We know of three national estimates of the frequency of joint custody (Child Trends, 2002; Clarke, 1995; Donnelly & Finkelhor, 1993), the best coming from special supplemental 1998 United States Census data (and also 1994 and 1996 data that provide essentially the same results). In this analysis, 65% of mothers had sole physical and legal custody, 10% had sole physical and joint legal custody, 11% of fathers had sole physical custody (with either joint or sole legal custody), 9% of parents had joint physical and legal custody, and 5% had split custody or some other arrangement (Child Trends, 2002). Thus, about 75% of children not living with both parents lived primarily with their mothers, approximately 10% lived primarily with their fathers, about 10% lived in joint physical custody, and another 5% lived either in split custody or in some other arrangement. Although some people argue that joint physical custody is becoming far more common, no trends for increased prevalence between 1994 and 1998 were found in the census data (Child Trends, 2002).

Historical Trend Evidence and Joint Custody

Historical data from Wisconsin demonstrate the importance of distinguishing legal custody and physical custody, and also make us suspect that joint legal custody is becoming considerably more common than suggested by the census estimates. A review of 9,500 Wisconsin divorce settlements between 1980 and 1992 revealed that sole physical custody to fathers remained stable during these years while sole physical custody to mothers declined (see Fig. 4). Joint physical custody rose from 2% to 14% of the Wisconsin cases, while joint legal custody increased from 18% to 81% (Melli, Brown, & Cancian, 1997). Our experience leads us to believe that this dramatic increase in joint legal custody and more modest increase in joint physical custody have also occurred in many other states. Estimates from 1990 data gathered by the National Center for Health Statistics (Clarke, 1995) also support this suggestion, as different states reported widely varying rates of joint custody (legal and physical custody were not distinguished)—for example, 4% percent in Nebraska compared with 44% in geographically and politically similar Kansas.

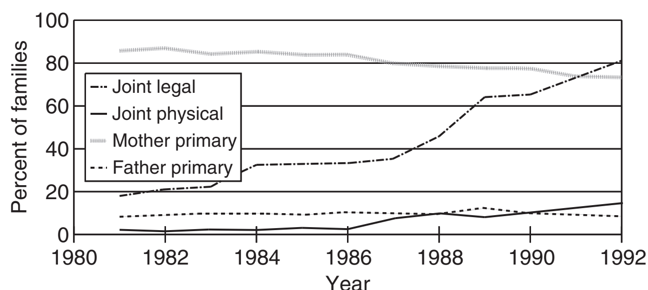

Fig. 4. **Percentage of custody arrangements in Wisconsin divorces from 1980 to 1992 (data were collected across calendar years; thus 1982 refers to 1981–82, etc.; based on Melli, Brown, & Cancian, 1997).**

Changes in Custody Arrangements

Custody arrangements change over time, and legal agreements often do not correspond to de facto residence. The best evidence on these points also comes from Maccoby and Mnookin's (1992) longitudinal study. For 783 cases where complete data were obtained during the 3-year study, initial legal agreements designated the following custody arrangements in the two California counties: 66% sole mother custody, 9% sole father custody, 21% joint physical custody, and 4% split custody. Shortly after the divorce decree was filed, however, only 52% of the cases with designated joint physical custody actually had a *de facto* joint physical custody. Among the 48% of the joint physical cases in which the living situation was not consistent with the legal agreement, most involved sole mother physical custody. Of cases with designated mother custody, 87% followed that arrangement in practice, as did 82% of father custody agreements, but only 35% of split-custody agreements actually conformed to that arrangement.

Three years later, only 45% of legally designated joint physical custody cases actually conformed to that arrangement, compared to 85% of cases with designated mother custody, 71% of cases of father custody, and 34% of split custody awards (Maccoby & Mnookin, 1992). The absolute percentages of the four types of custody arrangements 3 years after the divorce decree were similar to the initial arrangements, but the longitudinal analysis demonstrated that many families shifted out of their original custody arrangements and into new ones.

CUSTODY LAW AND CHILD CUSTODY EVALUATIONS IN PRACTICE

Later, we consider broad conceptual issues related to child custody law and custody evaluations. We begin, however, with a brief overview of the current legal landscape and a minimal critique.

The ''Best Interests of the Child'' Standard

Each state legislature in the United States controls its own child custody law, and laws can vary considerably from state to state. Still, every state law indicates that custody decisions are to be made according to "best interests of the child" standard, the principle that judicial determinations should be based on each child's unique future best interests (Elrod & Spector, 2004). Many mental health professionals applaud this "best interests of the child" standard as being responsive to individual children and families. We differ. Individualized decision making is appealing on the surface, but we are deeply concerned that a standard vague enough to be interpreted differently for each family that comes before the court (a) encourages parents to enter into custody disputes (thereby increasing parental conflict), because the outcome of a court hearing is difficult to

predict; and (b) allows for bias to intrude in the exercise of judicial discretion.

