

# Critiquing a Colleague's Forensic Advisory Report: A Suggested Protocol for Application to Child Custody Evaluations

Jonathan W. Gould  
H. D. Kirkpatrick  
William G. Austin  
David A. Martindale

**ABSTRACT.** The purpose of this article is to provide a protocol within which to frame a critique or critical review of a colleague's custody evaluation. While we think that the structure and logic of the following pro-

---

Jonathan W. Gould, PhD, practices forensic and clinical psychology. He is author of the book *Conducting scientifically crafted child custody evaluations* (Sage, 1998) and co-author of *Clinician in court* (Guilford, 2002).

H. D. ("De") Kirkpatrick, PhD, obtained his doctorate in psychology from the Saybrook Graduate School in San Francisco, and completed a two-year post doc in forensic psychology from the California School of Professional Psychology, Berkeley. He is a diplomate in forensic psychology (ABPP), and is in private practice in clinical and forensic psychology in Charlotte and Chapel Hill, NC.

William G. Austin, PhD, is a practicing clinical and forensic psychologist in Northwest Colorado. He is the author of numerous articles on forensic methodology for conducting child custody evaluations that are research based with practical applications.

David A. Martindale, PhD, ABPP, is a diplomate in forensic psychology, and author of *Cross-examining mental health experts in child custody litigation* (2001). He now is in private practice in New Jersey as a forensic psychological consultant to attorneys and psychologists. His work is concentrated in the areas of child custody, professional ethics, and malpractice.

Address correspondence to: Jonathan W. Gould, PhD, Charlotte Psychotherapy & Consultation Group, 417A South Sharon Amity Road, Charlotte, NC 28211 (E-mail: [jwgould@aol.com](mailto:jwgould@aol.com)).

TOCOL may be applied to other forensic evaluations, our focus here is on the specific forensic specialty area of child custody and parenting access evaluations (CCEs). [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2004 by The Haworth Press, Inc. All rights reserved.]

**KEYWORDS.** Child custody, review work product, critique work product, second opinion

### INTRODUCTION

Increasingly, mental health professionals (MHPs) are entering the practice of forensic psychology (Gould, 1998). Among the many reasons for this movement, we believe three are primary. The first is that many MHPs perceive the specialty area of forensic practice as an exciting alternative to basic clinical practice. The second reason is that the Supreme Court's decisions in *Daubert v. Merrill Dow Pharmaceuticals* (1993) and in subsequent cases have stimulated a proliferation of experts, including experts in mental health, offering services to American courts. The third reason is that the constraints of managed care have not yet affected forensic practice, allowing forensic practitioners to maintain a pricing structure controlled primarily by marketplace factors.

We define "forensic arena" as the legal context for which the MHP prepares her/his work. This paper will focus on a suggested protocol for offering a review or critique of child custody (and visitation) evaluations. It is the critique itself as a specific type of forensic report that we will address. Little has been written on how to approach a forensic work product review of a child custody evaluation (Calloway, 1997; Metropolitan Denver Interdisciplinary Committee [MDIC], 1997; Stahl, 1996).

The task of providing a critique of another MHP's work within the general forensic area is a frequently occurring forensic activity (Gould, 2001). Forensic mental health professionals (FMHPs) are often retained to provide consultation to attorneys within civil and criminal contexts. A criminal defense attorney whose client is accused of child sexual abuse might retain a FMHP under an *ex parte* appointment order (see *Ake v. Oklahoma*, 1985) to provide pre-trial consultation and to review materials obtained through the discovery process. Part of this review might be an analysis of the strengths and weaknesses of a colleague's particular work in the case (e.g., use and interpretation of psychological test data). In a civil complaint, a plaintiff's attorney in a case involving an emotional distress tort action might retain a FMHP to critique the report generated by an independent medical or psychological evaluator retained by the defense.

Within the field of psychology, the role of critiquing another psychologist's child custody evaluation is identified as an appropriate role by the American Psychological Association (APA). Greenberg and Shuman (1997) observed that many mental health professionals step into the forensic arena with a poor understanding of the differences between clinical and forensic roles and responsibilities. While we believe there is not a bright line between these two specialties and, in fact, a competent FMHP builds his/her forensic skills on a solid clinical base, many clinicians enter the forensic arena poorly prepared and professionally naive about what is required and what level of competence is expected. The APA (Otto & Heilbrun, 2002) has recently declared forensic psychology as a specialty area, and, as such, the practice of forensic psychology requires specialized skills, training, and knowledge.

The scientific robustness and reliability of child custody evaluations (CCEs) have been strongly debated for over 25 years, with some scholars arguing against their usefulness (Ellsworth & Levy, 1969; Krauss & Sales, 2000; Melton, Petrila, Poythress, & Slobogin, 1997; Okpaku, 1976) and other scholars arguing for their usefulness (Ackerman & Kane, 1998; Galatzer-Levy & Krauss, 1999; Gould, 1998). American courts have continued to use experts for the small percentage of custody cases that do not settle, and some states have endorsed their use by statute.

The use of work product reviews is a mechanism by means of which MHPs can police themselves. It is a mechanism for holding forensic practitioners to at least minimal standards of competence (Weissman, 1991) by scrutinizing the quality of their forensic evaluation. A review informs the court on the reliability and relevance of the expert testimony because, as some sources indicate, courts often are not very knowledgeable about underlying research (Kelly & Lamb, 2000) or are poorly equipped to recognize problems in evaluations (Stahl, 1996) and the use of science (Gould & Lehrmann, 2002; Shuman, 2002). A competent review allows the court to be a more sophisticated consumer of a forensic mental health evaluation (Heilbrun, 2001).

The custody evaluation process captures a particular moment in a family's history. The best that evaluators can do is offer opinions about how the family is functioning at that particular moment in time. The critique of a colleague's advisory report takes place at a different moment in time and the methodology used by the original evaluator may provide useful information about the family, even if the methodology has been legitimately criticized by a reviewer. In addition, we recognize that different evaluators may collect different data and different evaluators may assign different weight to data.

We draw a distinction between a "critique" or "review" and a "second opinion." The term "second opinion" has been borrowed from the field of medicine with unfortunate consequences: It is misleading. In the medical context, second opinions are ordinarily offered only following a *second full examination* of the patient. Only in rare circumstances are second opinions formulated on the basis of a file review. In the custody arena, the first evaluation offers rec-

ommendations concerning a parenting plan based upon a sufficiently adequate set of data about all members of the family. We should carefully avoid using the term “second opinion” unless we are describing a second evaluation of equal, greater, or different scope than the first evaluation, in which the second examiner obtains a sufficiently adequate set of data from which to offer a recommendation about a parenting plan. Such a second opinion can only be responsibly offered if the second practitioner has conducted an evaluation that is at least as comprehensive as the initial evaluation or if the second practitioner has conducted an evaluation that focuses attention on a particular aspect of a specific issue that was contested from the first evaluation.

We believe that all that can be expected from a review of an advisory report is commentary on the strengths and deficiencies of the evaluator’s methods and a commentary on the manner in which opinions appear to have been supported by the data gathered. A critique enlightens the court concerning what information should have been included in the report and what information was missing. We also wish to emphasize that the term “critique,” as we use it, suggests a review of the type that will identify both strengths and deficiencies in the advisory report under review.

Within the past decade, it has become standard practice within most professions offering custody evaluations to American courts that the evaluator must be either court-appointed or agreed upon by the litigants by means of a consent agreement. In some states, such as Colorado, all custody evaluations are court ordered by statute.<sup>2</sup> While the American trial court has the prerogative to give whatever weight it deems appropriate to a custody evaluation, and might perhaps be swayed by the arguments put forth in a critical opinion of the evaluation submitted by one side or the other, the professional offering the critique or review of the original custody evaluation should not allow anyone, including the court, to assume that the critique has the same breadth and scope as a custody evaluation and the FMHP should not opine concerning alternative parenting plans. That is, the reviewer should not offer an opinion about custodial placement.

As a general rule, MHPs have much to learn from our legal colleagues about the capacity to accept critical feedback about our forensic work. It is not uncommon for attorneys, zealously advocating for their clients, to challenge each other and offer stinging and sometimes harsh criticisms of their colleagues’ opinions and competence. Such criticism is often seen in written correspondence and heard in open court. Appellate reviews can provide strong rebukes of a lower court’s reasoning and decision-making. By and large, attorneys and judges have learned not to take such criticisms personally and to see these criticisms as an integral part of the legal process.

We believe that MHPs who offer their services within the forensic arena must anticipate that their advisory reports may be reviewed from two different perspectives. A MHP may examine a forensic evaluation from a variety of perspectives that include review of the evaluator’s current methods, procedures,

research, and psychological reasoning (Gould & Bell, 2000). An attorney or a judge may critique an evaluation from a legal perspective that examines its admissibility, weight, and substance (Gould & Lehrmann, 2002).

