California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 1

California Coalition for Families and Children
4891 Pacific Hwy., Ste. 102
San Diego, CA 92110
Cole.Stuart@Lexevia.com
D: 858.504.0171

July 24, 2013

Mayor Bob Filner/Director
San Diego Family Justice Center
1122 Broadway, Suite 200
San Diego, CA 92101

Ms. Gael Strack, Chief Executive Officer
Family Justice Center Alliance
707 Broadway Ste. 700
San Diego, CA 92101

Regarding: Notice and Demand per 42 U.S.C. §§ 1986, 1985; California Coalition for Families and Children

Dear Mr. Filner:

This correspondence will provide Notice of and Demand to cease and desist from ongoing illegal activity within your "power to prevent or aid in preventing" pursuant to Title 42, United States Code, Chapter 21, subchapter 1, section 1986 ("42 U.S.C. § 1986") which provides in pertinent part:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented

Please direct all future correspondence in this matter to my attention.

You have received this correspondence because you have oversight responsibility for others who are violating civil rights as described herein. Your failure to exercise your power to prevent or aid in preventing the violations identified subjects you to civil and criminal liability for your acts and the acts of others as discussed more fully below.

Exhibit A details the accused agency entities, actions, and citations to relevant authority. Exhibit B consists of excerpts from documents produced by the accused entities which evidence the violations accused. Table B.1 contains relevant supplemental materials. Exhibits C-I are detailed publications by the accused entities corroborating these allegations. Exhibits J and K are recitations and discussion of relevant authority cited.

NOTICE AND SUMMARY OF OFFENSES

The illegal activities accused center on the invidiously discriminatory provision of social services, legal advice and representation, obstruction of justice, illegal malingering between public and private entities, and fraudulent fundraising by the San Diego Family Justice Center, the Family Justice Center Alliance and their affiliates, partners, agents, and collaborators (the "Alliance"). A summary of these allegations follows.

I. Provision of Social Services in Violation of Equal Protection of the Laws: The entities identified in Exhibit A, including social workers, prosecutors, courts, and court staff, intentionally provide separate and unequal social and legal services to females while withholding equal services for males in violation of state and federal rights to Equal Protection of the Laws.

A. De Facto Discrimination: The services the Alliance claims to provide through Family Justice Centers and its partners include:

- Food subsidies, food stamp assistance, discount food shopping services;
- Short-term, transition, and long-term housing and housing placement assistance;
- Clothing and clothing subsidies;
- Free cell phones and service;
- Free internet access;
- Transportation assistance and subsidies;
- Free medical and dental care;
- Immigration assistance, language and communication skills training;
- Special access to general government agencies such as police, district attorney, and courts;
- Civil legal representation for family law, financial services (bankruptcy, credit repair);
- Psychological and spiritual counseling;
- Support groups and life coaching
- Child and adult camping/mentoring programs ;
- Pregnancy counseling and family planning;
- Short and long-term financial aid;
- Public benefits assistance
- Debt collection/credit repair legal representation and assistance;
- Bankruptcy counseling, financial advice and "coaching;"
- Free tax preparation, banking, and saving services;
- Money management and budgeting education;
- GED programs and vocational training;
- College application assistance;
- Scholarships and tuition subsidies;
- Resume preparation; interview coaching and career "inspirational" programs;

- Job search services, "action planning;
- Full time child care;
- Referrals to accountants, civil attorneys, and a network or legal professional services;
- Employment, social security, disability insurance services and benefit assistance;
- Home ownership/loan programs, financial assistance;
- "Asset development" and "financial justice advocacy";
- A future "campus approach": on-site housing, education, financial aid, and support; and
- "Vehicles for community capacity building."

(See Exhibit B pp. 1-11, 22-33, 55-82, 89-162)

Based on policies established and enforced by the Alliance, males, including fathers, victims of domestic violence, and single men, are excluded from receipt of such services at all Family Justice Centers throughout the nation. To the extent that the Family Justice Centers provide any services to males, they are formally and informally "screened" through a diversion process to inferior or even harmful "services" such as homeless shelters, "batterer's" programs which become the first step in criminal prosecution, extended waiting lists for short term male "transition" shelters, or simply denied services altogether. Ex. B pp. 34-46. Females undergo no such diversion in the "screening" process, but are permitted exclusive access to separate facilities, services, "victim" counseling, and aid by the Alliance's all-female counseling staff. Ex. B pp. 20-55.

As all services provided by the Family Justice Centers and the Alliance are appropriate for both males and females, and no rational basis for providing separate and unequal services most exists, these actions constitute de facto illegal discrimination under the laws cited herein. See Exhibits A, B.

B. Invidious Discriminatory Intent: The entities identified in Exhibit A will not dispute that they provide separate and unequal services to males and females. These entities justify such their discriminatory practices by reference to an overtly sexist and fraudulent ideology described in Exhibit A and evidenced in Exhibit B. Ex. B, pp. 5, 21, 163-190, 194-209, 309-312; Table B.1 pp. 3-32. As these entities recognize that their provision of social services is discriminatory, and as the ideological justifications for such discrimination fail to satisfy any relevant test for permissible unequal distribution of rights, privileges, and immunities, the practices identified herein are in violation of 18 U.S.C. section 1985. Your failure or refusal to "prevent or aid in preventing" the same is a violation of Title 42 section 1986. See *Authority* section herein and Exhibit K, hereinafter collectively referred to as the Civil Rights Criminal and Civil Statutes ("CRCCS").

II. Denial of Social Services in Violation of Due Process: The San Diego Family Justice Center ("Center") operates as a "screen" or gatekeeping process for victims of domestic violence in front of government agencies providing public and private social

services. Because the public services work closely with the Alliance, the Alliance's screen effectively converts what would otherwise be generally available social welfare services into a members-only club for those approved by the Alliance. In operating its screening process, the Alliance excludes applicants for whom the services are appropriate based upon irrational, prejudicial, and discriminatory criteria such as applicant ideology, gender identity, domestic relationship status, nepotism, and social status. Persons who do not fit the Alliance's personal and ideological profile are irrationally and maliciously diverted to harmful criminal justice system "services," or denied services altogether. Exs. A, B pp.34-53, Table B.1.

The San Diego Family Justice Center inserts itself or its agents as the de facto gatekeeper for eligibility determinations for a vast array of otherwise general social services. In so doing it has illegally usurped the role appropriately reserved for public agencies and in so doing deprived citizens of Due Process. Exs. A, B Sec. II, pp. 309-312, Table B.1, pp. 3-12.

III. Solicitation and Enforcement of Abuse of Process: Entities identified in Exhibit A play a central role in coordinating solicitation for and enforcement of unconstitutional injunctive orders in state family and criminal courts. This process initiates with legal opinions, and advice denominated "technical assistance" by lawyers with the Alliance and other national public and private nonprofit organizations. Their legal analysis is reduced to policies and ultimately formwork handed off to Alliance attorneys, prosecutors, and social workers not professionally trained in law. These practices are illegal, abusive, and inflict highly disruptive, unnecessary, and harmful deprivations of fundamental civil rights on all interested parties. Exs. A, B, pp. 22-33; Table B.1.

For example, California Judicial Council Form CR-160 imposes deprivations freedom of speech, freedom of association, familial relations, freedom from warrantless/unreasonable search and seizure, rights to keep and bear arms, confront adverse witnesses, effective assistance of counsel at liberty deprivation hearings, access to courts, and a variety of relevant rights to procedural and substantive due process based upon only a showing of "good cause" at an ex parte proceeding. See Ex. B Sec. III, pp, 1-17, 219-220, Table B.1.

Further, these illegal injunctive remedies are sought and imposed exclusively against persons within a protected class of persons defined under California Penal Code section 13700 (the "13700 Class"), and almost exclusively against males. As the illegal orders are intended to deprive two protected classes of Equal Protection of the Laws, their acquisition, grant, use, and enforcement constitute violations of 18 U.S.C. sections 241, 242, 1581, 1589, 1590, 1592, 1594, and 1951 and 42 U.S.C. sections 1983 and 1985(3). Ex. A, Table B.1.

As the parties identified in Exhibit A act individually and in coordination to obtain such illegal relief, such activities and your failure to prevent or aid in preventing the same constitute violations of the CRCCS. See Ex.s A, B Sec's. I, III, Table B.1.

IV. Obstruction of Justice: The entities identified in Exhibit A have established a network of social workers, prosecutors, and law enforcement directed to perform acts which amount to conspiracy to deprive citizens of civil rights and to obstruct justice. These entities commit witness and evidence tampering, abuse of process, spoliation, subornation of perjury, manipulation of police and criminal investigators, victim/witness intimidation and retaliation, and "victimless prosecution." Ex. B pp.221-323, 326-369, 393-395. Their manipulation of confidentiality laws, and judicial process facilitates and encourages illegal conduct, insults innocent crime victims, their families, the criminal justice system, and the accused alike. Table B.1.

Public and private social workers and prosecutors are instructed to perform "advocacy" for "clients" in and out of criminal and civil court without adequate standing, training, authorization, license, right, or agency relationships. Ex. B.1, pp. 22-32, 99-162, 360-369. These social workers improperly insert themselves into criminal investigations to direct first responders and investigators. They offer themselves as interloping after-the-fact "witnesses," "experts," and "victim advocates" or "coaches" during police investigation and courtroom proceedings to inject false, misleading, and invidiously discriminatory ideology into the criminal justice process. Table B.1, Ex. B, pp. 221-298, 313, 317.

Such activities and your failure to prevent or aid in preventing the same constitute violations of the CRCCS individually and in conspiracy/enterprise, specifically including 18 U.S.C. sections 241, 242, 1503, 1505, and 1512, 1592 and 42 U.S.C. sections 1983, 1985(2) and (3). Ex. K.

V. Unchartered Malingering Between Private and Public Entities: Under the umbrella of the Alliance, the entities identified in Exhibit A are performing activities beyond their charters and articles of incorporation or statutory authorization based thereon. For example, the Alliance and its Family Justice Centers insert themselves as "leadership" providing "accountability" to public law enforcement, prosecutors, and courts; provide false and misleading educational and training materials and services to a wide variety of public and private social agencies and services; purport to offer "court watch" services to "hold accountable" civil domestic relations and criminal justice courts and agencies for failure to adhere to prejudicial and otherwise ideology-infused "best practices." The programs—administered as "awareness campaigns"—consist largely of invidiously discriminatory misrepresentations as to crime statistics, economics, sociology, government, psychology, and law. See Exhibits A, B, Secs. I, V, pp. 309-312, 370-396.

Similarly, public entities, including police, courts, court staff, and prosecutors are involved in intimate "wrap-around" relationships with private Family Justice Center entities which well-exceed their statutory charters, effectively utilizing public entities as (unauthorized) agents of the private entities. Such abdication of public authority to private enterprise is unauthorized and therefore illegal. Ex. B, pp. 221-312, 393-395.

The Alliance also offers extensive public legal representation and services for civil matters including divorce, child custody, child and spousal support, child custody "advocacy" and related family and criminal law civil matters not authorized by statute, charter, or law. See Ex. B, sec. I, pp. 3-19, 22-33, 56-72, 94-162, 193. The intense intermingling of public and private functions (denominated by the Alliance as "co-location" or "wrap-around services") creates numerous de facto dual role and agency relationships which effectively abrogate separation of powers and therefore immunities attendant thereto. See Ex. B, Sec. V; cases cited in Ex. J.

As the described violations occur outside of any traditional recognition of governmental immunity to the CRCCS, the entities identified herein, as well as those empowered to influence them, are permitting non-immunized action in violation of law.

VI. Illegal Practice of Law:

For non-lawyer entities in California, many of the practices identified in the attached Exhibits—unauthorized, obstructive, dishonest or otherwise—constitute the illegal practice of law. Social workers practice law with no formal training, ethical fitness licensure, continuing education, oversight, or discipline. The entities identified in Exhibit A provide clients, other agencies, and one another with detailed and case-specific legal advice (denominated "technical assistance"), and individualized advocacy and representation. Ex. B, pp. 22-33, 94-159, 326-369. Such acts constitute the practice of law. See *People v. Landlords Professional Services, Inc.*, 178 Cal.App.3d 68 (1986); *People v. Sipper*, 61 Cal.App.Supp.844, 846 (1943); *In re Glad*, 98 B.R. 976, 977 (9th Cir.BAP 1989); *In re Anderson*, 79 B.R. 482, 484 (Bkrtcy.S.D.Cal.1987) (selection of forms, general advice about policies and procedures, assisting or advising others in "self help", and assisting others in determining strategies for legal proceedings is illegal practice of law). Equally troubling, to the extent these social workers are trained, they receive instruction exclusively through ideologically-engaged "awareness" programs. Ex. B, sec. VI, pp. 194-218. Further, the Alliance and its partner entities facilitate entities outside of the state of California to provide similar "technical assistance" services to entities inside of California without appropriate license or admission.

By copy of this letter we are alerting the State Bar of California of these allegations.

VII. Fraud on the United States and Private Financial Supporters:

The entities identified in Exhibit A obtain tens of millions of dollars in ongoing private and public funding for their illegal and discriminatory services by fraudulent means. Ex. B, pp. 1-19, 396-403, sec. VII,, Table B.1 pp. 33-38. Most alarming are the generation of and reliance on studies and statistics relied upon by certain of these entities in misrepresenting the frequency, nature, actors, and legality of "domestic violence". Ex. B. Sec. VII, pp. 221-235, 396-403, Table B.1. The funds fraudulently

obtained by the Alliance and its partners have further contaminated the public "wrap around" entities under Alliance influence or control. See Ex. B, sec. VII, pp. 221-323.

As applicants for and recipients of federal funding, the Alliance and its constituents are governed by state and federal laws, including 18 U.S.C. section 371, which prohibits "any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose." See AUTHORITY section below; Ex. K. Exhibits A, B, Table B.1 detail misrepresentations by the Alliance falsely describing the frequency, severity, morbidity, and character of domestic violence. The Alliance's reliance and promotion of these statistics constitute knowing and malicious falsehoods. Based upon such representations and the equivocations described herein, the Alliance has perpetrated fraud on the state and federal governments and private supporters. See Ex.s A, B, and Table B.1 pp. 33-38.

By copy of this letter we are alerting the United States Attorney for the Southern District of California, the Grand Jury for the Southern District of California, the Federal Bureau of Investigation, the Attorney General of the State of California, the District Attorney for the County of San Diego, Family Justice Center Alliance financial supporters, and the State Bar of California of these allegations, requesting investigation and, if warranted, prosecution of these allegations.

DISCUSSION

Your interaction with the Alliance entities identified in Exhibit A enables you to prevent or aid in preventing the illegal activities accused herein. The Civil Rights Criminal and Civil Statutes describe the parties potentially liable for civil rights deprivations. 42 U.S.C. section 1986 extends the scope of persons liable under the CRCCS beyond the entity violating section 1985 of the statutes to anyone who has the power to "prevent or aid in preventing" the violations. This broad category of entities who can "prevent or aid in preventing" includes not merely direct employee supervisors, but also executives, board members, policymakers, municipal entities containing offending departments, supporters, collaborators, and agents, and entities related by principles of agency and respondeat superior. Further, entities working in collaboration with offending parties may be liable as co-conspirators, co-operators of an illegal enterprise, as those terms are defined in the CRCCS, specifically including 18 U.S.C. sections 241, 371, 1596, 1983, 1985, 1962, 1964 and related predicate crimes identified in section1961 in conspiracy/attempt. Ex. K.

Further, to the extent that you directly or indirectly participate in deprivation of rights described herein, you and your agency may be independently or jointly liable for the actions of others. The state color of law actors and their co-conspirators identified in Exhibit A regularly commit violations of citizens' rights per the explicit direction, supervision, and guidance of the agencies for whom they are employed, as detailed in Exhibits B, C-I. You have received this Notice and Demand because you directly or

indirectly participate in, oversee, direct, supervise, prevent or aid in preventing such illegal activity.

Authority

We provide the following recitation of the key provisions of relevant law. A complete recitation is provided at Exhibit K.

42 U.S.C. section 1986 provides:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

As referenced above, 42 U.S.C. section 1985 (2) and (3) provide:

> (2) Obstructing justice; intimidating party, witness, or juror
>
> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

The corollary to section 1985, 42 U.S.C. section 1983, similarly provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

18 U.S.C. sections 241, 242, and 371 respectively provide:

> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Section 242:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Section 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of

> the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Complete text of additional statutes cited herein is available at Exhibit K.

Ongoing Invidious Discrimination

We have investigated the activities of the entities identified in Exhibit A and found numerous violations of relevant state and federal law including violations of equal protection, due process, obstruction of justice, illegal practice of law, fraud, and racketeering. To assist you in understanding these allegations, we provide the following explanation and encourage your independent analysis.

Under the CRCCS and law interpreting the Equal Protection Clause of the 14th Amendment, a public or private actor may not discriminate against classes of persons without legal justification. Discrimination is allowed, for example, between men and women in providing reproductive health services. The different anatomy of males and females necessitates that each have different needs, and as such, discrimination by gender is permitted because it is "substantially related" to a "legitimate state interest." *See, e.g., Wengler v. Druggists Mutual Ins. Co.*, 446 U.S. 142, 15 (1980).

However, where discrimination concerns fundamental rights such as due process, free speech, and free association, discrimination is permissible only if necessary and must be "narrowly tailored" to fit the necessity for discriminate treatment (the "strict scrutiny" test). Here, the rights affected by the activities of the entities in Exhibit A are fundamental—parental rights and rights of association and speech, due process, access to courts, rights to confront witnesses, and more. See,

Troxel v. Granville, 530 U.S. 57 (2000) and cases cited in Exhibit J. As such, all but *absolutely necessary* discrimination restricting fundamental rights is *illegal*.

Further, discrimination based on stereotypes, prejudices, or other pernicious justifications—called "invidious discrimination"—is illegal. *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971). In California, no entity may discriminate against a person because she is a member of a group that has been identified by government as deserving of special protection—called a "suspect class." *Sever v. Alaska Pulp Corp.,* 978 F.2d 1529 (9thCir. 1992). A class is entitled to heightened "suspect class" protection provided it can show a "governmental determination that its members require and warrant special federal assistance in protecting their civil rights." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir.1985); *Denney v. Drug Enforcement Admin.*, 508 F.Supp.2d 815 (E.D. Ca. 2007). Any discrimination against such a person or suspect class by any entity—public or private—is illegal. We provide further explanation of two types of illegal discrimination being inflicted below.

"Domestic Relations" Class Invidious Discrimination

With respect to the class-specific protective orders, arrest, prosecution, sentencing, and parole policies identified herein, such orders discriminate against the a "domestic relations" class. This class has been identified as a class entitled to special protection by the state of California in California Penal Code section 13700 and related law. The "13700 Class" includes:

> . . . an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

This 13700 Class is defined and treated as a special class entitled to heightened protection under California and federal law. *Griffin v. Breckenridge*, 403 U.S. 88 (1971); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529 (9th Cir.1992); *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985); *Denney v. Drug Enforcement Admin.*, 508 F.Supp.2d 815 (E.D. Ca. 2007). Like marital status, the 13700 Class is defined by a "relational" characteristic: persons in a current of former identified *relationship*, but also applies only to certain behavior of such person/s vis-a-vis *interaction* with others in the same Class. For example, a husband and wife are within the 13700 Class with respect to

one another, but not the rest of the world. Parents and children, boyfriend/girlfriend, brother/sister, etc. as well.[1]

The 13700 domestic relations Class is entitled to special protection because of a lengthy history of invidious discrimination against its members. The Alliance's foundational manifesto produced by its CEO Gail Strack and CFO Casey Gwinn, *Dream Big, A Simple, Complicate Idea to Stop Family Violence*, notes that the problem of family strife has been invisible to social support mechanisms dating to the days of Cain and Able. Gwinn, C., Srack, G, *Dream Big, A Simple, Complicate Idea to Stop Family Violence,* Wheatmark 2010, p. 21-24; Ex. B pp. 412-417. Our research concurs. Table B.1 pp. 1-32.

Dream Big notes that unlike society's increasingly enlightened embrace of other "social" ills, family conflict and the sometimes tragic consequences that result from its mismanagement more frequently arouse disdain rather than support. Discrimination against the 13700 Class is invidious social, economic, and legal discrimination similar to racial, ethnic, gender, or legitimacy. *See, e.g., Griffin v. Breckenridge,* supra; *Caban v. Mohammed*, 441 U.S. 380 (1979). In addition to the inevitable and debilitating economic, social, and psychological impact of divorce, children and parents within the 13700 Class are the historical targets of ridicule, prejudice, and scorn amounting to invidious discrimination. 13700 Class members are stamped with stereotypes as "broken family," "latch-key kids", "damaged goods," "gold diggers", "divorcees", "sugar daddies", "first wives", "wife beater", "histrionics", "single moms", "broken homers"—and the list goes on. See Ex. A, Table B.1.

Like any illness, domestic strife is treatable and as such the 13700 Class rightly deserves the "special protection" provided under California law. *Sever v. Alaska Pulp Corp.*, supra. California has adopted an extensive scheme of statutory privileges, programs, services, protections, set-asides, funding, and immunities, including 13700 Class-specific social services, law enforcement resources and social welfare programs with the honorable aim of addressing the "governmentally-determined" special needs of this Class. The mechanisms for "protecting" the 13700 Class have become ensconced in California Penal Code section 13700, and include Penal Code sections 136.1, 136.2, 646.91, etc., and Family Code sections 6250, 6320, 6380, etc., hereinafter referred to as the "Domestic Violence Intervention Legislative Scheme" ("DVILS").

Yet the Alliance, in its unique role in marshalling the DVILS extends not merely healing aid to families in crisis, but supports, houses, educates, trains, and commands police powers in aggressive enforcement of the DVILS—conveniently "co-located"

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[1] A scholarly analysis of the gender discrimination inflicted against the 13700 Class is described by Dr. Stephen Baskerville entitled *Taken Into Custody, The War Against Fathers, Marriage, and the Family* (available at ISBN-10: 1581825943, ISBN-13: 978-1581825947). We also enclose herewith a recently-filed Petition for Certiorari in the U.S. Supreme Court, Case No. 12-1438, *Tadros v. Lesh, et al.*, which identifies the 13700 Class and relevant state law defining its vulnerability to historic and ongoing invidious discrimination. Please consider the Petition for Certiorari and Dr. Baskerville's publication as matter incorporated to this Notice by reference as if set forth in full.

under the same roof and management as the Family Justice Centers (See Ex. B, pp. 3-19). The Alliance deploys these state police powers to reflexively respond to allegations of misdemeanors with "pre-crime arrests," victimless prosecutions, novel "predominant aggressor" investigation and prosecution ideologies, specialized "DV investigation" forms, subsidized "community conversant" "victim-advocates" and "expert witnesses," "therapy for batterers" which becomes the unwise and discriminatory first step in the criminal justice process, and stiff penalties or threats of penalties which are abundantly capable of and often do dramatically and irretrievably impact the entire family's lives.

With that delicate intervention the police and criminal justice system are known for, under the DVILS, the crisis-stricken family receives little aid, but is instead unwittingly cast as players in an Alliance-orchestrated crime drama pitting the family as "victims," "perpetrators," and "witnesses" against one another. Now awash in the state-declared "epidemic of domestic violence," the family is effectively cordoned to a state of marshal law—stripped of virtually every ordinary right to criminal due process. Rights universally available to witnesses or suspects of any other crime—even far more serious ones—are disposed of in favor of special rules to force special prosecution even when the special victim feels it not in her best interest to do so. Ex. B, pp. 219-220, 236-238, 243-301.

Hence, rather than extend additional healing services to the entire 13700 Class, the DVILS in the hands of the Alliance and its partners offer a heady in-house trained and supported criminal justice arsenal of aggressive and illegal pro-arrest policies, interrogation techniques, victimless prosecution, and more "assistance." Perhaps therein lies a response the domestic violence misdemeanor prosecutor's often-expressed scoffing at their own clients whom, they begrudge, are "so ungrateful." Ex. B, pp. 309-325, 221-308, Table B.1, pp. 39-50.

The actions described in the enclosed exhibits regularly deprive the targets thereof—namely the 13700 Class and particularly males therein—of Due Process and Equal Protection of the Laws and as such are illegal. Though the deprivations are putatively undertaken to "protect" the 13700 domestic relations class, they in fact represent an "imposed disability" on the entire Class, imposing constitutional deprivations at even the ideological appearance of domestic impropriety. See *U.S. v. Windsor*, No. 12-307 (U.S. June 26, 2013). As the 13700 Class is entitled to heightened protection under California law, and the Alliance and its partners' interpretation and enforcement of the DVILS deprive the entire 13700 Class of Due Process and Equal Protection, and illegally impose, facilitate, and enforce peonage on some, the DVILS and the protective orders based thereon are a violation of the CRCCS.

Invidious Feminist Discrimination

Exhibit A, B, sections IV and V also demonstrate what we perceive to be the shocking extent to which an invidiously feminist ideology has been and continues to be perpetrated by the Alliance with its partners, clients, victims, investors, and our

civil and criminal justice institutions. Exhibit B, sec. VII and Table B.1 detail how the Alliance perpetuates feminist UFV/UMP stereotypes and prejudice to fraudulently obtain federal funding, and you are likely aware of the Alliance's efforts to obtain private donations based upon the same fraudulent ideology. As the anti-male bias exhibited by the Alliance is irrational, prejudicial, malicious, and invidious, it is illegal, as is your tolerance, support, or participation with it.

Exhibits A and B exhibit the invidiously discriminatory feminist ideology adopted and promulgated by the Family Justice Center Alliance, including "UFV/UMP" ideology, fraudulent science and statistics, and fraudulent misrepresentations concerning Alliance practice and services. Exhibits B, section I and Table B.1 reveal the invidiously discriminatory practices permeating the Alliance and its partners, including its self-proclaimed devout feminist leadership, all female staff, adoption of "rape/incest" survivor perspectives on all male/female relationships, prejudicial pre-criminal justice system "screening" processes, and irrational and discriminatory provision of social services. Ex. A, B, pp. 5, 20-55, 137-141, 163-218, 227-230, 402, 406, 411, 417, Table B.1. In combination these attitudes and behaviors impose a "WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE" sign—as arrogant, discriminatory, and illegal today as it was in the 1960s era post-integration South.

The Alliance's feminist ideology interprets all social phenomena through a "gender" lens which invariably attributes social ills to men, and women's role as "survivors" of male oppression (Ex. B, pp. 167-172) in a "power and control" struggle to overcome male oppressors. Ex. B. 165-192. Under these assumptions, all social ills are in one way or another attributable to "paternalism" and interpersonal relational ills to "male dominance." See, e.g., Ex. B, pp. 190 attributing AIDS, teen pregnancy, STDs, all family violence, poverty, and most crime to "traditional masculinity." According to the Alliance's own literature, men have a secret agenda intent on "mass murder" "family annihilation" "societal breakdown" "rape and incest" intimidation, emotional abuse, isolation, using children, economic abuse, coercion and threats, and "a war on women." Ex. A, B. pp. 165-179. The Alliance's public relations demonstrate a shocking deafness to the shrill tones of fascist demagoguery which the free world evolved from midway through the last century. Perhaps their youth and relative lack of advanced learning limits their appreciation of the horrific history of their ideas. See detailed exhibits available in "Resources" section of Family Justice Alliance's website at http://www.familyjusticecenter.org/jdownloads.html (copies provided at Ex. C and portions excerpted in Ex. B).

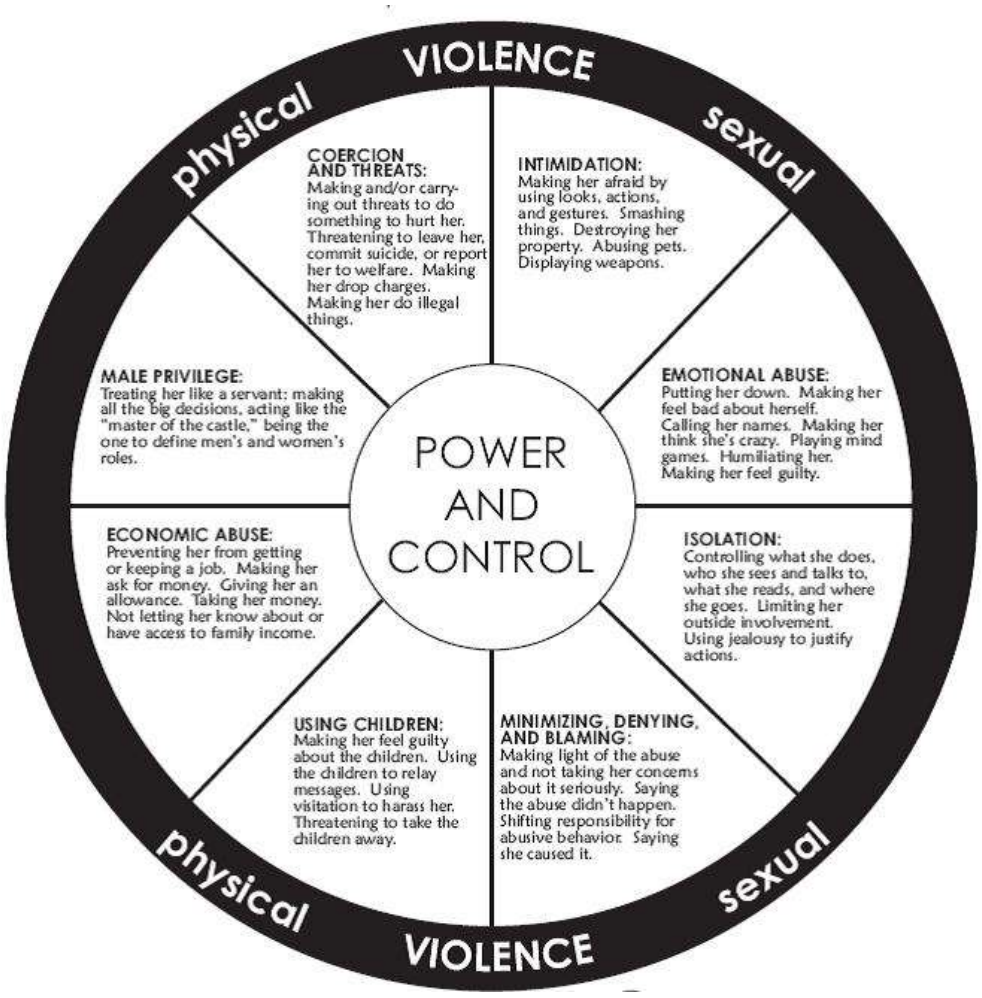
The Alliance literature is not, as we initially expected, affirmative women's-oriented self-help, but instead a surprisingly pro-state intrafamily intervention plan motivated not by traditional feminism, but by rape and incest survivor perspectives. Ex. A. Should you desire further evidence of the intensity of the Alliance's ideological intoxication, we invite your attention to the recorded statements of Mr. Gwinn in the webinars produced by the Alliance available at the Alliance's website at http://www.familyjusticecenter.org/jdownloads.html.

The Alliance's feminist "power and control" lens translates all interpersonal strife into "male oppression" terms. From the Alliance's own literature (Ex. B. p. 405-410):

Power And Control In Abusive Relationships

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the accused, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the victim/survivor's life and circumstances.

