THE PLACE FOR CUSTODY EVALUATIONS IN FAMILY PEACEMAKING

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Custody evaluations can serve the dual purpose of providing neutral, objective information to the court while also contributing to the possibility of earlier settlement, which coincides with the therapeutic jurisprudence goal of more positive outcomes for children and families. Research suggests that most cases settle after custody evaluations. However, most of the literature is focused on the use of custody evaluations for litigation. Evaluators, attorneys, and mental health consultants can influence parents to focus more on children's needs and less on their conflict as they go through the evaluation process. This article urges family courts to develop processes and require professionals to learn skills needed for an interdisciplinary process to utilize evaluations in peacemaking.

Key Points for the Family Court Community:

- All custody evaluation processes should aim to reduce and/or shorten children's exposure to parental conflict.
- Evaluators, attorneys, and mental health professional consultants should use the evaluation process to influence parents to be more aware of their children's needs and less invested in their adversarial positions.
- Evaluators should learn to write and orally present information and state opinions with consideration of the parents themselves as consumers of the custody evaluation as well as the court.
- Attorneys and mental health professional consultants should help clients review the report, process their emotional reactions, and consider their options for settlement versus litigation in terms of emotional and financial costs to the family.
- Court processes should be developed to contain the time and cost of custody evaluations and provide dispute resolution after custody evaluations.

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INTRODUCTION

After 25 years of doing custody evaluations, I still struggle with how evaluations might contribute to peace between parents and a better future for children. My professional journey to become a custody evaluator started when the results of my postdoctoral research in England, similar to many other studies, showed the biggest predictor of poor adjustment for children of divorced parents was their exposure to parental conflict. Off I went to become a mediator because the logical step to help these children was to resolve parental conflict as quickly as possible. When I returned to Los Angeles in the early 1980s, the family law court was moving away from using dueling mental health experts and urging both parties to use a joint neutral custody evaluator. I saw using neutral custody evaluations as a way for courts to focus more on children's needs and help solve problems in the family and less on parents' anger and desire to win in court. I learned that evaluations could play a role in peacemaking because most cases settle after a custody evaluation, but little has been written about how or why. All family law professionals should be challenged to develop the knowledge and skills for using custody evaluations in the parallel tracks toward probable settlement by parents themselves and possible decision by a judge.

Babb (2014a), using the framework of "therapeutic jurisprudence," writes that family law processes must focus on outcomes that positively affect and even improve the lives of individuals, children, and families. We now have a large body of research pointing to ways to promote better adjustment for

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children after parents separate (Kelly, 2012), which can be used to guide parents and family law professionals working with them. Parent education materials listed on www.afccnet.org, such as www.UpToParents.org and www.divorce-education.com advise parents to manage their conflict and keep children out of it, support children's attachments to both parents, set up a stable parenting schedule as soon as possible, and communicate and make decisions together about their children's needs.

Separating parents caught up in their own emotional turmoil have difficulty taking these steps to becoming a new kind of family. Parental insightfulness goes down with the stress of parental conflict and in turn is associated with poorer parent–child attachment (Oppenheim & Koren-Karie, 2012). Children suffer because their parents' mental health and practical parenting deteriorate in the aftermath of separation and is made worse by prolonged conflict (Kelly, 2012). Parenting programs, such as those listed on afccnet.org, and research-based self-help books for divorcing parents (Emery, 2005) counsel parents on understanding how their anger toward each other during separation can make it difficult to see the needs of their children.

Custody evaluations can play a part in the therapeutic jurisprudence goal of positive outcomes by shortening conflict and focusing parents more on their children's needs. The primary purpose of custody evaluations is to provide objective, neutral information and expert opinions to the court when there are allegations of physical or emotional harm to the child. However, in a significant number of these cases, the issue is more about conflict between the parents than actual danger to the child. Although research (Bow & Quinnell, 2004) suggests that referral by judges and attorneys for custody evaluations was primarily because of allegations of child abuse or mental instability of one parent, the third most important reason (35.4% of judges and 33.85% of attorneys) was negotiating/resolving the dispute. Because an uncertain percentage of evaluation cases result in no support for allegations of child abuse or mental instability of a parent, probably an even larger percentage of cases fall into the category of parental "high conflict" as the primary problem.

