
CHAPTER 1

Introduction

This book focuses on the evolving and dynamic interdependence between the behavioral sciences and family law in child custody evaluations and, more specifically, the role of the forensic evaluator when allegations of child maltreatment arise in child custody disputes. In many ways, this should be the healthiest dialogue between the two disciplines because the role boundaries and expectations applied to the evaluator role are more clearly delineated in the published literature than for other forensic mental health roles (Ackerman & Kane, 1998; Galatzer-Levy & Krauss, 1999; Gould, 2006; Greenberg & Shuman, 1997; Greenberg & Gould, 2001). This book teaches mental health professionals who conduct child custody evaluations to make such evaluations more useful to the courts and more valuable to the families who are engaged in the evaluation process. We contend that a scientifically informed child custody evaluation that is designed to meet at least the minimum legal standards of admissibility as a scientific work product best serves both courts and families.

There are many challenges within the field of child custody work for mental health practitioners. One challenge is created by the failure of both graduate schools and internship programs to prepare clinicians for work within an adversarial context. Another challenge is the apparent lack of understanding of what an expert is and how mental health professionals have a moral as well as an ethical obligation when they agree to serve as experts to meet the demands of that role competently. Other challenges includes learning how to craft an evaluation so that the information gathered will meet the standards of admissibility required by the legal system and finding an effective means by which to maintain one's expertise (an endeavor that demands keeping abreast of chang-

ing statutes and case law, research findings, and developments in assessment methods and procedures).

The Purpose of a Child Custody Evaluation

The primary purpose of a child custody evaluation is to provide information to the court and the family about the best psychological interests of the child or children. In Chapter 2, we explore the meanings and definitional limitations surrounding the concept of the best psychological interests of the child. In this chapter, we discuss what defines a child custody evaluation and provide a brief historical overview of conceptual frameworks that have been developed and refined to assist mental health professionals in constructing child custody evaluations.

The American Psychological Association's child custody guidelines (1994) made a subtle yet substantial modification when they added the adjective *psychological* to the definition of the best interests of the child (Guideline 14, p. 679). Mental health practitioners are encouraged not to provide testimony about the ultimate legal issue because of the limitations inherent in a psychological investigation. For example, we often are asked not to examine the financial issues involved in equitable distribution of property and its effect on children while recognizing that such a factor may play a role in the judge's decision. Similarly, factors outside the scope of behavioral science research such as questions about morality or theology may affect the judge's decision making and be outside the sphere of expertise of a psychologist. We need to recognize and respect what is and is not within the scope of our professional expertise and stay within its limits.

The Relationship between Law and Psychology

Historically, the relationship between law and psychology has been somewhat difficult to manage, in part because the rules and expectations of the mental health practitioner's role within the legal system have been poorly defined. This poor definition has resulted in controversies within the field of psychology about what constitutes ethical and appropriate involvement in the legal system, and concern about this ambiguity has stimulated efforts to define better role differences between clinical and forensic functions (Greenberg & Shuman, 1997, 2007; Heltzel, 2007) as well as efforts to delineate better for judges and attorneys the appropriate boundaries of testimony offered by treating therapists working within a forensic context (Greenberg & Gould, 2001; Greenberg, Martindale, Gould, & Gould-Saltman, 2004). There has been an unfolding dialogue between the courts and custody evaluators focusing on the nature and

quality of testimony by forensic psychological experts as contrasted with testimony by treating practitioners (Shuman, Greenberg, Heilbrun, & Foote, 1998; Krauss & Sales, 1999, 2000). Additionally, both within the courts and within the profession of psychology, increased concern has been expressed regarding the offering of clinical opinions masquerading as scientific knowledge (Gould & Martindale, 2005; Shuman & Sales, 1998, 1999; Tippins & Wittmann, 2005).

These evolving dialogues have resulted in some interesting interdisciplinary demands, such as when a clinician receives a subpoena to testify about ongoing treatment. Often, the clinician is an unwilling participant in litigation. The court (or an attorney) believes that the clinician has information that cannot be obtained through other avenues of testimony. The clinician is directed to disclose to the court information obtained during treatment that was never intended to leave the therapy office and certainly never considered appropriate for placement in the public record. In circumstances such as these, the role boundaries and expectations placed on the clinician by the court are often poorly defined. Providing testimony about treatment when the initial therapy contract did not anticipate forensic involvement may assist the court, but it may also serve to undermine an effective therapeutic relationship by forcing the clinician to offer an opinion in open court that would never have been spoken otherwise.

When clinicians provide court-ordered treatment, the dialogue between the clinician and the court is often more cooperative and collegial, but there are still tensions between the clinician's need to protect the privacy rights of the therapy client and the content of the treatment sessions and the court's need for complete and accurate information. Recent writings have suggested a model for conducting treatment in a forensic context and have called upon the profession of psychology to develop a set of professional practice guidelines that might assist clinicians in performing their clinical roles within the context of ongoing legal involvement (Gould & Greenberg, 2000; Greenberg & Gould, 2001; Greenberg, Gould, Gould-Saltman, & Stahl, 2001; Greenberg, Martindale, Gould, & Gould-Saltman, 2004). Similarly, Barsky and Gould (2002) have proposed a set of steps to help the nonforensic clinician understand how to navigate the legal system. The evolving dialogue in these areas of psycholegal practice is increasingly focused on developing a foundation for ethical and competent clinical testimony within the legal system.

Although the discussion of clinical treatment within a forensic context is a rich topic for examination, it is not the focus of this book. The topic is included because, often, those involved in the practice of child custody work are also involved in providing treatment services to families in transition and/or are asked to contribute to the analysis of the best psychological interests of the child in a critical evaluation for the court of treatment services offered by others. These references are offered as a starting point for further readings and thought about this complex issue.

A Very Hot Kitchen

Forensic psychology in general and child custody evaluations in particular have been a draw for many mental health practitioners seeking to avoid the long arm of managed care. One result of the intrusion of managed care into the previously autonomously run practices of psychologists is that more and more clinicians are offering to perform services in nonclinical specialties as a means to escape the tentacles of the current health care system (Gould, 2006; Goldstein, 2003). Mental health practitioners entering the child custody field are stepping into a very complex and formidable area of work. As Kirkland and Kirkland (2001) state,

The area of child custody evaluations is potentially one of the most stressful and difficult for psychologists because of high levels of emotionality and acrimony associated with the process and the participants. . . . It is speculated that child custody evaluations are among the most dangerous and risky endeavors for psychologists, owing to high levels of stress, threat of litigation, risk of board complaints, and even the possibility of personal harm. (p. 171)

Despite these apparent risks, mental health professionals are increasingly entering the forensic arena. Some are skilled in forensic thinking and the application of forensic methodology and procedures to psycholegal questions. Others step into the forensic arena with a poor understanding of the differences between clinical and forensic roles and responsibilities (Greenberg & Gould, 2001; Greenberg & Shuman, 1997) as well as of standard forensic methods and procedures (Gould, 2004; Kirkpatrick, 2004; Martindale & Gould, 2004). Many lack basic forensic training, while others do not know about admissibility standards for expert witness testimony such as the implications of *Frye* (*Frye v. United States*, 1923), *Daubert* (*Daubert v. Merrell Dow Pharmaceuticals*, 1993), or *Kunho Tire* (*Kunho Tire Company Ltd. et al. v. Carmichael et al.*, 1999) rulings on courtroom testimony.

