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2016

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# The Unsubstantiated Claims of Turkat's Harmful Effects of Child-Custody Evaluations on Children

Jonathan W. Gould & Allan Posthuma

**W**e welcome the opportunity to respond to Dr. Turkat's article, *Harmful Effects of Child-Custody Evaluations on Children*. We believe that there are many flaws and unsubstantiated claims made by Dr. Turkat, and we challenge his primary thesis that child-custody evaluations are, by definition, harmful.

Dr. Turkat sets the tone in his first paragraph with his sweeping statements that "child-custody evaluations [have] no scientific validity" and "there is still no scientific evidence whatsoever that a child-custody evaluation results in beneficial outcomes for the children involved." His article includes too many generalized, unsupported charges to allow it to pass without challenge. We hope that our comments will contribute to more informed discussion clarifying misunderstandings about the role and value of custody evaluations and how they should properly be introduced into court proceedings.

## OUTRAGEOUS ALLEGATIONS WITH NO SUPPORT

Our first concern with these opening statements of Dr. Turkat, and his paper in general, is his assumption that forensic psychologists and the courts have not responded to *Daubert*<sup>1</sup> and its progeny and that psychologists continue to pontificate in the absence of sound research support, charging outrageous sums of money for their services. This is not the case. Even in the non-*Daubert* states and in Canada,<sup>2</sup> expert evidence has come increasingly under the microscope to ensure opinions have scientific support. The National Academy of Sciences provides an excellent treatise for forensic, psychological, and other professional examiners.

In addition, professional organizations (federal, state, and provincial) have made explicitly clear to psychologists, as well as other forensic experts, the need to adhere to scientifically supported evidence. Furthermore, forensic psychologists must ensure the "scientific support" they are offering in support of their opinions is, in fact, robust, replicated, and well-recognized research.

## IMPORTANCE OF PROFESSIONAL PSYCHOLOGICAL AND SCIENTIFIC LITERATURE BROUGHT INTO THE COURTROOM

Our second concern is that Turkat's statements are too broad to be meaningful. We agree that there is no empirical research examining which residential arrangements are best for which children. Authors of current peer-reviewed literature proposing developmentally appropriate parenting arrangements extrapolate from empirically based child-developmental research to craft age-appropriate parenting plans.<sup>3</sup> The reader is directed to a 2014 article by Dr. Linda Nielsen, *Woozles: Their Role in Custody Law Reform, Parenting Plans and Family Court*. Dr. Nielsen describes how research data can often be distorted and manipulated to support an erroneous view of what is really demonstrated by the literature. "Woozles," or beliefs based on inaccurate data, have been particularly present in family court, where they can reinforce value judgements on what is best for children.<sup>4</sup>

There are many excellent examples of both legal and forensic-psychological interest in developing better understanding of scientific evidence in the courtroom. There are many examples of recent legal publications providing guidance both to the bench as well as to the forensic expert on the need for specificity in the relevance of forensic research to the issues before the court.<sup>5</sup> Faigman et al., writing in *The University of Chicago Law Review*, provide an excellent review of how the forensic examiner applies research data, based on groups, to the specific individual(s) before the court in meeting *Daubert*-progeny criteria.<sup>6</sup> Haack, in the *Dalhousie Law Journal*, contributes a common-sense discussion clarifying many misunderstandings about what is good scientific evidence and how that is determined. In a useful comment pointing out that scientific inquiry is in fact continuous with everyday empirical inquiry, she quotes Thomas Huxley as saying, "the man of science simply uses with scrupulous exactness the methods which we all . . . use carelessly."<sup>7</sup>

## Footnotes

1. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
2. *R. v. Mohan* (1994), 2 S.C.R. 9 (Can.).
3. Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297 (2000).
4. Linda Nielsen, *Woozles: Their Role in Custody Law Reform, Parenting Plans, and Family Court*, 20 PSYCHOL. PUB. POL'Y & L. 164

- (2014).
5. Gary Edmond & Kent Roach, *A Contextual Approach to the Admissibility of the State's Forensic Science and Medical Evidence*, 61 U. TORONTO L.J. 343 (2011); David L. Faigman et al., *Group to Individual (G2i) Inference in Scientific Expert Testimony*, 81 U. CHI. L. REV. 417 (2014); Susan Haack, *A Match Made on Earth: Getting Real About Science and the Law*, 36 DALHOUSIE L.J. 39 (2012).
6. See Faigman et al., *supra* note 5.
7. See Haack, *supra* note 5.

