

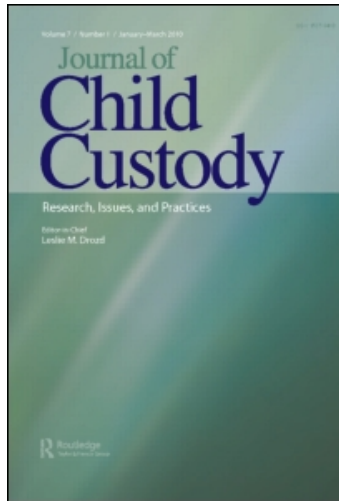
This article was downloaded by: [Pickar, Daniel]

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Publisher Routledge

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Journal of Child Custody

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t792306888>

Countertransference Bias in Child Custody Evaluations Is Just a Horse of a Different Color: A Rejoinder to Martindale and Gould

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To cite this Article Pickar, Daniel B. and Erard, Robert E.(2008) 'Countertransference Bias in Child Custody Evaluations Is Just a Horse of a Different Color: A Rejoinder to Martindale and Gould', *Journal of Child Custody*, 4: 3, 77 – 89

To link to this Article: DOI: 10.1300/J190v04n03_06

URL: http://dx.doi.org/10.1300/J190v04n03_06

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Countertransference Bias in Child Custody Evaluations Is Just a Horse of a Different Color: A Rejoinder to Martindale and Gould

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Journal of Child Custody, Vol. 4(3/4) 2007
Available online at <http://jcc.haworthpress.com>
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doi:10.1300/J190v04n03_06

ABSTRACT. The authors' reply to Martindale and Gould's critique of Pickar's article (2007a, this issue), "Countertransference Bias in the Child Custody Evaluator." Martindale and Gould's objections to considering an evaluator's countertransference reactions as a potential source of bias are addressed by focusing on these four areas: (1) Whether it is useful to introduce the term "countertransference bias" to identify a potential source of distortion in custody evaluations; (2) How the empirical literature on countertransference in the context of psychotherapy might apply to the child custody evaluation process; (3) Clarification of areas of agreement and disagreement with Martindale and Gould, and (4) The importance of evaluator attempts at "debiasing." We conclude that gaining awareness of countertransference reactions can only enhance the evaluator's ability to provide the most objective custody evaluation possible. doi:10.1300/J190v04n03_06 [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2007 by The Haworth Press, Inc. All rights reserved.]

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

Martindale and Gould (2007, this issue) contend that Pickar's article, "Countertransference Bias in the Child Custody Evaluator" (2007b, this issue) introduces superfluous terminology to the literature on bias in child custody evaluations (CCEs). They reject Pickar's proposal that awareness of countertransference bias as such may assist the evaluator in reducing bias in conducting CCEs: "We do not feel . . . that endeavors to understand and reduce the effects of such biases are more likely to meet with success by adding terminology from psychoanalytic theory" (p. 70).

We shall address Martindale and Gould's objections by focusing on these four areas: (1) Whether it is useful to introduce the term "countertransference bias" to identify a potential source of distortion in CCEs; (2) How the empirical literature on countertransference in the context of psychotherapy might apply to the child custody evaluation process; (3) Clarification of areas of agreement and disagreement with Martindale and Gould; and (4) The importance of evaluator attempts at "debiasing."

**EXPANDING THE LANGUAGE OF BIAS
IN THE CHILD CUSTODY EVALUATION PROCESS**

Many theoretical traditions offer constructs that are useful in approaching and understanding the biases endemic to child custody evaluations. In their own writings, Martindale and Gould have largely confined their discussions of bias to those associated with cognitive heuristics identified in the social cognitive psychology tradition (e.g., confirmatory bias, primacy bias, recency bias, anchoring bias). Biases in this tradition are based on distortions in information processing. While they are very important in understanding systematic distortions of a purely cognitive character, these cognitive biases have little to do with personal and emotional influences (i.e., “hot cognitions,” as the late Robert Abelson called them), that we well know, as custody evaluators, are at the heart of many serious distortions in judgment.

Martindale and Gould’s criticism of Pickar’s application of the concept of countertransference bias in the field of child custody evaluation evinces an antipathy towards the psychoanalytic tradition (perhaps reflecting a countertransference bias of their own). They argue: “Pickar has not contributed to our understanding of various types of bias by tapping the ‘language’ of psychoanalysis in order to create numerous new vocabulary terms” (p. 70).

