Countertransference Bias in the Child Custody Evaluator

Daniel B. Pickar

ABSTRACT. Concerns about bias which may arise in the child custody evaluation process have recently attracted critical attention. The types of biases addressed are those that primarily stem from cognitive psychology, as well as social and cultural sources of bias. Rarely discussed, however, is bias which can stem from evaluator countertransference, which if unrecognized can potentially lead to biased and non-objective recommendations. While one must strive to be objective and impartial, child custody evaluators are frequently working with highly charged emotional issues which may interact with their own personal issues or past experiences. This article examines the types of countertransference phenomenon which may arise in the child custody evaluation, and presents tips for identifying and managing such reactions. doi:10.1300/J190v04n03_04

Daniel B. Pickar, PhD, ABPP, is a Diplomate in Clinical Psychology, American Board of Professional Psychology. He has maintained a private practice in clinical and forensic psychology for the last 18 years, and has completed over 300 child custody evaluations. In addition, he has been a child psychologist at Kaiser Permanente Medical Center in Santa Rosa, California, for the last 20 years, where he also served as Division Chief of Child and Family Psychiatric Services and Director of Psychology Training. He has also served as Clinical Consultant to Civil Custody Unit of the Sonoma County Department of Probation.

Address correspondence to: Daniel B. Pickar, PhD, 1101 College Avenue, Suite 230, Santa Rosa, CA 95404 (E-mail: dpickar@sbcglobal.net).

The author is grateful to Miriam Wald, PhD, Louise Packard, PhD, and Jeffrey Pickar, PhD, for their thoughtful reviews of this article.

Journal of Child Custody, Vol. 4(3/4) 2007
Available online at http://jcc.haworthpress.com

doi:10.1300/J190v04n03_04

KEYWORDS. Bias, countertransference, child custody evaluations, forensic evaluations, family law

Concerns about bias which may arise in the child custody evaluation process have recently attracted critical attention. This is an important development, as the clinical decision-making process in child custody evaluations (CCEs), which should be based upon scientifically sound methodologies and rooted in the research literature (Gould, 2006), is also potentially subject to a number of influences which may impede the evaluator from making the most objective custody recommendations possible (Martindale, 2005; Robb, 2006). Evaluator bias decreases the reliability of information provided to the courts, thereby potentially misleading a judge into making a decision based upon faulty data. Because so much is at stake in the lives of children and families resulting from the evaluators recommendations to the court, it is essential that we maintain awareness of biases which may arise, and attempt to control for their potentially distorting influences upon the analysis of data and recommendations to the court. Tippins and Witman (2005), in their recent cautionary critique against psychologists making specific child custody recommendations noted:

> Although we are not aware of any substantive research on the clinical accuracy and objectivity of custody evaluations, there is a long line of judgmental heuristics research to suggest that even at the level of basic data gathering, clinicians can be extremely prone to distortions of what they observe due to various cognitive biases, attribution effects, labeling effects, illusory correlations, flawed estimation rules, and so on. (p. 195)

Most of the discussions in the literature regarding biases which may potentially arise in forensic mental health evaluations stem from the perspective of cognitive psychology (Borum, Otto & Golding, 1993; Evans, 1989; Garb, 1994; Otto, 1989; Williams, 1992). Recently, there have been more focused examinations of potential evaluator biases in child custody evaluations, such as the impact of confirmatory bias (Martindale, 2005) or evaluator distortions stemming from hindsight bias, primacy and recency effects, and familiarity bias (Robb, 2006). Biases which might arise in the CCE based upon race, religion, gay and lesbian parents (Gould, 2006), or the gender of the evaluator or parent (Bradshaw and Hinds, 1997; Warshak, 1996) have been addressed, and

Stahl (2006) has recently addressed the issue of evaluator bias in relocation cases. The American Psychological Association CCE guidelines (APA, 1994) require that psychologists not only maintain awareness of personal and societal biases, but must also strive to overcome them or withdraw from the evaluation (see guideline 6 of APA, 1994). Multiple relationships and dual roles is another potential source of bias for the evaluator, and the Model Standards of Practice for Child Custody completed by the Association of Family and Conciliation Courts (2007) requires that evaluator "shall strive for objectivity and shall take reasonable steps to avoid multiple relationships with any and all participants of an evaluation" (p. 84).

One other potential source of bias that can arise in the CCE is countertransference reactions the evaluator may experience in relation to a parent or child involved in a CCE. Countertransference, a phenomenon originally described by Freud (1912/1958) in the psychoanalytic psychology literature, is a term primarily applied to psychotherapy relationships, referring to the therapist's reactions, thoughts, and feelings about his or her patient based upon unconscious conflicts stemming from past relationships and experiences. This concept has tremendous relevance and applicability to any discussion about bias in the CCE process, but it is rarely described in the CCE literature. Only one substantial analysis of this issue has appeared in the CCE literature, and this was 15 years ago (Freedman, Rosenberg, Gettman-Felzlen, & Van Scoyk, 1993).

