



COMMON MISTAKES IN CHILD CUSTODY EVALUATIONS

EDWARD G. SILVERMAN, PH.D.

ALLOWING PARENTS TO DICTATE THE CONTENT AND FOCUS OF INTERVIEWS

Parents need the opportunity to tell the evaluator what they feel the evaluator needs to know. However, a more structured interview format is preferable for the following reasons:

- Important content areas are not overlooked
- Uniformity of data gathering from each parent
- Facilitates organized report writing

NOT GIVING EACH PARENT AN OPPORTUNITY TO RESPOND TO ALLEGATIONS

It is wise to give each parent an opportunity to respond to every allegation, whether it influenced your conclusions and recommendations or not. Why?

- Enhances your credibility
- Promotes a perception of thoroughness and fairness
- Helps you respond to cross examination
- Decreases the likelihood of Board complaints

LACK OF SPECIFICITY FROM COLLATERAL INFORMANTS

Custody evaluators routinely rely on collateral sources of information including friends, family members, teachers, coaches, co-workers, employers and other individuals who are familiar with the parents being evaluated. However, these informants tend to provide general opinions, not specific behavioral observations. In other words, they typically describe traits and characteristics in general terms, rather than providing specific examples of these traits and characteristics and reporting what, specifically, they actually observed. Custody evaluators should not settle for general descriptions and need to ask collateral informants to provide more specific information. We are interested in behavior, not opinions.

INADEQUATE ASSESSMENT OF PARENTING SKILLS

We all learned how to take a detailed social history, we were all trained to address mental health issues, and we all hopefully learned something about child development- some more than others. But, what did we really learn about parenting?

COMPETENT PARENTING BEHAVIORS

- actively and positively involved in child's life
- direct, open, two-way communication with child
- provides structure and consistency, but with flexibility
- avoids extremes of psychological closeness or distance
- sets clear boundaries and limits on child's behavior
- identifies, understands, and prioritizes child's needs
- knowledgeable of child's strengths and weaknesses

The Art and Science of Child Custody Evaluations by Jonathan Gould and David Martindale (2007)

COMPETENT PARENTING BEHAVIORS (CONT.)

- fosters age-appropriate independence
- accurate observation and interpretation of own and child's behavior
- appropriate discipline
- nurtures self-confidence and self-esteem
- supports child's relationship with the other parent
- cooperative communication with the other parent

DEFICIENT PARENTING

- substance use problems
- physical abuse
- sexual abuse
- emotional abuse
- neglectful parenting style
- authoritarian parenting style
- major mental illness
- abuse of power and control (IPV)

The Art and Science of Child Custody Evaluations by Jonathan Gould and David Martindale (2007)

BAUMRIND'S TYPOLOGY OF PARENTING STYLES

- Permissive (indulgent): high R, low D
- Authoritarian: low R, high D
- Authoritative: high R, high D
- Neglectful (uninvolved): low R, low D

R=responsiveness

D=demandingness

NOT DEFINING THE EMOTIONAL NEEDS OF THE CHILDREN

There are certain emotional needs that all children have:

- unconditional love
- emotional attunement and insightfulness
- constructive and respectful communication
- structure and consistency
- age-appropriate restrictions on behavior
- approach to discipline that is more positive than punitive
- freedom to love both parents without loyalty conflicts

UNIQUE EMOTIONAL NEEDS

There may be additional emotional needs that are unique and specific to each individual child:

- increased opportunities for socialization
- increased educational opportunities for exceptionally bright children
- increased structure and consistency for ASD and ADHD children
- gender-affirming care for transgender children

MISUSING THE TERM “ATTACHMENT” AND MISUNDERSTANDING ATTACHMENT THEORY

In attachment research, trained and certified coders capture attachment quality through standardized observations of children's relative ability to use their caregiver as a safe haven to which they can turn for protection, and as a secure base from which they can explore the environment. Secure attachment relationships are indicated by behavior that suggests that a child expects the attachment figure to be available in times of need, and insecure attachment by behavior suggesting the expectation of relative unavailability. However, there is no accepted measure of attachment other than the Strange Situation, which is only appropriate for infants between 12 and 20 months of age. Other measures of attachment have been developed, but serious questions have been raised about their psychometric properties and their predictive utility, they do not provide false positive and false negative rates, and they do not have adequate specificity and sensitivity for making individual predictions.