In her article in this Special Issue, Coates (2015) points out that in high-conflict cases we are trying to intervene with one or both parents who have rigid, polarized beliefs. Eddy (2006) says it is possible to help these high-conflict personalities involved in legal disputes by providing them with bonding, structure, reality testing, and consequences in a united approach. Attorneys and mental health professionals with a peacemaking mindset can use custody evaluations throughout custody cases to move these high-conflict parents with rigid, self-interested beliefs toward focusing more on their children's needs.

Whatever good a custody evaluation brings to a family may come at a high cost. Custody evaluations are intrusive, expensive, and may actually lengthen the family's involvement in the court system. There may be increased pressure on children who will be interviewed to align with one parent and become distanced from the other parent (Johnston & Roseby, 1997). Child-focused conflict, which is the essence of a custody dispute, is one of the biggest predictors of poor adjustment for children after divorce (Cummings & Davies, 1994; Emery, 1994). Attorneys and mental health professional consultants working on custody cases should help parents carefully consider whether a custody evaluation is appropriate and take steps to reduce these ill effects.

In custody evaluations, the parties' positions about requested physical and legal custody arrangements and the perceived faults of the other parent can become sharply focused and strengthened. The attention during the evaluation to parents' allegations against each other and the forming of a tribe of legal and mental health professionals who show support for the parent's position during the evaluation process, followed by the win–lose result in a litigated hearing, may further polarize parents' negative feelings toward each other and worsen the conflict (Johnston & Campbell, 1988).

In the litigation model, the custody evaluation report may only be a step in the prolonged conflict. In contrast to the lack of attention given to the use of evaluations in settling cases, we have emerging literature on mental health consultants who aid attorneys and clients in preparing for custody litigation and evaluations and who testify to critique evaluations in litigated hearings (Kaufman & Lee, 2011; Stahl & Simon, 2014). For the parents that are able to afford competing experts, litigation may be more intense now than when I entered the field 25 years ago.

Mosten (2009) calls for attorneys to be peacemakers who move away from a rights-based advocacy model to restoring or creating harmony in the family, eliminating or reducing threats and blame,

and focusing on negotiation and problem solving. I am calling on custody evaluators and mental health professional consultants to be peacemakers as well. Attorneys and mental health professional consultants can influence better parenting and co-parenting as part of preparing parents for evaluations. Custody evaluation reports can be written for the parents themselves to read and consider, as well as satisfy the forensic requirements for use by the court. Just as much attention should be given to postevaluation mediation and settlement conferences as for litigation. Many have written eloquently about research showing the direct and indirect negative effects on children of protracted litigation (Emery, 1994; Kourlis, Taylor, Schepard, & Pruett, 2013). Custody evaluations as a step leading to even grudging agreement by the parents may be preferable because it shortens the time the family is involved with the court and because research shows that parents comply more with their own agreements than court-imposed custody orders (Emery, 2004; Kelly, 1996).

I propose that the use of custody evaluations in the next 25 years be very different from the way they have been used in the last 25 years. Family courts should develop processes based on research showing that custody evaluations can contribute to parents making their own decisions for their children. Family law professionals should increase the possibility for a positive outcome for families by identifying ways of using custody evaluations to have an impact on the parents' attitudes and behavior that will help their children, consistent with the goals of therapeutic jurisprudence. To do so requires court processes that approximate the interdisciplinary "united approach" that Eddy (2006) suggests will help high-conflict people.

RESEARCH ON CUSTODY EVALUATIONS AND SETTLEMENT

As courts were grappling with the onslaught of custody cases in the wake of no-fault divorce in the 1970s, custody evaluations probably developed around the same time as mediation (Kelly & Ramsey, 2009). Mediation has evolved into one of the most frequently provided family court services (Babb, 2008) with well-done research on the process and outcomes (Emery, Sbarra, & Grover, 2005; Kelly, 1996). In contrast, there is very little empirical research on how custody evaluations are done or how useful they are in their defined purpose of providing information and expert opinions to judges who make orders (Kelly & Ramsey, 2009).

