests that could measure all the factors that might be relevant to child custody" (Emery & Otto, 2005, p. 8). There is research on various other psychological tests, including projective and intelligence tests, but the research subjects consist of populations other than the parties to a custody evaluation. Thus, the effectiveness and relevance of this research with respect to child custody evaluations have been questioned. Some critics argue that testing should not be used for child custody evaluations until there is research that validates its utility and relevance in the custody evaluation context.

The observation and the interview components of a custody evaluation often are not discussed in the literature. There is no empirical evidence that yields a determination of best practices for interview or observation methodology, though both of these components may provide valid results (Emery & Otto, 2005, p. 9). "[T]here are no structured interviews with well-established psychometric properties specifically developed for use in the child custody context, and survey data regarding psychologists' custody evaluation practices indicate that use of any structured interview approach is unheard of" (Emery & Otto, 2005, p. 9). Only one author discusses the fact that methodologies for observations and assessment strategies in this area lack standardization. It is generally accepted that a child's wishes should be considered in custody cases, but the age of the child is also an important consideration. Judges seldom consider the wishes of children younger than five years old. There are no studies looking at a child's preferences in the context of a custody evaluation, nor is there a standardized protocol to assess the reliability of children's preferences with respect to chronological age. Typically, judges prefer evaluators to obtain this information from the child in an interview, although the literature does not specify whether a judge should request specifically that information regarding children's preferences be included in the evaluation report.

Other aspects of the evaluation process are largely ignored in the literature. Although the significant variations in the cost of custody evaluations are well-documented, it is not clear how courts allocate custody evaluation costs. There also is no research to date pertaining to the use of a custody evaluator as a settlement officer. There are references in the literature to implementing statutes in several states, e.g., Florida, Pennsylvania, and South Carolina (Martindale, 2001), that are similar to or based on the APA guidelines to enforce standards of professional conduct, but there is no research to date on the effectiveness of these statutes in improving child custody evaluations.

In addition to the above-mentioned lapses in research, a more in-depth examination of the historical development of child custody evaluation practice is needed to better understand the forces contributing to the growth of custody evaluation practice (Kelly & Ramsey, 2009). Without an understanding of the role that societal factors, such as shifting gender roles, greater participation by fathers in childrearing, or the increased caseload of divorce in the 1970s and 1980s, play in the dramatic growth of custody evaluation services, system-level assessments of the service's efficiency are difficult to gauge (Kelly & Ramsey, 2009). A comprehensive understanding of the costs and benefits of performing custody evaluations is critical to human services systems that must justify the allocation of limited resources (Kelly & Ramsey, 2009). One researcher argues that without the empirical evidence of the beneficial effects of custody evaluations, the legitimacy of this intrusive practice has no foundation (O'Connell, 2009).

Custody evaluations are scrutinized heavily in the literature because of the lack of empirical evidence corroborating their effectiveness. Some authors believe that without empirical evidence the court should not permit evaluators to express opinions on ultimate issues "in custody cases as a matter of evidentiary law and the mental health profession should not provide them as a matter of professional ethics" (Tippins & Whittman, 2005, p. 214). Others believe that, because research in other fields of psychology is expansive and evidence-based, such research is useful in the realm of custody evaluations (Grisso, 2005).

## ***BEST PRACTICES***

### **Guidelines**

The AFCC (2006) model standards appear to be the most comprehensive of the guidelines developed by national organizations. These standards expand upon some of the same principles that appear in earlier guidelines (e.g. the APA (1994) guidelines and the AACAP



practice parameters). The AFCC model standards also are comprehensive insofar as they are designed to be used by attorneys, judges, and evaluators. The AACAP practice parameters are useful for the evaluator because they are more specific to the evaluation process. The APA guidelines are somewhat more comprehensive in the area of ethical standards for evaluators with respect to bias and avoidance of bias. "Any clinician[s] performing these evaluations ought to be familiar with the published standards and guidelines of his or her own professional discipline" (Herman, 1999, p. 13). One set of guidelines, however, cannot be recommended categorically over another because, in the end, there is no empirical evidence that supports the use of any of these sets of guidelines.

One author does recommend that states adopt uniform standards, but, due to the lack of definitive research documenting the value of any set of standards for custody evaluations, it is difficult to make a recommendation about whether states should or should not proceed in this manner (Elrod, 2001). Some authors criticize the promulgation of statutory standards because the organizations that developed the various guidelines never intended for them to be mandatory. Instead, the goal of the sponsoring professional organizations is to provide better protection for psychologists while addressing the needs and rights of their clients (Martindale, 2007). Furthermore, the guidelines articulate ethical parameters for practice rather than enforceable precepts. In sum, the statutory enforcement of guidelines for custody evaluation practice needs more thorough research before making a recommendation to implement a statutory scheme.

### **Evaluation Components**

Throughout the literature review, several components of the child custody evaluation are recommended: 1) collection of interview data from both parents and all children; 2) observation data; 3) collection of collateral information; and 4) a life history of parents. All four categories of

information also are recommended as subjects for inquiry in each professional organization's guidelines (i.e., APA, AFCC, AACAP). The use of psychological testing is subject to more debate. Although experts in the field recommend psychological tests, it is important to note that there remains little empirical research to support their use.

Though interview methodologies differ, general agreement exists concerning their importance in custody evaluations, especially when the results are supported by collateral sources of information. Most experts expect evaluators to continue to interview families, despite the lack of empirical evidence supporting the use of interviews in custody evaluations (Emery & Otto, 2005). The majority of authors recommend including all parents and children in interview sessions whenever possible.

Observation methodologies are vague, and research is needed to standardize protocols for observing parent-child interactions, though evaluators consistently are urged "to describe their observations clearly and to identify the inferences they draw from observations" (Emery & Otto, 2005, p. 10).

Recommendations for the use of collateral sources have become more prevalent. Austin (2002) describes collateral sources as critically important, whereas, the APA guidelines (1994) recommend the use of collateral sources "on occasion." The use of collateral sources is strongly suggested to resolve and/or validate disputed issues between parties. The appropriate use of collateral sources entails first obtaining consent from each source to disclose any information gained during the process. The evaluator also must ensure that there are adequate safeguards against bias and/or the appearance of bias and that the collateral information is valid (AFCC, 2007, § 11.6).

Although there are many unresolved questions about psychological testing, most authors recommend such testing as long as the validity, reliability, relevance, and testing methods are

explained to the court. The literature suggests that psychological testing be used to confirm an evaluator's hypothesis or to add to the weight of a conclusion, but overall conclusions must never be exclusively based on psychological test results. Until there is further research available on the psychological tests used in custody evaluations, evaluators should be cautious about using them and ensure that, when testing is used, it conforms to generally accepted testing methods.