Writing from both a legal and forensic-psychological perspective, psychologist Robert Kelly and attorney Sarah Ramsey have written about the importance in the age of *Daubert* and its progeny of judges and attorneys developing a better understanding of social-science research and the scientific processes that comprise a well-done empirical study.<sup>8</sup> They argue that judges need to understand better the methodological strengths and deficiencies of studies cited in an expert witness' oral or written testimony. They proposed a set of guidelines for judges and attorneys to follow to determine the forensic usefulness of a study drawn from behavioral-science literature.<sup>9</sup>

Several mental-health professionals have provided direction for forensic psychologists in ensuring the proffered evidence needs to conform with various indicia of scientific validity to satisfy the gatekeeping role performed by the judge.<sup>10</sup> This healthy cross-fertilization of legal and forensic-psychological research has contributed to many jurisdictions in Canada and the United States incorporating, in family-law legislation, requirements not only for the need of expert evidence having proof in scientific literature, but also for the examiner to answer specific questions put forth, either by counsel or the court, which must be addressed by the expert. In many cases, this enables the expert to focus on specific issues before the court, thus increasing the likelihood of being able to provide strong scientific evidence. Forensic psychologists are thus more likely to be able to find scientific support addressing specific issues than broad statements on best interests of children in parenting plans or custody evaluations.

### **MOST CUSTODY EVALUATIONS ARE USED TO SETTLE, NOT LITIGATE**

We believe child-custody evaluations should involve more than providing the court with recommendations about residential placement (physical custody) and decision making (legal custody). There are many useful ways in which a child-custody evaluation may provide reliable information to courts about a variety of issues.

Approximately 90% of child-custody evaluations are used as settlement tools that lead to out-of-court resolution of custody disputes. The use of a custody evaluation in this manner results in families being spared the increased conflict and ten-

sions that are part of custody litigation. We conclude, therefore, that an important role played by a well-conducted child-custody evaluation is to reduce the likelihood that families will litigate and to increase the likelihood that a negotiated settlement would lead to reasonable compromises.

Turkat fails to note this point in condemning child-custody evaluations because of the financial burden they put on families. The fact that child-custody evaluations are a financial burden reflects only one perspective, but not the whole story. Certainly, a child-custody evaluation that leads to litigation rather than settlement would become another significant cost in the litigation process. However, as described above, since most custody evaluations lead to settlement, the evaluation-as-settlement tool avoids the cost of litigation. It has been our experience that when custody evaluators claim that they often testify in court about their evaluations, it is very likely that their evaluations are either sub-par or viewed as unfair and biased. Evaluation reports that lead to settlement do not end up being the focus of litigation since the parties settle out of court.

### **PROFESSIONAL CONSENSUS ABOUT PROCEDURES TO BE UTILIZED IN A CHILD-CUSTODY EVALUATION**

The methodological steps employed in a child-custody evaluation have changed over the past 30 years. Today, there is a general consensus in law and mental health that the methodology of a custody evaluation includes multiple interviews of the parents, interviews with the children, direct observation of parent-child interaction, interviews with third parties who have directly observed parent-child interaction, administration of psychological tests, and review of past and current records.<sup>11</sup> In an effort to make custody evaluations more relevant to the unique issues presented by a particular family, attorneys and judges have been advised to provide specific questions to evaluators that define the scope of their evaluations and guide their investigative work.<sup>12</sup> The legal standard of what is in the best interests of the child is intention-

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8. Robert F. Kelly & Sarah H. Ramsey, *Child Custody Evaluations: The Need for Systems-Level Outcome Assessment*, 47 FAM. CT. REV. 286 (2009); Sarah H. Ramsey & Robert F. Kelly, *Social Science Knowledge in Family Law Cases: Judicial Gate-Keeping in the Daubert Era*, 59 U. MIAMI L. REV. 1 (2004); Sarah H. Ramsey & Robert F. Kelly, *Assessing Social Science Studies: Eleven Tips for Judges and Lawyers*, 40 FAM. L. Q. 367 (2006).

9. See Ramsey & Kelly, *Assessing Social Science Studies*, *supra* note 8, at 367.

10. Jason M. Chin, *Psychological Science's Replicability Crisis and What It Means for Science in the Courtroom*, 20 PSYCHOL. PUB. POLY & L. 225 (2014); Tess Gemberling and Robert Cramer, *Expert Testimony on Sensitive Myth-Ridden Topics: Ethics and Recommendations for Psychological Professionals*, 45 PROF. PSYCH.: RES. & PRAC. 20 (2014); Scott O. Linienfeld, *Public Skepticism of Psychology*, 67 AMER. PSYCHOL. 111 (2012).

