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# Harmful Effects of Child-Custody Evaluations on Children

Ira Daniel Turkat

Child-custody evaluations have become commonplace in family-law disputes over living arrangements, parental decision making, and time-sharing with offspring. A quarter century ago, I raised the issue that child-custody evaluations had no scientific validity.<sup>1</sup> When I reviewed the literature again a decade ago, the lack of scientific validity remained unchanged, prompting me to bring the issue directly to the readership of this journal.<sup>2</sup> Unfortunately, even today's prominent proponents of child-custody evaluations admit that at the present time there is still no scientific evidence whatsoever that a child-custody evaluation results in beneficial outcomes for the children involved.<sup>3</sup>

In light of the above, it is reasonable to ask: Why are child-custody evaluations ordered with regularity when there is no scientific evidence to support them? There are a variety of reasons.

First, it is rational and fair to expect mental-health experts to be more capable at rearranging families than judges; after all, the latter are not trained as psychologists or psychiatrists, and in the quest to make these critical decisions correctly, it is prudent to look to experts for advice. However, this assumption comes into question because there is no scientific evidence proving that mental-health professionals are better at making child-custody decisions than judges. In fact, there is no scientific evidence that mental-health professionals are better at making child-custody decisions than anyone, be they professionals, laypersons, or otherwise.

Second, while mental-health experts are duty-bound to provide their best advice when called upon, they do not seem to be emphasizing to the judiciary that there is no scientific evidence for their custody-evaluation recommendations. After all, if that were emphasized, their testimony might well be precluded based on the Federal Rules of Evidence and pertinent Supreme Court decisions (e.g., *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>4</sup>). Further, the lack of scientific validity has not deterred professional organizations such as the American Psychological Association (APA) from issuing guidelines for how to conduct these evaluations<sup>5</sup> or smaller groups offering “cer-

tification” (e.g., Professional Academy of Custody Evaluators) based on less-than-stellar credentials.<sup>6</sup> Such offerings by professional organizations encourage the use of child-custody evaluations despite the absence of proper scientific substantiation for them. Guidelines and certification are no substitute for scientific evidence.

Third, while custody evaluators undoubtedly perform these examinations with a sense of professional duty, they also have a significant financial interest in conducting them. Some studies report custody-evaluation fees to be in the thousands of dollars,<sup>7</sup> and in highly contested matters it is not uncommon to see tens of thousands of dollars spent on these evaluations.<sup>8</sup> As will be shown below, when parents are ordered into these costly evaluations in the absence of scientific evidence to determine if, when, and how they should be conducted, it creates a context in which custody evaluators have considerable discretion, leading some to implement extensive psychological assessments of family members and thereby spend the family's money in a way the court likely never imagined. Since there is no scientific evidence whatsoever that a more thorough evaluation leads to a better outcome for children, these families are forced to pay for a costly evaluation and opinion that may very well be incorrect. Those benefiting financially from these evaluations may not wish to see courts discontinue ordering them.

Financial interests aside, there is no doubt that what underlies the promotion of child-custody evaluations is the assumption held by the judiciary, custody evaluators, and pertinent professional organizations that performance of these examinations is in the best interest of children. Unfortunately, this assumption has no body of scientific evidence to prove it and appears more consistent with *wishful thinking*. Clearly, an overburdened judiciary would benefit greatly by having highly skilled professionals ready to perform child-custody evaluations that are strongly supported by a comprehensive body of scientific findings.

Since there is no direct scientific evidence proving that custody evaluations benefit children, is it possible that custody

## Footnotes

1. Ira Daniel Turkat, *Questioning the Mental Health Expert's Custody Report*, 7 AM. J. FAM. L. 175 (1993).
2. Ira Daniel Turkat, *On the Limitations of Child-Custody Evaluations*, 51 CT. REV. 8 (2006).
3. Marc J. Ackerman & Jonathan W. Gould, *Child Custody and Access*, in 1 HANDBOOK OF FORENSIC PSYCHOLOGY (B.L. Cutler & P.A. Zapf eds., 2015).
4. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
5. American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 AM. PSYCHOL. 863 (2010).
6. The Professional Academy of Custody Evaluators of Furlong, Pa., does not require a doctorate nor more than two years of experience to apply for certification. In contrast, the American Academy of Matrimonial Lawyers requires at least 10 years of practice following bar admission as one of 10 criteria that must be met to apply for certification.
7. Marc J. Ackerman & Tracy B. Pritzel, *Child Custody Evaluation Practices: A 20-Year Follow-Up*, 49 FAM. CT. REV. 618 (2011).
8. Author's experience as a work-product consultant in highly contested cases.

evaluations might *not* benefit children? Taken a step further: might child-custody evaluations cause detrimental effects for the children involved?