What research we do have suggests custody evaluations are done for a small percentage of custody cases, and are used in trial by an even smaller percentage. In the frequently used "tiered" model of resolving custody disputes described by Salem (2009), parents must first attend mediation and if they cannot decide about arrangements for their children, proceed on a path toward the judge making the decision for them, which may include an evaluation. Nationally, the actual number of cases that go before a judge is estimated to be between 6 to 20%, and the percentage of custody evaluations done is unknown (Krauss & Sales, 2000).

Custody evaluations do appear to lead to settlement (Austin, 2009; Bow, Gottlieb, Gould-Saltman, & Hendershot, 2011; Maccoby & Mnookin, 1994), which probably means they shorten the length of time the family is actively involved in litigation. Maccoby and Mnookin's (1994) landmark large-scale study on 1,100 families, who went through the court system, showed that approximately 75% of the cases that had custody evaluations were settled before trial. This suggests that family law courts and professionals should use the evaluation process as much to prepare for settlement as they do to prepare for an actual hearing before a judicial officer.

HOW CUSTODY EVALUATIONS MAY LEAD TO POSITIVE CHANGE AND SETTLEMENT

I believe family court reform for using evaluations to help settle cases should be guided by theory and research from social psychology that can point to ways of influencing people in conflict to cooperate. The theoretical framework of social power (Raven, 1992; Taylor, Peplau, & Sears, 2006) has

been used to research how organizations and groups impact individuals. Power, as defined in this framework, is simply an attempt to influence attitudes and behavior.

For settling custody disputes, the attempt should be to influence the parents to modify their polarized positions to make agreement possible and behave in accord with agreements or orders. Review of the literature on custody evaluations suggests three bases of Power/Influence that might contribute to settlement based on custody evaluations as they have been done in the last 25 years. Legitimate Power corresponds to the power of the court to give parents orders about how they should behave in regard to their children. Expert Power corresponds to how an expert's opinion about what is best for their children may affect the court's orders and the parents' attitudes and behavior in complying with court orders. Informational Power corresponds to the court using objective information in the court's opinion and the parents themselves using information to decide what is best for their children.

LEGITIMATE POWER

A custody evaluation may influence parents to settle because of the possible weight a judge may give the recommendations. Johnston and Roseby (1997) reported judges' orders are in accord with custody recommendations in about 85% of cases. Among the hypotheses Kelly and Ramsey (2009) call to be included in system research on custody evaluations is, "Upon completion of a custody evaluation and/or high-quality custody evaluation, parents will be more likely to reach a non-court-imposed settlement than if no custody evaluation is done and/or the custody evaluation is poorly done." The underlying logic is that parents, when confronted with a third-party, objective report (especially a high-quality report that a judge reviews) will be motivated to settle because they are better able to predict the outcome of a trial and want to reduce the trial transaction costs.

There is case law that a custody evaluator plays a quasi-judicial role, which has served as a basis for immunity against suit not only for custody evaluators but also for mediators and other neutral dispute resolution professionals. In *Howard v. Drapkin* (1990), a suit against an evaluator was dismissed because the appeals court held that absolute quasi-judicial immunity is properly extended to neutral third parties, such as family law "arbitrators"[1] for performing dispute resolution services that are connected to the judicial process and involve (1) the making of binding decisions; (2) the making of findings to the court; or (3) the arbitration, mediation, conciliation, evaluation, or other similar resolution of pending disputes. The court noted the many benefits that alternative methods of dispute resolution convey upon the judicial process by providing less expensive and less stressful processes of resolution.

Tippins and Wittmann (2005) drew attention to weight often given to custody evaluations by the court and questioned the ethics of evaluators making recommendations about the "ultimate issues," given the lack of empirical foundation to opinions stated. They described four levels of inference made by evaluators. Level IV in Tippins and Wittmann's (2005) schema is providing specific custody recommendations, corresponding to Legitimate Power, which the authors see as unethical given the enormous impact on the parents and children involved and the lack of consensus as to uniform methodology and an underlying knowledge base that would meet criteria for standards of evidence.

