

A Mixed and Dangerous Tool for Judges on Custody Evaluations

By Joan Zorza, Esq. © 2005 (To appear in Sexual Assault Report, Vol. 8, No. 4, March/April 2005 issue)

By far the most troublesome custody cases are those involving domestic violence (DV) and incest. For this reason SAR is reviewing a new tool recently issued for judges on this issue which is designed to help courts utilize custody evaluations. We wish we could overwhelmingly support the tool, which has some exemplary aspects, but the tool also definitely has some dangerous aspects that can be used against battered women and children who are victims of child sexual abuse (CSA), particularly where molested by their fathers. This article is based on a speech delivered on Jan. 8, 2005 at the Second Annual Battered Mothers Custody Conference, Siena College, Loudonville, NY.

Overview of the Tool

The Family Violence Department of the National Council of Juvenile and Family Court Judges (NCJFCJ) is funded by the U.S. Department of Health and Human Services (HHS) through the Violence Against Women Act. Many custody cases that involve DV also arise in cases where there is sexual assault (SA), e.g., where a parent commits incest, when one sibling sexually abuses another, or when a parent rapes or sexually assaults the other parent. Given the overlap, it is disappointing to see that a project of the NCJFCJ funded by HHS and the State Justice Institute will be used to assist abusive fathers to obtain custody, prevent mothers from protecting their children, endanger sexually abused children, and further confuse judges in these cases. The project, a bench guide for judges on custody evaluations in cases where there is domestic violence, is entitled *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* and is available from the NCJFCJ (1-800-527-3223 or email fdresource@ncjfcj.org.) or can be viewed or downloaded for free from its Web site at www.ncjfcj.org/dept/fvd/publications. The tool consists of a 27-page guide or manual followed by several cards for use as quick guides and reminders for judges.

Despite its dubious and dangerous weaknesses, the guide has some very helpful and praiseworthy aspects. The tool's primary strengths lie in its design, its clarity about how DV perpetrators behave and the safety needs of DV victims, and some of the limitations of psychologists, anger management therapy, Parental Alienation Syndrome (PAS) and

psychological testing. Its primary weaknesses arise from recasting PAS as parental alienation (PA) and its legitimating the family dynamic perspective in cases of domestic violence. The family dynamic perspective sees all problems as caused by the couple dynamic and poor communication in particular, a perspective that results in either obfuscating or minimizing the abuse within the family. The tool is written to validate both the domestic violence proponents and family systems proponents. As a result, most DV advocates will not realize how dangerous the tool is to victims of abuse, just as most custody evaluators and others schooled in the family system dynamic will see it as validating their views (that downplay DV allegations and look to whether mothers alleging abuse do so to deny father access of their children).

Although the “final” version of the guide was officially released and put up on the NCJFCJ’s Web site, it is likely that a few changes may be made, particularly toning down the implication that virtually every custody case involving DV needs a custody evaluation. I did not see a copy of the guide until after it was finalized, but now strongly urge this and other changes. NCJFCJ may feel it is too late to make anything but minor changes, and as a result the tool, though somewhat improved, will not keep victims safe and will promulgate faulty theories that will be used to denigrate abuse allegations and give abusive fathers custody or unsupervised access to their children. This article will discuss both the encouraging and discouraging aspects of the guide.

Helpful Aspects of New Guide

Batterer Characteristics. The tool gives a quick summary of how batterers behave, noting, for example, the following:

- Most batterers deny and minimize their abusive behavior (p. 8);
- Batterers may be inattentive to their children’s needs (p.12);
- Batterers commonly undermine their partners’ parental authority and sabotage their relationships with the children (p. 19);
- Lethal violence is highest during and after the couple separates which often affects the children (p. 9); and
- Batterers often accuse their partners of alienating the children (p. 12 & 19).

The tool also lists some of the risk factors for battering (p. 13) and warns that some children may feel safer identifying with the abuser than with the victimized parent (p. 19).