The Power and Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by an accused to establish and maintain control over his or her partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



According to the Alliance, domestic strife is not the product of incompatible moments, all-too-ordinary economic stress, unhealthy jealousy, conflicting personalities, selfishness, psychological disorders or substance abuse (See "DV 101 - Information & Resources for Survivors and their Supporters – SDFJC" at http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/356-dv-101-information-a-resources-for-survivors-and-their-supporters-sdfjc.html, Ex. A, Table B.1) but instead by "male privilege, oppression, dominance, isolation, intimidation, coercion, and denial." See "Wheel" above, Table B.1, Ex. B, sec. VIII, p. 406. Facilitated by such explanations, an "epidemic" of "violence against women" arises not by analyzing police blotters, crime statistics, or neighborhood feedback, but by editing dictionary entries for "abuse" "violence" "community" "batter" and "self-defense" and "perpetrator." Exs. A, B., pp. 174-179, Table B.1.

Though it is funded by local, state, and federal taxes and donations from men and women, virtually none of whom are feminists of the type behind the Alliance, the Alliance neither offers nor suggests use of remedies such as pre-intervention religious and secular counseling, equal support groups, equal relationship or empowerment literature, financial assistance, substance abuse counseling, child care, or other social services which might be effective at ameliorating the underlying causes of domestic strife.

The Alliance prescribes as its *sole remedy* for domestic disharmony a coerced "intervention" of the family's perceived "power and control imbalance." Upon initial "screening" if it is perceived that the relationship is "out of balance," the diagnosis is complete, and intervention mechanisms for a state-sponsored extraction of children, property, and liberties are put into motion. Relationship terminated, lives altered, and salaries paid; but for the welfare state fallout care, government's work is done. Table B.1 pp. 1-17.

The Alliance also promotes its ideology onto police and courts despite a near absence of relevant experience. No Family Justice Center employee has any observable experience as a law enforcement officer, judge, or court employee. Indeed only a few have law degrees, and of those only Ms. Strack and Mr. Gwinn cite service prosecuting misdemeanors for the San Diego City Attorney's Office as first jobs out of law school. Ex. B pp. 20-33. Yet the Alliance creates, distributes, promotes, and enforces detailed "policies and procedures" onto law enforcement and courts nationwide. These extensive policies describe and encourage "pre-crime intervention" arrests, victimless prosecutions, "therapeutic jurisprudence," and novel sentencing and post-sentencing "education" for misdemeanor crimes. Ex. B pp. 309-325, 370-395, et seq. The policies and procedures imposed irrefutably identify the sole perpetrator of such crimes and near-crimes as males. Ex. A, B pp. 221-325, 370-386, 389-392.

Nor are families consulted in creation of these aggressive intervention policies. These policies are instead forced on a family by emergency first responders to any disturbance involving members of the 13700 Class as "new policy." Officers are trained to "sense" a "domestic violence situation" and required to observe unique "DV

Investigation policies," contact a "DV counselor" to guide law enforcement in her investigation, to "build a case" for prosecution in case the family is unwilling to cooperate with prosecution of a family member for a "pre-crime" misdemeanor. Ex. A, B, pp. 208-209, 236-298. These "pro-arrest" policies require extensive training because they are a radical departure from standard police investigation and criminal prosecution. Ex. B pp. 236-238, 243-308. They utilize "DV specific" police reports, questioning techniques, and perspectives. Ex. B 221-242. The universal target of this invidious feminist discrimination—heterosexual men. Ex. B.

In sum, far from being the "fence at the top of the pit", the Alliance's support and enforcement of newly aggressive DVILS prosecution of "pre-crime" legal acts is more akin to *moving* the pit *into* the family living room—thereby placing all members of the family at jeopardy at the whim of any, or the state on its own accord. Ex. A, Table B.1. Even if an accurate diagnosis of a single cause of all conflict in human intimate relations were conceivable, any solution invoking force or threat of force to remedy it betrays the wisdom of our own mothers that "violence begets violence." Table B.1. For those men and women truly empowered of equal liberties, others who categorically promote aggressive police state intervention into intimate relationships, pre-crime arrest, victimless prosecution, and predominant aggressor ideologies as honest, fair, safe, and effective methods to address family strife have been and *by Grace of God* will continue to be checked in their empowerment by those with equally or more benevolent ideals of justice and community prosperity. Ex. B, Table B.1, pp. 3-10, 20-32, 39-54.

Immunity

Because the activities identified herein implicate governmental functions which may fall under special rules relating to governmental immunities, to assist you in understanding your potential liability for the "monstrous" deprivations identified herein, we provide the following observations.

Judicial Immunity

Our analysis indicates that *none* of the "services" accused in Exhibit A fall within the traditional "prosecutorial" or "judicial" immunities for state color of law actors. The acts accused are either (1) unauthorized by charter or constitution, (2) not judicial acts, or (3) not "intimately associated" with the *criminal* judicial process. *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Atkinson-Baker & Assoc. v. Kolts,* 7 F.3d 1452 at 1454 (9th Cir. 1993); *Achterhof v. Selvaggio*, 886 F.2d 826, 830 (6th Cir. 1989); *Hoffman v. Harris*, No. 92-6161, 1993 WL 369140, at **2 (6th Cir. Sept. 21, 1993), *cert. denied*, 511 U.S. 1060.[2] The chart at Exhibit J details additional cases and analysis.

[2] "The courts that have accorded absolute immunity to social workers appear to have overlooked the necessary historical inquiry; none has seriously considered whether social workers enjoyed absolute immunity for their official duties in 1871. If they did not, absolute

You are also likely aware that even "absolute judicial immunity" does not extend to federal criminal prosecution[3] or prospective relief.[4]

Qualified Immunity

To the extent that any immunity could apply to you, your agency, or those over whom you have the ability to aid in preventing violations of law, we suggest that the acts described in the enclosed exhibits are merely "ministerial," or purely private. For such acts to which a qualified immunity analysis is relevant, you may be aware that immunity applies only for acts which do not violate "clearly established constitutional rights." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). You may also be aware of the significant body of authority prohibiting deprivations of fundamental rights which are identified herein. For example, Exhibit B includes California Judicial Council Form CR-160, which imposes numerous deprivations of rights, including the freedom of speech, association, familial relations, and other rights.

As such acts violate "clearly established"—indeed "fundamental—constitutional rights, they may not be abridged by your organization or those your organization may

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immunity is unavailable to social workers under §1983. This all assumes, of course, that "social workers" (at least as we now understand the term) even existed in 1871. If that assumption is false, the argument for granting absolute immunity becomes (at least) more difficult to maintain. cf. *Antoine* v. *Byers & Anderson, Inc.*, 508 U. S. ___ [sic] (1993) (denying court reporter absolute immunity in large part because official court reporters did not begin appearing in state courts until the late 19th century." (Justices Thomas, Scalia, writing specially) (internal citations omitted).

[3] "We emphasize that the immunity of prosecutors from liability in suits under 1983 does not leave the public powerless to deter misconduct or to punish that which occurs. This Court has never suggested that the policy considerations which compel civil immunity for certain governmental officials also place them beyond the reach of the criminal law. Even judges, cloaked with absolute civil immunity for centuries, could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. section 242. . . . The criminal analog of 1983. *O'Shea v. Littleton*, 414 U.S. 488, 503 (1974); *cf. Gravel v. United States*, 408 U.S. 606, 627 (1972). The prosecutor would fare no better for his willful acts. Moreover, a prosecutor stands perhaps unique, among officials whose acts could deprive persons of constitutional rights, in his amenability to professional discipline by an association of his peers. These checks undermine the argument that the imposition of civil liability is the only way to insure that prosecutors are mindful of the constitutional rights of persons accused of crime." *Imbler v. Pachtman*, 424 U.S. 409, 428-29 (1976).

[4] "The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression, and were partially responsible for the wrongs to be remedied. The parade of cases coming to this Court shows that a similar condition now obtains in some of the States. Some state courts have been instruments of suppression of civil rights. The methods may have changed; the means may have become more subtle; but the wrong to be remedied still exists." *Pierson v. Ray* , 386 U.S. 547 (1967); *Pulliam v. Allen*, 466 U.S. 522 (1984).

influence. For your convenience we enclose a citation list and summary analysis relating these immunities to the accused activities at Exhibit J.

Immune Yet "Monstrous"

Further, whatever your entity's amenability to suit for acts in violation of the CRCCS, the moral and professional responsibility implications and understandable public indignation at and contempt for violations by color of law actors have been described thusly:

> It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be *monstrous* to deny recovery.

Gregoire v. Biddle, 177 F.2d 579, 581 (1949) (emphasis added). You're likely aware of the "duty to do justice" attendant to every color of law officer as described generations ago in *Berger v. United States*, 295 U.S. 78, 88 (1935) and re-emphasized recently in *Connick v. Thompson*, 578 F.3d 273 (2011). Regular, willing, and maliciously fraudulent violations of the CRCCS are unlikely to abide by such standards regardless of the law of immunity.

In short, whatever of your perception of your organizations *legal amenability* to federal suit at law or equity, or vulnerability to a discretionary federal criminal indictment, you surely aspire to ensure the entities over whom you have power to "prevent or aid in preventing" violate no laws or inflict no "monstrous" acts. Common to all human societies which maintain a record of history is the observation that present day actions, through the focused lens of hindsight, reveal "monstrosities" not appreciated—or at least not acknowledged—by the generation committing such actions. We would hope that such a precisioned perspective from future generations will not tarnish your organization's future reputation, and we venture to speculate that modern United States District Judges would agree.

No Immunity for Municipalities

Municipalities enjoy no immunities for violations of the CRCCS. As such, the City and County of San Diego entities including the City Attorney's Office, the District Attorney's Office, and San Diego County Court administrative offices identified in Exhibit A, and numerous functions of the county judges themselves enjoy *no immunity whatsoever* for policies, procedures or acts in violation of the CRCCS. *See, e.g., Monell v. Department of Social Serv.*, 436 U.S. 658 (1978); *Pembaur v. Cincinnati*, 475 U. S. 469, 480 (1986); *McMillian v. Monroe County, Alabama*, 117 S. Ct. 1734 (1997); *Carter v. City*

of Philadelphia, 181 F.3d 339 (3rd Cir. 1999); *Board of the County Comm'rs v. Brown*, 117 S. Ct. 1382 (1997); *Connick v. Thompson*, 131 S.Ct. 1350 (2011).

Given the gravity of the consequences from participating directly or indirectly in, overseeing, or failing to prevent any act—independently or in furtherance of a conspiracy—in violation of the statutes recited herein, we would assume that color of state law officials would have given significant forethought to the implications of your agency's customs and policies regarding such activities. However, our investigation has revealed little, if any, consideration of these issues. For example, there appears no observable measures to train or control in the prevention or aid in prevention of ongoing violations of citizens' civil rights. Further, to the limited extent that such polices appear to be enacted (see Ex. A's "notice" regarding what court administrative offices "CANNOT" do), those entities' practices appears to be entirely inconsistent with policy. It would seem wise to have addressed risks of for constitutional deprivations through, for example training and supervision of the social workers under your influence or control. *See, e.g., City of Canton v. Harris*, 489 U. S. 378, 388.

Moreover, to the extent that any such policies exist, they appear to encourage violations of law. The Alliance entities observe an explicit policy to solicit illegal protective orders such as those described in Exhibit B Sec. III, pp, 1-17, 219-220, Table B.1. Given this illegal behavior, we question whether the Alliance has policies which facilitate a "culture of indifference" to constitutional deprivations. *Connick v. Thompson*, 563 U.S. ___, 131 S.Ct. 1350 (2011); *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 691 (1978).

No Immunity for Equal Protection Violations

Further, no entity is immune from "invidiously discriminatory" activity described in the attached exhibits in violation of equal protection of the laws—including deprivations based upon sex, gender, marital status, and status as a member of the "Domestic Relations" class described in California Penal Code section 13700. *See, e.g.*, *Adarand Constructors v. Peña*, 515 U.S. 200 (1995); *Griffin v. Breckenridge*, 403 U.S. 88 (1971). The Ninth Circuit Court of Appeals has acknowledged that Equal Protection extends to include discrimination against persons or classes "identified by Congress or the courts as needing special protection." *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529 (9th Cir.1992). In California a "class" is entitled to heightened protection provided it can show a "governmental determination that its members require and warrant special federal assistance in protecting their civil rights." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985); *Denney v. Drug Enforcement Admin.*, 508 F.Supp.2d 815 (E.D. Ca. 2007).

No Immunity for Private Acts in Collaboration with Public Officials

Private partners working with government officials rarely enjoy the governmental immunities of their government partners. Thus, even should your private agency be working with, for example, a prosecutor's office, no private entity

enjoys immunity even though they are acting pursuant to the government agencies' direction. See *Dennis v. Sparks*, 449 U.S. 24 (1980); *Polk County v. Dodson*, 454 U.S. 312 (1981). Similarly, where one agency may be immune for a certain act—such as prosecutors for acts at trial—other government agencies working with prosecutors—such as social workers coaching witnesses or police—are not covered by another agency's immunity.

No Immunity for Discrimination Even if Pursuant to State Law

It is no defense to liability under the CRCCS that the discriminatory acts are authorized under state or federal law. In *Guinn v. United States* 238 US 347 (1914), the U.S. Supreme Court ruled that defendants acting under color of law could raise no defense that their discriminatory acts were specifically permitted under state law.[5] In *Screws v. U.S.*, 325 U.S. 91 (1945), the U.S. Supreme Court considered whether state "color of law" actors could be punished for violating the U.S. Constitution while acting in an official capacity. The Court concluded:

> Of course the petitioners are punishable. . . . Congress said that no state can empower an officer to commit acts which the Constitution forbade the state from authorizing, whether such unauthorized command be given for the state by its legislative or judicial voice, or by a custom contradicting the written law.

Regardless of whether the color of law entities and their agents identified in Exhibit A were acting pursuant to state law or otherwise, they are liable under the CRCCS for any violations of U.S. citizens' rights.

No Immunity For Use of Process to Commit Extortion, Peonage

Alliance enforcement of the domestic violence restraining orders further violates state and federal law as it facilitates extortion by those enforcing them. In the *Peonage Cases,* 123 F 671 (DC 1903), it was held that conspiracies to accuse a person

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[5] In *Guinn*, the purpose of the state statute was to circumvent the equal protection requirements of the United States Constitution, and was therefore no defense to violation of federal law. *See also, U.S. v. Buntin*, 10 F 730(1882, CC); *U.S. v. Stone*, 188 F. 836 (1911). Such has been the law in the 9th Circuit for California courts for over a century. *See, e.g., Yick Wo v. Hopkins* 118 U.S. 356 (1886). Such is the case even where "the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Id.*

of a crime before a judge with the intent to extort forced labor from him was a violation of a right or privilege "secured" to him by the United States Constitution.[6]

Threats and use of the illegal restraining orders are often used in civil custody and dissolution proceedings to coerce extraction of value from the target. To the extent you or your agency's "civil legal" advocates are involved in procuring restraining orders, they are subject to criminal and civil liability under 18 U.S.C. sections 241, 242, 1581, 1589, 1590, 1592, 1593, 1593A, 1594, 1595, 1951, 1961, and 1962; Exs. A, B sec. I, K.

No Immunity for Racketeering/Predicate Crimes/Conspiracy to Operate Enterpris

Similarly, neither judicial nor qualified immunity accrues to acts constituting "racketeering" under 18 U.S.C. sections 1961, specifically including 18 U.S.C. sections 242, 242, 371, 1341, 1343, 1503, 1505, 1510, 1512, 1513, 1515, 1581, 1589, 1590, 1592. Such acts also constitute wrongful "overt acts in furtherance of conspiracy" under 42 U.S.C. 1985 and "operation of an enterprise" under 18 U.S.C. 1962. See *Vierria v. California Highway Patrol*, 644 F.Supp.2d 1219 (E.D. CA 1219); *U.S. v. Angelilli*, 660 F.2d 23 (2d Cir. 1981); Ex. K.

No Immunity for Declaratory or Prospective Relief, Attorneys Fees, Costs, Divestiture, Imprisonment

A defendant to an action at equity under 42 U.S.C. sections 1983 and 1985, or 28 U.S.C. section 2201 may not claim immunity. *Pulliam v. Allen*, 466 U.S. 522 (1984). Further, attorney's fees and costs are awardable as damages to the prevailing party in any action necessary to assert the CRCCS statutes identified herein. 18 U.S.C. section 1593, 1594, 1595, and 1964; 42 U.S.C. section 1988. Injunctive remedies may include divestiture of all interest in and/or prohibitions against future practice with any entity liable under 18 U.S.C. sections 1593, 1593A, 1594, 1595, 1962, and 1964. In all cases the acts are criminal under Title 18 United States Code.

DEMAND TO CEASE AND DESIST; COMPENSATION FOR INJURIES

Please consider this notice of and demand to cease and desist from participation, oversight, or control in the illegal activities described herein. Please also consider this a Demand for compensation under the California Tort Claims Act under California Government Code section 910 et seq. on behalf of the undersigned for denial of services requested of the San Diego Family Justice Center on June 26, 2013.

Should you refuse to comply with this Notice and Demand, please understand that we intend to pursue all actionable remedies.

The novel and intricate relationships between public and private entities under the "co-location" model of the Alliance generate a complexity of exposures to derivative liability based on principles of respondeat superior, conspiracy, and enterprise See *Anderson v. Creighton*, 483 U. S. 635, 646 (1987); *Wyatt v. Cole*, 504 U. S. 158 (1992); *Richardson v. McKnight*, 521 U. S. 399 (1997*); Filarsky v. Delia*, 566 U.S. ___ (2012). These rules on these relationships generate an analysis far too complex for us to undertake. We assume that your agency has resolved the questions of defense and indemnification rights among co-located parties and partners. We therefore request that you deliver this Notice and Demand to any indemnitor or insurer and request their acknowledgement of receipt of this Demand so that we may communicate further with such entity/ies.

Please note that this Notice and Demand represents a claim under the California Tort Claims Act under California Government Code section 910 et seq. We further request a copy of any indemnity/insurance binder agreements, endorsements, and specific indemnification amounts/policy limits, and coverage for these claims in order that we may consider providing you with a specific demand package. In your response hereto, please also advise if any insurer or indemnitor has denied or reserve rights with respect to coverage for this claim.

Please also consider this notice our intent to present additional claims for damages under the CRCCS against you, the entities identified in Exhibit A, and the "partners," advisors, and "supporters" identified in the cc list to this letter. Further correspondence to these entities will be forthcoming.

REQUEST FOR RESPONSE

In conducting any analysis in response hereto, we would respectfully suggest your consideration of the following questions:

1. Is any entity in which you participate or have influence guilty of the allegations set forth herein?

2. What, if any, immunity applies to any of the entities identified in Exhibit A for:

    a. Criminal violations of the CRCCS;
    b. Injunctive relief proscribing future illegal judicial or quasi-judicial acts;
    c. Provision of social services;
    d. Advising others regarding laws, procedures, or formwork;
    e. Advocacy not "intimately associated with" the judicial phase of criminal prosecutions;
    f. Civil advice, counseling, or support in divorce/custody proceedings;

g. Advice, guidance, support, or investigation on behalf of victims;
h. Advice to other social workers, police, or courts;
i. Statements or advice to the public, partners, financial supports, or media including "webinars" and lobbying activities;
j. Collaboration, agency, conspiracy, enterprise, or respondeat relationships between divorce lawyers, criminal prosecutors, law enforcement, criminal defense lawyers; and
k. General (non-criminal) "victim advocate" representation and counseling;
l. The moral indignation and contempt rightly attributable to those committing "monstrous" and criminal violations of civil rights laws. See *Imbler v. Pachtman*, *Gregoire v. Biddle*, supra.

3. Are supervising and/or participating municipal-level entities properly training, educating, supervising, disciplining, and retaining subordinates charged with enforcing illegal laws, policies, and procedures?

4. Does the intricate entanglement, including coordination, and implementation of custom, policy, and practice between the entities in Exhibit A as described therein exceed relevant charters, constitutions, or articles of incorporation for such entities? Do the intricately coordinated activities of Alliance entities violate constitutional separation of powers, and thereby expose state actors and their collaborators, partners, co-conspirators or enterprise partners to liability under the CRCCS?

5. Similarly, for acts not authorized by such charters or other organizing/authorizing documents, are such actors liable as mere trespassers for deprivations perpetrated under color of law?

6. Do the domestic violence restraining orders procedures, process, and use of the concepts of "good cause," "harass", "annoy", "contact", "transfer", "follow", "keep under surveillance", "surrender", "dissuade", "electronic communication", "obscene language", deprive citizens of state and federal constitutional rights such as Due Process, Equal Protection of the Laws, parental autonomy, free speech and association?

7. Can any entity be exempted from federal civil or criminal liability by asserting reliance—in "good faith" or otherwise—on California law putatively permitting acts in violation of the United States Constitution?

8. Can inter-agency coordination as described in the enclosed charts and exhibits be considered a "conspiracy" under the Chapter 18 and 42 sections described above, or a "criminal enterprise" for purposes of extortion under color of law pursuant to 18 U.S.C. sections 1962 and 1951? Is such activity conspiracy, furtherance, or assistance in peonage under 18 U.S.C. sections 1581 et sec. and actionable civilly under 18 U.S.C. sections 1595 and 1962?

9. Has any of the parties identified herein committed violations of federal law racketeering crimes as defined under 18 U.S.C. section 1961, including sections 1951, 1341, 1343, 1346, 1503, 1505, 1510, 1512, 1513, 1581, 1589, 1590, and 1592, or state law fraud and racketeering laws? Even if the United States Attorney exercises discretion illegally by refusing to prosecute such crimes, do such entities remain vulnerable to civil suit under 18 U.S.C. sections 1595 and 1962/1964?

10. *In addition* to the predicate crimes recited in 18 U.S.C. section 1961, can violations of criminal statutes under 18 U.S.C. sections 241, 242, 371, 372, under 42 U.S.C. sections 1983, 1985, or as part of a criminal enterprise under 18 U.S.C. section 1962, form the foundation of civil and/or criminal liability under 18 U.S.C. sections 1962 and 1964—*even though they are not themselves predicate crimes*?

11. Even if not directly involved in such activities, does your organization have any ability to "prevent or aid in preventing" such violations? If so, to what extent have your agency entered defense and indemnity relationships with other public/private entities which may subject your agency to indirect liability?

By copy of this letter we are alerting the United States Attorney for the Southern District of California, the Grand Jury for the Southern District of California, the Federal Bureau of Investigation, the Internal Revenue Service, the Attorney General of the State of California, the District Attorney of the County of San Diego, and the State Bar of California of these allegations. Further Notice by copy is provided to Alliance public and private "partner" entities who may be empowered, and therefore responsible, to act to assure compliance with law.

Suggestions for Consideration

In presenting this demand we convey our agreement that domestic violence is a very real social malady which in some cases if ignored can precede more harmful consequences. We support your and others' intent to address this social issue.

Yet we consistently observe ***enormously harmful and even dangerous consequences to parents and children*** which the Alliance appears to ignore. Because of the uniquely sensitive interpersonal nature of domestic disputes, dogmatic, unbalanced, or clumsy law enforcement intervention can and often does exacerbate, prolong, and effectively institutionalize conflict and its fallout. See Table B.1.

Further, reflexive mandatory police intervention seems to us to directly contradict the expressed goals of the Alliance—to foster individual empowerment and autonomy, heal families and support those in need.[7] While incarceration is a sure

[7] Mr. Gwinn has himself acknowledged the importance of parental autonomy in resolving intrafamily conflict without police intervention, and the exposure of Alliance entities to

"quick fix" to a tense domestic confrontation,[8] prolonged insertion of state actors into decision-making roles within the family represent a dramatic shift from a history of national respect for individual rights and family autonomy. *See, e.g., Troxel v. Granville*, Ex. J. Moreover, promoting a long-term criminal justice role in the day-to-day life of a family is untested in free western countries, and the consequences for its failure potentially grave. To deny any family member autonomy is not only to disrespect the very values of independence and self-worth; it is also simply illegal, and in many cases we have observed, morally despicable.

Nor do we intend to suggest that we have exhaustively and accurately described the extent to which the Alliance and its partners have achieved in deploying the integration and social welfare agenda set forth in their exhibits. Regardless of how far along the Alliance's plans have developed, their direction and intent are clear. Whether advanced through a board meeting, political debate, or one of the several civil rights lawsuits framed herein, we intend that these issues will be confronted and fairly resolved in a forum in which *all* parents—men and women—children, and the entire interested citizen population affected have a seat at the table.

In addition to the above Demand to cease and desist, we urge that in implementing any policy with respect to families and children, you and your agency consider:

1. *Restraint and Respect*: Intervention based on novel or speculative theories guarantees immediate harm to individual rights while "hoping" for a net favorable outcome. Oddly, this directly contradicts Alliance values of autonomy and empowerment. Recognize the harmful consequences of overreaching and coercion by the monolithic perspective of a criminal justice response—especially one based upon novel, speculative, or downright inaccurate, biased, or malevolent ideologies. No matter how worthy the cause or pure-hearted the leaders, commanding behavior by force in intimate relations is at best a tolerable last resort, but increasingly a ham-fisted (and potentially catastrophic) blunderbuss;

2. *Responsible Awareness*: There are many appropriate social responses to domestic disputes which are based on real science and law and not solicitous of government entanglement. A monolithic criminal justice response is strong medicine with inevitably serious, often unforeseeable side effects. Given the many appropriate

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"significant" liability for injuries to citizens facilitated by novel state intervention strategies. http://www.youtube.com/watch?v=mATtBh2UPIo from 2:30-3:58. We concur.

[8] The Alliance provides an exhibit referring to an ABA survey of women who received domestic violence services from the criminal justice system indicating that such women don't want the relationship to end, but simply to change the behavior of their partner. For women, a "successful" criminal justice system intervention seems not to be a successful prosecution, but (1) by ending the tense conflict, and (2) by using the coercive fear of future prosecution to adjust the "power and control" while maintaining the relationship. If so, the threat of jail is a novel aphrodisiac in the Western world, though apparently still successfully practiced with child grooms and brides in certain Hindu regions of India.

modern tools available to address domestic strife, awareness and mastery of available resources may be wise;

3. *Fairness*: "Studies" are often flawed or biased, particularly when the subject is complex human interaction or control. When adopting policies, carefully scrutinize relevant supporting (and contradicting) data and assumptions to identify and minimize the harm from adoption of erroneous, speculative, biased and/or ideological approaches. Skillfully manipulated by sophisticated criminal justice professionals facile with the implements of coercion, might sometimes appears to make right. Few disinterested professionals would succumb to such conveniences. When conflicts among science and ideology appear, caution and restraint ***are*** justice.[9] Our grandparents wisely advised "if you can't do it right, don't do it at all." Your grandchildren may appreciate the dignity you maintained (or ignominy you avoided) by obedience to that wisdom;

4. *Sensitivity to Our Common Humanity*: Unlike generic criminal justice matters, domestic disputes ordinarily involve genuinely differing perspectives on the nature of acts and actors accused.[10] Intimate relations are uniquely incompatible with intensive criminal justice intervention, and recent history tells us that hasty accusations not only poison relationships, but can also be dangerous for years to come. Table B.1.

5. *Efficiency Is Effectiveness*: The criminal justice system is expensive; not just in terms of police and courts, but indirectly to the participants themselves. We regularly observe costs in dollars and tears which the Family Justice Center Alliance analysis fails to account for. Awareness of appropriate alternatives to criminal prosecution saves taxpayers, children, and ultimately the parties themselves both fiscally and psychologically;

6. *Obedience to Yours and Others*: Those who formed your entity imbued it and you with empowerments *and restrictions*—and for good reason. So did others who formed the entities with whom you interact. Alliance "partner collocation" or as code for "public/private integration" is disingenuous and largely illegal. Law and tradition advises respect for obedient, honest, and independent government functions central to social prosperity;

7. *Don't Make it Worse*: A policymaker or administrator has no training in psychotherapy for ordinary humans, but abundant training in coercion of criminals. If you chose to apply such learning beyond its prescribed confines to impose coercive "therapy" to remedy misdemeanor domestic strife, observe the ancient law of genuine healers: *Above all else, do no harm*

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[9] "What sorrow awaits you teachers of religious law and you Pharisees. Hypocrites! For you are careful to tithe even the tiniest income from your herb gardens, but you ignore the more important aspects of the law—justice, mercy, and faith." Matt. 23:23.

[10] Judge Hand observed that "right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. To many, this is, and always will be, folly, but we have staked upon it our all." *United States v. Associated Press*, 52 F.Supp. 362, 372 (D.C.S.D.N.Y.1943).

8. "Hope" Isn't Far Away: We share the Alliance's vision for hope, most notably the praiseworthy solutions the Alliance proposes to its own employees, members, and partners to their internal "power and control" conflicts. The slides below are copied from the May 4, 2009 Family Justice Center Presentation entitled "Family Justice Center Vision" available at slides available at http://www.caseygwinn.com:

Worthy advice—yet perhaps underutilized. From these slides (excerpted at Exhibit B, pp. 404-417) it appears that many who have joined the Alliance benefited from this wise guidance toward the historical virtues of successful human joint endeavors—that honesty, humility, humor and grace are highly effective antidotes to "power and control" struggles. Given the success of the Alliance movement, the advice appears to have been miraculously successful, and we would not be surprised if Alliance employees fortunate enough to have adopted those virtues in their personal lives have experienced similar improved personal outcomes.

It is a surprise though that given the Alliance's own appreciation of the empowerment bestowed by disciplined practice of "honesty, grace, and humility" the Alliance nevertheless fails to deploy this awareness in their aid of Alliance clients. Alliance clients and their families in crises are coached to perceive and therefore resolve their problems—not with integrity, humility, humor and grace—but with "power and control" ideology enacted through a coerced "power exchange" subsidized by state police powers and "long-term accountability to survivors"—i.e., *prison*. In other words, newly-enlightened Alliance employees tell their clients:

> *While our new Alliance leadership has bestowed upon us wisdom with which we have escaped our own "power and control" silos to empower ourselves to relate better with others, we won't be similarly empowering you. For you we offer police officers, courts and prisons for those who disagree. To repair the damage we know this will cause, we offer welfare, food stamps, relocation, day care in case you get a job, and a camp for children without fathers. Your family, friends, network, career—well, good luck but don't worry, our jobs depend on supporting you through this so we'll be here as long as your kind coming back. Sign here and right this way.*
>
> Ex. B., pp. 22-55.

Empowerment indeed.

What a horrific nightmare we would wake up from if, in a generation we realize that the Alliance's emancipation of women from an unstable relationship with one fallible human simply rebounded them into a terminally stable relationship with an infallible welfare state. The promise of "pre-crime intervention" is that by imposing the disability of state receivership onto your life, your now-former loved one's life, your children's life, your relationships with your employer, banker, network, friends, neighbors, creditors, landlord, and perhaps even your God, you receive in exchange the "hope" of an improvement in all of these, via police and welfare state services. While we also hope it works, from our perspective such folly is persuasive uniquely to those motivated by the "hope" of lotto-funded wealth, nicotine confidence, and plastic-bottled spirituality. In perspective, the Alliance's solution seems more a punishment for a woman's autonomy than empowerment of it.[11]

We would hope that the wisdom the Alliance imparts to its own in improving relations within its understandably harried community might be at least as "empowering" if adopted, taught, and facilitated for interactions with others outside of the Alliance's bulletproof hearts and black-widow tinted glass. Hearts risen in hope are not well served by hands risen in fear.

We respectfully reference a free resource for domestic strife in families which contains guidance backed by a substantial body of academic research that enables others to understand and practice very much the same advice the Alliance has thus far adopted for its own at www.youtube.com/uptoparents. This resource provides tools which can empower parents and children without unnecessary reliance on government entanglement. It may be an additional tool which can empower the Domestic Class, given access to the many such tools available, to develop and deploy successful long-term solutions to whatever are the underlying causes of domestic strife. Best of all—at least for parents and children—it's free. One place to start is the interview here: http://www.youtube.com/watch?v=rUH3mWzLeO4&feature=c4-overview-vl&list=PL75FBQp2qmEdBmfa15v5AftUEvHYtYrT2.