Bias resulting from countertransference must be distinguished from other biases previously described in the custody literature. Countertransference bias differs from personal bias such as prejudice related to age, gender, ethnicity or other social or cultural biases, although they may overlap in some instances. Countertransference bias also differs from the types of clinical bias (Martindale, 2005; Robb, 2006) or value bias (Gould, 2006) elaborated upon by others. The clinical biases previously addressed by these authors stem from cognitive psychology, and delineate the perceptual error and information processing problems which create cognitive distortions by evaluators. Bias stemming from countertransference is significantly different, as it directs the evaluator to maintain awareness of idiosyncratic personal reactions to clients which deviate from typical baseline reactions, originating from the evaluator's history or experiences in past relationships, leading to a potentially distorting effect on his or her judgment. Countertransference may be manifested internally in the form of thoughts and feelings, or externally, through a wide assortment of behaviors (i.e., biased report

writing, inappropriate behavior towards a client). While the empirical research on countertransference in the context of treatment is not vast, studies indicate that countertransference has been shown to take the form of distorted perceptions of clients, inaccurate recall of client material, reactive/defensive mental activity, and blocked understanding (Hayes & Gelso, 2001; Rosenberger & Hayes, 2002). The enterprise of a child custody evaluation essentially involves a brief but intensive evaluative relationship between the evaluator and parents, as well as between the children and the evaluator. Ethical evaluators must make every effort to be objective, impartial, and scientific in their approach, but they may sometimes be affected by influences or biases stemming from past experience, which may be elicited by the personal characteristics of the parents or children being evaluated. Unfortunately, considering one's countertransference may be experienced as antithetical to an evaluator who sees herself as being objective and scientific. Nonetheless, only if the forensic clinician attempts to understand and gain awareness of such countertransference reactions, will the greatest objectivity be maintained by the evaluator.

Therefore, the purpose of this article is to more fully describe the ways in which countertransference reactions on the part of the evaluator might compromise the objectivity of the evaluation and lead to bias, while also presenting suggestions for identifying and managing such a phenomenon when it arises. The fact that the more contemporary and broadened view of countertransference often assists in achieving a better understanding of the parents and children being evaluated will also be addressed. A proposal will be offered that in the future, the term "countertransference bias" be considered in any discussion of major sources of bias which can negatively impact the objectivity of the child custody evaluator.

AN OVERVIEW OF COUNTERTRANSFERENCE

In order to understand countertransference and its various manifestations, it is first important to understand the psychodynamic concept of transference. Freud's original definition of transference detailed the process by which emotions and desires originally associated with one person, such as parents or siblings, are unconsciously shifted or transferred to another person, especially the analyst (Freud, 1912/1957). While transference was originally associated with psychoanalysis, the phenomenon of transference has been applied to all forms of psycho-

dynamically based psychotherapies. Understanding and analyzing transference, which essentially refers to the phenomenon where the patient experiences the therapist as a significant figure from his or her past, is a key component of most psychoanalytic therapies (Gabbard, 2005).

Countertransference was originally referred to by Freud (1910/1957) as the analyst's transference to the patient or the analyst's response to the patient's transference. More specifically, countertransference was seen as the analyst's reactions, thoughts, and feelings about the patient, based upon the analyst's own neurotic or unconscious conflicts or past experiences with significant figures from the analyst's past. Countertransference was originally viewed by Freud as an obstacle or disruptive force in psychotherapy. While the original view of countertransference is still useful and important, the term has gone through a transformation in meaning. While countertransference may be a disruptive obstacle, awareness of countertransference dynamics taking place in a treatment relationship is also viewed as a valuable, if not essential source of information. Contemporary psychoanalytic writing has recently focused on how the patient-therapist relationship serves as a forum for re-enactments of past experience. In the more contemporary and broader definition, countertransference encompasses the therapist's entire response towards the patient, and not just those that stem from unconscious conflict or past experience. Additionally, most psychodynamic theoretical perspectives view countertransference as entailing a jointly created reaction in the therapist that stems in part from contributions of the clinician's past, and in part, from feelings induced by the patient's behavior (Gabbard, 1995).

Some of the more contemporary views of countertransference speak directly to the custody evaluator's reactions to a parent during a CCE. For example, Winnicott (1949) laid the groundwork for more current views of countertransference when he described the *truly objective countertransference*. This refers to the positive and negative emotional reactions of the therapist to the actual behavior and personal characteristics of the patient. Gabbard (2005) noted that Winnicott's countertransference-based concept of *objective hate* was not a reaction stemming from unconscious conflict in the therapist, but rather, was a natural reaction to the patient's outrageous behavior. For example, the parent in a CCE who presents as angry, hostile, or demeaning towards the evaluator will usually provoke a negative, defensive, or uncomfortable reaction in most evaluators. Thus, the evaluator counter-

transference in this case is "objective" in the sense that virtually any evaluator would react similarly to this parent's provocative behavior.

Giovacchini (1989) made a similar distinction by dividing countertransference into two general categories. The first type is *homogeneous countertransference,* which refers to average expectable reactions to objectionable behavior, such as the negative feelings most therapists or evaluators would experience upon hearing details of the physical or sexual abuse of a child. The second type, *idiosyncratic countertransference*, refers to an exaggerated or unique reaction to the characteristics or presentation of a client that most evaluators would consider innocuous. This is illustrated in the following example.

In a CCE, a female evaluator felt uncomfortable and noticed some dislike towards a father who appeared to be a reasonably good parent, was dedicated to his two children, and appeared to be free of any significant psychopathology or substance abuse problems. When the evaluator was arranging future appointments, she found herself dreading the prospect of seeing him again. Several hours after her meeting with the father ended, when a colleague asked about her day, the evaluator described that she had just spent the last four hours with a client whom she found quite annoying, and she made some other derogatory remarks about him. When the colleague questioned her about what specifically she didn't like, the evaluator felt unclear about what bothered her so much. The next day, when pondering her reaction and her colleague's question, she realized that this father's demeanor and tone of voice was quite similar to her very hypercritical father, who had also been physically abusive towards her as a child, and who was now deceased. Following this realization, the evaluator felt more relaxed and less judgmental towards this father, but also decided to seek consultation, to insure that her negative reaction would not impair her objectivity, or bias her against this father. This example illustrates an idiosyncratic countertransference reaction because the reaction was specific to this evaluator and would likely not have occurred with another evaluator.