At first glance, the idea that child-custody evaluations could potentially be harmful to children would seem inconsistent with the Zeitgeist. However, upon further consideration, there are several facts supporting the viability of the hypothesis that child-custody evaluations may indeed prove detrimental.

### WHY CHILD-CUSTODY EVALUATIONS MAY BE DETRIMENTAL

The first consideration as to why child-custody evaluations may be detrimental is that there is no scarcity of past participants claiming them to be. Not only are such claims made regularly in pleadings and attorneys' offices, a perusal of the Internet reveals no shortage of individuals opposed to these evaluations. It is easy to dismiss such complaints as the consequence of "sour grapes," but without proper scientific investigation, it is unknown what percentage of these custody-evaluation grievances have legitimacy.

Second, there is no doubt that these financially burdensome evaluations deplete a certain percentage of a family's financial resources, especially at a time when funds are being drained by the formal reorganization of the family. One of the more disturbing examples of such a financial assault was noted by the Second District Court of Appeal of Florida in 2003 where it was reported that one psychologist charged an *amount equal to the parties' entire net worth* (\$20,000), leading the appellate court to question how it could be in a child's best interest for the family's resources to be depleted by such fees.<sup>9</sup> This is especially concerning given that scientific research has shown that an important predictor of how well children adjust to divorce is economic stability, a key variable in light of the drain caused by dividing a family into two households.<sup>10</sup> Clearly, if a mental-health professional wipes out a family's entire net worth for an opinion that has no demonstrated beneficial value of major significance, this certainly would appear harmful to the children involved. In fact, any substantial dent in a family's resources due to a custody evaluation that produces little if any proven benefit for the family would certainly not be in the best interest of the children.

A third reason supporting the hypothesis that child-custody evaluations may be detrimental can be seen in the aftermath of the custody evaluator's declared opinion. Since there is no scientific evidence to support the opinion as correct or not, costly decisions may be made by the family on what may be erroneous professional recommendations. Some may feel no choice but to commit more family funds to attack or defend a report that may be incorrect and perhaps detrimental. Others may

succumb to the custody evaluator's recommendations to avoid further expense, even though these may be wrong and ultimately prove harmful to their children. Even correct recommendations might prove to be a detriment if the court feels it must dismiss them on grounds of inadequate scientific validity, thereby resulting only in another costly expenditure for the family. Thus, in the absence of strong scientific evidence, a correct set of recommendations and incorrect set may both produce detrimental effects for families.

**[T]here are several facts supporting . . . that child-custody evaluations may indeed prove detrimental.**

A fourth reason to suggest that child-custody evaluations may prove deleterious can be found in the scientific literature on the effects of psychotherapy.<sup>11</sup> Over the decades, substantial scientific evidence has accumulated showing that a significant percentage of patients are actually *harmed* by psychotherapy.<sup>12</sup> Put another way, *it is a well-established scientific fact that in their efforts to be helpful, mental-health professionals actually harm a subset of their patients.* While not widely publicized, the interested reader will find a substantial body of scientific research available documenting iatrogenic effects of psychotherapy. Accordingly, it is not unreasonable to assume that such efforts "to help"—in the form of providing child-custody evaluations—may prove harmful to some as well.

Fifth, there is substantial scientific evidence that diagnostic errors in healthcare are common, creating serious negative consequences and costing billions of dollars.<sup>13</sup> In medicine, objective assessment tools are readily available (e.g., blood test, MRI, etc.), yet diagnostic errors occur with regularity, producing serious consequences. In contrast, the assessment tools of mental-health professionals (including those used by child-custody evaluators) are certainly *less* objective. The determination of whether a blood-sugar level is too low or high is far more straightforward than determining how to optimally rearrange a family's time together, how decision making should occur on items like school choice and extracurricular activities, how to structure two-household living arrangements, and how to address other multi-factorial issues that are part and parcel of child-custody evaluators' recommendations. Armed with less objective assessment tools to examine the considerably more complex issues found in mental-health practice, it is not surprising that the rate of misdiagnosing psychiatric disorders is alarming.<sup>14</sup> In fact, diagnostic error is so problematic that the Chairperson of the Fourth Edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV), psychia-

9. Higginbotham v. Higginbotham, 857 So.2d 341 (Fla. Dist. Ct. App. 2003).

10. Robert E. Emery, Randy K. Otto & William T. O'Donoghue, *A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System*, 6 PSYCHOL. SCI. PUB. INT. 1 (2005).