[2] Legal Requirements. The guide correctly notes that virtually every state requires judges to consider domestic violence in custody cases (p. 9). However, as will later be discussed, the guide applies the most limited definition of DV used in any of the states, so that many DV and SA cases are not included. It also correctly notes that all states permit custody evaluations of children in custody cases.

The tool also encourages custody evaluators to consider whether domestic violence is the motivation when relocation is raised (p. 13), although it gives little other guidance on the topic.

[2] Limitations of Psychology. The guide wisely warns that a little training on DV does not make a mental health professional or custody evaluator an expert (p. 16), and that anger management therapy is inappropriate and ineffective in treating DV (p. 23).

The guide is very helpful in clearly stating (p. 18-19) what psychological tests can and cannot do, noting they cannot test for whether someone is a victim or perpetrator of DV as “[t]here is no single profile of a victim or a perpetrator.” It also tells readers that “[t]he standard psychological tests measuring personality, psychopathology, intelligence or achievement, including the Minnesota Multiphasic Personality Inventory (PAI), Rorschach Inkblot Test, Children’s Apperception Test (CAT), Thematic Apperception Test (TAT), Wechsler Adult Intelligence Scale (WAIS-III), and Wide Range Achievement Test (WRAT-3), do not directly address the psycho-legal issues relevant to most child custody cases,” including issues about the parents’ relationships with children, or their child-rearing attitudes or capacities. “A standard test may offer information [in a particular case] that is related to parent-child interactions, parent functioning or child functioning; but that information should be included in the evaluation *only if* the examiner makes clear the connection between the test results and the issue that is legally relevant in the custody context and *only if* the test results are backed up by and integrated with other data about real-life behavior” (emphasis in original).

The guide notes that newer tests developed to address the issues most relevant in custody cases have not “been evaluated with enough rigor to establish their validity or reliability,” tests such as the Bricklin Perceptual Scales (BPS), Perception of Relationship Test (PORT), Ackerman-Schoendorf Scales for Parent Evaluation and Custody Test (ASPECT), and Parent Awareness Skills Survey (PASS) tests. These tests at best provide hypotheses that must be validated or invalidated in other explorations. Furthermore, many of the psychological tests

commonly used in custody evaluations “also measure and confuse psychological distress or dysfunction induced by exposure to domestic violence with personality disorder or psychopathology,” making it important not to prematurely label the abused parent whose functioning may dramatically improve once she is safe.

The tool observes that evaluations based on “he said/she said” should be considered unreliable, and further warns that anger management treatment in “inappropriate and inadequate” for batterers. But perhaps the most helpful information in the guide is that Parental Alienation Syndrome is not recognized within the scientific community and does not meet either the **Frye** or **Dalbert** standard, the two tests used for admissibility of scientific evidence in the vast majority of state and federal courts in the U.S. (p. 19).

Safety Concerns. The guide warns that when there is DV, victims are endangered by meetings with their perpetrators, and that courts should not have them do so, reminding courts and evaluators to keep the safety of the victim as the primary consideration. Furthermore, the guide advises postponing visitation until the vulnerable parent and the children have healed and are safe from the abuse. It reminds readers that separation often increases the violence to both the vulnerable parent and the children.

All of the above-noted helpful information should aid attorneys representing abused parents or the children in custody cases involving DV and SA in selecting custody evaluators, obtaining useful orders from judges, crafting cross examination of evaluators once they have written their reports to the court, and seeking the protection their clients need. However, as the remainder of this article will discuss, the guide has information that will be used to seriously harm victims and children in these cases.