A custody evaluator should understand that her/his advisory report—the work product describing the evaluation and the foundation data upon which conclusions and recommendations were based—stands a good chance of receiving close scrutiny because an attorney will likely move that the advisory report be introduced into evidence. It is for these reasons that the Committee on Ethical Guidelines for Forensic Psychologists (1991) recommended that psychologists practicing forensic psychology prepare their advisory report in a manner that anticipates “that the detail and quality of [their] documentation will be subject to reasonable judicial scrutiny; this standard is higher than the normative standard for general clinical practice” (p. 661). Our public role as experts to the court places upon forensic practitioners a “special responsibility for fairness and accuracy” (p. 664). It is because of these responsibilities that we believe FMHPs must become inured to criticisms of their advisory report.

Unfortunately, sometimes even with the most thorough evaluation report available to assist in settlement negotiations, settlement does not occur. Usually, one of the litigants is unhappy with the evaluator’s recommendations and remains poised to have his/her day in court. The adversarial process allows litigants to challenge experts, even court-appointed experts. Thus, a custody evaluator must understand that it is quite likely that the advisory report, with its “assumptions and methodology,” may be critically reviewed by a colleague acting in a consulting role to one of the attorneys for one of the litigants.

### ***Expert versus Consultant***

As used here, the term “consultant” refers to a specific forensic mental health role and is different from the role of “expert.” The expert and consultant roles fall on a continuum and although the “expert typically serves to some minimal extent as a consultant,” there are nonetheless significant differences between the roles (Hess, 1998, p. 111).

Weissman and DeBow (2003) state that “on the respective ends of the continuum are the ‘expert’ whose commitment is to finding and expressing the truth, versus the ‘consultant,’ whose commitment is to assisting attorneys in their preparation of cases for litigation and helping attorneys understand psychological evidence. The two roles can be oppositional to one another” (p. 38). As one of the authors has previously written,

Occasionally, a forensic examiner will be asked to consult with an attorney without seeing the litigant (s). Such consultation may take the form of a literature review and synthesis, discussion of psychological principles applied to the attorney’s legal strategy, review of the psychological components of a legal brief, psychological analysis of the litigant’s

claims, review of the litigant's file, and discussion with other professional forensic specialists and synthesis of their opinions for the attorney's use. Experts are also asked to review a colleague's report and prepare cross-examination questions for the attorney . . . When the forensic specialist is hired as a consultant, it is important that the attorney hires the expert directly. In this way, all work conducted for the attorney is covered under the attorney work-product privilege. (Gould, 1998, pp. 188-189)

From a legal perspective, the forensic mental health consultant is an *agent* of the attorney and is anchored to the attorney-client privilege. According to Epstein (2001), when an attorney retains an expert, there are two primary factors for extending the protection of the privilege. "One is where the other professional communicating with the attorney's client has an independently recognized confidentiality privilege, such as a physician in some states" (Epstein, 2001, p. 151). The other is where the communication with the other professional (such as a forensic psychologist) "is deemed necessary to assist the attorney to understand better the facts and give a legal opinion to the client. The principle that extends the privilege to certain categories of experts, defined as agents of the attorney for the purpose of rendering legal advice, is often referred to as the *Kovel doctrine*, after the case that set forth the concept of derivative privilege attaching to experts necessary for the rendering of legal advice" (p. 152).<sup>3</sup>

Epstein (2001) adds that the retained expert is more likely to be "cloaked with the derivative privilege" (p. 153) if the expert is retained by the attorney rather than by the client, if the purpose of the expert is to assist the attorney in digesting privileged information, and if the information is collected from the client, is confidential in nature, and is digested by the expert for transmission to the attorney. Additionally, and this seems most on point about an expert being retained to critique a custody evaluation, "if the expert was retained to assist the lawyer in understanding data that is either actually or technically in another language so that the attorney can render legal advice, the information exchanged will be protected" (p. 154).<sup>4</sup>

The purpose of this article is to provide a protocol within which to frame a critique or critical review of a colleague's custody evaluation. While we think that the structure and logic of the following protocol may be applied to other forensic advisory reports, our focus here is on the specific forensic specialty area of child custody and parenting access evaluations (CCEs). We hope this article will be considered by other professionals as a jumping off point for future articles addressing this complex area and that our work will stimulate comment and debate about how to review and critique a colleague's child custody advisory report.

Much has been written in the forensic literature about encouraging the use of a standard evaluation protocol (Grisso, 1986). Standard protocols increase

the reliability (accuracy) of the data across time and across interviewees (Rogers, 1995) and are encouraged for use in CCEs (Gould, 1998; Schutz, Dixon, Lindenberger, & Ruther, 1989). We propose that critiques of CCEs would be more useful if a standard evaluation protocol were to be used to review and organize the data and to place the interpretation of the data within a conceptual framework that is anchored to the relevant behavioral science literature. A standard information gathering protocol should be flexible enough to consider unique or ideographic sources of data but also needs to be structured enough to provide a cogent uniformity to the data gathering process.

A review of a CCE should provide the retaining attorney and the court with the scientific basis of concern, if any, about the evaluator's advisory report. Reviews should be written in a manner that encourages the use of the science of our profession. A critique should be focused on the employed forensic methods and procedures, including the evaluator's demonstrated awareness of appropriate child custody standards, guidelines, parameters, principles, and research. The critique should also reflect applicable and relevant law and local rules of evidence. The review should offer a fair and objective examination of the foundation for the evaluation and its subsequent recommendations.

What then are the elements of a critical opinion protocol of a colleague's CCE? We have identified six major elements: (a) A critique should be *factually* and *ethically grounded*; (b) It should offer *clear, cogent, and current knowledge of the relevant behavioral science literature*; (c) It should contain a *discussion of alternative, rival hypotheses*; (d) It should be *objective and bias-free*; (e) The critique should *offer a discussion of its own limitations* as well as the limitations of the reviewed evaluation; and (f) Its tone should be *forceful, open, and honest*.

### ***Factually and Ethically Grounded***

A FMHP who is retained to provide a critical analysis of a colleague's CCE must familiarize himself/herself with the fact pattern of the case. In addition to a critical reading of the evaluation report, the reviewer should ask to see all custody-relevant documents, including the pleadings and the appointment order or consent agreement that describes the terms by which the evaluator was appointed and the evaluator's Statement of Understanding and other documents each party was asked to sign prior to beginning the evaluation. A review of any depositions, particularly if the evaluator has been deposed, may prove fruitful. The reviewer should examine the information listed in the evaluator's written report, including all written, audio taped, and video taped materials and notes. Reviewers should not limit their examination of the file to those items identified by the evaluator as having played a role in the formulation of his/her opinion. Particularly if the retaining attorney alleges that information provided to the evaluator appears not to have been utilized, that information should be examined with care.

The actions that will best protect the due process rights of the litigant whose attorney has requested a review and the actions that will conform to the admonitions of our Ethics Code will not always coincide. As Calloway (1997) states, "Courtesy and wisdom obviously dictate that we first inform the court-appointed or consent-ordered psychologist whose work we are requested to review. By speaking with our colleague, we may discover facts about the conflictual situation and encourage collaboration, to help us prevent the misuse of our services" (p. 10).

While this appears to be good advice, deciding whether to contact the evaluator and, if so, when to do so, requires careful ethical and legal consideration. When a FMHP is retained by an attorney to critique a custody evaluation, the reviewer is in a *consulting role* to the attorney (and not to the litigant/parent whom the attorney represents). The fact that the attorney retains the FMHP places the FMHP in a professional relationship with the attorney, who may not want either the court-appointed expert or opposing counsel and his/her client in this adversarial system to know about the existence and services of the retained expert. The attorney may only want consultation about the evaluator's written report. It should be assumed that the reviewer's critical analysis and feedback to the attorney are privileged and confidential, by virtue of the fact that they are received as the attorney's *work product*. Ordinarily, a report to the retaining attorney is disclosed only if the retaining attorney decides that it will be advantageous to his or her case or elects to call the reviewer as a witness.

Some might argue that psychologists should not accept assignments the demands of which will require that they protect from disclosure the product of their forensic services. As stated above, within the many roles FMHPs offer to the legal profession, confidential and privileged consultations are quite common and are sometimes court-ordered (see *Ake v. Oklahoma*, 1985). Psychologists who believe that good review methodology requires that there be contact with an evaluator whose work is being reviewed should decline assignments in which they will be asked to honor an attorney's work-product privilege. An alternative for psychologists who hold this view is to state in their written retainer agreements that they will accept a case assignment only if retaining attorneys agree to allow them to contact the colleague who performed the custody evaluation. This approach allows an attorney to decline to retain a psychologist who expects this kind of collegial openness or to agree to the conditions of collegial contact during the review process.