11. American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 AM. PSYCHOL. 863 (2010); Association of Family and Conciliation Courts, Task Force for Model Standards of Practice for Child Custody Evaluations, *Model Standards of Practice for Child Custody Evaluations*, 45 FAM. CT. REV. 70 (2007).

12. JONATHAN W. GOULD, *CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS* (2nd ed. 2006); Jonathan W. Gould & David A. Martindale, *Specific Questions Guide Child Custody Investigations*, MATRIMONIAL STRATEGIST, May 2009, at 1; Jonathan W. Gould & David A. Martindale, *Child Custody Evaluations: Current Literature and Practical Applications*, in 11 HANDBOOK OF PSYCHOLOGY 101-38 (Randy Otto & Irving Weiner eds., 2013).

13. Robert H. Mnookin, *Child Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, 39 LAW & CONTEMP. PSYCHOL. 226 (1995).

**[T]he usefulness of a custody evaluation is directly related to the nature and quality of the specific questions . . . .**

ally undefined<sup>13</sup> to allow judges maximum flexibility in determining which factors are most relevant in a particular family system. Although some states have defined factors that must be considered by the court, these best-interest factors do not define the universe of factors that may be important for a court to consider in a particular custody dispute. Yet when courts or attorneys provide

evaluators with specific questions to focus on, the resulting custody report is improved in two ways: by providing information about issues deemed most relevant by the court and/or attorneys and by introducing evidence-based research to address the questions of concern.

Over the past 20 years, the movement toward brief, focused custody evaluations has been another important change in the custody field. Some jurisdictions have instituted evaluations that target one or two questions. Professional practice guidelines have been promulgated to assist in the formulation and performance of brief, focused evaluations.<sup>14</sup>

#### **CUSTODY EVALUATIONS CAN PROVIDE MORE TO THE COURT THAN OPINIONS ABOUT CUSTODIAL PLACEMENT**

A child-custody evaluation is not limited to providing the court with expert opinions about custodial placement and parental decision making. A well-conducted child-custody evaluation may provide the court with information about family functioning that would not otherwise be available to it. The evaluator brings to the evaluation process an understanding of how to employ the scientific method to achieve the most reliable set of data available. One means of obtaining reliable data is through the use of forensic methods and procedures.<sup>15</sup> That is, information is gathered from multiple independent sources, enabling the evaluator to analyze the degree to which each independent data source converges on the same or similar findings. The five independent data sources used in a child-custody evaluation include multiple interviews with each parent, multiple interviews and/or observations of each child, direct observation of each parent with each child, psychological testing when appropriate, collateral record review, and collateral interviews of individuals who have direct observational knowledge of parent-child interactions. The confidence with

which an evaluator is able to offer an expert opinion is directly related to the number of independent data sources supporting the opinion.

Turkat's claim that there is no scientific evidence for custody recommendations is not new. Feinberg has voiced a similar concern, reflecting the often-heard criticism of child-custody evaluations by attorneys.<sup>16</sup> Tippins and Wittman argued that there is scant empirical evidence upon which expert opinions about custodial placement are based and urged evaluators to stop short of making residential-placement recommendations.<sup>17</sup>

#### **SPECIFIC QUESTIONS GUIDE RELEVANT INQUIRY**

We argue, however, that the usefulness of a custody evaluation is directly related to the nature and quality of the specific questions that guide the investigation. For example, the court may be concerned about whether a parent's mental-health condition adversely affects the children and, if so, whether it is something that might respond to mental-health treatment or medical/pharmacological intervention. The court may be concerned about how children have developed a dysfunctional relationship with one parent while aligning in an unhealthy way with the other parent and seek recommendations about how to help the children develop a more balanced, healthy relationship with both parents.

#### **INTEGRATING PROFESSIONAL AND SCIENTIFIC RESEARCH ACROSS SOCIAL-SCIENCE DISCIPLINES**

In the past, custody or parenting-plan evaluators often overlooked the extensive and rich developmental research published in highly regarded peer-reviewed journals, typically confined to the academic world.<sup>18</sup> However, in the last decade, many of these research interests have expanded into the classroom, parenting classes, and the courtroom.