The arena of child custody work is complex and requires effort to stay current. Kirkland and Kirkland (2001) suggested several defensive steps that the wise evaluator should take in anticipation of “an eventual and inevitable complaint” (p. 174). Among the recommended defensive steps is to ensure that one’s work reflects a thorough compliance with all specific state and national guidelines. Kirkland and Kirkland encourage examiners to “stay on top of the developing ethical and procedural literature” and to “avoid any role conflicts or even possible sources of perceived bias” (p. 174). They stress the importance of using collateral interviews and multiple data sources and recommend not addressing the ultimate issue before the court and carefully considering test interpretation, taking particular care not to over- or underinterpret psychological test data.

Stop and think about the Kirkland and Kirkland (2001) suggestion that

child custody evaluators should construct their forensic practice in anticipation of an eventual and inevitable complaint. Evaluators would be wise to heed the caution of Kirkland and Kirkland. Simply stated, child custody work can be both demanding and anxiety producing. Mental health professionals who enter the forensic arena as it is currently structured need to be prepared for participation in an adversarial process.

Attorneys receive training in the art of adversarial exchange. Those who learn well and who are by temperament comfortable with oral battle become active litigators. The others handle matters of law that do not bring them in to the courtroom. Litigators are prepared to spend days or weeks in the courtroom battling with their colleagues over issues of law. They challenge. They argue. They play strategic games with the facts. During their courtroom time, attorneys zealously advocate for their clients' positions and work hard at undermining the credibility of witnesses offering testimony not supportive of their positions before the court. When it is over, most attorneys shake hands and leave the adversarial spirit in the courtroom.

Probably as a result of having been trained as clinicians, many mental health professionals seem to have thinner skin. We are not trained in the art of advocacy nor do we spend our professional time in an adversarial setting. We expect empathy, honesty, concern, and support from our colleagues. Our training compels us to be gentle, compassionate, understanding, forgiving, and constructive in our criticism.

When mental health professionals offer their services as custody evaluators, sometimes they will be required to function in a work environment that is foreign to them: the courtroom. The task of experts, regardless of the manner in which they are being compensated for time expended, is to assist the trier of fact—to function as educators. Effective expert witnesses must develop the ability to maintain their composure and to focus on the task of communicating useful information to the court while attorneys treat the courtroom as though it were a battlefield. Forensic psychological experts must be able to endure aggressive (and, in some cases, deliberately nasty) cross-examination. Just as our teaching colleagues cannot allow their concentration to be impaired by disruptive students, we must stay focused on our educative function in the court. Cross-examining attorneys are ethically obligated to do whatever they can to cast doubt on evidence that is unfavorable to their clients. It is not personal.

The advisory report filed at the conclusion of a child custody evaluation should provide the trier of fact with a rational and scientific foundation for the interpretations, conclusions, and recommendations offered to the court. In preparing their reports, evaluators must focus on the objective: providing pertinent information about the family system. While denigration, criticism based on personal values, and reprimands are counterproductive, so is excessive concern for the emotional comfort of the litigants. Evaluators must recognize that they are obligated to articulate what data-gathering methods were utilized, what data were obtained, how those data bear upon the criteria that are collec-

tively referred to as the *best interests standard*, and the logical nexus between the data and the opinions and recommendations offered.

There is a very interesting movement developing across the United States called *collaborative law*, in which conciliation and negotiation replace aggressive advocacy (e.g., Fagerstrom, 1997; Tesler & Thompson, 2006). It is beyond the scope of this book to discuss collaborative law except to observe that it is interesting, progressive, and potentially of greater use to certain families than the current adversarial system.

We would welcome a change in the current system that would call upon mental health professionals to prepare for participation in one of the legal system's most highly contentious arenas. We believe that within the emerging concept of collaborative law, mental health professionals may play an important role in providing useful information about family functioning that can be used to assist the family in better managing their transition from an intact family to a binuclear family (Ahrns, 1987). It will likely be many, many years (if ever) before the collaborative law movement replaces the current system of advocacy.

The reality of today's legal system and the ways in which mental health professionals participate in that system suggests that we need to be prepared for an adversarial process. Kirkland and Kirkland (2001) remind us that, after successfully negotiating the litigation process in which reports are used, evaluators often are the subject of licensing board investigations resulting from the "acrimonious complaints of an angered party" (p. 172). Their study found that a child custody complaint is "unlikely to result in a finding of formal fault or in a revocation, but this is little joy for the practitioner whose license is in administrative purgatory during the response and defense period of the complaint" (p. 174).

A well-researched and well-written report is an important step in helping the family understand how to rehabilitate itself and how to assist specific family members in gaining the management skills and emotional competencies needed to help children move toward their psychological potential. A well-crafted report can provide relevant and useful information to the court, the attorneys, and the family while preserving the dignity of the family so that postdivorce healing can take place more effectively. Mental health professionals help promote understanding and change. We neither encourage nor support conflict with the intent of facilitating one party's litigation strategy. Our job is to paint a picture of a child's life within a binuclear family context. The task of the forensic psychological evaluator is to describe with clarity, knowledge, objectivity, and compassionate understanding the struggles each family has endured in moving from a stable, intact nuclear unit to a binuclear unit in which the children need to learn how to accept and cope with their changing world.

Whether the information contained in an advisory report encourages settlement or is utilized as an instrument in litigation, a report should be scientific-

cally informed in order to provide the best possible specialized knowledge for the family, the attorneys, and the court. An appropriately prepared report outlining the findings of a scientifically informed evaluation should be useful either in settlement discussions or in litigation. In either case, we must focus upon the reliability, relevance, and helpfulness (Krauss & Sales, 1999) of the information contained in the report.

Changing Paradigms

One might argue that the field of child custody evaluations is undergoing a paradigm shift (Kuhn, 1969). When paradigms change, conflict is inevitable. There is conflict over the nature of the change, over the direction of the change, and over the speed of the change. We believe that the paradigm shift is from a clinically based model emphasizing the clinical judgment of the evaluator (Calloway, 2002) to a forensically based model (Martindale & Gould, 2004) emphasizing the gathering of reliable data from independent sources and using reliable methods and procedures from which is sought convergence between or among independent data sources that may be used to confirm or disconfirm specific hypotheses.

Across the United States, there are battles occurring in some communities over how to conduct child custody evaluations. One side argues that child custody evaluations are clinical exercises, limited to testing and in-office clinical interviews. The other side stresses the need to conduct child custody evaluations as forensic evaluations are conducted. Child custody evaluations utilize a five-pronged methodology, including semistructured interview questionnaires, psychological tests, self-report measures, direct behavioral observation, and extensive collateral record review and collateral interviews (Austin, 2000d, 2002; Austin & Kirkpatrick, 2004; Gould, 1998, 2006; Heilbrun, 2001; Heilbrun, Warren, & Picarello, 2003; Otto, Buffington-Volkam, & Edens, 2003).

