

Psychologist Recommendations in Custody Disputes Can Be Harmful, Even Fatal

BY IRA DANIEL TURKAT, PH.D.

Throughout the United States, there is a little known fact regarding psychologist recommendations in custody disputes: They can lead to dead children.

In Virginia, a psychologist advised the court to remove its supervised visitation order in a custody dispute and permit unmonitored visits between father and child. The court followed the psychologist's advice. The fourth unsupervised visit resulted in the father murdering his child.¹

In Maryland, a court appointed psychologist in a custody dispute listened to a mother's plea that the father posed a risk to the well-being of their children but was not persuaded, and recommended the father be granted unsupervised access to them. The court endorsed the evaluator's recommendation. Months later, the father drowned all three of his children.²

In California, a psychologist with decades of experience performing custody evaluations who also served on the faculty of a university doctoral program in psychology performed a court-ordered custody evaluation and recommended the father be awarded primary custody. The court followed the psychologist's advice. Later on, the father stabbed his two sons to death. In a tragic irony, he pleaded not guilty by "reason of insanity."³

Sadly, these fatalities come as no surprise because for decades I have warned that there is no scientific evidence whatsoever that child custody evaluations result in beneficial outcomes for

children.⁴ Despite this, custody evaluations continue to be performed regularly throughout the country and psychologists' speculations about children's futures are typically endorsed by the courts.⁵ When vital decisions of this kind that have no scientific proof of benefit are imposed on parents fighting over the future of their children, a strong negative emotional reaction from one of the parents should be expected. Such reactions increase the likelihood that bad things will occur.

HARMFUL EFFECTS OF CHILD CUSTODY EVALUATIONS

Fatal endings to custody evaluator recommendations are horrific, but the more likely negative

Dr. Ira Turkat advises family law attorneys on winning child custody disputes. A licensed psychologist, he served on the faculty at Vanderbilt University School of Medicine and University of Florida College of Medicine. In 2011, the 50,000 member British Psychological Society named him alongside three of the world's most outstanding clinical psychologists in history for their influential work in creating case formulation; Dr. Turkat is the only American named among the four. Address all correspondence to: Ira Daniel Turkat, Ph.D., 2015 South Tuttle Avenue, Sarasota, Florida 34239; Telephone (941) 488-8093.

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outcome of child custody evaluations is harmful effects without loss of life. This too received no scientific attention, until now.

In a recent issue of *Court Review: The Journal of the American Judges Association*, I reported the first quantitative study on harmful effects of child custody evaluations.⁶ In that initial study, a cohort of parents from 35 states who participated previously in child custody evaluations provided the following results:

- 65 percent of parents reported that the custody evaluation was *not* in their children's best interest financially.
- 25 percent said their children experienced negative effects from the evaluation.
- 20 percent of parents reported the custody evaluation made their children *worse*.

The most striking detrimental effect revealed in the "harmful effects study" is the fact that 65 percent of parents reported that the money spent on their child custody evaluation was not in their children's best interest. This, too, should come as no surprise given that custody evaluations have no scientific evidence to prove their benefit, yet litigants may find themselves compelled to participate in these evaluations, at a significant price. Tens of thousands of dollars can be poured into a custody evaluation. The highest fee I am aware of exceeded \$300,000.⁷

Professional guidelines are not a substitute for lack of scientific proof.

In considering the range of harmful effects that might flow from these costly evaluations, it is important to understand that scientists can't even agree on something as elementary as what exactly is *mental health*, because the science is unsettled.⁸ In other words, psychologists can't correctly articulate what mental health is, yet, when it comes to something far more complex like custody disputes when there is no scientific proof of benefit for any custody evaluator recommendations, psychologists readily testify what is "best" for a child's psychological future. The plain truth is that professional custody evaluators significantly overreach. As a result,

harmful effects can occur, and some children have paid with their lives.

CUSTODY EVALUATOR EXPERIENCE

How then do custody evaluators justify giving recommendations about custody when there is no scientific evidence proving that custody evaluations benefit children? One obvious defense is that their "experience" justifies why these evaluations should be done. In other words, despite the lack of scientific evidence to validate the usefulness of child custody evaluations, their argument would be that the experience and judgment of professional custody evaluators leads to better outcomes for children. There are several problems with this argument.

First, there is no scientific evidence at all that the judgment of experienced custody evaluators produces a better outcome for children. The cases of child fatality following custody evaluators' recommendations reviewed previously, speak volumes about that.

Second, there is no scientific evidence whatsoever that a highly experienced custody evaluator produces a better outcome for children than an inexperienced evaluator; this is true even if one were to compare a custody evaluator to a piano teacher or a sewer worker.

Third, even the most experienced, highly published, and nationally acclaimed custody evaluators have no scientific evidence to prove that their judgments about custodial placement are any better for children than judgments offered by anyone else.

CUSTODY EVALUATOR CREDENTIALS

It is important not to misunderstand custody evaluator credentials. There is no scientific evidence that better credentials predict better custody evaluation outcomes for children. Further, the late Dr. Stuart Greenberg demonstrated potently that having superb credentials does not protect children from potential harm by a custody evaluator.