- One such area is research on executive function. Executive function refers to the development in the brain, as well as in real life, of the ability to problem solve and, in essence, meet the demands of life at school, at home, and on the work site. One fascinating insight provided by this research is that progress can be measured, not only by psychological tests designed to measure the ability to problem solve, but also in neuroimaging scans of the brain, and in particular the frontal areas of the brain. From the forensic standpoint, another encouraging development is the examination of educational and parenting strategies to improve executive function, not only

14. ASSOCIATION OF FAMILY AND CONCILIATION COURTS, GUIDELINES FOR BRIEF FOCUSED ASSESSMENT (2009).

15. Marc J. Ackerman et al., *Psychological Experts in Divorce Actions* (6th ed. 2015); James N. Bow, *Review of Empirical Research on Child Custody Practice*, 3 J. CHILD CUSTODY 23 (2006); David A. Martindale & Jonathan W. Gould, *The Forensic Model: Ethics and Scientific Methodology Applied to Child Custody Evaluations*, 1 J. CHILD CUSTODY 1 (2004).

16. Joy Feinberg & Jonathan W. Gould, *The Credible and Helpful Child*

*Custody Report*, Workshop presented at the 49th annual conference of the Association of Family & Conciliation Courts (June 2013).

17. Timothy M. Tippins & Jeffrey P. Wittman, *Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance*, 43 FAM. CT. REV. 193 (2005).

18. Allan Posthuma, *Current and New Developments in Psychological Testing for Child Custody Disputes*, in HANDBOOK OF CHILD CUSTODY (M.I. Goldstein ed., 2016).

in North America, but in many countries and cultures across the world.<sup>19</sup>

- Executive-function research, in the real world of the classroom and home, is sufficiently replicated to enable forensic psychologists to answer specific questions of interaction of each parent's potential ability to provide the coping mechanisms and skills of their child, or children, in facing the demands of the world they will encounter in the future.
- Research examining prediction of parental decision making demonstrates that pre-separation communication between parents often predicted post-divorce communication once litigation ended.<sup>20</sup> These research findings suggest that it may be possible to predict which parents are more likely to engage in cooperative communication once the litigation is complete. The evaluator may look at factors identified in the literature as associated with a negative prediction of future cooperative communication. Evaluators who gather information about the parents' past and present decision making about the children may be able to provide a prediction about which parents are more likely to engage in cooperative communication.
- Research now helps courts to understand better how each family member in a divorced family system contributes to one or more of the children's attitudes and behaviors regarding resisting visitation. The child-alienation model described by Johnston and Kelly<sup>21</sup> provides a map of how to investigate the contribution of each family member to children's resistance to visit with a parent.
- Empirical research and scholarship in child development have provided a wealth of data that serves as the basis for age-appropriate and developmentally appropriate parenting-access-plan guidelines for the court to consider when making parenting-plan decisions. For example, there is ample research addressing the developmental limitations of children aged four and under.<sup>22</sup>
- Research from intact and divorcing families regarding the psychological and social effects of relocation on children's adjustment has greatly evolved over the past 15

years. An assessment model addressing empirically based risk factors has been developed to predict the risk to a child whose parent intended to relocate to a geographically distant location.<sup>23</sup>

Research has also addressed the relationship between parental gatekeeping and parental access.<sup>24</sup> Other useful research provides more specific examination of gatekeeping, parental access, and relocation.

**We are most concerned . . . Dr. Turkat . . . create[s] a false impression about the utility of custodial evaluations.**

#### **FACTS ARE IMPORTANT, AND HYPERBOLE MISLEADS**

We are most concerned, however, by the several claims made by Dr. Turkat that are not supported by research and that create a false impression about the utility of custodial evaluations. There is no research to date that addresses the type of custodial evaluations that are most often ordered by courts. In fact, many jurisdictions around the country are limiting their orders for custody evaluators to brief, focused evaluations. Other jurisdictions direct evaluators not to address the ultimate issues regarding expert opinions about custodial placement.<sup>25</sup> Some jurisdictions have begun to rely on reports from guardians ad litem to investigate concerns in custody disputes, choosing to bypass the use of child-custody evaluators (e.g., New Hampshire).

Turkat argues that there are several ways in which a custody evaluation may be detrimental. On the other hand, since there is no empirical examination of the short- and long-term effects of expert opinions regarding custodial placement and decision making on judicial determinations, it is just as easy to argue that custody evaluations may be helpful. Neither argument has been empirically examined. In fact, scholars have not yet been able to develop a valid research study of these issues.