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[11] From *The Theory of Moral Sentiments*, Adam Smith (1759): "The great source of both the misery and disorders of human life, seems to arise from over-rating the difference between one permanent situation and another. Avarice over-rates the difference between poverty and riches: ambition, that between a private and a public station: vain-glory, that between obscurity and extensive reputation. The person under the influence of any of those extravagant passions, is not only miserable in his actual situation, but is often disposed to disturb the peace of society, in order to arrive at that which he so foolishly admires. The slightest observation, however, might satisfy him, that, in all the ordinary situations of human life, a well-disposed mind may be equally calm, equally cheerful, and equally contented. Some of those situations may, no doubt, deserve to be preferred to others: but none of them can deserve to be pursued with that passionate ardour which drives us to violate the rules either of prudence or of justice; or to corrupt the future tranquility of our minds, either by shame from the remembrance of our own folly, or by remorse from the horror of our own injustice."

CONCLUSION

Thank you for your attention. Our analysis reveals that you and the organizations you oversee may be significantly exposed for a variety of potential violations of numerous civil rights laws as described herein. As the civil and criminal penalties for such violations, if proven, are severe, we urge your prudent attention and response to this Notice and Demand.

Because you likely do not recognize the undersigned we invite your attention to the activities of the California Coalition for Families and Children of which the undersigned is an officer and founder. Since 2008 our group has assisted mothers, fathers, and children in efforts to support and defend family autonomy through domestic strife and raise public and governmental awareness of alarming deprivations of parents' and children's civil rights. A search of parenting Internet websites such as angiemedia.com, uptoparents.com, and thepubliccourt.com will reveal significant details of our activities, intent, and ongoing mission.

As parents and children who have withstood abundant hardship resulting from deprivations of "clearly-established" liberties, insults to our and our colleagues' humanity, and "good-intentioned" degradation our and our children's futures, the issues raised herein are first on sharpened minds and fused to injured hearts. It is our perception that this present-day suffering of so many parents and children has and is being wrought at the hands of a small but vocal minority who advocate—often without sufficient education, training, professional ethics oversight, experience, or even intelligent thought—for reflexive governmental intrusion into intimate human affairs. We have observed that these often ideologically-attached entities generate and knowingly rely on fraudulent statistics and malicious, hypocritical judgment, and blindly politic for more of what has become their own obesity of "power and control."

We are *highly* motivated to reverse this pernicious erosion parents' and children's welfare and vindicate the deprecations of the tens of thousands of victim parents and children lying in the path of this "Alliance" and its partners. As a recent victim of many of the violations identified herein, the undersigned offers that he has adequate standing to assert actions at law and equity in United States District Court to remedy such deprivations, and hereby submits this Notice and Demand for compensation for such injuries pursuant to the California Tort Claims Act under California Government Code section 910 et seq.

If you share our values, we welcome your cooperation. If you do not, we shall keep you informed of our progress in obtaining compensation, relief, and prospective compliance with law.

Sincerely,

Colbern C. Stuart, President
California Coalition for Families and Children

cc:

Arthur Loevy, Esq.
Jon Loevy, Esq.
Loevy & Loevy

Jeff Grell
Grell & Feist

Ms. Bea Hanson
Office on Violence Against Women
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Mr. Eric Holder
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Chief Judge Alex Kozinski
United States Court of Appeals For the Ninth Circuit
95 7th St.
San Francisco, CA 94103

Ms. Laura Duffy
United States Attorney
Southern District of California
880 Front Street, Room 6293
San Diego, California 92101-8893

Ms. Daphne Hearn
Special Agent in Charge
Federal Bureau of Investigation
10385 Vista Sorrento Parkway
San Diego, CA 92121

Foreperson
Grand Jury of The United States District Court, Southern District of California
880 Front Street
San Diego CA 92101-8893

Mr. Steven Jahr, Administrative Director
Ms. Jody Patel, Chief of Staff
Mr. Curt Child, Chief Operating Officer
Administrative Office of The Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Hon. Tani Gorre Cantil-Sakauye
Supreme Court, State of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Ms. Kamalla D. Harris
Office of the Attorney General
1300 I Street
Sacramento, CA 95814-2919

Hon. Tani Gorre Cantil-Sakauye
Hon. Marvin R. Baxter
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Mr. Brett Batson
Ms. Victoria Henley
Hon. Judith McConnell
California Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102

Ms. Mary McQueen
President
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

Attorney Complaint Intake
Office of the Chief Trial Counsel
State Bar of California
180 Howard St.
San Francisco, CA 94105

United States Senator Patrick Leahy
437 Russell Senate Bldg
United States Senate
Washington, DC 20510

United States Senator Jeff Sessions
326 Russell Senate Office Building
Washington, DC 20510 -0104

United States Senator Barbara Boxer
600 B Street, Suite 2240
San Diego, CA 92101

United States Senator Diane Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

United States Congresswoman Susan Davis
2700 Adams Avenue, Suite 102
San Diego, CA 92116

United States Congressman Duncan Hunter
1611 N. Magnolia Ave., Suite 310
El Cajon, CA 92020

United States Congressman John Conyers
2426 Rayburn H.O.B.
Washington, DC 20515

United States Congressman Lamar Smith
2409 Rayburn House Office Building
Washington, DC 20515

Mayor Bob Filner
City of San Diego
12th floor, 202 C St
San Diego, CA 92101

Ms. Marcella O. McLaughlin or current President
San Diego County Bar Association
401 West A Street, Ste. 1100
San Diego, CA 92101

Chief William M. Lansdowne
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Sheriff William Gore
San Diego County Sheriff Department
John F. Duffy Administrative Center
PO Box 939062
San Diego, CA 92193-9062

Ms. Kim Wells, MA
Executive Director
Corporate Alliance to End Domestic Violence

National Family Justice Center Alliance Advisory Board, Board of Directors
c/o National Family Justice Center Alliance
707 Broadway Ste 700
San Diego CA 92101

Sarah Buel, JD Clinical Professor of Law
Director, Diane Halle Center for Family Justice
Sandra Day O'Connor College of Law, Arizona State University
Sandra.buel@asu.edu

Ted Bunch
Co-Founder, A Call to Men
342 Broadway, Suite 163
New York, New York
10013-3910
info@acalltomen.org

Denise Gamache, MSW
Director, Battered Women's Justice Project
1801 Nicollet Ave., So., Suite 102.
Minneapolis, MN 55403
technicalassistance@bwjp.

Dean M. Hawley, MD
Professor, Indiana University School of Medicine
Clarian Pathology Laboratory
350 West 11th Street, Room 4064
Indianapolis, IN 46202-4108
dhawley@iupui.edu

Verna Griffin-Tabor
Center for Community Solutions
4508 Mission Bay Drive
San Diego, CA 92109

Jennifer Anderson, Project Director
Lori Gillam, Director of Finance
Natalia Aguirre, Director
Mellissa Mach, Director
Alexia Peters, Managing Attorney
National Family Justice Center Alliance
707 Broadway Ste. 700
San Diego, CA 92101

Amy Sanchez
Casa de Esperanza
P.O. Box 40115
St. Paul, MN 55104

Yvonne Carrasco
Consultant to Foundations and the Non-Profit Sector

Michael Mason
Chief Security Officer, Verizon Communications
michael@familyjusticecenter.org

Nancy E. O'Malley, JD
District Attorney, Office of the District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

Jan Goldsmith
City Attorney, City of San Diego
1200 Third Ave., #1620
San Diego, CA 92101

Bonnie Dumanis
District Attorney, San Diego County
330 W. Broadway
San Diego, CA 92101

Michael Roddy
San Diego County Superior Court
330 W. Broadway
San Diego, CA 92101

Hon. Robert Tentacosta
Hon. David Danielson
Hon. Timothy Walsh
Hon. Maureen Hallahan
Hon. Lorna Alksne
All Criminal and Family
Court Judges
Mr. Michael Roddy
San Diego County Superior
Court
330 W. Broadway
San Diego, CA 92101

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Recovery Act: Justice Assistance Grant Program

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TechSoup Software/Hardware Donations

Fundsnet Services Online

"Partners" of The National Family Justice Center Alliance including " a host of partner agencies on a local, state, national, and international level" who " help provide funding for the work of the Alliance, collaborate in service delivery within and outreach about the Family Justice Center movement, and sponsor our annual conference."

A Call to Men

Alabama Coalition Against Domestic Violence

Alianza

American Bar Association Commission on Domestic Violence

American Medical Association

American Prosecutors Research Institute

Arizona Child and Family Advocacy Network

Avon Foundation for Women

Battered Women's Justice Project

Blue Shield of California Foundation (Blue Shield Against Violence)

California Coalition Against Sexual Assault

California Crime Victims Compensation Program

California District Attorneys Association

California Partnership to End Domestic Violence

California Police Chiefs Association

Corporate Alliance to End Partner Violence

Danger Assessment.org

Dress for Success

Domestic & Sexual Violence Prevention Training and Consulting

End Violence Against Women International

Feminist Majority Foundation

Futures Without Violence

Gavin de Becker - MOSAIC Risk Assessment Program for Domestic Violence Cases

The Hands Project

Verizon Wireless Hope Line Program

Idaho Coalition Against Domestic Violence and Sexual Assault

International Association of Chiefs of Police

Intimate Violence Death News

Institute on Domestic Violence in the African-American Community

Jerome's Furniture

Legal Momentum

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Minnesota Coalition for Battered Women

National Clearinghouse on Abuse in Later Life (NCALL)

The National Center for Victims of Crime

National Center for Victims of Crime's Stalking Resource Center

National Center for Women & Policing

National Center on Domestic and Sexual Violence

National Coalition Against Domestic Violence

National Council Of Juvenile And Family Court Judges

National Domestic Violence Fatality Review Initiative

National Domestic Violence Hotline

National Network to End Domestic Violence

National Resource Center on Domestic Violence

National Sexual Violence Resource Center

National Strangulation Training Institute

National Teen Dating Abuse Helpline

New Hampshire Coalition Against Domestic and Sexual Violence

New Mexico Coalition Against Domestic Violence

Pace Women's Justice Center

Pennsylvania Coalition Against Domestic Violence

Praxis International

RAINN /National Sexual Assault Hotline

Relationship Training Institute

San Diego Padres Foundation

Silent Witness National Initiative

Solmedia

That's Not Cool (Youth Outreach)

U.S. Department of Defense Domestic Violence Task Force

U.S. Department of Justice, Office for Victims of Crime

U.S. Department of Justice, Office on Violence Against Women

USAID

Verizon Foundation

Vital Voices Global Partnership

Walmart Foundation

WomensLaw.org

Women's Rural Advocacy Program

Others affiliates of the Family Justice Center Alliance:

Adams & Adams Consulting

San Diego Domestic Violence Council

San Diego Family Justice Center Foundation

San Diego Fire Department, Chaplain’s Program

San Diego Police Department Domestic Violence Unit

San Diego Police Department, Elder Abuse Investigation Unit

San Diego County Probation Department

San Diego Volunteer Lawyer Program Legal & Immigrations Services

San Diego Youth & Community Services

Action Network of Human Trafficking

Sharp Healthcare, Forensic Medical Unit

UCSD School of Medicine

District Attorney's Victim/Witness Program

Adult Protective Services

California Western School of Law

Camp Hope

Center for Community Solutions, Legal Clinic

Child Welfare Services

Crime Victims Fund

Kaiser Permanente

Military Liaisons -- Miramar MCAS

Office of the City Attorney, DV and Special Victims Unit

President's Family Justice Center Initiative Technical Assistance Team

San Diego County District Attorneys' Office, Family Protection Division

San Diego Deaf Mental Health Services

Teen Court

California Board of Psychology

American Psychological Association

San Diego County Bar Association

Dr. Stephen Doyne

Dr. Lori Love

California Board of Psychology

The San Diego Public

California Coalition for Families and Children
4891 Pacific Hwy., Ste. 102
San Diego, CA 92110
Cole.Stuart@Lexevia.com
D: 858.504.0171

Exhibits A-K to July 24, 2013 Notice and Demand to Family Justice Center Alliance Online URLs

Main URL : http://croixsdadsblog.wordpress.com/2013/07/24/ccfc-cease-and-desistnotice-re-42-u-s-c-sections-1986-1985/

Exhibit A : http://croixsdadsblog.wordpress.com/2013/07/24/table-b-1-to-ccfc-notice-letter-re-42-u-s-c-1986/

Exhibit B : http://croixsdadsblog.wordpress.com/2013/07/24/exhibit-b-to-ccfc-notice-letter-re-42-u-s-c-1986/

Table B.1 : http://croixsdadsblog.wordpress.com/2013/07/24/table-b-1-to-ccfc-notice-letter-re-42-u-s-c-1986/

Exhibit C-I : http://croixsdadsblog.wordpress.com/2013/07/24/exhibits-c-i-to-ccfc-notice-letter-re-42-u-s-c-1986-2/

Exhibit J-K : http://croixsdadsblog.wordpress.com/2013/07/24/exbhits-j-k-to-ccfc-notice-letter-re-42-u-s-c-1986/

Tadros v. Lesh, et al., U.S. Supreme Court Petition for Certiorari Case No.12-1438

http://croixsdadsblog.wordpress.com/2013/07/25/tadros-v-lesh-et-al-u-s-supreme-court-petition-for-certiorari-case-no-12-1438/

Exhibit A

Ex. A

Entity/Accused Services/Violations Chart

State Color of Law Actor	Illegal Action/s	Citation/s
City of San Diego; Family Justice Center (Ex. C)); Family Justice Center Alliance (Exs. B, D)	Operation of the San Diego Family Justice Center and the Family Justice Center Alliance (the "Alliance") centers throughout the United States in violation of the Due Process and Equal Protection clauses of the First, Fifth, and Fourteenth Amendments to the United States Constitution and related provisions of the state constitutions in which the Alliance operates by the following activities: A. Invidiously Discriminatory Constitution and Deployment of Sexist Social Services: 1. *De Facto Discrimination*: The Alliance's discriminatory services include directing social support services exclusively to or for the benefit of females in domestic relationships with a male. No similar program or services are offered to males despite the fact that such services are appropriate for all citizens regardless of gender or sexual preference. Conversely, males seeking social services from the Alliance centers are "diverted" to separate and unequal services defining them as "batterers" regardless of their actual need. See Ex. B, pp. 309-312. Administration of the "No Male" policy is initiated by female Alliance employees in a pre-admission "screening" processes. Males are intentionally, irrationally, unequally, invidiously, and maliciously denied equal social services through the "screening" or other "diversion" processes. For example, over 96% of San Diego Family Justice Center social services clients are women despite the fact that many men need and are eligible for such services. The screening policy is the effective equivalent of the invidiously discriminatory and morally repugnant "WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE" sign prevalent in the post-segregation era South and recently thought, incorrectly it seems, to have died an ignominious death as an offensive relic of an	18 U.S.C. §§ 241, 242, 371, 373, 1581, 1589, 1590, 1591, 1592, 42 U.S.C. §§ 1983 (and conspiracy re: same), 1985, 1986 (the "Civil Rights Criminal and Civil laws") (Ex. K) for direct operation, participation/conspiracy with non-color of law actors, and oversight, conspiracy, participation with/oversight of non-immunized activities of both color and non-color of law actors

	inhumane past. Ex. B pp. 34-53. Males are "diverted" through the screening process to "batterers" programs falsely concluding their only need for services is as appropriate for violent criminals—"batterers," "abusers," and "perpetrators"—"education" that becomes the first step in a path toward incarceration. Ex. B 194-207. Webinar recordings in possession of the Family Justice Center Alliance instruct that if the male who is refused service disagrees with the screening decision to divert him to a pre-criminal process, he is forcibly ejected from the center and, if necessary, arrested by on-site armed public law enforcement officers or security guards. See Exs. B, C. 2. *Invidiously Discriminatory Constitution and Intent*: Alliance materials in Exhbits B, C and the items referenced therein explain that the Alliance is not a gender neutral organization but has evolved from feminist ideological roots. Its constitutional documents are adopted from a feminist ideology and proclaim hostility to "paternalism." See Exs B pp. 1-5, 163-209, B.1, the Alliance's "Domestic Violence 101 Manual" by Ganley, p. 16-17: (http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/355-dv-101-understanding-domestic-violence-ganley.html, and http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/356-dv-101-information-a-resources-for-survivors-and-their-supporters-sdfjc.html). <u>Source of Alliance Constitutional Materials:</u> Alliance constitutional materials are adopted from the "Mid Valley Women's Crisis Service" in Salem, Oregon http://www.mvwcs.com/domesticviolence.html The Mid-Valley Women's Crisis Service ("MVWCS") focusses its services primarily on	

	rape and incest victim recovery, though it also provides more general services to female victims of domestic violence. http://www.mvwcs.com/reference/index.html. These survivors of violent crime—often inflicted by perpetrators close to the victim—are understandably traumatized by such abuse. They have been brutally and insidiously betrayed by people they trusted. As a woman's group, the MVWCS victims are violated almost exclusively by men. Their experiences are harrowing. Rape and incest survivors need and deserve special attention for the atrocious injustices they have suffered. For reference, the MVWCS rape/incest survivor perspective will be referred to as "Rape/Incest Survivor Feminism", or "RISF." [1] - The Alliance's "DV 101" teaches: "Domestic violence is a gender-specific behavior which is socially and historically constructed. Men are socialized to take control and to use physical force when necessary to maintain dominance."; "Domestic violence has many names: wife abuse, marital assault, woman battery, spouse abuse, wife beating, conjugal violence, intimate violence, battering, partner abuse, for example. Sometimes these terms are used interchangeably to refer to the problem, while at other times a particular term is used to reflect a specific meaning (e.g., "woman abuse"	

[1] While feminist ideology has generally achieved mainstream accommodation, in some cases enthusiastic acceptance, the Mid-Valley Women's Crisis Service ("MVWCS") perspectives have received widespread welcome and identification in rape and incest survivor populations.

The RISF perspective is by no means limited to Mid Valley, Oregon. Similar groups nationwide provide survivor support, awareness, and information to this underserved victim population. See, e.g., http://www.rainn.org/ http://www.brissc.org.au/, http://www.aftersilence.org/ http://www.survivorschat.com/ http://cancer.dartmouth.edu/pf/health_encyclopedia/shc65http://www.dancinginthedarkness.com/ http://www.njcasa.org/resources/programs-support-groups http://www.pandys.org/secondarysurvivors.html http://www.joyfulheartfoundation.org/resources_rape.htm http://mystorymyshame.blogspot.com/ http://www.goodreads.com/book/show/5142050-secondary-survivors http://www.ccasa.org/for-survivors/ http://home.earthlink.net/~sanschu/incest1.html

	to highlight the fact that most victims are women). In addition to these multiple terms, there are different behavioral and legal definitions for domestic violence") (Ganley), Ex. B; - The Alliance's "DV 101" statistics: Documents claim that while females commit domestic violence nearly as frequently as males, DV 101 insists on using the "male" pronoun to refer to "perpetrators" and "female" pronoun" for "victims" and "survivors", explaining: "For the purposes of this manual, masculine pronouns are generally used when referring to perpetrators of domestic violence, while feminine pronouns are generally used to reference victims." The Alliance Imputes "Mass Murder" to Men as a gender: The Alliance's prejudice against men is stunning in its intensity and ideological intoxication. See Ex. B pp. 163-325. Among its more outrages claims is that men are plotting to "mass murder", "Family Annihilation" "Escalating DV" "Societal Breakdown" and "A War On Women." Ex. B. p 165. The demagoguery includes attributing ***all*** sexually transmitted diseases including HIV/AIDS, teen pregnancy, rape and incest, sexual abuse, and a host of social ills to "traditional masculinity." Ex. B. Mr. Gwinn father claims a "mass murdering of women" when several independent instances of men killing women occur over a short period—exclaiming "It's an epidemic of DV mass murder." See **www.caseygwinn.com** or Mr. Gwinn's numerous Youtube showcases such as **http://www.youtube.com/watch?v=Brw2evwl49U**. Mr. Gwinn attributes "power and control" as the first and most important cause of what others describe as a deeply troubled person committing murder/suicide. "A murder suicide is not just about hopelessness, it's about power and control, and then about helplessness."	

	Few others so confidently offer such universally consistent explanations to human behavior. However, when they have, their definitions and explanations have been largely inconsistent with the Alliance's definitions. Mr. Gwinn's definition of "mass murder" is directly contradicted by the F.B.I.: "According to the FBI: for individuals, mass murder is defined as the person murdering four or more persons during a particular event with no cooling-off period between the murders. A mass murder typically occurs in a single location in which a number of victims are killed by an individual or more.[2][3] With exceptions, many acts of mass murder end with the death of the perpetrator(s), whether by direct suicide or being killed by law enforcement.[4] A mass murder differs from a spree killing, in that it may be committed by individuals or organizations, whereas a spree killing is committed by one or two individuals. In terms of individuals, mass murderers are different from spree killers, who kill at two or more locations with almost no time break between murders and are not defined by the number of victims, and serial killers, who may kill numerous people over long periods of time. Mass murder is also not synonymous with genocide because genocide requires distinct elements. Mass murder may also be defined as the intentional and indiscriminate murder of a large number of people by government agents. Examples are the shooting of unarmed protestors, the carpet bombing of cities, the lobbing of grenades into prison cells, and the random execution of civilians.[5] The largest mass killings in history have been governmental attempts to exterminate entire groups or communities of people, often on the basis of ethnicity or religion. Some of these mass murders have been found to be genocides and others to be crimes against humanity, but often such crimes have led to few or no convictions of any type.	

	Similarly, the Centers for Disease Control, DSM V, Department of Justice and state legislatures across the united states have for generations adopted definitions far more complex and far less certain that those confidently offered in the citationless narratives constitution "DV 101." See Table B.1. http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/356-dv-101-information-a-resources-for-survivors-and-their-supporters-sdfjc.html And Mid-Valley Women's Crisis Center: http://www.mvwcs.com/domesticviolence.html The Family Justice Center has been defined as "The Deluth Model on Sterioids." The Deluth model: http://www.theduluthmodel.org/ Compare with: http://www.familyjusticecenter.org/ - The Alliance's UFV/UMP "DV101" Ideology: The invidiously discriminatory ideological distortions described in "DV 101" defining males as irrefutably presumed to be "batterers" "offenders" and "abusers" and females as irrefutably presumed to be "victims" and "survivors" will hereinafter be referred to as "Universal Female Victim/Universal Male Perpetrator" ideology, or "UFV/UMP" - Alliance Training and Education of Employees to Impose UFV/UMP: Alliance internal training and educational materials, policies, practice, and procedure manuals adopt a distinctively gender-centric variety of feminist definitions and ideology. Training materials entitled "Domestic Violence 101" ("DV 101") define the terms "batterer" "perpetrator" and "abuser" in male/female domestic relationships to refer exclusively to males. - The Alliance's Near-Unanimous Female Workforce: The composition and behavior of	

	the Alliance belies its androgynous title. In body and spirit Alliance would be more aptly named the "Women's Justice Center." All but a handful of its workers are female, and but for the "batterers" male-only programs (also led by a token handful of males), its clients are universally female (Ex. B, Table B.1). - The Alliance's Distribution and use of Fraudulent and invidiously discriminatory Promotional Materials: "Survey Data" contamination with invidiously discriminatory bias consistent with UFV/UMP: The "DV 101" materials contain or repeat fraudulent representations in and about statistical studies. Such fraudulent studies are misrepresented intentionally or without reasonable diligence to deny social services without due process to determine true facts - The Alliance's Adoption, Implementation, and Enforcement of Illegal, Fraudulent, and Unethical Ideology: Alliance and its partners implement discriminatory ideology through training materials adopted from a Women's rape and incest crisis center in Salem, Oregon. See, Ex. B, Table B.2. In a series of training and educational booklets entitled "DV 101 Information and Resources for Survivors and their Supporters" The Alliance admits that though its terminology is biased: > For the purposes of this manual, masculine pronouns are generally used when referring to perpetrators of domestic violence, while feminine pronouns are generally used to reference victims. This is not meant to detract from those cases where the victim is male or the perpetrator is female. This pronoun usage reflects the fact that the majority of domestic violence victims are female. The U.S. Department of Justice estimates that 95% of reported assaults on spouses or ex-spouses are committed by men against women (Douglas, 1991). The "don't mind the gender pronoun" disclaimer is specious consolation when	

	considered in the blaring context of an assaultive ideological UFV/UMP distortion campaign. - Utilizing case studies and examples exclusively involving male perpetrators and female victims while ignoring female perpetrators and male victims; - Coordinating public/private "wrap around" and "co-location" services with invidiously discriminatory bias: Promoting, educating, teaching, counseling, coaching, and attempting to lead public authorities including judges, court staff, prosecutors, law enforcement, and civil servants about allegations of domestic violence fraudulently and with invidiously discriminatory bias consistent with such ideology; - Operating "separate and unequal" social services based upon UFV/UMP ideology: Providing "services" to males only for "battering programs" or "outreach to men" programs directed at perpetrators of crimes while recognizing no need for or providing no such programs for females with invidiously discriminatory bias consistent with UFV/UMP; - Promulgating UFV/UMP ideology as legitimate government policy to other agencies, including courts, law enforcement, criminal prosecution, and civil family law matters: Promoting, teaching, educating, counseling, coaching and attempting to lead government officers and the public that females are incapable of perpetrating domestic violence against males consistent with UFV/UMP; - "Advising" law enforcement consistent with UFV/UMP: Coaching, advising, enlisting, supervising, cajoling, and encouraging law enforcement to alter, fabricate, and manufacture evidence during first response and subsequent investigation consistent with UFV/UMP; - Discriminatory provision of social services: Providing extensive social services, financial	

	support, counseling, aid, civil and criminal legal services advice and support, access to courts, exclusively to females in male/female domestic relationships and providing none of the same to men in male/female domestic relationships consistent with UFV/UMP; - Equivocating Legal Terminology with Ideological Terminology for Discriminatory Effect: While the DV 101 manual acknowledge that Domestic Violence consists of physical and sexual assault and battery as those terms are defined under law, the manual extends the definition to include a wide variety of activities the law does not, and most people would not, recognize as "violence" "abuse" or "battering", including: 1. Equivocating ordinary family budgeting as "battery" and "abuse"; equivocating a wide range of behaviors fairly characterized as ranging from, perhaps, "annoying" to more egregiously abusive behavior. For example, budget disputes are equivocated with forced resource deprivation: ("Perpetrators control victims by . . . controlling their access to all of the family resources: time, transportation, food, clothing, shelter, insurance, and money. . . The perpetrator is the one who controls how the finances are spent. He may actively resist the victim becoming financially self-sufficient as a way to maintain power and control"); sharing bread winning responsibilities ("Conversely, he may refuse to work and insist that she support the family."); sharing or delegating bookkeeping responsibilities ("He may expect her to be the family "bookkeeper," requiring that she keep all records and write all checks, or he may keep financial information away from her. In all instances he alone makes the decisions. Victims are put in the position of having to get "permission" to spend money on basic family needs."); post-separation or divorce disputes over separate income ("When the victim leaves the battering relationship, the perpetrator may use economics as a way to maintain control or force her to return: refusing to pay bills, instituting legal procedures costly to the victim, destroying assets in which she has a share, or	

	refusing to work "on the books" where there would be legal access to his income. All of these tactics may be used regardless of the economic class of the family.");[2] 2. Uniformly equivocating violent female-initiated physical attacks with "self defense" regardless of whether the male has initiated or threatened violence or aggression; 3. Equivocating as "charm" as abuse: ("Abusers can be very charming. In the beginning, they may seem to be Prince Charming or a Knight in Shining Armor. He can be very engaging, thoughtful, considerate and charismatic. He may use that charm to gain very personal information about her. He will use that information later to his advantage.") 4. Equivocating "wanting to spend time together" with "isolation from friends and family" ("Abusers isolate their victims geographically and socially. Geographic isolation includes moving the victim from her friends, family and support system (often hundreds of miles); moving frequently in the same area and/or relocating to a rural area. Social isolation usually begins with wanting the woman to spend time with him and not her family, friends or co-workers. He will then slowly isolate her from any person who is a support to her. He dictates whom she can talk to; he tells her she cannot have contact with her friends or family.") 5. Equivocating the state of being "jealous" with a state of paranoid schizophrenia: (Jealousy is a tool abusers use to control the victim. He constantly accuses her of having affairs. If she goes to the grocery store, he accuses her of having an affair with the grocery clerk. If she	

[2] Though the language in which the Alliance defines these concepts may be "run of the mill feminist" equivocations, it should be noted that the Alliance is not merely reciting these concepts as feminists have historically—in relatively benign social philosophy publications and academic curricula. What was once a quaint progressive social ideology in the Alliance's hands is becoming a *legal mandate* for law enforcement, courts, and a wide variety of social services. We suggest that this novel evolution from theory to policy is no longer benign, beneficial to any but a narrow class, or haphazard but not illegal. It has presently become morally repugnant invidious discrimination.

	goes to the bank, he accuses her of having an affair with the bank teller. Abusers routinely call their victims a whore or a slut."); 6. Equivocating as "abuse" being able to control anger in public while not controlling it as home as a power, not anger management, problem: (Abusers are very controlled and very controlling people. In time, the abuser will control every aspect of the victim's life: where she goes, how she wears her hair, what clothes she wears, whom she talks to. He will control the money and access to money. Abusers are also very controlled people. While they appear to go into a rage or be out of control we know they are very much in control of their behavior. The following are the reasons we know his behaviors are not about anger and rage: He does not batter other individuals - the boss who does not give him time off or the gas station attendant that spills gas down the side of his car. He waits until there are no witnesses and abuses the person he says he loves. If you ask an abused woman, "can he stop when the phone rings or the police come to the door?" She will say "yes". Most often when the police show up, he is looking calm, cool and collected and she is the one who may look hysterical. If he were truly "out of control" he would not be able to stop himself when it is to his advantage to do so. 7. Equivocating denial of accusations (justified and unjustified) with criminality: ("An abuser generally believes he is better than other people and so does not have to follow the rules that ordinary people do. That attitude is typical of convicted criminals, too. Each inmate in a jail typically believes that while all the other inmates are criminals, he himself is not. An abuser shows "above-the-rules" thinking when he says, for example, 'I don't need batterer intervention. I'm different than those other men. Nobody has the right to question what I do in my family.")	

	8. Equivocating predicting another's mental state with abusive "assuming": ("Abusive people often assume they know what others are thinking or feeling. Their assumption allows them to justify their behavior because they "know" what the other person would think or do in a given situation. For example, "I knew you'd be mad because I went out for a beer after work, so I figured I might as well stay out and enjoy myself.") - Projecting equivocating definitions of "abuse" by the following "test": "Does your boyfriend? Make all the decisions? Pressure you to have sex? Keep you from seeing your friends and family? Act jealous or possessive? Not take your opinion seriously? Put you down, call you names, or humiliate you? Slap, push, or hit you? If you answered yes to any of these, your boyfriend may be an abuser. You are not alone - help is available. Domestic violence is never the victim's fault." - Use of the above "abuse tactics" in combination constituted "battering": ("The abuser combines tactics to manipulate others. The tactics include lying, upsetting the other person just to watch his or her reactions, and encouraging a fight between or among others. Or, he may try to charm the person he wants to manipulate, pretending a lot of interest or concern for that person in order to get on her or his good side.")[3]	

[3] The cruel, indeed outrageous, irony in the Alliance's practice of equivocating "abuse" and "battering" to include a juvenile hyperbolization of relatively benign behaviors such as "making all decisions" and "acting jealous" with "violent physical assault", the public, while at first perhaps jolted by the alarm-inducing language, upon learning of the equivocation, may become desensitized and therefore falsely dismissive of allegations by those truly in danger. Over time, "abuse" becomes conflated and no-longer motivating. This may explain the Alliance's evolution from less alarming "abuse" to more alarming "batter" and similarly "victim" to "survivor." As

	The following behaviors are described as "emotional abuse" or "battering" (defined by the "gendered feminist" perspective of only including male "perpetrators" consistent with UFV/UMP); - Communicating calmly and honestly in an argument in which the female disagrees with the male, - Any type of lying by the male, - Defining a male's responding to a female's criticism with the observations that "you do it too" as abusive "denial" or "blaming", - Defining physically distancing oneself from an argument or painful encounter (leaving the home temporarily) as "abandonment" and "isolation", - Equivocating expression of any anger, even non-violent or justified, as "psychological abuse"; - <u>Equivocating male expression of male self-confidence with abuse"</u>: ("The abuser usually thinks of himself as strong, superior, independent, self-sufficient, and very masculine. His picture of the ideal man often is the cowboy or adventurer type").	

one term becomes ambiguous and thus loses its effectiveness, the Alliance must move to new terms to generate the jolting effect. See, e.g., Samuel Croxall, *The Fables of Aesop*, "when we are alarmed with imaginary dangers in respect of the public, till the cry grows quite stale and threadbare, how can it be expected we should know when to guard ourselves against real ones?"