### **Roles of the Judge and the Evaluator**

The role of the judge in relation to child custody evaluations generally is not well settled in the literature. It is accepted that judges' roles are to decide when a custody evaluation is necessary, to determine the admissibility of the expert testimony, and to assess how much weight to give to the evaluation in determining the custody arrangement. When judges decide that a custody evaluation is needed, they should establish the question(s) to be answered by evaluators. It may be useful in many cases for the judge to consult with attorneys and the evaluator to select the areas to be assessed (Gould, 1999, p. 72). Admissibility rules depend on state statutes, but judges have broad discretion to determine the relevance and reliability of evaluation testimony and reports. In order to address the difficulty judges may encounter in determining relevance and reliability, experts suggest several guiding principles:

- reports that rise to the level of "clear and convincing" evidence deserve greater weight.
- opinions based on overt behavior are more credible.
- facts are more trustworthy than opinions.
- certain psychological tests may not be useful.
- objective analysis is of primary importance.
- evaluation reports should be held to high standards (Turkat, 2005, p. 19).

The role of the evaluator is also straightforward as established in the literature. Evaluators should have training and continuing education in areas that include the "differentiation of different types of conflict, the impact of conflict on child and adult development and functioning, child interview techniques, custody evaluation protocols, domestic violence, child abuse and neglect, substance abuse, and basic principles of child custody law and procedure" (Elrod, 2001, p. 542-543). A proficient understanding of these topics is essential to maintain neutrality in conducting custody evaluations (Elrod, 2001). Evaluators should be aware of their own biases and, if bias is present, they should attempt to defuse the bias or remove themselves from the situation. Psychologists functioning as custody evaluators should not assume a therapeutic role with their custody evaluation clients. Their dealings with these clients are limited to the constraints of forensic evaluation protocols.

Judges often place great weight on several components of the written report, such as information about the strengths and weaknesses of parents, child information, and recommendations for custody and visitation (Bow & Quinnell, 2002). More research is needed to identify criteria used by judges to determine evidentiary weight in this area. Although judges may prefer recommendations as to the ultimate custody question, there are serious questions about whether a custody evaluation report can identify a definite answer, given that the evaluator's recommendations are based on methods lacking empirical support. Evaluators also should be familiar with the rules of evidence in order to demonstrate by written report and through in-court testimony how they reach their conclusions and to ensure that their methodologies are both relevant and reliable.

## ***CONCLUSION***

More research is necessary to substantiate many of the different elements of a child custody evaluation. The Maryland survey of judges, court personnel, and custody evaluation practitioners

is helpful to determine areas for further investigation. The survey indicates that evaluators come from different backgrounds, and, in certain circumstances, there is variability in their approaches to the evaluation. There is also a lack of uniformity among judges as to their expectations regarding the form and substance of the custody evaluation report. Clearly, standardization of process is needed for all elements of a custody evaluation. Greater clarity is also needed about the weight and range of criteria informing custody decisions to ensure that courts arrive at consistent and predictable decisions in adjudicating custody disputes.

Professional guidelines provide a modicum of standardization. Indeed, "there is a dire need for all professions involved in best interests hearings to cooperate -- to find solutions that are scientifically sound and that will serve the interest of the child, uphold the integrity of the judicial system, and foster respect for respective professions" (Wah, 2002, p. 161). This work is of primary importance to the families and children involved in the Maryland court system.

## **Annotated Bibliography: Child Custody Evaluations**

### ***GUIDELINES FOR EVALUATION***

American Psychological Association (1994). "Guidelines for Child Custody Evaluations in Divorce Proceedings." *Family Law Quarterly*, volume 29, 51-62.

This article describes guidelines developed by the American Psychological Association (APA) for psychologists conducting child custody evaluations in the context of marital dissolution cases. The guidelines build upon APA's *Ethical Principles of Psychologists and Code of Conduct* (APA 1992). As guidelines, they are not intended to be either mandatory or exhaustive. The goal of the guidelines is to promote proficiency in using psychological expertise to conduct child custody evaluations. The guidelines focus on three main areas: purpose of the evaluation, general guidelines, and procedural guidelines.

Herman, S., Dunne, J. et al. (1997). "Practice Parameters for Child Custody Evaluation." *Journal of the American Academy of Child and Adolescent Psychology*, volume 36, 139.

This article presents a series of practice parameters to guide clinicians in evaluating the often delicate and complex issues surrounding a child custody dispute. By way of background, the authors summarize the history of child custody decision-making and various judicial presumptions that have guided the courts. The differences between performing child custody evaluations and engaging in traditional clinical practice also are emphasized. The authors identify areas of inquiry that are common to all child custody disputes: evaluation of the continuity and the quality of the child's parental attachments; the child's parental preference; the existence of parental alienation; the child's special needs; the child's educational circumstances; gender issues; the child's sibling relationships the parents' physical and mental health; the parents' work schedules and finances; styles of parenting and discipline; parental use of conflict resolution; the family's social support systems; cultural and ethnic issues; ethics and values; and religious practices. In addition, the authors consider issues that complicate custody evaluations, including infants in custody disputes, homosexual parents, grandparents' rights, parental kidnapping, relocation problems, allegations of sexual abuse, and issues involving reproductive technology. An outline is provided that describes the complete evaluation process, from assessing referrals and planning a strategy to conducting clinical interviews, writing the report, and testifying in court.

Martindale, D.A. (2007a). "Model Standards of Practice for Child Custody Evaluation." *Family Court Review*, volume 45, issue 1, 70-91.

In this article the author discusses model standards for custody evaluation developed by The Association of Family and Conciliation Courts (AFCC) Task Force on Model Standards of Practice for Child Custody Evaluation. The model standards are designed to provide guidance to evaluators in the adjudication of disputes concerning child custody and access. The goal of the AFCC standards is to assist evaluators in performing their tasks more effectively and, in doing so, address the needs and rights of those to whom evaluator services are provided. The standards deal with acceptable evaluator behavior and the organization and content of evaluations.

## ***EVALUATION PROCEDURE, COMPONENTS, AND SUBSTANCE***

Austin, W.G. (2008). "Relocation, Research, and Forensic Evaluation, Part I Effects of Residential Mobility on Children of Divorce." *Family Court Review*, volume 47, issue 1, 136-149.