Many others have questioned whether custody evaluations meet the standards of evidence based on quality of information brought to the court (Shuman & Berk, 2012). However, Bow and Quinnell (2004) found that 84% of judges and 86% of attorneys in their study believe recommendations should be made. More recent research with a national sample of family law attorneys showed that 64% of those surveyed supported evaluators making recommendations about custody and 79% supported recommendations about parenting time (Bow, Gottlieb, & Gould-Saltman, 2011). It appears that in the litigation model there has been broad support for evaluators making recommendations and there probably will be in the future. Even though the Legitimate Power of custody evaluation recommendations may contribute to settlement and reduce the time and expense of conflict, I believe other factors are more likely to impact the rigid, polarized attitudes of the parents.

EXPERT POWER

Clients may look to custody evaluators as experts on their children's best interests. For Expert Power to have an impact on attitudes, there must be acceptance of the claim of expertise (Taylor, Peplau, & Sears, 2006). It is vitally important that parents in conflict view the evaluator as neutral and unbiased, as well as expert, if the parents are to accept the evaluator's opinion about the needs of their children. Clients want their attorneys to be experts who guide them through their custody cases to get the best results. In a therapeutic model of jurisprudence, attorneys and their mental health consultants should be working from the beginning with the common goal of what is good for the family as a whole instead of focusing on winning their case. Attorneys should recognize that many clients in custody evaluations have rigid, self-interested attitudes that are not necessarily in keeping with their children's interests. The way clients are prepared for a custody evaluation, the way a custody evaluator is portrayed to them, and the way an evaluation report is discussed will have an influence on parenting and co-parenting and shortening the time of conflict.

Attorneys often prepare clients to be seen favorably by evaluators and the court. Because an evaluator's expert opinion should be based on the same research that forms the basis of parenting programs listed on www.afcc.org, attorneys should help clients understand they will be evaluated according to whether they live up to those goals for parenting and co-parenting. Hence, preparing for a custody evaluation may be an opportunity for attorneys and mental health consultants to educate parents and possibly help rigid, angry parents to move toward being more child-centered and open to communicating and negotiating with a co-parent. Kaufman and Lee (2011) describe the dilemma of the mental health consultant, who is advised to avoid shaping or exerting undue influence on the parent's participation in a custody evaluation. I believe influencing a client with a problem (such as addiction or depression) to get help or influencing a parent to be more cooperative in co-parenting during an evaluation can immediately help a child and probably lead to a better outcome long term, which should be considered ethical and consistent with the goals of therapeutic jurisprudence.

Tippins and Wittmann (2005) state that evaluators' expert opinions are often not supported by research. Levels II and III in Tippins and Wittmann's (2005) schema correspond to Expert Power. At Level II, the evaluator may state expert opinion about psychological constructs such as attachment and diagnosis. Level III involves the expert opining at an even higher level of inference on custody-specific constructs such as "best interest of the child" and "preferred parent" that have meaning within the legal framework the court may consider.

The expertise of custody evaluators in general and any one evaluator in particular can be questioned in regard to bias, qualifications, and knowledge base (Shuman & Berk, 2012). There have been attempts to deal with possible bias and increase the expertise of evaluators by advances in ethical guidelines and standards of practice and training to custody evaluators (American Psychological Association, 1994; Association of Family and Conciliation Courts, 2007). There is a growing literature aimed at giving custody evaluators a research basis for guarding against bias, analyzing information, and forming opinions (Kuehnle & Drozd, 2012), which presumably should increase confidence in the expertise of evaluators. Having standards that ensure equivalent procedures for both parents should increase confidence in an evaluator's neutrality. Family courts should help custody evaluators be seen as neutral experts on children's needs by developing standards for training of evaluators, methods for conducting evaluations, and ways to effectively communicate the results of evaluations.