Sadly for true victims of abuse, by expanding the definitions of "abuse" to "batter" and "victim" to "survivor", the Alliance may be facilitating the escalation in perpetration of the most severe types of violence by muting the ability of those true victims to effectively alert others of the severity of the genuine abuse and battering. If anyone is justified in being outraged by the Alliance's equivocations, it's not confused law enforcement, criminal justice, civil courts, or even the accused, but the Alliance's own most needy clients. At the very least, the Alliance owes its own employees and clients effective terminology to allow them to communicate the type and severity of the "abuse" or "battery." It might, for example, use the pre-existing ordinary language definitions of "annoy" "argue" "disagree" raise voice" "act stingy" "pout" "hide" or an abundance of other terms used for at least dozens of years to convey commonly and understandably annoying, but not abusive, behaviors.

	- Being peaceful in public: ("The following are the reasons we know his behaviors are not about anger and rage: He does not batter other individuals - the boss who does not give him time off or the gas station attendant that spills gas down the side of his car. He waits until there are no witnesses and abuses the person he says he loves.")4 - Fraudulent Misrepresentations in Fundraising/Grant Seeking: Based upon the above referenced misrepresentations, equivocations, and falsifications, the Alliance has obtained or attempted to obtain funds in the form of donations, grants, subsidies, or value from public and private entities, including the donors and supporters identified in the cc list hereinbelow as well as the federal government. See Table B.1. -The Alliance cites no study or authority for said statistics other than the Mid-Valley Womens Crisis Service. - Obstruction of justice: Subornation of perjury, coaching, advocating, teaching, counseling female victims of domestic violence to inflate, manufacture, and sustain meritless allegations of domestic violence consistent with UFV/UMP; Promoting manipulated data to the public legal system by providing "referrals, case stats, and support" to victims in criminal City Attorney cases including domestic violence, child abuse, stalking, same sex domestic violence, violations of restraining orders, vandalism or harassing	

[4] It goes without saying that even the behaviors at the "lesser" end of the scale are unproductive and even unhealthy. They unfortunately plague many intimate relationships which even the Alliance would not identify as "abusive." See, "Antisocical Personality Disorder" in Diagnostic and Statistical Manual of Mental Disorders ("DSM V"). Notably, this diagnosis also captures much of the UFV/UMP ideology and judgements contained in Alliance materials, leaving one to question which kettle is blacker). Yet these otherwise benign sociological curiosities metastasize into malignancies when the UFV/UMP irrefutable presumptions become socio-governmental policy and practice through "separate and unequal" social welfare programs, family law civil institutions, and most alarmingly, the criminal justice system. It's hard to believe than any social scientist or legal practitioner would fail to recognize such as illegal discrimination, and not surprising that so many have condemned it.

	phone calls with invidiously discriminatory bias consistent with UFV/UMP; Conducting criminal Stay Away Order assessments on behalf of females against males, but not vice/versa with invidiously discriminatory bias consistent with UFV/UMP; Making recommendations to the court to submit to a Judge who can lift or modify a Stay Away Order with invidiously discriminatory bias consistent with UFV/UMP; Counseling, advising, directing, coaching, leading, and conspiring with clients with an invidiously discriminatory bias during "Accompanying client to criminal court hearings;" Instructing females but not males on how to reach City Attorney Advocates are in the volunteer area with invidiously discriminatory bias; Collaborate with The District Attorneys Office the San Diego Family Justice Center, the San Diego Police Department, the San Diego County Sheriff's Department and other law enforcement agencies working in partnership with The Crime Victims Fund to serve the needs of female crime victims with invidiously discriminatory bias consistent with UFV/UMP; Conduct the "FJC Legal Network" by "Specially trained attorneys and legal interns assist with obtaining unconstitutional temporary restraining orders for alleged female victims of domestic violence with invidiously discriminatory bias consistent with UFV/UMP; Prepare and file unconstitutional legal paperwork; Give information and referrals on other legal matters, including divorce, civil legal, and other related or unrelated matters of interest to female clients with invidiously discriminatory bias consistent with UFV/UMP;	

	Provide court accompaniment to female clients when available with invidiously discriminatory bias consistent with UFV/UMP; Provide perjured, false, misleading, fraudulent, and invidiously discriminatory Expert Witness Testimony consistent with UFV/UMP; Conduct warrantless and unreasonable forensic documentation or injuries through photography and coaching, overseeing, ,supervising, client re: same; Fabricating, obstructing, altering, damaging, hiding, or destroying evidence for, in conjunction with, or on behalf of clients; Creating, obtaining, promoting, and directing false, misleading, fabricated, perjured, and invidiously discriminatory "Mandated Medical Reports" to law enforcement consistent with UFV/UMP; Direct representation of females in Civil Restraining Order Hearings to obtain illegal Orders using illegally obtained, perjured, and/or falsified evidence with invidiously discriminatory bias consistent with UFV/UMP; Female-only client advocacy throughout any hearing process (including civil, divorce, and/or criminal hearings of any kind whatsoever) with invidiously discriminatory bias consistent with UFV/UMP; Collaboration with the District Attorney/City Attorney for the prosecution of a suspected male abuser with invidiously discriminatory bias consistent with UFV/UMP; Refusing collaboration with the District Attorney/City Attorney for the prosecution of a suspected female abuser with invidiously discriminatory bias consistent with UFV/UMP; Assisting the District Attorney/City Attorney in converting a "mutual abuse" or "female-initiated abuse" police report/investigation/prosecution	

	into a prosecution against the male, male victim only; Female client advocacy that directly adheres to female (only) client's needs (including things such as housing needs, food, and choosing a caregiver) with invidiously discriminatory bias consistent with UFV/UMP; Provide forensic evaluation to benefit female victims when requested consistent with UFV/UMP; Coordination, oversight, collaboration, and mutual assistance with community services such as counseling, Victims Compensation funds, and in-home support services with invidiously discriminatory bias consistent with UFV/UMP; Provide legal advice/representation for females only through city-sponsored "Family Law Attorney" with invidiously discriminatory bias consistent with UFV/UMP; On-site attorney to assist, advice, direct, represent, and advocate for females only in court at hearing for domestic violence restraining orders, and related child custody and visitation, child support and general family matter legal issues with invidiously discriminatory bias consistent with UFV/UMP; Advise female clients on issues related to paternity, divorce and custody issues (off-site) with invidiously discriminatory bias; Advising females on Family Law legal advice with invidiously discriminatory bias; Treating all male victims as "abusers", "batterers", or "offenders" with invidiously discriminatory bias consistent with UFV/UMP; Refusing to allow victims/witnesses through initial screening to access public services on public property with invidiously discriminatory bias consistent with UFV/UMP;	

	Providing the following invidiously discriminatory "volunteer services" on city-owned and operated facilities with invidiously discriminatory bias consistent with UFV/UMP: - Administrative Support - Volunteers working on administrative duties will work closely with the Volunteer Administrator, Supervisors and/or Volunteer Team Leaders who will be providing projects that need to be completed for the Alliance. Volunteers can assist with special events, provide clerical support, develop written materials, conduct research and gather statistics. - Case Management - Assist only female clients in accessing services from on-site partners that accommodate the individual needs of the client. The Intake procedure is designed to create a non-intrusive way in which to efficiently and effectively process a client through the Family Justice Center. - Providing extensive services exclusively to or for the benefit of females as follows (direct quote from Alliance Webinar presentation dated 6.17.2011): • Co-located Services: one site for detectives, prosecutors, advocates, civil legal, medical, spiritual support, and community based social service professionals; • Pro-Arrest/Mandatory Arrest Policies: law enforcement and prosecution services emphasizing the importance of arrest, prosecution and long-term accountability for offenders; • Policies Incidental to Arrest/Enforcement: policies to eliminate dual and/or mutual arrest; • Victim Safety/Advocacy: on-site staff to assess and provide victim safety, which includes security for staff and clients at the center; • Victim Confidentiality: confidentiality policies and procedures in place as required by law;	

	• Victim-Centered Facility where Offenders are Prohibited: services oriented toward victims and their children and not towards assistance for violent criminal defendants; • History of Domestic Violence Specialization: specialized training is a priority for each discipline, i.e. law enforcement, advocates, prosecutors, judges, court support personnel, and medical professionals; • Strong Support from Local Leaders: policy makers, elected officials and tribal leaders provide strong local support to the center; • Strategic Planning is Critical to Short-Term and Long-Term Success: each center works with a strategic planner to ensure sustainability, development of the program, and local funding • options for future operations; • Strong/Diverse Community Support: recognition that all centers need strong, diverse community support from local government, state government, business, labor, diverse community-based social service and faith based organizations. • Medical care, including on-site or off-site primary physical care, mental health counseling for victims and dependents, and sexual assault forensic evidence collection; • Law enforcement and civil legal assistance services, including electronic processing of protective orders, investigation and prosecution of offenders, victim-witness assistance, and courtbased victim advocacy services; • State-of-the-art information sharing and case management systems; • Social services, including federal and state welfare assistance for parents and children; • Employment assistance, including employment and career counseling and training through local One Stop	

	Employment Centers or other local services; • Substance abuse treatment; • Child-related needs such as parenting classes, teen pregnancy services, supervised visitation and safe exchange programs, services for child witnesses of domestic violence, assistance for relocating children into new schools, truancy programs, and youth mentoring programs; • Housing and transportation assistance to cover immediate needs and help with long-term housing solutions. Said advice, services, and representations are provided illegally, unconstitutionally, discriminatorily consistent with UFV/UMP, and otherwise in violation of state and federal law.	
City of San Diego Police Department (Ex. "E")	Operation of The San Diego Police Department in conjunction with San Diego Family Justice Center, Family Justice Center Alliance, and domestic violence specialty sections of the city and county entities described herein in violation of the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution and related provisions of the Constitution of the State of California by the following activities: - Providing legal advice, guidance, assistance, and coaching primarily in favor of females alleging domestic violence against male "suspects" with invidiously discriminatory bias in the following ways: - Filing false crime reports to include fraudulent and perjurous UFV/UMP definitions and ideology. - "Recommend . . . obtaining [an illegal] restraining order. A temporary restraining order (TRO) will be granted for a period of ten days. If the order is granted by the Family Court Judge, it is recommended that you give a copy of the restraining order to the Marshal, so that the offender can be served."	18 U.S.C. §§ 241, 242, 1581, 1589, 1590, 1591, 1592, 42 U.S.C. §§ 1983 (and conspiracy re: same), 1985, 1986 for direct operation, participation/conspiracy with non-color of law actors, and oversight, conspiracy, participation with/oversight of non-immunized activities of both color and non-color of law actors (Ex. K);

	- Advising regarding maintenance of coordinated propagation of invidiously discriminatory evidence and witness tampering to "make copies of the restraining order, so you, family members, friends, neighbors and your employer can be aware of the situation. If you have the restraining order BEFORE you call the police, give a copy to the officer. - Advising to manage, retain, alter, and manipulate evidence by "keep a record of all violations of the terms of the TRO or EPO. Keep it in a secure place. Report all violations to the detective in charge of your case." Said separate and unequal advice, services, and representations are provided illegally, unconstitutionally, discriminatorily consistent with UFV/UMP, and otherwise in violation of state and federal law.	
San Diego Center for Community Solutions (Ex. "F")	Providing the following services on behalf of persons alleging domestic violence against a partner with invidiously discriminatory bias consistent with UFV/UMP: - Illegal, discriminatory, false, and misleading legal advocacy/advice regarding domestic violence consistent with UFV/UMP; - Empowering, non-judgmental emotional support for female victims while engendering judgment, fabrication, and suborning perjury in civil and criminal legal matters consistent with UFV/UMP; - Discriminatory, unauthorized, and illegal advocacy and accompaniment to court hearings and meetings consistent with UFV/UMP; - Advocacy and accompaniment to domestic violence-related appointments consistent with UFV/UMP; - Information and referrals to additional discriminatory, unauthorized, and illegal resources including: therapy, support groups, emergency shelter, and parenting classes;	18 U.S.C. §§ 241, 242, 1581, 1589, 1590, 1591, 1592, 42 U.S.C. §§ 1983 (and conspiracy re: same), 1985, 1986 for direct operation, participation/conspiracy with non-color of law actors, and oversight, conspiracy, participation with/oversight of non-immunized activities of both color and non-color of law actors (Ex. K);

	- Safety planning for primarily and discriminatorily female victims and their families; - Inaccurate, illegal, invidiously discriminatorily consistent with UFV/UMP and unauthorized "education" on the dynamics of domestic violence; - Assistance with filing a police report or with reporting the violation of a restraining order with invidiously discriminatory bias consistent with UFV/UMP. Said advice, services, and representations are provided illegally, unconstitutionally, discriminatorily consistent with UFV/UMP, and otherwise in violation of state and federal law.	
City of San Diego, Office of the City Attorney (Ex. "E"); County of San Diego, Office of the District Attorney (Ex. "G")	Operation of the Criminal Division "Domestic Violence/Sexual Assault Unit" independently and in "partnership" with the San Diego Family Justice Center and the Alliance in an invidiously discriminatory consistent with UFV/UMP and unconstitutional manner as follows: "The unit handles misdemeanor cases of domestic violence . . . stalking, and child abuse. . . In 1994, the unit was designated as a state-of-the-art program by the National Council of Juvenile and Family Court Judges. The judges lauded the unit's innovative approaches to prosecuting domestic violence cases, with or without the victim's participation. An early intervention strategy at the misdemeanor level, coupled with a coordinated community response, is designed to prevent family violence from escalating and perpetuating itself from generation to generation. In 2002, the Mayor and City Council unanimously voted to approve the Family Justice Center which is a comprehensive one-stop shop for victims of domestic violence where over 200 professionals come together to provide victims of domestic violence with the resources they need to break the cycle of violence. While the social services aspect of domestic violence is consolidated within the Alliance, the prosecution of domestic violence cases continues to lie within the City Attorney's Office. Deputy City Attorneys handle all aspects of the cases from the time a report is received and also work directly with the	18 U.S.C. §§ 241, 242, 1581, 1589, 1590, 1591, 1592, 42 U.S.C. §§ 1983 (and conspiracy re: same), 1985, 1986 for direct operation, participation/conspiracy with non-color of law actors, and oversight, conspiracy, participation with/oversight of non-immunized activities of both color and non-color of law actors (Ex. K);

	Alliance to ensure victims of domestic violence receive the services they need in order to keep them safe." These entities' activities include providing legal advice, witness/investigator guidance, oversight, and coordination, including "wraparound" services integrated with the Alliance, San Diego Police Department, Center for Community Solutions, as well as illegal pursuit of unconstitutional protective orders and prosecution of criminal matters in favor of females against alleged male suspect/defendants, conspiracy with defense counsel representing female defendants to obtain invidiously discriminatory case outcomes consistent with UFV/UMP. This defendant produces or relies upon materials advocating invidiously discriminatory police procedures, paperwork, oversight for investigations, subornation of perjury, falsification of documents to generate otherwise groundless and/or unconstitutional criminal matters, prosecutorial procedures, civil services, and illegal provision of civil legal services consistent with UFV/UMP.	
Superior Court of California, County of San Diego (Ex. "G")	Providing legal advice, guidance, representation, coordination, and implementation of activities in violation of the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of California by the following activities: - Providing invidiously discriminatory legal advice regarding unconstitutional domestic violence restraining orders, what activity is illegal and may be constitutionally enjoined, providing false, misleading, inaccurate, incomplete, and deceptive descriptions of "threatening" "harassing" "stalking" "battering" "violence" "disturbing the peace" privacy" and "abuse" consistent with UFV/UMP; - Invidiously discriminatory advice about how to file for domestic restraining orders or civil harassment orders consistent with	18 U.S.C. §§ 241, 242, 1581, 1589, 1590, 1591, 1592, 42 U.S.C. §§ 1983 (and conspiracy re: same), 1985, 1986 for direct operation, participation/conspiracy with non-color of law actors, and oversight, conspiracy, participation with/oversight of non-immunized activities of both color and non-color of law actors (Ex. K);

	UFV/UMP; - Operation of illegal and unconstitutional "domestic violence clinics" and "facilitator offices" consistent with UFV/UMP; - Providing invidiously discriminatory legal information misrepresenting the legality of domestic violence restraining orders consistent with UFV/UMP; The "court staff" advises: - We CAN explain and answer questions about how the court works; - We CAN provide you with the number of the local lawyer referral service, legal services program, family law facilitator program, and other services where you can get legal information. - We CAN give you general information about court rules, procedures, and practices. - We CAN provide court schedules and information on how to get a case scheduled. - We CAN provide you information from your case file. - We CAN provide you with court forms and instructions that are available. - We CAN usually answer questions about court deadlines and how to compute them. - Advises that "referrals to San Diego County Bar Lawyer Referral Service, legal Aid Society and San Diego Volunteer Lawyer Program for civil dissolution matters; - Legal Information (Not Legal Advice) Said advice, services, and representations are provided illegally, unconstitutionally, invidiously discriminatorily consistent with UFV/UMP and otherwise in violation of state and federal law.	

The San Diego County Superior Court “staff” lists its “Service Limitations” (presumably, an admission of what the court, its staff, or administrators “cannot” legally do, or is not authorized by charter, ordinance, or law) as follows: (Ex. “G”)	- We CANNOT give legal advice or answer legal questions. - We CANNOT tell you whether or not you should bring your case to court. - We CANNOT tell you what words to use in your court papers. (However, we can check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number, and presence of attachments.) - We CANNOT tell you what to say in court. - We CANNOT give you an opinion about what will happen if you bring your case to court. - We CANNOT talk to the judge for you. - We CANNOT let you talk to the judge outside of court. - We CANNOT change an order signed by a judge. - We CANNOT tell you how to proceed with your case.	

Exhibit "B"

The Family Justice Center Alliance: In Their Own Words

Abstracted from Exhibits "C"-"I" and references therein, the following exhibits are direct quotes from the Family Justice Center Initiative and its partners. All source documents are available in their original form at: http://www.familyjusticecenter.org/jdownloads.html

Section I: Social Services Provided by The Family Justice Center Alliance:

A. Identity of the Aliance:

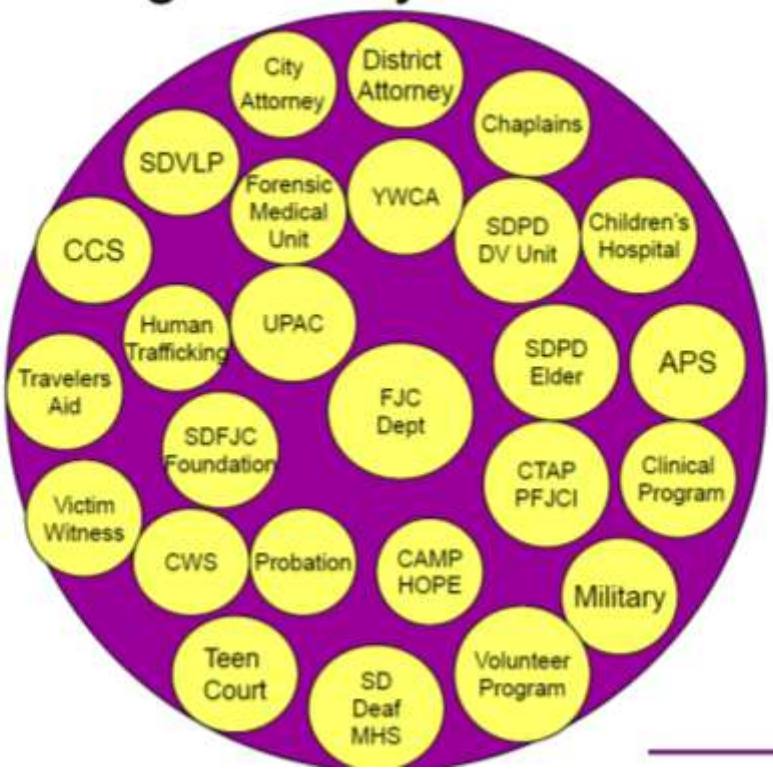
The History

- The Women's Movement
- The Battered Women's Movement
- The Civil Rights Movement
- The Modern Domestic Violence Movement
- The Choice to Recruit the Criminal Justice System
- The Choice to Reach Out to Men
- The Evolution Toward Co-Located Services

From the Women's Movement, to the Sexual Assault Movement, to the Battered Women's Movement, to intervention, to prevention, to specialization…

Leading to…

San Diego Family Justice Center



The San Diego Family Justice Center…

- **Police Department Domestic Violence Unit**
- **City Attorney's DV Unit/District Attorney's Family Protection Division**
- **25 on-site and off-site public and private agency partners**
- **TRO Clinic, Counseling, Food, Housing Assistance, Transportation, Cell phones, Shelter advocates, Disability community advocates, System advocates, Military advocates, Probation, DA Victim/Witness, and Services for Children, Mentoring**
- **Forensic Medical Unit (Sharp's Grossmont Hospital and UCSD Medical Center)**
- **Strong Volunteer Team, including Chaplains and Chaplains Assistants**
- **Camping, Early Intervention with Juvenile Offenders, Mentoring**
- **120 professionals on-site daily focused on DV**
- **Evaluation Committee – Focus Groups with Clients**

San Diego FJC New Home: Co-Located with the San Diego Housing Commission at Smart Corner October 1, 2010

"The seventh floor is where clients are received, greeted by a receptionist stationed behind bulletproof glass. After their identities and situations are established, clients are led inside to get something to eat or to rest. A small playroom serves as a child-care area, where purple-shirted volunteers watch children while parents move through the intake process. . . The center has 20 onsite "partners"—essentially nonprofits housed on the seventh floor, each in its own office or cubicle. These partners provide a host of social and legal services, such as attorney representation restraining orders, psychological counseling, shelter placement or a chaplain for spiritual counseling. . . . This month, victim services are set to move down to the second floor where a 5,000–square foot children's advocacy center has been created, staffed with 11 full-time trauma counselors from Children's Hospital. The space on the seventh floor will then be used for administration and prevention. Police detectives are on the sixth floor and prosecutors on the fifth; they confer frequently about cases. Prosecutors often brainstorm with detectives about what they can do to make a particular case prosecutable, or whether to move on."

Carson felt that the providers at the FJC had become her friends. The forensic medical unit even threw her a baby shower. It was a happy ending and a new beginning for Carson. But for thousands of domestic violence victims who came before her, the happy endings were much harder to come by.

JUST THREE YEARS AGO, a San Diego victim of domestic violence would, on average, have had to tell her story 32 times to get all the services she needed—medical help, legal counsel, restraining orders, housing, clothes and food, help for her traumatized children. And she would have had to make numerous trips, often without a car, to get to the myriad offices providing such services.

Casey Gwinn and Gael Strack knew these problems existed back in the late '80s, when both were practicing law in the domestic violence arena. In fact, Gwinn, now the city attorney, and Strack, the assistant city attorney, first met in the courtroom: Strack the defense attorney faced Gwinn the prosecutor.

"I realized then what it was like to be very passionate about your career," Strack says. She soon joined the city attorney's office as a prosecutor in the domestic violence unit.

Both attorneys recognized an urgent need for reforming San Diego's system. Gwinn prosecuted his first domestic violence case in 1985 and recalls that back then "the system was a total mess." To remedy that, he created the city's first domestic violence prosecution unit in 1986. Gwinn was the entire staff.

By 1989, there were domestic violence courts in every area of the county, specially trained prosecutors at the district attorney and city attorney offices, domestic violence investigators at police and sheriff's offices, and a host of services for battered women—support groups, counseling, shelters and job training.

"We had created a gauntlet for battered women," says Gwinn. "The good thing was the proliferation of services; the diabolical part was that they had to go from place to place to place to get that help. We weren't making it easy for victims."

In 1989, Gwinn wrote a plan to combine all the services needed by domestic violence victims under one roof. He brought it to the attention of the district attorney and police chief. His proposal was rejected, but Gwinn was undaunted. He started running a domestic violence unit at the city attorney's office and provided space there for The Center for Community Solutions and the YWCA (both organizations offered help to abused women).

Still, it was another 13 years before Gwinn's original vision became a reality. In October 2002, the Family Justice Center opened its doors. Gwinn didn't know it, but he had created a model for managing victims of domestic violence that would be applauded by the nation's president and duplicated in major urban centers throughout the country.

THE FAMILY JUSTICE CENTER comprises four floors in a nondescript downtown high-rise. You won't see a big sign on the door, but victims have had no trouble locating it—an average of 500 people find their way there each month. Many mornings, when Strack gets there at 7, women are waiting outside.

"That was a surprise to me, and a humbling experience," she says. "To see these people who literally have only the clothes on their backs—what they escaped with. I always knew it was this way, but I didn't see it every day. Now I do." (Although the majority of victims are women, about 9 percent are men—many of them part of a same-sex couple.)

The seventh floor is where clients are received, greeted by a receptionist stationed behind bulletproof glass. After their identities and situations are established, clients are led inside to get something to eat, or to rest. A small playroom serves as a child-care area, where purple-shirted volunteers watch children while parents move through the intake process.

A victim's advocate is assigned to each client, to ensure he or she gets the services needed. The center has 20 on-site "partners"—essentially, nonprofits housed on the seventh floor, each in its own office or cubicle. These partners provide a host of social and legal services, such as attorney representation, restraining orders, psychological counseling, shelter placement or a chaplain for spiritual counseling. The Family Justice Center doesn't fund the entities but gives them space.

This month, victim services are set to move down to the second floor, where a 5,000-square-foot children's advocacy center has been created, staffed with 11 full-time trauma counselors from Children's Hospital. The space on the seventh floor will then be used for administration and prevention.

Police detectives are on the sixth floor and prosecutors on the fifth; they confer frequently about cases. Prosecutors often brainstorm with detectives about what they can do to make a particular case prosecutable, or whether to move on.

Focus groups conducted with victims who've used the center have produced mostly positive comments. "They say that for the first time in their lives they are able to

CONTINUED ON PAGE 187

"The Family Justice Center comprises four floors in a nondescript downtown high-rise. You won't see a big sign on the door, but victims have had no trouble locating it—and average of 500 people find their way there each month. Many mornings, when Strack gets there at 7, women are waiting outside. . . . "

What is it?

- Co-located services
- Multi-disciplinary, multi-agency services
- A new community/culture
- Criminal and civil justice system professionals plus…community-based domestic violence programs, counseling services, medical services, spiritual support, economic assistance, and…
- A rejection of the categorical social service referral system…
- A vehicle for community capacity building
- A way to develop critical mass at the local level

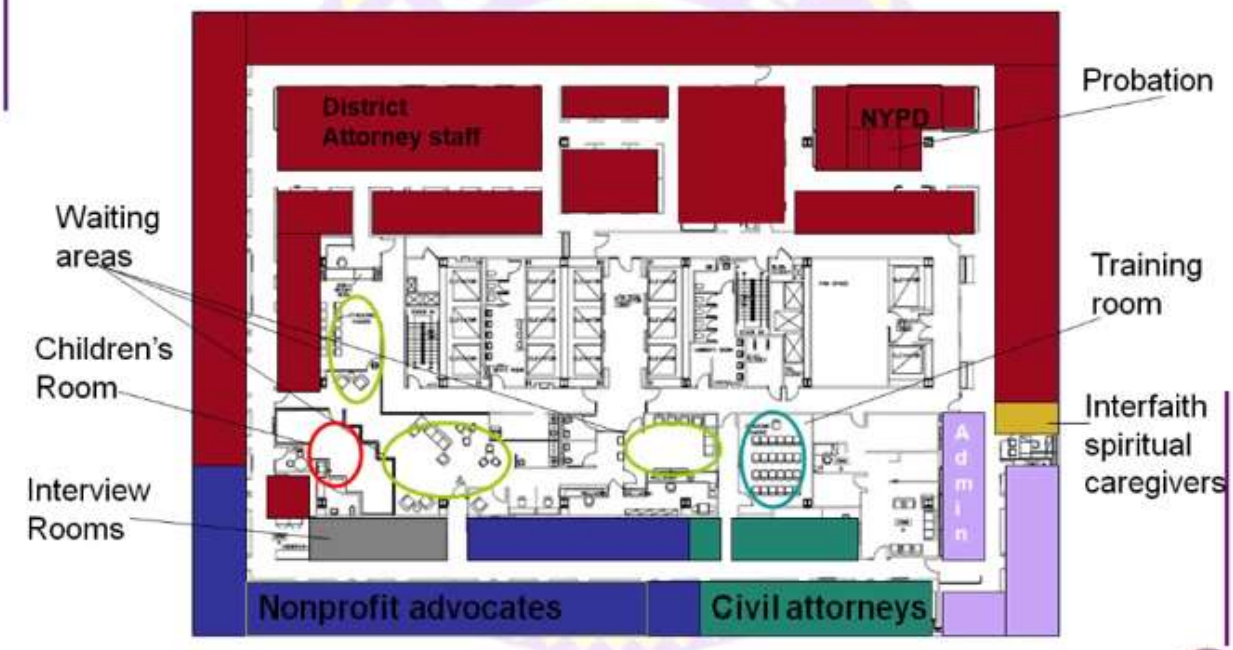
Basic Services

- Food
- Clothing
- Restraining orders without going to court
- Free cell phones with free minutes
- Free Internet access
- Spiritual support
- Transportation assistance
- Free medical assistance; dental assistance
- DA Victim-Witness Assistance
- Counseling
- Support Groups
- Safety Planning
- Child care
- Support services for children
- Law enforcement assistance
- Free locksmith services
- Pregnancy counseling

And the Most Used Service Providers Are…

- Restraining Order Clinic/Civil Legal Services
- Advocacy/Counseling/Safety Planning
- Law enforcement/prosecution services
- Children's Services ⬆
- Forensic Medical Unit/Health Services ⬆
- Chaplain's/Volunteer Programs
- Transportation ⬆

Brooklyn FJC Floor Plan – One Floor



Start with "Coordinated, Community Response" But It Is Not Enough

- Law Enforcement
- Prosecutors
- Advocates/Shelters
- Judges
- Court Staff
- Probation/Parole
- Military
- Social Services/Advocacy
- Government – City, County
- Government – State, Federal
- Federal agencies
- Medical/Fire
- Media
- Business/Employers
- Education (K-12, Secondary)
- Faith Community/Spiritual Care
- Parenting Programs
- Pregnancy Services
- Pet Care Services
- Prevention Programs
- Public Health
- Sexual Assault Professionals
- Child Abuse Professionals
- Elder Abuse Professionals

Guiding Principles

- The purpose of co-located services for victims and their children is to increase safety, promote healing, and foster empowerment
- Service delivery should be victim-centered and promote victim autonomy
- All agencies should share a commitment to culturally competent services and staff members that reflect the community
- All agencies co-located together should regularly be listening to their clients and responding to their input
- Professionals and volunteers should regularly conduct outreach and community education

Guiding Principles

- All law enforcement and prosecution personnel should maintain close working relationships with community-based domestic violence and shelter program staff
- All Centers should strive to develop a community that offers survivors a place to belong and engage long after crisis intervention services are offered
- Early intervention and primary prevention should be integrated into all initiatives, programs, and projects
- Recognition, affirmation, and support should be core values in the community of staff, volunteers, and clients
- Co-located services should be regularly re-evaluated in light of survivor input and increased or adjusted based on the needs of the clients

FJC Services to Come…

- Easily accessible county wide resource network/locations
- Economic/financial assessments
- Financial literacy
- Credit repair
- Asset Development
- Education
- Personal Coaching
- Job Training/Job Placement
- On-site housing/Coordinated – Emergency, Transitional, and Affordable
- On-site job availability for victims and children through corporate partnerships with responsible retailers
- Campus approach…

What is the future?