Racker (1968) further articulated the position that some of the feelings experienced by the therapist are induced by the patient. Racker divided such reactions into concordant and complimentary countertransference. *Concordant countertransference* involves an empathic link between the therapist and patient, when the therapist identifies with the patient's experience or emotions. Child custody evaluators who feel a strong positive connection with a parent may be experiencing a form of concordant countertranference. *Complimentary countertransference* occurs when the therapist identifies with the experience of

important others in the patient's life, rather than the patient's experience. The patient creates an internalized relationship pattern with the therapist playing the role of significant other. Sometimes, through a process called projective identification, the patient unconsciously induces a particular reaction in the therapist. According to Ogden (1979), *projective identification* is a process in which an aspect of the patient's self is disavowed and projected onto the therapist. Then, the patient provokes the therapist to experience or unconsciously identify with what has been projected. As a result, the therapist, who is the target of the projection, begins to behave, think, and feel in keeping with what has been projected. This form of complementary countertransference can provide important data about a patient's relationship patterns. The process of projective identification has been described as a primary defense mechanism more often used by individuals with severe personality disorders (Gabbard and Wilkinson, 1994; Kernberg, 1975). Thus, recognition by the custody evaluator of this dynamic taking place can aid in a greater diagnostic understanding of the parent and how this might impact their parenting skills. Concordant and complimentary countertransference, as well as projective identification, fall into the category of direct countertransference, because the therapists' reactions arise directly in response to the personality characteristics of the patient.

Racker (1968) also described *indirect countertransference*, which refers to the therapist's reactions or feelings arising from a third party outside the therapeutic situation. In applying the concept of indirect countertransference within the context of CCE's, the evaluator may be influenced in their emotional responses or reactions to parents by individuals not directly involved in the evaluation, such as a referring attorney, an outside therapist, or even the court. For example, an evaluator may be unconsciously influenced by a desire to especially please one of the referring attorneys, who may be the most potent source of future referrals.

COUNTERTRANSFERENCE IN NON-THERAPY RELATIONSHIPS

The concept of countertransference as both an obstacle to objectivity, as well as a rich source of information for the clinician have previously been discussed within the context of the psychological testing relationship, as well as within the forensic examiner/client relationship in non-custody related forensic evaluations. Feinberg and Greene (1995)

specifically examined how countertransference might arise in professional relationships within the context of family law. These authors noted that a problem which may occur for evaluators or attorneys working in the custody arena is when there is *distorted countertransference*, such as when a professional may become aligned with one of the parents, and as a result, have "colored/clouded glasses" or blinders about the objective issues involved. In such an instance, the aligned professional unconsciously screens out information that will not support his or her pre-conceived notions about the case.

Both Sugarman (1981) and Schacter (1997) have examined countertransference dynamics in the psychological tester/patient relationship. Sugarman noted that even psychological testing has a subjective component, and highlighted the need to attend to the interpersonal aspects of the patient-examiner relationship. Thus, in the context of psychological testing, helpful diagnostic information can be gleaned from the examiners' countertransference by scrutinizing the examiner's affective and subjective experience of the patient.

A review of the literature reveals that with one exception 15 years ago (Freedman, Rosenberg, Gettman-Felzien, & Van Scoyk, 1993), biases which stem from evaluator countertransference have not been discussed in the CCE literature. It is notable that the three main contemporary texts on conducting CCE's (Ackerman, 2006; Gould, 2006; Stahl, 1994) are silent on this topic, although these authors do address other issues regarding bias. Recently though, countertransference issues which may arise in the criminal area of forensic psychiatry and psychology have been addressed. For example, Sattar, Pinals and Gutheil (2004) cautioned that if forensic psychiatrists notice having strong emotional responses to the examinee, they should be aware that this is most probably due to countertransference. These authors caution that the forensic examiner may be subject to countertransference reactions due to external, non-examinee variables, such as having a strong emotional response to one of the attorneys involved in the case. Satar et al. (2004) has suggested the term "forensic countertransference" be applied to court-related evaluations and offered the following definition:

> Countertransference includes all feelings, whether conscious, subconscious, or unconscious, that are evoked in forensic examiners during evaluations or testimony, in response to examinee and non-examinee variables, which have the potential to have an impact on the objectivity of their forensic opinions. (p. 152)

Freedman et al. (1993) urged that child custody evaluators must acknowledge that countertransference does exist within CCE's, and if unrecognized, may inadvertently bias evaluators, resulting in a distorted perception of the case and possible inappropriate recommendations. This article not only further elucidates the ways in which evaluator countertransference can impact a CCE, but also squarely places the issue of countertransference alongside other possible biases requiring circumspection, in an effort to conduct the most objective and ethical evaluation possible.

DIRECT COUNTERTRANSFERENCE IN THE CHILD CUSTODY EVALUATION

While not specifically addressing custody evaluators, several notable researchers and clinicians have described the intense countertransference feelings that can arise for psychotherapists who provide treatment to post-divorce families. Wallerstein (1990) described that for the therapist, observing the unhappy couple can evoke painful childhood memories of conflict between their own parents. Wallerstein also noted that clinical work with divorcing families can inflame more recent wounds closely related to the therapist's present experience, including the clinician's own troubled marriage, a recent or ongoing divorce, an aborted love affair, or a divorce within the clinician's own family. Roseby and Johnson (1997) also described the countertransference reactions clinicians' encounter when working with divorcing families:

> In perhaps no other area of practice are legal and mental health professionals so much at risk for losing their professional objectivity, and becoming entangled with their clients, as in these high-conflict family situations. . . . These powerful and compelling responses to the pain and suffering of divorcing individuals (called countertransference reactions) are important signals to the professional involved to regain his or her balance and perspective in the case. This might involve taking a step back to review the basis for these reactions or seeking out another professional for consultation. (p. 10-11)