Another alternative is for the potential reviewer to offer a two-stage consultation. Stage one would involve conducting a preliminary review that would include only the methods and underlying assumptions of the evaluation, consistent with the APA's child custody guidelines (APA, 1994) and the professional practice guidelines guiding forensic psychologists (Committee on Ethical Guidelines for Forensic Psychologists, 1991). The retained reviewer would also provide consultation about the quality of the report, but would pro-

vide no written report and no testimony. In stage two of the review process, if the reviewer finds that s/he needs to speak with the court-appointed expert about aspects of the reviewed evaluation, the retaining attorney may agree to this step. When an attorney provides such permission to the reviewing expert, the act of consulting with the court-appointed expert would pull the privilege mantle off the consulting reviewer. The reviewer's work product and other materials would then be subject to rules of discovery. The FMHP providing critiques must understand that s/he cannot contact another mental health professional, the court, or opposing counsel without prior, written authorization from the retaining attorney. No matter what steps the reviewing expert and the retaining attorney chose to take, all steps must be clearly described in a written retainer agreement between the reviewing expert and the retaining attorney. When changes to the original retainer agreement are made, any and all changes need to be memorialized in writing and signed by both parties. There also are times when an attorney can obtain the entire file of the court-appointed evaluator for review by another FMHP without disclosing that a forensic consultant has been hired.

What happens in a case where the reviewer is retained, agrees to provide confidential consultation, and then discovers upon review of the evaluation what appears to be unprofessional, questionable, or possibly unethical conduct on the part of the custody evaluator? The FMHP who is practicing (including the provision of a critical review of a colleague's advisory report) within the custody arena must recognize that such a situation sets up, at a minimum, a tension among three competing and, one might argue, equally important factors: (a) a litigant's constitutional rights to due process, including the right to discovery and the counsel of record's right to have privileged and confidential expert consultation; (b) the reviewer's and the evaluator's professional ethics and governing code(s) of conduct; and (c) the best interests of the child that is the polar star for the court's determination of custody dispositions. These three factors together create a complex set of issues that must be carefully considered by the reviewer, and, we would argue, one factor cannot be ignored because of influences of the other two. Often, a FMHP seeks ethical advice about such issues by consulting with trusted colleagues. It is important to recognize that such consultation, whether it is peer consultation or paid professional consultation, may first have to be approved by the retaining attorney. Without such written authorization, the FMHP may breach the confidential relationship existing under the work-product privilege.

Though offering to review the advisory report of a colleague is ethically appropriate, FMHPs who provide review services should be familiar with the ethical standards and professional practice guidelines that are applicable to this particular activity. Ethical standards are drawn from the APA's *Ethical Principles of Psychologists and Code of Conduct* (APA, 1992, 2002). Guidelines governing forensic practice are drawn from the *Specialty Guidelines for Forensic Psychologists* (Committee on Ethical Guidelines for Forensic Psy-

chologists, 1991). Guidelines governing forensic practice in the specialty area of child custody evaluations are drawn from the *Guidelines for Child Custody Evaluations in Divorce Proceedings* (APA, 1994) and from documents distributed by various state associations (e.g., North Carolina Psychological Association, 1994). Guidance concerning ethical issues and appropriate methodology can also be obtained from our professional literature, current textbooks, and current continuing education workshop presentations.

In addition to the ethics codes and practice guidelines published by specific professional groups, general practice guidelines and specific practice standards have been promulgated by groups whose members come from a variety of professions. Guidelines that should inform child custody evaluators and FMHPs offering critiques include those available through the Association of Family and Conciliation Courts (AFCC; 1995), the American Academy of Child and Adolescent Psychiatry (AACAP; 1997), the American Professional Society on the Abuse of Children (APSAC; 1990, 1995a, 1995b).

Prior to accepting the task of reviewing a colleague's work, it is incumbent upon the FMHP to objectively examine his/her competency to perform the task. Regardless of one's training and skills, when a FMHP is related to or involved in a social or professional relationship with one or more of the evaluatees, s/he should decline to serve as a reviewer of the evaluation.

Admonitions that psychologists practice within their areas of competence (Ethical Principle A: Competence; APA, 1992, 2002) and conduct evaluations only involving matters that are within their established competencies (Guideline III.A: Committee on Ethical Guidelines for Forensic Psychologists, 1991) also apply to reviewers. For example, if a CCE contains an assessment of allegations of child sexual abuse and the reviewer is not experienced in this area, s/he should either seek a consultation by a MHP who is trained in this area and who can assist in the advisory report review or decline the assignment.

The documents that set forth the various standards, guidelines, and practice parameters applicable to work in the child custody field are an essential component of the growing body of knowledge that should inform not only the custody evaluator, but also any mental health professional conducting a critical review of a CCE. Heilbrun (2001) has proposed a list of principles for FMHPs that are useful in reviewing CCEs. With Heilbrun's principles in mind, a reviewer should determine whether or not (a) the evaluator's role and the purpose of the evaluation have been defined; (b) the evaluator has used a data gathering model that is consistent with current literature and current professional practice; (c) collateral sources have been utilized and historical information has been obtained; (d) scientific reasoning and data interpretation have been used to establish connections between characteristics or conditions assessed and the pertinent functional abilities; (e) the information provided will assist the court in adjudicating a fact in the case and/or the ultimate issue; (f) the limits of data interpretation have been articulated; and (g) empirical support has been provided for opinions expressed. These guidelines, princi-

ples, and standards comprise the working framework both for conducting evaluations and reviewing the advisory report. We are of the opinion that any psychologist who substantially practices outside of the standards, guidelines, and parameters that have been identified in the child custody literature must be prepared to offer to the court a logical and coherent rationale for his/her chosen course of practice.

Weissman (1991) made an attempt twelve years ago to delineate a standard of care for CCEs with the starting presumption: "There are certain minimal professional and ethical standards that all mental health professions should comply with when contemplating any involvement in a child custody dispute" (p.470). Weissman first described the standard with thirteen negative examples of how *not* to conduct a CCE (see Table 1), and then described principles that *should* guide the evaluator and his/her evaluation (see Table 2).

Forensic MHPs who conduct CCEs are expected to be knowledgeable about and are expected to follow in a general way guidelines proposed by professional organizations for conducting these types of evaluations (AACAP, 1997; AAFC, 1995; APA, 1994; Committee on the Ethical Guidelines for Forensic Psychologists, 1991). These guidelines describe ethical principles, professional practice standards, parameters, guidelines, and forensic methodological rules for the competent design and execution of a CCE. Although some of these general guidelines, standards, and rules may be described as aspirational in nature, they represent the current state of the art regarding competent and ethical professional practice in CCE and they provide a general framework for how the evaluation should be conducted. One of the authors (Kirkpatrick, 2004) argues that the child custody field has developed to the point that a set of "standards" in fact exists.

The FMHP should also obtain guidance from practice books that describe expected forensic methodology and the research basis for the evaluation of families who are undergoing an evaluation regarding issues of custody and parenting time (Ackerman, 2001; Ackerman & Kane, 1998; Galatzer-Levy & Kraus, 1999; Gould, 1998; Schutz et al., 1989; Skafte, 1985; Stahl, 1994, 1999).

### ***Demonstrate Relevant Knowledge***

Expert testimony and advisory reports are expected to be based on scientific research and methods. Practitioners who conduct CCEs are expected to be knowledgeable about relevant substantive scientific research concerning the effects of divorce, child development, and special problems that often surface in child custody disputes such as domestic violence, child abuse, sexual abuse, and child alienation. The relevant professional literature consists of basic research on children and families and evaluation approaches to specialized topics that describe specific forensic methodology, involving topics ranging from child sexual abuse to how to approach parenting time when one parent wants

TABLE 1. Thirteen Examples of How Not to Conduct a CCE (Weissman, 1991, p. 470).

- 
1. "accepting referrals without requisite forensic training and specialized knowledge and competencies in child developmental psychology, personality, psychopathology, and psychological assessment;
  2. accepting referrals without a reasonable degree of understanding of the legal standards in custody determinations or the pertinent psychological literature;
  3. accepting referrals in cases where personal attitudes, ideologies, or agendas bias the examiner's evaluation of the parties in terms of their gender, ethnicity, or lifestyle, or in terms of selection of methods, interpretation of findings or formulation of opinions;
  4. accepting referrals where prior, current, or prospective relationships potentially produce conflicts of interest;
  5. entering into dual relationships with parties by serving other contaminating roles such as counselor-therapist, mediator, and/or evaluator;
  6. accepting referrals without formally clarifying the nature and scope of the intended evaluations;
  7. failing to provide meaningful information to the parties as to the purposes, objectives, and intended uses of the evaluation and its work product;
  8. failing to protect confidential communications and privileged information when required by law;
  9. failing to construct an assessment methodology that is fair, impartial, and comprehensive as to the issues in question;
  10. evaluating only one party in a child custody action, and making recommendations as to the child(ren)'s custody based on this limited information;
  11. failing to conduct an independent and autonomous evaluation, relying instead upon second- and third-hand information that may be factually unreliable and biased;
  12. failing to document all data which form the basis for evidence or services provided; and
  13. failing to represent fairly and accurately findings, interpretations of data, and the factual bases for opinions" [citations omitted].
- 

to relocate with the child. In combination with the general practice guidelines, this literature creates a standard of practice framework for the practitioner once it can be determined what forensic questions need to be addressed for the court. Appendix A provides a representative, but not exhaustive, review of the professional literature that guides practitioners on a variety of issues.