Those who encourage the use of conventional forensic methods and procedures find support among the major professional organizations that have published guidelines (e.g., American Academy of Child and Adolescent Psychiatry, 1997b; American Psychological Association, 1994) or standards (Association of Family and Conciliation Courts, 2007) as well as from workshop providers who offer training in child custody evaluations through organizations such as the American Academy of Forensic Psychology, the American Psychological Association, and the Association of Family and Conciliation Courts. Judging from a review of the literature and the contents of workshops offered across the United States, there seems to be little question that the movement toward a scientifically informed model of child custody evaluations has taken hold (Bow & Quinnell, 2002; Kirkland, 2002; Kirkpatrick, 2004; Tippins & Wittmann, 2005). Those who continue to endorse the older, clinical model (e.g., Calloway, 2002; Trubitt, 2004) are, in our view, failing to meet their ethical responsibility

to provide forensic services at the highest level of professional competence (Committee on Ethical Guidelines for Forensic Psychologists, 1991) because of the potential impact that an expert's opinion may have on the decision-making process in a custody trial. As discussed later, those who rely solely upon clinical methodology and clinical judgment and fail to utilize reliable and relevant forensic methods and procedures may be conducting themselves in a manner inconsistent with the ethical obligations of their profession and undermining the credibility of all psychological experts who serve the court (Tippins & Wittmann, 2005; Weissman & DeBow, 2003). There is an emerging awareness of the critical distinction between providing expert witness testimony based upon clinical opinion and providing expert witness testimony based upon information drawn from forensic methodology (Shuman & Sales, 1998). The competent evaluator needs to be aware of these important issues.

Limitations of Clinical Judgment in a Forensic Context

Clinicians entering the world of custody evaluations encounter references to a controversy concerning the use of clinically versus scientifically informed methods. The concern about clinical judgment used in a forensic context is reflected in several recent articles. Summarizing the controversy, Shuman and Sales (1998) make the following points:

1. While some expert testimony by people with scientific degrees is derived from research the accuracy of which can be validated, much other expert testimony advances opinions derived from judgments in which accuracy rests on the experts' nonvalidated theories and skills.
2. These untested opinions are commonly referred to as "clinical" judgments and are defined by their reliance on personal experience rather than on statistically analyzed data drawn from valid and reliable research.
3. Use of the term "clinical" refers to a method or approach of making judgments or decisions.
4. The growing literature on human judgment and decision making helps explain the inherent unreliability of clinical judgment and decision making.
5. Expert judgments that are clinically derived are as susceptible to error as lay judgments and involve the use of strategies in arriving at decisions that contribute to the error rate.
6. Clinical judgments and opinions offered in court are just as flawed as any other clinical judgment.
7. To the extent that a scientist or practitioner is relying on personal experience and personal biases in drawing inferences that go beyond the data, he or she is engaging in clinical decision making, despite his or her scientific training.

The Importance of a Scientifically Informed Approach

Increasingly, mental health professionals are being asked to conform their oral testimony and their written work product to standards of *evidence-based practice* (Greeno, 2001). Whether mental health professionals are providing clinical or forensic services, there is an increasing need them to base their methods and techniques upon research that supports the efficacy of those methods and techniques (Martindale & Gould, 2006; Tippins & Wittmann, 2005).

A careful reading of our ethical responsibilities and best practices aspirations (Committee on Ethical Guidelines for Forensic Psychologists, 1991; Association of Family and Conciliation Courts, 2007; American Psychological Association, 1992, 2002; American Psychiatric Association, 1994) and of documents reflecting the current state of forensic mental health and law clearly indicates that child custody evaluators need to base their work products on scientifically informed methods and research (Amundson, Duda, & Gill, 2000; Austin, 2001; Galatzer-Levy & Krauss, 1999; Gould & Stahl, 2000; Otto et al., 2003; Roseby, 1995; Wingspread Conference Report and Action Plan, 2001).

Science and Practice

Ideally, clinical psychology should be based on scientifically and empirically validated principles, techniques, and theory. Pope (1996) wrote:

Science works best when claims and hypotheses can be continually questioned. That which tends to disallow doubt and discredit anyone who disagrees is unlikely to foster the scientific venture or promote public policies and clinical practices based on scientific principles. Each scientific claim should prevail or fail on its research validation and logic. (p. 971)

The Forensic Model

Kuehnle (1998a) has applied the forensic model of assessment to evaluating allegations of child sexual abuse. Although she has used the term *scientist practitioner model*, we believe that her operational definitions of the role of the evaluator and of the scope and purpose of an investigation of sexual abuse allegations are analogous to our concept of the forensic model as applied to child custody evaluations.

Another term recently introduced at conferences that purports to describe a more child-sensitive model of custody evaluations is the *clinical/child-based evaluation model* (Calloway & Lee, 2002). We conducted a literature search on this term and found no citations. We also asked colleagues on several professional forensic and clinical listservs if anyone had heard of the model or could lead us to literature that described the model, but we received no information.

We were curious about both the origin and the conceptual underpinnings

of this model. We noted earlier in this chapter that the first guideline of the American Psychological Association's child custody guidelines (1994) declares, "The primary purpose of the evaluation is to assess the best psychological interests of the child" (p. 678). As we presume that most, if not all, child custody evaluators respect these guidelines and endeavor to conduct evaluations accordingly, we cannot imagine a model focused on child custody assessment that would not be child-based.

We believe that people who speak about a clinical/child-based evaluation model are creating tension where none need exist. We found two articles that appeared to address this model, neither of which used the term. The first article, written by Vivienne Roseby (1995) was a building block in our field's movement toward the use of reliable methods, its support for scientifically informed opinions based upon reliable data, and its concern for offering opinions to the court that do not go beyond the appropriate interpretations of the data. Reflecting concerns about clinical hunches offered as scientifically informed opinions, Roseby writes, "Not surprisingly, mental health professionals have at times been criticized for exceeding the limitations of empirically based scientific knowledge in their efforts to be responsive" to the needs of the court (p. 97). She provides a model for child custody evaluations that is similar to the current forensic model.

Roseby identifies four assumptions that should guide child custody evaluations:

1. Minimize the parents' sense of shame and exposure and maximize their understanding of the child's needs and experiences.
2. Explicate the causes and potential avenues for diffusing the parental conflict and its effects upon the child.
3. Evaluate each parent's concern and characterological capacity to resolve the parental conflict as well as to meet the child's needs over time.
4. Identify what custody plan, support, and/or arbitration structures will be needed to support the child's development in the short and long term.

Roseby offers some interesting observations about the use of psychological test data in child custody evaluations. She warns of the dangers of interpreting test data without understanding the context of the testing. She also stresses the need to consider "all psychological test data . . . as working hypotheses which can be disconfirmed or further supported and understood in the context of information obtained by other methods" (p. 99).

Roseby argues against evaluators using psychological tests conducted and interpreted by their colleagues. She writes,

When psychological reports are completed and returned to the evaluator, an incongruity arises. Specifically, the testing was not conducted by the same pair of

eyes, the same mind, the same sifter and sorter as the person who conducted the rest of the evaluation. As a result, the ways in which testing confirms or disconfirms other information are not fully explained and the explicit effects of test data on the final recommendations are not elucidated. When psychological test data are not braided into the logic of the overall evaluation, the data are weakened and legitimately vulnerable in court. (p. 99)

We see *no* conflict between what Roseby described in her “child focused approach” to child custody evaluations and the forensic model. In fact, we were impressed with her ability to recognize, 10 years ago, concerns that have only recently become part of usual and customary practice among child custody evaluators.