- Co-located services
- Multi-disciplinary services
- New communities/cultures
- Criminal and civil justice system professionals plus…community-based domestic violence/sexual assault programs, counseling services, medical services, spiritual support, economic assistance, and…
- A rejection of the categorical social service referral system…
- Creating vehicles for community capacity building

San Diego FJC – 40,000 sq. ft.

Mixed use building – city rents space

B. Alliance partners with civil legal and governmental agencies to provide services:

FJC Partners

- Police
- Prosecutors
- Investigators
- Government Advocates
- DV or Sexual Assault Advocate/Counselor
- Medical – Doctors/Nurses
- Therapists
- Chaplains
- Paramedics
- Civil Attorney
- Military
- Probation
- FJC Management Staff
- Volunteers

Verizon- Sponsored FJCI Technology Solutions

- Co-located service providers with fire walled, secure information sharing/Broadband wireless
- Cell phones integrated with case management services (with video and text messaging)
- Internet-based language services
- Electronic filings with the Family Court (no court appearances required)
- Electronic Safety Deposit Boxes for Clients
- Video teleconferencing with other Centers and the courts
- Best Practices Profiled
- Web TV/Client E-Learning – FJC Institute
- Microsoft Office Teaching Labs/Internet Uses/On-Line
- Relationships PLUS technology

Victims of Our Own Success: The Inadequacy of "Coordinated, Community Response" –

- Law Enforcement
- Prosecutors
- Advocates/Shelters
- Judges
- Court Staff
- Probation/Parole
- Military
- Social Services/Advocacy
- Government – City, County
- Government – State, Federal
- Federal agencies
- Medical/Fire
- Media
- Business/Employers
- Education (K-12, Secondary)
- Faith Community
- Parenting Programs
- Pregnancy Services
- Pet Care Services
- Prevention Programs
- Public Health
- Sexual Assault Professionals
- Child Abuse Professionals
- Elder Abuse Professionals

Blocks and Barriers

- Quality of Life Issues/Breakdown of Communication
- Insufficient Funding
- Prejudice and Ignorance
- Fear of Change
- Old Power Structures
- Turf Wars
- Cynicism and Trust Fatigue
- Tolerance of Violence

Professionals are scattered

What We Learned

We surveyed 300 victims of family violence in our community. They told us they wanted…

No. 1 - Co-located services

No. 2 - Civil legal services

Victims also wanted counseling, protection orders, advocacy services, financial assistance and a safe place to bring their children.

What We Learned

You don't need a building – Just do it!

Crime Victims Assistance started co-locating services in their offices two days a week.

- Legal services
- Counseling
- Chaplaincy services

On site they already had sheriff deputies, prosecutors, investigators and more…

Tulane University FJC Survey
Range of Services in Centers

- **Criminal Justice**
- **Medical Services**
- **Civil Legal Services**
- **Child care/Child trauma/Advocacy Services**
- **Living Provisions/Needs**
- **Financial & Employment Assistance**
- **Public Benefits**
- **Social Services**
- **Spiritual Support**
- **Community Education/Outreach/Prevention**
- **Camping/Mentoring Programs**

Current/Active Partners

- Adams & Adams Consulting
- Adult Protective Services
- California Western School of Law
- Camp HOPE
- Center for Community Solutions, Legal Clinic
- Child Welfare Services
- Children's Hospital – Chadwick Center
- Crime Victims Fund
- Kaiser Permanente
- Military Liaisons – Miramar MCAS
- National Family Justice Center Alliance
- Office of the City Attorney, DV and Special Victims Unit
- President's Family Justice Center Initiative,
- Technical Assistance Team
- San Diego County District Attorney's Office, Family Protection Division
- San Diego Deaf Mental Health Services
- San Diego Domestic Violence Council
- San Diego Family Justice Center Foundation
- San Diego Fire Department, Chaplain's Program
- San Diego Police Department, Domestic Violence Unit
- San Diego Police Department, Elder Abuse Investigations Unit
- San Diego County Probation Department
- San Diego Volunteer Lawyer Program, Legal & Immigrations Services
- San Diego Youth & Community Services,
- Action Network on Human Trafficking
- Sharp Healthcare, Forensic Medical Unit
- Teen Court
- Traveler's Aid
- UCSD School of Medicine
- District Attorney's Victim/Witness Program

What Merger Means

- <u>The Whole Community Embraced Merger</u>
- Eliminated competition for funds
- Increased income, donors, grants, and foundation support
- Maintained identity of both organizations
- We've truly become leaders, not followers
- We serve more clients - better

"Lets just do it!"

With the help of the Family Justice Center Alliance, we were able to get the Center up and running within 30 days of getting the keys to the building.

Become an FJC Alliance Member. It's Free!

Benefits of Becoming a Member:

- Technical Assistance
- Training Opportunities
- Online Library of Resources
- Best Practices
- Upcoming events
- Starting a Family Justice Center

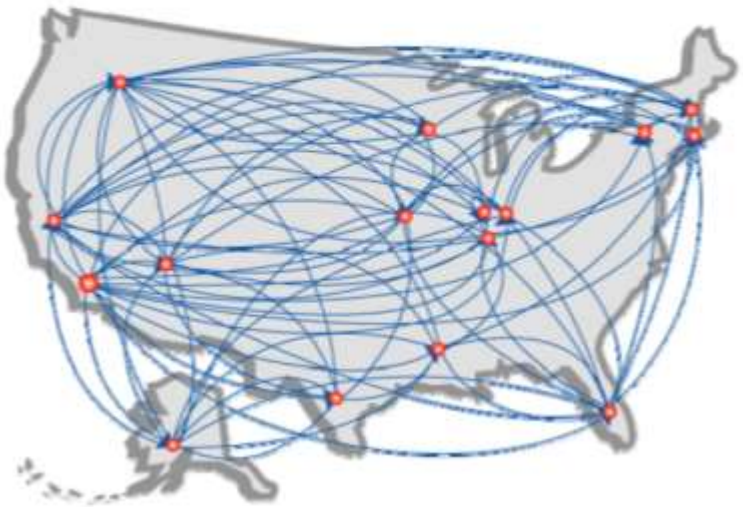
Visit our website www.familyjusticecenter.org click "Get Involved"

FJC Movement

- 80 Operating FJCs/Other MDT/Multi-Agency Models
- ½ coordinated by shelters/community-based DV agencies
- ½ coordinated by District Attorney's Offices or Police Departments
- 140 Communities in active discussions

- Centers in 10 countries
- Rural
- Suburban
- Urban
- Tribal
- Regional Centers
- Leading Centers in New York, California, Idaho, Washington, Florida, Alabama, Arizona, Tennessee…

FJC Sites



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"Local Services, Global Reach"

DREAM BIG

Casey Gwinn

Designing the Model

Family Justice Center Alliance Leadership and Ideology; In Their Own Words:

Your Presenters Today:

Casey Gwinn,
President and Chief Financial Officer,
FJC Alliance

Gael Strack, JD
Chief Executive Officer
FJC Alliance

www.familyjusticecenter.org

"Local Services, Global Reach"

"Local Services, Global Reach"

DREAM BIG START SMALL

Casey Gwinn Gael Strack

Good Guys

■ **Casey Gwinn**, San Diego city attorney, speaks to groups across the country about domestic violence, and has helped galvanize his own community around this issue. Under his leadership, domestic violence homicides have dropped 75 percent over the past 15 years. He has accomplished this through vigorous prosecution of domestic violence cases and evidence-based prosecution, in which prosecutors build a case against offenders even when victims are afraid to cooperate. "I'm a product of the women's movement," Casey says. "Three feminists invested their lives in me when I first became a prosecutor 17 years ago. They educated me about domestic violence and built a relationship that continues today."

■ **Patrick Lemmon** and **Jonathan Stillerman** are codirectors of **Men Can Stop Rape**, a Washington, D.C., nonprofit that works with thousands of students nationwide and runs a stunning media campaign aimed at men and boys using the slogan "My strength is not for hurting."

The group is growing rapidly because of huge demand from a wide spectrum of social service areas. "People are realizing that their work—even if not connected to sexual violence—is very much connected to traditional masculinity," says Jonathan. "There are a lot of groups working on issues like early fatherhood, HIV and AIDS, or the prevention of STDs. They realize that if we embrace traditional notions of masculinity, we're embracing a lot of risky sexual behaviors."

■ In Canada many men were shocked into action after the infamous 1989 Montreal Massacre, in which a lone gunman entered a classroom at L'Ecole Polytechnique, ordered the men to step aside, and murdered 14 female engineering students. Several men's organizations sprang into existence, including **White Ribbon Campaign**, which began in Toronto, and **Men for Change** in Halifax. "At first there was trepidation about who we were and what our agenda was," says **Peter Davison**, Men for Change's executive director. "When men organize, it's typically done to get power, but we were organizing to share a new vision of the world." —*K.O.*

Family Justice Center Founder and CEO Casey Gwinn:

"I'm a product of the women's movement."[1]

"Three feminists invested their lives in me when I first became a prosecutor 17 years ago. They educated me about domestic violence and built a relationship that continues today."

Who Are Family Justice Center Clients? **In their own words**:

Women : 91%
Men : 9% ("many of them part of a same sex couple")

[1] Source; *The Oprah Magazine*, Oct. 2002 ed.

Free Civil Legal (Divorce) Advice and Representation:

"Local Services, Global Reach"

FJC Legal Network

The FJC Alliance Team

Casey Gwinn, JD

Gael Strack, JD

Sgt. Robert Keetch, Ret.

Jennifer Anderson

Brenda Lugo

Lori Gillam, CPA

Yvonne Coiner

Mehry Mohseni

Melissa Mack

Alexia Peters, JD

The FJC Alliance TA Team

Casey Gwinn, JD

Gael Strack, JD

Natalia Aguirre

Jennifer Anderson

Lori Gillam, CPA

Nancy Lefler-Panela, MSW

Melissa Mack

Mehry Mohseni

Alexia Peters, JD

Jena Valles

Rachel Whiteside

The FJC Alliance Direct Service Team

Lee Friedman

Karianne Gwinn

Katie Huerta

Alexia Peters, JD

Katie Zumwalt

Staff of the FJC Legal Network

Alexia E. Peters,
Managing Attorney

Michelle Adams,
Staff Attorney

Yvonne Coiner,
Court Support Advocate

Supported by 15 Intern & Volunteer Positions

- Intern Positions:
  - Coordinator
  - Legal Screener
  - TRO Duty
  - Administration
  - Advocacy
  - Special Projects
  - CFJI
  - National
  - International

On-line Legal Training

- Recorded Sessions:
  - Crimes & Collecting the Evidence
  - Legal Network Day to Day Operations
  - FJC Alliance Internship Program
  - Overview of Civil & Criminal Justice System & Protection Orders
  - Safety & Security

ETO – Client Tracking System

- Developed by Melissa Mack for the Legal Network
- ETO tracks all aspects of Intake, DV-110, DV-130 and follow up
- Tracks demographics, legal assistance requested, legal assistance provided, and incident history, including corroborating evidence

TRO Program for Legal Network

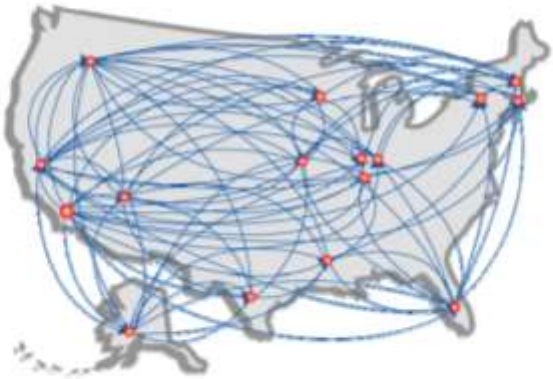
- In December, we conducted an analysis of the first 300 clients served at the Legal Network with the help of survivors, interns and staff

Special thanks to the VOICES COMMITTEE for their on-going feedback

www.FamilyJusticeCenter.org

Family Justice Center Legal Network

FJC Sites



- Program of the Alliance
- Launched in July 2009 as a TRO clinic at the request of Lt. Luhnow
- Initially funded by OVW for 6 months
- Currently funded by Avon for 1 year
- Seeking additional funding in partnership with CCS and the FJC

Stats (to date)

- 89.4% of clients apply for TROs
- 10% of clients are provided with Court Support (Court Support did not begin until December)
- 2% of clients go to Court Preparation Classes
- 932 Volunteer/Intern Hours valued at $21,240.28
- 5 E-box clients
- 90% of clients are FJC Walk-Ins (with 54% of those clients being referred by the police); 10% are other Referrals

Results of the TRO Study

- Reviewed outcomes from 297 Clients (July through Dec 2009)
  - All data was recorded in ETO
  - Analyzed what the clients requested in the application to what the clients received after the hearing
- Conducted phone surveys with 70 Clients
  - Interviews were conducted by survivors and Brenda Lugo assisted with Spanish-speaking Clients

American Bar Association Research – 2001 – Study

- Did the victim want the court to just let him go? Yes 4%/No 96%
- Did the victim want him to go to court for what he did? Yes 55%/ No 45%
- Did the victim think it was good the case was prosecuted? Yes 90%/No 10%
- Would the victim call the police if he harmed her in the future? Yes 79%/No 11%/Maybe 10%
- Overall conviction rate, 96%
- Jury Trial Conviction Rate on Misdemeanor DV Cases: 70%

Court Preparation

The Client Resource Manual

- Developed by Lynn Freeman
- Sponsored by Coronado Soroptimist
- Available soon

Pending

- Safety Planning Course
- Post-TRO Legal Course
- Court Representation
- Expanded Legal Services
- High Risk Team

Thank you to our Funders

- OVW
- Verizon Foundation
- AVON
- Soroptimist of Coronado
  - Gift Cards
  - Manual
- And Lori Gilliam for managing it all!

Thank you – FJC Alliance Team

Your Presenters Today:

Casey Gwinn,
President and Chief Financial Officer,
FJC Alliance

Gael Strack, JD
Chief Executive Officer
FJC Alliance

www.familyjusticecenter.org

"Local Services, Global Reach"

DREAM BIG

Casey Gwinn

Designing the Model

San Diego Staff/Reception/Legal & Social Services; "Screening"

Receptionist

10

RECEPTIONIST

- Receptionist or Information Specialist
  - Greets and checks-in Clients
  - Provides intake form
  - Coordinates for an Interpreter
  - Screens clients – Victims Only
  - Notifies case manager of new client
  - Provides Entry
  - Assists with parking validation
  - Maintains Statistics

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Case Manager

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CASE MANAGER (Navigator, Initial Screener)

- Provides brief overview of the Intake Process to Client and a tour of the FJC
- Coordinates client services at FJC and ensures client is receiving services
- Coordinates follow-up and case management

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ROUTING COORDINATOR

- Responsible for tracking and routing of each client
- Monitors and is available to assist clients with any delays

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San Diego FJC – Multi Floors

OPERATIONS MANAGER

- Oversees:
  - Day to Day operations
  - Technology Management
  - Facility Management
  - Security Issues
  - Volunteer Program

19

Director of Client Services

- OVERSEES:
  - Client services
  - Clinical assessments
  - Service delivery
  - Coordinates with Community Partners, Staff and Volunteers

20

Volunteer Program Administrator

- OVERSEES:
  - Operations of volunteers
  - Recruitment
  - Training
  - Supervision
  - Communication
  - Community Outreach

21

New Client – Full Clinical Screening

Let's walk through the steps together

29

New Client – Full Screening Role of Receptionist:

- Warmly welcome client
- Conduct a brief and friendly screening:
  - Is it the Client's first visit?
  - Is s/he at the right location?
- Provide Intake form
  - Is client a victim of family violence?
  - What services are they seeking?
  - Are those services available?
  - Any language barriers or special needs?
- Review Form
  - Any reason for a further review?
  - Alert Case Manager of new Client
  - Track Client (statistics)

30

Checking In

31

Case Manager – Greets Client

33

Case Manager Provide Name Tag

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New Client Intake - Role of Case Manager

- Case Manager (or Supervisor of Case Managers) is alerted of new client either by phone or computer
  - Retrieves client intake form
  - Checks for comments
  - Begins tracking client with routing board or client intake system
  - Prioritizes needs of client
- Greets new client at the porch and escorts client to:
  - Hospitality, Children's Room, Quiet Room or Dinning room (depending on the circumstances)
  - Provides overview of client intake process and background information about the Client Screener

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Methods of Coordinating Services from Case Manager to Clinical Screener

- Case Manager can:
  - Assign a client to one room and alert Clinical Screen the Client is ready for intake
  - Introduce Screener to the Client in the Dining Room and Screener escorts Client to Office
  - Advise Clinical Screener that the Client is ready and then Screener greets Client in the Dining Room and escorts Client to office

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Clinical Screener

37

Clinical Screening

38

Discuss Confidentiality & Information Sharing & Obtain Consent where Appropriate

39

FOR OFFICE USE ONLY

CASE MANAGER COMMUNITY PARTN

- ☐ **Adult Protective Services** _____
  Provides case management, advocacy, and investigation services to victims of Elder Abuse)
- ☐ **Center for Community Solutions** _____
  Assistance with restraining orders
- ☐ **Chaplain's Program** _____
  Provides spiritual care in a nurturing environment, along with assistance in obtaining available community resources
- ☐ **Children's Hospital** _____
  Assists victims and their children by providing education, advocacy, counseling, and family support
- ☐ **City Attorney, Domestic Violence and Special Victims Unit** _____
  Prosecutors, investigators and advocates are available to inform you of your rights, future court hearings, criminal stay away orders, assistance with safety planning and obtain restitution.
- ☐ **District Attorney, Family Protection Unit** _____
  Prosecutors, investigators and advocates are available to inform you of your rights, future court hearings, criminal stay away orders, assistance with safety planning and obtain restitution.
- ☐ **Forensic Medical Unit** (days vary) _____
  Medical professionals are available to conduct forensic examinations, document injuries, and provide limited medical services for victims
- ☐ **Integrated Mental Health Services – Dr. Diane Lass** _____
  Provides individual and group counseling to victims of domestic violence
- ☐ **Immigration Attorney** _____
  Immigration legal assistance for people experiencing domestic violence
- ☐ **Military Liaison** _____
  Assist victims injured by a military member by discussing all of the services available to the victim through the military and civilian communities
- ☐ **Relationship Training Institute** _____
  Provides individual counseling to the following victim populations: Adult victims of Relationship violence (VOC fund-eligible, Medi-Cal insurance), substance abuse issues, military families, English and Spanish speaking.
- ☐ **San Diego Deaf Mental Health Services** _____
  Provides advocacy, support and assistance to deaf and special needs clients
- ☐ **San Diego Police Department, Domestic Violence and Elder Abuse Unit** _____
  Investigate and respond to incidents of domestic violence and elder abuse
- ☐ **San Diego Volunteer Lawyer Program** _____
  Provides direct representation in court to handle domestic violence restraining order applications, contempt hearings, restitution, and immigration
- ☐ **Traveler's Aid** _____
  Provides transportation assistance

Case Disposition:

_____

_____

_____

_____

Receptionist: _____

Intern ☐ /Volunteer ☐: _____

Client Cleared Yes No	Companion Cleared Yes No	ID Type/Number	Today's Date	Time	Receptionist
Case Manager:		Audited:	FJC Case Number:		

SAN DIEGO
FAMILY JUSTICE CENTER

CLIENT SERVICE PLAN

ROUTED TODAY	SAW TODAY	FOLLOW UP	COMMUNITY PARTNERS	PHONE NUMBERS
☐	☐	☐	ADULT PROTECTIVE SERVICES	619-283-5731
☐	☐	☐	CASE MANAGER	619-533-6039
☐	☐	☐	CENTER FOR COMMUNITY SOLUTIONS	619-533-6042
☐	☐	☐	CHAPLAIN'S OFFICE	619-533-6046
☐	☐	☐	CHILDREN'S HOSPITAL	619-533-3529
☐	☐	☐	CITY ATTORNEY'S OFFICE	619-533-6000
☐	☐	☐	CLINICAL SCREENER	619-533-6074
☐	☐	☐	DISTRICT ATTORNEY'S OFFICE	619-531-4300
☐	☐	☐	FORENSIC MEDICAL UNIT	619-533-6030
☐	☐	☐	HOME START	619-533-6047
☐	☐	☐	MILITARY LIAISON	619-533-3574
☐	☐	☐	POLICE DEPARTMENT DV UNIT	619-533-3510
☐	☐	☐	DEAF MENTAL HEALTH SERVICES	619-269-6290 V/TTY
☐	☐	☐	SD VOLUNTEER LAWYER PROGRAM	619-533-6043
☐	☐	☐	TRAVELER'S AID	619-533-6044
☐	☐	☐	UPAC	619-533-6044
☐	☐	☐	VICTIM/WITNESS	619-533-3570
☐	☐	☐	DOMESTIC VIOLENCE SERVICES	619-533-6001

Scope of Clinical Screening

- A trained Clinician or approved screener conducts a client screening and clinical assessment
- Welcomes Client and provides overview of services
- Conducts a Risk Assessment
- Provides Crisis Counseling
- Develops a Service Plan
- Provides Personalized Safety Planning
- Escorts Client back to Dining Room for next service
- Coordinates services with Case Manager and/or Routing Coordinator
- Follows-up personally with high risk clients

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Client Screening

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After Clinical Screening:

- Client Screener:
  - Escorts client to Dining Room
  - Meets with Case Manager
  - Advises Case Manager where the Client is and what services need to be provided
  - Provides Case Manager with paperwork
  - Case Manager then coordinates Services

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After first screening, Case Manager & Clinical Screener Meet

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Tracking Clients to Ensure Services are Coordinated

45

Tracking Clients using a Client Tracking System or Routing Board:

- Enters client information and risk assessment into client intake screen
- Routes client in accordance to provided service plan
- Escorts Client to next Community Partner
- Always routes client to Exit Interview at the end of the routing screen

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Returning Client – Direct Route to Requested Service or (Fast Track)

- Client has returned to the FJC within 90 days of last visit
- No new incidents
- No crisis
- Seeking services
- Ok to route directly to service requested without a new screening

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Appointment – Direct Route to Requested Service (Fast Track)

- Client has an appointment with a community partner
- Client has already received a client screening by FJC
- Ok to route directly to community partner
- Community partner advises FJC case manager as to next steps:
  - Additional services are needed from FJC
  - Community Partner will take lead to coordinate future services, exit interview, client survey and follow up

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Counselor goes to the Dining Room

51

Counselor meets & greets Client

52

Counselor Escorts Client to Private Office and provides services

53

Client is escorted to next Community Partner – Forensic Medical Unit

58

Meets with Advocate

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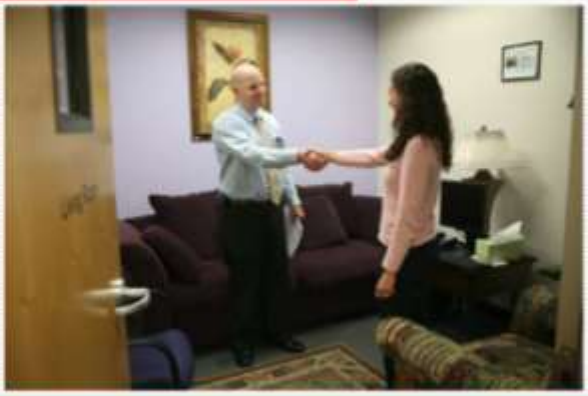
Meets with Civil Attorney



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Exit Interview

- Case manager or Clinical Screener conducts the exit interview
- Reviews delivery of services
- Provides Client with a hard copy of the service plan, the safety plan brochure and a client satisfaction survey form
- Escorts client to porch
- Client may complete survey on porch and check out with the reception for parking validation
- Case Manager returns to Routing and moves client from "In Service" to "Checked Out"

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Ensure Parking is Validated

68

Determine if Escort to Car is Appropriate

69

Escort is provided to Car & Surrounding Area is Checked

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The Follow-Up

- All Clients
  - Next Day
  - Next Week
  - Every Month
  - Or as Necessary
- High Risk Clients
  - By same provider
  - As Needed
  - Case Review

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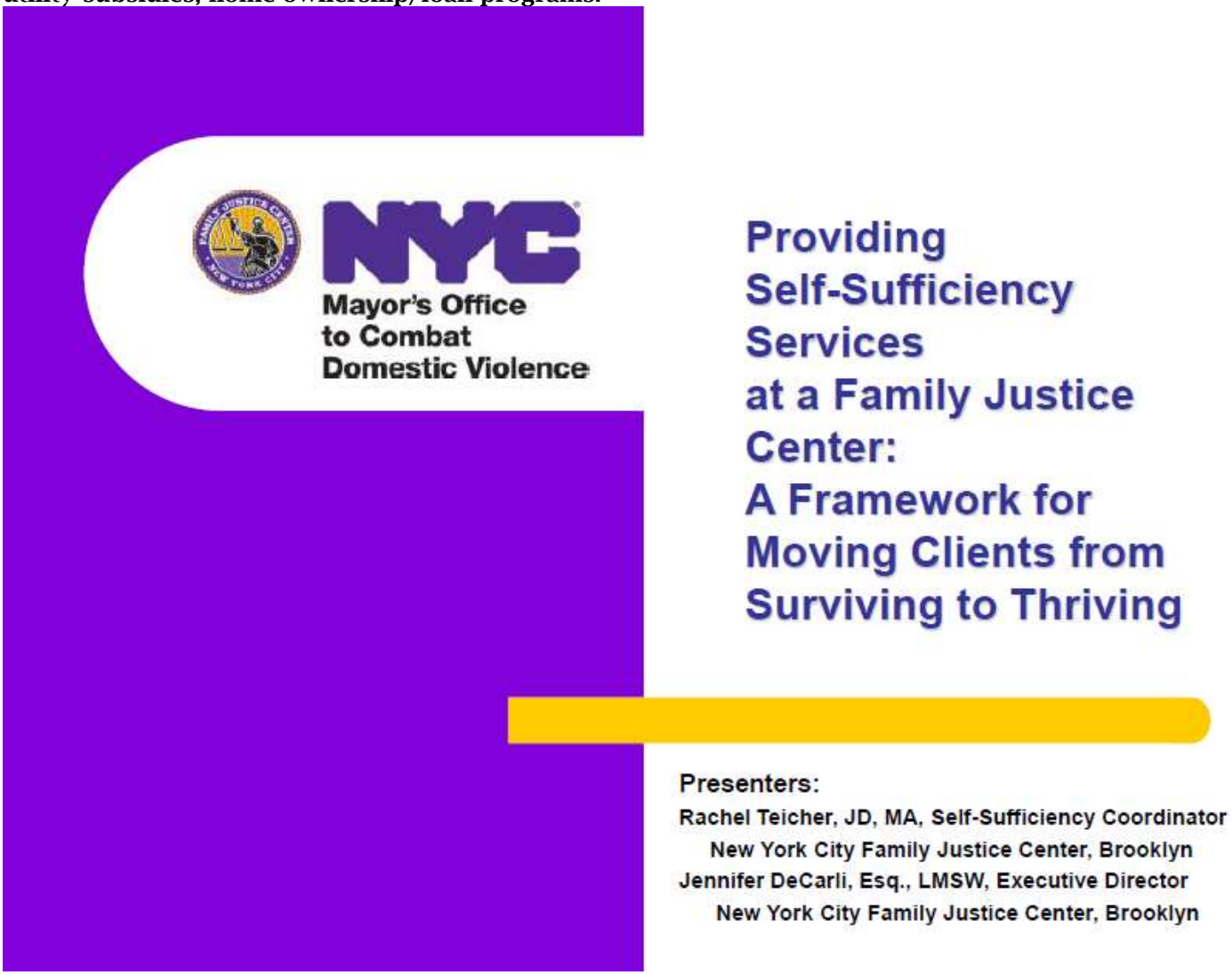
Fall 2010

The Dreams Are Getting Bigger

Family Justice Center Alliance Extended Social Services:

Short and long-term financial aid, public benefits assistance, debt collection/credit repair assistance, bankruptcy counseling, financial advice and "coaching," tax preparation, "safe banking" and saving services, budgeting classes, GED programs, college application assistance, scholarships and tuition subsidies, interview coaching and "inspirational" programs, full time child care, referrals to accountants, civil attorneys, professional services, "financial justice advocacy," resume preparation, clothing subsidies, immigration assistance, job search services, "action planning", language skills, unemployment, social security, disability insurance services and benefit assistance, vocational training, utility subsidies, home ownership/loan programs.



Overview

- An Overview of the New York City Family Justice Center Initiative
- The Importance of Understanding Self-Sufficiency
- The BKFJC Self-Sufficiency Program History and Overview
  - Public Benefits and Human Resources Administration
  - Financial Empowerment Initiatives
  - Education
  - Job Readiness
- Best Practices for Creating a Self-Sufficiency Program
- Questions

11

Services Provided at the BKFJC

- Safety planning
- Risk Assessment
- Civil legal advocacy and representation
- Prosecution of domestic violence crimes
- Assistance with filing police and probation reports
- Counseling for adult victims
- Children's activities
- Children's counseling

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- Support groups
- Services for the elderly and/or disabled
- Shelter/housing advocacy
- Language interpretation
- Voluntary spiritual support
- **Self-Sufficiency services**
- **On-site ESL, Financial Literacy and Literacy Classes**
- **Financial Counseling**
- **Practical Assistance**

The Importance of Understanding Self-Sufficiency

Why Does Self-Sufficiency Matter For Our Clients?

- For domestic violence victims, access to financial, housing, vocational, and other resources may make the difference between long-term stability or returning to batterers or homelessness.
- Proactively addressing economic insecurity and its role in the life of a domestic violence victim allows for safety planning of another sort—how to stay safe and become self-sufficient in the aftermath of abuse.
- Self-sufficiency means maintaining a standard of living that does not require choosing between basic necessities. For example, a client should not have to choose between paying for housing and paying for healthcare.

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Why Is It So Challenging to Become Self-Sufficient?