In addition to knowledge in the research content areas and forensic methodology, the FMHP needs to be familiar with relevant state laws because statutes and case law help identify general factors that need to be considered in competently conducted CCEs. Further, some jurisdictions (e.g., California) have published local rules pertaining to CCEs. The term "local rules" refers to rules that are adopted by a presiding judge, by a chief judge, or by all of the judges in a jurisdiction that govern practices, procedures, and policies in the courts of that district. The authority for establishing local rules varies from state to state. For example, a jurisdiction might have local rules pertaining to the appoint-

TABLE 2. Principles to Guide a Child Custody Evaluator (Weissman, 1991)

---

The evaluator should:

1. Understand the referral questions and make sure the evaluator has “the requisite clinical and forensic knowledge and skill to evaluate” (p. 471);
  2. Create a record that can be reviewed by others;
  3. Avoid ex parte communications in order to minimize any perception of bias;
  4. Directly assess all parties in the dispute and review collateral sources of information for verification of issues and gather data in a standardized and parallel format;
  5. Use standardized methods of data collection as much as possible. Be mindful of standards of admissibility of evidence and maximize structure in the evaluation so as to increase reliability;
  6. Acknowledge the limits of long-term predictions concerning the child and family due to situational variables associated with the stress of divorce and litigation;
  7. Assist the court by formulating parenting plans that will take into account a multitude of relevant variables.
- 

ment of a parent coordinator in a domestic matter, even though there is no statutory basis for the appointment.

While anchored to the relevant behavioral science literature pertaining to child custody, a FMHP might consider the following questions as a set of checkpoints to the thought process as a CCE is being reviewed (Table 3), in reviewing the evaluator’s use of interviews of the litigants (Table 4), in reviewing the evaluator’s use of psychological tests (Table 5), in reviewing the evaluator’s behavioral observations with each child (Table 6), in reviewing the evaluator’s use of collateral records and collateral interviews (Table 7), and in reviewing the evaluator’s apparent skill, knowledge, and actual advisory report (Table 8).

### ***Discuss Rival, Alternative Hypotheses***

An important concept guiding professional activity is that FMHPs, as educators to the court, should include in their reports reasonable alternative hypotheses, thereby enabling the court to critically examine the data. The consideration of plausible, alternative hypotheses suggests that even a critical opinion may include not only a reasonable second perspective but also other plausible explanations. As described below, educating the court about the importance of using a multi-hypothetical model may be as valuable as providing a criticism about the specific report.

Whether we are conducting an evaluation or offering critical opinion testimony, our role is to provide the court with a full range of scientific information, not just the scientific information that fits our argument. Our opinions

TABLE 3. Questions to Consider in Reviewing a CCE

- 
1. Did the evaluator clearly define the main problems or issues to be resolved?
  2. Did the evaluator clearly identify the legal questions relevant to the behavioral data to be collected?
  3. Did the evaluator identify the factors to be measured?
  4. Did the evaluator articulate testable hypotheses for the evaluation?
  5. Did the evaluator consider rival and/or plausible alternative hypotheses?
  6. Have the criteria defining the best interests of the child been clearly outlined?
  7. Did the evaluator identify developmental outcomes and the data upon which the specific predictions are based?
- 

TABLE 4. Questions to Consider in Reviewing the Interviews of Litigants

- 
1. Did the evaluator explain how credibility of interview data was assessed?
  2. Did the evaluator obtain interview data from each parent about the specific areas of functioning that are the focus of the court's concern?
- 

need to be crafted around the specific data points from which our conclusions were drawn *and such reasoning needs to be communicated to the court*. That is, we need to inform the court of the data used in forming our opinions. When providing alternative opinions, we need to inform the court of our use of different data points or alternative interpretations of the same data. When offering opinion testimony, we not only explain alternative hypotheses but also describe these alternatives fairly and accurately. We then can explain to the court why the strengths and weaknesses of the rival hypotheses are less convincing in this particular circumstance than the point of view we are presenting as more useful.<sup>5</sup>

### ***Objective and Bias-Free***

Forensic psychologists who act consistently within the bounds of the Specialty Guidelines (Committee on Ethical Guidelines for Forensic Psychologists, 1991) maintain an objective and impartial attitude *no matter who retains them*. They present their “services and the products of their services . . . in a forthright and responsible manner” (Committee on Ethical Guidelines for Forensic Psychologists, 1991, p. 658). No matter who the client is, the responsibility of the forensic psychologist is to “provide services in a manner consistent with the highest standards of their profession” (p. 657). Note that the Guidelines clearly state that our behavior is to conform to the *highest* standards.

TABLE 5. Questions to Consider in Reviewing the Use of Psychological Tests

- 
1. Was the psychological testing administered in a competent manner in accordance with ethical standards and professional practice guidelines?
  2. Were tests administered as outlined in the test manuals?
  3. Did the evaluator explain how test response style/bias was interpreted?
  4. Did the evaluator seek external support from collateral sources to confirm response style interpretations?
  5. Did the evaluator obtain objective test data from each parent about the specific areas of functioning that are the focus of the Court's concern?
  6. Was the choice of each objective test clearly related to the psycho-legal questions that are the focus of the evaluation?
  7. If not, what rationale is offered for the instruments selected?
  8. Was the relationship between choice of objective tests and the psycho-legal questions clearly explained to the trier of fact?
  9. Did each objective test possess the characteristics of a test that are suggested when using psychological tests in a forensic context? If not, why not?
  10. Did the evaluator explain the basis for the selection of each test administered and how its results would be used?
  11. Did the evaluator clearly identify the hypotheses drawn from the objective test data?
  12. Did the evaluator compare discrete sources of data drawn from the objective test data and compare them to information obtained from collateral sources?
  13. Did the evaluator discuss how information from objective test data was analyzed for the degree of convergent validity in the data?
- 

This is an awesome responsibility and one that must be taken very seriously. Our essential role is “as expert to the court . . . to assist the trier of fact to understand the evidence or to determine a fact in issue” (Committee on Ethical Guidelines for Forensic Psychologists, 1991, p. 665). Forensic psychologists who follow the Guidelines do not take sides. Their obligation is to seek facts and interpret such facts from a psychological perspective. Of course, our presentation of facts and their interpretation to a court must also conform to relevant state statutes or to the Federal Rules of Evidence guiding scientific evidence testimony.

[F]orensic psychologists have an obligation to all parties to a legal proceeding to present their findings, conclusions, evidence or other professional products in a fair manner. This principle does not preclude forceful representation of the data and reasoning upon which a conclusion or professional product is based. It does, however, preclude an attempt, whether active or passive, to engage in partisan distortion or misrepresentation. Forensic psychologists do not, by either commission or omission, participate in a misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence

contrary to their own position. (Committee on Ethical Guidelines for Forensic Psychologists, 1991, p. 664)

### *Discussion of the Critique's Own Limitations*

A critical review of a CCE must include caveats and statements about the limitations of the review. A written critique should include a statement that the critical review is neither a custody evaluation nor a second opinion. The written critique should emphasize the manner in which the reviewer became involved in the case, the questions and issues raised to the reviewer by the retaining attorney, the database analyzed by the reviewer, and the inherent and relevant limitations of the database. The limited scope of a critical review must be clearly articulated to everyone. For example, the reviewer may wish to include a statement that no parties were directly evaluated during the critique.