With rare exception, child custody evaluators were originally trained as psychotherapists and entered the field with a sincere desire to empathically assist others with their pain and suffering. However, every

custody evaluator must understand the clear differences between serving in a therapeutic versus a forensic role (Greenberg and Shuman, 1997). Evaluators may feel an internal sense of compassion, but neutrality and detachment must be maintained with parents, even when faced with strong expressions of anger, despair, disavowal of responsibility, and projection of blame (Pickar, 2007). Although evaluators must strive to be objective and scientific in approaching the CCE, the possibility exists that the evaluator's thoughts, feelings, and ultimate view of a parent or child may be influenced by past experiences in relationships. When the evaluator's perception or reaction to the personality characteristics of the client is directly colored by their own past experience, this is a form of direct countertransference.

The potential for bias can arise when there is a *concordant countertransference*, a form of *direct countertransference*. This countertransference reaction occurs when the evaluator over-identifies with a parent whom they see as similar in parenting approach or having common interests, sometimes resulting in a negative view of the other parent (Freedman et al., 1993). For example, a male evaluator may have a similar interest in playing or coaching basketball as the father, and as a result, may ask the father an unusually large number of questions about this issue, thus experiencing some identification with this parent, potentially biasing his view of the case. Conversely, a negative countertransference may be evoked when evaluators identify disliked parts of themselves or their family members, in the parent being evaluated. If not recognized, this could lead to a polarization in how the parents are perceived, with one viewed more critically, while the other more positively.

Evaluators frequently experience concordant identifications with a child in a CCE, which might potentially lead to inappropriate custody recommendations. Evaluators interview and observe children during a CCE, and assessing their concerns and needs may include listening to their custody preferences. However, children's stated preferences for a custody arrangement may not always reflect their best interests. As Warshak (2003) noted, "when the child is suffering from pathological alienation, the stated preference is probably a poor guide to the child's welfare (p. 379). An evaluator's concordant countertransference to a teenager where alienation dynamics are present is illustrated in the following example.

An evaluator was conducting a CCE with an adolescent boy with whom he experienced a strong identification. He respected this 15-year-old boy's strong academic record, and the evaluator identified with

this teenager's interest in playing guitar and mountain biking, hobbies also shared by the evaluator. In some ways, this boy also reminded the evaluator of his son, now an adult. This boy's parents had an extremely high-conflict divorce, with the boy very aligned with his mother, and quite alienated from his father, who he refused to see during his scheduled paternal custody periods. The mother would openly criticize the father to their son, and would undermine their contact by her negative portrayals of the father. The boy's stated preference was to have no contact with his father, whom he viewed as responsible for the divorce and as a terrible father in every way. The father had never been abusive to the boy, and they actually had a fairly good relationship prior to the 6 months preceding the separation. Thus, this boy's criticisms were quite disproportionate to his actual experiences with his father. The evaluator was very familiar with the dynamics of the "alienated child" (Kelly and Johnston, 2001) and could see that such a process was taking place within this family. The evaluator knew that in cases of alienation, therapeutically supervised contact with the "alienated parent" may sometimes need to be mandated (but in a way which is tolerable to a child), along with family-focused therapeutic interventions, to assist in improving the situation (Johnston, Walters, and Friedlander, 2001; Sullivan and Kelly, 2001). The evaluator, though, due to his strong concordant identification and empathy with this boy, felt strongly swayed to provide a recommendation consistent with the teenager's wish for no contact with his dad, which the evaluator also believed would be experienced as the least stressful to this boy. Fortunately, this evaluator was a member of a consultation group with other evaluators, and he decided to present the case prior to writing a report. His colleagues helped him realize that his countertransference reaction to this teenager, and subsequent wish to cause him the least discomfort, was hampering his ability to conduct an objective analysis of the data. Awareness of the concordant countertransference allowed the evaluator to provide recommendations which might eventually improve the relationship with his father and develop a more realistic view of him, apart from the mother's influence.

A custody evaluator may also struggle with a countertransference-based wish to help (Freedman et al., 1993), a natural pitfall for evaluators, who were originally trained as therapists to be empathic and helpful. The evaluator who grew-up with a depressed or alcohol-abusing parent may be subject to countertransference-based rescue fantasies in response to a child currently in this situation with a divorcing parent. The evaluator with a strong identity as a helper may not be able to resist

the countertransference-based wish to help, and may find themselves offering advice or responding in an overly empathic or therapeutic manner, thereby compromising neutrality and stepping out of the forensic role. The evaluator, who as a child took on the role of mediator in their own high-conflict family, may be prone to be exceedingly mediational in their approach to CCE's. This could lead to evaluation reports which are so extremely even-handed[1] that they do not provide well-supported and definitive conclusions and recommendations. Such reports may not only fail to settle a custody dispute, but may actually lead to a trial, as both parties will view the report as supporting their custody positions (Pickar, 2007). Thus, the evaluator must have the awareness to recognize the impulse or tendency to be therapeutic in approach, and take steps to resist blurring the boundary between the forensic and therapeutic role.

Another potential area of countertransference is the evaluator who is currently dealing with a failed marriage or divorce. The evaluator whose marriage has ended due to infidelity on the part of their spouse may be especially prone to be critical of the parent in a CCE who engaged in an extra-marital affair. While a parent might have had a past affair, this may have no bearing on their present ability to effectively parent their child. A countertransference reaction leading to a rigid, overly-moralized approach to this issue might ultimately lead to biased recommendations.