The author argues that the research literature regarding the effects of residential moves, or relocation, on children of divorce is not fully relevant in child custody evaluations. The article reviews literature that considers residential mobility as a general risk factor for children of divorce. Courts and child custody evaluators face dilemmas concerning whether to allow children to move with a parent to a new community and how to craft long-distance parenting plans if relocation is allowed. The literature suggests that relocation considerations should be a starting point for the custody evaluation, but that it should not be a basis for evaluation bias or a presumption against relocation. The role of the evaluator in a relocation case should be to assist the court by predicting the risk and the degree of potential harm to the child. The author suggests harm-mitigation strategies for each alternative.

Austin, W. (2002). "Guidelines for Utilizing Collateral Sources of Information in Child Custody Evaluations." *Family Court Review*, volume 40, 177-184.

Collateral information is vital to the process of assess the credibility and validity of information obtained from primary sources of information, i.e., the parties in a custody dispute. Collateral information sources include structured interview data, self-report data from questionnaires, psychological testing, third party information from interview data and record reviews (e.g. school/medical reports), and direct behavioral observations. Collateral sources are necessary to confirm hypotheses in forensic-clinical-scientific child custody evaluations. Collateral information should: come from sources that possess reliability high value : is relevant: and is neutral with respect to the interests of litigants. If collateral information is consistent with primary sources, it will increase the validity/reliability of inferences drawn from primary source information.

Emery, R., Otto, R., et al. (2005). "A Critical Assessment of Child Custody Evaluations." *Psychological Science in the Public Interest*, volume 6, issue 1, 1-29.

This study considered in this article examined the administration and evaluation of tests used in custody evaluations. The authors cite research that demonstrates the scientific inadequacy of tests developed to assess custody issues and of claims by evaluators regarding psychological measures that, although they are well-established in forensic psychological practice, are not directly relevant to the matters of custody determination. The authors propose several reforms. Parents should reach custody agreements through mediation, collaborative law, and good faith attorney negotiations. The article also advises legislatures to adopt the "approximation rule," whereby post-divorce parenting arrangements mirror parent involvement in marriages. Finally, the article recommends that custody evaluators follow applicable law and offer opinions only when there is adequate scientific basis for the opinions.

Gould, J., Stahl, P. (2000). "The Art and Science of Child Custody Evaluations: Integrating Clinical and Forensic Mental Health Models." *Family & Conciliation Courts Review*, volume 38, 392-414.

This article presents a model for child custody evaluation intended to help families resolve their conflicts. It also provides courts with a useful, legally relevant evaluation model. According to the authors, the “art” of conducting a complete child custody evaluation lies in the integration of the scientific method, a structured protocol, careful attention to all of the evaluation data, and careful application of the divorce research. In addition, the authors argue that a complete child custody evaluation is based on the evaluator’s clinical judgment regarding the family’s dynamics, the child’s functioning and needs, and the ability of each parent to meet those needs. The evaluation should be designed to provide the best possible data to the courts and meet minimum standards of scientific admissibility. Child custody evaluators should remain current with the behavioral science literature in all areas related to child custody evaluation, including, but not limited to, child development, adult psychopathology, children’s adjustment to separation and divorce, forensic use of psychological tests, forensic ethics, and forensic methods and procedures applied to custodial evaluation.

Gould, J. (1999). "Scientifically Crafted Child Custody Evaluations Part One: A Model for Interdisciplinary Collaboration in the Development of Psycholegal Questions Guiding Court Ordered Child Custody Evaluations." *Family & Conciliation Courts Review*, volume 37, 64-73.

This article proposes that judges, attorneys, and evaluators collaborate on the formulation of specific psychological questions to guide the examination prior to the court order for a custody evaluation. The article recommends that the questions accurately reflect the concerns of the court, the attorneys, and the parties to the dispute. They should be also framed within behavioral science norms in order to render them suitable for evaluation by a mental health professional. This model will best serve courts by providing information on specific, legally relevant areas of parenting, child development, and/or mental health.

Gould, J. (1999). "Scientifically Crafted Child Custody Evaluations Part Two: A Paradigm for Forensic Evaluation of Child Custody Determination." *Family & Conciliation Courts Review*, volume 37, 159-170.

The author posits a conceptual model for gathering and analyzing data in child custody evaluations. He argues that the use of forensic methodology provides a more scientific basis for the information provided by the evaluator, resulting in a more useful and accurate picture of the family in question.

Gould, J. (1999). An Interdisciplinary Collaborative Model for Developing Psycholegal Questions in Court Ordered Child Custody Evaluations, *Juvenile & Family Court Journal*, volume 50, winter issue, 43-51.

The purpose of this article is to propose a model for interdisciplinary collaboration among judges, attorneys and evaluators prior to writing court orders that specify what will be contained in custody evaluations. The questions that should be addressed in evaluations should reflect the concerns of courts, attorneys and parties to custody matters. The questions should be based on the behavioral science literature. Recent legislation, the meaning of "best interests of the child," and model standards promoted by some organizations, are often too vague and open to challenges in the courtroom. The author argues that an interdisciplinary collaborative model will offer more clarity. It will articulate specific psychological questions to address in an evaluation.. Once these questions are developed, they may be included in court orders. A collaborative model



that defines the scope of custody evaluations will better serve courts, attorneys, parties to custody matters and evaluators.

Halon, R. (2000). "The Comprehensive Child Custody Evaluation: Ten Years Later." *University of Arkansas at Little Rock Law Review*, volume 22, 481-500.

This article addresses the rising number of complaints about child custody evaluations and recommends that clinicians return to their scientific roots when assuming the status of expert witnesses. The author argues that clinicians and evaluators should operate within the context of forensic practice as opposed to clinical practice. In a clinical setting, therapists pay empathetic attention to the patient, thereby dispensing with or avoiding judgment regarding the patient's thoughts and behavior. The clinical approach is beneficial in helping individuals solve problems and restoring their emotional well-being. The problem is that when diagnoses are made by "clinical judgment" rather than through forensic tests, there is more room for error. In the courtroom, clinicians should refer to relevant research and the scientific methodology underlying their conclusions. The author concludes by emphasizing that the "best interests" judgment is made by courts, not evaluators.

Hynan, D. (2003). "Parent-Child Observations in Custody Evaluations." *Family Court Review*, volume 41, 214-223.

This article focuses on data-gathering for custody evaluations through observation. The author states that there is little consensus regarding the process for observation sessions. Similarly, there is no clear agreement among custody evaluators as to the most important and relevant aspects of parent-child interactions during observation sessions. The author questions the usefulness of home visits. This skepticism concerning home visits is based on author's assertion that home visits are difficult to arrange and typically fail to uncover severe problems.