We also found an unpublished article by John M. Palen entitled “Child Custody Evaluations: Uses and Misuses” (www.illinoisbar.org/Sections.8uses.html), in which he describes “the components of a child-focused evaluation.” After consultation and review with Palen, we summarized his article:

1. “In a child-centered assessment the focus is on identifying the needs of the child as well as the strengths and weaknesses of each parent as they affect his or her ability to parent.” Palen describes this focus as “the cornerstone to a child-centered evaluation.”
2. “The goal of the evaluation is to develop a parenting plan that maximizes the child’s exposure to each parent’s capabilities while protecting him [or her] as much as possible from their limitations.”
3. “This [goal] is accomplished with a comprehensive evaluation that investigates specific concerns—identified by the court at the outset—by tapping into multiple sources of data that include: [a] extensive individual clinical interviews with parents and children that employ both open-ended and structured questions; [b] observations of each parent with each child—sometimes at each home as well as at the office; [c] review of relevant documents and records; [d] interviews with collateral sources such as teachers, physicians, and therapists; and [e] psychological testing as needed.”
4. “When the same evaluator talks with all family members, attorneys, therapists, and teachers, a more comprehensive view of the family and its needs can emerge.”
5. A “child-focused custody evaluation results in specific recommendations that facilitate the continued development of both children and parents.”
6. When an evaluator goes on a “pathology hunt,” “the task of understanding the child’s needs becomes peripheral to that of exposing the parent’s imperfections, mistakes, and failures—even if these limitations lie outside of the realm of parenting. . . . [A] parent’s mental health *per se* is not an indicator of parenting capacity. . . . Routine psy-

chological testing within a context that is focused on uncovering parental pathology is a misuse of an important tool. . . .”

7. The “findings of the report [should be presented] to the parents together or separately in a conference with the evaluator and with their attorneys present.”
8. The “ethical guidelines of the American Psychological Association require that clients who have been evaluated for any reason be given this opportunity. In addition, the Association of Family and Conciliation Courts *Model Standards of Practice for Child Custody Evaluation* require that the results of psychological testing be discussed with the adult participants in the evaluation—especially if the results indicate the need for psychological treatment or counseling.”
9. “In summary, a child-focused evaluation should: [a] minimize the parents’ sense of shame and exposure and maximize their understanding of their child’s needs; [b] explain the causes of the parental conflict, discuss its effects on the child, and suggest ways to diffuse it; [c] evaluate each parent’s current and historical capacity to resolve the conflict as well as his or her ability to meet the child’s needs over time; and [d] identify what custody and time-sharing plan and supportive services will be needed to support the child’s development in the short and long term.”

We see *no* conflict between what Palen has described and what we refer to as the forensic model.

We acknowledge the frustration that some mental health and legal professionals have with the adversarial context within which child custody evaluations are currently presented to the court. There are legitimate differences about how mental health professionals currently interact with the legal system and how they should optimally interact with it.

In our peer-reviewed writings, our workshops and seminars, and our professional consultations, we have sought to address ways in which the methods of behavioral science may be properly applied in the search for answers to psycholegal questions. Both in our professional publications and in our court reports, we have emphasized our responsibility as forensic specialists to offer alternative plausible hypotheses. Neither in our own nor in others’ writings on the forensic model do we find any statements that might encourage forensic psychologists to characterize findings or opinions in terms such as “right” or “wrong.” Martindale has pointed out that an honest expert offers an “acknowledgment of the known methodological limitations inherent in evaluations of comparative custodial suitability” (Martindale, 2001a, p. 505), and we both have written about the need for transparency in all forensic activities associated with the role and activities of an evaluator (Gould, 2006; Martindale, 2004).

There is a strong emphasis on psychological fact finding in forensic work. Greenberg and Shuman (1997) refer to the need to focus attention on *historical*

truth, that is, to focus attention on finding data that helps understand how people behaved in the real world. As Gould put it, the “scrutiny applied to information used in the process and the role of historical truth” in forensic evaluations is based upon the view that “litigant information [should be] supplemented with and verified by collateral sources and scrutinized by the examiner, adversaries, and the court” (Gould, 1998, p. 17). Current texts also support the need to obtain historical truth in the manner described above (see Goldstein, 2003; Heilbrun, 2001).

It is likely that all mental health professionals involved in custody-related work would agree that child custody advisory reports should be used in the most constructive manner possible, but disagreement might exist concerning how best to accomplish this goal. Custody advisory reports should not be used as weapons in custody battles to determine who won and who lost. In our view, an advisory report should focus on the specifically defined questions posed by the court or the attorneys (Amundson et al., 2000; Gould, 1999). It should be written in a manner that respects the family system and encourages a parenting plan that accentuates each parent’s positive qualities (Gould & Stahl, 2000; Roseby, 1995) while realistically describing how each parent’s limitations may adversely affect each child’s best psychological interests. It should also be written in a way that allows the reader to understand from the child’s point of view what it is like to live with each parent (Smart, 2006) and what it is like to adjust to the new living situation (Smart, 2002; Smart & Neale, 2000). We do not support an allegations-based approach (Benjamin & Gollan, 2003) or a pathology-based approach; rather, we stress the need to help the family create a functioning system that supports not only the best psychological interests of the children, but also the establishment of healthy family functioning across households.

There may be times when cross-examination will feel adversarial and when a cross-examining attorney and an expert will feel hostile toward each other. Additionally, during legal proceedings, mental health colleagues may be directed by the court to refrain from communication with one another. Such limitations on collegial contact may create tension between colleagues with opposing views. If the “collegial exchange of ideas” is prohibited by the court (or by virtue of the agreement between a retained psychologist and the retaining attorney) and if, as a result, a “hostile environment” evolves (Calloway, 2002, p. 216), it cannot logically be declared that utilization of the forensic model by one or both psychologists has created the unpleasantness. The forensic model encourages the application of reliable and relevant research to the particular family that is the focus of the evaluation. We find no support for the notion that “individual differences are overlooked” or that the forensic model “ignores the interplay between [the] idiopathic and [the] general” (Calloway, 2002, p. 217). In fact, the excellent work of Krauss and Sales (1999), Shuman and Sales (1999), Tippins and Wittmann (2005), and others has helped us integrate the complexities of legal admissibility standards into child custody assessment. A

recent article in which Gould and psychologist Phil Stahl provide a set of decision rules to use in the application of current child development research to a particular family system (Gould & Stahl, 2001) serves as an example of how current authors of the forensic model stress the importance of the interplay between idiopathic and general information.

In summary, we believe that there is great value in the forensic model. We also believe that there is overwhelming support in current behavioral science literature and in presentations offered at professional conferences for the premise that the forensic model is the most parsimonious and most useful model of data gathering that has been devised to date.

The Forensic Model in Child Custody Evaluations

The scientist-practitioner model has been at the foundation of modern training in professional psychology for almost half a century. Its strength lies in resolving tensions between the use of scientific knowledge and the use of clinical judgment. One cannot exist without the other. Scientific knowledge informs clinical and forensic decision making, of which clinical judgment is a critical component. Where science provides facts, clinical judgment integrates facts into context. Where clinical judgment provides intuitive understanding, science incorporates experiences into a theoretical framework about human behavior. We refer to this integration of scientific information and clinical judgment as *scientific expertise*. We do not suggest a formula for determining what part of scientific expertise is based on research and what part is based on clinical judgment; we merely note that each is a necessary component for the development of a competently crafted and ethical forensic work product.

Psychologists are assumed to be expert in aspects of psychological science due to their training, licensure, experience, and education. Not every psychologist is expert in all areas of psychology, and even experts within a specialized field are likely not to be familiar with everything that has been published within that field, but an expert in a specific area is expected to know more than a generalist and the expert who specializes is expected to be familiar with both the historical and the current literature in his or her field.

