

# Qualitative Analysis of Current Child Custody Evaluation Practices

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**Abstract**—The role of the custody evaluator is perhaps one of the most controversial and risky endeavors in clinical practice. Complaints filed with licensing boards regarding a child-custody evaluation constitute the second most common reason for such an event. Although the evaluator is expected to answer for the family-law court what is in the “best interest of the child,” there is a lack of clarity on how to establish this in any empirically validated manner. Hence, practitioners must contend with a nebulous framework in formulating their methodological procedures that inherently places them at risk in an already litigious context. This study sought to qualitatively investigate patterns of practice among doctoral practitioners conducting child custody evaluations in the area of Southern California. Ten psychologists were interviewed who devoted between 25 and 100% of their California private practice to custody work. All held Ph.D. degrees with a range of eight to 36 years of experience in custody work. Semi-structured interviews were used to investigate assessment practices, ensure adherence to guidelines, risk management, and qualities of evaluators. Forty-three Specific Themes were identified using Interpretive Phenomenological Analysis (IPA). Seven Higher Order Themes clustered on salient factors such as use of Ethics, Law, Guidelines; Parent Variables; Child Variables; Psychologist Variables; Testing; Literature; and Trends. Evaluators were aware of the ever-present reality of a licensure complaint and thus presented idiosyncratic descriptions of risk management considerations. Ambiguity about quantifying and validly tapping parenting abilities was also reviewed. Findings from this study suggested a high reliance on unstructured and observational methods in child custody practices.

**Keywords**—Forensic psychology, psychological testing, assessment methodology, child custody.

## I. INTRODUCTION

AS a custody evaluator, the role of the mental health professional is to design evaluation methods, develop reports, and offer testimony that is both relevant and helpful to the family-law court. Even though 42 states currently include general custody guidelines for the court to consider, such as the American Psychological Association’s 2010 version of the *Guidelines for Child Custody Evaluations in Family Law Proceedings* [1] and the Association of Family and Conciliation Courts’ *Model Standards of Practice for Child Custody Evaluation*, adherence to such criteria by evaluators is not mandatory [2]. Furthermore, divorce statutes do not specify the methods or procedures that evaluators should use in presenting their recommendations to the court [3]. Thus, clinicians frequently must base their evaluations on an idiographic mixture of accepted scientific methods, standard

of practice in the field, professional guidelines, and ethical principles.

Given the lack of consistency in the practices of psychologists who perform custody evaluations, the volume of complaints to state licensing boards about custody evaluations is routinely second to those about sexual misconduct [4]. However, precise percentages of the number of complaints about custody disputes received by licensing boards are unknown [5]. Yet, despite the efforts of some states, such as California, to attempt to reduce complaints by requiring that evaluators complete continuing education on custody issues, no data currently exist about whether such training has reduced the percentage of those disciplined [6].

In the forensic practice of psychologists providing custody evaluations, there appears to be a contradiction between the standard of care acceptable within the family-law court and the risk of disciplinary action by state licensing boards. Currently, all states allow custody-evaluation complaints to be filed with the APA’s Ethics Committee as well as malpractice suits [7]. Thus, the evaluator in most states may be placed in the midst of an ethical and professional dilemma in which the same report that met the legal standard of the family court may still result in the loss of time, resources, and clinical license because of an angered litigant. Such a discrepancy between the court and licensing bodies undermines the APA’s aspirational principle of beneficence and may hinder the number of clinicians providing such services.

### *Statement of the Problem*

The purpose of the current study was to investigate qualitatively the patterns of child custody practices, with a particular interest in methods of assessment, among forensic psychologists locally in Southern California. Due to the inherent legal and ethical risks involved in providing custodial recommendations to the court, it was postulated that specialized training and research in this area may help reduce negative professional consequences through a form of risk management. Therefore, specific inquiry into how psychologists conduct such evaluations including (a) standard procedures; (b) how they decide which instruments are appropriate for use; and (c) how they handle various legal, ethical, and clinical dilemmas, were deemed to be of particular use in helping elucidate the local standard of practice.

Actual decision-making themes of practice among local psychologists providing services in family law were expected to be revealed. Since custody evaluations are generally provided by seasoned clinicians, novices are rare. Consequently, there is a profound need for research that examines how evaluators approach such work, select

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assessment tools, integrate data, weigh parental and circumstantial factors, manage contradictions between the test data and parental statements, and how recommendations are derived

## II. LITERATURE REVIEW

### *Historical Overview and the Development of the Best Interest of the Child Standard*

The end of the 19th century marked the gradual acceptance within the judicial system of the belief that a mother's care was essential for the optimal development of very young children [8]. In turn, courts developed the tender-years presumption that the best interest of the child relied upon the mother being awarded custody. Even though the tender-years presumption was initially intended to apply to for children up to the age of four, this was later eliminated by rulings that extended this legal theory to include the entire range of childhood [8]. By the 1920s, women were being awarded custody of their children as often as men, given that courts upheld the responsibility of fathers to provide financial support. Nonetheless, confusion in family-law courts about the applicability of the tender-years presumption and its inherent gender bias was addressed by the creation of the best-interest-of-the-child test in the 1970s as a means to clarify parental rights and the right of the child to the custodial care of a parent. After a number of decisions held that the gender bias inherent in the tender-years doctrine violated the equal protection clause of the fourteenth amendment, the Uniform Marriage and Divorce Act (UMDA) of 1973 was implemented to shift the court's focus to that of the "best interest of the child" [9].

Perhaps the greatest methodological issue with custody research is the absence of specific outcome measures. Even though the child's adjustment may be a crucial outcome variable, no adequate means of operationalizing this construct has been utilized to determine what is, indeed, in the best interest of the child. BICS research is plagued by a lack of internal validity given that custody researchers are unable to control factors such as the developmental stage of the child, the parental level of social support, parental resources, parental pre-divorce functioning, and the voluntariness of the custodial arrangement. Last, the failure of researchers to specify legal limitations, due to differences between jurisdictions regarding statutory criteria for determining custody, severely limits the external validity of such findings [9].

