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**CHILD CUSTODY EVALUATIONS: SOCIAL SCIENCE AND PUBLIC POLICY: CHILD  
CUSTODY EVALUATIONS: THE NEED FOR SYSTEMS-LEVEL OUTCOME  
ASSESSMENTS\***

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**HIGHLIGHT:** Child custody evaluations need to be studied systemically as a human service system. There is little research on the history, caseload dynamics, economics, delivery systems, or impact of custody evaluations. This article identifies five systems-level questions about custody evaluations and examines one, outcomes assessment, in detail by developing seven outcome hypotheses. The article concludes that such research could improve the practice and use of child custody evaluations.

**Keywords:** *child custody; child custody evaluations; evaluation research; methodology; systems analysis*

**TEXT:**

**[\*286] I. INTRODUCTION**

Substantial progress is being made in improving professional standards for custody evaluations. The Association of Family and Conciliation Courts (AFCC) Model Standards of Practice for Child Custody Evaluation (2007) and recent debates about the scientific validity of the evaluation process have generated much thoughtful discussion (Bala, 2005; Erard, 2007; Erickson et al., 2007a, b; Tippins & Wittmann, 2005). This article builds on these improvement efforts by proposing a research agenda for studying custody evaluations at the macro or systems level.

Surprisingly little research has been reported on custody evaluations as a systems-level human service. The history, caseload dynamics, economics, delivery systems, and impact of custody evaluations have not been documented. Little is known about the intended and unintended costs and the benefits of custody evaluations at the systems level. To advance this process, we propose seven outcome hypotheses related to benefits of custody evaluations and address some of the methodological challenges related to testing them.

For the purposes of our analysis, we limit our examination of custody evaluations to disputes between parents and do not include their use in disputes between parents and the state in child protection matters. Further, we use the term "custody evaluation" to mean an assessment of both parents and their children rather than an assessment of one parent only.

In the next section, Part II, we describe systems for providing custody evaluations to give a context for the analysis that follows. In Part III, we identify five key systems-level [\*287] questions about custody evaluations. In Part IV, we address in depth one of these questions, evaluation of costs and benefits. The article concludes with a discussion of the potential for systems-level research to improve custody evaluations.

**II. THE CONTEXT: DISPUTED CHILD CUSTODY CASES AND CUSTODY EVALUATIONS**

Custody disputes between parents may arise in a number of contexts. Custody may be disputed at divorce or between never-married parents, who represent an increasing number of all parents.

Disputes also arise subsequent to divorce or separation over issues such as relocation or other custody modifications.

Most parents settle issues related to custody of their children without going to trial, although estimates of custody litigation are not precise (Emery, Otto, & Donohue, 2005; Schepard, 2004). Results from different studies show that from six to twenty percent of custody disputes are decided by a court (Krauss & Sales, 2000). Little reliable information is available on the number of forensic custody evaluations performed or on how they are used. They may be used more often in pretrial settlements, for example, than as evidence in a trial. It is likely, however, that they are performed for a small proportion of custody cases (Bow & Quinnell, 2001; Maccoby & Mnookin, 1992; Otto & Martindale, 2007).

Nonetheless, the high divorce rate, the increasing nonmarital birth rate, and other factors result in a substantial number of custody-related cases (Otto & Martindale, 2007; Schepard, 2004). Many reasonable, but anecdotal, reports indicate that judges find custody cases to be difficult and frustrating and that they turn to mental health professionals for assistance (Bow & Quinnell, 2001; Otto & Martindale, 2007). A judge faced with a difficult case may highly value a custody evaluation, especially if the judge believes that the custody evaluation is scientifically grounded.

A custody evaluation that met professional standards, such as those proposed by the AFCC, generally would collect data from multiple sources with particular attention to the need for "objectivity, fairness and independence" (AFCC, 2007). The custody evaluator typically would then prepare a report for the court and might also testify as an expert witness concerning both the process and contents of the custody evaluation (Bow & Quinnell, 2001). Under certain conditions, custody evaluation reports may be used in pretrial meetings, negotiations, or mediation sessions to assist in settlements prior to an actual hearing.

Forensic custody evaluations generally originate from one of three sources (Horvath, Logan, & Walker, 2002; Schepard, 2004). The three basic sources outlined in Table 1 capture most, if not all, of the important variation in evaluation provision.

In *Source 1: Court-Appointed Private-Sector Forensic Evaluator*, the judge orders an evaluation unilaterally or as part of a stipulation agreed to by the parties and appoints the evaluator from the pool of available private mental health professionals. *Source 2: Court-Appointed Public-Sector Forensic Evaluator* is the same as Source 1, with the exception that the evaluator comes from a publicly financed agency or program, which normally, but not always, is associated with the court.

The third method, *Source 3: Party-Paid Mental Health Expert Testimony*, has fallen into disfavor. Under this model, one or both parties unilaterally commission a custody investigation with the implicit expectation that the report will favor the commissioning party. In this article, we focus exclusively on Source 1 and Source 2, which are the custody evaluations [\*288] ordered by the court. We do not address Source 3 because we view it as fundamentally different from the other two sources. Its purpose is clearly advocacy and it is more likely to be biased or to be perceived as

biased by the court than a court-ordered custody evaluation with the evaluator having a responsibility to the court (Gould, 2006; Schepard, 2005). In addition, it is unlikely that the evaluator will have access to both parents (Schepard, 2004), so the data collected would not be adequate to provide a report comparable to that of a court-ordered evaluation.