Jaffe, A.M. and Mandeleew, D. (2008). "Essentials of a Forensic Child Custody Evaluation." *Family Advocate*. Volume 30, issue 4, 16-21.

In this article, the authors make recommendations on the substance of a custody evaluation. Drawing upon their experience as evaluators, their recommendations deal with the organization of an evaluation and methods and measures used. The authors suggest that the evaluation include life histories of the child and parents, psychological tests (cognitive functioning, objective personality, projective personality, parenting assessment), academic achievement information, and an interview with the child.

Kirkland, K. (2002). "The Epistemology of Child Custody Evaluations." *Family Court Review*, volume 40, 185-188.

According to the author of this article, the increasing use of custody evaluations has resulted in stricter scrutiny of their quality and usefulness. This scrutiny has included consideration of evaluation practices, application of legal standards to clinical issues, and higher and more uniform standards for the evaluation process. Practitioners recognize the need for guidelines covering collateral sources of information in evaluation. The author argues for a convergent multimodal approach to the collateral source component of custody evaluations. Once collateral sources are contacted, evaluators can inform them that the information will be treated as confidential and may be used in court reports to the court. The author also argues that

evaluators should inform collateral sources of information that behavioral descriptions of observed events are far more useful than their opinions.

Martindale, D.A. (2007b). "Setting the Standards for Custody Evaluators." *Journal of Psychiatry & Law*, volume 35, issue 2, 173-199.

The author states that over the past decade complaints against evaluators have risen concerning their qualifications and methods they use. He argues that ultimately courts should be responsible for regulating the professionalism of custody evaluations. The article proposes that legislatures and court systems develop standards to use in regulating the professional preparation and conduct of those who perform child custody evaluations. Since evaluators need leeway to operate in complex or unique situations, regulations must not be too rigid or restrictive. The author suggests that these standards comport with the AFCC Model Standards of Practice for Child Custody Evaluation.

O'Donohue, W., Beitz, K., and Cummings, N. (2007). "A Model for Constructs Relevant to Child Custody Evaluations." *Journal of Forensic Pathology Practice*, volume 7, issue 4, 125-139.

In this article the authors argue that the literature concerning custody evaluations has not provided a model to guide the assessment process. A useful model should specify relevant domains and offer clear arguments as to why they are relevant. Relevance is determined according to both legal and psychological criteria. Intended to mitigate substantial involvement with one parent, the authors present a five factor model that addresses: (1) poor attachment, (2) poor parenting skills, including abuse or neglect, (3) emotional instability/mental disorder of the parent, (4) environmental instability, and (5) exaggerated conflict. The authors also consider arguments and empirical evidence indicating that sexual orientation can be relevant to the domains of parental conflict, environmental stability, and possibly, in complex ways, to emotional stability.

Roseby, V. (1996). "Uses of Psychological Testing in a Child-Focused Approach to Child Custody Evaluations." *Family Law Quarterly*, volume 29, number 1, 97-110.

In this article the author considers how the child-focused alternative to custody evaluation attempts to frame issues under consideration so as to avoid the chronic conflict inherent in the "win-lose framework" that exists in the courtroom. The article describes this type of assessment as one that focuses on "adult mental health" rather than "parenting competence." It also emphasizes the parent-child relationship. The author notes that custody evaluations which presuppose assessing the relative parenting capacity of parents rather than focusing on their mental health and stability, cause problems for the family as a whole and often make the process more combative. The child-focused evaluation stresses that the evaluator understand the nature of the family conflict. The tests that are utilized in the evaluative process are intended to assess the traits and allegations relevant to parenting and maintain data credibility.

Turkat, I. (2005). "On the Limitations of Child Custody Evaluations." *Court Review*, volume 42, issue 2, 8-13.

This article focuses on determining the adequacy of child custody evaluations in the context of the cost to the family, the best interests of the child, and the validity of the measures that they include to assess parental fitness. The author recommends that an evaluation should rely on

sound scientific data, but that there are potential issues that may extend beyond valid data. These issues include: (1) the subjectivity of the interview questions; (2) the absence of standards for conducting clinical observations; (3) the absence of standardized testing protocols; and (4) the validity of the tests themselves (there are over two thousand tests available). The author argues that it is critical to focus efforts on results-oriented evaluations. Application of scientific research should tell the evaluator: (1) how a child's best interests will be served by placement with one parent rather than the other; and (2) how to identify the parent who can best serve those interests. Several recommendations are made to safeguard against the limitations of custody evaluations.

### ***USE OF PSYCHOLOGICAL TESTING IN EVALUATIONS***

Carter, S. and Sanders, D. (2001). "Anatomy of a Child Custody Evaluation." *Florida Bar Journal*, volume 75, issue 6, 89-95.

In this article the authors identify guiding principles for conducting custody evaluations. First, the evaluator must be unbiased and have specialized knowledge, training, skill, and experience. A psychologist's curriculum vitae, knowledge of the field, objectivity, and bias may be challenged. The evaluation must involve interviews with parents, interviews with the child and observation of parent-child relationships. Testing should be both objective (MMPI-2; MCMI-III) and projective (Inkblot; TAT; HTP; Drawings). Specialized psychological testing (PASS, ASPECT, Bricklin Instruments) is objective but has limitations; thus, it is necessary to evaluate the reliability and validity of this forensic testing. It is also useful for attorneys in preparing for cross-examination of experts to understand the range of psychological tests, their purposes, reliability and validity.

Erard, R.E. (2007). "Psychological Testing and Child Custody Evaluations in Family Court: A Dialogue: Picking Cherries with Blinders On: A Comment on Erickson et. al." *Family Court Review*, volume 45, issue 2, 175-184.

This article is a response to the Ericson, Lilienfeld and Vitacco article cited below. The author takes the position Ericson, Lilienfeld and Vitacco demonstrate prejudice against all assessment methods. The author argues that verbal self-reporting has led to distortions in Ericson's description and assessment of most of the instruments discussed. He criticizes Ericson, Lilienfeld and Vitacco for ignoring the utility, reliability, and validity of the Rorschach inkblot test in custody evaluations. The author further argues that Erickson and his co-authors ignore an extensive body of peer-reviewed literature that fails to support the conclusions and criticisms of psychological testing.

Erickson, S.K., Lilienfeld, S.O., and Vitacco, M.J. (2007). "Psychological Testing and Child Custody Evaluations in Family Court: A Dialogue: Failing the Burden of Proof: The Science and Ethics of Projective Tests in Custody Evaluations." *Family Court Review*, volume 45, issue 2, 157-174.