Assessing how local evaluators precisely consult different scientific bodies for their relevance, reliability, and helpfulness before proffering their expert testimony is a vital area that needs to be addressed in the research and hence addressed in this study. Hence, it was deemed relevant to explore through this study whether child-custody evaluators are cognizant of the dearth of scholarship on the foundations of the BICS in family-law jurisprudence.

### *Defining the Role of the Mental Health Professional in Custody Evaluations*

Due to the scrutiny that is endured by mental health professionals in their role as expert witnesses, the impact of expert testimony in custody decisions will be likely be based on both the content of such testimony and the clinician's portrayal of their level of expertise. Thus, it was deemed relevant to assess how and in which ways evaluators balance their degrees, experience, and training when presenting their recommendations to the family-law court. As such, qualitatively appraising whether psychologists do construct their testimony in consideration of their level of credibility may help serve as a model for clinicians to maximize their success. Nonetheless, the most pervasive concern in custody practice stems from the indiscriminate use of assessment tools without a clear sense of how these findings will address substantive case issues. By definition, this undermines the validity and utility of the evaluation process. However, knowledge about the relative frequency of use of assessment tools by practitioners may not only help guide psychologists toward what is considered to be the customary conduct of custody evaluations, but also perhaps hint at an actual standard of practice that may be reasonably claimed in court should such a question arise.

Hagan and Castagna [10] reexamined the data produced by Ackerman and Ackerman's [11] landmark survey regarding customary practices among psychologists conducting custody evaluations. Hagan and Castagna [10] stated that notably absent from the previous analysis was an attempt to document the exact frequency of test use across the average period of practice as well as the number of evaluations performed. Alarming, no measure reached a level above 25% in the evaluation of children in custody disputes [10].

In the practice of custody evaluations, clinicians have a notorious history of egregious overreaching in which recommendations have not only lacked scientific validity, but are also irrelevant to the legal question. Even though clinicians frequently assess psychological issues, the central factors are the parent-child relationship, childrearing attitudes, and capacities [12]. Yet, in their report, how may evaluators competently address such custodial issues that did not directly have a quantifiable set of criteria?

### *Ethical and Legal Ramifications for Custody Evaluators*

According to the APA Ethics Committee [13], 2,413 complaints were filed in 34 states against psychologists performing custody evaluations in the 1990s, accounting for 11% of all categories of ethical violations. Yet, irrespective of how such information is interpreted, this is a significant problem that is undoubtedly exacerbated by the vagueness of an established standard of care. Moreover, it is estimated that the majority of complaints that make it to state licensing boards are unwarranted and just a reflection of the litigious nature of practice in custody evaluations rather than negligence per se.

Perhaps the overarching concern and source of liability in custody practice is that the guidelines provided by the APA

are aspirational and thus not mandatory. Therefore, from an ethical vantage point, an evaluator may legally engage in conduct that is outside of these guides. Nonetheless, a dilemma may be created since the judicial system and professional licensing bodies may both still use the various APA guidelines as the standard of practice.

It is important to consider that the APA guidelines on custody work were only constructed due to concerns in the field regarding the high risk of ethical, board, and legal complaints being filed against evaluators. Yet, despite a general ethical framework to guide psychologists providing custody evaluations, there remains a struggle to find definitive answers on how to minimize professional risks.

Martindale [4] noted that professional organizations are divided between their obligation to the public and their accountability to practitioners. That is, organizations such as the APA and the Association of Family and Conciliation Courts (AFCC) are frequently pressured by their members to produce guidelines that are uncomplicated and afford some level of protection. However, Martindale argued that the inability of the APA to address the issue of custody procedures, prompted the AFCC, as an international and interdisciplinary organization, to develop a model of practice in 2007 to move the focus from protecting the evaluator to improving the quality of services to address the needs of the litigants.

Even though various professional guidelines address training and practice standards in addition to establishing criteria by which substandard practices may be gauged, their application is not uniform. Further, it is not known to what extent psychologists have implemented professional guidelines into their evaluation practices [14]. Hence, this study with local custody evaluators was designed to address these areas.

### III.METHODS

#### *Participants*

The 10 participants in the study consisted of doctoral-level mental health professionals who worked in the forensic field of child-custody evaluations in southern California. The researcher included 10 participants in order to satisfy the sampling needs to qualitatively explore the themes of child-custody work. It was projected that once the saturation point of 10 participants was reached, it was unlikely that collection of additional data would add to the themes being explored. In order to set up meetings in which to conduct the interviews, the researcher contacted the evaluators by telephone or email, according to their stated preference on the returned questionnaire that had been included with the recruitment letter. Based on each participant's availability and expressed preference, seven interviews were conducted in person and three were conducted over the telephone.

Because the study's focus was on a qualitative comparison of existing custody work to the criteria recommended by the APA's 2010 version of the *Guidelines for Child Custody Evaluations in Family Law Proceedings* [1], participants were

limited to practicing licensed doctoral level psychologists due to qualitative questions regarding the process of selecting various assessment instruments. Further eligibility for the participation of each clinician was based on California state policies regarding qualifications for performing custody evaluations. The qualifications, as set forth by the California Rules of Court, rule 5225(d), include the completion of 40 hours of education on 21 topics relating to custody evaluations, such as child sexual abuse and domestic violence, followed by 8 hours of specific continuing education each subsequent year.

Further inclusionary criteria was delineated by the researcher, using a Demographic Questionnaire Form in order to ensure that participants possessed sufficient professional knowledge, experience, and were likely more representative of licensed psychologists conducting custody evaluations. Thus, to establish a baseline for expertise, all participating evaluators had been practicing for at least seven years. All participating clinicians had completed at least one child-custody evaluation within the last 12 months.

#### *Measures*

Demographic data for each of the participants was gathered prior to the interview via a questionnaire created by the researcher. The data gathered included: (a) ethnicity; (b) age; (c) gender; (d) degree (e.g., PhD or Psy.D); (e) number of years of experience; (f) number of evaluations completed; (g) cumulative number of continuing education hours as established by California rule 5225(d); (h) other certifications and relevant training; and (i) total number of times they have been notified by the California licensing board regarding ethical complaints that have been filed against them related to custody work. The screening questionnaire was distributed via mail to help ensure the confidentiality of the participants and minimize interviewer bias. Participants were provided with a pre-stamped envelope for return of the demographic questionnaire on which space was included for the individuals to state their preferred method of contact from the researcher to schedule the interview. Nevertheless, four participants returned the demographic questionnaire via mail, four completed the instrument in person before conducting the interview, and two participants provided responses over the phone to the researcher (see Table I).