It is not uncommon in custody disputes for one parent to argue emotional, mental, or behavioral superiority over the other parent. When a parent in an unhealthy marriage seeks counseling to learn how to cope with the stresses of the relationship, this is often presented by the other parent as a sign of emotional weakness or parental incompetence. In rarer circumstances, a parent may have a history of admissions to psychiatric hospitals for a variety of problems. Experienced

19. Peg Dawson & Richard Guare, *Executive Skills for Children and Adolescents: A Practical Guide to Assessment and Intervention* (2nd ed. 2010); SAM GOLDSTEIN & JACK NAGLIERI, *HANDBOOK OF EXECUTIVE FUNCTIONING* (2014); MAUREEN HOSKYN ET AL., *EXECUTIVE FUNCTIONS IN CHILDREN'S EVERYDAY LIVES: A HANDBOOK FOR PROFESSIONALS IN APPLIED PSYCHOLOGY AND EDUCATION* (2015).

20. ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992).

21. Joan B. Kelly & Janey R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 FAM. CT. REV. 249 (2001).

22. LESLIE DROZD ET AL., *PARENTING PLAN EVALUATIONS* (2nd ed. 2016).

23. William G. Austin et al., *Parental Gatekeeping and Child Custody: Child Access Evaluation: Part I*, 51 FAM. CT. REV. 485 (2013); William G. Austin, *Child Custody Evaluation and Relocation: Part I: Forensic Guideposts for the Evaluator and Court*, 29 AMER. J. FAM. L. 156 (2015); William G. Austin, *Child Custody Evaluation and Relocation: Part II: Options for a Systematic Approach to Forensic Evaluation*, 29 AMER. J. FAM. L. 207 (2016).

24. Austin et al., *Parental Gatekeeping*, *supra* note 23.

25. SANDRA MILLER, *NEW YORK STATE COURT'S MATRIMONIAL COMMISSION ON CUSTODY DISPUTES IN DIVORCE CASES* (2006), <http://www.nycourts.gov/ip/matrimonial%2Dcommission>.

**[T]he research conducted by Dr. Turkat . . . would not be accepted by most peer-reviewed journals.**

and qualified forensic psychologists typically have extensive academic and clinical expertise with such cases and know when to consult with other mental-health specialists to determine the relevance of a parent's mental health to the welfare of the children involved.

Turkat, however, makes no reference at all to such important details, nor to the diverse responses of courts. He does not draw a distinction between or among the data obtained by the evaluator, the analysis of the data by the evaluator, the discussion of the meaning of the analysis of the data in light of the issues faced by the family, and the expert opinions that are proffered to the court based upon these data and analyses. We choose not to throw the baby out with the bathwater. Courts may find useful the data in an evaluation report but not the expert opinions. They may find useful the data and analysis but not the expert opinions. They may find useful the data, the analysis, and the application of these data and analyses to the issues faced by the family but not the expert opinions. Courts may find useful the data, analysis, and application to the family and agree with some of the expert opinions. Courts may find useful the data, analysis, and application to the family and accept all of the expert opinions. Courts may also modify expert opinions by incorporating information from other parts of the case to which the evaluator had no access.

#### **FORENSIC EVALUATION IS NOT PSYCHOTHERAPY**

Turkat argues that a significant number of psychotherapy patients are harmed by psychotherapy. He then makes the unsupportable argument that since mental-health professionals conduct forensic evaluations, it makes sense to consider that mental-health experts will harm those who they forensically evaluate in a manner similar to the ways in which psychotherapy has been shown to be harmful to some patients. Whether in court or in journal articles, those who make assertions such as that proffered by Turkat about forensic evaluations causing harm have, in our view, a responsibility to cite empirical research to support such a claim.

It is one thing to offer an opinion based upon clinical experience and observation rather than based upon empirical research as long as the basis of the opinion is clearly stated. Statements without attribution to experience or empirical data may mislead the reader to an unsupported conclusion.

Further, there is little parallel between the activities of a psychotherapist with a patient and the activities of a forensic evaluator and a litigant. There is a robust literature addressing differences between clinical assessment and forensic assessment and between therapeutic and forensic roles.<sup>26</sup> The purpose of psychotherapy is to assist the client to change prob-

lematic aspects of her or his life. Therapists are intended to be helpful to their clients. The purpose of forensic assessment is to assist the court in understanding a particular psycho-legal issue. In the case of a child-custody evaluation, the purpose is to gather information about a family system with the goal of assisting the court in its determinations about parental access and parental decision making. Therapy is fundamentally different from forensic assessment.