[1] Problematic Aspects of Guide

Definition of Domestic Violence. The guide defines domestic violence (DV) within the context of a relationship, a way of looking at the problem that will keep many family system proponents focused on the family and not on the abuser who chooses to perpetrate crimes against his intimate partner (and possibly children). In describing DV as “a dynamic between parents” (p. 8), and making statements such as when “parents are entangled in an abusive relationship” (p. 12), “when there is violence at home” (p. 8), and “violence or abuse in the parents’ relationship” (p.9), rather than discussing abusers who batter their partners, most mental health professionals

doing custody evaluations, mediation or otherwise involved in custody disputes, who have been schooled in the family systems dynamic, will continue to see the problem as involving the dysfunction of both parents. They will likely blame the victimized or non-abusive parent as much as, or even more than, the perpetrator for the abuse. Rather than noting that batterers are typically inattentive to their children, the tool says that both parents may be inattentive (p. 12), blaming the mother equally and failing to note that much of the research finds that most abused mothers still attend to their children's needs. Likewise, the discussion of "[l]ethal violence between partners" (p. 9) falsely implies that battered women become homicidal after separation, something blatantly false.

Fails to Debunk the Family Dynamic Approach. The discussion about "one partner seek[ing] to control the other through the use of abusive patterns or behaviors that operate at a variety of levels—emotional, psychological, and physical" (p. 8) will lead the DV community to focusing on the coercive control aspects, while not noticing the more dangerous family dynamic approach on which most mental health professionals will focus.

Family dynamic proponents believe that any abuse problems are caused by the couple's dynamic, particularly their poor communication, and hence they are very likely to deny or trivialize the power, control and abuse issues, about which the guide seeks to educate. Minimizing the DV or child abuse allegations, the family dynamic proponents are likely to blame mothers for exaggerating their abuse allegations, not emphasize the anger that victims feel (indeed, they treat it as a weakness and possibly an indication of instability and poor parenting), and assume that mothers raise abuse allegations to alienate their children from their other parent. Rather than protecting the victim, they are more likely to assume that therapy is needed to improve the couple's communication skills to solve the couple's problems. If the couple is sent to a therapist, the therapist is likely to share the same family systems dynamic perspective. The result is the abuser will never have to confront his wrongdoing, impeding or preventing the healing of the abuser, the victim, and each of the other family members, and further endangering the victim and children, as well as others exposed to the abuser in the future.

Nothing in the guide explicitly states that under the laws of every state DV and CSA, even within the family (incest), are crimes, and need to be regarded as such by the courts, even the family court. While the guide does mention the seriousness of DV and the overlap between

DV and child abuse (CA), it is strangely silent (and hence implicitly complicit) in suggesting that CSA allegations are particularly difficult to investigate and problematic in custody disputes. It never mentions that the research has found that men who abuse their partners are 6.5 to 19 times more likely than other men to commit incest with their children (Lundy Bancroft & Margaret Miller, “The Batterer as Incest Perpetrator,” 85, in Lundy Bancroft & Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, 2002), and, thus, dual allegations of DV and incest, are more likely to be true and involve far more dangerous abusers.

Fails to Mention Sexual Violence. Although it lists “emotional, psychological, and physical” violence as among the types of battering (p. 8), the tool never explicitly mentions sexual violence, and never discusses the implications of a child born of a marital or intimate partner rape or even stranger rape. The rapist may have no entitlement under statutory or case law to be recognized as the child’s father, or it may not be in the child’s best interest for paternity to ever be determined. When the guide talks of “any children shared by the adult parties” (p. 8) it minimizes that some children are unfortunately products of rape, and that such children should never be considered as “shared” between the mother and her rapist.

Fails to Consider Violence Outside the Immediate Family. In addition, the limited definition of DV (i.e., something happening only between the parents) will mean that readers, particularly those already less sympathetic to DV and CA, will see abuse within the family as irrelevant and ignore abuse outside of the family. This is true even though the statutes of many states look more broadly at an abusers’ history of violence, even when it involves his other partners, children or even unrelated people. The guide never suggests that custody evaluators look at the broader family, e.g., incest or physical abuse of a step-child, or DV or SA of a mother-in-law or disabled relative, or SA of one sibling by another. That a father is a pedophile or rapist, or physically or sexually abused his own mother or disabled sibling or his girlfriend is also relevant to his fitness for custody or unsupervised visitation. Though never mentioned in the guide, the laws of many states explicitly make such abuse relevant. But the guide assumes abuse is only relevant when the abuser has abused this particular partner and the children from this relationship. As to the effect of abuse on children, even though most states presume it is relevant, evaluators are still encouraged to discount abuse unless it is shown to harm the children. That the

abuse may harm the children if it continues and escalates is all but ignored.