In this article the authors review the psychometric properties of psychological tests that are widely used in custody evaluations, cautions against their unfettered use, and calls upon attorneys to educate themselves regarding the limitations of evaluations that incorporate these tests. According to the authors, opinions formed through use of improper assessment techniques that incorporate problematic tests are themselves vulnerable to evidentiary challenges. The authors conclude that attorneys should familiarize themselves with commonly used

psychological tests and vigorously challenge expert testimony derived from tests that are scientifically unsound.

Grisso, T. (2005). "Commentary on 'Empirical and Ethical Problems With Custody Recommendations: What Now?'" *Family Court Review*, volume 43, issue 2, 223-228.

The author argues that Tippins and Wittmann's recommendation to banish conclusory testimony for custody evaluations is not likely to work. He offers evidence that judges favor expert opinion on the ultimate legal question. He also argues that conclusory testimony is generally accepted across almost all other areas of law in which psychological testimony is involved. He posits that it is not practical to allow only clinicians with "adequate forensic training" to conduct evaluations because there is no such specific training available. He states that Tippins and Wittmann argue that empirical research is needed; however, this is a deficiency in the discourse that has not been answered due to lack of funding for studies to validate expert evaluations.

Medoff, D. (1999). "MMPI-2 Validity Scales in Child Custody Evaluations: Clinical versus Statistical Significance." *Behavioral Science & Law*, volume 17, 409-411.

The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) is commonly used in the psychological assessment of parents involved in child custody evaluations. In this article the author underscores that, owing to the interface of mental health practitioners with non-mental-health professionals in the context of child custody cases, careful attention must be paid to the potential misunderstanding or misuse of data from this test. While there is a widely-held view that in the clinical significance of the MMPI-2 research does not support this view. Despite empirical findings that identify patterns of elevated defensiveness on the MMPI-2 validity scales among parents involved in child custody disputes, these patterns have been demonstrated to reach statistical but not clinical significance. False causal attributions contributing to the potential mischaracterization or loss of important data related to personality functioning are identified and discussed. In addition, the author considers potential dangers associated with such false causal attributions.

Otto, R., Edens, J., and Barcus, E. (2000). "The Use of Psychological Testing in Child Custody Evaluations." *Family & Conciliation Courts Review*, volume 38, 312.

In this article the authors discuss how, in conducting child custody evaluations, child custody evaluators may consider using standardized psychological tests that assess general constructs relating to specific behaviors and capacities. The authors consider that as alternatives, forensic assessment instruments developed specifically for purposes of child custody evaluation may be used. They also state that the validity of many standard measures in the context of child custody evaluation has not been established, and that published reviews identify concerns about the reliability and validity of custody assessment instruments and a need for further research into these issues.

Quinnell, F. and Bow, J. (2001). "Psychological Tests Used in Child Custody Evaluations." *Behavioral Science and the Law*, volume 19, 491-501.

Based on a national survey of 198 psychologists, this article explores the current status of psychological testing in child custody evaluations. The survey respondents view psychological testing as one source among many for assessing parents and children. Overall, testing ranks as the fourth most useful source of information for evaluations. The elements considered most

important are clinical interviews with the parents, clinical interviews with the subject children, and parent-child observations. According to the survey, evaluators discriminate in test selection by focusing on their preferences for objective assessments in parent inventories and rating scales. These findings address the criticism that evaluators over-interpret test findings, make unsubstantiated assumptions, and use testing that is not relevant to the legal issues at hand. The study finds that evaluators adhere more closely to APA guidelines than previously believed.

Shuman, D. (2003). "The Role of Mental Health Experts in Custody Decisions: Science, Psychological tests, and Clinical Judgment." *Family Law Quarterly*, volume 26, 135-162.

In this article the author states that the transformation of the standard for child custody litigation to a psychological best-interests-of-the-child test has led to a situation where mental health professionals' testimony is a common feature of legal decision-making in custody issues. The author examines the evolution of expert testimony to what has become a pervasive and virtually unrestricted characteristic of child custody litigation that is rarely challenged. The author reviews and assesses several psychological tests (MMPI-2, MCMI-III, Inkblot, Bricklin Scales, Ackerman-Schoendorf Scales) and their methodologies in the context of admissibility in family court. The author concludes that the reliability and relevance of testing should be examined and demonstrated.

Tippins, T. and Wittmann, J. (2005). "Symposium Issue on Child Custody Evaluation: Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance." *Family Court Review*, volume 43, issue 2, 193-218.

The authors review relevant psychological literature and conclude that the empirical foundation for many conclusions reached by authors of psychological literature are tenuous or non-existent. According to the article, while there are many valid and reliable techniques for observing and assessing the psychology of parents, there are no similarly valid and reliable instruments for assessing the implications of parent psychology for custody. The absence of such instruments is an ethical indictment of any specific custody recommendation. The authors offer seven recommended changes in custody evaluation protocol and call for abolishing the practice of asking mental health experts to offer opinions about specific custody arrangements.

### ***JUDGE AND ATTORNEY SURVEY RESEARCH***

Bow, J. and Quinnell, F. (2004). "Critique of Child Custody Evaluations by the Legal Profession." *Family Court Review*, volume 42, issue 1, 115-127.

The article considers the results of a survey of 121 judges and attorneys in Michigan. It explores the congruency between child custody evaluations and the needs of the legal profession. The survey shows that both judges and attorneys express similar attitudes and beliefs. According to the survey, over seventy percent of evaluations are court-ordered. The findings indicate that judges should recommend child custody evaluations for allegations of physical/sexual abuse or neglect, mental instability, parental conflict, and mental instability of a parent. Judges and attorneys believe that the evaluation's most important components are assessments of parents' strengths and weaknesses, information about the child gleaned from interviews and research regarding the child's history, and recommendations for custody and visitation. There is concern among those surveyed about bias. The authors indicate that survey results suggest that additional

improvements in child custody reports are needed. Reports could be improved by including a greater focus on the child, more specific provisions for custody and visitation, explanation of legal criteria relevant to the recommendations, and more timely completion of evaluations.

Dalton, C., Drozd, L.M., and Wong, F.Q.F. (2006). *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*. Reno, NV: State Justice Institute and National Council of Juvenile and Family Court Judges.

This monograph is designed to be a tool to help judges: determine whether a family violence dispute is one that requires an evaluation; determine the content of an evaluation; select the right person to conduct the evaluation; tailor the evaluation to the judge's needs; and know whether or to what extent the judge can rely on the evaluator's report.

Greenberg, L. Gould, J., et al. (2004). "Is the Child's Therapist Part of the Problem: What Judges, Attorneys, and Mental Health Professionals Need to Know About Court-Related Treatment for Children." *Family Law Quarterly*, volume 37, issue 2, 241-265.