#### **DIAGNOSIS IS SELDOM USEFUL IN CHILD-CUSTODY EVALUATIONS**

Turkat spends time discussing the "substantial scientific evidence that diagnostic errors in healthcare are common, creating serious negative consequences and costing billions of dollars" (p. 153). The implication that Turkat appears to want the reader to draw is that because diagnostic errors in the healthcare industry cause "serious negative consequences and cost[] billions of dollars," it follows that diagnosis in child-custody assessment creates serious negative consequences and adds significantly to the cost of the evaluation. There is no evidence to support this assertion.

Further, most custody texts addressing how to conduct child-custody evaluations emphasize the lack of usefulness of mental-health diagnoses. In the vast majority of child-custody cases, a mental-health diagnosis does not provide information to the court about parenting or parent-child interaction. A mental-health diagnosis provides no information to the evaluator or to the courts about the ways in which the behaviors associated with a mental-health diagnosis are related to parenting behaviors. Without demonstrating a nexus between the mental-health diagnosis and parenting behavior, the diagnostic label provides only another term to be used as a weapon in the parents' custodial battle.

#### **SCIENTIFIC PROCESS IS IMPORTANT EVEN WHEN WRITING FOR A NON-SCIENTIFIC AUDIENCE**

It's important to note that the research conducted by Dr. Turkat, as described in his paper, would not be accepted by most peer-reviewed journals. The primary reason is the lack of a control group. While he could certainly claim that the respondents to his survey were disenchanting, there is no way he could determine whether the only individuals who responded to the survey were those who were disenchanting. For most regulatory psychological boards in Canada and the United States, statistics have been interpreted to indicate that the highest rate of complaints to regulatory organizations come from parents who did not receive the custody or parenting-plan arrangements they believed they deserved.

The psychological research, conducted by an agency or an academic institution, typically must be approved by an ethics committee. It is unlikely any ethics committee or, for that matter, the judiciary, would randomly make custody arrangements or parenting plans irrespective of the merits or shortcomings of the parenting plan. When forensic evaluators con-

26. Stuart A. Greenberg & Daniel W. Shuman, *Irreconcilable Conflict Between Therapeutic and Forensic Roles*, 28 PROF. PSYCH.: RES. & PRAC. 50 (1997).

tact therapists, counselors, or teachers involved with either the parents or the children, they must factor in these sources of information. They probably receive only the viewpoint or perspective of the parent or student and, thus, from a forensic standpoint, have a biased view. Forensic evaluators must use the information provided by the client—but only in the context of various other sources of information, including other collateral interviews, psychological testing, and observations of various combinations of immediate and extended family interactions.

### **VOICES OF CHILDREN ARE INCREASINGLY HEARD AND RESPECTED**

In the United States and Canada, an increasing number of states and provinces have legislation providing for consideration of the rights and views of the child in defining a parenting plan or custody resolution. In British Columbia, where the second author practices, the courts are increasingly likely to have a Views of the Child report, instead of the more traditional assessment of the complete family. The law in British Columbia, similar to Article 123 of the U.N. Convention on the Rights of the Child, requires the court and the examiner to assess not only the child's wishes, but whether the recommendation is in the best interest of the child.

Too often, when parents litigate custody, the voices of their children are either ignored or are presented through each parent's perspective.<sup>27</sup> A custody evaluation should provide information to the court about the children's perspective through their eyes, not filtered through the eyes of their parents or their parents' attorneys. A custody evaluation will often include information about the children's experiences within the binuclear family and information about the children's wishes. There are emerging data about children's desire to participate in decision making about their custodial placement.<sup>28</sup> Some children want nothing to do with decision making about their custodial placement while other children are eager to share their ideas and opinions. A custody evaluation will often include relevant information about the children's experiences with each family, each extended family, and other child-related areas of examination.

Dr. Turkat raises a valid point about the need for the court and forensic examiners to be sensitive to the vulnerabilities of children. In most situations, examiners and the court try to minimize contributing to the distress of children. However, as the court is aware, most situations in which a forensic examination is ordered typically follow the most protracted, vitriolic disputes, in which the children may have already developed emotional, behavioral, and academic problems. Legislatures, courts, and forensic examiners are deeply aware of the destructive forces operating on children in these disputes and have attempted various ways to minimize the damage done to children, unfortunately often with less-than-satisfying results.