After review of the literature on child custody practices as well as ethical and legal dilemmas associated with such work, a semi-structured interview instrument was constructed by the researcher as the primary method of data collection for the qualitative study. The semi-structured interview consisted of 31 questions that were administered to each evaluator and had been projected to last between 60 and 90 minutes. However, interviews ranged in length between 54 minutes and 133 minutes. The semi-structured interview was intended to address questions on common practices among evaluators, explore variations across cases and clinicians based on dimensions derived from past research, and identify areas in which a dearth of literature exists. The questions were open-

ended, which allowed for the possibility of idiosyncratic and spontaneous responses from each participant.

TABLE I  
CHILD-CUSTODY EVALUATOR DEMOGRAPHIC INFORMATION IN REGARD TO CHILD CUSTODY EVALUATIONS

Participant	1	2	3	4	5
Age	64	57	55	68	65+
Gender	Male	Female	Male	Male	Female
Ethnicity	Caucasian	Caucasian	Caucasian	Caucasian	Caucasian
Degree	Ph.D.	Ph.D.	Ph.D.	Ph.D.	Ph.D.
Yrs. Conducting Evaluations	25	18	16	36	21
Yrs. Licensed	34	28	26	38	25
Approx. # Over Career	600+	300+	500+	200+	500+
# of Evals in Past 12 Mo.	25-30	15	35-40	12	15
% of Practice Custody Work	80	100	95	30	70
# of Hrs. of CEs This Year	20+	18	12	12	*Did Not State
# of Hrs. of CEs over Career	*Did Not State	306	832	540+	216
Known Complaint Filed	Yes	Yes	Yes	Yes	Yes
# of BOP Complaints	3	*Did Not State #	4-5	1	4
Complaints Outcome	All Dismissed	All Dismissed	Complaint All Dismissed	All Dismissed	All Dismissed
Participant	6	7	8	9	10
Age	62	62	68	67	57
Gender	Male	Female	Male	Male	Female
Ethnicity	Caucasian	Caucasian	Caucasian	Caucasian	Caucasian
Doctoral Degree	Ph.D.	Ph.D.	Ph.D.	Ph.D.	Ph.D.
Yrs. Conducting Evaluations	15	23	20+	30	8
Yrs. Licensed	20	23	15	26	29
Approx. # Over Career	250	500	1500-2500	1000+	15
# of Evals in Past 12 Mo.	6	20	7	4	7
% of Practice Custody Work	90	50	25	98	20
# of Hrs. of CEs This Year	*Did Not State	50	6	12	12
# of Hrs. of CEs over Career	*Did Not State	500	*Did Not State	190	150-200
Known Complaint Filed	*Did Not State	No	Yes	Yes	No
# of BOP Complaints	*Did Not State	0	3	3	0
Complaints Outcome		N/A	2 Dismissed; 1 License Taken, but Returned Upon Appeal	All Dismissed	N/A

*Note.* \*Some evaluators failed to provide responses on the demographic questionnaire in Appendix A that was returned to the researcher. Although the researcher made attempts to contact the participants who did not answer items on the demographic questionnaire, participants did not provide this information to researcher.

Each interview was conducted either over the telephone or in-person, depending on the preferences and schedule needs of the researcher and participant. Thus, seven participants opted to conduct the interview in-person while three psychologists chose to complete the interview via telephone due to professional scheduling demands. Recordings were used solely for transcription purposes. Last, an informed consent form was provided to, and completed by, each participating clinician prior to conducting the interview.

#### *Procedures*

The primary researcher obtained referrals through convenience sampling through the list of custody evaluators provided by the Superior Court of California as well as through contacts from committee members regarding evaluators in the Southern California area. The primary researcher contacted such referred clinicians via stated preferred contact, either email or telephone, and provided information regarding the inclusion criteria. For the six participants who did not return the demographic questionnaire via mail, the researcher subsequently administered an initial screening prior to the interview. Such a procedure was utilized in order to establish if the clinician would be considered for participation based on the inclusion criteria.

The 10 clinicians who met eligibility criteria were asked to participate voluntarily in a semi-structured interview that was projected to last between approximately 60 and 90 minutes for most participants. Interview times actually ranged between 54 and 133 minutes. Participants were informed that the interview would be conducted by the primary researcher and would be audio recorded and transcribed for further analysis. Clinicians were informed that all information would be kept confidential. Any identifying information was separated from their responses and excluded during transcription in order to ensure confidentiality and maintain the data's integrity.

There were 31 questions in the semi-structured interview, with more specific topics of inquiry in the form of prompts to guide the researcher in asking additional questions when needed. Unidentified past evaluation case examples, preferred heuristics and models in custody practice, professional risk management procedures, and forms of assessment used to conduct an evaluation were mostly volunteered throughout the interviews. However, when not volunteered, the researcher inquired as to the evaluators' procedures; what type of data (i.e., collateral information, clinical interviews, testing); and how the data were used to formulate a comprehensive report. Upon completion of the semi-structured interview, a verbal

and written debriefing statement was provided, recorded, and transcribed. .

Inter-rater reliability of the research depended upon the confidence that may be placed on the custodial work themes that emerged from the data derived from the participating evaluators [15]. Given that qualitative approaches do not rely on objective statistical analyses, studies utilizing this approach must establish specific methods to verify the accuracy of their findings. Thus, to ensure the accuracy and integrity of the findings, the study utilized an external audit process whereby the data were first interpreted by the principal investigator and then reviewed by two other doctoral students who were facilitated by the project's Chair.

#### *Interpretive Phenomenological Analysis*

In the study interpretative phenomenological analysis (IPA) was utilized, which is a form of qualitative analysis consisting of four stages developed by Professor Jonathan Smith from the University of London [15]. The IPA is an experiential qualitative approach to research similar to phenomenology, whereby it emphasizes knowledge acquired through interactions with others and the world. This form of qualitative analysis strives to understand a concept through the evaluation of reports and idiosyncratic experiences of participants [16].