### **Table 1**

Sources of Origin for Providing Forensic Child Custody Evaluations in Parental Disputes

#### **Source 1: Court-Appointed Private-Sector Forensic Evaluator**

**Selection process:** Judge appoints an evaluator from a court- or party-provided list of available evaluators or an evaluator agreed upon by the parties.

**Payment:** Disputing parents pay for the evaluation equally, or according to some proportionate system.

**Output:** A custody evaluation report is produced for the court and usually the parties. The evaluator may meet with the parties. The report may be used in pre-trial settlement negotiations or as evidence at trial. The evaluator may testify as an expert witness.

**Note:** The judge may unilaterally decide to have an evaluation done or the parents may have stipulated to a custody evaluation previously. These evaluators may be called neutral mental health evaluators.

#### **Source 2: Court-Appointed Public-Sector Forensic Evaluator**

**Selection process:** Judge orders that a custody evaluation be conducted and a mental health professional with a public or quasi-public program conducts the evaluation. The use of the public sector custody evaluations system may be mandatory or voluntary on the part of the parents.

**Payment:** The public system may provide the service free of charge or there may be a fee, which may be fixed or based on a sliding scale.

**Output:** A custody evaluation report is produced for the court and usually the parties. The evaluator may meet with the parties. The report may be used in pre-trial settlement negotiations or as evidence at trial. The evaluator may testify as an expert witness.

**Note:** The judge may unilaterally decide to have an evaluation done or the parents may have stipulated to a custody evaluation previously. Public-sector systems may or may not be officially associated with the court system. They often provide custody evaluations in context of an array of negotiation, mediation, and other dispute settlement services. These evaluators may be called

neutral mental health evaluators.

### **Source 3: Party-Paid Mental Health Expert Testimony**

**Selection process:** One or both parents have an evaluation done and the evaluator submits a report and/or testifies as an expert witness for the parent who has retained him/her.

**Payment:** The party who retains the evaluator pays for the service, unless the other party is ordered to share litigation costs.

**Output:** The evaluation report is produced for the party who retained the evaluator. The evaluator may appear as an expert witness.

**Note:** Because one party has unilaterally commissioned the evaluation, the evaluator may not have had the cooperation of all the individuals that a complete custody evaluation report would require. The evaluator and the report likely will be viewed as biased in favor of the party who retained the evaluator.

Unfortunately, there is little scientific research on custody evaluations as a systems-level human service. A substantial and important literature on custody evaluations does exist, but it is primarily directed at the performance or practice of evaluations. Much of this published work centers on the issue of best-practices standards for mental health professionals and [\*289] tends to focus on micro, case-level issues related to how a responsible evaluator should conduct an assessment (Ackerman & Ackerman, 1996; American Psychological Association [APA], 1994; Bow & Quinell, 2001; Gould, 2006; Martindale & Gould, 2004; Stahl, 1994).

In addition, there is relevant research on child development, divorce, parent-child relations, and other areas that can be used for "formulating questions to guide the collection of data, and for making inferences and recommendations" (Kelly & Johnston, 2005). Gould (2006) states that the forensic evaluator needs to be aware of current literature in areas such as "the functioning of post-divorce family systems; the challenges faced by blended and stepfamilies; application of intimate partner violence research to family transitions and postdivorce functioning; child alienation and the arguments that support or challenge this concept" and other areas.

There also is a research literature on the appropriateness and scientific validity of various psychological tests used in custody evaluations (Erard, 2007; Erickson, Lilienfeld, & Vitacco, 2007a, b; Martindale & Gould, 2004; Quinell & Bow, 2001). Addressing issues of measurement validity by identifying best practices and appropriate instruments is essential to all good science, but measurement validity is only the beginning. The scientific method also requires that testable hypotheses be formulated about the anticipated effects of practices such as custody evaluations and that these hypotheses be rigorously and empirically tested. Unfortunately, there is virtually no reported empirical research on custody evaluations that tests for hypothesized systemic effects,

although Pruett and her colleagues are conducting an evaluation in Connecticut that will provide some data in this area (Pruett, 2008).

### III. FIVE UNANSWERED SYSTEMIC QUESTIONS

Research at the systemic level is a necessary condition for improving the practice of child custody evaluations. In this section we briefly describe five important unanswered systemic questions about custody evaluations. Our goal in doing so is threefold: first, to provide further support and detail for the proposition that little is known about custody evaluations at the systemic level; second, to provide an agenda for researchers wishing to advance the understanding of custody evaluations as a system; and third, to introduce and provide context for the next section of the article that describes how the scientific method may be used to assess the systemic benefits and costs of custody evaluations.