Fortunately, Martindale and Gould’s hostility to psychoanalytically derived constructs does not reflect a consensus position in the child custody literature. Both classic (Goldstein, Freud, & Solnit, 1973) and more recent (Kalter, 2006; Johnston, 1988; Johnston & Roseby, 1997; Wallerstein, 1990; Wallerstein, Lewis, & Blakeslee, 2000) contributors to the fields of divorce and child custody have fruitfully applied psychoanalytic concepts to their research, writing, and practice.

Martindale and Gould contend that using the term countertransference is “assigning [a] new label[s] to interpersonal dynamics¹ . . .” (p. 70). They facetiously offer the unwieldy alternative term, “baggagification,” as a means of trivializing the concept of countertransference. We are at a loss to understand why “countertransference,” a technical term and a psychological construct that has been developed and refined for over 80 years, should be considered “new vocabulary” unless Martindale and Gould simply mean that it is relatively novel to the child custody literature. Yet if it is so negligible, it seems a remarkable thing that countertransference, when searched as a keyword, has been cited in some 4,200 scientific papers and empirical studies over the last 40 years, and over 1,600 publications in just the last seven years

(PsychInfo search, May 22, 2007). We respectfully submit that “countertransference” is a far better word for these processes than “baggagification” and also preferable to the various circumlocutions that some may awkwardly employ in order to maintain personal distance from the psychoanalytic tradition. A colleague (L. Packard, personal communication, May 20, 2007) observed that “elegance,” as a research term, has to do with compacting the maximum amount of information in the fewest words. We utilize nosologies in psychology for just this purpose (e.g., dysthymia means something different from major depressive disorder). Martindale and Gould champion the K.I.S.S. principle, but as Albert Einstein is said to have once observed: “Everything should be made as simple as possible, but not simpler.”

Spreading far beyond its psychoanalytic origins, the concept of countertransference has been widely accepted in mainstream psychology. For example, in a special issue of the *Journal of Clinical Psychology*, “In search of the meaning and utility of countertransference,” both the renowned, staunchly non-analytic founder of rational-emotive therapy, Albert Ellis (2001), and the respected family systems researcher and practitioner, Florence Kaslow (2001), recognized that countertransference exists in practically all forms of psychotherapy.

Martindale and Gould attempt to treat their disagreement with Pickar as a matter of mere semantics. Starting with the truism, “language is intended to facilitate communication” (p. 70), they go on to proscribe terms that introduce concepts from outside their own familiar domain. By condemning the use of the word “countertransference,” these authors ignore a broad body of relevant literature and only make it more difficult for evaluators to review in any systematic way the various forms in which the evaluator’s own personal history, emotional needs, and idiosyncratic reactions to the litigants, children, lawyers, and collateral sources, may be distorting their judgment and reducing their objectivity and impartiality. One might well ask, “Who is really imposing their way of speaking on others?”

We are in agreement with Martindale and Gould about the general value of seeking simple explanations prior to progressing to more complex explanations. Still, it is vital to distinguish between the simple and the simplistic. When one is confronted with entrenched resistance to the importation of useful ideas from one field of application to another, a useful counterweight to Ockham’s Razor is Koppett’s Quandary, “A simple story, however inaccurate or misleading, is preferred to a complicated explanation, however true” (Koppett, 2004, p. 136).

**EMPIRICAL RESEARCH ON COUNTERTRANSFERENCE
AND APPLICATIONS TO CHILD CUSTODY EVALUATIONS**

Martindale and Gould write, “to the best of our knowledge, researchers have been unable to develop methods by which the core concepts of psychoanalysis might be subjected to empirical scrutiny” (p. 74). While we strongly disagree with this surmise, it is well beyond the scope of this brief reply to address empirical research on the full array of major psychoanalytic concepts. Here we shall simply point out that Martindale and Gould are incorrect in presuming that countertransference has not been subjected to empirical scrutiny. While the bulk of the literature on countertransference is still concentrated in theoretical works and published case studies, significant empirical research in the last two decades has studied countertransference from a more systematic, empirical perspective (Hayes & Gelso, 1993; Hayes, McCracken, McClanahan, Hill, Harp, & Carozzoni, 1998; Marcus & Buffington-Vollum, 2005; McClure & Hodges, 1987; Yulis & Kiesler, 1968). The relevant empirical literature has been summarized in several recent reviews (Hayes & Gelso, 2001; Kiesler, 2001; Rosenberger & Hayes, 2002; Schwartz & Wendling, 2003). Perhaps it is worth noting that almost all of this research has been published in non-psychoanalytic, peer-reviewed journals.