In this article the authors suggest that therapists who provide treatment to court-involved children and families must have adequate expertise to effectively assist them and should avoid escalating conflict or exacerbating pre-existing family conflict. The authors explain the distinction between court-related treatment and traditional psychotherapy. The appropriate role of a child therapist in a forensic context is based on professional objectivity and is to apply recent research to determine the child's needs. The authors explore consent issues that can arise for a therapist in disclosing information to an evaluator about the scope, nature, and progress of treatment. The article suggests criteria for evaluating the performance and expertise of child therapists, for engaging in a critical evaluation of their reports, and for determining when a change of therapists is necessary.

Klepak, R. (2008). "What to Tell Your Client – About Mediation, the Custody, or a Custody Evaluation." *Family Advocate*, volume 30, issue 4, 8-11.

Based on the author's experience and opinions, this article contains brief practice-based recommendations for lawyers. It stresses the importance of advising the client that the child is the focus of the evaluation and that parents should view themselves as neither winners nor losers as a result of the evaluation outcome. In more desirable results may emerge when parties make custody decisions on a collaborative basis, the author recommends that attorneys encourage mediation.

Waller, E., Daniel, A. E. (2004). "Purpose and Utility of Child Custody Evaluations: From the Perspective of Judges." *Journal of Psychiatry & Law*, volume 32, issue 1, 5-26.

In a survey of ninety-seven judges regarding the utility of custody evaluations, the authors find that judges are most likely to order custody evaluations in cases involving allegations of sexual abuse, physical abuse, or parental unfitness. Judges report that they expect comprehensive procedures and that inclusive reports are most useful in their decision-making. Although judges are hesitant to have mental health professionals testify as to the ultimate custody disposition, the survey also suggests that custody evaluations play a significant role in judicial decision-making.

## ***EVALUATOR QUALIFICATIONS***

Baerger, D., Galatzer-Levy, R., et al. (2002). "A Methodology for Reviewing the Reliability and Relevance of Child Custody Evaluations." *Journal of American Academy of Matrimonial Law*, volume 18, 35-73.

In this article the authors argue that a custody evaluator must maintain an objective forensic role. The authors propose a five-part methodological framework that synthesizes the legal and behavioral science literature, empirical research, ethical guidelines, and model standards of practice. They also propose specific criteria for ensuring that child custody evaluations are consistent with *Daubert's* relevancy and reliability standards of admissibility.

Deward, M. (2005). "Psychological Evaluations: Their Use and Misuse in Illinois Child Abuse and Neglect Cases." *DePaul Law Review*, volume 54, 971-1006.

In this article the author considers custody evaluations in instances where a parent is suspected of abuse or neglect. The Supreme Court case of *Stanley v. Illinois*, which emphasizes the importance of child-parent relationships, and *Daubert*, which has important holdings for admissibility, are discussed. In Illinois, however, many problems still arise with custody evaluations. For instance, psychological tests are admitted into evidence without discussion of their limitations and supporting methodologies, and clinicians still disregard guidelines set forth by their profession to avoid overstepping their authority – for example, by advocating against returning a child to a parent's custody. The author calls for state legislatures to adopt Federal Rule of Evidence 702 pertaining to admissibility of expert testimony and for courts to follow the American Psychological Association (APA) and AFCC guidelines for child custody evaluators.

Gould, J. and Lehrmann, D. (2002). "Evaluating the Probative Value of Child Custody Evaluations." *Juvenile and Family Court Journal*, volume 53, issue 1, 17-29.

This article provides a model for critiquing the forensic competence and admissibility in court of a child custody report. According to this model, the authors argue that a judge should consider whether the testimony is based upon sufficient facts or data, whether reliable principles and methods are used to elicit the information, and whether expert witnesses have accurately applied appropriate evaluation principles and methods to the facts of the case. These factors will help judges and attorneys evaluate the methodology of the interview format, the psychological tests, self report measures, direct behavioral observations, and collateral records.

Ramsey, S. and Kelly, R. (2004). "Social Science Knowledge in Family Law Cases: Judicial Gate-Keeping in the *Daubert* Era." *University of Miami Law Review*, volume 59, issue 1, 1-81.

The authors consider how the appropriate and correct use of testimony based on social science research has become a critical issue in family law cases. As family law cases increasingly rely on scientific testimony, judges are faced with a duty imposed by *Daubert* to assess the validity of expert scientific testimony. The authors examine how courts use social science research in family law decisions and provide evaluation standards for determining the relevance of research to family law cases. The authors recommend expanding the gate-keeping model and suggest that judges scrutinize sources of social science data in addition to expert testimony. They conclude that it is possible for family courts to use social science research effectively and productively.

Wah, C. (2002). "The Changing Nature of Psychological Expert Testimony in Child Custody Cases." *Judicature*, volume 86, number 3, 152-161.

The author states that, under Federal Rule of Evidence § 702, the expert is to "assist the trier of fact." This is a key issue for the judge as "gatekeeper" because in assisting the judge, the expert's testimony must be relevant. The author examines how a judge can determine relevancy by assessing whether there is a scientific basis for testing. For testing to remain relevant and reliable, the article recommends that evaluators adhere to the professional standards articulated in the APA guidelines and work with all relevant parties to determine the best interests of the child. The author recommends using reliable substantiated testing, such as the MMPI-II, for parent evaluation. The author also asserts that rate of error is another issue in psychological testing admissibility, few psychologists maintain rate of error statistics, and courts differ on what rate of error is acceptable.

### ***STATUTORY FRAMEWORK FOR EVALUATIONS***

Atwood, B. (2003). "Hearing Children's Voices: The Child's Voice in Custody Litigation: An Empirical Survey and Suggestions for Reform." *Arizona Law Review*, volume 45, 629-690.

The authors consider how child custody decrees are different in critical ways from the other orders rendered by family courts. As revealed in the Arizona survey examined in this article, many judges dislike the in-camera interview and feel unqualified to evaluate children's statements. The common opinion revealed in the survey is that courts should provide basic procedural due process protections for the custody litigants, regardless of whether a judge uses an in-camera interview or a different method to elicit children's wishes. Survey respondents prefer to determine children's wishes through methods such as court-ordered custody evaluations or party testimony rather than in-court testimony or in-camera interviews. The authors also report that states disagree markedly on the procedural protections extended to litigants in private custody disputes, especially with regard to the conduct of in-camera interview with children.

Herman, S. (1999). "Child Custody Evaluations and the Need for Standards of Care and Peer Review." *Journal of the Center for Families, Children & the Courts*, volume 1, 139.