Specific forms of direct countertransference frequently arise in evaluating parents with personality disorders. In the therapeutic context, Gabbard and Wilkinson (1994) noted that borderline patients are notorious for evoking deviations from the therapeutic frame that leads to ill-advised boundary crossing. In the CCE, narcissistically disordered parents may present with a specific form of entitlement resulting in demands to be treated as exceptions to the usual procedures. The underlying presence of rage, commonly seen in borderline patients, may lead the novice evaluator to feel threatened or intimidated by the parent's volatility. In the clinical context, borderline patients also tend to evoke countertransference reactions whereby the patient's internalized world of relationships are enacted in the clinical setting between patient and therapist. Consider the following case example of an enactment in a CCE:

> A parent states to a child custody evaluator near the beginning of an initial meeting, "I just need to give you a warning that my ex-husband is very likeable and comes across as the perfect father,

but he is a con-artist. Because I'm more emotional and not as likeable as him, when I tell people that he was a terrible husband and father, they get irritated with me and don't believe me." The evaluator, trying to be careful to remain neutral, states, "I just want to let you know that I understand what you are saying. I will be examining both of you closely to understand your legitimate concerns about your child and the parenting she is receiving in each home." To this statement, the parent states, "I can tell by your response that you don't believe me and my ex-husband will probably be able to manipulate you too." The evaluator, who is now more visibly irritated and taken aback by the mother's comments states, "I don't think that your reaction was called for as I told you, I would be fair and circumspect in looking at each of your concerns," to which the parent states, "You see, its happening again, and now you are irritated with me and aren't going to believe me just like everyone else."

In this parent's enactment with the evaluator, the mother almost coerces the evaluator into an "irritated" response, and then identifies with the evaluator's reaction as being similar to how all others react to her. The defense of projective identification, commonly seen in clinical situations with borderline individuals, often leads the clinician to feel transformed into someone other than who they are (Gabbard, 1999). In the context of a CCE, the task for the evaluator is to recognize and control one's identification with a parent's projection, while attempting to remain neutral and not overly reactive (i.e., a "scientific stance"), thereby maintaining the forensic role.

INDIRECT COUNTERTRANSFERENCE IN THE CHILD CUSTODY EVALUATION

Evaluator bias can also result from indirect forms of countertransference. This occurs when the evaluator's emotional responses, feelings, or thoughts about a case are influenced by third parties or individuals not directly involved in the evaluation. *Indirect countertransference* may become manifest in several different ways. In discussing criminal forensic evaluations, Satar et al. (2004) described how an evaluator's strong, emotional responses to one of the attorneys involved in a case can impinge upon objectivity during forensic evalua-

tions. In such cases, external non-examinee variables can have a substantial impact on the objectivity of the evaluation.

In a CCE, the attorneys who represent parents should have no bearing on the evaluator's view of the case. Unfortunately, this may not always be the case. For example, a beginning evaluator may experience an unconscious pull towards writing a report so that it is perceived as acceptable to the attorney who may generate the greatest likelihood of future referrals. A novice or even an experienced evaluator might harbor anxiety or fear of harsh cross-examination by an attorney known to be very aggressive in the courtroom with testifying experts, and may unconsciously develop recommendations influenced by a wish to avoid this possible scenario.

Attorney feedback to evaluators about their work on previous cases might also lead to indirect countertransference. Consider the following example:

> A male custody evaluator was informed by an attorney (not associated with a present case) that there was a perception among some attorneys in the community that the evaluator's reports may tend to be biased in favor of fathers. The evaluator, who prided himself on being fair and impartial, did not experience himself as biased in favor of fathers, but nonetheless, was troubled and concerned by this feedback.

Given the above example, what might be the impact of such feedback on the evaluator? The ethical evaluator always strives to be non-biased and objective, but all evaluators are subject to bias at times. In this situation, the evaluator then reviewed his cases over the last two to three years and determined that in a few instances, this may have been true. The evaluator worked hard to be more circumspect regarding the potential for this bias to arise in future cases, and even sought consultation on his next few custody evaluations. Still, one countertransference risk which might arise in the evaluator with an excessive need to please or who has some insecurity in their judgment, would be an overzealous effort to be unbiased against mothers, thereby creating the risk of going to the opposite extreme and possibly being biased against fathers. This example illustrates that while an evaluator needs to be circumspect with respect to biases, one also needs to be aware of having an overreaction to the feedback of attorneys (i.e., indirect countertransference), which could also lead to an unconscious bias.

As specified in the AFCC model standards of practice for CCE's (AFCC, 2007), obtaining information from collateral sources is critical to a thorough evaluation, especially with respect to corroborating or disconfirming assertions, allegations, or claims made by parent or children in a CCE. Another potential source of indirect countertransference however, is the evaluator who may be overly influenced by a collateral source of information who is aligned with one of the parents, leading to a distorted view of the case. This might especially be a risk when interviewing a collateral source whom the evaluator knows from the community, and for whom the evaluator has great respect. The evaluator might be inclined to give great weight to the feedback received from this professional. Most evaluators who have worked in a community for several years will be familiar with many of the mental health professionals who might be contacted as collateral sources of information in a CCE. Evaluators hope that collateral sources, especially mental health professionals, teachers, and physicians, will strive to be unbiased in their presentation of information to the evaluator, but this may not always be the case.