11. David H. Barlow, *Negative Effects of Psychological Treatments: A Perspective*, 65 AM. PSYCHOL. 13 (2010).

12. Scott O. Lilienfeld, *Psychological Treatments That Cause Harm*, 2

PERSP. PSYCHOL. SCI. 53 (2007).

13. Ali S. Saber Tehrani, HeeWon Lee, Simon C. Matthews, Andrew Shore, Martin A. Makary, Peter J. Pronovost & David E. Newman-Toker, *25-Year Summary of US Malpractice Claims for Diagnostic Errors 1986-2010: An Analysis from the National Practitioner Data Bank*, 22 BMJ QUALITY & SAFETY 672 (2013).

14. MICHAEL A. TAYLOR, HIPPOCRATES CRIED: THE DECLINE OF AMERICAN PSYCHIATRY (2013).

**The present study was designed to be exploratory and . . . is preliminary in nature.**

trist Allen Frances of Duke University School of Medicine, declared that the current version of the diagnostic manual (DSM-5)—the most widely used compendium of criteria for psychiatric disorders—“includes scientifically unfounded, inadequately tested, and potentially dangerous diagnoses,”<sup>15</sup> resulting in millions of patients labeled incorrectly as

suffering from mental disorders.<sup>16</sup> The problem of diagnostic error is well illustrated in DSM-5 research field trials, which revealed a significant failure in evaluators’ ability to reliably agree on numerous psychiatric diagnoses, prompting DSM-IV Chairperson Frances to declare, “*The results of the DSM-5 field trials are a disgrace to the field.*”<sup>17</sup>

Chairperson Frances’ scathing criticism of the scientifically problematic psychiatric diagnoses contained in DSM-5 was echoed by no less than the Director of the National Institute of Mental Health, Thomas Insel, who confirmed that the DSM-5’s “weakness is its lack of validity.”<sup>18</sup>

Given the problem mental-health practitioners have in making reliable and valid diagnoses combined with the documented history of *harming* therapy patients they set out to help, it would seem likely that scientifically unsupported custody evaluations are not immune from these very same serious deficiencies. Clearly, assigning a psychiatric diagnosis is a far less complex task than figuring out an entire family’s best arrangements for the future of children’s lives. As such, it seems reasonable to expect evaluators to make errors when examining complex matters like child custody, resulting in negative outcomes.

Finally, scientific evidence that privacy intrusion can be stressful has been known for decades.<sup>19</sup> In heated custody battles, it is not uncommon for highly sensitive and deeply personal information obtained from a minor by a custody evaluator to be revealed to parents. On occasion, such content may stimulate damaging interactions among family members. The negative impact upon the individuals so affected has not been studied scientifically, but recent scientific studies show that

privacy invasion in families can *negatively affect the child-parent relationship*.<sup>20</sup> In light of the significant privacy intrusion and forced disclosure that children and parents may endure as participants in custody evaluations, it is reasonable to expect potential detrimental effects.

In sum, when one considers the lack of scientific evidence to support custody evaluations, the diagnostic-error rate among mental-health professionals, the harmful effects psychotherapists unintentionally cause patients, the impact of financial burden caused by custody evaluations, and the psychological damage that privacy invasion may generate, the hypothesis that child-custody evaluations may produce detrimental effects seems viable.

In light of the above, I recently searched the literature in this regard and did not find even one research study aimed at investigating the potential negative impact of child-custody evaluations on the children these examinations aim to help. The present article reports the first known quantitative data on detrimental effects of child-custody evaluations.

## RESEARCH DESIGN

Scientific investigation can be expensive. As such, initial studies in an area typically are designed to be limited, straightforward, and cost-effective, operating under the assumption that if useful results emerge, future studies will be more sophisticated and produce reliable findings of greater clarity with increased applicability. The present study was designed to be exploratory and, as an initial investigation, is preliminary in nature.

To preserve objectivity and subject anonymity, a nationally recognized private research firm utilized by Harvard University, Stanford University, and other institutions was hired to solicit and screen subjects, administer research questions, collect data, and tally results.