### **NO EMPIRICAL SUPPORT FOR HARMFUL EFFECTS ON CHILDREN OF CHILD-CUSTODY EVALUATIONS**

The last criticism offered by Turkat about the alleged harmful effects of child-custody assessment is focused on the intrusiveness of the evaluation process. Turkat acknowledges that there has been no empirical examination of the relationship between the alleged intrusiveness of a child-custody assessment and the negative effects on the parent-child relationship. Nonetheless, he opines that "it is reasonable to expect potential detrimental effects" resulting from the custody-evaluation process (p. 154). Turkat does not explain why it is reasonable to expect potential detrimental effects from a custody assessment. In fact, it is possible to infer the opposite effect. In more than 90% of cases in which a custody evaluation has been conducted, the evaluation reports become tools for settlement. That is, a well-done evaluation will often keep the parties out of court. The findings and recommendations often serve as a basis for out-of-court settlement.

**A custody evaluation should provide information to the court about the children's perspective . . . .**

### **CHEAP SHOT AT A TERRIBLY UNFORTUNATE AND SAD EXAMPLE OF UNPROFESSIONAL BEHAVIOR**

We believe, however, that it was a mistake of Dr. Turkat to focus much of his concluding section on the highly publicized emotional and professional problems of one practitioner, the late Dr. Stuart Greenberg. This section owed more to sensationalism than scholarship; it contributed nothing of merit to the other important points raised by Dr. Turkat elsewhere in his paper.

### **CUSTODY EVALUATIONS ARE OFTEN A NECESSARY INTRUSION**

We agree that the custody-evaluation process is intrusive. To be effective, it is, in our view, unavoidably so. We have described how practitioners respectfully and thoroughly follow best practices in conducting the process. Yet evaluators must investigate many aspects of how the parents and children function across a wide variety of activities and environments. Evaluator interviews with collateral informants may be experienced as intrusive by some parents while being welcomed by other parents. However, we believe that the custody-evaluation process is best regarded as an inoculation rather than a long-term illness. Individuals who are given an inoculation may suffer short-term discomfort from the needle piercing the skin and penetrating into the blood, yet the long-term advantages far outweigh the temporary discomfort. So, too, the custody-evaluation process may cause short-term discomfort that should nonetheless promote long-term advantages for the overall health of the family.

27. Carol Smart, *From Children's Shoes to Children's Voices*, 40 FAM. CT. REV. 307 (2002).

28. Jonathan W. Gould & David A. Martindale, *Including Children in*

*Decision Making About Custodial Placement*, 22 J. AMER. ACAD. MATRIMONIAL L. 303 (2013); PATRICK PARKINSON & JUDY CASHMORE, *THE VOICE OF A CHILD IN FAMILY LAW DISPUTES* (2008).

**Judges need to scrutinize the quality of information obtained from collateral informants.**

**JUDGES AS GATEKEEPERS: TIPS TO IDENTIFYING A COMPETENTLY CONDUCTED CHILD-CUSTODY EVALUATION**

There are several tips that can guide judges in determining the quality of a child-custody evaluation. The first step is to examine the evaluator's training. Ask the evaluator whether he or she has obtained specialized training in

each of the procedures employed in a custody evaluation. Judges are encouraged to carefully examine the expert's continuing-education workshops and publication list (CV) to ensure that the proposed expert has developed specialized knowledge in child-custody assessment. The proposed expert should have recently attended continuing education in child-custody assessment as well as in the areas of concern specific to the matter before the court, *e.g.*, relocation, alienation, domestic violence, LGBT parenting. The proposed expert should be educated about the current professional and scientific knowledge of the areas of concern before the court, and, when possible, the expert may demonstrate evidence of authoring or co-authoring peer-reviewed publications in those areas specific to the matter before the court.

An important area for judges to examine is whether the evaluator conducted a forensic rather than a clinical interview of the parents and children. In a forensic interview, the evaluator gathers information about particular areas of interest that are identified in the specific questions that define the scope and purpose of the evaluation. A custody-assessment interview is not a clinical interview in the sense that the forensic interviewer, not the party, is in charge of the direction of the interview. In a clinical interview, the patient leads the therapist. In a forensic interview, the interviewer is focused on obtaining information about specific areas of concern identified by the questions that guide the evaluation.

Judges need to examine the interview data to ensure that each question posed at the beginning of the evaluation was systematically investigated by the interviewer. Similarly, the judge needs to examine interview data from children and collateral informants to ensure that the evaluator obtained information that directly answered the questions that guided the evaluation.

Judges should ask evaluators to explain their choice in psychological tests. Evaluators need to explain to the court why a particular set of tests was chosen. The evaluator needs to explain how the selected tests are used to create information from parent responses that can help answer the questions posed at the beginning of the evaluation process.

Judges also need to inquire about the context of the parent-child observation. Parent-child observations that take place in the parent's home are likely to produce information about parent-child interactions that are more representative of their daily behavior than information obtained during a parent-child observation at the evaluator's office.