In considering information from collateral sources, evaluators must realize that not all treating therapists are "forensically informed" and sufficiently attuned to the fact that parents involved in current custody litigation may be intentionally or inadvertently distorting information, in an effort to have the therapist adopt their point of view. Greenberg, Gould, Gould-Saltman, and Stahl (2003) noted that if the therapist becomes overly aligned with one litigating parent and only considers that parent's viewpoint, the result is biased treatment and often an escalation of parental conflict. Furthermore, these authors cautioned that biased therapists may escalate conflict by providing treatment information to the court without obtaining a balanced understanding of both sides of an issue. Some therapists may even express information about parent-child relationships that they have not directly observed. Even the most seasoned therapists may be subject to a biased and one-sided view of a divorce situation, when their primary treatment relationship has only been with either one of the parents, or with the child brought to therapy only by one of the parents.

The credibility of collateral sources in a CCE is a function of the degree of their neutrality, or not being emotionally aligned with one of the parents (Austin & Kirkpatrick, 2004). A problematic indirect countertransference might develop if the evaluator fails to discern the collateral source's alignment, and the subsequent influence of this alignment upon the feedback given to the evaluator.

TEN TIPS FOR IDENTIFYING AND MANAGING COUNTERTRANSFERENCE REACTIONS

The CCE process is one in which the evaluator is most frequently working with highly charged emotional concerns, which may interact with their personal issues or past experiences. It is important that evaluators acknowledge that countertransference does exist, and if unrecognized or unacknowledged, can lead to bias and compromise the objectivity of the evaluator in providing recommendations that are in the child's best interests. We should heed the words of the nineteenth century English historical painter and writer, Benjamin Haydon, who declared, "Fortunately for serious minds, a bias recognized is a bias sterilized" (Haydon & Stoddard, 2006). Following are some questions and suggestions to consider for identifying and managing countertransference reactions:

1. *Warning signs*. The first step is recognizing that countertransference may be taking place. As previously noted, countertransference may manifest internally in the form of thoughts or feelings, or externally, through behavior or actions. In the therapy context, Kiesler (2001) has described that the empirical referent for countertransference is when the therapist's experience and actions with a particular client deviate significantly from his or her baseline behavior with other clients in the therapist's past or present practice. Applying Kiesler's empirical referents to the custody context, countertransference may be operationally defined as when the evaluator's experience and actions with a particular custody litigant (or child involved in a CCE) seems idiosyncratic and deviate significantly from his or her baseline with other custody litigants (or their children). Additionally, countertransference may be operative when the evaluator's interactions or discussions about a case with a supervisor or colleague is unusual and deviates from his or baseline of typical behavior with colleagues about past cases. In practical terms, most experienced evaluators have a characteristic manner of working with clients. When there is a change in the evaluator's characteristic approach, this could serve as a personal warning flag that countertransference may be operative. Sarcastic comments to colleagues about a parent, the experience of unusually strong positive or negative feelings towards a parent, or the ca-

sual dismissal of data may all reflect countertransference (Freedman et al., 1993).

2. *Concordant countertransference*. A question to always consider is whether this case evokes any feelings in the evaluator related to their personal history, which might lead them to overidentify with one parent or perhaps be biased against the other parent. Over-identification with a parent creates the risk that negative characteristics of that parent may be obscured or ignored by the evaluator.
3. *Self-check questionnaire and tracking previous recommendations*. Barsky and Gould (2002) recommend maintaining a personal log or self-check questionnaire to raise the evaluator's awareness of how a particular case is affecting them. Such an approach encourages self-supervision and assists the evaluator in recognizing if countertransference may be occurring. Another way to track possible biases stemming from countertransference is for the evaluator to keep a record of his or her recommendations in all cases, to see if a gender bias may be operative (such as in the example previously described). Lastly, an evaluator who realizes that they have a personal countertransference trigger might keep a record tracking recommendations in cases involving that trigger, as a means of engaging in self-supervision.
4. *Enactment or projective identification with personality disordered parents*. There are several questions to consider in working with parents with personality disorders. Is the parent attempting to create a particular reaction in the evaluator, and how can this reaction or experience of the parent be used to learn about this parent's capacity for relationships, their personality dynamics, or their experience in coping with their ex-spouse or the divorce? In working with individuals with narcissistic personality disorders, be watchful not to diverge from your usual approach in the face of aggressive entitlement. Maintaining a scientific or forensic stance is especially important in working with borderline personality disordered individuals who tend to use the defense of projective identification in how they interact with others. The evaluator must work to avoid identifying with the parent's projections by becoming angry or dismissive. Rather, one must remain neutral and non-reactive.
5. *Indirect countertransference to attorneys*. Consider the following question: Might the evaluator feel a special desire to please one of the attorneys more than the other, and how might this affect the recommendations?

6. *Indirect countertransference to collateral sources*. Consider if the evaluator might be swayed by a collateral source known to the evaluator, and as a result, not recognize if the therapist is aligned with one of the parents. If the collateral source is aligned with one of the parents, this greatly reduces the objectivity and usefulness of their feedback to the evaluator.
7. *Use multiple methods of data gathering*. Martindale (2005) described that another approach to reducing bias is to follow the various custody guidelines (AFCC, 2007; APA, 1994) to employ multiple methods of data gathering, and to be skeptical concerning information from one source that is not congruent with another source. For example, the presence of disconfirming data from psychological testing or collateral sources which stands in contrast to an evaluator's initial positive countertransference identification with one of the parents, will assist the evaluator to be more objective in their analysis of that parent.
8. *Seek supervision*. Once a countertransference reaction has been identified, consultation with an experienced colleague can assist the evaluator to achieve greater objectivity. Unfortunately, even experienced evaluators may feel a sense of shame or embarrassment that they cannot manage countertransference reactions on their own, or they may be fearful of being perceived as incompetent. In fact, just the opposite is true. The evaluator who seeks consultation is acting in the highest ethical manner, by taking steps to insure objectivity.
9. *Join a consultation group*. One of the best means for identifying and managing countertransference reactions is being part of a consultation group that meets on a regular basis. Participation in a consultation group with other evaluators or therapists working in the divorce arena (e.g., special masters, parenting coordinators, or co-parent therapists) can provide a forum for the evaluator to discuss discrepancies in the data, to share feelings and experiences about work with difficult cases, and to obtain validation or have questioned the perceptions that may serve to guide the recommendations (Pickar, 2007). By maintaining openness in communication within the consultation group, the evaluator can hopefully identify the roots of their strong emotional responses to a case and insure greater fairness and objectivity. If a consultation group is not available (such as in smaller communities), having even one colleague available for regular consultation, whether in person or by phone, will be helpful.