Researchers have operationalized countertransference manifestations and examined affective, cognitive, and behavioral components of these phenomena. In the psychotherapy context, 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 (Rosenberger & Hayes, 2002).

We recognize that a concept that was developed and studied in the treatment context should not be uncritically applied to the forensic psychology context. Ideally, one would like to see some well-designed empirical research on how countertransference has led to significant distortions in forensic applications. Then again, we are not aware of any of the types of the biases previously described by Martindale (2005), Gould (2006), or Robb (2006) in this journal have been the subject of any empirical research designed specifically for the CCE context.

Pickar (2007a) previously proposed, based upon Kiesler’s (2001) contribution, that countertransference in CCEs be operationally defined as a phenomenon that occurs when the evaluator’s experiences and actions with a particular custody litigant (or child involved in a CCE) seem idiosyncratic and deviate significantly from his or her baseline

with other custody litigants (or their children). Martindale and Gould dismiss self-reflection by custody evaluators, emphasizing the centrality of what is done by custody evaluators rather than what is imagined and felt: "In work done for the court, what matters is behavior. Unless judgment distorting biases manifest themselves in overt, identifiable behaviors, hypotheses concerning evaluator psychodynamics are not pertinent to court proceedings" (p. 72). Yet, it is undeniable that cognitive distortions based upon undetected countertransference reactions often find their way into custody reports. Martindale and Gould's emphatic distinction between evaluators' thoughts and feelings, versus their behavior, is of negligible value when the evaluator's countertransference-based, biased interpretations and judgments enter into findings and recommendations in a CCE.

Unfriendly as they are to the concept of countertransference, Martindale and Gould themselves provide some compelling examples of impaired judgments which likely stem from evaluators' unexamined countertransference bias. Such examples include using insulting terminology in describing the non-favored parent, while using glowing terminology in describing the favored parents, or the production of a report which is clearly unbalanced, with one parent portrayed quite negatively, and the other more uncritically presented. Hayes and Gelco (2001) have demonstrated that therapists' decisions about treatment can be altered when their unresolved conflicts are touched upon. Hayes, McCracken, McClanahan, Hill, Harp, and Carozzini (1998) have offered a wealth of examples of how such countertransference reactions can be triggered, including: (1) a therapist who worried about his own children's safety strongly identifying with a client when she described fears about not being able to protect her children from harm; (2) a therapist whose feelings toward a client were influenced by the client's similarity in her appearance and in her occupation to his ex-wife; and (3) a childless therapist, conflicted about her own decision not to leave her husband, who consequently felt envious of her client—a divorcée with three children—and became bored when the client discussed child-rearing issues. Such examples have obvious ramifications for the decision making process in the custody evaluation context as well. Indications of countertransference manifesting in behavior might include an evaluator's disclosure of personal information about herself with a litigant, diverging from standard procedures to accommodate a demanding client or an especially liked client, or making sarcastic comments about a client to a colleague. The crucial point is that it is important for an evaluator to identify a countertransference reaction when it is taking place, so it does

not have a further distorting influence upon the evaluator's manner of analyzing and interpreting information and in the writing of a report.

AREAS OF AGREEMENT AND DISAGREEMENT WITH MARTINDALE AND GOULD

We concede Martindale and Gould's point that Pickar's article may be open to criticism because of the technically complex way the various types of countertransference were elaborated, rather than simply offering a primer on the concept of countertransference. Pickar took the more ambitious approach because of the fact that this dynamic process, with only one exception 15 years ago (Freedman, Rosenberg, Gettman-Felzien, & Van Scoyk, 1992), had not been addressed in the custody literature, and it was felt that the complexity and types of countertransference should be appreciated and understood. Martindale and Gould's comment affords Pickar an opportunity to clarify his original intention. His proposal is not that evaluators adopt all of the technical language describing the various forms of countertransference, but that the terms *direct countertransference* (i.e., referring to the evaluators' idiosyncratic reactions to the custody litigants and their children, based on unresolved conflicts in the evaluator) and *indirect countertransference* (i.e., the evaluators' reaction to third parties not directly involved in the evaluation, such as attorneys and collateral sources of information, also based in the evaluator's unresolved personal conflicts and needs) be used to identify potentially significant distorting influences that can generate bias in the child custody evaluator.

