

Forensic Custody Evaluations

A Failed Experiment on You

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NY Blue Ribbon Commission on Forensic Custody Evaluations

From NY Blue Ribbon Commission: “Ultimately, the Commission members agree that some New York judges order forensic evaluations too frequently and often place undue reliance upon them. Judges order forensic evaluations to provide relevant information regarding the “best interest of the child(ren),” and some go far beyond an assessment of **whether either party has a mental health condition** that has affected their parental behavior.”

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NY Blue Ribbon Commission on Forensic Custody Evaluations

From NY Blue Ribbon Commission: “In their analysis, evaluators may rely on principles and methodologies of **dubious validity**. In some custody cases, because of lack of evidence or the inability of parties to pay for expensive challenges of an evaluation, **defective reports** can thus escape meaningful scrutiny and are often accepted by the court, with **potentially disastrous consequences** for the parents and children.”

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NY Blue Ribbon Commission on Forensic Custody Evaluation

From NY Blue Ribbon Commission: “By an 11-9 margin, a majority of Commission members favor **elimination of forensic custody evaluations** entirely, arguing that these reports are biased and **harmful to children** and **lack scientific or legal value**. At worst, evaluations can be **dangerous**, particularly in situations of domestic violence or child abuse.”

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NY Blue Ribbon Commission on Forensic Custody Evaluation

From NY Blue Ribbon Commission: “These members reached the conclusion that **the practice is beyond reform** and that no amount of training for courts, forensic evaluators and/or other court personnel will successfully fix the bias, inequity and conflict of interest issues that exist within the system.”

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Forensic custody evaluations are a failed experiment in service delivery to a vulnerable population.

Clinical psychology – diagnosis & treatment - needs to return to court-involved custody conflict.

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Vulnerable Population

“**Vulnerable**” refers to *individuals or groups* whose dignity, well-being and *best interests* are more easily violated due to such factors as: (a) characteristics of the *individual or group* (e.g., level of cognitive and emotional functioning; history of oppression); (b) **level of voluntary consent/assent** (e.g., serious consequences threatened if consent not given); (c) interests of *individual or group* compete with interests of more powerful *individual(s) or group* (e.g., claimant and insurance company); and (d) **high risk of harm** (e.g., **life-changing decision based on inadequate assessment**).

Canadian Psychological Association Code of Ethics

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Court-involved families meet criteria for being a “**vulnerable population**” requiring special professional safeguards to guard against possible exploitation of their vulnerability.

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An Experiment on You

- The activity of a forensic custody evaluation did not exist prior to the 1980s. Custody evaluations have no history.
- It is a made-up thing by a group of people, it represents an experimental approach to service delivery.
- Clinical psychology has its foundations in the principles of healthcare – diagnosis guides treatment
- Forensic custody evaluations have no foundation in any established domain or principles.

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Origins – 30 years ago

Stahl & Simon 2013: “It was not until **1994** that the APA recognized the importance of formalizing guidelines for child custody evaluations when it published its first set of such guidelines, and it was not until **2010**, 16 years later, that these guidelines were revised.” (p. 17)

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Far from Mature

Stahl & Simon 2013: 

“As a formal and organized field, forensic psychology has entered its **adolescence**, but it is **far from mature**.” (p. 17)

Simon & Stahl 2020: 

“As a formal and organized field, forensic psychology has entered its **adolescence**, but it is **far from mature**.” (p. 17)

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Forensic vs Clinical Psychology

Stahl & Simon 2013: “Because forensic psychology is truly a **new field**, many child custody evaluators, having been trained only in the clinical tradition, bring to their work what we call a “clinical mindset” rather than a “forensic mindset”... clinical thinking and the clinical mindset are no longer thought to be an appropriate approach to forensic psychological work.”(p. 17)

“While there is some overlap between forensic thinking and clinical thinking, **we view these modalities as distinct**.” (p. 20)

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They do something different

Stahl & Simon 2013: "Despite the clear and convincing argument for the use of a forensic model when conducting child custody evaluations, there are still those who argue that a clinically informed approach to child custody evaluations is appropriate and preferable... **We strongly disagree with the clinically informed approach.**" (p. 18)

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The forensic psychologists who created this experimental new approach to service delivery (forensic custody evaluations) did **NOT** inform the subjects of the experiment regarding alternatives to their experimental new approach.

Parents and the courts were **NOT** informed that they could also seek a clinical diagnostic assessment of the pathology in the family.

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The forensic psychologists who created the experimental new approach to service delivery of forensic custody evaluations intentionally withheld information about alternatives from the parents and the courts.

Forensic psychologists gave parents and the courts **ONLY** one choice – their experimental new approach of forensic custody evaluations.

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If the experimental new approach is successful, then its creators reap financial rewards and benefits of professional status.

If it is unsuccessful, then the lives of thousands of children and their parents will be irrevocably destroyed.

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From its inception, the rewards for their experiment went to the forensic psychologists while the risks were born by the children and families.

Their approach failed – NY Blue Ribbon Commission

The lives of thousands of children and their parents were irrevocably destroyed across decades as a result of their failure.

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Forensic Custody Evaluations

Structure

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- **Opening:** cut and paste formalities
- **Sources:** description of information sources
- **History & Symptoms:** transcript of audio recordings of unfocused reporting by each participant.
 - No professional processing of information
 - A high school student would be less expensive
- **Testing:** MMPI & random instruments of no usefulness. Direct reporting on computer interpretations.
- **Conclusions:** personal opinions without the application of professional knowledge – misdiagnosis.
- **Recommendations:** ineffective and harmful

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Roberts Apperception Test for Children

The child's stories are recorded and then scored—according to objective criteria—for the presence or absence of specific characteristics.

Norms, grouped by age, are based on a sample of more than 1,000 children and adolescents, ages 6 through 18, from all four U.S. Census regions. The sample is representative in terms of gender, ethnicity, and parental education.



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Roberts Apperception Test for Children

Available Resources

- Support from self
- Advocacy
- Support from other
- Reliance on other
- Limit setting



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Roberts Apperception Test for Children

Problem Identification

- Recognition
- Description
- Clarification
- Definition
- Explanation



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Roberts Apperception Test for Children

Resolution

- Simple closure or easy outcome
- Easy and realistically positive outcome
- Process described in constructive resolution
- Process described in constructive resolution of feelings and situation
- Elaborated Process with possible insight



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Roberts Apperception Test for Children

Emotion

- Anxiety
- Aggression
- Depression
- Rejection



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Roberts Apperception Test for Children

Outcome

- Unresolved outcome
- Nonadaptive outcome
- Maladaptive outcome
- Unrealistic outcome

Unusual or Atypical Responses

- Unusual—refusal, no score, antisocial
- Atypical categories



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Forensic Custody Evaluations

Ethical Violations

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Ethical Violations

Primary Violations

- 2.04 Bases for Scientific and Professional Judgments
- 2.01 Boundaries of Competence
- 9.01 Bases for Assessment
- Principle D: Justice

Secondary Violations

- 2.03 Maintaining Competence
- 3.04 Avoiding Harm

Duty to Protect

- The child from psychological child abuse
- The targeted parent from spousal psychological abuse

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No inter-rater reliability.

If an assessment is not reliable, it CANNOT be valid.

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Forensic custody evaluations are a failed experiment in service delivery to a vulnerable population.

40 years of failure.

Clinical psychology – diagnosis & treatment - needs to return to court-involved custody conflict.

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