The author asserts that few jurisdictions have specified standards of practice for child custody evaluators. California Rules of Court 1257.3 (now 5.220) provides uniform standards that apply to court-connected and private child custody evaluations. While this new law represents an important advance in raising standards for custody evaluations, the authors state that in many jurisdictions the courts and mental health professionals generally receive no guidelines to perform child custody evaluations. The authors also argue that standards are needed in the following areas: evaluation strategy, collateral interviews, home visits, psychological testing, clinical interviews, standards of care, and evaluation report preparation.

Lord, D. (2002). "Evaluating the Child Custody Evaluation." *Alaska Bar Rag*, volume 26, 21-24.

This article discusses the inadequacy of the Alaska code requirements for child custody evaluations. In particular, the author argues that they do not reflect or support current research on child development. The author recommends that the code specify the following with respect to child custody evaluations: (1) that the evaluation is "scientifically crafted," using the scientific



method, (2) that it includes information from a variety of sources, and (3) that it is relevant and useful in addressing the court's concerns regarding the family. The author also suggests using the American Academy of Child and Adolescent Psychology *Summary of Practice Parameters for Child Custody Evaluations* (1997) in structuring child custody evaluations.

Snyder, H. and McDaniels, S. (2004). "Custody and Visitation Evaluations Under Illinois Law: Some Considerations as to the Content of a Mental Health Professional's Report." *Child Legal Rights Journal*, volume 23, number 2, 35-43 (2004).

The authors state that Illinois code provides that a custody evaluation may be court-ordered upon motion of either party or the child's representative or upon the court's own motion. Evaluations may be directed toward individuals or all parties. The scope of the evaluation and the process by which it is conducted is left to the discretion of the mental health professional. The authors recommend that evaluations should be relevant to the best interests factors listed in Illinois code. While Illinois has not adopted the *Daubert* standards of admissibility, the Illinois appellate court has held that child custody evaluation reports must be based on evidence that is considered reliable according to the standards of the psychiatric profession. The authors recommend that the courts rely on AFCC standards of practice in assessing the credibility of an evaluation report.

Walsh, T. (2001). "In the Interest of a Child: A Comparative Look at the Treatment of Children Under Wisconsin and Minnesota Custody Statutes." *Marquette Law Review*, volume 85, issue 4, 929-974.

This article examines the child custody and placement statutes of Wisconsin and Minnesota. The author reports that statutory schemes for legal and physical custody in both states require that custody determinations are based on the "best interests" of the child. In Minnesota, the submission of a parenting plan is mandated only when a parent seeking physical custody or visitation has been convicted of certain specified criminal offenses. The author suggests that since the Wisconsin Family Code does not have a similar statutory requirement, the Wisconsin legislature may be guided by Minnesota's legislative response to the primary caretaker custodial factor. In 1989, the Minnesota legislature passed an amendment stating that "the primary caretaker factor may not be used as a presumption in determining the best interests of the child."

## **OTHER TOPICS**

Stahl, P. (1999). "A Child Custody Evaluation: A Process to Help your Kids Thrive." *Family Advocate*, volume 22, 35.

The purpose of this article is to advise parents on a number of issues with respect to child custody evaluations. The first addressed by the author deals with the selection of an evaluator. Usually, the evaluator is appointed by the court. The author suggests that parents inquire about the evaluator's experience and training. The author also discusses what parents should know about the evaluation process and the testing. This includes the type of testing, parent interviews, child interviews, observations of parent and child, contact with collateral services, and the written report. Parents are advised that testing should be confidential. The author also stresses the benefits of the evaluation for parents. In particular, evaluation testing can help parents learn to work together for the benefit of the child.

American Bar Association (2000). "High-Conflict Custody Cases: Reforming the System for Children. Conference Report and Action Plan." *Child Custody Proceedings Reform Conference sponsored by the American Bar Association*. Access online: <http://www.abanet.org/child/custody-proceeding-reform.pdf>.

In this action plan the ABA proposes recommendations for changes in the legal and mental health systems to reduce the impact of high-conflict custody cases on children. The action plan adopts a new model for resolving family disputes by focusing on the welfare of effected children and clarifying the roles of mental health professionals, lawyers, and the court system. It calls for: improvements in evaluation and treatment of children, more effective and expanded services, and judges with specialized education/experience to handle high conflict cases.

Champagne, A., Easterling, D., Shuman, D.W., Thomkins, A.J., & Whitaker, E. (2001). "Are Court-Appointed Experts the Solution to the Problems of Expert Testimony?" *Judicature*, volume 84, number 4, 178-183.

This article addresses the debate between advocates for the use of privately-retained experts and those favoring court-appointed experts. The study represented in the article is based on outcomes from focus groups of judges, family lawyers, and court-appointed experts. The authors report that experts are found to support the court-appointed approach because it provides them access to both parents and children and enables them to more effectively assess best interests in accordance with APA guidelines. Experts further believe that court appointment is favorable because court-appointed attorneys are unable to control or manipulate experts. Lawyers, on the other hand, are concerned that they lose control of the process when experts are appointed by courts. Judges believe that court-appointed experts are neutral more often than private attorneys.

Elrod, L. (2001). "Reforming the System to Protect Children in High-Conflict Custody Cases." *William Mitchell Law Review*, volume 28, issue 2, 495-551.

In this article the author states that research demonstrates that high conflict custody cases are detrimental to the development of children, resulting in emotional turmoil; depression; lower levels of financial support; and higher risk of mental illness, substance abuse, academic failure and parental alienation. The author argues that high-conflict cases need to be identified in order to target resources to protect children. According to the author, it is possible to reduce the adverse effects of high-conflict custody cases on children by implementing multiple interventions, such as improvements to court structures and procedures. The author also recommends the adoption of uniform standards for custody evaluations and treatment by mental health professionals. In the author's opinion high-conflict parents would likely benefit from a quick resolution of the dispute by a judge or other court officer who can compel them to attend education and evaluation programs. Such programs may help prevent them from inflicting violence on each other or abducting their children.

Greenberg, S. and Shuman, D. (1997). "Therapy vs. Forensics: Irreconcilable Conflict Between Therapeutic and Forensic Roles of Mental Health Professionals." *Psychology Research & Practice*, volume 28, 50-59.