Rappaport, S.A. (2022). “What we have here is a failure to communicate”: The misuse of attachment and bonding in the courtroom: A call for definitions and explanations. *Family Court Review*, 60(1), 115-125.

MISUSING THE TERM “ATTACHMENT” AND MISUNDERSTANDING ATTACHMENT THEORY (CONT.)

It has been argued by some that there is a general consensus that infants form a primary attachment with one caregiver and that parenting arrangements in divorce situations should reflect this consensus. However, this is not a consensus view. Some children, particularly younger children, may still prefer some caregivers over others when it comes to meeting attachment needs. However, this preference is typically only seen when more than one caregiver is currently accessible, and it does not seem to depend on attachment quality to the respective parents.

Forslund, T. et.al. (2022). Attachment goes to court: child protection and custody issues, *Attachment and Human Development*, 24:1, 1-52.

NOT CITING RELEVANT RESEARCH OR MISAPPLYING THE RESEARCH

There is research on a number of topics that directly pertain to the work we do, including but certainly not limited to:

- shared time parenting plans
- overnight visitation for infants and toddlers
- impact of parental conflict on children's adjustment
- intimate partner violence
- parental alienation
- relocation

NOT CITING RELEVANT RESEARCH OR MISAPPLYING THE RESEARCH (CONT.)

Assertions regarding research evidence on any issue should be:

- complete rather than selective in scope
- relevant and appropriate to the issue at hand
- accurate, organized, clear to follow, and sufficiently detailed
- based on studies independently assessed as high quality
- self-critical, acknowledging limitations
- balanced and fair

AFCC Guidelines for the Use of Social Science Research in Family Law (2018)

NOT CITING RELEVANT RESEARCH OR MISAPPLYING THE RESEARCH (CONT.)

Individual research studies, or even synthesized meta-analyses or reviews of studies, are not sufficient on their own to definitively support a specific determination or course of action, particularly when applying group research to an individual case. Resolutions and arguments presented in family law matters will therefore often draw on other bases beyond social science research, including professional judgment, clinical observation, and societal values. Persons making claims should be transparent about the different factors that led them to a particular conclusion, and the relative weight that they applied to these factors.

AFCC Guidelines for the Use of Social Science Research in Family Law (2018)

INATTENTION TO POTENTIAL BIAS

There are three categories of bias:

- Non-Cognitive Bias
- Cognitive Bias
- Implicit Bias

January 2018 AFCC Webinar presented by Philip Stahl, Ph.D., ABPP

INATTENTION TO POTENTIAL BIAS (CONT.)

Examples of Cognitive Bias:

- Anchoring Bias
- Availability Bias
- Confirmatory Bias
- Countertransference
- Halo Effect
- Hindsight Bias
- Overconfidence Bias
- Primacy or Recency Bias

NOT OFFERING ALTERNATIVE EXPLANATIONS FOR THE DATA

If there are multiple interpretations for the data, you have an obligation to acknowledge them and explain why you have chosen the interpretation that you have given and why you eliminated the alternative explanations. In fact, you have an ethical obligation to report the data that are inconsistent with or not supportive of your conclusions and recommendations.

NOT INCLUDING A LIMITATIONS SECTION IN YOUR REPORT

Every evaluation has limitations that potentially threaten the reliability (i.e., trustworthiness) of your conclusions, opinions, and/or recommendations. These may include the following:

- Records that were requested but not received
- The amount of time that has elapsed since you conducted the majority of your evaluation
- Collateral informants who refused to be interviewed
- Cultural issues that impact the interpretation of psychometric testing

You are responsible for acknowledging the limitations of your evaluation and specifying to what extent these limitations impact the confidence you have in your conclusions and recommendations.

INADEQUATE ATTENTION TO SPECIFIC REFERRAL QUESTIONS

- Referral questions should be listed at the beginning of the written report
- Referral questions define the scope and purpose of the evaluation
- Just as referral questions guide the evaluation process, they should also guide the reader of your report
- Referral questions should guide the conclusions and recommendations section of your report
- Referral questions should not be treated as afterthoughts and your answers to specific referral questions should be explained

BREAKING THE TOILET DURING A HOME VISIT



HAVING A
LITTLE TOO
MUCH FUN?