How attorneys help a client review an evaluation report and view the evaluator will have an impact on whether that client will be influenced by the evaluation toward improved parenting, settlement, or further litigation. People are unlikely to easily accept an opinion that is not consistent with their attitudes and are likely to bolster their self-image by making a negative attribution about the source (Taylor, Peplau, & Sears, 2006). High-conflict people are overly emotional, use irrational reasoning, and are probably more likely to be negative about someone who does not agree with them (Eddy, 2006). An attorney working within the litigation model may find a ready audience for finding

flaws in the report and attributing bias to the evaluator when a report does not support a parent's position. Pickar and Kaufman (2013) suggest that attorneys assist their clients to understand and absorb the custody recommendations and the reasoning behind them, manage the parents' responses, and work with their clients about responding to make decisions based on the report. An attorney's mental health consultant, as a trusted expert, could play a valuable role in explaining an evaluator's reasoning and work with the client's emotional reactions to an evaluation report. Lee and Kaufman (2010) describe the use of volunteer mental health professional and attorney teams to help settle challenging custody cases after the submission of a custody evaluation, which gives another chance for mental health professionals to help clients process emotions.

Attorneys, other mental health experts, or the parents themselves can question almost any opinion from a neutral evaluator, especially because there is little information about the reliability and validity of custody evaluations (Kelly & Ramsey, 2009). For a small percentage of cases, one or both sides may hire mental health professionals to challenge or support custody evaluations and possibly give a countervailing expert opinion. Shuman and Berk (2012) state,

> With lack of judicial guidance, custody litigation has become an inconsistent endeavor, not only between jurisdictions, but within jurisdictions as well. Because of this inconsistency, many litigants choose such forum shopping and extending litigation in hopes the adverse party will either quit or choose to settle. A battle of privately hired experts typically ensues, leaving judicial determination based on equally compelling evidence (p. 572).

Certainly, there are cases where evaluators may get it wrong, be incompetent, or even be unethical, but family court processes should be modeled on the majority of cases where that is not so. I believe in a therapeutic jurisprudence model, attorneys and mental health consultants should help clients at least consider the evaluator's opinion about their children's needs and do a cost– benefit analysis about the impact on the child and family of further litigation to challenge an adverse custody evaluation versus pursuit of settlement.

INFORMATIONAL POWER

Social psychology research suggests that Informational Power, corresponding to Level I in Tippins and Wittmann's (2005) schema, is likely to have the most impact on the parents' attitudes and behavior. Judicial officers and attorneys want detailed information from custody evaluations (Bow & Quinnell, 2004; Bow, Gottlieb, Gould-Saltman et al., 2011). There has not been similar research on what custody litigants want from custody evaluations or how they react to information presented in evaluation reports. However, social psychology research suggests that information from evaluations is likely to be a key component of an evaluation's impact on positive parenting and co-parenting, and the possibility of settlement increases if information is presented in a way that the parent can understand and in a context that may counteract the predisposition to disregard information not consistent with self-protective attitudes (Taylor, Peplau, & Sears, 2006).

Custody evaluations have become more detailed and more expensive and take longer to conduct in the effort to address concerns about the quality of information and analysis. Even so, judicial officers and attorneys have wanted even more detailed information supporting opinions from evaluations for litigation purposes (Bow & Quinnell, 2004). Supporting a hypothesis that Informational Power is probably the most useful aspect of custody evaluation's impact on settlement is the finding that attorneys report that more detailed reports help to settle cases (Bow, Gottlieb, & Gould-Saltman, 2011).

As part of a therapeutic model of jurisprudence, custody evaluators should be challenged to learn new skills to more effectively present information from evaluations to courts, parents, and their attorneys. Pickar and Kaufman (2013) have written about the importance of a "high-quality" evaluation report written for the multiple audiences of the court, attorneys, and the parents. They posit that there

need not be a contradiction between the kind of evaluation report that satisfies forensic guidelines, with the court as the primary client, and for clients themselves because careful presentation of information based on sound procedures and research-based analysis are important for both. They present several concepts about writing the report with consideration of the parents as readers that may aid in settlement: describing the parents' perspectives and concerns so they feel heard and understood, emphasizing strengths as well as weaknesses, and refraining from use of jargon and diagnostic language. Pickar and Kaufman note that, while a custody evaluation report is not constructed to appease parents and must present information and opinion about problems that negatively impact parenting, the report will not meet a helpfulness or usefulness standard from a parent's perspective unless s/he feels s/he has been treated fairly and respectfully by the evaluator.