*1. What is the History of Child Custody Evaluations?* Very little scholarship addresses the history of custody evaluations as an institutional practice. While some scholars comment tangentially on historical matters related to custody evaluations, there are no histories of custody evaluations (Gould, 2006; Otto & Martindale, 2007). The absence of historical research on custody evaluations means that certain key questions have not been addressed. Illustrations of basic, but unanswered, historical questions include the following:

- . When did court-ordered custody evaluations become a recognizable and regularly used practice to assist in settling disputed custody cases?
- . Why did the practice of custody evaluations grow and become institutionalized, and how did this growth vary across states and other jurisdictional boundaries?
- . Who were the key players in the growth of custody evaluations as a practice and what were their interests? Were they, for example, judges, lawyers, professional mental health associations, and/or parent groups?
- [\*290] . Was the shift in the 1970s to a gender-neutral version of the best interests standard for custody decisions related to an increase in forensic custody evaluations?
- . Did shifting gender roles and an increased emphasis on fathers' involvement in childrearing have an impact?
- . Did the increased caseload of divorces and the likely increase in the number of disputed custody cases in the 1970s and 1980s impact the use of custody evaluations?

*2. What are the Caseload Dynamics of Custody Evaluations?* From a systemic perspective, we know very little about the incidence and prevalence of custody evaluations within parental disputes at the level of particular jurisdictions or the nation as a whole. Further, we know relatively little about the characteristics of the cases in which custody evaluations are done, other than the fact that the parents cannot agree on custodial arrangements. Table 2 provides a brief overview of the stages in custody disputes and indicates that little is known about the number of custody evaluations performed and the proportion that these cases represent of the total relevant case flow.

The scarcity of such basic caseload information clearly limits our ability to understand the use, costs, and benefits of custody evaluations, thereby limiting our ability to reflect knowledgeably on policy options concerning their improvement. To remedy this situation in the short term, good survey research needs to be done with representative samples of custody disputes. In the long term, court management information systems need to be adapted or developed to provide key information on custody evaluation utilization across jurisdictions.

3. *What are the Economics of Child Custody Evaluation?* Very little is known about the economics of custody evaluations. For example, we have little information about the average cost of an evaluation and the normal range of variation around the average (Ackerman & Ackerman, 1996; Bow & Quinnell, 2001; LaFortune & Carpenter, 1998). [\*291] How these costs vary regionally and by jurisdiction generally is also unknown. Such unknowns, along with the scarcity of information about caseload dynamics (see Table 2 above), mean that there is no way to validly and reliably estimate the aggregate costs of custody evaluations nationally, regionally, or by jurisdiction. Similarly, little is known about how the costs of custody evaluations vary across the delivery systems identified in Table 1. For example, evaluations that are done through a court-appointed public-sector system (see Table 1, Source 2 above), are expected to cost less per evaluation than evaluations done through a private-sector system (Bala, 2005), but there is no reliable data or analysis through which to test this expectation. Because we do not have valid cost and payment information, it is only possible to speculate on the influences these factors may have on custody evaluation utilization rates as well as the quality and fairness of the services provided.

## **Table 2**

Parental Custody Disputes and Child Custody Evaluations: Caseload Dynamics Information Deficits for National, State, and County Levels

### **A. Initial Disputes; Court not involved; Case settled (number of cases and % of total unknown)**

#### *custody evaluation options*

1. No evaluations performed (N and % of total unknown)
2. Both parties agree to an evaluation (N and % of total unknown)

### **B. Initial Disputes; Court involved; Case settled pre-trial, at trial, or tried (number of cases and % of total unknown)**

#### *custody evaluation options*

1. No custody evaluation performed (N and % of total unknown)
2. Parties stipulate to court order (N & % of total unknown)
3. Independent of parties, judge orders evaluation (N & % of total unknown)

### **C. Subsequent Disputes, e.g. renegotiating parenting time, relocation problems (number of cases and % of total unknown)**

#### *custody evaluation options*

1. No custody evaluations performed ((N & % of total unknown)
2. Both parties want an evaluation and the court orders (N & % of total unknown)
3. Independent of parties, judge orders evaluation (N & % of total unknown)

Beyond payment data, there is little information related to economic incentives for mental health professionals who do custody evaluations, nor is there a good understanding of how these incentives may have changed over time and potentially influenced the supply of mental health professionals who do custody evaluations. For example, mental health professionals may have been more interested in custody evaluations in the 1990s as the supply of psychologists continued to increase and stricter third-party payer regimens were imposed for mental health treatment (Gould, 2006). Such questions are particularly important given that custody evaluation services generally are neither highly regulated nor institutionalized, but rather may be characterized as a cottage industry (Schepard, 2005).

*4. What are Geographical and Jurisdictional Variations in Delivery Systems?* As noted above, there are two major ways custody evaluations may be provided to the courts (see Table 1 above). Very little is known about the prevalence of each of these systems across or within geographic and jurisdictional boundaries. It also is likely that there are geographical and jurisdictional differences in utilization rates at the aggregate level and at the level of subpopulations. Because utilization rates typically have a powerful influence on the quality of services, the absence of this baseline information limits our ability to plan and conduct outcomes assessments of custody evaluation systems.