The authors state that therapists usually are highly invested in the welfare of their patients and often worry that offering public information about the patient deficits in custody evaluation reports could impair the patient trust in the therapeutic relationship. The authors posit that the role of a therapist is not consistent with the role of a court-appointed forensic expert. The authors

suggests that therapists are often unfamiliar with the relevant law, the psychological questions raised, and much of the factual information in child custody cases. As a result, their utility as testimonial experts is compromised. Much of what a therapist knows comes from the patient and is uncorroborated. The authors caution that in not recognizing the limitations and conflicts inherent in a pre-existing therapeutic relationship and its impact on the therapist's ability to serve in a forensic role, psychologists, psychiatrists, and other mental health professionals risk harm to their profession and their patients and do not serve the courts well as custody evaluators. The authors urge therapists to acknowledge the limits of what they can accurately and reliably report to the court in the context of a therapeutic relationship.

Kelly, R.F. and Ramsey, S.H. (2009). "Child Custody Evaluations: The Need for Systems-Level Outcome Assessments." *Family Court Review*, volume 47, number 2, 286-303.

The authors propose a research agenda to study child custody evaluation practice. In order to improve custody evaluation policies and procedures, the authors recommend that investigators pursue the following areas of inquiry: 1) the history of child custody evaluations; 2) the caseload dynamics of custody evaluations (the incidence and prevalence of custody evaluations locally and nationally); 3) the economics of child custody evaluation; 4) the variability in practice across jurisdictions; and 5) the outcomes derived from custody evaluations. The authors present seven testable hypotheses for conducting rigorous empirical research on outcomes: 1) upon completion of a custody evaluation, parents will be more likely to reach a non-court-imposed settlement than if no custody evaluation is performed. 2) disputed custody cases that proceed to trial will be adjudicated more rapidly when a custody evaluation is performed than those in which there is no custody evaluation. 3) judges will express higher levels of satisfaction with the decision-making process when they can rely on a custody evaluation to inform their decision-making versus when they cannot. 4) when a custody evaluation is part of the resolution process, parents will be: (a) more likely to abide by the parenting plan and (b) less likely to engage in subsequent inter-parental conflict and litigation. 5) on average, parents will be more satisfied with parenting arrangements that are the product of a custody evaluation than those that are the result of other court processes. 6) children in custody arrangements subsequent to a custody dispute for which a custody evaluation was performed are likely to score better on child well-being measures than children involved in such cases in which no custody evaluation was performed. 7) As custody evaluations become more common practice, court efficiency and effectiveness in disputed custody cases will be significantly improved. The authors conclude with an acknowledgement of the expense of performing rigorous outcomes research, but suggest the cost might be borne by private foundations dedicated to children's well-being and by federal funding agencies with interests in children.

O'Connell, M.E. (2009). "Mandated Custody Evaluations and the Limits of Judicial Power." *Family Court Review*, volume 47, number 2, 304-320.

The author compliments Robert Kelly and Sarah Ramsey for shifting the focus, with their research agenda proposal, from the "how to" questions concerning custody evaluations to the more central "why" question. Further, the author challenges the legal system to clarify the basic justification for imposing custody evaluations, which she characterizes as extensive and expensive intrusions in family privacy. Three possible justifications, including privilege, harm, and voluntariness, are discussed. Because a parent's claim of access to his or her child is deeply

embedded in the Constitution, the author argues that the state may not interfere with this privilege by conditioning access to one's children on submission to extensive and intrusive social service interventions such as custody evaluations. The author argues that custody evaluations never are truly voluntary and that custody evaluations are used as litigation strategies resulting in forced compliance with the process. The author suggests that the basic justification for custody evaluations is a topic of increasing importance, as the demographic range of the litigants arguing over custody involves a greater number of never-married parents with fewer economic resources. Custody evaluation policies and procedures must be designed to off-set the coercive power of the state to intrude in family life in this manner.

Pickar, D.B. (2007). "On Being a Child Custody Evaluator: Professional and Personal Challenges, Risks, and Rewards." *Family Court Review*, volume 45, number 1, 103-115.

In this article the author examines the professional challenges that may be encountered by the evaluator, specifically concerning bias. He states that evaluation bias may be produced by "countertransference." Countertransference is the therapist's personal response toward the patient based upon the therapist's prior experience. The author recommends that evaluators become vigilant of the existence of countertransference and seek appropriate consultation or supervision to avoid it and/or deal with it effectively.

Pruett, M., Insabella, G., and Gustafson, K. (2005). "The Collaborative Divorce Project: A Court-Based Intervention for Separating Parents with Young Children," *Family Court Review*, volume 43, issue 1, 38-49.

The authors describe the collaborative divorce project (CDP) as a unique court-based, collaboratively focused, randomized clinical trial. It is designed to assist parents of children six-years old and under as they begin the separation/divorce process - for married and unmarried couples. The authors' research shows that parents not participating in CDP are far more likely to undergo expensive and time-consuming child custody evaluations and to receive mandatory or recommended additional services.

Schleuderer, C. and Campagna, V. (2004). "Assessing Substance Abuse Questions in Child Custody Evaluations." *Family Court Review*, volume 42, 375-383.

The authors argue in this article that comprehensive child custody evaluations should incorporate substance abuse issues and specific assessment strategies. Federal law mandates different levels of informed consent for substance abuse evaluations. Clients who undergo drug and alcohol treatment are entitled to confidentiality, which is necessary in order to shield disclosures made while in treatment. The authors assert that it is unclear as to whether informed consent is necessary to investigate substance abuse questions in a child custody evaluation. They recommend that evaluators obtain written consent pursuant to Title 42 of the Code of Federal Regulation Part 2 (Statutory Authority for Confidentiality of Drug Abuse Patient Records, 2004). The authors also offer protocols for evaluating parents with substance abuse problems.

## Appendix

### ***WEB-BASED RESOURCES***

Association of Family Conciliation and Courts

<http://www.AFCCnet.org>

Mission:

The Association of Family and Conciliation Courts (AFCC) is an interdisciplinary, international association of professionals dedicated to improving the lives of children and families involved in family conflict. AFCC promotes a collaborative approach to conflict resolution, which serves the needs of children. It is a resource for those who work in and with family law systems, encouraging education, research, and innovative programs. It also has become a clearinghouse for best practices in addressing family strife.

American Psychological Association

<http://www.apa.org>

Mission:

The mission of the American Psychological Association (APA) is to advance the creation, communication and application of psychological knowledge to benefit society and improve people's lives.

American Academy of Child and Adolescent Psychiatry

[www.aacap.org](http://www.aacap.org)

Mission:

The mission of the Academy is to promote mentally healthy children, adolescents and families through research, training, advocacy, prevention, comprehensive diagnosis and treatment, peer support and collaboration.

California Alliance for Families and Children

<http://www.cafcusa.org>

Mission:

The Alliance advocates for fairness and equality in family court, for conflict reduction reforms, and for joint custody and co-parenting.