Risk Factors. Consistent with this narrow definition of DV, the guide mentions certain risk factors for batterers without noting that batterers can abuse even if they have no known risk factors. The guide also fails to mention that most people with the noted risk factors are not batterers. The guide also implies that it is these risk factors, particularly the batterer's unemployment, "the most significant socio-demographic risk factor" for battering (p. 13), that causes his abusive behavior, rather than also noting failing to work can be part of his abusive tactics. Similarly the discussion of the role of alcohol and drugs as risk factors of DV (pp. 12 & 13) is somewhat misleading. Some of the amphetamines are probably the only drugs that have been shown to actually cause violent behavior (Richard J. Gelles & Mary M. Cavanaugh, "Association Is Not Causation: Alcohol and Other Drugs Do Not Cause Violence, 175-205, in Donileen R. Loseke, Richard J. Gelles & Mary M. Cavanaugh, *Current Controversies on Family Violence*, 2nd Edition, 2005). While alcohol and most drugs do not cause DV, there are many abusers who use them (or falsely claim to use them as an excuse for the battering) so that the claim that they do not increase the risk may be too simplistic. But the statement that drug use does increase the risk is again too simplistic. The tool is quite correct, however, in telling its readers that abusers with a substance abuse problem need treatment before their children should be subjected to them without adequate supervision.

On page 12 in discussing mental illness, the tool states that "[m]ental illness can produce violence." Even this claim is debatable, as revealed by the observation of many conscientious objectors during the Vietnam era assigned to work in New Jersey's state mental hospitals at a time they first started using mace to calm violent patients. The conscientious objectors found that no hospital needed to use mace more than once; all violence directed at staff ended once the inmates knew staff really were carrying mace and were willing to use it. (Even the most severely insane patients were able to subdue their violent tendencies to avoid serious pain.) Furthermore, the tool does not mention that states differ in whether mental illness effectively excuses DV or might prevent an order of protection from issuing. This determination usually depends on whether DV is defined under that state's laws in terms of violating specific criminal statutes (and thus requiring criminal intent), or more in terms akin to a tort that causes harm to another.

Implies That Women's Abuse Is as Dangerous as Men's. Nowhere does the tool

mention that much of what has been discovered about DV applies to male batterers only; little is actually known about female batterers or their male victims. The gender neutral language is correct in terms of the law, but is not correct as to research findings, which generally show women to be considerably less dangerous than men, more likely to act in self-defense, and less likely to recidivate (see, e.g., Lois A Ventura & Gabrielle Davis, “Domestic Violence: Court Case Conviction and Recidivism,” 11 *Violence Against Women*, 266, 272 (2005)).

“Real” Abuse and Reinventing “Parental Alienation.” A dangerous implication of the guide is that only documented cases of abuse can be real. As already noted, the tool never mentions that the vast majority of DV and SA cases, particularly those involving CSA, are not documentation, and that lack of proof is not inconsistent with the abuse. Nor does it mention that men who abuse their intimate partners are many times more likely than other men to commit incest with their daughters (Bancroft & Silverman, above). Rather, the tool will suggest to family dynamic proponents that unproven abuse allegations were likely invented to prevent the abuser from having access to his children.

Not only are undocumented cases deemed inherently suspect, but the guide encourages custody evaluators and judges to ignore even *res judicata* and issue preclusion in reopening prior abuse determinations to see if the allegations were made falsely for tactical gain. In a subsection entitled, “When Victims Have a History of Physical Violence,” the guide instructs that such abuse cases, and especially those with “a history of police or criminal justice system involvement—almost always warrant a [custody] evaluation” to subject the history “to careful review and to supplementation.” The rationalization is to “sufficiently distinguish between the primary perpetrator of violence ... and a partner who may be using violence defensively. In the civil restraining/protection order and criminal contexts, the focus is on specific *acts* of violence. The family court system has both the luxury and the obligation to look more broadly at the dynamics within the family.”