10. *In extreme cases of countertransference, consider withdrawing from the case*. In clinical situations such as psychotherapy, countertransference reactions can usually be worked-through over time and hopefully be resolved. Sattar et al. (2004) noted that in forensic evaluations, the examiner's emotional reactions and biases need to be worked-through quickly, before the end of an evaluation or before an opinion is rendered. This is necessary to avoid the risk of having the evaluator's objectivity tainted by countertransference. The American Psychological Association CCE guidelines (APA, 1994) require that psychologists must not only maintain awareness of personal biases, but must also strive to overcome them or withdraw from the evaluation. Thus, in cases where objectivity clearly cannot be maintained, termination from the case should be considered.

WHEN COUNTERTRANSFERENCE LEADS TO BIAS

A recent survey conducted by Bow and Quinnell (2004) found that when attorneys and judges were asked to critique CCE reports, their primary concern was the lack of objectivity or presence of bias among evaluators. Bias, as defined by the *American Heritage Dictionary* (2006), is "a preference or inclination, especially one that inhibits impartial judgment." The presence of direct and indirect forms of countertransference in the evaluator has the potential to inhibit impartial judgment and lead to bias. Because countertransference can be a powerful source of bias which impedes the impartial judgment and objectivity of the child custody evaluator, it is proposed that "countertransference bias" be considered as among the most prominent biases which can affect the CCE process.

Martindale (2005) noted regarding bias in CCE's, "life's decisions must be made by humans . . . and our mental capacity to make decisions is affected by various emotional needs" (p. 44). Stahl (2007) suggested that one of the ways to reduce the risk of bias that might affect an evaluator's conclusions is to clearly recognize that bias does exist, and that we are all at risk for being affected by our biases. As illustrated by this article, countertransference bias does exist, and lack of vigilance to this phenomenon threatens the objectivity of the child custody evaluator.

This article has described the various ways in which countertransference can arise in the CCE process. In some instances, awareness of countertransference reactions assists in achieving a better under-

standing of parents. But when countertransference reactions are unrecognized and therefore not worked through or resolved, the evaluator may develop a distorted view of the case. When the evaluator is unaware of a countertransference reaction, a bias will frequently reveal itself in the writing of a CCE report. In some cases, the report might sound like an indictment of one of the parents, or conversely, a favored parent to whom the evaluator has developed a positive countertransference might be uncritically examined with respect to their parenting skills or psychological difficulties. When a bias clearly shows itself in the CCE report, this often leads one of the parents and his or her attorney to immediately dismiss the report, or to seek the services of a rebuttal expert to critique the report, in an effort to expose the bias of the evaluator and discredit the findings.

Because the emotionally charged issues which arise with divorced or divorcing families frequently touch issues in the evaluator's own life, the novice evaluator may be especially vulnerable to not recognizing countertransference reactions when they arise. Whether novice or highly experienced, the only way to prevent countertransference bias from compromising the evaluators impartiality and objectivity is for evaluators to be supremely circumspect about their reactions to parents being evaluated, to engage in continuous self-monitoring, and to seek consultation or supervision when necessary.

NOTE

1. CCE reports should attempt to be even-handed, by specifying both positive and negative qualities about the litigants. This comment though, is geared towards the report which fails to provide concrete examples of parenting or psychological deficits forming the basis for a recommendation of reduced custody periods for one of the parents.

REFERENCES

Ackerman, M.J. (2006). *Clinician's guide to child custody evaluations* (3rd ed.). Hoboken, NJ: John Wiley and Sons.

American Heritage Dictionary of the English Language (4th ed.) (2006). New York: Houghton Mifflin Company.

American Psychological Association. (1994). Guidelines for child custody evaluations in divorce proceedings. *American Psychologist, 49,* 677-680.

Association of Family and Conciliation Courts. (2007). Model standards of practice for child custody evaluation. *Family Court Review, 45,* 70-91.

Austin, W. G., & Kirkpatrick, H.D. (2004). The investigation component in forensic mental health evaluations: Considerations for parenting time assessments. *Journal of Child Custody, 1*(2), 23-46.

Barsky, A. E. (2002). *Clinicians in court: A guide to subpoenas, depositions, testifying, and everything else you need to know.* New York: Guildford Press.

Borum, R., Otto, R. & Golding, S. (1993). Improved clinical judgment and decision making in forensic evaluations. *Journal of Psychiatry and Law, 21*(1), 35-76.

Bow, J.N., & Quinnell, F. A. (2004). Critique of child custody evaluations by the legal profession. *Family Court Review, 42,* 115-127.

Bradshaw, E. R., & Hinds, R.W. (1997). The impact of client and gender on custody evaluations. *Family and Conciliation Court Review, 35,* 317-335.

Evans, J. St. B.T. (1989). *Bias in human reasoning: Causes and consequences.* Hillsdale, NJ: Lawrence Erlbaum Associates

Feinberg, R. & Greene, J.T. (1995). Transference and countertransference issue in professional relationships. *Family Law Quarterly, 29,* 111-120.