*5. Outcomes Assessment: What are the Costs and Benefits of Doing Custody Evaluations?* Human services always have costs and, it is hoped, benefits (Part IV provides a rationale for viewing court-ordered child custody evaluations as a human service). Some of the costs and benefits may be assigned monetary values and some cannot sensibly be monetized. Further, human service systems, regardless of the degree to which they are institutionalized, may have both intended and unintended costs and benefits. Assessing human service systems involves quantitatively or qualitatively measuring these intended and unintended costs and benefits to produce a reasonably valid overall picture of the service's value to relevant populations and subpopulations. For this article, we did a comprehensive research literature review and found that there were virtually no benefit-cost analyses of custody evaluations as a human service. Normally, such a literature review should be limited to assessments published in peer-reviewed professional publications, but because of the difficulty we encountered in finding custody evaluations assessments, we went beyond this common search parameter (Kelly, 2000; Kelly & Ramsey, 2007; Ramsey & Kelly, 2006, 2007). In short, very little is known about the intended and unintended costs and benefits and by implication the ratios of benefits to costs for custody evaluations as a human social service, although Pruett and her colleagues are conducting a study that will provide data in this area (Pruett, 2008).

[\*292] Discouragingly, this assessment of the research on custody evaluations is not a new insight. Grisso (2005) indicates that "[t]he complaint that clinicians often exceed their scientific

basis for child custody testimony was first heard about thirty years ago. . . ." Turket (2005) noted that, while custody evaluations are generally considered to be very important in processes related to resolving custody disputes, there is no research showing actual impact. Further, he notes that this assessment is unchanged from one based on his 1993 review of the same literature. Bala (2004) states the same overall conclusion: "This is not an area of professional practice that is guided by science, nor do many assessors engage in meaningful research to determine the validity of their individual analysis, predictions, or recommendations" and others have reached similar conclusions (Krauss & Sales, 2000; O'Donohue & Bradley, 1999). Because of the absence of rigorous scientific studies assessing the accuracy and impact of custody evaluations, it is not possible to determine whether custody evaluations have no overall effect, significant overall negative effects, significant overall positive effects, or some combination of positive and negative effects. This is distressing in light of the fact that courts consider the evaluations, often recognize evaluators as experts, and it is recommended that forensic child custody evaluations be scientifically informed (Gould & Martindale, 2007).

Rigorous outcomes assessment research would require theoretical clarity and methodological rigor and planning, but would benefit children, parents, court professionals, and custody evaluators themselves. To advance the goal of developing such a body of research, we next present a theoretical framework for conducting assessment research in the form of seven testable hypotheses concerning potential custody evaluation effects. With this theoretical framework in place, we then very briefly describe methodological designs that might be used to test these hypotheses, focusing on outcomes assessment as an example. Our objective in presenting this theoretical and methodological discussion is to assist researchers in initiating the crucial task of developing the body of assessment research needed to advance our understanding of custody evaluations and to improve this human service.

#### **IV. PATHWAYS TO IMPROVEMENT: THEORY AND METHODOLOGIES FOR ASSESSING THE IMPACTS OF CUSTODY EVALUATIONS**

In this section we present both theoretical expectations, that is, hypotheses, and methodological guidelines for conducting rigorous outcomes assessment research on custody evaluations. The analysis uses a logic model approach and is posed at the systemic level, so the hypotheses and methodological guidelines concern populations of the parents and children for whom custody evaluations are done and the court systems where the evaluations will be used (Frechtling, 2007).

Viewed systemically, custody evaluations are a human service that require the expenditure of resources. Further, they are ordered or sanctioned by governmental authority, namely the judge assigned to the custody case. Under these circumstances, there is a reasonable public policy expectation that should be tested to determine if the human service is effective. This expectation is grounded in the dual understanding that a court-ordered service should provide a benefit and that ineffective human services create important opportunity costs, that is, the resources used for the ineffective service may have been spent in more effective ways (Dawes et al., 1989).

### **[\*293] A. HYPOTHESES CONCERNING EXPECTED CUSTODY EVALUATION EFFECTS**

The expectation that a benefit will result from a service may almost always be translated into a hypothesis, the statement of an expected relationship between an independent variable and a dependent variable. In the case of a human service hypothesis, the independent variable, that is, the suspected cause, is the provision of the human service relative to a status quo condition. The dependent variable is the expected behavioral or attitudinal beneficial impact of services. For example, we might hypothesize that, when high-quality custody evaluations are done in disputed custody cases, the cases are likely to settle in a less litigious manner than cases in which no custody evaluations were done or low-quality custody evaluations were done. In the context of stating a hypothesis of this type, it is important to recognize that it certainly is possible for a system to exist in which all or nearly all custody evaluations that are done are compliant with best-practice standards, but that the custody evaluations provided have *no effect*, a *negative effect(s)*, or a *positive effect(s)* that is small relative to the cost of providing them. It is precisely this possibility that make outcomes assessment necessary. Hence, having stated such a hypothesis, the next step is to test it with the relevant population or caseload in an empirically rigorous manner.

The seven illustrative hypotheses below concern the expected effects of custody evaluations on courts, parents, and children. Note that the custody evaluation independent variable may be conceptualized in at least two ways: (1) whether a custody evaluation was done in the case and (2) the quality of the custody evaluation. For clarity's sake, we group the hypotheses under four categories: court related, parent related, child related, and institutionalization related.