Where there have been mutual allegations or findings of abuse, readers of the tool are told that “[a] careful examination may reveal that ... only one of the parents poses any ongoing risk to the children or the other parent, *or* that the parent with a record of violence is actually the victimized partner ... rather than the abuser.” Many order of protection court forms include a section for the history of abuse between the parties, and some state statutes and case law

explicitly allow courts hearing civil orders of protection to consider not just the specific triggering event, but all abuse that has happened in the past between the parties, and in some states, abuse that the alleged perpetrator has committed against others as well. Hence the assumption that the family court should be reopening the case to look at the full picture may well be relitigating that which has already been decided. Furthermore, unless specifically permitted by court rules and state law, our laws do not allow ignoring res judicata or issue preclusion to reopen settled court cases, and arguably the UCCJEA and the full faith and credit provisions of VAWA (18 U.S.C. §§ 2265-2266) may supersede other state rules and laws.

The real purpose which many family systems proponents will infer from the recommendation to reinvestigate old cases will become clear when the tool goes on to reinvent PAS as Parental Alienation (PA). Both custody evaluators and judges are urged to reinterpret all abuse as PA, and many attorneys for fathers as well as fathers' rights groups will push abusers to recast all abuse allegations against them as PA. As the gender bias studies so well documented in the last 30 years, women's behavior is held to a much higher standard, so that any alienation by fathers tends to get overlooked or trivialized, just as so much of men's physical or sexual abuse is trivialized by recasting it as PA or women's vindictiveness. And the tool only hints that making PA allegations is itself alienating behavior, and that every abuser has a tactical interest in doing so.

Fails to Consider Alienating Behaviors of Fathers. Furthermore, the very alienating behaviors of non-custodial parents are not even considered within the definition of what constitutes alienating behavior. The most obvious unique behavior of non-custodial parents is not paying child support on time (or paying it late), which has foreseeable and economically devastating consequences to the family, yet no courts allow for such damages and most bend over backwards to give fathers many opportunities to pay the support in small amounts months, if not years, later. Probably the most alienating behavior short of killing the child's other parent, is not legitimating their female partner's immigration status when they could do so. This is often done by non-custodial fathers. Not only is this not seen as alienating (although it often results in the undocumented parent being deported and never seeing her children again), but it is often recast as reprehensible conduct by alien mothers sufficient to constitute immigration fraud and be grounds for an annulment of the marriage.

While admitting that PAS is not accepted within the scientific community, the tool not only reinvents it as PA, but it also tells custody evaluators and judges how to make evidence of alienation admissible and to get around the evidentiary laws and cases making it inadmissible. Citing an article by Leslie Drozd (one of the tool's three co-authors) and Nancy Olesen (who is on the tool's advisory board), the guide pushes the PA agenda of fathers' rights advocates. Dr. Linda S. Barnard calls PA indistinguishable from PAS except in name (e-mail communication of Jan. 3, 2005). Peter Jaffee notes that the concept of PA is found only in the literature of custody evaluators and not any other recognized social science (Peter Jaffee, "Conflict or Violence? Children, Their Parents, and the Court," Family Violence and the Courts: 10th Anniversary Conference, San Francisco, Sept. 9, 2004).