## SUBJECTS

One hundred one individuals representing 66 metropolitan areas across 35 states who met the following selection criteria participated in the present study: (1) they indicated they were divorced; (2) they reported they had participated in a child-custody evaluation by a psychologist; (3) they presented details requested about the custody evaluation; (4) they indi-

15. Allen Frances & Dayle K. Jones, *Should Social Workers Use Diagnostic and Statistical Manual of Mental Disorders-5?*, 24 RES. SOC. WORK PRAC. 11 (2014).

16. Allen Frances & Suzy Chapman, *DSM-5 Somatic Symptom Disorder Mislabels Medical Illness as Mental Disorder*, 47 AUSTL. & N. Z. J. PSYCHIATRY 483 (2013).

17. Allen Frances, *Newsflash from APA Meeting: DSM-5 Has Flunked Its Reliability Tests*, HUFFINGTON POST, May 8, 2012, [http://www.huffingtonpost.com/allen-frances/dsm-5-reliability-tests\\_b\\_1490857.html](http://www.huffingtonpost.com/allen-frances/dsm-5-reliability-tests_b_1490857.html) (emphasis added).

18. Thomas Insel, *Director’s Blog: Transforming Diagnosis* (April 29, 2013), <http://www.nimh.nih.gov/about/director/2013/transforming-diagnosis.shtml>.

19. Carl I. Greenberg & Ira J. Firestone, *Compensatory Responses to Crowding: Effects of Personal Space Intrusion and Privacy Reduction*, 35 J. PERSONALITY & SOC. PSYCHOL. 637 (1977); Stephen D. Webb, *Privacy and Psychosomatic Stress: An Empirical Analysis*, 6 SOC.

BEHAV. & PERSONALITY 227 (1978); T.G. Gutheil, Harold Bursztajn, Archie Brodsky & Larry H. Strasburger, *Preventing “Critogenic” Harms: Minimizing Emotional Injury from Civil Litigation*, 28 J. PSYCHIATRY & L. 5 (2000).

20. Ana M. Cruz, *Managing Privacy Boundaries Between Parents and Young-Adult Children: An Examination of the Relationship Between Cultural Orientation, Family Communication, Family Satisfaction, and Parental Intrusion*, 68 DISSERTATION ABSTRACTS INT’L SEC. A 4919 (2008); Skyler T. Hawk, Loes Keijsers, Tom Frijns, William W. Hale III & Wim Meeus, *Mind Your Own Business: Longitudinal Relations Between Perceived Privacy Invasion and Adolescent-Parent Conflict*, 23 J. FAM. PSYCHOL. 511 (2009); Skyler T. Hawk, Loes Keijsers, Tom Frijns, William W. Hale III, Susan Branje & Wim Meeus, “I Still Haven’t Found What I’m Looking For”: Parental Privacy Invasion Predicts Reduced Parental Knowledge, 49 DEVELOPMENTAL PSYCHOL. 1286 (2013).

cated the evaluation was paid for by family funds; and (5) they were not related to any other study participant. No children participated in the present investigation.

The subjects were equally divided in gender (49% female; 51% male). Age was distributed as follows: 34 years or younger (28.7%); 35-44 (35.6%); 45-54 (20.8%); 55-64 (13.9%), and 65 or older (1%). In regard to subjects' participation in a child-custody evaluation, 94% reported doing so between 2000 and 2015; the remaining few did so before 2000. The highest custody-evaluation fee reported by subjects was \$23,000.

## METHOD

Following an online identification and screening process,<sup>21</sup> potential subjects were exposed to and answered only one question at a time regarding aspects of their divorce history, including experience participating in a child-custody evaluation, until they either met all of the screening criteria or failed to meet one of the criteria. Those failing to meet any one of the screening criteria were removed immediately from the study, and those meeting all of the screening criteria were then administered the survey online. Subjects were chosen consecutively until the target number of participants was reached with equal gender representation. No one who met all screening criteria was excluded from the study. Any subject who failed to answer all of the required questions of the study was excluded from the final subject pool.

Following successful completion of the custody-evaluation-history screening process, each of the participants were asked three yes/no questions as to whether the recommendations of the child-custody evaluator did or did not: (1) "have any negative effect on any of your children"; (2) "have any harmful effect on the life of any of your children"; and (3) "make life worse for any of your children."