The IPA consists of four stages, each closely followed for analysis in the present study. The first stage involves reading each participant's transcript several times until the researcher has an overall grasp of the data. However, there are no explicit rules or requirements for the comments that are made by the researcher [16], [17].

In the next stage of the IPA, the researcher rereads the transcripts from each participant and finds themes through the process of abstraction within and across participants [15]. The process of abstraction is repeated until all potential themes are exhausted from the data and a list of themes has been established [16], [17].

In the present study, initial themes are referred to as Specific Themes in the Results Section. Overarching themes that were found among the transcripts are described as Higher Order Themes in the Results Section. The last stage of IPA is reflected in the present study through the production of a summary table of structured themes and quotes that illustrate such themes. Each of the superordinate themes that, in the current study, are referenced as Higher Order Themes, may then be written as a narrative account with supporting quotes from the transcripts [16]. For example, in the present study, this was conducted at two levels. In the first level of the Specific Themes, various themes of custody practice were found to be universal across participating clinicians. Thus, those themes that are common across participants are referred to as Universal Themes and were used to capture the decision-making process of evaluators and, hence, present a narrative of their overall experience. Second, all specific themes, including Universal Themes, were clustered to develop Higher Order Themes. Even though Higher Order Themes may sometimes include Universal Themes, they are consistently comprised of

a cluster of multiple themes, and never will a Higher Order Theme be strictly comprised of Universal Themes [15].

#### IV.RESULTS

Table I presents the demographic and custody evaluation experience data obtained from the 10 participating psychologists in this study. Ages ranged from 55 to 68, and all participants identified as Caucasian. Four child-custody evaluators were female and six were male. Experience conducting custody evaluations ranged between 8 and 36 years, with 15 to 38 years' experience as a licensed psychologist in California.

One hundred percent of participants sampled held a Ph.D. degree and had conducted between 15 and 2,500 custody evaluations over the course of their careers. All participating psychologists designated their primary employment as working in private practice, and they indicated a range between 25% to 100% of their practice being devoted to custody work.

Seven of the participating psychologists had completed the annual minimum eight hours of continuing education required by California Rule for the Court 5225(d) in order to be appointed as a custody evaluator. Two participants in the sample were unwilling to provide this information, and one evaluator had completed only six hours at the time that the interview was conducted. The total number of continuing education hours accrued by the psychologists in the current study over the course of their professional practice ranged between 216 and over 540.

Last, seven out of the 10 participants disclosed having had a known licensure complaint regarding a child-custody evaluation filed by a client with the California licensing board. One participant did not provide information regarding known licensure complaint history, and two evaluators disclosed having never experienced a complaint filed with the licensing board. The range of the number of licensure complaints filed against the participating psychologists varied between zero and five. However, one of the sampled evaluators reported a license revocation.

#### *Specific Themes*

Transcripts were reviewed utilizing IPA to identify Specific Themes. Upon consolidating repetitive themes, a final list of 47 themes of the initial 54 themes was identified independently by both the primary researcher and a peer reader. Cohen's kappa coefficient of 0.87 was obtained. After the semifinal list of 47 themes was derived further analysis determined that four of these themes were redundant in content with other Specific Themes identified. A final list of 43 identified Specific Themes was submitted to IPA. These themes were given labels/descriptors and are presented in the order in which they emerged in the interviews, per IPA procedures, with the number of participants who expressed each theme listed in parentheses for each corresponding Specific Theme (see Table II).

TABLE II  
SPECIFIC THEMES FOUND IN TRANSCRIBED INTERVIEWS AND NUMBER OF CHILD CUSTODY EVALUATORS EXPRESSING EACH SPECIFIC THEME

Theme 1. General Procedures (10)	Theme 2. Weighing Clinical/Legal Criteria in BICS (10)	Theme 3. Understanding of BICS (9)	Theme 4. Case Law (7)
Theme 5. Use of Forensic literature (9)	Theme 6. Use of Professional Guidelines (10)	Theme 7. Use of Testing Measures (9)	Theme 8. Application of Testing Measures (9)
Theme 9. Testing Weaknesses (10)	Theme 10. Testing Parenting Variables (7)	Theme 11. Best Testing Measures For Custody Evaluations (9)	Theme 12. Less Credible Testing In Custody Evaluations (7)
Theme 13. Custody Population Patterns (5)	Theme 14. Determining Parenting (10)	Theme 15. Defensive Clients (8)	Theme 16. Integrating Data (9)
Theme 17. Data Discrepancies (9)	Theme 18. Ethical Concerns in Testing (9)	Theme 19. Management of Ethical/Legal Concerns (9)	Theme 20. Decision-Making Model (5)
Theme 21. Factors in BOP Complaints (10)	Theme 22. Risk Management (10)	Theme 23. Managing Complaint Process (7)	Theme 24. Strengths/Weakness of Clinicians in Custody Work (9)
Theme 25. Short-Term/Long-Term Outcome Considerations (10)	Theme 26. Less Monetary Gain/Increased Regulation (5)	Theme 27. Improved Efficiency (5)	Theme 28. Training Recommendations (3)
Theme 29. Impact of CEs (8)	Theme 30. Role of Developmental Theory/Research (7)	Theme 31. Role of Child Assessment (8)	Theme 32. Coaching/Parental Influence (9)
Theme 33. Trauma Assessment (10)	Theme 34. Management of Suspected Abuse (9)	Theme 35. Meeting with Children (7)	Theme 36. Geographical Separation (7)
Theme 37. Testing One Parent (4)	Theme 38. Parental Considerations (10)	Theme 39. Inadvisable Joint Custody (7)	Theme 40. Incentives to Practice Custody Work (10)
Theme 41. Personal Qualities of Evaluators (10)	Theme 42. Preventing Burnout (10)	Theme 43. Tips in Navigating through Legal System (10)	

### Higher Order Themes

The finalized list of 43 Specific Themes agreed upon by the primary researcher and two peer readers was then provided to the project's Committee Chair for review and guidance in formulating Higher Order Themes. The list of 7 Higher Order Themes is presented in Table III with a label representing the content tapped by the Specific Themes clustered within the Higher Order Theme. As can be seen in Table III, Higher Order Themes emerged that consisted of: (a) Law, Ethics, Guidelines (#1); (b) Parent Variables (#2); (c) Child Variables (#3); (d) Psychologist Variables (#4); (e) Testing (#5); (f) Literature (#6); and (g) Trends (#7). The Specific Themes that compose each of the Higher Order Themes are listed under each Higher Order Theme in Table III.