Psychologist Greenberg was a nationally known custody evaluator who was elected president of the American Board of Forensic Psychology by his peers, served as a university professor, special master, and guardian *ad litem*, and evaluated more than 2,000 cases.⁹ Greenberg was also caught:

- Lying to the court about a parent being potentially abusive and dangerous to her children when she wasn't;
- Lying to the court about what witnesses told him about her as a parent;
- Failing to disclose that the parent he recommended the court award custody to was represented by one of Greenberg's business partners; and
- Covertly using a hidden video camera in his office lavatory to tape individuals without their knowledge, which ultimately led to Greenberg being caught sexually satisfying himself on that very camera.

After that discovery, Greenberg committed suicide.

An attorney advising a custody evaluation may be giving bad advice.

Singlehandedly, Greenberg helped to show that a custody evaluator having superb credentials proves nothing about whether children evaluated by that psychologist will be placed on the right path toward a better future or a road toward harm, including the potential for being murdered.

CUSTODY EVALUATOR MISDEEDS

Professional custody evaluators may be tempted to minimize Greenberg as one bad apple, but there are far too many instances documented of custody evaluators violating ethics codes and/or state licensing laws.¹⁰ While I would like to assume that the overwhelming majority of custody evaluators operate within the law and professional guidelines, this does not mean all that much because there is no scientific evidence to prove that their custody evaluations actually benefit children. Professional "guidelines" are not a proper substitute for a lack of scientific proof.¹¹ Today's guidelines for performing child custody evaluations not only lack scientific support, they may be detrimental by implying that exams that follow such guidelines are of "high quality."

WHAT TO DO ABOUT CUSTODY EVALUATIONS

Given the sad state of today's child custody evaluations as described previously, what should family law attorneys do about it?

First and foremost, it is imperative to recognize that *any* custody evaluator recommendation received today is not only lacking scientific proof of directing children to a better future, it may steer children to a worse fate than if no custody evaluation was performed.

Second, family law attorneys should not fall prey to the general assumption that a custody evaluator's recommendation is better for the children being evaluated than what the court might decide on its own.

Third, it is appropriate to seriously question whether the benefits of getting evidence that ordinarily would be inadmissible in through a custody evaluation is worth putting children at risk for harm.

Fourth, it is critical to understand that when an attorney advises a client to participate in a custody evaluation, one may unwittingly be giving bad advice.

There is no such thing as a scientific child custody evaluation.

Finally, family law attorneys should help psychologists capable of performing scientific research on the effects of child custody evaluations find funding to do the necessary research. Ultimately, science is the key to developing custody evaluations that truly improve children's lives, not the jargon one may hear from some of today's professional custody evaluators that imply their evaluations are supported by science.¹² At the present time, the scientific research literature shows quite clearly there is no such thing as a scientific child custody evaluation.

NOTES

1. See Luke Mullins, "The Wrong One", *The Washingtonian*, Dec. 13, 2013; Tom Jackman, "Psychologist in Prince Rams Custody Case Paying Mother \$550,000 Legal Settlement," *Washington Post*, Nov. 8, 2014; and Alex Koma,

"Joaquin Rams Guilty of Murdering Toddler for Insurance Money," *Inside NoVa*, Apr. 13, 2017.

2. See Joaquin Sapien, "Call in Congress for Family Court Reform," *Long Island Press*, Sept. 18, 2016.

3. See Kelsey Brugger, "Ex-Wife Sues Nicholas Holzer in Children's Murders," *Santa Barbara Independent*, Aug. 11, 2016.

4. See Ira Daniel Turkat, "Questioning the Mental Health Expert's Custody Report," 7 *Am. J. Fam. L.* 175 (1993); and Ira Daniel Turkat, "On the Limitations of Child-Custody Evaluations," 51 *CT. Rev.* 8 (2006).

5. See M. Gregg Bloche, *The Hippocratic Myth: Why Doctors Are Under Pressure to Ration Care, Practice Politics, and Compromise their Promise to Heal* (2011).

6. See Ira Daniel Turkat, *Harmful Effects of Child-Custody Evaluations on Children*, 52 *CT. Rev.* 152 (2016).

7. See Ira Daniel Turkat, "Child Dead and Parent Charged with Murder After Psychologist Recommends Said Parent to Court: Turkat Responds to Gould & Posthuma's Custody-Evaluation Fallacies." 52 *CT. Rev.* 170 (2016).

8. See Jose Bertolote, "The Roots of the Concept of Mental Health," 7 *World Psychiatry* 113 (2008); Keith Tudor, *Mental Health Promotion: Paradigms and Practice* (2013).

9. See Karen Armstrong & Maureen O'Hagan, "Seattle Times Special Report: Twisted Ethics of an Expert Witness," *Seattle Times*, June 26, 2011.

10. See Karl Kirkland & Kristin Kirkland, "Frequency of Child Custody Evaluation Complaints and Related Disciplinary Action: A Survey of the Association of State Board and Provincial Psychology Boards," 32 *Prof. Psychol. Res. Pr.* 171 (2001); James N. Bow, Michael C. Gottlieb, Jeffrey C. Siegel & Gretchen S. Noble, "Licensing Board Complaints in Child Custody Practice," 10 *J. Forensic Psychol. Pract.* 403 (2010); Jelena Zumbach & Ute Koglin, "Psychological Evaluations in Family Law Proceedings: A Systematic Review of the Contemporary Literature," 46 *Prof. Psychol. Res. Pr.* 221 (2015); and <http://www.psychcrime.org/articles/index.php?vd=18>, last accessed Jan. 14, 2018.

11. See Turkat, *supra* n.7.

12. *Id.*