There are several instances in Martindale and Gould's critique where they either miss the point or are mistaken in their interpretation of Pickar's meaning. For some reason, they interpret Pickar to be claiming that an evaluator should be held to some extremely high standard of mental health in order to be qualified to conduct a CCE. They argue, "If we were to require that evaluators have healthy childhood and healthy marital relationships, society would have to handle disputed custody cases with far fewer evaluators" (p. 72). But Pickar never advocated eliminating countertransference in such a draconian fashion or otherwise—his point was simply that it behooves evaluators to try to recognize it. A study by Hayes et al. (1998) found that 80 percent of highly experienced therapists deemed excellent by their peers experienced countertransference reactions. Hayes et al. noted that these findings undermined the professional myth that good or highly experienced thera-

pists do not experience countertransference reactions. While this research was conducted in the psychotherapy context, we also believe it is a professional myth that excellent and highly experienced child custody evaluators never experience countertransference reactions while conducting their evaluations.

Pickar suggested that because most custody evaluators were originally trained as psychotherapists (and, of course, many still practice as such), they may be especially vulnerable to countertransference reactions due to the helpful and empathic stance they typically have maintained in conducting psychotherapeutic work. Thus, Martindale and Gould miss the point when they state, “we strongly disagree . . . that with rare exception, evaluators ‘enter the field with a sincere desire to empathically assist others with their pain and suffering’” (p. 73).² Ignoring Pickar’s emphasis that the therapeutic stance is not so easily dissociated from the forensic one, Martindale and Gould stress the importance of approaching custody evaluations with an attitude of objectivity, detachment, and impartiality. We have no quarrel with the following observation by Gould (2006):

No matter how strongly we may feel on a personal level about the issues at hand, no matter how much we may like the litigants on one side and dislike the litigants on the other side, it is imperative that our professional attitude and beliefs lead us to conduct a neutral, impartial, fair, and dispassionate evaluation. (p. 19)

All custody evaluators must strive to function in this objective manner. However, we believe that the model of the completely dispassionate and emotionally detached evaluator is essentially a convenient fiction. One might call it the “fallacy of immaculate perception.” Ironically, the classic prototype of this idealized, purely objective ratiocinator is found in the very tradition from which Martindale and Gould most desire to distance themselves—viz., Freudian psychoanalysis. In the original Freudian conception, the analyst was a “blank screen,” without memory or desire (Bion, 1967), who reacted to the patient in full accord with the reality principle and for whom any personal emotional reactions represented a technical error and a distortion of the process. Current psychoanalytic theory has largely discarded the “blank screen” ideal as a type of self-delusion. Modern psychoanalysts recognize that countertransference reactions based on the analyst’s own personal history, emotional needs, and emotional reactions to the patient are inevitable, and that it is the analyst’s task to attempt to recognize and

understand the interaction between the analyst's and the patient's jointly constructed intersubjective interaction (Gill, 1982; Greenberg & Mitchell, 1985; Levenson, 2005). It is precisely because evaluators, just like litigants, are human and subject to emotional and cognitive influences from their personal and family history that Pickar focused on countertransference bias in his article.

Martindale and Gould also draw the mistaken inference that Pickar somehow intended for evaluators to testify in court about their countertransference reactions. Rather, recognition of one's own countertransference is recommended as a means of developing further hypotheses and correcting distortions in the evaluator's inferences and judgments. We would obviously prefer that custody evaluators themselves notice the operation of countertransference on their opinions rather than be confronted with this possibility for the first time in the courtroom. Unfortunately, the latter takes place all too often already. For example, when a cross-examining attorney learns that an evaluator has recently undergone a divorce, he or she may attempt to make the argument that the evaluator has thus become biased against the parent of the opposite gender. We propose that evaluators do themselves no disservice in the courtroom by acknowledging that they are fallible, that even highly experienced evaluators must always remain quite circumspect about potential biases that could arise from personal factors which may distort their perception, and that they actively and self-reflectively attempt to control for such biases.

THE IMPORTANCE OF EVALUATOR ATTEMPTS AT "DEBIASING"