Participants were next asked, "Given what you know now, if you could go back in time and take all the money that was spent on the child custody evaluation and choose today how best to spend that money for your children's benefit, which statement below do you agree with?" and were asked to choose one of the following: (1) "My children would be better off if the money was spent on the child custody evaluation" or (2) "My children would be better off if the money was spent in other ways and not on the child custody evaluation."

Finally, participants were then invited (but not required) to respond to the following open-ended statement: "Please tell us anything else you would like us to know about the effects of the child custody evaluation on any of your children."

21. The subject-recruitment-and-screening process utilized by the independent research company is summarized as follows. Subjects were invited to participate in a short survey as an entry to desired premium content (e.g., e-book, movie, etc.) from a select group of pre-screened online publishers with an established history of producing attentive, quality respondents. Participation was purely voluntary, and no other reward (e.g., airline miles, money, etc.) was offered to subjects for participation. Any subject who failed the research company's trademarked technology to

## RESULTS

The results of the present study indicate that a remarkable number of children experienced negative effects and that lives were made worse by the recommendations of the custody evaluator, as reported by their parents. As can be seen in in Figure 1, nearly one in four children reportedly experienced negative effects, and one in five were reportedly harmed or lives were made worse by the custody evaluators' recommendations. These findings are disturbing. However, they appear especially problematic given that a stunning 65% of all parents in the present study reported that their children would have been better off if the money spent on the child-custody evaluation had not been spent on it. Within that 65% were many parents *not* reporting negative effects who still concluded that their children would have been better served by the family not having spent money on the child-custody evaluation. Thus, in addition to an alarming percentage of children reportedly being harmed by child-custody evaluators' recommendations, a

**[C]hildren experienced negative effects and . . . lives were made worse by . . . the custody evaluator . . .**

**FIGURE 1: PERCENTAGE OF PARENTS REPLYING AFFIRMATIVELY**

23%	19%	20%	65%
Negative Effects on Children	Harmful Effect on Children	Children's Lives Made Worse	Children Better Off If Money Not Spent on Custody Evaluation

unique negative effect was found: approximately two-thirds of all parents report that *child-custody evaluations are not in the financial best interest of their children.*

Although not required, subjects were invited to respond to an open request to present anything else about the effects of the evaluation on their offspring they would like to, and 66% of parents chose to volunteer their thoughts—suggesting a population intrinsically motivated to share their child-custody-evaluation experiences. Of those who reported that the custody evaluator's recommendations produced negative effects on their children, they related predictable complaints, such as that the evaluator made a poor placement decision (e.g., "Because of the evaluation my child resides with his maternal grandparents and is miserable"; "[the evaluator] made my daughter live with her mother, who is unfit and absentee"), created a negative economic impact on the children (e.g., "The

identify dishonest answers (e.g., response-pattern analysis, including elimination of excessive-speed responders, "trap" questions with known answers such as "what time zone are you in?," etc.) was eliminated. Study participants were each assigned a unique alphanumeric label; at no time did the present author interact with any of the subjects that participated in the study or receive any personally identifying information about them. For additional information about the research firm utilized, please contact the author.

**[T]wo-thirds of parents did not feel child-custody examinations are in their children's best financial interest . . . .**

*cost of the evaluation was so high . . . it set back my ability to afford the right things for my child. Instead of doing traveling sports and band it is no longer feasible and I must work extra as well as his mother so neither one of us see our child much"), and demonstrated unacceptable professional performance (e.g., "the evaluator spent little time with the child[,] spent no alone time with the child[,] and made life altering*

*decisions based on her feelings and not the facts").* In addition, other subjects who reported that the custody evaluator's recommendations produced negative effects on their children also reported how the evaluation process stressed their offspring. Examples:

It created tension in my children, them getting confused on whom to support, me or her. Long and the short of it, nothing good came out of it.

My kids knew what was going on, the purpose and reason of the eval. It put them in the middle of the battle between my ex-wife and I. It was emotionally draining for them. They wanted it to be over.

It was an unnecessary trauma on my daughter, which the court mandated.

Perhaps even more illuminating are the complaints volunteered by those who reported that the custody evaluator's recommendations did *not* have negative effects on their children. Consistent with the data reported above, the evaluators were criticized over the cost of the child-custody evaluation (e.g., "It really didn't do anything one way or another other than a loss of funds used to pay for it" and "waste of money//could of taken the kids shopping for clothes shoes//spent on a vacation//bought the children food/hygiene products anything they may have needed"). In addition, a subset of parents who did not report negative effects on the children did attack the usefulness and value of the custody evaluation. For example:

It didn't really have an effect. It pretty much told us what we already knew so the money would have been better spent on my daughter.