For reasons we do not fully understand, the law apparently has interpreted children's best interests to be primarily their best psychological interests (as opposed to other possibilities such as their economic, educational, or medical interests). This is evident in the various factors deemed relevant to children's best interests listed in most state laws, which typically are rooted in the Uniform Marriage and Divorce Act (1979), which lists the following:

- The wishes of the children's parent or parents as to their custody
- The wishes of the children regarding their custodian
- The interaction and interrelationship of the children and their parent or parents, their siblings, and any other person who may significantly affect the children's best interests
- The children's adjustment to their home, school, and community
- The mental and physical health of all individuals involved

Because child custody laws differ from state to state, some factors designed to be considered by judges are idiosyncratic to one or only a handful of states. South Carolina, for example, takes into account the religious beliefs and commitment of the parents, while Alabama, Florida, Michigan, North Dakota, and Utah consider parents' "moral character" to be relevant to children's best interests. One of the goals of a child custody evaluation—the overriding goal, according to some—is to assess the child and parents relative to these state-specified best-interest factors.

A Psychological Evaluation for the Deer-Doe Family

After several months of separation and still no custody agreement, Jane's attorney suggested a child custody evaluation as a next step in their negotiations, and, eager for some outside help, John agreed. Several weeks later, a psychologist, Dr. David Hagan, who was mutually agreed upon by both parties, was appointed by the court to assess Jane, John, his girlfriend, and their children.

Over the course of 6 weeks, Dr. Hagan conducted a comprehensive evaluation consisting of interviews and psychological testing with both parents; tests included the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the Rorschach Inkblot Technique, and the Wechsler Abbreviated Scale of Intelligence. Both children were interviewed, observed interacting with each other, and observed interacting with each parent at Dr. Hagan's office and at the respective parental homes. Dr. Hagan also administered a number of psychological tests to the children including the Achenbach Child Behavior Checklist (with parents and teachers as informants), the Roberts Apperception Test, the Bricklin Perceptual Scales, and the Wechsler Intelligence Scale for Children-IV. In addition, Dr. Hagan obtained collateral information by interviewing the children's teachers and grandparents, reviewing school and medical records, and reading all litigation-related documents. Finally, Dr. Hagan evaluated John's girlfriend by way of extensive interviewing and administration of the psychological tests mentioned earlier.

Dr. Hagan's bill for $7,400 reflected that he spent 37 hours conducting the evaluation, reviewing records, and writing a 35-page report summarizing his observations, findings, and opinions. (We discuss the report later.)

Practices Reported by Custody Evaluators

Given their frequency, high cost, and social and personal importance, we might expect to find a large body of research on custody evaluations and their scientific underpinnings. However, only a few studies of custody evaluations have been completed. One thing these studies show is that, in real life, many evaluators use the instruments employed by our fictional Dr. Hagan. Another thing research shows is that most of these measures are deeply flawed when used in the custody context.

With the exception of one study (Bow & Quinnell, 2002) all research examining child custody evaluation practices has been based on the self-report of examiners. Although these data provide some helpful information, we must keep in mind that professionals' reports of their behavior may not accurately depict their actual practices (Greenberg, Otto, & Long, 2003).

Keilin and Bloom (1986) described the practices reported by 82 custody evaluators (78% psychologists) who responded to an anonymous survey. Respondents devoted an average of 19 hours to each evaluation and almost always reported interviewing each parent and the children. Most used psychological tests with adults (76%) and children (74%); most observed parent–child interactions (69%); half said they observed interactions between the two parents; and about one third reported visiting the children's homes or schools. Approximately one half interviewed third parties (e.g., friends and relatives) in an attempt to gain a better understanding of the children and their parents.

No one particular psychological test was used by a majority of the respondents when assessing children. Intelligence tests were used most frequently, with almost half of the evaluators using them in the majority of their cases. The next most frequently used instruments with children were the Thematic Apperception Test or the Children's Apperception Test (39%), followed by miscellaneous projective drawings, the Rorschach Inkblot Technique, and the Bender-Gestalt Visual Motor Test. In assessments of parents, the MMPI was the most commonly used assessment technique (70%), followed by the Rorschach Inkblot Technique (42%), and the Thematic Apperception Test (38%).

Keilin and Bloom (1986) also asked the evaluators to rank order 21 different factors with respect to their importance when considering custody. In descending order of significance, the ten most important were (1) the stated preferences of a 15-year-old (or older) child, (2) parental attempts at alienation (i.e., attempting to turn a child against the other parent), (3) the nature and quality of the child's emotional relationship with each parent, (4) the emotional or psychological stability of each

parent, (5) each parent's parenting skills, (6) each parent's openness towards the child's contact with the other parent, (7) the parents' preseparation caretaking and parenting roles, (8) the parents' expressed anger and bitterness regarding the divorce, (9) the parents' sexual orientation, and (10) the stated preferences of a 5-year-old child.