Evans (1989) has used the term "debiasing" to "refer to the problem of how to eliminate the impact of biases in reasoning, decision-making, and problem-solving" (p. 113). We believe it is crucial that evaluators make every attempt at debiasing, and the purpose of the countertransference bias article was to provide practical suggestions to assist evaluators in detecting and preventing bias, most particularly, from countertransference reactions. When one reads Martindale and Gould's critique, the question arises, "For what audience are these authors writing?" Their comments appear to be geared towards assisting attorneys in detecting bias on the part of mental health experts. For example, they quote a statement taken from a previous publication by Martindale (2001), *Cross-Examining Mental Health Experts in Child Custody Liti-*

gation: “The search for indications of bias is most efficiently begun by comparing the contents of an evaluator’s contemporaneously taken notes with the evaluator’s description of factors supporting the opinion(s) offered” (p. 488). In the same paragraph, they then list several suggestions from another paper they co-wrote (Martindale and Gould, 2007), also clearly geared for attorneys’ or rebuttal experts’ use in detecting bias in mental health experts conducting child custody evaluations. Nowhere in their article do they offer any consideration of debiasing techniques for evaluators themselves, *prior to review by their adversaries*, as intended in Pickar’s article. Likewise, in Martindale’s (2005) article in this journal, no suggestions are offered for evaluators with respect for debiasing, apart from the familiar standard that “evaluators employ multiple methods of data gathering” (p. 44).

To give credit where due, however, Gould (2006) provides several sensible suggestions to the evaluator for reducing confirmatory bias, such as considering alternate hypotheses which might disconfirm initial hypotheses, seeking out data that might not support a possible bias, and seeking professional consultation to ensure an evaluator’s initial bias does not influence data collection or the interpretation of data. Gould notes:

As evaluators, we are trained to be objective purveyors [*sic*] of human behavior. However, we also fall prey to our personal³ and professional biases that may subtly affect our view of the data. It is incumbent upon each of us to be continuously aware of how issues of confirmatory bias may influence our reading of the data.” (p. 316)

Other writers who have recently published in this journal also believe it is important for evaluators to make attempts at debiasing. Robb (2006) commented on the importance of evaluators monitoring meta-cognitive factors, and observed, “This way, even non-conscious biases may be detected by developing insight, rather than just academic knowledge and self-challenge of overconfidence” (p. 63). Robb further noted:

Less obvious issues, such as bias inherent in the scientific process or the clinical relationship, can be the most challenging to confront and address. Given the profound issues at stake in child custody litigation, professionals providing custody evaluations should be aware of the multiple pitfalls that exist in clinical decision-making as well as strategies to counteract them. (p. 63)

It was Pickar's intention to contribute to the literature on debiasing, by highlighting another type of bias which can develop from factors not previously emphasized in the child custody literature. We remain hard pressed to understand how it might be helpful, in improving the objectivity of the child custody evaluation process, to proscribe or limit the types of bias an evaluator should consider in conducting an impartial and unprejudiced evaluation.

IGNORE COUNTERTRANSFERENCE BIAS?

Unrecognized countertransference is a universal professional hazard, not only within the arena of psychotherapy, but in the forensic context as well. Sattar, Pinal, and Gutheil (2004), in their discussion of countertransference reactions in the area of criminal forensic psychiatry, conclude:

No matter what term is selected to describe the feelings evoked as a response to aspects of forensic evaluations, it is of paramount importance that forensic psychiatrists learn to identify and process these feelings to prevent them from having an impact on the neutrality and objectivity of their forensic work and from tainting the general reputation of the field. (p. 153)

Countertransference bias is a distinctively different and particularly pernicious type of bias, in contrast to those purely cognitive biases previously examined in the CCE literature. With all due respect to Martindale and Gould, we prefer to think of countertransference bias not as a zebra from Montana, but just as a horse of a different color. Recognition of the power of countertransference and the fact that none of us is simply immune to triggers of our own emotional needs and unresolved conflicts is essential to developing a salutary alerting mechanism. Expanding the vocabulary of bias can only enhance our ability to conduct and provide the most objective child custody evaluations possible, to best serve the courts and the best interests of children and families in the throes of divorce-people who need our unbiased guidance.

NOTES

1. Note that their use of this term, "interpersonal dynamics," in the custody evaluation context may itself represent a dangerous flirtation with the psychoanalytic tradition, indeed only a rather small step removed from "countertransference" itself.

2. For ourselves, we fervently hope that evaluators are indeed, and not too rarely, empathically motivated to reduce the suffering of children, and secondarily, their parents, in the context of divorce and custody disputes, rather than by purely pecuniary interest or some abstracted legal punctiliousness—but of course, that does not mean that we endorse loading the dice in favor of our personal predilections when offering our recommendations to courts.

3. Let's not give too much credit, however. Aren't such subtle "personal biases" really a type of countertransference reaction to the litigants at hand, and isn't the term "confirmatory bias" here stretched beyond recognition?

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SUBMITTED: May 30, 2007

REVISED: June 12, 2007

ACCEPTED: June 19, 2007

doi:10.1300/J190v04n03_06