Inflated Need for Evaluations. Currently the guide urges judges to appoint custody evaluators in virtually all cases involving DV or CA allegations, even when there is a conviction (p. 11), implying that custody evaluators are best suited to investigate these cases. Page 11 currently admits, "[i]n the most egregious cases, it may not even be necessary to order an evaluation" yet in "other cases involving a limited record of domestic violence ... one of the parties will contest the legitimacy of that record, or its relevance to custody and visitation determinations. And there will be cases involving allegations, and perhaps counter-allegations, of domestic violence in which there are no public records to serve as substantiation. These cases will always benefit from careful investigation and evaluation." The next paragraph adds, "[a] history of physical violence in the parents' relationship—and especially a history of police or criminal justice system involvement—almost always warrants an evaluation, if resources are available" and that "it is crucial that the history be subject to careful review and to supplementation, as appropriate." Card I in the guide appears to support this, and while it discusses that DV knowledge is needed *when* a custody evaluation is ordered, most readers will assume that the custody evaluation is virtually always needed, missing that the emphasis is on the need for DV expertise. It is encouraging that the NCJFCJs may tone down the language suggesting that evaluations are always needed.

Not only does the guide urge evaluations when they are not needed, but it suggests that observing the child with each parent and alone is likely to be helpful (p. 11). According to many psychologists, this tells us nothing about parenting ability since batterers are experts in looking

good in such situations (email communication of 1/03/05 with Dr. Linda S. Barnard).

Custody Evaluators Are Often Incompetent. In addition to the fact that the custody court generally has no business reopening cases where there are convictions, judicial findings or admissions, the assumption is also wrong that most custody evaluators have any expertise in making determinations about abuse. Few custody evaluators are adequately trained in DV and CA issues. The Institute of Medicine, the medical branch of the National Academy of Sciences, recently found that 40% of mental health practitioners have had absolutely no training in DV at any point in their professional careers (Felicia Cohn, Marla E. Salmon, & John D. Stobo, *Confronting Chronic Neglect: The Education and Training of Health Professionals on Family Violence*, 50 (National Academy Press, 2002)). And, based on upon information discussed at the press conference when the report was released, the vast majority of those who had some DV training received fewer than two hours, hardly enough to make them experts or even minimally competent in the area, something hinted at in the judicial tool (but without any real suggestion of what would make someone an expert). As the guide also admits, most tests used by custody evaluators are unsuited for investigating DV or CA and cannot determine whether someone is a perpetrator or a victim. Nor can the “he said/she said” information that most evaluators hear result in reliable determinations.

But even the tool’s plea for using custody evaluator with DV expertise is problematic, since no guidelines are issued as to what constitutes an expert and the vast majority of custody evaluators have little insight into how poorly they understand the subject. The guide suggests (p. 16) that courts look to see if jurisdictions have a way of designating evaluators who are competent in DV, and to see “whether the evaluator has been certified as an expert in, or competent in, issues of domestic violence by a professional agency or organization.” Yet it does not warn, as the National Coalition Against Domestic Violence discovered some years ago, that such certification can be bought by paying a fee.

Others Are Better Investigators. As to actual investigations, a knowledgeable detective, police officer, child protection officer, batterer treatment provider, or a children’s advocate from a domestic violence program is often far more qualified to make such a determination. For instance, SAR has never heard of a custody evaluator obtaining court permission to place a hidden camera in a bathroom or bedroom to determine if CSA were happening. While law

enforcement officers and child protection workers seldom do this in investigating incest cases (unlike cases where, e.g., a doctor or dentist is accused of sexually abusing his patients), there is no reason why such an investigative tool could not be used, especially if a child implicates a particular location as the scene of the abuse. Furthermore, police or child protection workers are far better poised to seize and collect evidence than are others investigating ongoing abuse. Likewise, all of the types of alternative investigators suggested here are more likely to talk to community contacts, and their investigations are almost always less expensive than those of custody evaluators, which have been known to cost more than \$20,000. While other suggested investigators may charge a fee (though usually below that of custody evaluators), police and child protection often are free.