In Table III, the list of the seven Higher Order Themes is organized in an order that suggests that the way to think about child-custody evaluations is that they take place within legal and ethical guidelines that provide a structure for evaluating parent and child variables; are impacted by psychologist and evaluator variables, testing issues and literature to be applied to the evaluations; and trends in this field. As illustrated in Table III, the Higher Order Themes differ in the number of Specific Themes that comprise each Higher Order Theme. Evaluators varied among themselves in the number of Specific Themes that emerged in their interviews. Despite this variation in Specific Themes among the participating psychologists, all Higher Order Themes were present in some aspect in all 10 interviews.

**Higher Order Theme 1: Ethics, Law, Guidelines and Corresponding Quotes.** Eight specific themes were found associated with Higher Order Theme 1 regarding the

procedures and concerns evoked by issues specific to Law, Ethics, and Guidelines when conducting child custody evaluations. As can be seen in Table III, this Higher Order Theme included 8 Specific Themes. Specific Themes in this Higher Order category identified patterns in the consultation or citation of legal precedents in custody evaluations and an awareness that they are operating within a legal system in which complaints to the licensing board are a major risk.

**Higher Order Theme 2: Parent Variables.** Five Specific Themes were found related to Higher Order Theme 2 regarding how and what aspects of parents are appraised by custody evaluators in examining Parent Variables (see Table III). This Higher Order Theme reflects that in conducting a child-custody evaluation, these psychologists stressed the primary importance of assessing the parents, while being aware of possible parental influence on the children.

**Higher Order Theme 3: Child Variables.** Next, six Specific Themes were determined to be associated with Higher Order Theme 3 regarding the assessment of Child Variables in making custodial recommendations. These psychologist child-custody evaluators clearly felt that formal assessment of children is difficult, including issues of validity and procedures for assessment, mandatory reporting obligations, and a universal sense of responsibility when child trauma is an issue.

**Higher Order Theme 4: Psychologist Variables.** Seven Specific Themes were linked with variables related to the psychologist's personal experience of doing child-custody evaluations and are clustered in Higher Order Theme 4. Taken together, the themes in Higher Order Theme 4 reflect the

personal sense of responsibility, risks, and rewards that these psychologists find in child-custody evaluations.

**Higher Order Theme 5: Testing.** Given that all participants were psychologists, a specific focus on assessment issues unique to custody-evaluation work was reflected through 13 Specific Themes in Higher Order Theme 5. As can be seen in Table III, while there are many Specific Themes subsumed within the Higher Order Theme of Testing, what is clear is that these experienced child-custody evaluator psychologists report multiple complications and limitations in the application of formal assessment instruments to child-custody work.

**Higher Order Theme 6: Literature.** Two Specific Themes on use of scholarly research by custody evaluators was encapsulated by Higher Order Theme 6 on Literature. This Higher Order Theme reflects that these psychologists try to be aware of relevant literature related to child-custody work, but the direct application of that literature to recommendations is limited.

**Higher Order Theme 7: Trends.** Last, two Specific Themes were reflected in Higher Order Theme 7 on how psychologists anticipated that there will be changes in the way in which child-custody evaluations will be conducted as larger issues in health-care delivery.

TABLE III

SEVEN ASSOCIATED HIGHER ORDER THEMES WITH SPECIFIC THEMES LISTED FOR EACH (TOTAL NUMBER OF PARTICIPANTS EXPRESSING THE SPECIFIC THEME IS LISTED IN PARENTHESES)

Higher Order Theme 1. Law, Ethics, Guidelines		Higher Order Theme 2. Parent Variables		Higher Order Theme 3. Child Variables	
Specific Theme 4: Case Law (7)	Specific Theme 6: Use of Professional Guidelines (10)*	Specific Theme 10: Testing Parenting Variables (7)	Specific Theme 14: Determining Parenting (10)*	Specific Theme 31: Role of Child Assessment (8)	Specific Theme 33: Trauma Assessment (10)*
Specific Theme 19: Management of Legal/Ethical Concerns (9)	Specific Theme 20: Decision-Making Model (5)	Specific Theme 15: Defensive Clients (8)	Specific Theme 32: Coaching/Parental Influence (9)	Specific Theme 34: Management of Suspected Abuse (9)	Specific Theme 35: Meeting with Children (7)
Higher Order Theme 1. Law, Ethics, Guidelines		Higher Order Theme 2. Parent Variables		Higher Order Theme 3. Child Variables	
Specific Theme 21: Factors in BOP Complaints (10)*	Specific Theme 22: Risk Management (10)*	Specific Theme 38: Parental Considerations (10)*		Specific Theme 36: Geographical Separation (7)	Specific Theme 39: Inadvisable Joint Custody (7)
Specific Theme 23: Managing Complaint Process (7)	Specific Theme 43: Tips in Navigating through Legal System (10)*	Higher Order Theme 6: Literature		Higher Order Theme 7: Trends	
Higher Order Theme 4. Psychologist Variables	Higher Order Theme 5. Testing	Specific Theme 1: General Procedures (10)*	Specific Theme 2: Weighing Clinical/Legal Criteria in BICS (10)*	Specific Theme 5: Use of Forensic Literature (9)	Specific Theme 26: Less Monetary Gain/Increased Regulation (5)
Specific Theme 24: Strengths/Weaknesses of Clinicians in Custody Work (9)	Specific Theme 25: Short-Term/Long-Term Outcome Considerations (10)*	Specific Theme 3: Understanding of BICS (9)	Specific Theme 7: Use of Testing Measures (9)	Specific Theme 30: Role of Developmental Theory/Research (7)	Specific Theme 27: Improved Efficiency (5)
Specific Theme 28: Training Recommendations (3)	Specific Theme 29: Impact of CEs (8)	Higher Order Theme 5. Testing		Higher Order Theme 6: Literature	Higher Order Theme 7: Trends
Higher Order Theme 4. Psychologist Variables		Specific Theme 8: Application of Testing Measures (9)	Specific Theme 9: Testing Weaknesses (10)*		
Specific Theme 40: Incentives to Practice Custody Work (10)*	Specific Theme 41: Personal Qualities of Evaluators (10)*	Specific Theme 11: Best Testing Measures for Custody Evaluations (9)	Specific Theme 12: Less Credible Testing in Custody Evaluations (7)		
Specific Theme 42: Preventing Burnout (10)*		Specific Theme 13: Custody Population Patterns (5)	Specific Theme 16: Integrating Data (9)		
		Specific Theme 17: Data Discrepancies (9)	Specific Theme 18: Ethical Concerns in Testing (9)		
		Specific Theme 37: Testing One Parent (4)			

*Note.\** Items marked with an asterisk reflect a Universal Theme that was expressed by all evaluators in the interviews conducted in this study's sample.