I believe evaluators should have a background in conflict resolution and family systems theory so that they learn to present information in a way that helps parents understand each other and their conflict as a problem that has the potential to be solved. Reports can present information about how the stress of divorce may have contributed to temporary behavior problems and to exaggerate negative beliefs about each other that perpetuate conflict (Johnston & Campbell, 1988) and steps that parents can take to improve. If parents feel their concerns have been thoroughly investigated, this information may normalize their view of the other parent and decrease polarization of their positions about arrangements for children. Evaluators can learn from methods used in mediation and parenting coordination to investigate the details of the parents' difficulties with communication and decision making and provide information about practical steps they can take to solve those problems so both parents can stay involved after the report and any settlement or court decision.

Some have called for the custody evaluator to meet with the attorneys and the parties to give an oral report as well as provide a written report to the court (Juhas, 2012; Bobb et al., 2012). In such oral presentations, the evaluator stays in role as the court's expert and provides information to the parties and attorneys in response to questions for clarification. The parties are empowered to interact directly with the evaluator who is presenting information about them, and the evaluator has the opportunity to provide additional information not in the report that may be important to the parties. In such a role, the evaluator does not act as a mediator. Judge Mark Juhas (2012) writes about these post evaluation feedback sessions, stating,

> Not only does this help the parties reach a resolution, but it also allows them the advantage of the expert's thought process before the matter proceeds to trial. Many times this feedback session allows the parties to review their positions, contemplate the recommendations and the evaluator's comments, and reach an agreement on the case . . . these feedback sessions allow the parties a good opportunity to determine their own future and settle the case if they wish to do so. Further, it also saves court time as it forces the parties to focus their thoughts thus making for better and streamlines presentations (to the court) (p. 129).

Evaluators, accustomed to the more intellectualized and detached position of writing reports and court testimony, need to learn new skills for such direct interaction with clients.

Change in attitudes and behavior can take time, so psychotherapists may be the ones to help parents further understand feedback from an evaluation for long-term positive change. Many psychotherapists do not have specialized training in working with separated families. Information from an evaluation report may counteract what occurs in some cases, when psychotherapists themselves may have become part of the tribe that reinforces polarized positions because they often only have information from one client. The custody evaluation could help psychotherapists have a more objective view of their own clients and problems in the family, formulate treatment goals, and further help the parents have more child-centered attitudes and become better co-parents.

Although Informational Power is probably the most valued component of custody evaluations, the time and expense of an evaluation increases with thorough investigation, documentation of detailed information, and thoughtful presentation. Keeping the family in litigation longer and using

precious financial resources can have negative effects on families, inconsistent with the goals of therapeutic jurisprudence. High-quality detailed information based on extensive investigation is probably extremely useful for settlement and to help parents focus more on their children's needs. Still, most custody cases settle without an evaluation. The challenge for the courts and for attorneys working to settle a case is to identify which cases will benefit from the time and expense of the high-quality evaluation.

THE FUTURE OF CUSTODY EVALUATIONS IN AND OUT OF THE COURT

The primary use for custody evaluations is to provide information and expert opinions to a judicial officer in a litigated case, but some question whether the litigation model is appropriate for family disputes (Kourlis et al., 2013) and highlight the devastating emotional and financial effects on children and families of resolving family law cases through the traditional adversarial process. In her call for family court reform Babb (2014b) suggests, "Greater need for interdisciplinary, and forward-looking systems, including mediation, parent education, early neutral evaluation, and a triage or differentiated case management process for sorting through various levels of family conflict." Hence, custody evaluations may have a decreasing use in family courts in the future and/or may evolve into a more identifiable role in the dispute resolution process both in and out of court.

Within family court systems in many jurisdictions, different models of providing information about families in dispute are being considered, both because of concerns about financial resources available to the courts and because briefer and more quickly available neutral information about cases may aid in settlement (Kourlis et al., 2013; Salem, 2014). Research suggests that brief evaluations are similarly effective compared with comprehensive evaluations in the way decisions were made between the parents or by the court and similar in parents' satisfaction with services provided (Birnbaum & Radovanic, 1999). This move to briefer custody evaluations or hybrid evaluation-dispute resolution models is likely to cause controversy both because of concerns over the quality of information from evaluations (Tippins & Wittman, 2005) and because of concerns over confidentiality in mediation or settlement processes (Salem, 2014).