It is just a big hassle for the child involved and stirs up more emotions.

It took too much time, and effort, and had to explain questions, that my child did not need to know at the time.

The evaluation did not have much merit in court because the judge said it sounded "biased" even though it was based off scientific metrics.

Taken as a whole, the results of the present study reveal child-custody evaluations are rejected by the majority of parents as not in their children's financial best interest, and a worrisome number report negative and harmful effects of these evaluations on their children. Clearly, the parents in the present study provide disturbing appraisals of the child-custody evaluations they participated in around the country.

#### **ADVICE FOR THE JUDICIARY**

The results of the present study question the assumption that child-custody evaluations are in the best interest of children. The data herein demonstrate that almost one in four children experienced negative effects from these evaluations, including parental reports of harm and children's lives made worse in one in five cases. Further, two-thirds of parents did not feel child-custody examinations are in their children's best financial interest; looking back, they oppose spending money on these evaluations. The results of the present study should trigger alarms when a motion for a child-custody evaluation is heard.

For the first time, the judiciary now has some quantitative information about the effects of child-custody evaluations. Unfortunately, these initial data suggest custody evaluations may harm children. Most parents reject these evaluations as financially unworthy. The data raise serious concerns.

In regard to the individual case before the bench, the results of the present study suggest the court should appreciate that *any* order for a child-custody evaluation may potentially lead to damaging the children the court is trying to protect. Ironically, the present data imply the court may need to protect children in custody battles *from the custody evaluators*.

The notion that children in custody battles may need protection from custody evaluators comes not just from the present study demonstrating a worrisome percentage of children reportedly being harmed and parents reporting these evaluations as not in the children's financial best interest, but by a consideration of common courtroom practices. Before the present study, given the absence of any scientific evidence whatsoever to support the utilization of child-custody evaluations, the decision to order such an evaluation was based on two key assumptions: (1) the evaluation would be helpful for the children; and (2) the bench would rely primarily on the credentials of the evaluator as a guarantor of an accurate and cost-effective custody evaluation. Unfortunately, the present results show that children can be hurt by these evaluations and that parents view these evaluations as *cost-ineffective*, with children better off without them. Further, reliance on the evaluator's credentials is flawed as well.<sup>22</sup> One can have outstanding credentials, but that does not guarantee accurate or cost-effective child-custody-evaluation recommendations.

Indeed, most family courts these days would welcome as a custody evaluator someone who had served as a psychology

22. See Turkat, *supra* note 1.

professor at a major university and as the elected President of the American Board of Forensic Psychology (the longstanding certification authority in its area recognized by the APA), authored numerous peer-reviewed articles pertinent to custody evaluations (including joint publication with a law professor), evaluated over 2,000 cases, and served as a court-appointed guardian ad litem and special master. These are in fact the credentials of University of Washington Clinical Associate Professor Stuart Greenberg:

[H]e evaluated more than 2,000 children, teenagers and adults. His word could determine which parent received custody of a child . . . . But his formidable career was built upon a foundation of hypocrisy and lies. In the years since Greenberg's death . . . . *The Seattle Times* worked to unearth Greenberg's secrets, getting court records unsealed and disciplinary records opened. Those records are a testament to Greenberg's cunning. They show how he played the courts for a fool. He played state regulators for a fool. He played his fellow psychologists for a fool. And were it not for a hidden camera, he might have gotten away with it. . . .

[A]s a custody investigator, expert evaluator, arbiter, mediator, guardian ad litem, special master[, he] became enmeshed in the court system, buddying up to lawyers, judges, fellow experts. On the stand, he radiated confidence. "He was just kind of a notch above the rest of us," says Nick Wiltz, a fellow forensic psychologist. "He was able to present reports and information in a very powerful way." . . . He published in peer-reviewed journals and spoke all over the country. . . . His peers elected him president of the American Board of Forensic Psychology. . . . His fees in individual cases were known to climb from \$8,000 to \$12,000 to \$20,000 or more.<sup>23</sup>