- **Living wage (family-sustaining wages) vs. minimum wage**
  - In NYC, adult with one child - Living wage $19.66 vs. minimum wage $7.25
  - Living wage employment is out of reach for those without a high educational and skill level
- **High cost of living**
  - Limited affordable housing stock - $3,100 average cost of one bedroom
  - Childcare, travel costs (metro card - $2.50 per ride – over $100 for a monthly pass)
- **Women are more likely to be poor**
  - 32 % more likely to be poor than men with the same level of education
  - 15 - 32 % of the women receiving public assistance:
    - are current victims of domestic violence and
    - an additional 60 percent were abused in the past

Legal Momentum, "Reading Between the Lines: Women's Poverty in the United States," 2009

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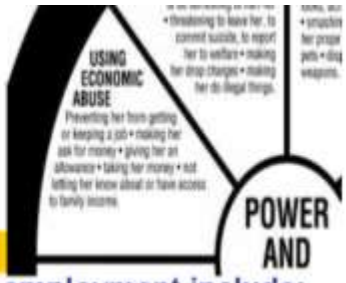
2

Why Is It Even Harder For Our Clients to Become Self-Sufficient?



Forms of abuse specific to sabotaging a client's employment include:

- Abuser's threats to co-workers
- Abuser's stalking – flowers, constant calls randomly showing up, waiting at train/parking lot
  - Even if a victim has separated from the abuser, the abuser can still find the victim at work;
  - Stalking is a risk factor for increased violence and femicide – abuser feels loss of control and so may escalate the violence toward the victim
- Victims fear leaving children or pets at home during work hours if the abuser is home
- Victim's visible injuries from the abuser prevent the victim from going to work
- Victims' interrupted work history and/or lack of education due to interference by the abuser
  - Power and control – a survivor succeeding in the workplace is a direct attack on "breadwinner" role of abuser

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The Physical and Emotional Toll of Domestic Violence on Employment

- Inability to concentrate at work
  - Fear
  - Exhaustion
  - Medical symptoms: depression, physical pain
  - Post-Traumatic Stress Disorder (PTSD) - 88 percent of battered women in shelters have diagnosable symptoms
    NIJ Study, pg. 30
- Missed time from work
  - 74% of employed battered women were harassed by their partner while at work. This caused 56% of them to be late for work at least five times a month, 28% to leave early at least five days a month, and 54% to miss at least three full days of work a month
    U.S. Gen. Accounting Office, "Domestic Violence Prevalence and Implications for Employment Among Welfare Recipients," 1998.
- Loss of support system of co-workers due to abuse
- Loss of job
  - 24 to 52% of employed battered women lost their jobs as a result of the abuse
    U.S. Gen. Accounting Office, "Domestic Violence Prevalence and Implications for Employment Among Welfare Recipients," 1998.
- **Financial hardship is one of the main reasons victims don't separate from an abusive partner.**

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Financial Abuse Takes Many Forms

- Many abusers control the finances – clients have to ask for money, turn over their paycheck, have no experience budgeting and feel powerless, etc.
- Use of client or children's social security numbers to open accounts and credit cards
- Marital debt
- Abuser working "off the books" so formalized means of collection are ineffective
- Verbal abuse aimed at a victim's ability or right to work: "You're stupid. No one would ever hire you." or "You're not smart enough to go back to school."

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[2] See Sec. I. X "UFV/UMP"

Special Populations Face Additional Barriers to Self-Sufficiency

- LGBTQ and HIV affected
  - Fear of abusive partner "outing" the domestic violence victim
- Immigrants
  - Language barriers
  - Immigration status (which may or may not be a barrier, but the abuser tells that victim that it is a barrier)
  - Cultural community is insular and does not accept the client's decision to leave the abuser
  - Belief by members of the cultural community that either working outside of the home OR receiving public assistance is shameful

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The Good News

- Clients with marketable skills are less likely to become homeless
  - Violence against women is a principal cause of women's homelessness. Between 22% and 57% of homeless women report that domestic or sexual violence was the immediate cause of their homelessness, depending on the region and type of study

National Law Center on Homelessness and Poverty, "Some Facts on Homelessness, Housing, and Violence Against Women"

- Access to financial, housing, vocational, and other resources can make all the difference to our clients
- Even when clients have immediate safety concerns, a discussion about long-term financial stability can be part of the conversation
- Helping clients explore economic options is a form of empowerment

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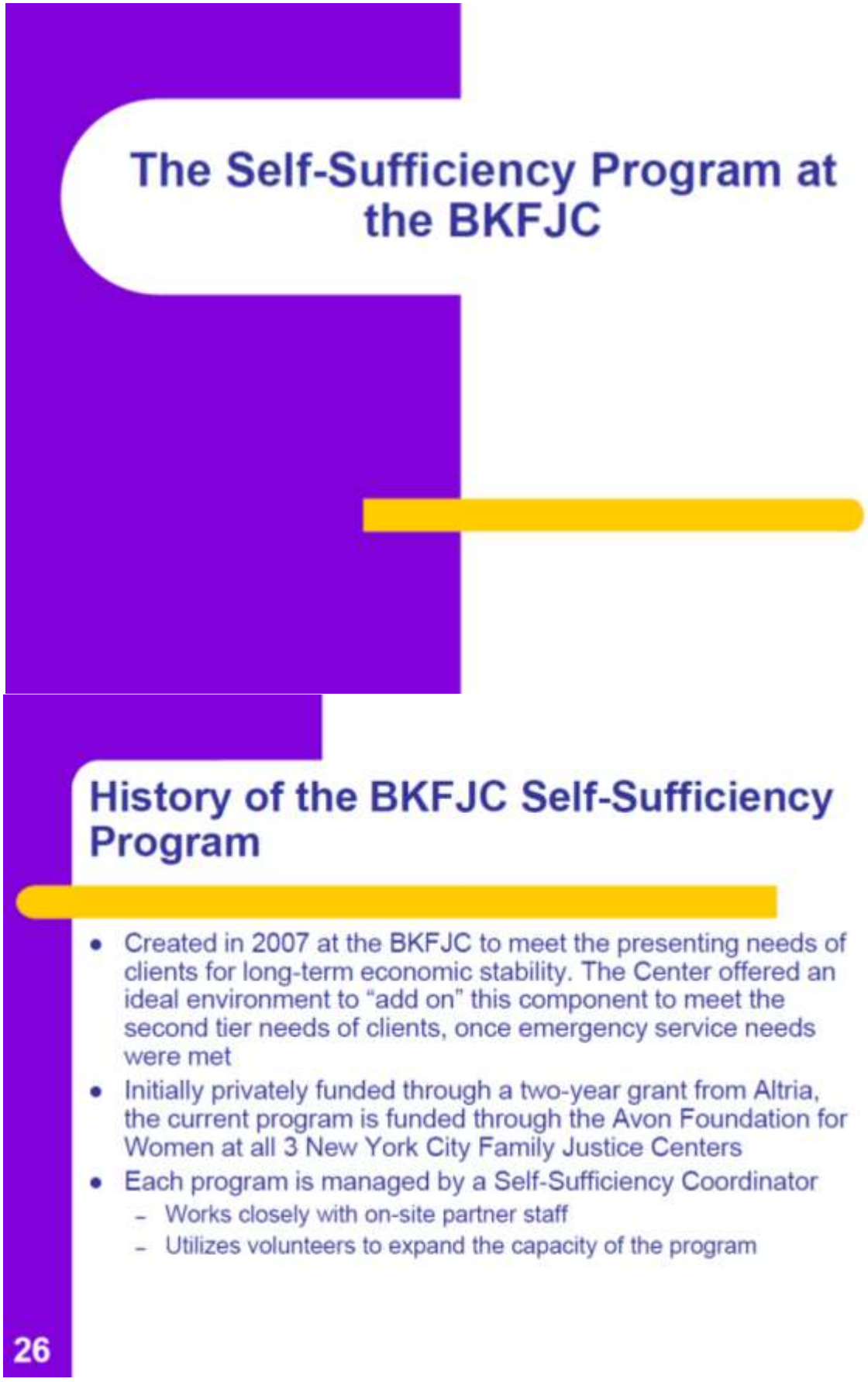

[3] See Sec. I. X "UFV/UMP"

Who are the Program's Clients?

Clients are referred by on-site partner agency staff members including case managers, civil legal attorneys and government victim advocates (District Attorney counselors)

- Completes a self-sufficiency referral form which identifies the client's specific needs
- The Self-Sufficiency Coordinator and the partner agency staff member then work collaboratively together. The partner agency staff member focuses on all of the non self-sufficiency needs of the client
- In January 2011, the BKFJC Self-Sufficiency Coordinator had 85 client meetings and performed 98 consultations

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Specific Self-Sufficiency Services Provided On-Site

- **Addressing Concrete, Immediate Needs**— Accessing public benefits, practical assistance, emergency financial assistance
- **Human Resources Administration (HRA) appointments** –Information and assistance regarding eligibility criteria and information about applying; appointments with HRA on-site weekly to resolve issues on public benefits within HRA by direct assistance
- **Financial Empowerment** – On-site financial coaching; 13-week financial literacy program
- **Education** –Referrals to literacy classes, GED classes, and ESL classes; On-site ESL class; assistance with educational admissions applications and financial aid applications; expedited referrals to vocational training
- **Job Readiness Assistance** – Resume and cover letter drafting or editing; interviewing assistance; job search strategies; action planning
- **Assistance with Obtaining Child Care**
- **Unemployment Insurance (UI)** – Information and assistance regarding eligibility and applying for UI, including domestic violence provisions
- **Information on Employment Protections**

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Public Benefits and the Human Resources Administration

Public Benefits

- One of the most important services of the Self-Sufficiency Program
  - Public benefits help address the immediate needs of our clients
  - Can be a bridge to safety for many of our clients
- In New York City, the Human Resources Administration administers public benefits

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Common Issues With a Client's Public Benefits Case

- Need to remove abuser from the case
- Application was rejected
- Case was sanctioned or closed
- Concerns about immigration case
- Information on HRA's domestic violence liaisons
- Need to add child to the public benefits case
- Eviction and rental arrears
- Change location of work assignment or Job Center (reporting benefits center) for safety reasons
- General participation requirements and exceptions for DV survivors
  - Family Violence Option (FVO) - Temporary exemptions from certain requirements if meeting the requirements would jeopardize their safety

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Financial Coaching

- A financial coach from The Financial Clinic, a City-contracted provider, is on-site through a partnership with New York City's Department of Consumer Affairs Office of Financial Empowerment
- One-on-one financial planning covers the following topics:
  - Budgeting
  - Banking—checking and/or savings
  - Credit building and credit repair (a "soft pull" of the client's credit report is helpful when preparing to rent an apartment)
  - Debt
  - Identity theft
  - Taxes
- The financial coach is on-site every Tuesday at the BKFJC. The Self-Sufficiency Coordinator schedules appointments for clients with the financial coach

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Financial Empowerment Services

- Tax Preparation Assistance
- Debt Collection and Credit Repair Issues
  - Obtaining information about debts is key!!! www.annualcreditreport.com
  - Safety issues and credit reports
- Budgeting, Saving, Safe Banking
- Information and Assistance with Foreclosure
- Information on Bankruptcy as an Option

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Education Services Provided

- Assistance with College Applications and Scholarship Applications
- On-Site ESL Classes
- Expedited Referrals to:
  - GED Programs
  - ESL Classes
  - Vocational Training

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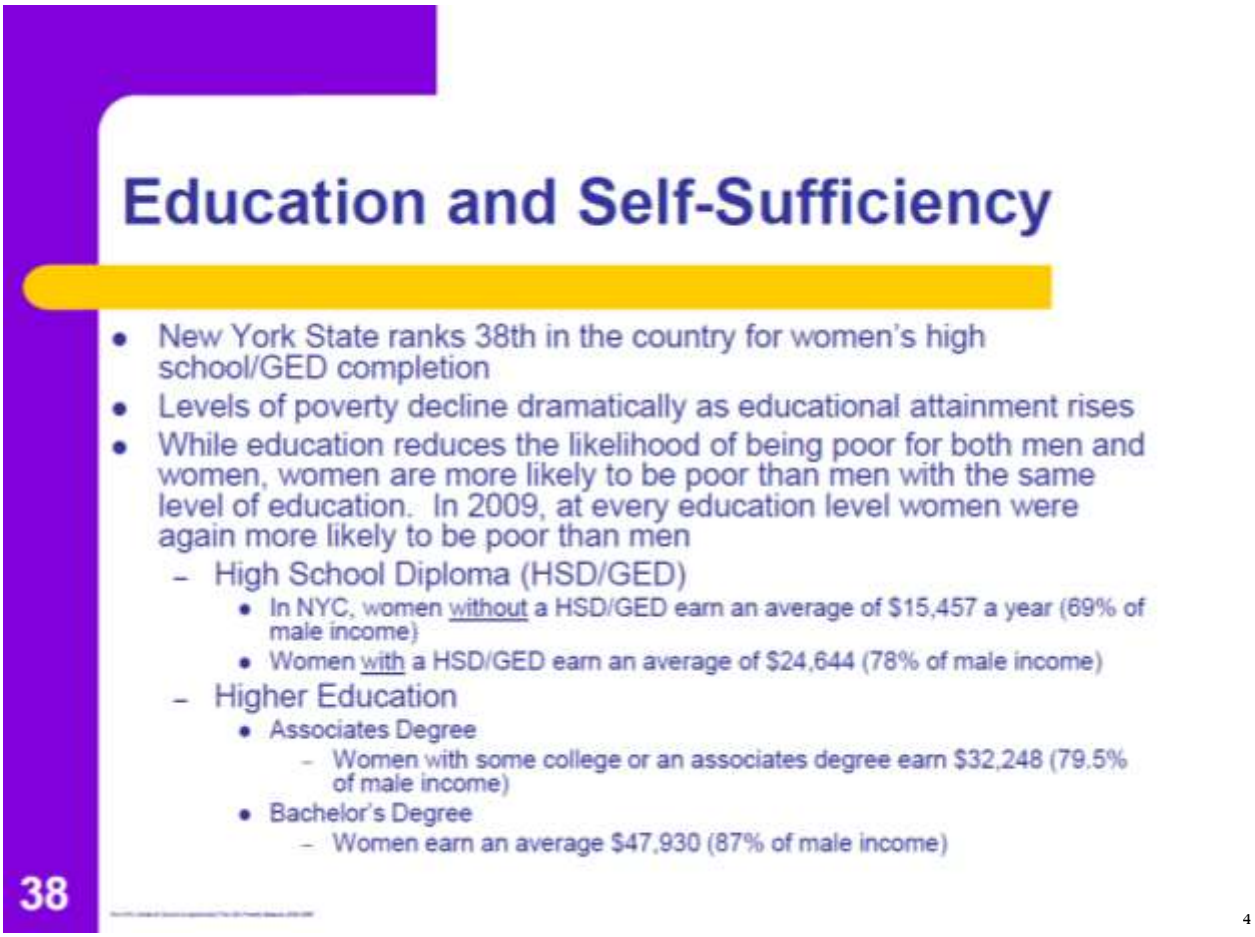

[4]

[4] See Sec. I. X "UFV/UMP"

Specific Details on the On-Site ESL Classes

- Partnership with a community based agency to teach the class
- Classes are provided at the BKFJC three days a week and can be used to fulfill HRA work requirements
- Many clients continue to attend classes even after they have active case management needs
- Many clients become involved in other BKFJC programs such as the family literacy project

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Job Readiness

What is Job Readiness?

- The ideal "job ready" candidate:
  - Has stable housing
  - Has regular, full-time child care
  - Can communicate in English
  - Has the equivalent of a high school diploma
  - Can be employed legally in the United States and has documentation reflecting this
  - Has prepared a resume and can answer questions about his/her work history comfortably
  - Has the practical necessities – for example, clothing appropriate for an interview
- Remember: a desire to work is not the same as job readiness

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Job Readiness Services

- Resume and cover letter drafting or editing
- Interviewing assistance
- Job search strategies
- Action planning
- Linkage to services through Dress for Success

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Additional Self-Sufficiency Services Provided

- Unemployment insurance information
- Information on employment protections for domestic violence victims
- Information on Social Security Income and Social Security Disability
- Assistance applying for child care subsidies
- Tax Preparation Assistance

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Best Practices for Creating a Self-Sufficiency Program

Benefits of Providing Self-Sufficiency Services at a Family Justice Center

- Client receives self-sufficiency services from an individual who works in close coordination with the client's case manager, counselor, Assistant District Attorney, etc.
- The co-location of a wide array of services allows the Coordinator to focus primarily on the self-sufficiency needs of the client to complement the other services the client is receiving
- Cultural Competency – access to language line and ability to collaborate with partners that specialize in working with specific populations
- It maximizes the resources of each partner agency
- Provides vital feedback on existing services and inspiration for expanded services
- Self-Sufficiency is a core required training for all partner staff. This on-going training of partner staff enhances their ability to identify client's self-sufficiency needs and manage client expectations

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Long-Term Program Development

- Look at the clients' long-term stability needs:
  - CREDIT - Establish contacts with financial planning and bankruptcy clinics
  - RENTAL AND UTILITY ARREARS - Find charitable agencies that provide financial assistance
  - WORK CLOTHING, COATS, ETC. - Build a relationship with clothing donation organizations such as Dress for Success to provide business suits and coats to clients and their children
- Expand and streamline referral databases.
  - Use volunteers
  - Create internal website so partners can access up-to-date information
- Continue to gather information on current job training programs, establish formal referral systems and contacts with various existing organizations

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Remember to Manage Client Expectations!

Empower clients by being supportive but realistic. That means:

- **Creating manageable action plans** – Break down an overwhelming topic into smaller pieces.
- **Find an order** - Balance the client's crisis situation with long-term self-sufficiency planning.
- **Support self-determination but reality test:**
  - Examples : client wants to pay to attend a technical certificate program, but would use up savings with no guarantee of employment afterwards; client is unable to secure affordable childcare and needs to understand how this may limit her options
- **Recognize that a desire to work is not the same thing as job readiness**
  - Examples : Client does not have work authorization; client has never worked before; client unable to secure affordable childcare
- **Help clients recognize that public benefits are:**
  - Not a long-term solution
  - Are likely not enough to sustain a household entirely
  - Prepare the client for wait times, paper work and temporary work assignments which may not lead to the fulfillment of the client's long-term goals

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FJC Services to Come…

- Easily accessible county wide resource network/locations
- Economic/financial assessments
- Financial literacy
- Credit repair
- Asset Development
- Education
- Personal Coaching
- Job Training/Job Placement
- On-site housing/Coordinated – Emergency, Transitional, and Affordable
- On-site job availability for victims and children through corporate partnerships with responsible retailers
- Campus approach…

Financial Security and Safety Planning

Rene Renick
Director of Programs & Operations
National Network to End Domestic Violence
202-543-5566 ext 103
rrenick@nnedv.org

Lt. Chris Sayers
Anaheim Police Department
Founding Director, AFJC
714-765-7960
csayers@anaheim.net

What does financial abuse look like?

- Bank accounts emptied
- Credit cards maxed out
- New loans w/o client's knowledge/consent (car, house, boat). Client listed as co-signer
- Medical benefits obtained/utilized w/o consent
- Checks stolen from mail and cashed by abuser
- Apartment rented (client's name forged)
- Abuser controls all of the money/assets
- Hiding assets
- Job loss due to harassment at work

Domestic Violence and Financial Abuse

- Most programs and services are geared towards immediate intervention and services for first 30 days.
- Domestic Violence physical and mental abuse effects are very serious...
- Financial abuse can be crippling. It impact may be felt for years!

What help can you expect from law enforcement?

- If seeking hidden assets, very little!
- Understanding "*civil vs. criminal*"
  - If married, likely to be civil until legal separation is filed with the court
  - Once separated, may be criminal
- Protection vs. Prosecution
  - Protection more likely than Prosecution
  - Front end vs. back end victim (whose loss is it?
  - Jurisdictional issues (Where did crime occur?)
  - Electronic transactions by phone and internet (Proving who placed the order)

How can a victim minimize the risk?

- Legal separation (file with court)
- Immediately order copy of credit report
- Fraud alert (Trans Union, Experian, Equifax)
- Utilize P.O. Box for mail (anyone can change your mail delivery address)
- Use locking mail box
- Programs like "Safe at Home"

Once it happens…

- Start a log (all actions, conversations, documents) which help dispute charges
- Fraud Alert (credit bureaus)
- Notify bank immediately (new account recommended)
- File a police report
- Realistic expectations (about one year to resolve is common)

How can a victim minimize the risk? (Continued)

- Change social security number
- Shred! Shred! Shred!
- Know your rights under state's ID Theft laws
  - Information on fraudulent credit applications
- Put away some cash
- Make copies of important documents
- Copies of bank statements, tax records and assets
- Entitled to half of the assets (seek counsel)

How advocates can help!

- Make agency shredders available (seek shredder donations of fund drive)
- Allow client access to copier/fax machines
- Facilitate gaining credit reports
- Facilitate documentation process
- Safety Planning

[5] See also "Obstruction of Justice" by shredding; spoliation of Evidence.

How advocates can help!

- Be knowledgeable of resources/referrals (may include immigration or family law attorneys, accountants, access to public benefits or tax preparation)
- Educate survivors in financial information
- Help survivors access direct assistance funds for education and job training

Questions?

Survivor Centered Economic Justice Advocacy

Shawndell Dawson, Economic Justice Specialist,
National Network to End Domestic Violence

So, Why Economic Justice Advocacy ? & How does Economic Justice Advocacy Fit with the VAW Movement?

"There is nothing new about poverty. What is new is that we now have the techniques and the resources to get rid of poverty. The real question is whether we have the will."

— Dr. Martin Luther King, Jr.
Sermon at the National Cathedral in Washington, DC
March 31, 1968

Economic Justice Defined

All people deserve the relief of good jobs with livable wages, access to public benefits, decent affordable housing, in addition to affordable child care, healthcare, and education.

Goals

- Provide a frame work for how economic justice advocacy compliments your work
- Review the impact of DV, financial abuse, and resource strain
- Provide an advocacy frame work and guiding principles for supporting survivors
- Provide examples of real programs focused on the economic empowerment of abuse survivors

Social Change Nexus

[6]

[6] See Sec. I. X "UFV/UMP"

Social Transformation (Promoting Economic Justice)

Working to eliminate inequality and oppression, resulting in a world where all people have access to the resources and remedies they need in order to be safe and to thrive

Economic Justice Advocacy from the Survivor's Perspective

Why Economic Advocacy?

Addressing the needs of Survivors

- Safety
- Self-Determination
- Equal Access to Resources
- Restoration
- Justice

Financial Abuse

Abusive partners use money and other financial resources to maintain or exert control.

Examples:

- Withholding Resources (money, food, medication, clothing, wheelchairs)
- Identity Theft
- Tax Fraud
- Not allowing partner to work or earn any money

Including an EJ Advocacy Focus

Requires:

- A committed focus on supporting the long-term needs of women
- Adapting a broader policy analysis that is rooted elimination of poverty, inequality, & other oppressions
- Collaborating with partners outside of your usual realm of allies

Economic Impact of Financial Abuse

- Limited or non-existent job or education experience
- Limited or very little income/personal assets
- Accumulated debt including legal and medical costs
- Ruined credit

Quality of Life Impact

- 74% harassed at work
- 30% lose their jobs
- 8 million work days lost

DV Destroys Credit

- Non-payment of mortgage/joint debts
- Forged signatures on credit applications
- Forged checks
- Credit cards; max out, secondary user
- Identity theft
- Non-payment of support/maintenance
- Evictions & utility cut offs
- Discharge of abuser debt; bankruptcy

Economic Status of Survivors

- 27% of survivors have no access to cash
- 34% of survivors have no access to a checking account
- 22% of survivors have no access to a car
- 51% of survivors have no access to a charge account/credit

(Shepard & Pence, 1988)

Survivor Reality

Access to financial resources and the ability to meet basic human needs are critical components to the safety of domestic violence survivors

DV Costs Survivors So Much More...

- Hospitalization/Medical care for injuries
- Property damage
- Credit Damage/Repair
- Relocation
- Security systems
- Legal costs
- Crime Scene Clean-up

Survivor Safety Requires More Than Legal Interventions

Survivors' Needs

- Safety
- Access to Emergency Funding
- Affordable Permanent Housing
- Stable Employment w/ Livable Wages
- Health Insurance
- Affordable & Accessible Transportation (public & private)
- Affordable Childcare
- Access to Food

Barriers to Safety

- Limited Legal System Response
- Limited Access to Long term and stable community resources
- High demand and need for community resources
- Limited employment or employer supports

Self-Sufficiency Challenges... meeting the standard to survive

- A Single Adult in San Francisco County must make *$2,334* a month or *$28,102* per year to take care of his/her basic needs without government assistance
- In San Francisco, County family with one parent and two children needs *$58,461* per year-to pay bills and take care of family basic needs without government assistance.

Economic Justice Advocacy for the Advocate's Perspective

Economic Barriers for Women

- Diminished standard of living
- Abuser moving and hiding assets
- Using assets as a form of control
- Continuing abuse through the courts
- Pursuing and getting sole custody of children

Guiding Advocacy Principles

Advocate's Guiding Principles

- Survivor Centered Advocacy –100% on the side of the survivor
- Survivors are the experts
- Partnerships with survivors as equals
- Recognizing that safety cannot exist if basic human needs are not met
- Committed to coalition building & collaborations with allies
- Understanding that Social Change = ending violence and all other forms of oppression

Economic Justice Advocacy from Advocate's Perspective

- Providing opportunity and alternatives for long-term financial stability
- Assisting survivors with their basic human needs (food, shelter, and healthcare)
- Ensuring safe and equitable access to community resources
- Building a coalition of allies
- Challenging community and social service systems

Advocate & Survivor Partnerships

- The relationship is peer to peer, not clinician to client
- Goal: supporting survivor self-determination
- Non-judgmental support – without victim blaming
- Supporting informed consent & decision making
- View survivors' lives in totality

Best Practices in Economic Empowerment : Empowering Survivors One Program at a Time

Honoring Survivor Expertise

- She knows the abuser's patterns
- She knows what he is capable of
- She knows which interventions will be the most dangerous
- She knows what help she most needs

Economic Recovery

- Crisis intervention through direct asst, TANF (i.e. NNEDV Direct Assistance Fund)
- Restoration through credit repair, victim compensation, legal remedies
- Income through job placement, micro-enterprise, workplace issues, barriers
- Long-term stability through economic empowerment, financial literacy and asset-building

Collaborations for Change

- Grassroots community organizing
- Labor Union Organizing
- Collaborating to Create Job Training & Employment Opportunities
- Micro-enterprise/Small Business/Self-Employment Development
- Asset Creation
- Financial Literacy & Economic Empowerment Programs
- Helping Women Pursue Higher Education
- Emergency Fund Development

Economic Programs for Survivors

San Juan Women's Small Business Organizations

Program Components:

- ✓ Entrepreneur Support Program
- ✓ Supporting women in pursing non-traditional positions or jobs
- ✓ Building support with other vendors or mentors in the community

Kentucky Domestic Violence Coalition

Program Components:

- ✓ Individual Development Accounts with $2 match
- ✓ Financial Literacy Education

Allstate Domestic Violence Program

- Partnership with NNEDV & The Allstate Foundation
- Program Focus: Economic Empowerment & Economic Justice Advocacy
- Program Focus Areas
  - Direct Service
  - Public Awareness
  - Thought Leadership
- Contact: economicjustice@nnedv.org

Economic Programs for Survivors

Wyoming Women's Business Center

Program Components:

- ✓ Micro-enterprise/Micro-Loans
- ✓ Individual Development Accounts
- ✓ Financial Literacy Education
- ✓ Emergency Funding

Missouri Redevelopment Opportunities for Women (ROW)

Program Components:

- ✓ Financial Literacy Education
- ✓ Community Coalition Building
- ✓ Individual Development Accounts

FJC Questions to Consider

- What role can your organizations have in supporting abused women in search of safety, accountability, and financial security?
- Are all your FJC partners committed to supporting survivor self-determination?
- Are your FJC partners aware of public benefits and community resources available and how to access them?

What You Can Do?

- Address survivor economic and safety challenges
- Help survivors access education and workforce training
- Help survivors access cash for emergencies and financial crisis
- Assist with negotiating access to public benefits and community resources
- Build coalitions with financial institutions and anti-poverty organizations.

Resources

Resources

Economic Justice Advocacy

- National Online Resource Center on Violence Against Women www.Vawnet.org
- National Resource Center on Domestic Violence (Building Comprehensive Solutions Program) www.nrcdv.org
- Wider Opportunities of Women www.wowonline.org
- National Network to End Domestic Violence Allstate Domestic Violence Program www.nnedv.org

In Her Shoes-The Economic Justice Edition

Experiential learning tool following the lives of characters through various systems and institutions demonstrating how economics affect domestic violence survivors

Order from Washington State Against Domestic Violence www.wscadv.org or (360)586-1029

[7]

Contact Information

Shawndell Dawson,
Economic Justice Specialist
National Network to End Domestic Violence
Allstate Domestic Violence Program
660 Pennsylvania Ave, SE #303
Washington, DC 20003
(202)543-5566 ext. 20
sd@nnedv.org
economicjustice@nnedv.org
www.nnedv.org

[7] See Sec. I. X "UFV/UMP"

CHAPTER 10 - OTHER ASSISTANCE PROGRAMS THAT YOU MAY QUALIFY FOR

There are various government assistance programs for which you may be qualified. Below is a list of assistance programs and eligibility requirements. For more information, you can go to the Health and Human Services Agency (HHSA) website at http://sdpublic.sdcounty.ca.gov, or call the ACCESS Customer Service Center at 1-866-262-9881.

CASH AID PROGRAMS

General Relief Program:

- Provides temporary cash assistance for eligible county residents who have no other means of support. Any aid received must be repaid to the county. Completed hours of required Job Training may count toward repayment of the debt.
- Eligibility Requirements:
  - Be a San Diego County resident for at least 15 days and intend to reside in San Diego County
  - Have a valid photo ID, such as California Department of Motor Vehicles license/ID card
  - Have a Social Security Number (SSN) or proof of application for SSN
  - Be age 18 through 64, with some rare exceptions
  - Be a U.S. Citizen, Legal Permanent Resident or Amnesty Alien
  - Have income less than $264 per week
  - Property limits cannot exceed
    - $1,000 personal;
    - $250 personal effects;
    - $5 liquid assets;
    - up to $1,500 vehicle value;
    - 1 burial arrangement per person;
    - no real property allowed
- For more information call the ACCESS Customer Service Center at 1-866-262-9881.

CalWORKS (Welfare):

- CalWORKs is designed to transition people from welfare to work. It provides temporary cash assistance to eligible families with minor children, to move families with children from dependency to self-sufficiency through employment.

- Eligibility Requirements:
  - Have age qualified dependent children (up to 18 years of age)
  - Have dependent children who lack the parental support and care as a result of one or both parents being absent, deceased, incapacitated or unemployed
  - Be a resident of San Diego County
  - Be a U.S. Citizen, Legal Permanent Resident or other specific non-citizen
  - Have valid photo identification (ID), such as a California driver's license or ID card
  - Have a Social Security Number (SSN) or proof of application for SSN
  - Have school age children enrolled and attending school
  - Have current immunization records for children below the age of 6
  - Your personal property cannot exceed $2,000 (or $3,000 for families who have a member age 60 or older)
  - Your income (earned and unearned) must not exceed program limits
  - You must meet program requirements
- Call the ACCESS Customer Service Center (1-866-262-9881) for more information

Cash Assistance Program for Immigrants:
- The Cash Assistance Program for Immigrants (CAPI) is a state-funded cash aid program for certain immigrants who are not eligible for the federally funded Supplemental Security Income/State Supplementary Payment (SSI/SSP) program.
- Call the ACCESS Customer Service Center (1-866-262-9881) for more information

CHILD CARE PROGRAMS

Head Start:
- Project Head Start is a federally funded child development program designed to help break the cycle of poverty by providing preschool children of low-income families with a comprehensive program to meet their emotional, social, health, nutritional and psychological needs.
- Children from 3 to 5 years old (including children with disabilities) are eligible.
- For more information and eligibility requirements, please call 1-888-873-5145, or visit www.sandiegoheadstart.org.