Advantages of a Scientifically Informed Advisory Report

Science is characterized by its utilization of methods that help reduce or eliminate the inherent bias of casual, unfiltered impressions based upon personal beliefs and expectations (Martindale, 2005a). Scientific methods also help reduce bias attributable to professional beliefs and expectations (Greeno, 2001). As Greeno states:

Most scientific techniques improve our ability to create careful documentation that enables us to perceive our world accurately. . . . Science provides us with spe-

cific techniques for decreasing bias around a number of activities. . . . the tools of social science can be regarded as having evolved in order to create a set of techniques to help us avoid a number of systematic mistakes we will make if our perceptions are unaided . . . but these techniques do not work perfectly, and there are times when scientific techniques do not make us more accurate. . . . There are constraints and limits on what we can perceive when we apply scientific techniques. (pp. 116–119)

Psychological experts differ from most other witnesses in their application of scientific methods to analyses of data. Psychological experts have no special expertise in determination of truth. What they offer the court is a method of analyzing information that is designed to identify, control, and, at times, eliminate subjectivity.

The scientific method and the model of scientifically crafting child custody evaluations discussed in this book will help protect the evaluator from the influences of mistaken impressions, unknown or unconscious biases, confirmatory bias, and other mistakes of perception and interpretation (Martindale, 2005a). The use of a scientifically informed methodology, integrated with appropriate scientific research about factors relevant to the family under scrutiny, will provide the evaluator with a firm evidentiary ground upon which to offer interpretations, opinions, and conclusions. The scientific method applied to child custody evaluations is not perfect. Science draws on special and unnatural techniques that create their own source of bias. One source of bias inherent in the scientific method is the use of techniques that impose upon our observations of human behavior an artificiality that is necessary to conduct rigorous and controlled observations of human behavior (Greeno, 2001). The rigor and control of some scientific observational techniques may affect the behaviors being observed by robbing them of the spontaneity that makes unique the quality of the human interaction. Observing interactions between parent and child is one example. Science has not developed a means by which to measure the unique aspects of the interactions observed between a loving parent and child. Despite the need to move so much of our evaluation methodology toward a scientifically informed model, there will always be room for the art of observation and clinical description (Gould & Stahl, 2000).

The Child Custody Evaluation as a Forensic Activity

A forensic evaluation is *not* the same as a clinical evaluation. The methods and procedures, the posture of the evaluator, and the intended audience for the work product are different. Greenberg and Shuman's (1997) seminal paper clearly articulated important differences between clinical and forensic roles.

For our purposes, it must be made clear that a child custody evaluation is a forensic evaluation. The form and content of the evaluation must be useful not only for the families being evaluated but also for the courts that may need the

information contained in the evaluation. Courts can only utilize this important information when it is crafted in a manner consistent with rules of evidence (rules governing admissibility) and it is for this reason that a child custody evaluation must be conceptualized as a forensic activity.

It is also the general consensus, as expressed in the professional literature, that a child custody evaluation is a forensic activity. We are perplexed by those colleagues who insist that there are no professional practice guidelines indicating the need to craft a child custody evaluation as a forensic work product. Stated simply, if a psychologist knows (or should have known) at the time of accepting an assigned task that its end product will be used in an adjudicative setting, then it is by definition a forensic task. Any evaluation the findings from which are likely to be used in a legal proceeding is, by definition, a forensic evaluation (Committee on Ethical Guidelines for Forensic Psychologists, 1991).

According to the specialty guidelines for forensic psychologists (Committee on Ethical Guidelines for Forensic Psychologists, 1991), a child custody evaluation falls within the definition of forensic psychological activity. The specialty guidelines state:

“Forensic psychology” means all forms of professional psychological conduct when acting, with definable foreknowledge, as a psychological expert on explicitly psycholegal issues, in direct assistance to courts, parties to a legal proceeding, correctional and forensic mental health facilities, and administrative, judicial, and legislative agencies acting in an adjudicative capacity. (p. 657)

The guidelines for child custody evaluations in divorce proceedings (American Psychological Association, 1994) also consider a child custody evaluation as a forensic psychological activity. The guidelines state, “Psychological data and expertise, gained through a child custody evaluation, can provide an additional source of information and an additional perspective not otherwise readily available to the court on what appears to be in the child’s best interest, and thus can increase the fairness of the determination the court must make” (p. 678).

The American Academy of Child and Adolescent Psychiatry (1997b) takes a similar position and distinguishes between treating clinicians and custody evaluators. Treating clinicians are advocates or agents for children and ideally are partners with parents or guardians in the therapeutic alliance. Child custody evaluators, while guided by the best interests of the child, have no duty to the child or to the child’s parents. Custody evaluators report to the court or to retaining attorneys. The aim of the custody evaluation is not to relieve suffering or to treat symptoms but to provide objective information and informed opinions to help the court render a custody decision.

The recently published Association of Family and Conciliation Courts *Model Standards of Practice for Child Custody Evaluation* (2007) provide the most comprehensive statement addressing a child custody evaluation as a forensic activity:

(a) Child custody evaluation is a process through which information and opinions bearing upon the custody of, parenting of, and access to children can be made known to the court, to the litigants, and to the litigants' attorneys in those cases in which the parents and/or other primary caregivers are unable to develop their own parenting plans. An evaluation may be requested by the parents or by their attorneys or may be ordered by the court. . . . (b) The application of the knowledge and skills of the mental health professions to the resolution of legal matters is, by definition, a forensic endeavor and these *Model Standards* have been written from that perspective. . . . Prior to commencing evaluations, evaluators shall take reasonable steps to secure court orders or consent agreements in which they are specifically named and in which their roles, the purposes of their evaluations, and the focus of their evaluations are clearly defined. . . . (p. 6, emphasis in original)

In a footnote to the *Model Standards*, the Association of Family and Conciliation Courts task force made clear the emphasis on the forensic nature of the evaluation.

In some jurisdictions, the term "forensic" is not employed in the construction of court orders and the evaluations performed for the courts may be referred to as "clinical" evaluations. Our purpose in emphasizing the forensic nature of the evaluative task is to call attention to two aspects of custody evaluations that distinguish them from other evaluations performed by mental health practitioners. First, because custody evaluations are performed in order that evaluators will be able to assist triers of fact by formulating opinions that can responsibly be expressed with a reasonable degree of professional certainty, sufficiency of information (both from a qualitative and from a quantitative perspective) is judged by a higher standard than that which might be applied to evaluations conducted within a treatment context. Second, notwithstanding the fact that reports prepared by evaluators are used for settlement purposes more often than they are used by the judges who have ordered the evaluations, evaluations must be conducted and reports must be written with the needs of the court in mind. (p. 25)

It is our position that the reports in which we outline the findings of a custody evaluation are forensic work products and should, for that reason, meet or exceed the minimal standard of evidentiary admissibility for scientific data. As soon as the evaluator knows (or should have reason to know) that his or her work product may be used in a legal arena, the quality of psychological data, as well as the methods, procedures, and reasoning used to arrive at his or her conclusions, should conform to conventional forensic psychological practice (Committee on Ethical Guidelines for Forensic Psychologists, 1991) in the area of child custody evaluation (American Psychological Association, 1994; Association of Family and Conciliation Courts, 2007). They must also meet the evidentiary standards of Federal Rules of Evidence (in particular, FRE 703) or their state equivalents governing the admissibility of scientific evidence (Goodman-Delahanty, 1997; Gould, 2006).