### *Critique Presented in a Forceful, Open, Honest Tone*

We can discuss our opinions in a forceful, open, and honest manner. We can provide cogent reasoning to support our beliefs that one explanation fits the data better than another. However, we should never intentionally exclude or misrepresent the meaning of a rival hypothesis or the cogency of its logic. We can attempt to convince the trier of fact of our conviction, but we should never

TABLE 6. Questions to Consider in Reviewing Behavioral Observations

---

1. Did the evaluator explain how credibility of self-report data was assessed?
2. Did the evaluator obtain self-report data from each parent about specific areas of functioning that are the foci of the Court's concern?
3. Was the choice of each self-report measure clearly related to the psycho-legal questions that are the focus of the evaluation?
4. If not, was the relationship between choice of self-report measure and the psycho-legal questions clearly explained to the trier of fact?
5. Did each self-report measure possess the characteristics of a test that are suggested when using psychological tests in a forensic context? If not, why not?
6. Did the evaluator explain the basis for the selection of each test administered and how its results would be used?
7. Did the evaluator clearly identify the hypotheses drawn from the self-report measures?
8. Did the evaluator compare discrete sources of data drawn from the self-report measures and compare them to information obtained from collateral sources?
9. Did the evaluator discuss how information from self-report measures was analyzed for the degree of convergent validity in the data?

---

TABLE 7. Questions to Consider in Reviewing Collateral Records and Interviews

- 
1. Did each parent provide a list of collateral interview sources knowledgeable about each parent's relationship with the minor child?
  2. Were the collateral interview sources interviewed in a consistent manner, using a common set of questions to form the basis of the interview focus from which the evaluator could compare responses across information sources?
  3. Were the questions asked of the collateral interviewees focused on specific questions of concern in this specific evaluation and were more general questions about parenting skills as well? If not, why not?
  4. If yes, what hypotheses were generated based upon the collateral information?
  5. Did the evaluator examine similarities and differences across interviewee data (convergent validity)?
  6. How did the evaluator assess the credibility of collateral interviewees?
  7. Did the evaluator obtain names of other people to interview from the collateral sources? Were these people interviewed?
  8. Were the choices of collateral interview sources representative of people involved in the child's life across a wide range of activities contrasted with limiting interviews to family and friends?
  9. If not, were the limitations of the obtained collateral data discussed?
- 

attempt to deceive, withhold, distort, or ignore reasonable, cogent alternative arguments.

### **SUMMARY**

In this article, we propose a framework for conducting work product reviews or work product critiques of a colleague's child custody evaluations. Though battles between experts frequently do little to bring light to the situation, the best interests of children are ill served when flawed reports go unchallenged and when they become the basis upon which the trier of fact rests his or her judicial decision. Where an expert's opinions have not been formulated through the utilization of appropriate procedures and are not supported by reliable data, exposing these deficiencies is essential (Martindale, 2001, p. 504). We perform an important educative function when we assist judges in their endeavors to more effectively evaluate proffered expert testimony (Heilbrun, 2001; Martindale, 2001).

The advisory report review is one tool that can make courts more informed consumers of forensic mental health evaluations. The same "special responsibility for fairness and accuracy" (Committee on Ethical Guidelines for Forensic Psychologists, 1991, p. 664) demanded of evaluators is expected of those who review evaluations. When one side requests that a full second evaluation

TABLE 8. Questions to Consider in Reviewing the Skill and Knowledge of the Evaluator

- 
1. Does the interpretation reasonably fit the data described in the report?
  2. Does the evaluator clearly address the psycho-legal questions that are relevant to the legal issues before the court?
  3. Did the evaluator address the limitations of the data?
  4. Did the evaluator address inconsistencies of the data?
  5. Did the evaluator discuss the degree to which data from different methods provide a convergent (reliable) view of each parent's parenting competencies?
  6. Were relevant research findings introduced to facilitate explanation and prediction?
  7. If not, why is the scientific basis of the forensic findings not presented to the Court?
  8. Can the court reasonably conclude that the evaluator was impartial and objective in the substance of the written report and in the substance of oral testimony (including depositions)?
  9. Based on the data reviewed (with their stated limitations) does the evaluator appear to have been impartial and scientific in approach and demeanor, or does s/he appear to have functioned as an advocate?
- 

be performed, the decision to be made by the court is complex. Second evaluations add to the expenses both for the family and for the court system, delay the process of resolving the conflict between the parents, and place additional stress on the parents and on the children. In some jurisdictions, second evaluations are strongly discouraged. For example, New Jersey's Board of Psychological Examiners have distributed guidelines in which it is suggested that formulating an opinion with respect to an earlier evaluation might best be done by means of a file review rather than subjecting the family members to an additional evaluation (N.J. Board of Psychological Examiners, 1993).

We propose that when second evaluations are requested, courts may want to utilize expert consultation in the form of an advisory report review to determine if there is basis for a full second evaluation. If the evaluation passes a forensic quality control analysis by the consultant, then the case can move forward toward a resolution of the issues.

When providing a critical opinion, the criticism needs to be focused on the "assumptions and methodology" used in the evaluation process, including the professional advisory report and/or qualifications of the expert. Criticism should also include some analysis of the evaluator's apparent knowledge, skills, and training in forensic mental health practice, including the evaluator's awareness of applicable laws, rules, and procedures in family law. Critical review should be limited to evaluations of methodology, interpretation of data, forensic acumen, and alternative conclusions drawn from such interpretations. They should never be personal attacks upon the examiner.

## NOTES

1. For example, Colo. Rev. Stat. § 14-10-127 (2001).
2. Colo. Rev. Stat. § 14-10-127 (2001).
3. *United States v. Kovel*, 296 F.2d 918, 921 (2d Cir. 1961).
4. *ECDC Envtl. V. New York Marine & Gen. Ins. Co.*, 1998 U.S. Dist. LEXIS 8808 at \*22-23 (S.D.N.Y. June 4, 1998).
5. We believe that the recent *Daubert* ruling provides a strong rationale for experts being able to articulate the basis for their opinions. The *Daubert* case was returned to the 9th Circuit Court and, again, the scientific evidence proffered by the plaintiffs was rejected by the Court (*Daubert v. Merrell Dow Pharmaceuticals, Inc. (on remand)*, 43 F.3d 1311 [9th Cir. 1995]). Judge Alex Kozinski, writing for the Court, declared that “[s]omething doesn’t become scientific knowledge just because it’s uttered by a scientist . . .” (at 1315-16). The Court’s task, Kozinski wrote, “is to analyze not what the experts say, but what basis they have for saying it” (at 1316). It is worthy of note that this was not the first time that a respected jurist emphasized the importance of experts articulating the bases for their opinions. In 1967, David Bazelon, in his opinion in *Washington v. United States*, 390 F.2d 444, declared that the court was “deeply troubled by the persistent use of labels and by the paucity of meaningful information” presented by experts (at 447). He added that in the case at bar, the experts had provided “only the conclusions without any explanation of . . . what facts . . . [were] uncovered, and why these facts led to the conclusions” (at 447).

## REFERENCES

- Ackerman, M. J. (2001). *Clinician’s guide to child custody evaluations* (2nd ed.). New York: Wiley.
- Ackerman, M. J., & Kane, A.W. (1998). *Psychological experts in divorce actions* (3rd ed.). New York: Aspen Law & Business.
- Ahrons, C. (1994). *The good divorce: Keeping your family together when you marriage comes apart*. New York: HarperPerennial.
- Ainsworth, M. D. S. (1979). Object relations, dependency, and attachment: A theoretical review of the infant-mother relationship. *Child Development*, 40, 969-1025.
- Ake v. Oklahoma, 470 U.S. 68 (1985).
- Amato, P. (2000). The consequences of divorce for adults and children. *Journal of Marriage and the Family*, 62, 1269-287.
- Amato, P. R. (2001). Children of divorce in the 1990: An update of the Amato and Keith (1991) meta-analysis. *Journal of Family Psychology*, 15(3), 355-370.
- Amato, P. R., & Gilbreth, J. G. (1999). Nonresident fathers and children’s well-being: A meta-analysis. *Journal of Marriage and the Family*, 61, 557-574.
- Amato, P. R., & Keith, B. (1991). Parental divorce and the well-being of children: A meta analysis. *Psychological Bulletin*, 110, 26-46.
- Amato, P. R., & Sobolewski, J. M. (2001). The effects of divorce and marital discord on adult children’s psychological well being. *American Sociological Review*, 66, 900-921.
- American Academy of Child and Adolescent Psychiatry. (1997). Practice parameters for child custody evaluation. *Journal of the American Academy of Child and Adolescent Psychiatry*, 36(10 Suppl.), 57S-68S.