Ten years later, Ackerman and Ackerman (1997) surveyed 800 doctoral-level psychologists who conducted child custody evaluations and obtained usable responses from 201 (25%). Respondents spent 21 hours per evaluation—similar to the earlier survey—but these respondents reported devoting more time to reviewing collateral materials and report writing. Intelligence tests and projective measures continued to be the instruments most frequently employed with children, and the MMPI/MMPI-2 remained the most frequently used assessment instrument for parents, followed by the Rorschach Inkblot Technique.

Many custody evaluators also reported using assessment instruments with children that were developed specifically for use in custody contexts (Ackerman & Ackerman, 1997). Over one third used the Bricklin Perceptual Scales (Bricklin, 1990a) while 16% used the Perception of Relationships Test (Bricklin, 1989). Fewer respondents (11%) used the Ackerman-Schoendorf Scales for Parent Evaluation of Custody (Ackerman & Schoendorf, 1992), the one custody-assessment measure designed for entire families and adults. Fewer than 10% used other custody-assessment measures, specifically, the Parent Awareness of Skills Survey (Bricklin, 1990b) and the Custody Quotient (Gordon & Peek, 1989). Other investigators (e.g., Bow & Quinnell, 2001; Gourley & Stolberg, 2000) have reported findings regarding test usage by custody evaluators similar to those detailed by Keilin and Bloom (1986) and Ackerman and Ackerman.

Like Keilin and Bloom (1986) before them, Ackerman and Ackerman (1997) also asked custody evaluators to rate the importance of various factors to issues of child custody. According to the custody evaluators, the ten most important, in descending order of significance, were (1) the substance abuse status of each parent, (2) the parents' parenting skills, (3) parental attempts at alienation, (4) the nature and quality of the child's emotional relationship with each parent, (5) the emotional or psychological stability of each parent, (6) each parent's openness toward the child's contact with the other parent, (7) the parents' history of compliance with the court during the separation, (8) the parents' preseparation caretaking and parenting roles, (9) the stated preferences of a 15-year-old or older child, and (10) the parents' expressed anger and bitterness regarding the divorce.

THE (LIMITED) SCIENCE OF CUSTODY EVALUATIONS

State statutes regarding children's best interests help us understand at least some of the practices of custody evaluators. We could (and later do) question, for example, whether (or when) a parent's mental health or the wishes of a child should be a central focus in child custody cases. Still, evaluators who assess such factors are following explicit legal guidelines. More difficult to explain and more problematic, however, are other aspects of evaluation practices including the widespread use of well-established measures with no clear relevance to the custody context (e.g., measures of intelligence), attempts to measure constructs created to apply to child custody decision making (e.g., "parent alienation syndrome"), efforts to identify "parent of choice" (e.g., the Bricklin Perceptual Scales), and the use of measures that a significant number of psychologists view with skepticism (e.g., the Rorschach Inkblot Technique).

We are dubious about many child custody evaluation practices, because of the absence of solid psychological science and of clear criteria to be predicted by psychological science. We also hold two much more fundamental questions about child custody evaluations: Why has society and the law placed such importance on a prediction about *psychological* factors in determining custody? And if the goal is to minimize children's psychological risk, might there be better roles for psychologists to play—both as practitioners and as scientists—in custody disputes? For now, however, we focus on the lack of scientific evidence to support many of the instruments and practices of mental health professionals who serve as custody evaluators.

Heilbrun, Rogers, and Otto (2002) described a three-category typology of assessment techniques used in forensic contexts, including custody evaluations. *Clinical assessment instruments* are those developed to assess psychological constructs, typically for intervention purposes (e.g., measures of intelligence, psychopathology, academic achievement). *Forensically relevant instruments* assess constructs that are psychological in nature but may be of particular relevance in forensic contexts (e.g., measures of response style, risk for criminal offending). Finally, *forensic assessment instruments* are specifically designed to assess psycho-legal constructs. Here we review evidence in regard to the third and first categories of assessment techniques. We do not consider forensically relevant instruments because none have been used widely by custody evaluators, although that may change (Posthuma, 2003). We also raise concerns about "parent alienation syndrome" and other constructs that have been created for, and asserted to have scientific standing in, the context of custody evaluations.

Forensic Assessment Instruments: No Scientific Support

In the past 15 years, psychologists have developed a number of forensic assessment instruments purporting to assess children's best interests in custody disputes (see Grisso, 2003). Our bottom-line evaluation of these measures is a harsh one: These measures assess ill-defined constructs, and they do so poorly, leaving no scientific justification for their use in child custody evaluations.

The most widely used forensic assessment instrument (Ackerman & Ackerman, 1997) is the Bricklin Perceptual Scales