Indifferent to Costs. Indicative of the indifference of the cost implications to parents—the vast majority of whom are unable to pay much if anything—the guide is silent as to what custody evaluators should do when their fee has not been paid by one or both parents being evaluated. When the fees assessed against one or both parents have not been paid, custody evaluators usually refuse to inform the court of their results. But the guide is silent on how courts can or should deal with this quite common situation, or even whether it is constitutional to order an indigent parent to pay any costs for custody evaluations given. (In **Boddie v. Connecticut**, 401 U.S. 371 (1971), the US Supreme Court held that indigent litigants cannot be charged to get divorced.) At least in divorce cases, since the evaluation is being done for the court, the court could require that reports be turned over to them and the court could assess costs through its distribution of assets and debts. But the failure to do more than suggest that in some cases evaluations can be done without charging the parties (while urging evaluations in all cases where there is even a suspicion of abuse), the tool seems to promote using custody evaluators where there is little indication that they are necessary and with no regard for the least expensive means of gathering the information desired by the court. Indeed, the very suggestion that abuse issues can be reopened may make many evaluators feel they can and should do so, and further encourage many batterers to seek to recast DV issues as PA or “unfriendly” parent allegations.

Assumes Batterer Programs Work. In a similar vein, the guide implies with little justification that batterer programs are effective in ending abuse, so that a batterer who has completed such treatment should be considered as appropriate for custody, shared custody or

unsupervised visitation (pp. 23 & 24). That the children or their mother may still be terrified of him is barely noted. However, the tool ignores the reality that the majority of abusive men who complete batterer programs (even when they have been cured of substance abuse problems) continue to abuse their former partners. Even studies that have looked at official records of only physical abuse often find that over half of abusers continue to physically abuse their partners, and virtually all use emotional abuse (Andrew R. Klein, *The Criminal Justice Response to Domestic Violence* (Wadsworth/Thomson Learning, 2004)). Furthermore, many batterers that have ceased to abuse their former partners are not “cured,” but rather have moved on to new victims, something that shall still affect their children during visitation. And the record of child abusers, particularly those who commit incest, is probably far worse.

Although there are laws and court practices in many jurisdictions that return an abuser to the status quo for consideration of custody/visitation upon completion of a batterer program, the reality is that there is no rational reason for doing so. To date, nobody has been able to predict which program completers are considerably less likely to reoffend, although it is definitely true that program completers are considerably less likely to reoffend than are noncompleters (Peter G. Jaffe, Nancy K.D. Lemon, & Samantha E. Poisson, *Child Custody & Domestic Violence, A Call for Safety and Accountability*, 57-58 (Sage, 2003)).

Gender Bias of Most Mental Health Practitioners. Probably the biggest problem with custody evaluators performing these investigations is that most of them are locked into a family dynamic systems interpretation of DV. Custody evaluators interject much bias against women, having been strongly influenced by Freudian interpretations that disbelieve abuse allegations and assume women and children make false abuse allegations. This has blinded most of them from being able to take the abuse allegations seriously, or even from benefitting from training in DV. In addition, they often reinterpret or recast these abuse allegations as lies, PAS, PA or “unfriendly” behavior, which they use to punish women seeking to assert their constitutional rights to protect themselves and/or their children.

No Advantage to Alleging Abuse. Finally, by not mentioning it, the guide continues the myth that women who make abuse allegations obtain tactical advantages from doing so. As several Department of Justice studies have found, mothers obtain no advantage for alleging DV or CSA (forthcoming in a special volume on custody and domestic violence in the journal,

Violence Against Women; John E.B. Myers, *A Mother's Nightmare–Incest: A Practical Guide for Parents and Professionals* (Sage, 1971)).

Conclusion

We are encouraged that the NCJFCJ has agreed to reexamine its tool, albeit with the caveat that it is too late to make anything other than minor modifications. NCJFCJ acknowledges that it will modify the guide so that it no longer implies that virtually all cases involving DV allegations require custody evaluations.

Although there is much helpful material in this tool (e.g, noting that PAS does not meet admissibility standards and noting that many psychological tests regularly used cannot inform about DV or CA), there are also many disappointing and even dangerous aspects. SAR urges the NCJFCJ to either pull the guide or to revise it in consultation with several experts in parental custody disputes involving DV or incest, e.g., Jay Silverman, Lundy Bancroft, Carol Dellams, Peter Jaffe, Linda Barnard, John E.B. Myers, or even your author.