Note that the hypotheses are offered as illustrative and are developed from claims made about the benefits of custody evaluations. There are a number of competing hypotheses that could also be advanced for these outcome measures that researchers would want to consider as well. For example, parental satisfaction may be heavily influenced by child support amounts or allocation of parenting time in addition to or rather than by custody evaluations. Settlement after an evaluation is completed may be due more to a parent weighing the likelihood of a court accepting the evaluation recommendations and the expense of contesting them than to the parent's acceptance of the evaluation recommendations.

Further, if custody evaluations have impacts on important outcomes, it is probable that in many instances these effects will operate through mediating variables such as quality of legal representation and other issues contested between the parents, such as child support or division of property. While we recognize the importance of such indirect effects, we limit ourselves here primarily to simple bivariate hypotheses in the interest of keeping the illustrative hypotheses relatively straightforward. In all, our effort here is to emphasize the importance of examining the impact of evaluations.

### Court-Related Hypotheses

*1. Settlement. Upon completion of a custody evaluation and/or high-quality custody evaluation, parents will be more likely to reach a non-court-imposed settlement than if no custody evaluation is done and/or the custody evaluation is poorly done.*

We refer to this as the *pretrial settlement hypothesis* and it has been articulated by a variety of scholars and practitioners concerned with custody evaluations (Bala, 2004, 2005; Dennis, 2006; Equi, 2006; Tippins & Wittmann, 2005). The underlying logic for the [\*294] settlement hypothesis is that parents, when confronted with a third-party, objective custody report that a judge reviews, will be motivated to settle because they are better able to predict the outcome of a trial and want to reduce the trial transaction costs (Mnookin & Kornhauser, 1979).

*2. Quicker Trials. Disputed custody cases and/or high-conflict disputed custody cases that go to trial will be adjudicated more rapidly when a custody evaluation and/or high-quality custody evaluation is done relative to the cases in which no custody evaluation is done or the custody evaluation is of poor quality.*

We refer to this as the *speed-of-adjudication hypothesis*. The rationale for this hypothesis is that the custody evaluations, especially high-quality custody evaluations, will give the judge a clearer picture of parental capacity and home environments (Bala, 2005). As a result, the judge will be better able to move the trial to an expeditious resolution (Rotman, 2005). It is instructive to note that the presence of a custody evaluation, especially a poor-quality one, could produce the opposite effect if the parties chose to challenge it through aggressive cross-examination of the evaluators and the presentation of other experts who would be critical of the custody evaluation. The advantage of a rigorous test of this hypothesis and its alternative is that it should be possible to empirically determine which of the rival hypotheses is supported, something individual experience and theoretical speculation alone cannot do.

*3. In cases that go to trial, judges will express higher levels of satisfaction with their decision-making process and their actual decisions both when they have a custody evaluation versus no custody evaluation and when the custody evaluation they have is high quality versus low quality.*

We refer to this as the *judge satisfaction hypothesis* and its rationale is straightforward. By definition, forensic custody evaluations are meant to assist judges in their decision-making process. Hence, if custody evaluations are effective in what they are intended to do, we should see a positive effect on the level of judges' satisfaction with the custody decisions they make (Stahl, 1994).

### Parent-Related Hypotheses

*4. When a custody evaluation, independent of quality, or a high-quality custody evaluation is part of the resolution process, whether there is a pretrial settlement or an adjudication, parents will be: (a)*

*more likely to abide by the agreed-to or court-imposed parenting plan and (b) less likely to engage in subsequent parental conflict and litigation.*

We refer to this as the *parenting arrangement adherence/conflict reduction hypothesis*. The rationale is that parents, on average, should be more likely to positively adapt to the resolution of their custody dispute if they believe that it is based in some large measure on a relatively objective third-party assessment of the conditions that would positively or negatively influence the well-being of their child (Kelly & Johnston, 2005; Stahl, 1994).

*5. On average parents will be more satisfied with the parenting arrangements that emerge in disputed custody cases when a custody evaluation, or a well-done custody evaluation, has been done than when there is no custody evaluation or the custody evaluation is poorly done.*

[\*295] We refer to this as the *parental satisfaction hypothesis* and the logic behind it reflects that of the prior hypothesis (Stahl, 1994). To test this hypothesis, it would be sensible to make two types of parental satisfaction comparisons: (1) between parents with and without custody evaluations who substantially gain the custody arrangements they seek and (2) between parents with and without custody evaluations who substantially do not gain the custody arrangements they seek.