Because a child custody evaluation is a forensic activity, the evaluator

bears a responsibility to conduct him- or herself in a manner consistent with that of a forensic specialist. In the case of psychology, the evaluator should be aware of the specialty guidelines for forensic psychologists (Committee on Ethical Guidelines for Forensic Psychologists, 1991), the guidelines for child custody evaluations in divorce proceedings (American Psychological Association, 1994), and the ethical principles of psychologists and code of conduct (American Psychological Association, 2002). In the case of psychiatry, the evaluator should be aware of the practice parameters for child custody evaluation (American Academy of Child and Adolescent Psychiatry, 1997b).

It also places a responsibility on the evaluator to follow forensic methods and procedures. There is a growing professional consensus that a five-pronged methodology drawn from conventional forensic mental health practice may be properly applied to child custody evaluations (Kirkpatrick, 2004) and that these forensic methods and procedures should be taken into account by attorneys (McCurley, Murphy, & Gould, 2006) and judges (Gould & Bell, 2000; Gould & Lehrmann, 2002) when considering what is and what is not a competent forensic work product.

What Judges and Attorneys Want

Recently, Bow and Quinnell (2004) published the data from a survey conducted among attorneys and judges. The responding judges and attorneys reported that their top reasons for child custody evaluation referrals were parental conflict, mental instability, allegations of physical or sexual abuse, and alcohol abuse. The most important components of a custody evaluation, in order, were discussions of the strengths and weaknesses of the parents, child information drawn from history and interview data, and recommendations for custody and visitation. Least important were the list of documents reviewed, family and parental histories, psychological testing of the child, and recommendations for other services such as therapy or parenting classes.

The number-one complaint in the survey about the use of child custody evaluators was the length of time taken to complete the evaluation. Other factors that concerned judges and attorneys were evaluators' lack of objectivity, lack of knowledge of legal criteria (e.g., knowing your state's best interests statute), and conclusions lacking supporting data (Bow & Quinnell, 2004).

Judges and attorneys reported that completion of a typical evaluation should take approximately 5–6 weeks and that the optimum length of a comprehensive report should be about 10 pages for judges and 12 pages for attorneys. In a previous survey of evaluators, Bow and Quinnell (2001), reported that completion of a child custody evaluation required an average of 9.27 weeks, with the most commonly reported times being 6 weeks (14%), 8 weeks (16%), and 12 weeks (11%). Evaluators gave an average report length of 21 pages, with a range from 4 to 80 pages.

In addition to reporting the concerns expressed by attorneys and judges,

Bow and Quinnell (2004) also relayed to their readers the suggestions offered by those attorneys and judges. For judges, the most common suggestion was that evaluators include all sources of information. Attorneys suggest that evaluations would be improved if evaluators avoided bias, provided data that logically supported their conclusions, and included specific, detailed recommendations.

When asked at what age a child's custodial preference should be considered, judges reported that they begin to consider a child's preference when the child is about 7 years old, while attorneys reported that they begin to consider a child's preference when the child is about 9 years old. Both attorneys and judges agree that the weight given to a child's preference should be a function of the child's maturity. In contrast, Bow and Quinnell (2001) reported that the average age of children when *evaluators* seriously consider their preferences in regard to custody decision criteria is about 12 years old.

An overwhelming number of judges (84%) and attorneys (86%) indicated that evaluators should provide recommendations about custody (Bow and Quinnell, 2004). An even higher percentage of judges (91%) and attorneys (90%) indicated that evaluators should provide recommendations for visitation. These data are consistent with Bow and Quinnell's (2001) finding that 94% of evaluators in their survey reported making explicit recommendations about custody and visitation.

Addressing who is selected as an expert witness, attorneys rated five factors as very important: objectivity, experience conducting custody evaluations, communication skills, presentation skills, and years of professional experience (Bow & Quinnell, 2004). Among the lowest rated factors were professional membership, diplomate or fellow status, and general/custody professional publications.

The value of Bow and Quinnell's work lies in providing evaluators with an understanding of what the consumers of our work product expect from us. Judges and attorneys expect briefer reports with more case-specific information that is obtained in a shorter amount of time than is reflected in current practice.

Pros and Cons of Offering Ultimate Issue Testimony

The concept of the ultimate issue refers to explicitly legal decisions that are within the domain of the court. In the field of child custody, ultimate issue testimony often involves determinations of custodial placement and of legal decision making. There is disagreement in the field about the appropriateness of offering ultimate opinion testimony in child custody work. On the one hand, Melton and Limber (1989) point out,

Ultimate-issue opinions by mental health professionals do not assist the finder, and they constitute legal opinions by definition outside the specialized

knowledge of mental health professionals. Therefore, they do not meet the standard for admissibility of expert opinions under Rule 702 (Federal Rules of Evidence). . . . As a matter of ethics, experts should not offer opinions as if they were based on specialized knowledge when they are not. (p. 83)

On the other hand, we believe that most judges want a specific recommendation as to custodial placement and would avoid using an evaluator who refuses to offer such an opinion. In many jurisdictions, the failure to offer such an opinion would throw a wrench into the traditional method of designating responsibility for experts' fees. Often responsibility for paying the expert is borne by the party who has been favored and, for that reason, the favored party wishes the report to be entered into evidence. In some jurisdictions, the opposite is true. It is presumed that a report prepared by a court-appointed evaluator will be entered into evidence and considered by the court. The party wishing to have the expert available for cross-examination (in the hopes of convincing the court that the recommendation in the report should not form the basis for the court's decision) accepts responsibility for the expert's fees. (See discussion of *State v. Kim* in Chapter 3.)

Wisely, the American Psychological Association (1994) assisted psychologists in defining the scope and limitations of expert testimony. Its use of the term *psychological* in conjunction with the concept of best interests clearly circumscribes the area of our expertise. We can provide expert testimony about the best psychological interests of the child providing that there is adequate data to form such an opinion.

Prior to assuming the role of an evaluator for the court, psychologists working with families in transition or with attorneys may wish to guide the parties to consider alternatives other than a custody evaluation. Among the options available are referrals to therapy, mediation, or a settlement-based model of custody determination. If alternatives to an evaluation are to be suggested, they must be suggested prior to the commencement of the evaluation. If recommended alternatives to a custody evaluation are communicated prior to any legal involvement by the psychologist (such as being court-appointed as the impartial evaluator), then the psychologist is operating within his or her proper role. If the psychologist recommends alternatives coincident with or subsequent to being appointed by the court or retained by the litigants' attorneys, then he or she may be operating outside appropriate ethical and professional practice parameters.

In a recent case in which one of us (Jon) was being considered by attorneys to evaluate a family involved in a relocation case, he participated in a conference call with the mother's and father's attorneys. The primary issue was the mother's challenge to a judge's temporary order. The parents had been married about 2 years prior to their separation. They had a child who was about 6 months old at the time of separation. The judge provided the mother with permission to relocate with the child to another state 500 miles from the original

family residence. The judge also ordered the child to visit with the father for 2 contiguous weeks every third month. The mother complained that the child was adjusting poorly to the arrangement, while the father wanted to maintain the arrangement and refused to allow the mother to see the child during his visitation time.

During the conference call, Jon asked the attorneys if they were aware of the current literature about residential and access arrangements for infants and early-stage toddlers. Both attorneys indicated that they were. In fact, Jon had seen both attorneys attend a local presentation on this precise issue about 6 months prior. The attorneys recalled attending the workshop that addressed residential and access arrangements for infants and early-stage toddlers, but had not read the articles upon which the presentation was based. Jon asked if they would like citations for the research articles. The mother's attorney did, and the father's attorney did not. Jon forwarded the full written citations to both attorneys anyway.