Child Care Assistance:
- Your family must be participating in CalWORKS Welfare-to-Work activities, or
- Have limited financial resources
- Call the ACCESS Customer Service Center (1-866-262-9881) for more information

FOOD AND NUTRITION PROGRAMS

Women, Infants, and Children (WIC) Program:
- WIC offers checks for nutritious food, nutrition counseling, and other services to eligible participants (pregnant women, new mothers, young children).
- Eligibility requirements:
  - WIC Serves:
    - Pregnant women
    - Breastfeeding women up to one year postpartum
    - Non-breastfeeding women up to six months postpartum
    - Infants and children under five years old
    - All foster children under five years old
    - Single fathers may receive vouchers for eligible infants/children
    - Families living in the U.S. undocumented or who have applied for citizenship (Their application or legal status will not be jeopardized in any way).
  - To get WIC you need to:
    - Meet the WIC income guidelines
    - Get medical checkups – referrals to healthcare / medical care can be provided
    - Have a nutritional need
    - Live in California
  - For more information, call 1-800-500-6411 or visit www.sandiegowic.org.

Commodity Supplemental Food Program:
- This program provides food and nutrition education to eligible participants.
- Eligibility requirements:
  - You must be one of the following:
    - Low-income pregnant woman
    - Woman 12 months postpartum
    - Breast-feeding mother

- Parent with children under 6
- Senior over 60

- You must also:
  - Reside in San Diego County
  - Be a low-income household
  - Not be receiving WIC benefits (participants may only receive either WIC or CSFP).

- For more information, call 858-527-1419 or 1-866-350-3663, or visit www.sandiegofoodbank.org.

Food Stamps (also known as SNAP):

- The Food Stamp Program is a federal supplemental nutrition program for families and individuals that meet certain income and asset guidelines. Food stamp benefits help supplement your food budget and allow families to buy nutritious food. You can be working and still qualify for food stamps. If you qualify for food stamps you can use these benefits to purchase food at most grocery stores, convenience stores and food markets.
- Eligibility is determined based on your household size, income, assets, and various other factors.
- Call the ACCESS Customer Service Center (1-866-262-9881) for more information

Free and Reduced Lunch Program:

- San Diego Unified School District participates in the National School Lunch and Breakfast Programs.
- This program is a federally subsidized program and your child(ren) may be eligible to receive free or reduced-price meals.
- If you would like to apply for the program, please complete a Free & Reduced-Price Meal Application Packet available at your child's school office, cafeteria, or the central Food Services office located at Revere Center, 6735 Gifford Way, San Diego, CA 92111.
- If you have any questions regarding this program please call (858) 627-7328.

MEDICAL ASSISTANCE PROGRAMS

Medi-Cal

- Medi-Cal is California's Medicaid health care program. This program helps pay for a variety of medical services for both adults and children if they have limited income and resources.
- Families of any size are eligible if they meet income guidelines. The following persons may be eligible:
  - Children under 21 years of age
  - Persons 65 years of age and older
  - Disabled and blind persons
  - Pregnant women
  - Families where at least one child is under 21 and at least one parent is absent, disabled, unemployed or working (depending on hours worked and income earned)
  - Anyone who is eligible for CalWORKS; Supplemental Security Income and State Supplemental Program (SSI/SSP); Entrant or Refugee Cash Assistance (ECA or RCA); or In-Home Supportive Services (IHSS)
  - Families with working parents may also qualify. They may have to pay a share of their medical expenses.

County Medical Services (CMS):

- CMS is a program that funds medical care for uninsured poor adult county residents. While not a health insurance program, CMS funds services through a network of community health centers, private physicians and hospitals.
- CMS Minimum Eligibility Criteria:
  - To be eligible for County Medical Services (CMS) a person must meet the minimum eligibility criteria:
    - Have an immediate or long-term medical need
    - Be 21 through 64 years of age
    - Be a U.S. citizen or an eligible alien, and be able to provide documentation of U.S. citizenship or legal alien status.
    - Be a resident of San Diego County
    - Sign lien forms for services covered by CMS
    - Meet CMS financial requirements or receive General Relief
- How to apply:
  - Call 1-800-587-8118 to request an appointment and apply for CMS.

EMPLOYMENT PROGRAMS

Family Self-Sufficiency Services:

- This is a program of the Community Action Partnership which enables individuals and families who meet the federal poverty level guidelines to achieve and sustain self-sufficiency by overcoming barriers to employment and eliminating behaviors that result in dependency. Services include transportation, child care, and expenses for work-related training.
- For more information and eligibility requirements, call 619-338-2799

HOUSING PROGRAMS

Section 8 Rental Assistance Programs

- Qualified families have a portion of their rent paid to the landlord by the Housing Authority.
- To apply, go to http://www.sdcounty.ca.gov/sdhcd/renters/renter_information.html and click on "Waiting List Application"
- Eligibility:
  - Applicants who live or work in the jurisdiction of the Housing Authority of the County of San Diego and are at least one of the following:
  - Families with children.
  - Working Applicants- (Must have worked at least 32 + hours per week for the previous six months. Applicants may combine job training or an academic program as part of the previous 12-month requirement. Applicants receiving Unemployment, Disability, or Workman's Compensation Benefits will be considered qualifying under the preference if those benefits were the result of 12 continuous months of employment at 32 + hours per week up to the start of the above referenced benefits.)
  - Elderly families.
  - Disabled families.
  - Veterans or surviving spouses of veterans (other than dishonorable discharge)

Public Housing:

- The County of San Diego Housing Authority administers several publicly-owned rental housing units within San Diego County. These rental units are available to low-income families, senior citizens, and disabled persons.
- Eligibility:
  - You must be a senior citizen (62 years of age or older), a disabled individual, or a low-income family.

  - You must either live in an unincorporated area of San Diego County, or in the cities of Chula Vista, Coronado, Del Mar, El Cajon, Escondido, Imperial Beach, La Mesa, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, or Vista.
  - Your household's annual gross income must be at or below 50% of San Diego's Average Median Income (AMI):
    - Here is the AMI chart from March 2009:

Family Size	80% of AMI	50% of AMI	30% of AMI
1	$46,250	$28,900	$17,350
2	$52,900	$33,050	$19,850
3	$59,500	$37,150	$22,300
4	$66,100	$41,300	$24,800
5	$71,400	$44,600	$26,800
6	$76,700	$47,900	$28,750
7	$81,950	$51,200	$30,750
8	$87,250	$54,500	$32,750

- If you meet the above requirements and wish to apply for Public Housing, you may submit an application online at www.sdhcd.org. If you require specific accommodation to complete the application, please contact (858) 694-4801 or toll free at (877) 478-LIST.

Home Repair Program:

- The Home Repair Program for Owner-Occupied Property provides loans and grants for the repair of owner-occupied homes.
- Deferred Loan - Deferred loans are offered at three percent simple interest and calculated annually on the unpaid principal. The total amount borrowed must be repaid when the property changes hands or the recipient moves from the property. Owners may borrow up to $25,000 for a single-family home or $8,000 for a mobile home.
- Grant - A non-repayable grant is available to eligible Mobile Home owners of up to $8,000.
- Eligibility
  - This program assists single-family homeowners or mobile home owners. You must live in the residence you would like to repair.
  - You must either live in an unincorporated area of San Diego County, or in the cities of Coronado, Del Mar, Imperial Beach, Lemon Grove, Poway, or Solana Beach.

- Your household's annual gross income must be at or below 80% of San Diego's AMI (see chart above)
- Please call (858) 694-4810, for information on the Home Repair Loan/Grant Program, or visit http://www.sdcounty.ca.gov/sdhcd/homeowners/repair_loan.html to download an application

Down Payment and Closing Cost Program:

- The County of San Diego offers low-interest deferred payment loans of up to $35,000 or 33% of the purchase price whichever is less for low-income first-time homebuyers. The loan funds may be used to pay the down payment and closing costs on the purchase of a new or re-sale home. Properties eligible for assistance include single-family homes, condominiums, townhomes and manufactured homes on a permanent foundation. The appraised value of the property may not exceed $451,250. Participants must contribute a minimum of one percent of the purchase price from their personal funds.
- Eligibility:
  - The total gross annual income of the entire household must not exceed 80% of the San Diego County Area Median Income AMI (see chart above).
  - The home that you purchase must be in an unincorporated area of San Diego County or in the city of Coronado, Del Mar, Imperial Beach, Lemon Grove, Poway or Solana Beach.
  - Select a lender and schedule an appointment. Inform the lender that you are interested in both the DCCA and Mortgage Credit Certificate (MCC) Programs. The lender will prepare and submit your applications.
- For more information, please call (858) 694-4810.

Mortgage Credit Certificate Program:

- The San Diego Regional Mortgage Credit Certificate Program allows qualified first-time homebuyers to reduce their federal income tax by up to 20 percent of the annual interest paid on a mortgage loan. With less being paid in taxes, the homebuyer's net earnings increase, enabling him/her to more easily qualify for a mortgage loan. Purchasing property in designated areas increases the income eligibility and purchase price limits, as well as removes the first-time homebuyer requirement. An MCC may only be used to purchase single-family detached homes, condominiums, townhomes and manufactured homes on a permanent foundation.

- The property to be purchased must be located within an unincorporated area of San Diego County, or in the cities of Carlsbad, Chula Vista, Coronado, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Marcos, Santee, or Vista. The cities of San Diego and Oceanside operate their own individual MCC programs.

MCC Income Eligibility Limits		
Number of Persons	Non-Designated Area	Designated Area
1-2 Persons	$94,800	$113,780
3+ Persons	$109,020	$132,720

- For more information, please visit the www.ahahousing.com website, or call (619) 469-0270.

Shared Housing Program (East County):

- The County's Shared Housing Program provides funding to a nonprofit agency to match persons in need of housing with homeowners who have space in their homes to share. If you are an eligible renter (see eligibility requirements below), you can benefit from this home referral program by being matched to a homeowner who has a room available to rent, in exchange for rent paid, care giving or other services performed. If you are an eligible homeowner with extra rooms available in your home, you can benefit by finding someone who wishes to share space in your home, in exchange for rent, services performed or a combination of the above.
- All homeowners and applicants undergo screening to determine appropriate matches and will participate in follow up visits and support services through the program agency.
- Eligibility Requirements:
  - You must be a senior citizen, a disabled person, a victim of domestic violence, a homeless person, an illiterate person, a migrant farm worker, and/or a low or moderate income person.
  - You must either live in an unincorporated area of East San Diego County, or in the city of Lemon Grove.
- Certain program restrictions and conditions apply, so please contact Crisis House for more information at 619-444-1194 ext. 304 or visit www.crisishouse.org.

NSP Homeownership Assistance Program:

- The Neighborhood Stabilization Program (NSP) Homeownership Assistance Program creates homebuyer opportunities for income eligible households to purchase foreclosed and abandoned homes that could otherwise be sources of blight within the community. The program offers 15 year silent loans at 3% simple interest up to a maximum of $50,000 for income eligible homebuyers. The loans are forgivable after 15 years. The property must be located in a targeted census tract and the purchase price for the property may not exceed $451,250. The sales price must be a minimum of 1% under current appraised value.
- Eligibility Requirements:
  - The total gross annual income of the entire household must not exceed 120% of the San Diego County Area Median Income (see chart above).
  - The property must be located within the designated NSP Target Areas within the County of Diego's jurisdiction.
  - It is mandatory that you complete a HUD approved Homebuyer Education course to participate in the program. Please call (619) 961-8750, for a schedule of upcoming courses.
- Participants are pre-approved (for a period of three months following close of escrow) for a grant up to $12,500 for energy efficiency/conservation improvements to your newly purchased home.
- When you have found an eligible property and your offer has been accepted select a lender and schedule an appointment with the lender. Inform the lender that you are interested in the County NSP loan program and refer the lender to our website. The lender will pre-qualify you and submit your application.
- For more information, call (858) 694-4810

HOMELESS RESOURCES

2-1-1 San Diego:

- You may dial 2-1-1 to talk to a person who can link you to various homeless shelters and other services to meet your needs. You can also visit the 211 website at www.211sandiego.org to search for resources yourself. Assistance is available in more than 150 languages.

Cold Weather Shelter Voucher Program:

- The program typically runs from late November through April and provides vouchers for hotel/motel rooms for families with children, the disabled, and the elderly during the winter season. Catholic Charities administers that program for the County, coordinating with various community based homeless service agencies from around the region.
- This regional voucher program is a flexible supplement to winter shelter facilities provided by various cities and allows the County to provide for winter shelter needs where such facilities are unavailable. Major funding for the program comes from the County's Health and Human Services Agency (HHSA) with contributions from HCD on behalf of the Urban County and additional contributions from many of the region's cities.
- For more information on the Cold Weather Shelter Voucher Program, please contact Catholic Charities at (619) 231-2828.

SDG&E UTILITY DISCOUNT PROGRAMS

Energy Team Program:

- Customers who meet income guidelines may be eligible for the Energy Team to come to your home and make home improvements that will help you save money on your energy bill. To apply and find out more information, go to http://www.sdge.com/residential/assistance/energyTeam.shtml, or call 1-866-597-0597.

CARE Program:

- Customers enrolled in the California Alternate Rates for Energy (CARE) program get an automatic 20% discount on their bill every month.

FERA Program:

- Customers enrolled in the Family Electric Rate Assistance (FERA) program are billed at a lower rate for electricity within certain levels of usage.

Eligibility for CARE and FERA:

- Eligibility is based either on total household income and household size or participation in public assistance programs. If eligible, you will be enrolled in only one program, and the discount will become effective within 30 days of receiving your completed application.

C. Summer activities for children of divorced mothers:

Camp Hope for Children Impacted by Family Violence

- To heal
- To give hope
- To have fun

Go to:
www.camphopesandiego.org

Tepee Village & Meeting Circle

=

Water Play

Water Play

Water Play - Kayaking

Fishing

Catching Frogs

Serenity Lodge at Camp HOPE

view of MainLodge

MAIN LODGE FLOOR PLAN

The Main Lodge is a group gathering space that provides an eating hall and kitchen facilities, meeting rooms, camp administrative space, and a health center. The Lodge greets visitors as they approach the knoll and opens on to a courtyard off the main hall. The "butterfly roof" signifies the uplifting nature of the camp and allows for water runoff collection.

The Dreams Are Getting Bigger

Mayor's Office to Combat Domestic Violence

Providing Civil Legal Services at a Family Justice Center: Benefits, Challenges and Lessons Learned

South Brooklyn Legal Services

Legal Services NYC

Presenters:

Jennifer DeCarli, Esq., LMSW, Executive Director
New York Family Justice Center, Brooklyn

Nadya Rosen, Esq., Deputy Director
South Brooklyn Legal Services,
Family/Domestic Violence Unit

New York City Family Justice Center Initiative – Basic Overview

- The Mayor of the City of New York through the Commissioner of the Mayor's Office to Combat Domestic Violence has created three New York City Family Justice Centers.
- New York City Family Justice Center, Brooklyn (BKFJC)
  - Opened July 2005
  - Serves borough of Brooklyn (2.5 million residents)
    - Client must have some connection to Brooklyn
  - Initially funded as part of the Department of Justice, Office on Violence Against Women President's Family Justice Center. It is now sustained through public and private funding.
- New York City Family Justice Center, Queens (QFJC)
  - A second Center opened in July 2008 in Queens (2.3 million residents)
- New York City Family Justice Center, Bronx (BXFJC)
  - A third Center opened in April 2010 (1.3 million residents)
- Multiple Centers help us to address the needs of the entire population of New York City and transient clients.

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New York City Family Justice Center in Brooklyn (BKFJC)

- New York City Family Justice Center Administration: The Mayor's Office to Combat Domestic Violence manages the overall administration of the centers, including funding, personnel, and government and nonprofit partnerships. Partner agencies, both government and nonprofit, deliver direct services to clients.
- District Attorney's Offices in Kings County (KCDA) is the co-lead partner agency with OCDV and their DV Bureau part of the Center
- 17 community nonprofit agencies are on-site with either full or part-time staffing
- 4 civil legal providers are on-site with full or part time staffing – South Brooklyn Legal Services (SBLS), Sanctuary for Families (SFF), Urban Justice Center (UJC), and Jewish Association for Services for the Aged (JASA).
- 6 government agencies are on-site with full or part-time staffing including KCDA, New York City Police Department, Probation, Human Resources Administration (public assistance), Department of Information Technology and Telecommunications and Department for the Aging
- Access to wide range of information, options and services with one visit – "domestic violence information hub"

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Who are the Clients at the BKFJC?

1. DV ARREST CASES

- An arrest has been made for intimate partner violence or elder abuse
- District Attorney's Office contacts victim ("complainant" or "CW") to come to the BKFJC and meet with a DV prosecutor

2. UNEXPECTED CLIENTS

- "Walk-ins" come to the BKFJC for help without an appointment
- Can be referred by police, Family Court, child welfare agencies, community organizations, etc.

3. EXPECTED COMMUNITY APPOINTMENT CLIENTS

- Clients who have appointments with on-site partner agencies

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Services Provided at the BKFJC

- Safety planning
- Risk Assessment
- **Civil legal advocacy and representation**
- Prosecution of domestic violence crimes
- Assistance with filing police and probation reports
- Counseling for adult victims
- Children's activities
- Children's counseling
- Support groups
- Services for the elderly and/or disabled
- Shelter/housing advocacy
- Language interpretation
- Voluntary spiritual support
- Self-Sufficiency services
- On-site ESL, Financial Literacy and Literacy Classes
- Financial Counseling
- Practical Assistance

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Specific Civil Legal Services Provided by On-Site Partners

- **Family and Matrimonial Law** – South Brooklyn Legal Services (SBLS) is contracted by the City to provide Family Court representation at the BKFJC. SBLS and Urban Justice Center (UJC) and Sanctuary for Families (SFF) provide consultations and representation in Family Court order of protection (OP) filing, custody, visitation, divorce, and child support matters. JASA provides legal assistance to elder clients (60+) at the Center.
- **Immigration Law** –SFF, contracted by the City to provide immigration legal assistance at the BKJFC provides consultations and representation on U visas, self petitions, battered spouse waivers and work permits.
- **Disability Project**– A SBLS fellow works specifically with clients who have mental health disabilities and need representation in Family Court.
- **Elder Temporary Order of Protection Program** - JASA staff draft petitions for Family Court OP's and coordinate with Family Court to cut down on wait time for elders.
- **Family Court OP petition drafting** –OP petitions are drafted by case managers and attorneys and submitted electronically to Family Court.
- **Court Room Advocates Project (CAP)** - Lawyers and law students assist clients filing for OPs in Family Court – clients referred directly from BKFJC.
- **LGBTQ Initiative** - Legal advocacy and assistance to LGBTQ clients by specially trained SBLS, UJC and SFF attorneys and on-site community partner the New York City Anti-Violence Project (AVP).

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How are Clients Referred to the On-Site Civil Legal Partners?

- Based on the required training at the BKFJC, the case managers assess for the client's civil legal needs.
- Case managers then refer clients to the civil legal screener of the day – see the next slide for the specifics of the civil legal screener's role.

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The Role of the BKFJC Civil Legal Screener

- Designated civil legal screeners from four on-site partner agencies meet with BKFJC clients referred to them by their case manager to review their civil legal needs.
- Legal screeners triage for urgent legal needs (a filing deadline about to be missed, an immediate need to go to court, an irrevocable legal event that is about to occur– i.e. deportation, custody writ) and consult with the on-site attorneys as needed.
- Screeners make future appointments with on-site legal partners for immigration and family law issues via a shared Microsoft outlook calendar, and direct expedited referrals to off-site civil legal partners as necessary.
- Screeners are highly knowledgeable about the array of civil legal options and the eligibility requirements of each civil legal agency.
- Screeners orient clients to the legal systems and explain the options and any limitations of various legal remedies.

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The Role of the On-Site Civil Legal Attorneys

- Meet daily with clients who were scheduled for a future consultation appointment by the civil legal screeners.
- Represent BKFJC clients in Family Court, Supreme Court and Immigration Court matters.
- Are available as much as possible for emergency issues that arise daily.
- Are available as much as possible to answer legal questions from on-site partner staff.

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Challenges

- Confidentiality: Use protocols that facilitate information sharing between legal service providers and social service providers while always respecting and maintaining client confidentiality.
  - Examples : Appt. scheduling protocol via the Microsoft outlook calendar, office locations.
- Different Professional Obligations:

  Example: A social worker who becomes aware of child abuse is a mandated reporter whereas a lawyer may be prevented from disclosing that information.
- Due to the volume of clients at the BKFJC, managing a client's expectations and the expectations of on-site partner staff can be challenging:
  - BKFJC records 1,500-1,800 client visits (new and repeat visits) a month
  - Approximately 40% of clients request civil legal services
  - Can't represent every client who is in need!
  - There are waits for consultation appointments – we now ask for a client's written permission to remind them of upcoming legal appointment.
  - Because on-site partner staff have immediate access to civil legal attorneys, it can be challenging to always be available for quick consultations with case managers, clients, screeners, while also handling a high volume of cases.

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FJC Alliance Legal Network

Legal Advocacy

For Domestic Violence Victims

Client Information Manual

Managing Your Divorce:
A Guide for Battered Women

National Council of Juvenile and Family Court Judges

Dean Louis W. McHardy, Executive Director

Family Violence Department
Resource Center on Domestic Violence:
Child Protection and Custody

Meredith Hofford, M.A., Director

P.O. Box 8970 • Reno • Nevada • 89507 • 800/527-3223

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Introduction

This booklet is intended to be used by battered women who are representing themselves, without an attorney, in court cases involving child custody. This is not a recommendation to go into court unrepresented. In fact, we start the booklet with a piece on "How to Find an Attorney." What we recommend strongly is that if there is any dispute or conflict about the arrangements for custody and visitation, get a lawyer! Battered women have spoken repeatedly about the loss of custody as the greatest threat in their lives, saying that it is more painful than the physical violence they have suffered. The stakes are extremely high in custody disputes; get a lawyer.

You may say, "If I could afford an attorney, I wouldn't need this booklet." It's true; usually the reason a battered woman is not represented by counsel is because she can't afford it. This may be true at the beginning of a court case, or it may be even more devastating and true when she loses her house, runs out of money, and her attorney withdraws before the case is concluded. Read the first piece. Make sure you have exhausted every resource that might be available to you. Your children are worth the effort, and you deserve the expert support.

Okay, you've left no stone unturned, and still you can't find an affordable lawyer (please, no lawyer jokes). The rest of the booklet is designed to help you build a strong, focused, and thorough case. The information cannot guarantee the outcome you want, but it should increase your chances. It is also an important process in which you will learn and practice advocacy skills for yourself and your children as you rightfully demand safety and justice.

We hope your pursuits are rewarded. Stay safe, and love those babies!

Donna Medley, Executive Director
Texas Council on Family Violence

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[8] See UFV/UMP Sec. X

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WELCOME LETTER

Welcome to the Family Justice Center's Legal Network. The Legal Network is here to provide assistance to you in obtaining a temporary restraining order, explain the court system, and answer legal questions. We realize that the criminal and civil process can be overwhelming and scary at times. To help you through this difficult time, we have prepared this manual to help you to understand the process and to assist you in making an informed decision about what is best for you and your family.

This manual also includes information about domestic violence in general. Please read through the Domestic Violence Information section to learn about the prevalence and manifestations of domestic violence. This section also includes tools (power and control wheel, risk assessment, safety plan) to help you identify and protect against the dangers specific to your situation.

Please note that we have included a domestic violence resources list at the end of this manual. Many services that you may be interested in are offered directly through the Family Justice Center. The resource list includes all Family Justice Center services offered, as well as services offered from different agencies around San Diego County. The Legal Network is not currently able to provide attorney representation to all clients. Should you need representation, the resources list includes contact information for San Diego attorneys who may provide reduced-rate or *pro bono* legal services to you as a victim of family violence.

Thank you for contacting us. You deserve to be safe from violence and we are here to help.

Sincerely,

SERVICES AVAILABLE AT THE FJC LEGAL NETWORK

The Legal Network offers the following services to clients:

Temporary Restraining Orders (TRO): Legal Network staff and volunteers are fully trained and able to aid clients in preparing the paperwork necessary to request a TRO from the courts. The Legal Network also offers fax filing services to the central (downtown) family court. TRO services are offered to domestic violence victims and elder abuse victims.

Court Hearing Preparation: For clients who have upcoming restraining order hearings, the Legal Network staff is available to meet and discuss how to prepare adequately for the hearing. During this meeting, staff will discuss what will happen before/during/after the hearing, what information the judge will likely ask about, and proper courtroom etiquette.

Court Support: The Legal Network offers clients the option of having a support person accompany her/him to the restraining order hearing. The support person can meet the client at the Family Justice Center (FJC) before the hearing or at the courthouse. Clients often request support people to accompany them to court to help locate the courthouse and courtroom, help ease the client's nerves, explain court procedures, and provide debriefing and referral services after the hearing.

Court Representation: Our Legal Network attorneys have limited availability to provide representation to clients. Clients who will receive representation will be decided on a case-by-case basis.

Electronic Safety Deposit Box (E-Box): The Legal Network can provide you with an e-box which allows you to store all of your documents that you accumulate in a password-protected electronic format. The e-box is a flash-drive (also known as a jump drive, USB drive, thumb drive) that you can easily carry with you.

Safe-at-Home Confidential Address: The Safe-At-Home program will give you a substitute mailing address to use on official documents. Additionally, any first-class or government mail sent to you at that address will be forwarded to you within 48 hours. The Legal Network is an enrolling agency for the Safe-at-Home program, so our staff can assist you in registering with the program.

Education about Court System: Legal Network staff can provide an overview of the court system to help clients understand the legal processes that they may go through. Staff can answer questions about all different aspects of the San Diego courts, including the roles of court personnel, the difference between civil and criminal courts, court locations and hours of operation, and any other questions that clients might have.

Referrals: The Legal Network provides clients with referrals to many different services, both legal and non-legal (e.g., mental health practitioners, military liaisons, dental services, legal clinics, crisis counseling, housing services, etc.). Please also see the list of San Diego County resources at the end of this manual.

CHAPTER 1 - YOUR RIGHTS[1]

You are afforded certain rights as a victim of domestic violence (DV). This section will inform you of many rights that you may not be aware of and will explain how these rights can help protect you from further abuse. Please note that some rights apply both in the civil and criminal systems. Also, the glossary of terms in the back of the book (page 109) contains the definitions of many words that you may not be familiar with.

All references to California code[2] sections are as follows:

CC = Civil Code	GC = Government Code
CCP = Code of Civil Procedure	HS = Health and Safety Code
EC = Evidence Code	LC = Labor Code
FC = Family Code	PC = Penal Code

RIGHTS AFTER YOUR ABUSER HAS BEEN ARRESTED

These rights apply when there is a criminal case against your abuser (your abuser is being prosecuted for DV).

MARSY'S LAW (VICTIM'S BILL OF RIGHTS)[3]

The California Constitution contains a Victim's Bill of Rights (known as Marsy's Law), which guarantees certain rights to all crime victims. Here are the rights that Marsy's law guarantees to you as a DV victim as your abuser is going through the criminal process:

- To be treated with fairness and respect and be free from intimidation, harassment and abuse.
- To be protected from your abuser (the defendant) and persons acting on the defendant's behalf.

[1] The Riverside County District Attorney's Office Victim Rights Manual provided significant guidance in the creation of this section.
[2] A "code" is a series of laws that are grouped together by category. Knowing the code in which a law is in will allow you to locate that specific law.
[3] Information for this section was obtained from the San Diego County District Attorney's Office website at http://www.sdcda.org/helping/victims/marsy-law.html, accessed on 1/5/2010. The Victim's Bill of Rights is Article I, section 28(b) of the California Constitution. Marsy's law is codified as PC 679.026.

CHAPTER 2 - RESTRAINING ORDERS[73]

A restraining order is a court order that prohibits a person from contacting certain people, visiting certain locations, and/or behaving in certain ways. A restraining order is awarded through the courts, and violating a restraining order results in criminal penalties. As a DV victim, obtaining a restraining order against your abuser may be an effective way to increase your safety. This section discusses whether you should obtain a restraining order, how to file for a restraining order, and how to enforce the order once you've obtained one.

TYPES OF RESTRAINING ORDERS[74]

Emergency Protective Order (EPO): An EPO is a protective order that a police officer will obtain for a victim after the officer has been called to the scene of a DV situation. An EPO serves a similar function as a restraining order, however it only remains in effect for 5 days. A police officer can ask a judge to award an EPO 24 hours a day, 7 days a week.

Temporary Restraining Order (TRO): A TRO is an initial restraining order that a judge issues the same day of the TRO forms being filed (unless the forms are filed after 3:30pm). A judge will issue a TRO if the evidence reasonably proves past act(s) of abuse. The TRO includes all of the same protections that a DVRO includes. The only difference is that the TRO is only effective until the court hearing (usually within 2-3 weeks).

Domestic Violence Restraining Order (DVRO): A DVRO is the restraining order that a judge issues after reviewing the evidence filed with the court and hearing both parties present their case. The judge may either adopt the protections as set forth in the TRO or modify the included protections as the judge sees fit. Typical protections include forbidding the abuser from contacting the victim in any way, requiring that the abuser stay at least 100 yards away from the victim at all times, and forbidding the abuser from using/taking the victims car, furniture, or other possessions (even if jointly owned). A DVRO remains in effect for a length of time determined by the judge (typically 1-3 years).

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[74] Information in this section has been adapted from both the Riverside County D.A.'s Office Victim Rights Manual and the California Attorney General Crime and Violence Prevention Center's Domestic Violence Handbook.

Civil Harassment Order: If a DVRO is not available to you, you may be able to obtain a civil harassment order if your abuser has subjected you to continual harassment. These orders are obtained in civil court rather than family court.[75]

Criminal Protective Order (CPO): If the abuser is involved with a criminal case for DV, the criminal court may issue the victim a CPO. A CPO involves the same protections as the other types of restraining orders, but can also require that the CPO be effective as a part of the abuser's probation.

SHOULD YOU OBTAIN A RESTRAINING ORDER?

When determining whether you should file for a restraining order, it is essential to weigh the safety and risk factors involved in the process. Restraining orders can provide much needed protections, but they may also put you more at risk if your abuser is not likely to be deterred by the order. You are in the best position to predict how your abuser will react to having a restraining order issued against him/her. Here are a few questions to consider before filing for a restraining order:

1. Does my abuser respect authority?
2. Does my abuser have particular reasons why he/she would not want to be arrested (a job, children, a good image to protect)?
3. Is my abuser capable of lethal violence?
4. Is my abuser likely to become so angry because of the restraining order that he/she will retaliate, regardless of the repercussions of violating the order?

If, after considering these questions, you believe that a restraining order will increase your safety, then filing for a restraining order may be in your best interests.

HOW TO FILE FOR A RESTRAINING ORDER[76]

The FJC Legal Network staff is available to help you complete the necessary forms to file for a DVRO. However, you may access all of the forms necessary to file for a DVRO on your own at www.sdcourt.ca.gov (go to the Family tab, and

[75] CCP 527.6
[76] Adapted from the YWCA of San Diego County's Legal Advocacy for Domestic Violence Victims Manual

then click on Domestic Violence Restraining Orders). Additionally, filing for DVROs and service of the DVROs is free, but **you need to request free service!**[77] The form to request free service can be accessed by visiting www.sdcourt.ca.gov, clicking on the Civil tab at the top of the screen, then clicking on the Forms page. Locate Form CIV-046 (entitled "Request for Free Service of the Order and Injunctions). For more information on completing service of the TRO and the DVRO, see below at page 28.