TABLE IV  
UNIVERSAL SPECIFIC THEMES WITHIN EACH HIGHER ORDER THEME

Specific Theme Number with Label/Descriptor	Associated Higher Order Theme of Universal Theme				
	Higher Order Theme 1: Law, Ethics, Guidelines	Higher Order Theme 2: Parent Variables	Higher Order Theme 3: Child Variables	Higher Order Theme 4: Psychologist Variables	Higher Order Theme 5: Testing
6: Use of Professional Guidelines 21: Factors in BOP Complaints 22: Risk Management 43: Tips in Navigating through Legal System	14: Determining Parenting 38: Parental Considerations	33: Trauma Assessment	25: Short-Term/Long-Term Outcome Considerations 40: Incentives to Practice Custody Work 41: Personal Qualities of Evaluators 42: Preventing Burnout	1: General Procedures 2: Weighing Clinical/Legal Criteria in BICS 9: Testing Weaknesses	
Content of Universal Specific Theme	All agreed that a significant problem is complaints to the BOP, thus risk management through the use of guidelines is critical. They all had tips for navigating through the Legal System.	The ultimate outcome issue is determining parenting through quantifiable and unquantifiable considerations in providing recommendations.	All agreed that a significant issue is assessing when trauma is a concern, while focusing on observational methods for child assessment due to methodological limitations.	All agreed that the incentives to practice Custody work have to be balanced against potential burnout, sense of commitment to the welfare of children, and the personal qualities of the psychologist.	All agreed that there are general procedures to follow, and that it is essential to be aware of the weaknesses of tests in custody work, and to be specifically aware of Clinical/Legal criteria with the BICS.

TABLE V  
NARRATIVE OF UNIVERSAL THEMES

Law, Ethics, Guidelines	Parent Variables	Child Variables	Psychologist	Testing
A) Consult Professional Guidelines to mitigate risk and establish standard of care B) Reduce issues that may lead to perceived bias C) Establish consistent protocol for risk management D) Maintain good professional working relationships in court through establishing competency	A) Consider attachment bond as well as personality qualities/abilities regarding caretaking B) Assess potential risk factors that may negatively impact child's environment such as psychopathology and substance use	A) Understand mandated reporter duty regarding suspected abuse B) Utilize behavioral, interview, and collateral data to assess for trauma	A) Be attuned to various iterations of outcomes for all parties involved in the evaluation B) Maintain a perspective on positive aspects of custody work C) Maintain a balanced view of self with a diverse set of professional and personal interests	A) Procedures to include both behavioral, formal tests, and collateral data B) Need to understand legal criteria and reason for referral C) Recognize limits of psychological tests in understanding parenting and lack of norms for population

#### Universal Specific Themes

Noteworthy, as indicated in Table III, 14 of the 43 Specific Themes were found in all 10 interviews, and were, thus, universally represented among the sample of custody evaluators in this qualitative study. The discovery of these Universal Specific Themes was found to be consistent following two reviews by the principal researcher and the project Committee Chair to ensure validity and reliability of the findings. These 14 Universal Specific Themes are presented under their Higher Order Themes in Table IV. All of the child-custody evaluators expressed four of the same Specific Themes under Higher Order Theme #1, two of the same Specific Themes under Higher Order Theme #2, one common Specific Theme under Higher Order Theme #3, four of the same Specific Themes under Higher Order Theme #4, and three of the same Specific Themes Higher Order Theme #5.

A pictorial representation of the progression of the five Universal Specific Themes is provided in Fig. 1 of the procedural framework, risk management, and issues encountered in assessing variables relevant to the custodial recommendation. The pictorial representation illustrates the relationship between each of the five Higher Order Themes that contain the 14 identified Universal Specific Themes and their impact on each other. These 14 Universal Specific Themes provide a helpful summation of the most salient factors in establishing a local model for the standard of care,

procedural considerations in mitigating risk, and a general profile of clinicians perhaps most equipped for this forensic subspecialty. This illustration offers a fundamental understanding of approaches, concerns, and tips that were found consistently among psychologist custody evaluators, but does not provide all of the specific details or other important factors that were also found thematically throughout the transcripts and that can be found in Table III, where the Specific Themes have been clustered to reflect overarching Higher Order Themes.

#### V. DISCUSSION

##### A. Summary of the Study and Findings

The purpose of the study was to apply qualitative methodology to understand how experienced local child-custody evaluators weigh clinical, practical, ethical, and legal factors in formulating their custodial recommendations. A specific focus was to examine general procedures and considerations of local psychologists when conducting a child-custody evaluation with regard to their use of formal psychological testing and other data-gathering methods to provide their recommendations to the family court. Another aim was to develop a practical risk management framework to help address concerns about the increased likelihood of having a complaint filed with the licensing board.

There were 43 Specific Themes that were extracted from the interviews of the 10 participating psychologists. It is



noteworthy that 14 of the 43 Specific Themes (approximately one-third) were expressed by every one of the participating psychologists. Thus, there were a large number of specific issues that every one of these psychologists recognized as being important. These 14 themes are referenced as Universal Specific Themes and capture the issues that have become so significant for these psychologists that they have been embedded in the minds of every one of them and incorporated into their risk management approach, assessment procedures, and corresponding limitations and strengths in determining the BICS (specifically), as well as a perceived need to match certain intrinsic characteristics of clinicians with a balanced lifestyle to optimize their long-term sustainability in practicing in this subspecialty. Please refer to Fig. 1 for a pictorial representation of the progression of the Universal Specific Themes regarding the procedural framework, risk management considerations, and issues in assessment related to the determination of the custodial arrangement.

