

CHILD CUSTODY EVALUATION



New Theoretical Applications and Research



Daniel J. Hynan

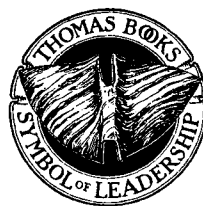
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By

DANIEL J. HYNAN, PH.D.



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PREFACE

Roughly two decades ago, I started carrying out child custody and similar types of evaluations. I had always been focused on integrating scientific evidence into my therapy and assessment practice, and after a fairly short time of doing custody work, it became clear that evaluation methods needed a significant injection of empiricism. That realization started the long run of trying to use some of my limited spare time to write articles focused on combining science and professional experience to promote advancement in the child custody field. At some point, years ago, it occurred to me that I could and should write a book. I aimed for 2015 as a tentative goal.

Along the way, I have gained a lot of knowledge and received a good deal of inspiration from those who wrote pioneering books on child custody evaluation, including Benjamin Schutz and his coauthors (the first one I read), Marc Ackerman, Jon Gould, and Philip Stahl. Although I left behind Barry Bricklin's methodology a long time ago, I still appreciate that his contributions helped to focus the field on making improvements. There are many others whose work I consider to fall in the range between very good and phenomenal, and my more specific views about such matters can largely be seen in my reference citations.

As I was working on the exhaustive task of statistically analyzing test data on hundreds of custody evaluation parents, it occurred to me that the custody evaluation field would benefit most from peer-reviewed articles on tests that did not have such prior publications. Because there had never been any peer-reviewed articles specifically about custody litigants regarding the Personality Assessment Inventory or the Parent-Child Relationship Inventory, I submitted the most fundamental data, including gender comparisons, to the *Open Access Journal of Forensic Psychology*. Two articles on those tests were published in that journal in 2013. I have a great deal of regard for the highly productive way that Editor Greg DeClue manages that journal, and those articles can be downloaded in full at no cost from the journal website. Because there already had been a number of good-quality, peer-reviewed articles on the use of the MMPI-2 in child custody litigation, I concluded it was not necessary to go through the additional work of writing a journal article on that measure.

Anyone who has looked at this book beyond this preface will have noted that each chapter begins with a Practice Checklist. I repeatedly emphasize that evaluators need to engage in careful deliberation, and the checklists can be a highly useful, practical method of doing so. They have been recommended by Nobel laureate Daniel Kahneman and others as a means to promote higher-level deliberation instead of more faulty intuition. I put them at the beginning of chapters to increase the odds that readers will use them.

As I created these checklists, there were repeated quandaries regarding how many points to include. There is an inevitable trade-off between how well checklists grab the reader's attention and their length, and there is no perfect answer for every context. The final ones included here integrate crucial concepts and procedures, with a focus on relative brevity.

In a few places in the book, there is repetition of certain content areas. I think most readers are probably like me in that they do not read this type of book from front to back, but tend to focus on certain chapters or sections, one at a time. Some topics are relevant for more than one chapter, and some material is simply important enough that it deserves to be repeated.

I am grateful to many people, including hundreds of judges and attorneys who have referred evaluations to me over the many years. I greatly appreciate the mainly anonymous reviewers and editors who have read, commented on, and agreed to publish my journal articles.

I am enormously grateful to the team of multidisciplinary professionals who read the manuscript and offered very helpful comments: Sarah Bonkowski, Mary Jean Dolan, and Steven Peskind. I appreciate Bob Emery's suggestion to consider material on early neutral evaluations. Also, I want to thank Marzena Powala and Peter Ji for their great help in assisting me in preparation of parts of this book. I am most thankful for my family for their inspiration and support.

I am lucky for a lot of reasons. One big piece of luck was the genetics lottery where I got the nucleus of cognitive ability to be able to do such work. I was extremely fortunate to have parents who were good models of how to work and interact with other human beings. Also, I was very fortunate to stumble across this area of work that has been both fascinating and a good fit for my set of skills.

There is a saying that individuals who are fortunate enough to have resources have the responsibility to use them well. It is well known that children of divorce are at a very increased risk of experiencing an array of life problems, and the main goal of custody evaluations is to assist those children. It is easy to talk about the importance of helping children of divorce lead positive lives, but in order to carry out actual improvements, many knowledgeable people need to persist through lots of obstacles to do difficult work in multiple areas over a long period of time. The goal is worth the effort.

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CHILD CUSTODY EVALUATION

Chapter 1

WHAT IS IMPORTANT FOR CHILDREN OF DIVORCE?

PRACTICE CHECKLIST

There are negative effects on children of divorce as a result of:

- Exposure to interparental conflict
- Parental psychological dysfunction
- Loss of contact with a parent
- Economic hardship
- Stress
- Multiple family transitions

Other negative effects on children can result from:

- Inadequate affection and nurturance
- Aversive parenting, such as harsh punishment

Positive effects on children of divorce can result from parental:

- Warmth and support
- Active child management
- Relatively close parent-child relationships
- Know relevant state statutes regarding child custody and visitation.
- Know essentials of relevant U. S. Supreme Court decisions.
- Know the common and legal meanings of vocabulary pertaining to child custody.