- American Professional Society on the Abuse of Children. (1990). *Guidelines for psychosocial evaluation of suspected sexual abuse in young children*. Chicago, IL: Author.
- American Professional Society on the Abuse of Children. (1995a). *Psychosocial evaluation of suspected psychological maltreatment in children and adolescents*. Chicago, IL: Author.
- American Professional Society on the Abuse of Children. (1995b). *Practice guidelines: Use of anatomical dolls in child sexual abuse assessments*. Chicago, IL: Author.
- American Psychological Association. (1992). Ethical principals of psychologists and code of conduct. *American Psychologist*, *47*, 1597-1611.
- American Psychological Association. (1994). Guidelines for child custody evaluation in divorce proceedings. *American Psychologist*, *49*, 677-680.
- American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, *57*, 1060-1073.
- American Psychological Association, Office of Ethnic & Minority Affairs. (1990). Guidelines for providing services to ethnic, linguistic, and culturally diverse populations. *American Psychologist*, *48*, 45-48.
- Association of Family and Conciliation Courts. (1995). *The AFCC model standards of practice for child custody evaluations*. Madison, WI: Author.
- Austin, W. G. (2000a). Assessing credibility in allegations of marital violence in the high-conflict child custody case. *Family and Conciliation Courts Review*, *38*, 462-477.
- Austin, W. G. (2000b). Relocation law and the threshold of harm: Integrating legal and behavioral perspectives. *Family Law Quarterly*, *34*, 63-82.
- Austin, W. G. (2000c). A forensic psychology model of risk assessment for child custody relocation law. *Family and Conciliation Courts Review*, *38*, 186-201.
- Austin, W. G. (2001). Partner violence and risk assessment in child custody evaluations. *Family Court Review*, *39*, 483-496.
- Austin, W. G. (2002). Guidelines for utilizing collateral sources of information in child custody evaluations. *Family Court Review*, *40*, 177-184.
- Austin, W. G., & Kirkpatrick, H. D. (2004). The investigation component in forensic mental health evaluations: Considerations for parenting time assessments. *Journal of Child Custody*, *1*(2), 23-46.
- Bagby, R. M., Nicholson, R. A., Buis, T., Radovanovic, H., & Fidler, B. J. (1999). Defensive responding in the MMPI-2 in family custody and access evaluations. *Psychological Assessment*, *11*(1), 24-28.
- Bancroft, L., & Silverman, J. G. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.
- Baris, M. A., Coates, C. A., Duvall, B. B., Garrity, C. B., Johnson, E. T., & LaCrosse, E. R. (2001). *Working with high-conflict families of divorce: A guide for professionals*. Northvale, NJ: Aronson.
- Bathurst, K., Gottfried, A. W., & Gottfried, A. E. (1997). Normative data for the MMPI-2 in child custody litigation. *Professional Psychology: Research and Practice*, *9*, 205-211.
- Bauserman, R. (2002). Child adjustment in joint-custody versus sole-custody arrangements: A meta-analytic review. *Journal of Family Psychology*, *16*, 91-102.

- Binggeli, N. J., Hart, S. N., & Brassard, M. R. (2001). *Psychological maltreatment of children. APSAC Study Guides 4*. Thousand Oaks, CA: Sage Publishers.
- Biringen, Z., Greve, J., Howard, W., Leith, D., Tanner, L., Moore, S., Sakoguchi, S., & Williams, L. et al. (2002). Commentary on Warshak's "Blanket restrictions: Overnight contact between parents and young children." *Family Court Review*, 40, 204-207.
- Bowlby, J. (1969). *Attachment and loss: Vol. 1. Attachment*. New York: Basic Books.
- Braver, S. L., Ellman, I. M., & Fabricius, W. V. (in press). Relocation of children after divorce and children's best interests: New evidence and legal considerations. *Journal of Family Psychology*.
- Braver, S. L., & O'Connell, O. (1998). *Divorced dads: Shattering the myths*. New York: Tarcher/Putnam.
- Briere, J., Berliner, L., Bulkley, J. A., Jenny, C., & Reid, T. (Eds.) (2001). *The APSAC handbook on child maltreatment* (2nd ed.). Thousand Oaks, CA: Sage Publishers.
- Bruch, C. S. (2001). Parental alienation syndrome and parental alienation: Getting it wrong in child custody cases. *Family Law Quarterly*, 35, 527-552.
- Calloway, G. C. (1997). Ethical issues in the professional role of critiquing child custody evaluations. *The North Carolina Psychologist*, November-December, 10-11.
- Cassidy, J., & Shaver, P. R. (Eds.) (1999). *Handbook of attachment*. New York: Guilford.
- Ceci, S. J., & Bruck, M. (1995). *Jeopardy in the courtroom*. Washington, DC: American Psychological Association.
- Ceci, S. J., & Hembrooke, H. (1998). *Expert witnesses in child abuse cases: What can and should be said in court*. Washington, DC: American Psychological Association.
- Clawar, S. S., & Rivlin, B. (1991). *Children held hostage: Dealing with programmed and brainwashed children*. Chicago, IL: American Bar Association Family Law Section.
- Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, 15, 336-345.
- Cuthbert, C., Slote, K., Driggers, M. G., Mesh, C. J., Bancroft, L., & Silverman, J. (2002). *Battered mothers speak out: A human rights report on domestic violence and child custody in the Massachusetts family courts*. Wellesley, MA: Wellesley Center of Women.
- Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993).
- Depner, C. E., & Bray, J. H. (Eds.) (1993). *Nonresidential parenting: New vistas in family living*. Newbury Park, CA: Sage.
- Ellsworth, P., & Levy, R. (1969). Legislative reform of child custody adjudication: An effort to rely on social science data in formulating legal policies. *Law and Society Review*, 4, 167-233.
- Emery, R. E. (1999). *Marriage, divorce, and children's adjustment* (2nd ed.). Thousand Oaks, CA: Sage.
- Epstein, E. S. (2001). *The attorney-client privilege and the work product doctrine* (4th ed.). Chicago, IL: American Bar Association.
- Ewing, C. P. (2003). Expert testimony: Law and practice. In A. M. Goldstein (Ed.), *Handbook of psychology, forensic psychology* (Vol. 11, pp. 55-66). New York: Wiley.

- Fabricius, W.V., & Hall, J.A. (2000). Young adults' perspectives on divorce: Living arrangements. *Family & Conciliation Courts Review*, 38, 446-461.
- Faller, K. C. (1999). *Maltreatment in early childhood: Tools for research based intervention*. New York: Haworth Press.
- Friedrich, W. N. (2002). *Psychological assessment of sexually abused children and their families*. Thousand Oaks, CA: Sage Publishers.
- Galatzer-Levy, R. M. & Kraus, L. (Eds.) (1999). *The scientific basis of child custody decisions*. New York: John Wiley & Sons.
- Garb, H. N., Wood, J. M., Nezworski, M. T., Grove, W. M., & Stejskal, W. J. (2001). Toward a resolution of the Rorschach controversy. *Psychological Assessment*, 14, 433-448.
- Gardner, R. A. (2001). "Should courts order PAS children to visit/reside with the alienated parent? A follow-up study." *American Journal of Forensic Psychology*, 19, 61-106.
- Garrity, C. B., & Baris, M. A. (1994). *Caught in the middle: Protecting the children of high-conflict divorce*. San Francisco: Jossey-Bass.
- Goldstein, A. M. (Ed.). (2003). *Handbook of psychology: Forensic psychology* (Vol. 11). New York: Wiley.
- Gould, J. W. (1998). *Conducting scientifically crafted child custody evaluations*. Thousand Oaks, CA: Sage.
- Gould, J. W. (1999a). 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 and Conciliation Courts Review*, 37, 64-73.
- Gould, J. W. (1999b). Conducting scientifically crafted child custody evaluations: Part Two: A paradigm for the forensic evaluation of child custody determination. *Family and Conciliation Courts Review*, 37(2), 135-158.
- Gould, J. W. (2001). A protocol for offering a critique of a colleague's forensic work product. Handling of a relocation case. *Proceedings of the American Bar Association, Family Law Section, Spring CLE Meeting*, 343-358.
- Gould, J. W., & Bell, L. C. (2000). Forensic methods and procedures applied to child custody evaluations: What judges need to know in determining a competent forensic work product. *Juvenile and Family Court Journal*, 38(2), 21-27.
- Gould, J. W., & Lehrmann, D. (2002). Evaluating the probative value of child custody evaluations. *Juvenile and Family Court Journal*, 53(2), 17-30.
- Gould, J. W., & Stahl, P. (2000). The art and science of child custody evaluations: Integrating clinical and forensic mental health models. *Family and Conciliation Courts Review*, 38, 392-414.
- Gould, J. W., & Stahl, P. (2001). Never paint by the numbers: A response to Kelly and Lamb (2000), Solomon and Biringen (2000), and Lamb and Kelly (2001). *Family Court Review*, 39, 372-376.
- Graham-Bermann, S. A., & Edleson, J. L. (Eds.) (2001). *Domestic violence in the lives of children: The future of research, intervention, and social policy*. Washington, DC: American Psychological Association.
- Greenberg, L., & Gould, J. W. (2001). The treating expert: A hybrid role with firm boundaries. *Professional Psychology: Research and Practice*, 32, 469-478.