The first Universal Theme that emerged from the interviewed custody evaluators aids in understanding overarching professional concerns regarding risk management and how this is addressed through use of various organizations' guidelines (i.e., APA and AFCC), ethics code, and interactions within the family-court system. Specifically, all evaluators expressed an awareness of the attenuated risk and ease of having a licensure complaint filed with the BOP that was linked to the perceived litigiousness of the client population and heightened stress of the circumstances prompting such an evaluation (Universal Specific Theme #22). One might think that the legal concept of "best interest of the child" would be the predominant, universal theme. What these experienced psychologist child-custody evaluators expressed was that personal threats (in the form of a complaint to the psychology board) is an ever present concept in the minds of every one of them.

Perceived bias (Universal Specific Theme #21) by the parties involved in the custody evaluation was cited across all evaluators as one of the primary factors prompting a complaint being filed with the BOP. All expressed a need to mitigate their risk through providing a balanced approach in the evaluation, which was endorsed universally as a focus in their procedures (Universal Specific Theme #22). In addition, they all described familiarity with, and at least consultation of, professional guidelines set forth by at least one of the organizations on child custody issues (Universal Specific Theme #6). Nevertheless, adherence to professional guidelines was not universally endorsed across evaluators as all discussed their awareness of how these documents serve as merely a guide and not necessarily a standard or expectation (Universal Specific Theme #6). Moreover, preferences for either the APA or the AFCC guidelines varied due to expressed awareness of the differing levels of specificity regarding issues particular to the nature of the custody evaluation (Specific Theme #21). Although psychologists varied in the perception of their view regarding the legitimacy and fairness of complaints filed with the licensing board, all endorsed a sense of concern regarding evaluators' limited recourse during the period of investigation

by the California state licensing body (Universal Specific Theme #22). Thus a need for accurate and thorough documentation, as well as adhering to at least the most crucial aspects of the ethics code, was endorsed as the best form of risk management (Universal Specific Theme #22). In addition, all evaluators offered advice that successfully navigating through the legal system as a mental-health professional may be achieved through maintaining a humble attitude with the legal representatives of the parties, professional practice experience, and maintaining collegial relationships (Specific Theme #43).

The second area of emphasis for these psychologists addressed parenting issues (Higher Order Theme 2). The Universal Specific Themes shed light on the considerations that evaluators make in determining parenting variables that may affect the child and, ultimately, the custodial arrangement. Findings indicated that evaluators were particularly focused in the assessment on ruling out negative variables such as substance abuse and psychiatric pathology that may be detrimental in child's environment as one of the major factors in determining parenting (Universal Specific Theme #14). Further, the psychologists all acknowledged that assessing parenting style, parent's personality, and behavioral observations made during the psychologist's interaction with the child as well as from collateral witnesses were cumulatively utilized as means to determine the quality of parenting (Specific Theme #14). Similarly, all participating psychologists suggested that the most crucial criteria in presenting custodial recommendations regarding the issue of parenting centered on basic parenting skills, judgment, quality of the attachment relationship, and attunement to their child's developmental needs (Universal Specific Theme #38).

According to these mental health professionals, a deep commitment to promoting the best interest of children and families is at the forefront of their motivation to practice in this subspecialty area (Universal Specific Theme #40) and attempting to consider the best possible outcomes for the parties (Universal Specific Theme #25). Further, all acknowledged the potentially lucrative nature of custody work; however, they alluded to how, in their perspective, this compensation was not always on par with the stressful nature or number of hours of work that such an assessment typically involves (Universal Specific Theme #40). These psychologists universally emphasized how professionals best suited for practice in the field of custody work would need to be child focused in their conceptualization, resilient (i.e. "thick-skinned"), not easily intimidated by others, balanced and open-minded in weighing of various perspectives, as well as thorough and persistent in their work ethic (Universal Specific Theme #41). Furthermore, when asked about their opinions for mitigating burnout, all 10 evaluators responded similarly (Universal Specific Theme #42) regarding ensuring balancing personal interests with clinical work and seeking colleague support. While these would appear to be good recommendations for all psychologists, they may be especially crucial for those who conduct child-custody evaluations if they are to withstand the personal vulnerability this work

involves. Last, these psychologists reported a focus on having developed an idiosyncratic procedural approach that generally had minimal deviation between each child evaluation by which they attempted to minimize bias (Universal Specific Theme #1). All participants discussed a large focus on their procedures that were routinely documented in conducting a child-custody evaluation as consisting of collecting background data from both parents, collateral sources, and thorough interviewing and observation regarding information about the parent-child dyad (Universal Specific Theme #1). They all also stressed the importance of recognizing limitations with the BICS (Universal Specific Theme #2) and limitations with standardized testing in general (Universal Specific Theme #9).

In sum, the Universal Specific Themes provide an overview of child-custody evaluation experiences that are shared by every one of these seasoned psychologists who practice within this forensic subspecialty. Despite all having stated an awareness that they are operating in an ethical/legal arena in which they have legal protection from court action, they acknowledged being at undue risk for licensing board complaints from litigious individuals who may feel that they have not been treated properly. Consequently, in attempting to do their work, these psychologists indicated use of their own customary procedures taking into account limitations of available standardized instruments. Although all psychologists in this sample indicated how they pay attention to professional guidelines and ethics codes, they reported that these do not provide sufficient bases for the work that they do. In particular, all psychologists discussed their attempt to assess parenting variables as the universal focus of their child-custody work. Yet, the universal concern in regard to the child involved in the evaluation was in assessing possible issues of trauma. Last, in order to do this high-risk and stressful work, psychologists conducting custody evaluations have to be especially mindful of their motivation for remaining in this role (i.e., commitment to the welfare of children and families) while balancing self-care activities to ensure that coping resources do not exceed task demands

#### *B. Ethical, Legal, and Professional Issues as an Evaluating Psychologist*

One of the major findings of this study suggests a high prevalence of complaints being filed with the licensing board for clinicians conducting custody evaluations. The data provided in the demographic questionnaire (see Table I) by the evaluators in the current study reflect that the experience of having a licensure complaint filed against the practitioner is common. That is, 70 % of the evaluators in this study have had at least one licensure complaint filed against them. In addition, psychologists openly discussed their varied adherence to any of the guidelines (i.e., APA or AFCC) in their custody procedures. Although all clinicians acknowledged how such documents provide a generic template, they also stated that ultimately these organizations provided non-mandatory recommendations.