Freedman, M.R., Rosenberg, S. J., Gettman-Felzien, & Van Scoyk, S. (1993). Evaluator countertransference in child custody evaluations. *American Journal of Forensic Psychology, 11,* 61-73.

Freud, S. (1957). The future prospects of psycho-analytic therapy. In J. Strachey (Ed.), *Standard edition of the complete psychological works of Sigmund Freud* (Vol. 2, pp. 139-152). London: Hogarth Press. (Original work published 1910)

Freud, S. (1958). The dynamics of transference. In J. Strachey (Ed.), *The standard edition of the complete psychological works of Sigmund Freud, Vol.12.* (Vol .12, pp. 97-108). London: Hogarth Press, (Original work published 1912)

Gabbard, G. O. (1995). Countertransference: The emerging ground. *International Journal of Psychoanalysis, 76,* 478-485.

Gabbard, G. O. (1999). *Countertransference issues in psychiatric treatment.* Washington, D.C.: American Psychiatric Press.

Gabbard, G. O. (2005). *Psychodynamic psychiatry in clinical practice* (4th ed.). Washington, D.C: American Psychiatric Publishing.

Gabbard, G.O., & Wilkinson, S.M. (1994). *Management of countertransference with borderline patients.* Northvale, NJ: Jason Aronson.

Garb, H.N. (1994). Cognitive heuristics and biases in personality assessment. In L.Heath, R.S. Tindale, J.Edwards,E. Posavac, F.Bruant, E Henderson et al. (Eds.), *Applications of heuristics and biases to social issues* (pp. 73-90). New York: Plenum.

Giovacchini, P.L. (1989). *Countertranference triumphs and catastrophies.* Northvale, NJ: Jason Aronson.

Gould, J.W. (2006). *Conducting scientifically crafted child custody evaluations* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Greenberg, S.A., & Shuman, D.W. (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology, 28,* 50-57.

Haydon, B.R., & Stoddard, R.H. (2006). *The life, letters, and table talk of Benjamin Haydon*. Kila, MT: Kessinger Publishing.

Hayes, J.A., & Gelso, C.J. (2001). Clinical implications of research on countertranference: Science informing practice. *Journal of Clinical Psychology*, 57(8), 1041-1051.

Johnston, J.R., Walters, M.G., & Friedlander, S. (2001). Therapeutic work with alienated children and their families. Family Court Review, 39(3), 316-333.

Johnston, J.R., & Roseby, V. (1997). *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce.* New York: The Free Press.

Kelly, J.B., & Johnston, J.R. (2001). The alienated child: A reformulation of parental alientation syndrome. *Family Court Review*, 39(3), 249-266.

Kernberg, O.FO. (1975). *Borderline conditions and pathological narcissism.* New York: Jason Aronson.

Kiesler, D.J. (2001). Therapist Countertransference: In search of common themes and empirical referents. *Journal of Clinical Psychology*, 57(8), 1053-1063.

Martindale, D. (2005). Confirmatory bias and confirmatory distortion. *Journal of Child Custody, 2*(1/2), 31-48.

Ogden, T.H. (1979). On projective identification. *International Journal of Psychoanalysis*, 60, 357-373.

Otto, R.K. (1989). Bias and expert testimony of mental health professionals in adversarial proceedings: A preliminary investigation. *Behavioral Sciences and Law, 7*(2), 267-274.

Pickar, D. B. (2007). On being a child custody evaluator: Professional and personal challenges, risks, and rewards. *Family Court Review, 45,* 103-115.

Racker, H. (1968). *Transference and ountertransference.* New York: International Universities Press.

Robb, A. (2006). Strategies to address clinical bias in the child custody evaluation process. *Journal of Child Custody, 3*(2), 45-69.

Rosenberger, E.W., & Hayes, J.A. (2002). Therapist as subject: A review of the empirical countertransference literature. Journal of Counseling and Development, 80, 264-270.

Sattar, S. P., Pinals, D.A., & Gutheil, T. G. (2004). Countering countertransference, II: Beyond evaluation to cross examination. *The Journal of the American Academy of Psychiatry and the Law, 32*(1), 148-154.

Schachter, J. (1997). Transference and countertransference dynamics in the assessment process. *Psychoanalytic Psychotherapy, 11*(1), 59-71.

Sugarman, A. (1981). The diagnostic use of countertransference reactions in psychological testing. *Bulletin of the Menninger Clinic, 45,* 473-490.

Stahl, P.M. (2006). Avoiding bias in relocation cases. *Journal of Child Custody, 3(3/4)*109-124.

Stahl, P.M. (1994). *Conducting child custody evaluations: A comprehensive guide.* Thousand Oaks, CA: Sage Publications.

Sullivan, M.J., & Kelly, J.B. (2001). Legal and psychological management of cases with an alienated child. *Family Court Review*, 39(3), 299-315.

Tippins, T.M. & Wittman, J.P. (2005). Empirical and legal problems with custody recommendations: A call for clinical humility. *Family Court Review, 43,* 193-222.

Wallerstein, J.S. (1990). Transference and countertransference in clinical interventions with divorcing families. *American Journal of Orthopsychiatry, 60*(3), 337-345.

Warshak, R. (1996). Gender bias in child custody decisions. *Family & Conciliation Court Review, 34,* 396-409.
Warshak, R. (2003). Payoffs and pitfalls of listening to children. *Family Relations*, 52, 373-384.
Williams, A.D. (1992). Bias and debiasing techniques in forensic psychology. *American Journal of Forensic Psychology, 10,* 19-26.

SUBMITTED: May 3, 2007
REVISED: May 20, 2007
ACCEPTED: June 19, 2007

doi:10.1300/J190v04n03_04