- Greenberg, S. A., & Shuman, D. W. (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice*, 28, 50-57.
- Grisso, T. (1986). *Evaluating competencies: Forensic assessments and instruments*. New York: Plenum.
- Heilbrun, K. (1995). Child custody evaluation: Critically assessing mental health experts and psychological tests. *Family Law Quarterly*, 29, 63-78.
- Heilbrun, K. (2001). *Principles of forensic mental health assessment*. New York: Kluwer Academic/Plenum Publishers.
- Heilbrun, K., Warren, J., & Picarello, K. (2003). Third party information in forensic assessment. In A. Goldstein (Ed.), *Handbook of psychology: Forensic psychology* (Vol. 11, pp. 69-86). Hoboken, NJ: Wiley.
- Heinze, M. C., & Grisso, T. (1996). Review of instruments assessing parenting competencies used in child custody evaluations. *Behavioral Sciences and the Law*, 14, 293-313.
- Hess, A. K. (1998). Accepting forensic case referrals: Ethical and professional considerations. *Professional Psychology: Research and Practice*, 29, 109-114.
- Hetherington, E. M., Bridges, M., & Insabella, G. M. (1998). What matters? What does not? Five perspectives on the association between marital transitions and children's adjustment. *American Psychologist*, 53, 167-184.
- Hetherington, E. M., & Kelley, J. (2002). *For better or for worse: Divorce reconsidered*. New York: Norton.
- Holden, G. W., Geffner, R., & Jouriles, E. N. (1998) (Eds.). *Children exposed to marital violence: Theory, research, and applied issues*. Washington, DC: American Psychological Association.
- Hynan, D. J. (1998). Interviewing children in custody evaluations. *Family and Conciliation Courts Review*, 36, 466-478.
- Jaffe, P. G., & Geffner, R. (1998). Child custody disputes and domestic violence: Critical issues for mental health, social service, and legal professionals. In G. W. Holden, R. Geffner, & E. N. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* (pp. 371-408). Washington, DC: American Psychological Association.
- Jaffe, P. G., Lemon, N. K. D., & Poisson, S. E. (2003). *Child custody and domestic violence: A call for safety and accountability*. Thousand Oaks, CA: Sage Publishers.
- Johnston, J. R., & Campbell, L. E. G. (1988). *Impasses of divorce: The dynamics and resolution of family conflict*. New York: Free Press.
- Johnston, J. R., & Campbell, L. E. G. (1993). A clinical typology of interparental violence in disputed custody divorces. *American Journal of Orthopsychiatry*, 63, 190-199.
- Johnston, J. R., & Girdner, L. K. (2001). *Family abductors: Descriptive profiles and family interventions*. Washington, DC: Office of Juvenile Justice Prevention.
- Johnston, J., & Roseby, V. E. (1997). *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce*. New York: The Free Press.
- Kelly, J. B., & Johnston, J. R. (2001). The alienated child: A reformulation of parental alienation syndrome. *Family Court Review*, 39, 249-266.
- Kelly, J. B., & Lamb, M. E. (2000). Using child development research to make appropriate custody and access decisions for young children. *Family and Conciliation Courts Review*, 38, 297-311.

- Kelly, J. B., & Lamb, M. E. (in press). Developmental issues in relocation cases involving young children: When, whether, and how? *Journal of Family Psychology*.
- Kirkpatrick, H. D. (2004). A floor, not a ceiling: Beyond guidelines-an argument for minimum standards of practice in conducting child custody and visitation evaluations. *Journal of Child Custody*, 1(1), 61-75.
- Krauss, D. A., & Sales, B. D. (2000). Legal standards, expertise, and experts in the resolution of contested child custody cases. *Psychology, Public Policy, and the Law*, 6, 843-879.
- Kuehne, K. (1996). *Assessing allegations of child sexual abuse*. Sarasota, FL: Professional Resources Press.
- Kuehnle, K., Coulter, M., & Firestone, G. (2000). Child protection evaluations: The forensic stepchild. *Family and Conciliation Courts Review*, 38, 368-391.
- Lamb, M. E. (1997). Fathers in child development: An introductory overview and guide. In M. E. Lamb (Ed.), *The role of the father in child development* (pp. 1-18). New York: Wiley.
- Lamb, M. E. (2000). The history of research on father involvement: An overview. *Marriage & Family Review*, 29(2-3), 23-42.
- Lamb, M. E. (2002). Placing children's interests first. *Virginia Journal of Social Policy & the Law*, 10, 98-119.
- Lamb, M. E., & Kelly, J. B. (2001). Using the empirical literature to guide the development of parenting plans for young children. *Family Court Review*, 39, 365-371.
- Lamb, M. E., Sternberg, K. J., & Thompson, R. A. (1997). The effects of divorce and custody arrangements on children's behavior, development, and adjustment. *Family and Conciliation Courts Review*, 35, 393-404.
- Lassiter, G., Deater-Deckard, K., Dunn, J., & Davies, L. (2002). Support across generations: Children's closeness to grandparents following divorce and remarriage. *Journal of Family Psychology*, 16, 363-376.
- Lee, S. M., & Olesen, N. W. (2001). Assessing alienation in child custody and access evaluations. *Family Court Review*, 39, 282-298.
- Lyon, T. D. (1999). The new wave in children's suggestibility research: A critique. *Cornell Law Review*, 84, 1004-1105.
- Maccoby, E. E., & Mnookin, R. H. (1992). *Dividing the child: Social and legal dilemmas of custody*. Cambridge, MA: Harvard University Press.
- Main, M. (1996). Introduction to the special section on attachment and psychopathology: 2. Overview of the field of attachment. *Journal of Consulting and Clinical Psychology*, 64(2), 237-243.
- Martindale, D. A. (2001). Cross-examining mental health experts in child custody litigation. *Journal of Psychiatry and Law*, 29(4), 483-511.
- Masten, A. S., & Coatsworth, J. D. (1998). The development of competence in favorable and unfavorable environments. *American Psychologist*, 53, 205-220.
- McCann, J. T., Flens, J. R., Campagna, V., Colman, P., Lazzaro, T., & Conner, E. (2001). The MCMI-III in child custody evaluations: A normative study. *Journal of Forensic Psychology Practice*, 1, 27-44.
- Medoff, D. (2003). The scientific basis of psychological testing: Considerations following Daubert, Kumho and Joiner. *Family Court Review*, 41(2), 199-213.
- Melton, G. B., Petril, J., Poythress, N. G., & Slobogin, C. (1997). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (2nd ed.). New York: Guilford.

- Metropolitan Denver Interdisciplinary Committee. (1997). *The child custody evaluation: The MDICC aspirational guidelines*. Denver, CO: Author.
- Mullender, A., Hague, G., Imam, U., Kelly, L., Malos, E., & Regan, L. (2002). *Children's perspectives on domestic violence*. Thousand Oaks, CA: Sage Publishers.
- New Jersey State Board of Psychological Examiners. (1993). *Specialty guidelines for psychologists [sic.] Custody/visitation evaluations*. Newark, NJ: Division of Consumer Affairs, New Jersey Department of Law & Public Safety.
- North Carolina Psychological Association. (1994). *Child custody guidelines*. Raleigh, NC: Author.
- Okpaku, S. R. (1976). Psychology: Impediment or aid in child custody cases? *Rutgers Law Review*, 29, 1117-1153.
- Otto, R. K., Edens, J. F., & Barcus, E. H. (2000). The use of psychological testing in child custody evaluations. *Family and Conciliation Courts Review*, 38, 312-340.
- Otto, R. K., & Heilbrun, K. (2002). The practice of forensic psychology: A look toward the future in light of the past. *American Psychologist*, 57(1), 5-18.
- Poole, D. A., & Lamb, M. E. (1998). *Investigative interviews of children*. Washington, DC: American Psychological Association.
- Rohner, R. P., & Veneziano, R. A. (2001). The importance of father love: History and contemporary evidence. *Review of General Psychology*, 5(4), 382-405
- Rogers, R. (1995). *Diagnostic and structured interviewing: A handbook for psychologists*. Odessa, FL: Psychological Assessment Resources.
- Roseby, V. (1995). Uses of psychological testing in a child-focused approach to child custody evaluations. *Family Law Quarterly*, 29, 97-110.
- Rosenthal, R., Hiller, J. B., Bornstein, R. F., Berry, D. T. R., & Brunell-Neuleib, S. (2001). Meta-analytic methods, the Rorschach, and the MMPI. *Psychological Assessment*, 14, 449-451.
- Schutz, B. M., Dixon, E. B., Lindenberger, J. C., & Ruther, N. J. (1989). *Solomon's sword*. San Francisco: Jossey-Bass.
- Shuman, D. W. (1994). *Psychiatric and psychological evidence* (2nd ed.). New York: McGraw-Hill.
- Shuman, D. W., & Sales, B. D. (1998). The admissibility of expert testimony based upon clinical judgment and scientific research. *Psychology, Public Policy, and Law*, 4(4), 1226-1252.
- Shuman, D. W., & Sales, B. D. (1999). The impact of Daubert and its progeny on the admissibility of behavioral and social science evidence. *Psychology, Public Policy, and Law*, 5(1), 3-15.
- Shuman, D. W. (2002). The role of mental health experts in custody decisions: Science, psychological tests, and clinical judgment. *Family Law Quarterly*, 36(1), 135-162.
- Skafte, D. (1985). *Child custody evaluations: A practical guide*. Beverly Hills, CA: Sage.
- Solomon, J., & Biringen, Z. (2001). Another look at the developmental research. *Family Court Review*, 39, 355-364.
- Stacey, J., & Biblarz, T. J. (2001). Does the sexual orientation of parents matter? *American Sociological Review*, 66, 159-183.
- Stahl, P. (1994). *Conducting child custody evaluations*. Thousand Oaks, CA: Sage.
- Stahl, P. (1996). Second opinions: An ethical and professional process for reviewing child custody evaluations. *Family and Conciliation Courts Review*, 34, 386-395.

