

Fraught With Hazards: Evaluating Disputants in Child Custody Litigation

A review of the video



Child Custody

with G. Andrew H. Benjamin

Washington, DC: American Psychological Association, 2006. American Psychological Association Psychotherapy Videotape Series, Series IV-Relationships, Item No. 4310753. \$99.95

Reviewed by

[Camille J. Randall](#)

☞ To enhance my professional breadth, I often contract with a local psychologist who performs comprehensive custody evaluations for regional family court judges. My training and professional experiences as a clinical child psychologist help me perform reasoned home study observations and conduct focused interviews with collateral contacts reporting about the involved children. I am more than happy to accept my limited role in such evaluations, not only because many aspects are outside my professional expertise (e.g., interpretation of certain tests, clinical and substance abuse interviewing with adults, thorough knowledge of legal proceedings) but also because I find the whole enterprise more than a bit frightening. In the video *Child Custody*, G. Andrew H. Benjamin corroborates my unease as he summarizes psychologists' roles in child custody evaluations as "fraught with hazards." Indeed, numerous ethical complaints pertain to psychologists in the context of child custody litigation. A psychologist and family lawyer, Benjamin suggests that psychologists' risk may be minimized by the adoption of careful strategies, such as videotaping parent interviews and amassing supporting documentation and evidence (see Benjamin & Gollan, 2003).

☞ The function of this video's illustrative vignette and related discussion is not to train the clinician to perform a competent, comprehensive custody evaluation. This is indeed a vast undertaking. Although guidelines and recommended methodologies exist, best practices based on sound empirical underpinnings are wanting in this field (Emery, Otto, & O'Donohue, 2005). The validity of assessing core constructs relating to child custody is itself questioned. In accordance with literature-based recommendations to first explore nonadversary avenues in resolving disputed custody (e.g., collaborative law, mediation; Emery et al., 2005), Benjamin describes the first phase of his preferred methodology in court-ordered evaluations as preevaluative screening. That is, the first phase further clarifies the necessity for these lengthy, expensive, and emotionally acute procedures with each party and his or her attorneys. In *Child Custody*, Benjamin briefly describes five more key phases of his evaluative procedure to the series discussant, Jon Carlson, a recognized family psychologist and Adlerian enthusiast. Further phases include psychosocial evaluation, parent-child observations, document review, collateral interviews, closing interviews with disputants, and follow-up with attorneys. The illustrative vignette demonstrates one of the more edgy aspects of custody evaluation proceedings: the closing interview.

☞ It is here where the "fraught with hazards" warning becomes readily apparent to the viewer, who may wonder whether he or she is (or can become) ready to adopt this mode of professional discourse. Although Benjamin calls the viewer's attention to his respect for the client and emphasis on the client's positive parenting attributes, what is witnessed is more akin to a confrontational cross-examination, replete with a "bombardment" (Benjamin's term) of documentation supporting allegations of the client's physical abuse of his daughter.

During the discussion following the vignette, when Carlson suggests the similarity of the closing interview to a cross-examination, Benjamin agrees. He notes that although his law training assists him in this activity, he believes psychologists can also perform well in this function. Does a psychologist want to do so?

☰ The psychologists who work in child custody cases should be deft professionals with thorough knowledge of the literatures related to child development, divorcing families, and valid assessment procedures in the custody context; keen awareness of custody litigation proceedings; and convincing and steadfast demeanors. Carlson, who sports a gentle demeanor and tribal bracelet under his sport coat sleeve, subtly illustrates this distinctive stance as he notes to Benjamin that the vignette seems qualitatively different from traditional psychotherapy. Alluding to Benjamin's somewhat antagonistic dialogue with the client, Carlson asks if he is ever concerned about the potential for violence during or after tense closing interviews. Aspects presumed to reduce ethical and legal risk for psychologists participating in custody evaluations also mitigate the risk of physical violence, according to Benjamin: respecting the client, "being hard on the facts," and videotaping all interview sessions for use as evidence. Benjamin also lists some transactional tips to prevent violent confrontations with clients during closing interviews. These include minimizing eye contact, reading allegations from a written script on a laptop screen, not engaging clients in arguments, and seating clients close to "egress" in case they need to bolt from the room in anger. In this context, respect for clients is tantamount to permitting them to hear allegations revealed during testing and interviews before their attorneys do, as well as providing a forum in which they may dispute allegations prior to the final report's filing. However, even though they may dispute allegations made against them during closing interviews, their disputes will be met with closed ears and minimal eye contact. Indeed, this brand of respect requires practice and, one may argue, a specific kind of psychologist.

☰ Benjamin describes the vignette as an example of a tough case from his practice, which represents the "worst of the worst" custody litigants referred from family courts (most cases are settled outside of court or in mediation; Emery et al., 2005). The content of the closing interview seems rather straightforward, however. Allegations pertaining to the father's physical abuse of his daughter—clearly a threat to his custodial fitness—are documented by child protective services reports, emergency room charts, and police photographs. Many times, custody evaluators find themselves engaged in hair-splitting pursuits, attempting to determine whether poorly treated depression in one estranged spouse trumps former substance abuse in the other as it pertains to fostering the elusive best interests of the child (Emery et al., 2005). In my opinion, these are more accurately the tough cases, as they are most vulnerable to errors in clinical judgment.

☰ As mentioned, *Child Custody* is by no means a comprehensive training tool for psychologists wishing to perform custody evaluations, nor is it even a primer of recommended protocol (for this, refer to the companion, Benjamin & Gollan, 2003). This video successfully illustrates the professional stance required of psychologists who intersect with the legal system in the evaluation of parties contesting custody in divorce proceedings. It is thus a useful adjunct to passively reading about evaluation methodology and its scientific basis. Video segments are clearly defined in the on-screen menu, and the approximately 90 min total running length is appropriate to convey the circumscribed content of *Child Custody*. Although the case vignette itself stimulates metaphorical lightbulbs in the mind of the viewer, the subsequent discussion between Benjamin and Carlson underscores important issues and caveats encountered in custody evaluation procedures. Inadvertently (and charmingly) the contrast between the psychologist as custody-evaluator versus psychotherapist is portrayed by the interpersonal styles of the respective discussants.

References

- Benjamin, G. A. H., & Gollan, J. (2003). *Family evaluation in custody litigation: Reducing risks of ethical and malpractice infractions*. Washington, DC: American Psychological Association.
- Emery, R. E., Otto, R. K., & O'Donohue, W. T. (2005). A critical assessment of child custody evaluations: Limited science and a flawed system. *Psychological Science in the Public Interest*, 6, 1-29. [PsycINFO](#) [Article](#)
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