During another conference call prior to the beginning of the evaluation, Jon explained his understanding of the current research and the recommendations that typically follow from the research. Both attorneys agreed that they understood the literature and wanted to proceed. Once the decision was made to appoint Jon as the court's expert, he did not raise the issue again.

Who Is the Client?

It is imperative to understand that the custody evaluator—whether appointed by a court order or consent order—is acting as the court's agent to assess the child's best psychological interests. Family law attorney Leslie Ellen Shear (Personal communication, May 5, 2002) suggests that the client paradigm is inapplicable and should be avoided. Her view is that the appointed evaluator should view him- or herself as an arm of the court—almost as though he or she were a temporary employee of the court, rather than an independent practitioner assigned to perform a task for the court.

Psychologists working as custody evaluators are acting within a forensic role (Committee on Ethical Guidelines for Forensic Psychologists, 1991; Association of Family and Conciliation Courts, 2007; American Psychological Association, 1994) that demands evaluators maintain a distance between themselves and those they are evaluating. The relationship is dramatically different from that between clinicians and their clients (Greenberg & Shuman, 1997). The scope of the evaluation and the issues to be examined are determined by the court and/or by the litigants' attorneys. The report in which the findings of the evaluation are outlined is ordinarily distributed in a manner dictated by the court's appointment order. Reports are typically filed with the court and are often made available to the litigants' attorneys. (Evaluators do not ordinarily provide their reports to those who have been evaluated.)

The concepts of confidentiality and privilege are not applicable in custody

evaluations. Quite simply, there is no patient and no therapist. The forensic evaluator's role is to examine the parents and children and obtain third-party information in the form of interviews with others and records review for the specific purpose of assisting the court in determining custodial placement and visitation. It is understood at the outset that, in order to assist the court, the information gathered must be communicated to others. Refer to Greenberg and Shuman (1997) for a fuller discussion of this issue.

Courts order evaluators to obtain psychological information about the children and families. It is hoped that if the information is complete, children will be spared the distress of having to offer testimony. If parents held the privilege to the information gathered by evaluators, they would be able to prevent its disclosure to the court. If parents or attorneys were gatekeepers of the information gathered by evaluators and needed by courts, much of it would be unavailable, and the need for further information would be met through testimony, including testimony by children.

Assessing the Best Psychological Interests of the Child within the Family Context

Although the American Psychological Association's (1994) custody guidelines state that "the primary consideration in a child custody evaluation is to assess the individual *and family factors* that effect the best psychological interests of the child" (p. 678, emphasis added), some authors believe that these guidelines did not sufficiently emphasize the importance of assessing and understanding the child within the context of the family (Gould & Kirkpatrick, 2001). It is critical for the evaluator to generate an understanding of the family/relational contextual variables that may have fueled the custodial dispute and may be preventing an out-of-court resolution.

American Psychological Association's Criteria

The American Psychological Association's (1994) guidelines for child custody evaluations identify the focus of a child custody evaluation as "to assess the individual and family factors that affect the best psychological interests of the child. More specific questions may be raised by the court" (p. 677). Toward this end, the American Psychological Association recommends an evaluation of parenting fitness, the psychological and developmental needs of the child, and a consideration of the resulting fit between each parent's parenting competencies and the needs of the child. To accomplish these evaluation goals, a child custody evaluation should involve (1) an assessment of each parent's capacities for parenting, (2) an assessment of the psychological functioning and developmental needs of the child and the wishes of the child where appropriate, and (3) an assessment of the functional ability of each parent to meet the needs of

the child, which includes an evaluation of the interaction between each adult and the child (American Psychological Association, 1994).

Association of Family and Conciliation Courts Criteria

The Association of Family and Conciliation Courts' *Model Standards of Practice for Child Custody Evaluation* (2007) suggest that

The child custody evaluation process involves the compilation of information and the formulation of opinions pertaining to the custody or parenting of a child and the dissemination of that information and those opinions to the court, to the litigants, and to the litigants' attorneys. Child custody evaluators shall secure from the court and/or attorneys reasonably detailed information concerning their role and the purpose and scope of the evaluation. (p. 5)

Departing from the previous *Model Standards* (Association of Family and Conciliation Courts, 1994) and from the American Psychological Association custody guidelines (American Psychological Association, 1994), in which specific criteria were identified, the 2007 Association of Family and Conciliation Courts *Model Standards* define the scope of the evaluative task as follows:

The scope of the evaluation shall be delineated in a Court order or in a signed stipulation by the parties and their counsel. . . . (a) Evaluators shall establish the scope of the evaluation as determined by court order or by a signed stipulation by the parties and their attorneys. If issues not foreseen at the outset of an evaluation arise and if it is the evaluator's professional judgment that the scope of the evaluation must be widened, the evaluator shall seek the approval of the court or of all attorneys prior to going beyond the originally designated scope of the evaluation. Any changes in the scope of the evaluator's assigned task shall be memorialized in writing and signed by the court or by all attorneys, as applicable. . . . (b) Evaluators shall employ procedures that are most likely to yield information that will meet the needs of the court and shall conduct the data gathering phase of their evaluations in a manner consistent with state, provincial, or territorial statutes, or with judicial rules governing such evaluations. When circumstances demand that an evaluation be limited in scope, evaluators shall take steps to ensure that the boundaries to the evaluation and the evaluator's role are clearly defined for the litigants, attorneys, and the court. (pp. 13–14)

Grisso's Competency-Based Model

Grisso (1988, 2003) has argued that forensic evaluations should focus on functional abilities. A child custody evaluation should therefore be an evaluation of parenting competencies. Grisso outlines several objectives for competency evaluations that we apply to child custody evaluations. If an evaluator is practicing in a state in which the parenting abilities to be considered in custodial

placement disputes have been statutorily specified or articulated in case law, the primary objective is to assess those abilities. When those abilities that, taken collectively, constitute good parenting have not been articulated either in statutes or in case law, it is the evaluator's task to identify clearly the behaviors being assessed and to offer research support for his or her contention that the identified behaviors are related to effective parenting.

A second objective is to obtain information that suggests the causes of any observable deficits in competency abilities (Grisso, 1988). The evaluator examines the parent within a specific context or role. Knowledge of the law is particularly important with regard to this component of the evaluation. In some jurisdictions, the causes of parenting deficits are not deemed pertinent, and evaluators are discouraged from offering recommendations incorporating the presumption that certain deficits can be successfully therapeutically addressed.

A third objective addresses the degree of practical significance of the parent's specific strengths and deficits in light of the specific demands of the best interests standard. Only rarely do evaluators find, either in statutes or in case law, terminology that suggests the weight to be assigned to the various factors that collectively define the best psychological interests of the child. In preparing their advisory reports, evaluators should, in our view, address the weight they assigned to the various factors considered and articulate the rationale for their decision.

Grisso (1988) takes the position that offering testimony about the ultimate issue "offers absolutely no new information to the court about the defendant's characteristics or the implications of their deficits in competency abilities" (p. 20). Grisso's argument is similar to those offered by Melton and Limber (1989) and by Myers (1991).

Otto's Competency-Based Model

Otto and Edens (2003) build on Grisso's competency-based model and include an analysis of functional components, causal components, and interactive components. Functional components are the parent's characteristics and abilities to care for children. The evaluation must examine the caretaker's child-rearing abilities. Otto and Edens (2003, p. 250) write, "Forensic assessments that describe only diagnoses, personality characteristics, or general intellectual capacities of parents and fail to assess the care taker's childrearing abilities are of little value."