Empowered by top-notch credentials and reputation in an area lacking scientific validity, Greenberg engaged in highly unethical behavior, abused his clients and employees, duped the courts about cases (e.g., misused and misrepresented test and interview data, including manipulating a custody recommendation to favor a convicted domestic-violence offender represented by legal counsel who was Greenberg's undisclosed business partner, while falsely presenting the assault victim as significantly disturbed mentally and posing a danger to her offspring), secretly videotaped individuals in his office bathroom for his own private gratification, and despite having been found

guilty of violating his license to practice earlier in his career, Greenberg was so cunning he was able to force his disciplinary records to be sealed so as not to interfere in his future practices as a forensic psychologist.<sup>24</sup> In 2007, Greenberg was caught gratifying himself in front of the very camera he used to spy on others in his office bathroom and shortly thereafter committed suicide.<sup>25</sup>

Had it not been for the discovery of that camera, Greenberg might still be operating today as a prominent, highly desired custody evaluator.

Greenberg's case undoubtedly would not apply to most custody evaluators, but it illustrates the serious flaws in how these evaluations are assigned, implemented, and utilized. Relying primarily on credentials is risky when there is no scientific evidence to guide the court.

In light of this dilemma and considering the results of the present study, the bench would do well to stay focused on the need for strong scientific support *before* authorizing well-intentioned professionals to perform potentially harmful child-custody evaluations or unwittingly empowering potentially harmful evaluators. At present, ordering a child-custody evaluation is a gamble, in terms of the evaluator, the evaluation, and the potential for harm to children. As Greenberg illustrated in today's poor level of science that forces the bench to be dependent *on its faith in the evaluator* performing a child-custody evaluation, it comes with a heavy wager: an evaluator you place your faith in may take a family down a terrible path you might not even know about until after the damage is done. Put another way: if the highly observed President of the American Board of Forensic Psychology can "play the courts for a fool,"<sup>26</sup> what prevents the less-scrutinized custody evaluator before you from doing so? Today's poor level of science on child-custody evaluations offers the judiciary no protection.

Considering the results herein more globally, the judiciary may wish to take a very hard look at the practice of ordering child-custody evaluations to determine how they serve the needs of families. More specifically, a greater push should be made by the judiciary to encourage local psychologists and the APA to begin systematic scientific research on child-custody evaluations<sup>27</sup> to develop a set of proven tools that properly serves families. Over the last quarter century, psychology has failed to do so. If the judiciary halted child-custody evaluations

**At present,  
ordering a  
child-custody  
evaluation is a  
gamble . . . .**

23. Karen Armstrong & Maureen O'Hagan, *Seattle Times Special Report: Twisted Ethics of an Expert Witness*, SEATTLE TIMES, June 26, 2011, <http://www.seattletimes.com/seattle-news/seattle-times-special-report-twisted-ethics-of-an-expert-witness/>.

24. *Id.*

25. *Id.*

26. *Id.*

27. From a scientific perspective, the results of the present study call for the development of clearly delineated facts on the positive and negative outcomes of child-custody evaluations utilizing well-designed research investigations of far greater sophistication than the initial survey herein, which naturally comes with limitations.

Scientifically useful retrospective and cross-sectional studies would certainly be helpful, but, ultimately, prospective investigations are required to demonstrate the long-term effects of child-custody-evaluation recommendations, using well-chosen representative populations of ample size. With a comprehensive body of scientific facts on custody evaluation and outcome, including direct assessment of the functioning of children in addition to other measures such as parental report (the sole dependent variable in the present study), evaluators would then have a legitimate scientific foundation to properly advise the courts, which is lacking at the present time.

until there is strong scientific evidence for how to perform them in ways that achieve better outcomes for children, psychologists would likely rise to the challenge. Without such a halt, the experience of the last quarter century as noted above is at risk to continue as is. Maintaining the status quo is certainly not in the best interest of families litigating over custody of their children.

As child-custody evaluations have been performed for decades under the assumption that it is in the best interest of children—an assumption seriously challenged by the results of the present investigation and the factors reviewed herein, it is hoped that future research will help create evaluations that serve children well and outweigh any negative effects, including the crippling cost some families have experienced. Given the design of the present study, one should look to the results of future, more sophisticated scientific investigations to better identify the types of negative effects that child-custody evaluations may produce, their prevalence, and how they can be prevented.

Since at the present time there is no scientific evidence

whatsoever that child-custody evaluations benefit children while the quantitative information presented in the present article indicates these evaluations may harm them, at minimum, it is advisable for the judiciary to become far more cautious when a motion for a child-custody evaluation is heard. At maximum, one could well argue that, at the present time, families may be better off without child-custody evaluations.



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