Note: This form is a guide to promote productive reasoning and good practice. It is not comprehensive or all-inclusive and does not replace adequate training and experience.

Over one and a half million children each year experience the divorce of their parents (Arkowitz & Lilienfeld, 2013). For a significant proportion of these children, there are strong disagreements between the parents about custody, time sharing, and making important decisions about the children. When there are such disagreements, evaluators and other professionals, such

as judges, attorneys, and mediators, must try to sort through and make sense of a complex and conflicting array of information to try to reach an accurate idea about what is most important and relevant.

How does anyone decide what is most important and relevant regarding children of divorce? Certainly families are often complex and many people have views of parent-child interactions that are primarily influenced by their own experiences when they grew up. The wide variety of books, television shows, and other media on families and parenting reflect the disparate perspectives and approaches that exist.

My goal in writing this book is to contribute to the advancement of knowledge regarding children of divorce, especially the practice of evaluation as it pertains to child custody, time sharing, and related matters. To work toward this goal, I attempt to integrate scientific findings, relevant theory, and professional experience in such a way as to be both conceptually sound and useful in practice. Also, I strongly consider the perspectives of others who have been very critical of custody evaluation and related concepts (e.g., Emery, Otto, & O'Donohue, 2005; Krauss & Sales, 2000). For example, in chapter 2, I closely examine, from both conceptual and empirical standpoints, the "approximation rule" proposed by the American Law Institute (ALI) (2002) that would change the best-interest-of-the-child legal standard and that includes considerable criticism of custody evaluation.

The reality of custody evaluation work is that there are a plethora of specific circumstances regarding each family that must be taken into consideration. Often, the circumstances and combinations of circumstances are highly challenging. The human reality of divorce is that many evaluations include a very mixed and difficult set of facts, associated with emotionally gut-wrenching experiences for parents and children.

For example, a considerable proportion of custody evaluations include allegations of domestic violence. Such actions are often private events, witnessed by no one, and result in highly conflicting claims by each party. Certain individuals may engage in distortions, purposeful or otherwise, about what actually took place. Some cases involve serious domestic violence. There is a stereotype that domestic violence occurs mainly in lower socioeconomic groups. However, research has found that it affects all realms of society, including those at upper income levels. Upscale women who were victims of domestic violence were the focus of research by Weitzman (2000):

Living a life perceived to be foreign to the experience of one's peers typically gives rise to emotions like shame. Sally told me, "I was embarrassed by it. When he would hit me, I would become embarrassed. I would be humiliated." Another woman, Alice, strongly asserted, "No, you're married, for better or for worse. You can't tell anybody, and the reason you can't tell anybody is: it's *embarrassing*. It's a very shameful thing." And Jennifer said, "I didn't want anyone to know that

about me; I didn't want them to think that of me. I wanted them to think, 'She's wonderfully happy; she's wonderfully successful; she's a good wife.'" (p. 26)

A number of other difficult cases include intense emotions and controversies over whether it is good or harmful for a very young child to have overnight visits with the nonresidential parent.

Consider the young father faced with a court order dictating short visits during the work week, designed to create a relaxed, if brief, parenting experience while not stressing the baby with undue separations from the mother. He may well have a rigidly scheduled, entry-level job that supports not just himself, but his child and his child's mother. Yet, he must find the two, sometimes three, two-hour blocks of parenting time that his employer will allow. His employer will likely have no reason to entertain providing a flexible work schedule to a junior employee. So, the young man leaves work promptly at 5:00 p.m. and speeds to the home of his child's mother. He picks up the baby, who may well be cranky because of hunger or fatigue at that time of day. The child may thus struggle against the transition. He then drives at least a few minutes to his home, arriving there just before six. The baby may now be asleep or frantically hungry. The baby's mood does not improve when she is woken, taken out of her car seat, and fed as fast as the father can, but not as fast as the baby wants. By this time, the father may have only half an hour or so to enjoy his child before the drive and transfer to the mother's home begins. (Ludolph, 2012, pp. 491–492)

It is important for evaluators and others to have empathy with the plight of children and families who are going through a divorce or separation process. However, unlike counseling and psychotherapy, in which empathy can play a direct role as a therapeutic factor, it is not a direct contributor to carrying out a high-quality evaluation. The productive use of empathy in the evaluative process is to provide motivation for evaluators to carry out numerous difficult tasks, including, but not limited to acquiring extensive scientific and professional knowledge, learning and carrying out valid and relevant methodology, using sound reasoning in the analysis of information that is collected, and conveying the probable final product of a written report in a clear and timely manner.

SCIENTIFIC EVIDENCE ABOUT CHILDREN OF DIVORCE

A crucial general principle for custody evaluators is that the most important and relevant area of information in conceptualizing what is best for children is the research evidence that pertains to children of divorce. Dozens of research studies that include tens of thousands of individuals have been analyzed in a number of quantitative and qualitative reviews. In general, this research has found that children of divorce function less well than children