A key component of consultation and expert witness testimony involves the critique of the child custody evaluation report. As we have stated, but it cannot be said enough or clearly enough, a child custody evaluation is a forensic work product, not a clinical work product. Thus, the approach to the review and critique of the child custody evaluation must also be done in forensically informed and forensically sound. In other words, one applies a forensic mindset and a forensically informed method of hypothesis testing and inference making to the critique in the same way that one applies this mindset and methods to the evaluation itself. Thus, a competent and skilled reviewing expert will follow the same protocol as was described in Chapter 4 with relation to designing the evaluation itself. Just like the child custody evaluator needs a process for performing and completing an evaluation, so must the reviewing expert employ such a forensically-informed process.

For example, the reviewing expert will focus on the strengths and weaknesses of the work product, the strengths and weaknesses of the parenting plan(s) offered, the strengths and weaknesses of the nexus between the data gathered and the


recommendations offered, the strengths and weaknesses of how psychological testing was used and so forth. This chapter will outline a preferred technique for this critique.

Key Components of a Well-Done Child Custody Evaluation

Before considering the process of the critique, one must understand the components of a well-done child custody evaluation. A thorough, comprehensive child custody evaluation process always includes at least the following²,³:

- Adequate informed consent (assent) with each parent, with children, and with all collateral witnesses⁴. The consent/assent explains, minimally, the process of the evaluation, the parent’s need to share relevant information, the limited scope of confidentiality in the custody evaluation process, who the evaluator’s client is (the Court), the components of the evaluation and risks and benefits from participating. The evaluator’s fee and financial policies should be detailed in the consent/assent document used by the evaluator. With regard to children, it is important that you explain to them in a manner that they can understand, that they do NOT need to participate and answer questions if they do not want to and that, if they do not understand the evaluator’s questions, they should never guess at the right answer. For children between the ages of 3-7, the evaluator should be especially mindful of the influences of receptive and expressive language development in the evaluation process.

- Several interviews with each parent that addresses the following:

⁴ See e.g., AFCC Model Standards
o Each parent’s views of the major issues in the case

o An in-depth understanding of each parent’s concerns and allegations and each parent’s responses to the other parent’s concerns and allegations

o Each parent’s views of their own, and the other parent’s strengths as a parent

o Each parent’s views of their own, and the other parent’s weaknesses as a parent

o Each parent’s views of the level of cooperation (or lack thereof) and communication between the parents

o Each parent’s views of the nature and strength of support of the children’s relationships with the other parent and whether or not the other parent is supporting their relationship with the children

o Each parent’s views of how the parents historically handled conflict in their relationship, and how it has been handled since separation

o Each parent’s views of whether or not there have been elements of abuse, violence, coercive control, psychological abuse, emotional abuse, verbal abuse, etc. during the relationship, and, if there has been such abuse or violence, if there has been any change in that behavior leading up to or since separation

o Each parent’s perceptions of their children, their children’s individual psychological, emotional, academic, and social functioning; whether or not any of their children have unique or special needs; and how each parent perceives that they support the children’s functioning and needs
- Each parent’s perceptions and thoughts about what the children need moving forward
- Any other unique issues particular to the case, such as:
  - In a relocation case, understanding\(^5\):
    - Evidence that the child custody evaluator has had relevant continuing education and training in conducting relocation evaluations
    - Each parent’s understanding of the motives for wanting to move and the motives for wanting to prevent the move.\(^6\)
    - Each parent’s ideas of the parenting plan that is in the children’s best interests assuming the move takes place, and if the court does not allow the move
    - Each parent’s ideas about the logistics of any travel plans if the parents live apart so that the distant parent can see the children, i.e., who will be traveling, how, who will pay for it, etc.
    - Unless you are in a jurisdiction that prohibits asking (such as California), understanding each parent’s position on what


\(^6\) We understand that some jurisdictions do not consider the motive for a relocation unless it is demonstrated that the relocation is primarily intended to interfere with the children’s relationship with their other parent. Nevertheless, how the parents understand their own motives and the motives of the other parent is useful information for the custody evaluator.
he/she might do if the court prohibits or allows the children to move