### **Child-Related Hypothesis**

*6. Children in custody arrangements subsequent to a custody dispute for which a custody evaluation or a well-done custody evaluation was produced are likely to score better on child well-being measures than children from custody-disputed cases in which no custody evaluation was produced or the custody evaluation produced was of poor quality.*

We refer to this as the *child well-being hypothesis*. The rationale for this hypothesis is somewhat more complex than the others presented in that it operates indirectly through processes already described. For example, if a custody evaluation has the effect of reducing conflict and litigiousness between parents, it would follow that children should benefit from this (Kelly & Johnston, 2005; Schepard, 2004). If disputing parents who have had the benefit of a custody evaluation are more likely to follow the arrangements outlined in their settlement and to be satisfied with it, then children also should benefit. Note that the effect on children operates through the effects postulated in Hypotheses 1 through 5 and that many hypotheses are contained within this single child well-being hypothesis (for readers familiar with multivariate modeling techniques, it may be useful to visualize this hypothesis in the context of a path analysis). For example, numerous measures fall under the broad concepts of child well-being, such as academic achievement, physical health, mental health, and social behavior. Similarly, it is likely that the hypothesized well-being effect will differ across variables such as age, gender, and socioeconomic status and in relation to the length of time postresolution. Further, there may be interaction effects among these variables, which researchers could address through the study design and/or multivariate statistical analysis techniques.

### **Degree of Institutionalization of Custody Evaluation System Hypothesis**

7. *As custody evaluation institutionalization increases, court efficiency and effectiveness in disputed custody cases will be significantly affected.*

In Table 1, we identified two of what we believe to be the most common sources in the United States for providing court-sanctioned custody evaluations: Source 1: Court-Appointed Private-Sector Forensic Evaluator, and Source 2: Court-Appointed Public-Sector Forensic Evaluator. Between the two sources there is a continuum or dimension that might be defined by the poles of a private versus public provision system. Along the same continuum there will also be variation in the degree to which the provision of custody evaluations is programmatic, that is, bureaucratically organized and regulated, versus *laissez faire*, that is, organizationally decentralized and unregulated. For convenience sake, we refer to this underlying variable as the degree of institutionalization of custody evaluation provision systems, with the poles of the variable being *laissez faire* (low institutionalization) and programmatic (high institutionalization). We postulate that all [\*296] custody evaluation provision systems may be placed at some point along this continuum. We suspect that the degree of institutionalization of these systems will strongly influence both efficiency (cost per unit of service, utilization, coverage, etc.) and effectiveness (various cost and benefit-related outcomes), but we are not in a position to hypothesize about the direction or size of these suspected effects (Horvath, Logan, & Walker, 2002; Martin, 2005). Hence, we pose this *institutionalization hypothesis*, but only generally, in that we strongly suspect that how custody evaluation provision systems are organized will significantly influence coverage, efficiency, and effectiveness.

Interestingly, it may be easier to conduct outcomes assessment research on custody evaluation provision systems that are at the higher end of the institutionalization continuum, rather than those at the lower end. More institutionalized custody evaluation systems likely will already have in place the case management information systems that greatly facilitate initiating outcomes assessment research. This is much less likely to be the case in a more diffused, *laissez-faire* system.

### **B. KEY METHODOLOGICAL CONSIDERATIONS AND THREE RIGOROUS DESIGNS**

In this section we outline in general terms three illustrative research designs that might be used to empirically test hypotheses in outcomes-assessment research on custody evaluations. Before presenting the designs, we briefly describe some key methodological considerations.

#### **Key Methodological Considerations**

*Measurement Strategies:* A necessary condition for good outcomes assessment research is a strategy for validly measuring key variables such as the independent and dependent variables in the hypotheses outlined above. Two measurement issues of particular importance are measuring the

quality of the custody evaluations, a key independent variable in most of the hypotheses, and measuring child-related outcomes.

On the issue of measuring quality, two points should be made. First, the custody evaluation professional community has expended a great deal of effort in developing best-practices statements related to the conduct and reporting of custody evaluations (American Academy of Child and Adolescent Psychiatry, 1997; APA, 1994; AFCC, 1994, 2007), thereby providing standards for assessing evaluation procedures and reports. Because this basic work has been accomplished, what remains is the task of operationalizing the best-practice standards in a manner that allows them to be applied in a research setting to a sample of evaluations. In this regard, it is encouraging to note that Budd (2001) and her colleagues successfully performed such an operationalization in their study of the quality of custody evaluations in the context of child protection cases and Bow and Quinnell (2001) examined the impact of the APA guidelines on psychologists' practices.

Second, one of the explanations often given for the lack of good outcomes assessment research on custody evaluations is the difficulty involved in measuring the *best interests of the child*, a goal that custody evaluations should advance and therefore a standard against which custody evaluations might be assessed (Krauss & Sales, 2000; Turkat, 2005). This expectation is formalized in Hypothesis 6. Because the *best interests of the child* is a legal, not a social scientific, concept, it will require translation into terms that allow it to be measured.

[\*297] Importantly, much has been accomplished in recent decades in the development of multidimensional measurements systems for gauging children's well-being (Annie E. Casey Foundation, 2008; Federal Interagency Forum on Child & Family Statistics, 2007; Ramsey, 2007). The results of these developments in measurement may be seen in the better studies of the effects of marital conflict and divorce on children (Cherlin et al., 1991; Hetherington & Kelly, 2002; Maccoby & Mnookin, 1992). In all, it is fair to conclude that the literature on the measurement of children's well-being is sufficiently developed to support outcomes-assessment research seeking to assess the impact of custody evaluations on children. In addition to child well-being measures, other useful outcome variable information might be gathered through user-satisfaction surveys, follow-up interviews of clients and other related parties, feedback from judges and related personnel, courtroom observation, and review of court and other agency files that would allow tracking case processing and outcomes. Further, significant progress has been made in the recent past on the development of systems for measuring family functioning that might also be used in outcomes-assessment studies (Kelly, 2000). In all, while the development of measurement strategies for custody evaluation outcomes studies will be a demanding process, there are good reasons for cautious confidence that the measures necessary for these studies are already available or can be developed.