The competency concept requires an examination of a parent or caretaker's knowledge, understanding, beliefs, values, attitudes, and behaviors pertaining to parenting each child. Otto and Edens (2003) make the point that to complete a competency-based evaluation adequately, the evaluator must have "a notion of functional ability concepts or behavioral dimensions constituting the relevant domain of parenting abilities" (p. 250). They also provide a list of parenting tasks for the evaluator to consider.

In previous writings, we have commented upon the enormous task of defining the domain of parenting abilities and developing investigative hypotheses that guide the evaluation process. We have suggested that evaluators operationally define specific parenting behaviors to examine for each evaluation (Gould, 1999; Martindale & Gould, 2004). The more tailored one's investigative hypotheses to the specific needs of the court, the more likely that the focus of the evaluator will be on gathering information relevant to the needs of the family under scrutiny (Amundson et al., 2000).

Otto and Edens (2003) provide a novel integration of custody and child protection literature in their discussion of parenting factors. For example, drawing on Barnum (1977), they describe "two basic responsibilities of parents: advocacy/protection and socialization" (p. 251) and drawing on Azar, Lauretti, and Loding (1998), they describe "five broad domains of parenting" (p. 251) that include an assessment of parenting skills, social-cognitive skills, self-control skills, stress management skills, and social skills. To this list, they add the need to assess parenting style.

When parenting deficiencies are identified, Otto and Edens (2003) recommend that the evaluator examine causal explanations. They suggest examination of life-situational stress, situational or examination-related stress, ambivalence, lack of information, and mental disorder or disability, each of which is defined in their chapter.

The final component of a competency-based analysis is the interactive component or what the American Psychological Association child custody guidelines refer to as the goodness-of-fit criteria. Children vary in their needs and differ in their developmental readiness. Parents also vary in their abilities to parent children adequately at different stages of the children's development. In the 1989 movie *Indiana Jones and the Last Crusade*, recall that when Indiana Jones complained to his father that he was never around during his childhood, the elder Jones responded, "You left just when you were getting interesting." Different parents may be better parents at different stages of their children's development, just as different children may need different types of care at different stages of their lives. Otto and Edens (2003) remind us that "deficiencies in certain parenting abilities may have greater or lesser significance in various cases, depending on the needs of the specific child in question" (p. 255).

Among relevant parent variables to be assessed are:

1. Parents' prior and current relationship with the child.
2. Parents' historical and current responsibility for caretaking.
3. Parents' communication with the child about
 - a. The divorce.
 - b. The parents' attitudes toward each other.
4. Each parent's goals for visitation and decision making should he or she be awarded custody.

5. Parent–child interactional style.
6. Parents’ current and anticipated living and working arrangements.
7. Parents’ emotional functioning and mental health.
8. Child’s preferences.
9. Child’s description of relationship with each parent.
10. Child’s emotional, social, and academic functioning and mental health prior to and during the divorce process.

Gould’s Scientifically Crafted Child Custody Evaluations

Gould (1998) extended the forensic assessment model used in other areas of criminal and civil forensic mental health practice and applied it to child custody work. Others had been offering continuing education training or articles that adapted conventional forensic methodology to child custody work. His initial contribution advanced the argument for a scientific crafting of child custody evaluations (Gould, 1998). He argued that the criteria included in the *Daubert* standard were important and relevant when crafting a child custody evaluation (pp. 24–48). Whether a particular state adopted a *Daubert* or a *Frye* standard for expert witness testimony, he suggested that the *Daubert* standard, stressing scientific knowledge rather than community standards, would likely result in a more reliable, relevant, and helpful work product for the court and would better reflect the usefulness of the psychological sciences as applied to child custody decision making.

Gould (1998) wrote that the available science of forensic methods and procedures should be applied to child custody evaluations. He encouraged the use of a model of custody evaluation in which the evaluator, the attorneys, and the court would work together to define the scope of the evaluation prior to its initiation, so that both parents and the evaluator would be clear about the focus and scope of the evaluation endeavor.

He also provided an evaluation protocol that encouraged evaluators first to obtain agreement either from the attorneys or the court about a list of specific psycholegal questions to be addressed in each evaluation (Gould, 1999). Once the psycholegal questions have been defined, the examiner *operationally* defines the variables to be measured. Properly articulated questions allow the evaluator to choose measurement techniques and tools that are both reliable and relevant to the questions posed.

Gould (1998, 2006) suggested the adoption of a five-pronged methodological approach to data gathering and urged evaluators to integrate current behavioral science literature into the decision-making process with regard to custody and visitation access recommendations. Support has been voiced for the use of clearly defined psycholegal questions (Amundson et al., 2000) as well as for the forensic methodology employing the five-pronged approach to data gathering (Austin, 2000c, 2000d, 2002; Kirkland, 2002).

The Art and Science of Child Custody Evaluations

Two years after the first edition of Gould's book (1998), Gould and Stahl (2000) wrote an article that began to address the conceptual differences between a scientifically informed model and a clinical model of forensic assessment. They argued that a competent evaluation is based upon the scientific process found in forensic methods and the procedures and scientific fact found in current literature. They also opined that science without context provides a meaningless report. Scientific process and scientific facts need to be integrated into an advisory report through the judicious use of clinical judgment.

Gould and Stahl (2000) wrote, "Although competent and well-intentioned practitioners may differ in how they conduct a proper child custody evaluation, it is necessary that each practitioner logically, coherently, and competently defend his or her approach to a child custody evaluation from within the framework of the behavioral science literature" (p. 398). They challenged custody evaluators to be intellectually honest both with themselves and with the courts when offering expert testimony. They wrote:

It is one thing for unsuspecting but well-intentioned judges to allow as evidence clinical opinions that are believed by the mental health practitioner to be an admissible scientific work product but are in fact data and recommendations based on clinical rather than forensic standards [footnote not cited]. However, it is quite another to deliberately use a quasi-forensic methodology that, as an *a priori* assumption, deliberately excludes scientific methods and procedures that are precisely designed to both increase the reliability and validity of the gathered data and meet minimal standards of admissibility as scientific evidence. (p. 410)

They suggested that one way to maintain the dignity of the family during the evaluation process is

by providing a thorough evaluation with sensible recommendations, staying focused on the children and their needs, and avoiding the temptation to join the "he said/she said" battle of the parents. . . . Without becoming advocates of settlement, without switching roles and mediating a settlement, and without advocating for either parent, evaluators can thereby indirectly assist in efforts toward the settlement and encourage parents to reduce their litigation and conflict with one another. (pp. 408–409)

They concluded that the art of conducting a child custody evaluation lies in integration of the scientific method that includes careful attention to the entirety of the evaluation data and application of current behavioral science research to those data with one's clinical judgment about family dynamics, the child's functioning and needs, and the ability of each parent to meet the needs of the child. The art of crafting recommendations in child custody evaluations

is to apply current research to creative solutions for each unique family configuration. The evaluator is never a technician applying research results without understanding the context of each family system. There are no standard protocols that fit all families, and, as Gould and Stahl (2001) wrote, a competent custody evaluator never paints by the numbers.

The present book moves from the integration of art and science in child custody evaluation to a more sophisticated and broader discussion of how to competently conduct a scientifically informed, clinically sound forensic evaluation when investigating allegations of child maltreatment in the context of a child custody dispute.