There has been a call for restructuring services away from the tiered model to a triage model, which would involve early assessment for types of cases appropriate for immediate mediation or other services such as brief/issue-focused evaluation (Salem, 2009; Babb, 2014b), which would further reduce referral for the detailed, comprehensive custody evaluation done in an attempt to meet the standard of evidence. Several models have been proposed for providing information and opinions that are briefer and more informal: nonconfidential mediation (Salem, 2009), early neutral evaluation (Santeramo, 2004), or conflict resolution conference with attorneys aided by a court counselor who can obtain collateral information (Kourlis et al., 2013).

Private-sector dispute resolution models include ways of providing neutral information and expert opinion about custody issues when cases reach impasse. Mosten (2011) pioneered the use of the "confidential mini-evaluation" in the 1990s for use in mediation of family law cases and then promoted it as a step for litigating attorneys to use to help settle cases prior to further litigation. The mini-evaluation allows parents quick access to information from a neutral expert to give them a reality check on their positions about custody and may prevent them from the public commitment and investment of resources that are likely to entrench their adversarial positions. It has the obvious benefits of shortening conflict and saving financial resources as well as providing direct access to discuss their children's needs with an evaluator in a process oriented toward settlement. In Collaborative Family Law cases, if parents cannot agree on a parenting plan with the help of coaches, a "child specialist" can meet with the parents and children and give feedback and suggestions to the parents (Tessler, 2008). The involvement of a child specialist can offer the same benefits as with mini-evaluations.

I want to join in the call for reform of family court processes. In line with a therapeutic model of jurisprudence, family courts should develop methods for getting information and opinion from

neutral evaluators that are briefer, more affordable, contribute to parents making their own decisions about their children, and aid the court in making orders if parents cannot reach agreement. Custody evaluations could contribute more to peacemaking by the following:

- Provide early triage or some method of identifying the cases where there is greater possible risk to a child, such strong concern about domestic violence or child abuse, which do need a high-quality, more thorough evaluation;
- When a briefer evaluation is indicated, either the judicial officer or a court process should provide guidance about specific information needed from an evaluation to contain time and expense;
- Recognize that recommendations from a neutral custody evaluation are a part of a continuum of dispute resolution;
- Have standards of training, uniform methods of investigation, and requirements for presenting information to increase confidence in evaluator neutrality, objectivity, and expertise, which are even more important for briefer evaluations;
- Require evaluators to obtain formal training in conflict resolution along with their training in forensic skills;
- Train evaluators to write reports with consideration of the parents as readers of the report and to give oral reports in direct interaction with parents;
- Use mental health professionals to debrief evaluation reports with parents to help them understand the information and deal with emotional reactions;
- Require postevaluation mediation and settlement conferences to discuss the contents of the evaluation and work on resolving open issues without litigation.

I also call for family law attorneys to develop a peacemaking mindset and skills for using custody evaluations for dispute resolution. As part of therapeutic jurisprudence, I believe all family law attorneys who work on custody cases should be formally trained in conflict resolution and have continuing education in the effects of parental conflict on children. Attorneys and mental health consultants should be working with clients to assess the need for evaluation, what kind of evaluation, ways to educate parents about good parenting and co- parenting throughout the evaluation process, and ways to help influence parents to be open to settling instead of prolonging litigation.

With the recent work done by the Institute for the Advancement of the American Legal System (IAALS) Honoring Families Initiative (Kourlis et al., 2013) and the recent Special Issue of *Family Court Review* about the IAALS White Paper (Shepard & Emery, 2014), I have some renewal of the hope I started out with 25 years ago that custody evaluations can play a positive role in helping separating families. Evaluators can play the role of being the sensitive eyes and ears of the court about families in custody cases, while also being peacemakers. I believe the family law courts of the future will require that of us.

NOTE

1. Considering custody evaluators in the role of "family arbitrators" has not been without controversy, particularly about whether the process is truly impartial (Carroll, 1990).

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