*The Qualitative/Quantitative Mix:* The data collected for outcome assessment studies may vary depending on the level of cooperation from the court system and the families in the sample. Data-collection methods may include questionnaires and interviews (fixed format and intensive)

with key participants in a case, such as parents, lawyers, court personnel, children, and the custody evaluator. In addition, case records may be reviewed, perhaps for an extended period of time.

It is frequently, but incorrectly, suggested that outcomes assessment research necessarily must employ quantitative data collection and analysis methodologies. Qualitative data collection methods such as fieldwork-based observation, intensive open-ended interviewing, and focus groups are all methodologies that can be of great value in an outcomes-assessment research design. Indeed, theoretical and design needs often are best met with methodologies that skillfully mix qualitative and quantitative methods. The analysis and interpretation of qualitative data often provide the insight needed to make sense of quantitative results and thereby produces a much richer knowledge base upon which to improve service provision and outcomes (Kelly, 1985).

*Control Groups:* To test hypotheses about the impact of custody evaluations on evaluated families, it is necessary to compare these families to a group that is comparable in all key respects other than their custody evaluation experience. Some form of control is essential because, if studies of custody evaluation outcomes are limited only to cases in which they have been used, there is a significant risk that results will be biased by what is known as a selection effect. For example, those disputed custody cases that are most likely to eventually resolve may be the cases most likely to employ custody evaluations, making it impossible to know if the custody evaluation had its intended result or a selection effect accounted for the outcome results. Selection effects are especially likely when custody evaluation services are available on a voluntary basis. Control groups could be created through an experimental design, a matched-group design, or a longitudinal survey design, for example, which are described in the next section.

**[\*298]** *Human Subjects Concerns:* Conducting research on custody evaluation outcomes may involve the collection of information from parents, children, mental health professionals and other individuals with sensitive information and review of confidential records. Data collection of this type raises ethical concerns that must be carefully considered prior to initiating the study so that the human subjects may be appropriately protected. Many helpful resources are available to assist custody evaluation researchers in properly developing and implementing human subject protection plans (Depner et al., 2005).

*Resources:* Custody evaluation practitioners and court administrators, rather than evaluation researchers, may be responsible for designing and overseeing outcomes assessment. Assessment designs embedded into a functioning court system are often complex and require significant planning, but there are many methodological resources available to assist in this work. Perhaps the most useful is the California Legal Services Trust Fund Program Evaluation Toolkit (California Legal Services Trust Fund, 2006), which is a collection of resources for doing program assessments geared toward legal settings. The Toolkit presents discussions of key methodological issues, illustrations, and a bibliography of resources.

### **Three Rigorous Designs**

We now briefly describe three research designs that might be used to test the hypotheses presented in Part IV.A, which will illustrate and encourage practical, rigorous methods for pursuing research on custody evaluations. The designs we describe are not mutually exclusive--they may be combined and adapted in a variety of manners depending on the context and needs of a particular custody evaluation research project.

The three designs we discuss do not constitute a complete list of designs that might be used profitably to assess child custody evaluations. Illustrations of other designs that might be used in custody evaluations outcomes assessment, which are not described more fully here, include retrospective satisfaction surveys, focus groups, intensive interview and observation, time series and interrupted time series studies within one court system or a sample of systems, and cross-system comparative designs.

*Experimental Designs of Program-Level Innovations:* In principle, the assessment research design best suited for testing outcomes hypotheses related to the effects of services or programs is a randomized field experiment. In this design an experimental (treatment) group and a control group are created through random assignment. For a variety of reasons, it is often difficult to implement an experimental design in a legal setting, especially when highly sensitive matters involving parents and child well-being are at issue. Even so, under certain conditions it is possible to do more experimentation in family law than is now done. Specifically, when new court-related services are introduced, they should almost always be assessed using a randomized experimental design. Note that, when a new service is offered, the members of the control group will not be denied all services, rather, they will continue to be offered the status quo services. Further, although they will not be offered the new services, it is unknown whether the new services are better than, worse than, or equal to the status quo service. Under these circumstances it is hard to argue that anyone has been denied access to a beneficial service. For example, it would be very valuable to have an experimental study that compares the outcomes of custody evaluations done by a Court-Appointed Private-Sector Forensic Evaluator (see Table 1, Source 1) versus custody evaluations done by a Court-Appointed Public-Sector Forensic Evaluator (see Table 1, [\*299] Source 2). These considerations support the conclusion of an important report from the Federal Judicial Center Advisory Committee on Experimentation in the Law (1981), which argued that much more randomized experimentation and certainly more quasi-experimentation in court systems is possible, ethical, and advisable.