- Stahl, P. M. (1999). *Complex issues in custody evaluations*. Thousand Oaks, CA: Sage.
- Stoltz, J. M., & Ney, T. (2002). Resistance to visitation: Rethinking child and parental alienation. *Family Court Review*, 40, 220-231.
- Sullivan, M. J., & Kelly, J. B. (2001). Legal and psychological management of cases with an alienated child. *Family Court Review*, 39, 299-315.
- Wallerstein, J. S. & Kelly, J. B. (1980). *Surviving the breakup: How children and parents cope with divorce*. New York: Basic Books.
- Wallerstein, J. S., & Tanke, T. J. (1996). To move or not to move: Psychological and legal considerations in the relocation of children following divorce. *Family Law Quarterly*, 30, 305-332.
- Warshak, R. A. (1996). Gender bias in child custody decisions. *Family and Conciliation Courts Review*, 34, 396-409.
- Warshak, J. W. (2000a). Blanket restrictions: Overnight contact between parents and young children. *Family and Conciliation Courts Review*, 38, 422-445.
- Warshak, J. W. (2000b). Social science and children's best interests in relocation cases: Burgess revisited. *Family Law Quarterly*, 34, 83-113.
- Warshak, R. A. (2001). *Divorce poison*. New York: Regan.
- Weiner, I. B. (2001). Advancing the science of psychological assessment: The Rorschach inkblot method as exemplar. *Psychological Assessment*, 13, 423-432.
- Weissman, H. N. (1991). Child custody evaluations: Fair and unfair professional practices. *Behavioral Sciences and the Law*, 9, 469-476.
- Weissman, H. N., & DeBow, D. M. (2003). Ethical principles and professional competencies. In A. M. Goldstein (Ed.), *Handbook of psychology: Forensic psychology* (Vol. 11, pp. 33-53). New York: Wiley.
- Whiteside, M. F. (1998). Custody for children: Age 5 and younger. *Family and Conciliation Courts Review*, 36, 479-502.

SUBMITTED: August 26, 2003

REVISED: November 4, 2003

REVISED: December 1, 2003

ACCEPTED: December 7, 2003

## APPENDIX A Suggested Resources by Topic

1. Abduction of Children by Parents: Johnston & Girdner (2001)
2. Attachment Theory and Research: Ainsworth (1979); Bowlby (1969); Cassidy & Shaver (1999); Main (1996)
3. Child Adjustment and Custodial Arrangements: Amato (2001); Bauserman (2002); Hetherington, Bridges, & Insabella (1998); Maccoby & Mnookin (1992)
4. CCE Approaches, General Methods and Procedures: Gould (1998, 1999b); Gould & Bell (2000); Gould & Lehmann (2002); Gould & Stahl (2000); Galatzer-Levy & Kraus (1999); Kirkpatrick (in press); Schutz et al. (1989); Stahl (1994, 1999); Weissman (1991)
5. Child Maltreatment Evaluations: Kuehnle, Coulter, & Firestone (2000)
6. Child Development Research: Gould & Stahl (2001); Kelly & Lamb (2000); Lamb (2002); Lamb & Kelly (2001); Solomon & Biringen (2001); Whiteside (1998)
7. Child Resiliency and Mastery: Masten & Coatsworth (1998)
8. Child Sexual Abuse Evaluations and Testimony: Ceci & Hembrooke (1998); Friedrich (2002); Kuehnle (1996)
9. Child Sexual Abuse Interviewing and Suggestibility: Ceci & Bruck (1995); Ceci & Hembrooke (1998); Lyon (1999); Poole & Lamb (1998)
10. Collateral Sources in CCEs: Austin (2002); Austin & Kirkpatrick (in press); Heilbrun (2001); Heilbrun, Warren, & Picarello (2003)
11. Cultural Differences: American Psychological Association (1990)
12. Custody Arrangements: Bauserman (2002); Fabricius & Hall (2000); Lamb (2002); Lamb, Sternberg, & Thompson (1997); Maccoby & Mnookin (1992)
13. Divorce Effects Research: Amato & Keith (1991); Amato & Sobolewski (2001); Emery (1999); Hetherington, Bridges, & Insabella (1998); Hetherington & Kelly, (2002); Wallerstein & Kelly (1980)
14. Domestic and Partner Violence: Austin (2000c, 2001); Bancroft & Silverman (2002); Graham-Bermann & Edleson (2001); Holden, Geffner, & Jouriles (1998); Jaffe & Geffner (1998); Jaffe, Lemon, & Poisson (2003); Johnston & Campbell (1993); Mullender, Hague, Imam, Kelly, Malos, & Regan (2002)
15. Expert Testimony Issues: Ewing (2003); Goldstein (2003); Krauss & Sales (1999); Shuman (1997); Shuman & Sales (1998, 1999)
16. Family Systems and Divorce: Ahrons (1994); Amato (2000, 2001)
17. Fatherhood Research: Braver & O'Connell (1998); Lamb (1997; 2000); Rohner & Venezio (2001)
18. Forensic Evaluations, Generally: Heilbrun (2001); Melton et al. (1997)
19. Forensic Role Issues: Greenberg & Gould (2001); Greenberg & Shuman (1997)
20. Gender Issues in Custody: Cuthbert, Slote, Driggers, Mesh, Bancroft, & Silverman (2002); Warshak (1996)
21. High Conflict Families: Baris, Coates, Duvall, Garrity, Johnson, & LaCrosse (2001); Garrity & Baris (1994); Johnston & Campbell (1988); Johnston & Roseby (1997); Lamb (2002); Warshak (2001)
22. Interview and Observational Techniques: Hynan (1998); Poole & Lamb (1998)
23. Overnight Parenting Time: Biringen, Greve, Howard, Leith et al. (2002); Kelly & Lamb (2000); Warshak (2000a)

## APPENDIX A (continued)

24. Nonresidential Parenting: Amato & Gilbreth (1999); Depner & Bray (1993); Lamb (1997; 2000)
25. Parental Alienation/Rejection: Bruch (2001); Clawar & Rivlin (1991); Gardner (2001); Kelly & Johnston (2001); Lee & Olesen (2001); Stoltz & Ney (2002); Sullivan & Kelly (2001); Warshak (2001)
26. Parenting Time: Kelly & Lamb (2000); Lamb (2002); Lamb & Kelly (2001)
27. Psychological Maltreatment of Children: Binggeli, Hart, & Brassard (2001); Briere, Berliner, Bulkley, Jenny, & Reid (2001); Faller (1999)
28. Psychological Testing in CCEs, Generally: Heilbrun (1995); Heinze & Grisso (1996); Medoff (2003); Otto, Edens, & Barcus (2000); Roseby (1995); Shuman (2002)
29. Psychological Testing with the MMPI-2: Bagby, Nicholson, Buis, Radovanovic, & Fidler (1999); Bathurst, Gottfried, & Gottfried (1997)
30. Psychological Testing with Other Personality Inventories: McCann, Flens, Campagna, Collman, Lazarro, & Conner (2001)
31. Psychological Testing with the Rorschach: Garb, Wood, Nezworski, Grove, & Stejskal (2001); Rosenthal, Hiller, Bornstein, Berry, & Brunell-Neuleib (2001); Weiner (2001)
32. Relocation Cases: Austin (2000a, 2000b); Braver, Ellman, & Fabricius (in press); Kelly & Lamb (2000); Wallerstein & Tanke (1996); Warshak (2000b)
33. Sexual Orientation and Issues in Custody and Parenting Time: Stacey & Biblarz (2001)
34. Standards of Evidence and Admissibility: Krauss & Sales (1999); Shuman & Sales (1999)
35. Third Party and Grandparent Parenting Time: Lassiter, Deater-Deckard, Dunn, & Davies (2002)