- In the event of a proposed international move, any specific questions relevant to language, culture, abduction risk\(^7\), or other internationally relevant issues relevant to the case
- Each parent’s ideas of how he/she will promote the children’s relationships with the distant parent in the event that he/she is the primary parent
- Each parent’s description of how the other parent has historically supported and promoted the children’s relationships with that parent
- Assuming a child old enough to have thoughts about it, evidence that the evaluator explored the children’s views about moving vs. not moving
- A risk–benefit analysis of the advantages and disadvantages of primary mother-custody in one location and primary father-custody in the other location
- Clear evidence that the evaluator has considered all relevant psychological and case or statutory law factors relevant to the case and the jurisdiction

\(^7\) Abduction risk is a significant issue to consider in proposed international relocations since many countries are not signers to the Hague Convention. For more information, see, e.g., Stahl, Philip M. (2013).
• Suggested parenting plans depending on the outcome of the case (i.e., children move with moving parent, children don’t move and parent moves, both parents in same location)

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• Multiple interviews with each child, conducted at an age-appropriate level, to try and understand⁸:
  o Each child’s views of themselves, their interests, their sense of self confidence and self competence (i.e., what they do well and what they do not do well), their friends, and their schooling
  o Each child’s views of family relationships, things they like and don’t like about other family members; who they go to when they are sick, hurt, or afraid; and any special or unique aspects to their relationship with each of their parents
  o Each child’s views of how they manage things emotionally, their typical moods, and some description of things that make them angry, afraid, sad, happy, etc.
  o To the extent they have an opinion and want to share that opinion, each child’s views of how they want to spend time with each of their parent’s moving forward, and why
  o Anything else that is unique to the case or that the child wants the evaluator (or the judge) to know

• Observations of parents and children together

• If psychological testing or parenting questionnaires are administered, they must be administered in a quiet room, with privacy, and following the appropriate test instructions.\(^9\)

• Collateral review of information provided by parents and / or their attorneys. In most jurisdictions, all material submitted to the child custody evaluator by one attorney needs to be copied to the other attorney. In some jurisdictions, both sides must agree in advance of sending it to the evaluator, and, if they can’t agree on what material the evaluator will be given, the court will usually be asked to rule.

• Collateral contacts\(^10\), often by phone and sometimes face-to-face, with relevant collateral resources who have knowledge of general or specific information about the family. According to Austin and Kirkpatrick\(^11\), these resources often fall into 3 different distinct categories, as follows:

  o Friends and family who typically have a relationship with one or more persons in the family and who have significant experience observing family relationships. The primary benefit of gathering information from these persons lies in the richness of their information. The primary risk of gathering information from these persons lies in their strong tendency to be biased in favor of one side or the other.

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o Professional or semi-professional persons who typically have an opportunity to observe one or more family members in a unique setting. Members of this group may include teachers, daycare professionals, nannies, physicians, therapists, visitation supervisors, coaches, karate teachers, music or art teachers, and others who have a specific relationship. The primary benefit of gathering information from persons in this group lie in the many observations of children or adults across a spectrum of issues being evaluated. Given their role, there is less of a risk that these persons will be biased. The primary risk of gathering information from some of these people is relying too heavily on their experiences, since they have limited opportunities for understanding the family and family relationships.

o Individuals who have a unique relationship with one or more persons in the family. These may be people who have experienced a one-time event, such as an observation at an exchange, and who have very specific information about that one-time event. Their value is limited to gathering information about that specific event. Generalizing from such information may be difficult.

- A comprehensive report\textsuperscript{12} of at least reasonable length, that includes the following:
  
  o Evaluation process, including how much time the evaluator spent in various components of the evaluation

• Critical and relevant information gathered from the parents, children, and collateral witnesses, especially information pertaining to the particular scope of the evaluation as directed by the court in the order appointing the evaluator.
  • If psychological testing was completed, the results of the testing and an explanation of how the test results were considered in formulation of the conclusions
  • A description of limitations, if any, associated with the lack of information the evaluator wishes they had but does not have.

  A section in the report which identifies the evaluator’s analysis of all the data, an analysis of the various custodial options available, an identification of the data that supports and data that does not support the conclusions, a clear statement of conclusions, including information that may be unclear, and, to the extent requested by the court and to the extent that the data allows, clear recommendations consistent with the Best Interests of the Children.

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