An excellent example of the use of a randomized experimental design in a family law setting is the study by Pruett and her colleagues (2005) of an innovative court-based program called the Collaborative Divorce Project (CDP). The CDP was an integrated and comprehensive seven-part program geared toward assisting parents and children through the social and legal process of divorce. The study used only volunteers to form the sample of cases that were randomized into an experimental and control group. In addition, all of the status quo services were available to control group members. Pruett and her colleagues measured program impacts using a wide range of outcome measures. The CDP outcome-assessment design illustrates that it is possible to do very

rigorous research in family court settings.

An additional research example is one of the few outcome assessments on custody evaluations. Birnbaum and her Canadian colleagues used a rigorous experimental design in a study that compared traditional comprehensive child custody evaluations with shorter, more narrowly focused evaluations (Birnbaum & Radonanovic, 1999; Birnbaum, 2007). Like Pruett's work, Birnbaum's study is of an innovative court-based program, and study participants volunteered prior to being randomized into experimental and control groups. Preliminary results of the study indicated that there are few, if any, significant differences between traditional and focused custody evaluations on a variety of parent, child and court related measures, but that focused custody evaluations can be provided much more efficiently than traditional custody evaluations, a finding that has important policy implications if it remains robust after further analysis.

In spite of the arguments favoring randomized experimental designs, there certainly will be instances in which it is not possible to implement such a design. In these instances, matched-group quasi-experimental designs often will be a good alternative.

*Matched-Group Designs:* Matched-group designs allow hypotheses testing by creating a control group through the process of matching study subjects on all important characteristics other than the experimental intervention. Matched-group designs require that the researcher have a good understanding of the background characteristics upon which cases should be matched. The key advantage of randomized experiments over matched-group quasi-experiments is that randomization has neutralized both confounding variables that are known and those that are unknown. Even with this important limitation, carefully executed matched-group designs have been used in a variety of legal settings (Ramsey & Kelly, 2004).

*Longitudinal Survey Design:* When neither an experimental nor a matched-group design is feasible, another quasi-experimental research design that may be used profitably is the longitudinal survey design. Longitudinal designs typically require relatively large random samples because statistical methods are used to control for confounding and intervening variables rather than random assignment or matching (Ramsey & Kelly, 2004). These sampling requirements are important because the longitudinal survey relies on naturally occurring variation in a population for variation in the independent variable in the hypotheses to be tested. An important limitation of this approach is that it is based on the assumption that all key confounding variables have been neutralized--if they are not, then results are likely to be biased (Diamond, 2000; Rubinfeld, 2000). An excellent example of [\*300] family law research that employed a longitudinal survey design is the Mnookin and Maccoby Stanford Child Custody Study (1992), which sampled court caseloads soon after initial divorce filings and then followed divorcing parents and children over the 3-year period following the divorce. A design such as this could readily be adapted to include a custody evaluation assessment component.

## V. CONCLUSION AND NEXT STEPS

Outcomes-assessment research on child custody evaluations needs significant expansion, because surprisingly little is known about custody evaluations as a human service system at the systemic level. To aid this endeavor, we presented seven illustrative systems-level outcomes hypotheses and three illustrative research designs that might be used to test them. Our argument is not so much a critique of the current state of research on custody evaluations as it is a call to focus on and rapidly increase research. Pursuing this research agenda will be challenging, however. Access to court records may be difficult if they are confidential, court and agency cooperation may be essential if an experimental design is used, and the research is likely to be expensive. Hence we conclude with two related reflections on why such a cost is justified.

First, a distinguishing feature of professions is an ongoing commitment to the development of a knowledge base used to improve the professional practice that is provided in the public interest. For professions based in the sciences, the implication is that the knowledge base is expanded with research that is structured by the scientific method. The practice of custody evaluations clearly aspires to be one that is a science-based professional practice, and therefore, there is a professional obligation to advance the scientific knowledge base upon which that practice is based. We have argued that the practice of child custody evaluations is most likely to improve if researchers focus on a very specific type of research--rigorous population or sample-based outcomes-assessment research.

Second, given the effort and financial resources needed to support custody evaluation outcomes research, we propose that the community of child custody evaluators look for allies to support a research agenda. Judges also would want good assessment research on custody evaluations. They ultimately order custody evaluations and would have a clear interest in ascertaining whether custody evaluations produced the benefits claimed, at an acceptable cost. In fact, judges have demanded outcomes research in other areas. Budd et al. (2001) reported that the major impetus behind their assessment of custody reports used in Chicago's child protective services system came from the judges who used the reports and wanted to see improvements in them. We believe that judges who use custody evaluations in disputed custody cases and their organizations are in a position to help justify funding requests for the research community. Allowing researchers to use and even assist in designing data bases would be an important contribution by judges and court administrators as well.

As we have noted, performing rigorous outcomes research on child custody evaluations will be expensive. This will especially be so in the early stages of developing this evaluation research agenda. We believe that the agenda we propose will be attractive to private foundations dedicated to children's well-being as well as federal funding agencies with interests in children (National Institute of Child Health and Human Development) and with interests in the relationships between law and other professions (National Science Foundation--Law and Social Science Program).

**[\*301]** Cooperative efforts to study the impact of child custody evaluations systematically as a human service system have the potential to improve the practice of child custody evaluations. Doing so could assist parents and children as they navigate the process of resolving custody disputes.

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