#### *C. Salient Factors in Conducting a Child Custody Evaluation*

The perception of bias by litigants was universally cited as the overarching factor that contributed to complaints being filed with the licensing board. An empathic and open-attitude that is balanced with fairness were noted as essential components to being a successful custody evaluator and may even be considered a way of mitigating risk.

The necessity to develop idiosyncratic risk management procedures was universally reported by psychologists in this study given the potential for licensing complaints and malpractice suits. These psychologists all discussed the need to thoroughly document procedures, data gathered, statements made by all parties, as well as contacts with those evaluated and the legal teams. Further, participants expressed that they began their procedures by clearly conveying the limits of confidentiality, ex parte communication policies, and payment arrangements. These psychologists opined the need to create an equitable distribution of time between each of the evaluatees to reduce the perception of bias that, in their experience, frequently preempts complaints being filed by clients with the licensing board. Last, evaluators emphasized the need to adhere to a multiple data framework as well as refrain from extrapolating from a single data point in making custodial recommendations.

Given the likelihood of encountering ethical and professional risks in conducting a child-custody evaluation, concerns regarding reducing the potential for burnout were universally discussed by psychologists in this study. As suggested by the current study's participants, and corroborated by Pickar [18], evaluators are likely to benefit from regularly consulting with colleagues or attending a consultation group to discuss their cases so as to reduce the risk of bias and ensure that the best interest of the child is upheld.

Interestingly, clinicians in the current study discussed areas of consideration in their ability to project crucial short-term and long-term outcomes based on the determination of the custodial arrangement. Many cited limitations in their ability to make ultimate determinations regarding the likely outcome for a child due to how each evaluation was perceived as a case study with numerous factors that could contribute developmentally.

#### *D. Psychological Assessment within the Context of Child-Custody Work*

In the current study it was found that there is indeed a lack of standardized methodological approach among evaluators sampled. While all participating psychologists were well-versed in their understanding of the various professional guidelines and viewed their applicability as generic enough to apply in their clinical work, they simultaneously acknowledged that a standard of practice is perhaps more nebulous. Even though the common practice within the field of custody work remains consistent with the spirit of a multi-method data-point framework that is utilized in other forensic subspecialties. Although beyond the scope of this research, but alluded to by participants, it appears that a certain tolerance of

ambiguity, confidence in one's level of professional competence, and being "tough-skinned" is essential to succeeding as an evaluator. Indeed this would be a prerequisite as scholars in the field of child custody research have opined that there are "probably as many different ways to perform observations as there are evaluators" [19, p. 159], [20].

#### E. Limitations and Directions for Future Research

An inherent limitation of the study was the convenience and snowball approach to the selection of the sample that likely impacted the diversity of the practitioners represented and perhaps may limit the generalizability of findings. This may have impacted the findings of this study as the procedures and characteristics of the evaluators in this study may be different from other clinicians who may not share a similar professional association.

Another limitation of the study was the requisite criteria for inclusion. Since evaluators were required to hold a doctoral level degree (i.e., Ph.D. or Psy.D.) in psychology, the practices of other mental health professionals who also conduct child-custody evaluations were not examined. That is, the findings from the current qualitative study regarding procedures and salient risk management issues that were described by the participants may not reflect that of other practitioners approved to conduct such evaluations. In addition, since evaluators were selected only from one county in California, participants were likely to be similar, including exposure to training opportunities. Therefore, it is unknown as to the degree of influence that being in geographic proximity to each other may have had on participating evaluators and, thus, procedures described may represent the aggregate and collective effect of these experiences.

Another major limitation of the study is that participants may have been unknowingly biased by the demographic questionnaire that was sent via mail prior to the scheduled interview. Moreover, while the smaller number of clinicians to be sampled for the study (i.e.,  $n = 10$ ) allowed a more in-depth understanding, the themes to be revealed should not be considered exhaustive of all potential issues in providing custodial recommendations.

A significant methodological limitation of this research study is that information on all psychologists regarding their child-custody evaluation practices was done via self-report during the semi-structured interview. Gathering data via self-report is known to be prone to several issues, given that clinicians may not have depicted their practices accurately or made omissions.

Future research may perhaps be best served by aiding in the development of a more standardized approach to custodial work through conceptualizing a clear standard of care through common practices in the field. To date, two studies have attempted to examine empirically the procedures utilized in child-custody evaluations by reviewing volunteered reports from clinicians [21], [22]. Perhaps future research endeavors should focus on looking at qualitatively examining patterns of practice in the writing of forensic reports.

Yet another potential area may be determining how to quantify parental fitness and the child's future well-being to arrive at the most reasonable custodial arrangement. This, in turn, may be utilized to develop a list of ideal parenting behaviors, and how to assess for such traits through a battery profile may assist the judge in setting the best custodial arrangement.

Due to the litigious nature of custody work, additional research on understanding factors and dynamics that may lead to ethics or board complaints are noteworthy considerations. Clinicians in this study discussed this as a concern and suggested the role of perceived bias by those evaluated as a potential factor in such an outcome. Whether such complaints are promulgated by interpersonal dynamics and countertransference is an area that has remained unexplored [18], [23]. Furthermore, whether there are personal characteristics or professional inclinations that make certain clinicians a better fit for this forensic subspecialty is a worthy topic of investigation. As discussed by Pickar [18], evaluators are likely to experience any number of personal threats from an angered parent that may include harassing telephone calls, violation of personal property, or other more egregious violations of their sense of safety.

In conclusion, clinicians would benefit from undertaking research endeavors that investigate more fully the relationship between specific test variables, evaluation methodology, and scientifically linking them to parent and child attributes to formulate the best custodial arrangement. Given the long-term impact that such custodial recommendations may have on the lives of all members of the family involved, perhaps additional research that may highlight practice procedures for evaluators will simultaneously validate and clarify the complexities that mental health professionals must encounter in this forensic subspecialty.

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