Judges also need to know whether the evaluator participated in the parent-child observation or whether the evaluator

intentionally chose not to participate. Information from parent-child observations are best when the evaluator simply watches and does not interact with the parent or the child. The more the evaluator becomes engaged in the parent-child observation, the more likely the observational information is changed from a parent-child observation to a parent-child-evaluator observation.

Judges need to scrutinize the quality of information obtained from collateral informants. Too often, evaluators provide collateral interview data that is ripe with opinions and vacant of behavioral observations. We learn little from a collateral statement that the parent is loving and kind. We learn more when the collateral statement describes how the parent and child interacted. For example, a collateral informant recently reported that she observed the child run up to her parent, jump into her father's arms, kiss him on the cheek, and say, "I missed you today!" The father responded by smiling at his daughter, getting down on one knee, and giving her a big hug. They laughed and spontaneously began to sing a song. Behavioral detail from a collateral informant—a fact witness—is far superior to an opinion (that a parent is loving) from one who should be a fact witness.

Another increasingly common aspect of quality reports is for the evaluator to tie his or her expert opinions to the professional and scientific literature. For example, when opining on a parenting-access plan for a two-year-old, it is often helpful for the evaluator to cite to the relevant research articles that support the expert opinion.

**A CALL FOR INTERDISCIPLINARY CONFERENCES AND TRAINING**

We are also encouraged by the high-quality workshops offered by state and national mental-health associations, including those offered at the state and regional level by The Association of Family & Conciliation Courts (AFCC), the American Psychological Association (APA), and the American Academy of Forensic Psychology (AAFP). Legal associations, including the American Bar Association (ABA), the American Academy of Matrimonial Lawyers (AAML), and state bar associations around the country, are also providing high-quality workshops. We find great value in interdisciplinary conferences that focus on family law and related mental-health issues such as the recent conferences co-presented by AFCC and AAML. We view these workshops and conferences as examples of healthy developments in psychology and the law.

**CUSTODY EVALUATIONS PROVIDE USEFUL INFORMATION TO THE COURTS AND, MORE OFTEN THAN NOT, LEAD TO SETTLEMENT**

We come to a very different conclusion than Dr. Turkat about the usefulness of child-custody evaluations. We support their use in cases in which expert mental-health professionals can offer specialized knowledge to the court. We also believe that evaluators need to do better. There are wide variations in the quality of child-custody evaluations, and there are wide variations in the abilities of attorneys and judges to identify a competently conducted custody evaluation from a poorly conducted custody evaluation.

We believe that an important solution is for attorneys and judges to become more familiar with what constitutes a competently conducted custody evaluation. Once the bench and the bar become more familiar with knowing how to identify a competently conducted evaluation and then communicating expectations to forensic practitioners that inferior reports will no longer be accepted, the quality of evaluator reports will rise to meet the expectations of the legal system.

Science can advance only when there is vigorous examination and debate about issues of importance in the field. Scientific inquiry and scientific debate are prescriptions for humility. They are our profession's inherent forms of arrogance control. B.F. Skinner concluded that science requires a "willingness to accept facts even when they are opposed to wishes."<sup>29</sup> We are, therefore, encouraged by the editors of this journal requesting a second opinion on Dr. Turkat's article. Dr. Turkat has raised many important issues worthy of debate, and we are honored to have been given the opportunity to participate in this debate.



*Jonathan Gould is a board-certified forensic psychologist who specializes in psychological concerns associated with family-law matters. He has authored or co-authored five books, including *Conducting Scientifically Crafted Child Custody Evaluations (2nd edition)*, *The Art and Science of Child Custody Evaluations*, and *Psychological Experts in Divorce**

*Actions (6th edition). He has authored or co-authored more than 100 peer-reviewed articles about child-custody assessment, application of psychological ethics to child-custody assessment, forensic assessment of alienation dynamics, domestic violence, and child sexual abuse. Dr. Gould has conducted more than 300 court-appointed child-custody evaluations, consulted on more than 2,500 family-law-related matters. He has lectured widely on topics about applying forensic methods and procedures to child-custody assessment, the application of Daubert principles to forensic psychological assessment, application of child-development research to crafting age-appropriate parenting plans, among other areas of importance to family-law attorneys and courts. He may be reached at [jwgould53@gmail.com](mailto:jwgould53@gmail.com).*



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29. B. F. SKINNER, SCIENCE AND HUMAN BEHAVIOR 12 (1953).