Filing for a DVRO requires you to complete various forms and file them with the appropriate court. To determine which court to file with, see the Court Locations section of this manual on page 39. Additionally, your abuser will need to be served with the TRO and DVRO in a timely manner. This can be a very confusing and time-consuming process. Our Legal Network staff members are trained in properly completing the forms and compiling evidence to support your case. They will also be able to file your forms via fax if your case is being handled by one of the downtown courthouses. Additionally, if you are pursuing a divorce, child/spousal support, child custody and visitation, or other proceedings at the same time, our staff can answer questions on how the cases may affect the restraining order process. Please do not hesitate to come into our office to obtain assistance. For information about other legal clinics that provide divorce, child/spousal support, child custody, and other civil services (beyond restraining orders) please see the DV Resources Guide beginning on page 111.

The judge will either grant or deny a DVRO based on the supporting evidence that accompanies the DVRO forms. The evidence that you are able to provide is the key to obtaining a DVRO, because the judge will only grant the DVRO if you prove by the "preponderance of the evidence" that you have been abused by the respondent. This means that you must prove that it is more likely than not that your account of the facts is the truth. The more evidence that you can submit with your application, the more likely it is that the judge will believe your side off the story. Please read the Evidence section below (page 33) for more information on types of evidence that are helpful and the proper ways to file the evidence with the court.

IMPORTANT NOTE: If you come into our office for assistance with a DVRO, please be aware that the process ***will take over 2 hours*** to complete the paperwork, plus additional time to receive the order back from the court. Additionally, we serve clients on a first-come first-serve basis, so you may need

[77] CCP 527.6

to wait if the Legal Network is serving other clients when you come in. As a result, you should ***plan on spending an entire day*** at the Family Justice Center, to ensure that you have enough time to finish the process. If you will be bringing your children, we have a children's play room available for your convenience.

SERVICE OF PROCESS

"Service" refers to notifying the respondent (your abuser) about the court proceedings and any orders issued by the court. Service is required by law, and a judge cannot issue a restraining order until proof of service is obtained. ***Copies of all restraining orders issued against a respondent must be served on that respondent before he/she is legally bound by the order.***

The TRO petition, notice of hearing, all supporting documents (evidence, etc.), all granted TRO/DVROs must be personally served on the respondent by someone who is not protected by the order (i.e. you cannot personally serve your abuser). Because you are a DV victim, you may qualify for free service. You must request free service when you file papers with the court. The form to request free service can be accessed by visiting www.sdcourt.ca.gov, clicking on the Civil tab at the top of the screen, then clicking on the Forms page. Locate Form CIV-046 (entitled "Request for Free Service of the Order and Injunctions").

Here are the steps that you should follow to serve your abuser properly:

1. Request Free Service:
    a. If you would like the Sheriff to serve your respondent for free, complete the "Request for Free Service of the Order and Injunctions" Form and submit it to the court. The form to request free service can be accessed by visiting www.sdcourt.ca.gov, clicking on the Civil tab at the top of the screen, then clicking on the Forms page. Locate Form CIV-046 (entitled "Request for Free Service of the Order and Injunctions").
    b. If the Sheriff successfully serves the respondent you do not have to provide proof of service to the court, because the Sheriff will notify the court for you.
2. Service by Someone Other than the Sheriff:
    a. If the Sheriff is unable to serve the respondent, or if you would rather have someone else serve the respondent, you will need to follow these steps:

i. Ask someone you know to serve your respondent with the appropriate paperwork. The person must be over 18 and not be protected by the order (thus, you cannot serve the respondent yourself). Additionally, you must provide the person with a "Proof of Service" Form.
    1. You can obtain this form by going to www.courtinfo.ca.gov, clicking on the Forms tab at the top of the screen, selecting the group "Domestic Violence Prevention" in your appropriate language from the drop down menu, and then clicking on the DV-200 form from the list.
ii. Instruct the person to:
    1. Walk up to your respondent.
    2. Say the respondent's name, "Are you John Doe?" or "Hi, John Doe."
    3. Give him/her copies of all of the paperwork.
    4. Fill out and sign the "Proof of Service" Form (Form DV-200)
    5. Give the signed "Proof of Service" form back to you (the petitioner).
iii. Make 5 copies of the completed "Proof of Service" form.
iv. File the *original* "Proof of Service" form with the court at least 2 days before your hearing.
v. Always keep an extra copy of the "Proof of Service" form with you for safety.

For more information about service, please visit www.courtinfo.ca.gov and click on the "Forms" tab at the top of the screen. Then, from the pull down menu click on Domestic Violence Prevention in your preferred language. Click on the form DV-210-INFO.

FINDING YOUR HEARING DATE/TIME (AND OTHER INFORMATION) ON THE INTERNET

You can find the date and time of your restraining order hearing on the internet through the San Diego Superior Court website (www.sdcourt.ca.gov), by following these steps:

1. Go to www.sdcourt.ca.gov
2. Click on "Court Calendar" (in the Quick Links area on the screen), there is a picture of a calendar next to the link.

3. Click on the "Calendar Search" at the top left corner of the screen
4. Check "Domestic" for the Division
5. Enter your ***last name*** in the "Party" section
6. Click "Start Search"
7. The date, time, and courtroom of your hearing will appear on the next screen

You can also find out whether the DVRO has been served on your abuser, and the expiration date of the DVRO, by following these steps:

WHETHER A RESTRAINING ORDER OR PROTECTIVE ORDER HAS BEEN SERVED ON YOUR ABUSER

1. Go to www.sdsheriff.net
2. Click the "Restraining Orders" link in the gray section of the screen
3. Enter your abuser's last name
4. Click "Look Up"
5. Browse the names until you find your abuser's name. The date that the order was served will be listed.
6. Click on your abuser's name for more information

EXPIRATION DATE OF RESTRAINING ORDER OR PROTECTIVE ORDER

1. Follow the same steps as above; the expiration date will be listed as well.

HOW TO ENFORCE YOUR RESTRAINING ORDER

If your abuser violates your DVRO in person, immediately call 911 and wait for the police to arrive. Inform the 911 operator if you feel you`re in immediate physical danger.

When the police arrive show them your DVRO. Explain in detail what has happened that caused you to call 911. If the abuser has not been served, inform the police and ask them to serve him at the scene. Be sure to obtain the police report or incident number. Also write down the name of the officer who responded to your call.

If your abuser violates your DVRO by telephone, call the police. They will not respond in person, but they will take a report by phone. If the abuser leaves a

message on your answering machine, voicemail or e-mail, save those tapes and a hard copy of the e-mail. ***Keep a log of all DVRO violations*** with dates, times, and details of the violations.

If a third person witnesses a violation of your DVRO, try to obtain a statement in writing as to what the person saw or heard. This is very helpful in proving to the Court that a violation has taken place.

Make sure your workplace, child`s school, day care, etc., have a copy of your DVRO and instructions on what to do if it is violated.

TWO IMPORTANT NOTES:

1. Your DVRO is violated even if you allow your abuser to come over. Giving your consent for your abuser to violate the order does NOT authorize your abuser to actually do so. If you no longer feel that you need a DVRO, then you must petition the court to remove it.
2. If you have a Criminal Protective Order (CPO) that was granted when your abuser was being prosecuted, the CPO will no longer be effective after your abuser's probation has been terminated. The sheriff's computerized system may not show that the CPO is no longer effective. If you still need protection, consider applying for a DVRO. Our Legal Network staff can help.

RENEWING YOUR RESTRAINING ORDER

DVROs are typically granted for a maximum period of 5 years. However, you may request the court to renew the DVRO at anytime during the 3 months before your DVRO expires.[78] To request a renewal, you will have to file a "Request to Renew Restraining Order" (DV-700) form and a "Notice of Hearing to Renew Restraining Order" (DV-710) form with the court clerk. Our Legal Network staff may assist you in completing and filing the appropriate paperwork to request a DVRO renewal. However, you can access all necessary forms online by going to www.courtinfo.ca.gov, clicking on the Forms tab at the top of the screen, selecting the Domestic Violence Prevention group in your preferred language from the drop down menu, and clicking on the DV-700 and DV-710 forms. You may also select the DV-720-INFO form for more information about renewing a DVRO.

[78] CCP 527.6(d)

You will also be required to personally serve your abuser (the restrained person/your abuser) with the following forms: DV-700 (Request to Renew Restraining Order), DV-710 (Notice of Hearing to Renew Restraining Order), DV-130 (your current DVRO), and a blank MC-030 (a declaration form). After serving these forms, you will have to file a Proof of Service form with the court (DV-200). If the judge does renew your DVRO, you will also have to serve the respondent with a copy of the renewed DVRO and then file a Proof of Service form with the court. For more information about serving the respondent, please see page 28 above.

Note: If you do not make your request to renew your DVRO before your current DVRO expires, you will have to file another DVRO petition in the same manner as you did for initially obtaining the DVRO.

CHAPTER 3 - EVIDENCE

At the hearing to obtain a DV restraining order (DVRO), the judge will base his/her decision on the evidence that has been filed for both sides. Therefore, the more evidence that you can provide to prove to the judge that you are a DV victim and that your abuser (the respondent) is responsible for the abuse, the more likely you are to successfully obtain a DVRO. The judge will only order a DVRO against your abuser if the "preponderance of the evidence" indicates that you experienced abuse and that the respondent is responsible for the abuse. The "preponderance of the evidence" is in your favor if the judge believes that you were more likely than not abused by the respondent. You have not met this burden solely because the judge granted you a temporary restraining order (which requires a lower standard of proof). Consequently, it is extremely important for you to consider all possible sources of evidence and to file all evidence with the court in a timely manner. The following sections will aid you in identifying evidence and will explain how to file the evidence with the court.

TYPES OF EVIDENCE[79]

There are many different sources of evidence that can be helpful to the court in determining whether to grant you a DVRO. Here is a checklist of items that you may be able to produce for evidence, if you have access to them and believe they will be helpful to the judge. This list is not exhaustive, so be sure to think of other sources of evidence that are not included on this list. Be creative!

- ☐ Police reports/records of phone calls
- ☐ Reports/recommendations/business cards from Child Welfare Services
- ☐ Other restraining orders or past restraining orders against your abuser
- ☐ Documentation of violations of a restraining order
- ☐ Medical records/bills
- ☐ Bank records
- ☐ Phone records
- ☐ DV shelter records (but do NOT reveal the location of the shelter!)
- ☐ Counseling/mental health records
- ☐ Witnesses (neighbors, friends, family, priest, teachers, other witnesses that can testify to the abuse in the form of a declaration, see page 34)

[79] The YWCA Legal Advocacy Program Restraining Orders presentation and the West Tennessee Legal Services, Inc., Legal Need Assessment were both used to develop this checklist.

- ☐ Photographs of injuries and/or damaged property
- ☐ Batterer's criminal court records/convictions and probation records
- ☐ Voicemails, letters, emails or text messages from batterer or person speaking on behalf of batterer
- ☐ Documentation of batterer's use of weapons
- ☐ Documentation of batterer's previous violence with other victims
- ☐ Documentation of batterer's drug/alcohol abuse (DUIs, failed rehabilitation, etc.)
- ☐ Batterer's mental health records or other documentation (e.g. diagnosis of depression, history of suicide attempts/threats, etc.)

HOW TO FILE EVIDENCE WITH THE COURT

There are two ways that you may file evidence with the court. The first (and preferred) method is to ***attach evidence to the temporary restraining order (TRO) request*** that is filed with the court. If the Legal Network staff is assisting you in filing for a TRO, the staff member working with you will ask you for any evidence that is available to attach to the request before it is sent by fax to the court.[80] Attaching evidence to your TRO petition is much easier than filing additional evidence with the court after the TRO has been filed.

If you retrieve additional evidence after the TRO request has been filed, then you may file the evidence as exhibits as long as certain timelines and service requirements are met:

- Timeline:
  - All additional evidence (exhibits) must be filed with the court and personally given to the respondent ***at least 5 days before the hearing.***[81] This is called "serving" the respondent or "service of process."
  - If your exhibits are ***more than 10 pages long***, you may not temporarily file (see below) them with the court more than 10 days before the hearing, except by court order.[82]
  - NOTE: After being notified of the additional evidence that you filed, the respondent may file a supplemental declaration and personally

[80] If your case is not in the San Diego Central Court (downtown – either Madge Bradley or Family Court), then our staff will not be able to file your request by fax. However, they still may help you prepare all necessary forms and give you instructions on how to personally file the request in the appropriate courthouse.
[81] San Diego County Superior Court Rules § 5.5.3, see also FC 243
[82] San Diego County Superior Court Rules § 5.5.2

serve you with that declaration before 10:00 a.m. two court calendar days before the hearing.[83] Thus, if the respondent attempts to discuss any additional evidence at the hearing about which you have not been notified, you may object to the evidence being admitted and request that the court not consider it.

- Service:
  - "Service" refers to notifying the respondent about the court proceedings. Service is required by law, and a judge cannot issue a restraining order until proof of service is obtained. For more information about service, please visit www.courtinfo.ca.gov and click on the "Forms" tab at the top of the screen. Then, from the pull down menu click on Domestic Violence Prevention in your preferred language. Click on the form DV-210-INFO.
  - The TRO petition, notice of hearing, and all supporting documents must be personally served on the respondent by someone who is not protected by the order (i.e. you cannot personally serve your abuser). Because you are a DV victim, you may qualify for free service. ***You must request free service*** when you file papers with the court.
- How to File:
  - If you are filing ***multiple exhibits*** (any document or piece of evidence), you must label each exhibit consecutively (starting at 1, 2, 3, etc.).
  - If your exhibits are ***more than 10 pages long***, you must temporarily file ("lodge") it with the court (as opposed to "filing" it with the court). You must include a paper entitled "Notice of Lodgment" which lists the documents included. The notice must be filed with the court and served on the respondent. Documents temporarily filed with the court must be tabbed and highlighted to correlate the notice of lodgment, and each document must be marked in a manner that calls attention to the relevant portions.[84] The court will stamp the lodgment as "received" and return it to you.
  - For each exhibit, you must provide a declaration identifying the exhibit, stating that you have personal knowledge of the facts contained in the exhibit and that all facts are true and correct. This is called ***authentication*** of the exhibit. Here are a few examples of how to authenticate exhibits:

[83] San Diego County Superior Court Rules § 5.5.3
[84] San Diego County Superior Court Rules § 5.5.2

- AUTHENTICATION OF DECLARATIONS (if you are filing a written statement about events that you personally experienced/observed):

EXHIBIT 1

I, [Your Name], have personal knowledge of the following facts and could competently testify thereto, except as to those matters which are stated upon information and belief.

[Insert your written statement here.....]

I declare that the foregoing is true and correct under penalty of perjury under the laws of the state of California.

Date: [Month and day], 20XX

By: [your signature]
[Type your name]

[page number]

- AUTHENTICATION OF OTHER EVIDENCE (bank records, photographs, etc.) You must file a declaration along with the evidence simply stating what is included in the exhibit and authenticating the evidence. Here is an example:

I, [Your Name], declare:

1. I am the petitioner and I have personal knowledge of each fact stated in this declaration.

2. Exhibit 1 is a true and correct copy of my bank records for July 2009 through October 2009.

3. Exhibit 2 is a true and correct copy of photographs taken of respondent outside of my home on January 1, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: [Month and day], 20XX By: [your signature]

[Type your name]

[page number]

CHAPTER 4 – COURT

This section will help answer questions you may have about the court process, give you tips to help you prepare for going to court, and discuss our Court Support services that may be available to you.

COURT SUPPORT

As a DV victim, you have the right to have a support person with you during your DVRO hearing. This support person may sit at the table with you if you are not represented by an attorney.[85] Our ***Court Support Program*** consists of trained Court Support Advocates who are available to accompany you to your hearing at the downtown family courts. If you would like a court support advocate, we will assign one of our advocates to you on the day that you file your TRO request. The advocate will contact you within a few days to introduce themselves and discuss what services you would like from them.

Here is a list of the services that the Court Support Program can offer you:

- ***Emotional support*** before the hearing, during the hearing, and after the hearing. The DVRO process can be very confusing, frightening, and overwhelming. Our Court Advocates can discuss any fears or worries that you may have and can help you decide whether obtaining a DVRO is in your best interests.
- ***Accompaniment*** through the legal system.
  It is very likely that you will have to see your abuser at your hearing (unless he/she does not show up). This can be very uncomfortable and intimidating. Our Court Advocates can accompany you to the courthouse and sit with you during the hearing to ensure that you are not alone.
- ***Referrals*** to community resources.
  Although our Legal Network staff will offer referrals to you when you initially file for the TRO, you may discover that you need other services as you proceed through the process. The Court Advocates will discuss services that may benefit you and will provide referrals to those resources.
- ***Answer questions*** or help you find answers to questions.

[85] FC 6303 (a) & (b)

WHAT TO EXPECT

On the day of your hearing, your case will likely be one of many cases on the docket for the day. You will need to sit in the courtroom until the judge calls you to the table. On your temporary restraining order (TRO), you will notice the hearing date, time and courtroom on the first page. Be sure to get to the courtroom at least 10 minutes early! Your case may be called right away, or you may need to wait in the courtroom for a few hours.

When the judge calls your name, you will proceed to the petitioner's table. The judge will then begin with your hearing. If the ***respondent is present*** at the hearing, the judge will likely ask both you and the respondent questions about the abuse and review all papers filed with the court in an attempt to determine whether to grant the Domestic Violence Restraining Order. Be prepared for the respondent to ask for a continuance for any of the following reasons: to get an attorney, respondent is not ready to proceed, respondent has a criminal case pending, or respondent needs additional time to review new evidence. The judge will likely grant the first request for a continuance. If this happens, your TRO will be extended until the next hearing date.

NOTE: If the respondent shows up with an attorney or attempts to discuss new evidence that you have not seen, you can object to the admission of the evidence

and request a continuance to either get an attorney of your own and/or review the new evidence.

If the ***respondent does not show up***, the judge will verify that the respondent was served, check to see if any response has been filed, and consider ***only*** the papers that were filed with the court when granting or denying the order. If the respondent was served and no response was filed, then the judge will likely grant the order.

If the ***respondent was not served***, it is important for you to request a reissuance. The court will give you a new form to fill out which you should give to the bailiff after you have completed it. You will receive a new hearing date. The Legal Network can then help you serve the respondent in time for the new hearing.

Here is a list of possible outcomes of your hearing and what you should do for each:

1. ***Order Granted:***
   You will be asked to stay after the hearing to obtain a copy of the DVRO. Be sure to keep a copy of the order with you at all times by ensuring that a copy is in your car, purse, child's school, briefcase, workplace, etc. Be sure to mark your calendar for the date when the order will expire and calculate 3 months before that time to consider whether you should ask the court for a reissuance.
2. ***Order Denied:***
   You may request a second hearing if you would like another opportunity to plead your case to the court. Regardless, be sure to take additional steps to ensure your safety! We can help with safety planning. Also, please see the Safety Planning section in this manual at page 87.
3. ***Hearing Continued:***
   Your hearing may be continued for a number of reasons. Your TRO will be extended until your next hearing. Your hearing will likely be continued if:
   - The respondent has not been served. Our Legal Network staff can help you find a way to serve the respondent before your next hearing.
   - Additional evidence has been submitted. If either party has not had sufficient time to review new evidence, then the court may continue the hearing until a later date. If you requested the continuance for this reason, take the additional time to look over the new evidence and ask us if you have any questions or would like to file rebutting

evidence (evidence that will challenge the validity of your abuser's new evidence).

- If you have children with the respondent, the judge may continue the hearing and order you to go to mediation (see page 52 below). This likely will happen if the DVRO request concerns the visitation and custody of your children.

TIPS ON COURT ETIQUETTE[87]

- Do not bring your children with you to the hearing. They are not allowed in the courtroom. In an emergency situation where you must bring your children, bring a friend to watch them while you are in the courtroom. If your hearing is in the Family Court in downtown San Diego (on 6th Avenue), there is a Children's Waiting Room that you can use. See the next section below for more information.

- Dress appropriately and professionally for court. For example, do not wear tank tops, see through clothing, jeans, shorts, or thong sandals. Dress as if you were going to church, temple, a funeral or job interview. Here are examples of what is and is not appropriate for court:

- Show appropriate respect for the court while waiting for the hearing. For example, do not chew gum, eat or talk in the courtroom.

[87] Portions of this section were drawn from the YWCA Legal Advocacy Program Restraining Orders presentation.

- Be on time for the hearing. The judge can make orders without you if you are not on time. Make sure you let the judge know you are present when your name is called.

- During the hearing itself, act in a manner which is respectful. Under no circumstances should you lose control, curse, yell, give dirty looks, argue with the judge or the other party, or do anything inappropriate. If your batterer should accuse you of using drugs, being a bad mother/father, or sleeping with numerous partners, ignore him/her. Do not yell at him/her or respond directly. Focus on the judge and direct your comments to the judge.

- Be aware of your body language! Do not fidget or make unnecessary movements. Sit straight and face the judge directly. Slouching and fidgeting can be distracting to the judge and detract his/her attention from what you are saying.

- When speaking to the judge use "please," "thank you" and "your honor." Make sure you speak loudly enough so that the judge can hear you. You can move the microphone close to you before you speak.

CHILD CARE DURING HEARING

As a general rule, you should arrange child care before you come to your hearing. Most courts do not allow children in the courtrooms, although most of the Superior Courthouses in San Diego County have Children's Waiting Rooms.[88] If you cannot find outside childcare, you may use the Children's Waiting Room if your child is at least 2 months old, you are the parent or legal guardian, and if there is available space in the room. The Children's Waiting Rooms are available on a ***first come first served*** basis, and can often be at full capacity. If at all possible, it is much better to find other arrangements for your children.

If you are going to use the Children's Waiting Room, ***arrive at least 15 minutes early*** to allow time to fill out all necessary paperwork and ensure that your child is properly situated before your hearing.

[88] There are seven courts that have Children's Waiting Rooms: Central, North County, East County, South County, Juvenile, Family, and Madge Bradley. For questions, you may contact Julia Meyers, the program manager, at 619-450-7176.


TRANSLATOR SERVICES

Translator services are available to you during your hearing. The initial TRO petition that you filed with the court likely indicated the need for an interpreter. Regardless, you should call the court that is handling your case in advance (at least 1 day before your hearing) and notify them that you will need an interpreter for your hearing. The phone numbers for all of the Family Courts in San Diego County are listed on page 39. Additionally, you should tell the bailiff when you check in that you need an interpreter.

The courts offer interpreters in many different languages beyond Spanish. If they do not have an interpreter on site that speaks your language, they will bring somebody in specifically to interpret for you. It is very important for you to notify the court ahead of time so that arrangements can be made for your hearing.

HOW TO PREPARE FOR THE HEARING

It is very important for you to thoroughly prepare for your hearing. Being prepared will ease feelings of anxiety and will allow the hearing to run more smoothly. Here is a list of things that you should do before your hearing to be sure that you are adequately prepared:

BEFORE HEARING:

1. ***Create a folder with copies of your TRO***, proof of service, and any exhibits (supporting evidence) that were either attached to your petition or filed separately.
2. ***Read your declaration and review your exhibits*** so that all of the information is fresh in your mind for the hearing.
3. ***Identify a support person*** for the hearing (either through our Court Support Program, see page 38, or a close friend or family member that you trust). Make a plan for where and when you will meet up with the support person before your hearing.
4. If you have children, make a ***plan for childcare*** during the hearing. If you need to use the Children's Waiting Room, call the court to ensure that your child meets the requirements and that they will be open on the day of your hearing.
5. If at all possible, ***go to court and observe other hearings*** before the day of your hearing. This will familiarize you with the hearing process.
6. ***Plan in advance what you will wear*** to your hearing.
7. ***Plan to be at court for 3 hours.*** You may need to notify your employer ahead of time.
8. Get plenty of rest, drink lots of water, and eat properly.
9. ***Avoid contact with your abuser!***

ON THE DAY OF YOUR HEARING:

1. Do not be under the influence of drugs or alcohol.
2. ***Be prepared to be searched*** (no weapons or pepper spray are allowed in court).
3. Take a ***support person*** with you.
4. ***Bring cash for public parking*** (probably at least $8.00).
5. ***Arrive early***, we recommend that you arrive at least 30 minutes before your hearing (earlier if you have children who need to be dropped off at the Children's Waiting Room).
6. Sit away from your abuser. ***Report any direct contact from your abuser*** to a bailiff (any of the sheriffs in uniform in the courthouse).
7. Remember to bring your court packet that contains copies of your paperwork.
8. ***Bring a bottle of water.***

CHAPTER 5 - MEDIATION[89]

Mediation is a process through which you and your abuser will negotiate an agreement regarding custody and parenting issues with the help of a professional mediator. The mediators in San Diego County are experienced Family Court Counselors who have specialized training in conflict resolution, parenting, child development, domestic violence, substance abuse, and child abuse and neglect.

In San Diego County, mediation is handled by Family Court Services (FCS, a division of the Family Court) or, if you can afford it, by a private mediator. The main concern in mediation is the *best interest of the child*. Do not bring up child support/money issues. If you do not agree with the father/mother of your child about custody and visitation, you will be required to attend mediation. The mediator will try to help you and the child`s father/mother reach an agreement. Do not sign an agreement unless you really do agree with it. It is very difficult to change it after you agree. If you do not reach an agreement, the mediator will make a recommendation to the court. This recommendation will probably be made into an order by the judge. Mediation is your opportunity to tell the court what you believe is in your child`s best interest and why.

The mediator is NOT your advocate or counselor. The mediator is a court employee and is assigned by Family Justice Court Services to listen to your parenting plan and that of the child`s other parent. The primary job of the mediator is to help the parents reach an agreement about custody and visitation. If there is no agreement, as is often the case in domestic violence situations, the mediator will make a recommendation to the court.

TIPS

Do I have to go in with my abuser?
As a victim of domestic violence you are entitled by law to see the mediator separately and to have a support person accompany you in mediation. The support person may not talk or interfere with the mediator. When you make your appointment or when you arrive, let the clerk know that you want separate mediation. If you feel pressure, you can ask to speak to the mediator`s supervisor.

[89] Adapted from the YWCA of San Diego County's Legal Advocacy for Domestic Violence Victims Manual and from information available at www.sdcourt.ca.gov. For more information on mediation, please go to www.sdcourt.ca.gov, click on the Family Tab and then go to the Custody & Visitation Mediation link.

Appointments
Arrive 10 minutes early to relax and organize your thoughts. Mediation can take up to a few hours. If the abuser is intimidating you, avoid eye contact or talking with him. You can also let the clerk or bailiff know you have a restraining order and that he is harassing you.

Spanish Speaking Mediator & Interpreter
Call the Mediator Office as soon as possible and let them know if you need an interpreter or Spanish-speaking mediator. Here is the contact information for all FCS locations in San Diego County:

- San Diego, (619) 450-7888 1555 Sixth Avenue San Diego, CA 92101
- El Cajon, (619) 456-4181 250 E. Main St. El Cajon, CA 92020
- Vista, (760) 201-8300 325 S. Melrose Drive, Vista, CA 92081
- South County, (619) 746-6097 500 Third Ave., Chula Vista, CA 91910

Declaration
You may give the mediator the declaration contained in your restraining order application only ***if it was properly served and is accompanied by a cover letter and proof of service.*** The mediator does have access to your court file, but does not have to read it or any other documents.

Prepare a Parenting or Visitation Plan
It is important to have a specific visitation plan in writing so you, the other parent and the police if need be, are clear on when and with whom the child is supposed to be. See the Child Custody Options Checklist below at page 54 to assist you in preparing a visitation plan.

About Yourself
Make sure you explain why it is in the best interest of the child for your parenting plan to be implemented. You may want to point out that you are:

- The primary caretaker for the child
- Providing good housing and quality day care
- Involved with the child's education
- Providing stability for your child

If you have issues that might affect your credibility with the mediator make sure you show how you have changed. Examples are:

- Attending AA meeting
- In counseling or taking parenting classes
- Tested clean for drugs and dates of last test
- Enrolled in school or employed

MEDIATION SUPPORT

As a DV victim, you have the right to have a support person of your choice accompany you to mediation.[90] This can be a close friend, family member, or someone that you trust. A mediator may, however, exclude a support person from a mediation session if the support person participates in the mediation session, acts as an advocate, or is disruptive. The presence of the support person does not waive the confidentiality of the mediation, and the support person is bound by the confidentiality of the mediation.

CHILD CUSTODY OPTIONS CHECKLIST

You can use this checklist to assist you in preparing a visitation plan for your mediation session. Read the questions, consider what answer will be in the best interest of your child, and then check the appropriate boxes. It may be helpful to make notes about the reasons why each answer is in the best interest of your child.

a) **Legal Custody- Who is to make decisions about child`s schooling, medical needs, etc.?**
- ❑ Legal Custody to Mom because Dad:
  - abuses, endangers or neglects child (Child Welfare Services involved)
  - has history of DV
  - has criminal record
  - has threatened to take children away
  - abuses drugs or alcohol
  - other

❑Joint-Legal Custody

b) **Physical Custody – Where is the child going to live?**
- ❑ Primary Physical Custody to victim: Kids live with victim.
- ❑ Visitation to other parent
  - Unsupervised Visitation: Other parent can be alone with kids.
  - Supervised Visitation: Other parent not to be alone with kids.
  - Nonprofessional supervision: Family or friend to supervise visits.
  - Professional supervision: Visits take place at local social service agency.

[90] FC 6303(c)

- ❑ No Visitation to other parent[91]
- ❑ Parent of custody to move with kids out of the county or state.

c) **Transportation/Exchange**
- ❑ Pick–up/Drop–off at victim`s location; abuser remains outside (curb side exchange).
- ❑ Pick–up/Drop–off at abuser`s location.
- ❑ Pick–up/Drop–off at home of family member or friend or at child`s school.
- ❑ Pick–up/Drop–off inside police station (during business hours only).
- ❑ Pick–up/Drop–off to be professional supervised (supervised exchanges).

d) **Safety Issues**
- ❑ Abuser to wait at pick-up/drop-off location for 15 minutes after victim leaves with kids.
- ❑ Abuser to take Batterer`s Counseling/Anger Management.
- ❑ Abuser to undergo drug and/or alcohol treatment and/or provide proof of negative drug/alcohol test.
- ❑ Abuser and/ or victim take Parenting Classes
- ❑ Abuser must not travel outside of San Diego County with the kids/to Mexico with the kids.
- ❑ Abuser must not be left alone with the kids (supervises visitation).
- ❑ Victim`s home address to remain confidential and not known to abuser.
- ❑ Abuser must not drive with kids
- ❑ Abuser to learn proper car seat procedure at police station prior to driving with kids.

e) **Financial Issues**
- ❑ Abuser to pay for supervised visitation/supervised exchanges.
- ❑ Mom and Dad to share costs of professional supervision/exchanges

f) **Visitation Schedule**
- ❑ Abuser to visit with kids one night during week 5-8 p.m. and every other weekend.
- ❑ Abuser to visit with kids on weekend from 9 a.m. Saturday to 5 p.a. Sunday.
- ❑ Abuser to visit with kids during week; Abuser pick up kids from school.
- ❑ Abuser to have or not to have overnight visits.
- ❑ Address holidays, birthdays and special occasions.

g) **Restraining Orders**

[91] FC 3044: In California, there is a presumption that the non-abusing parent (the victim) having sole custody of the child is in the child's best interest. This presumption, however, can be rebutted if your abuser provides the proper evidence to show that you are an unfit parent. Please talk to our Legal Network Staff for more information.

CHAPTER 6 - CHILD WELFARE SERVICES[a]

This section will discuss ways in which Child Welfare Services (CWS) may become involved in your case, mandated reporting laws, and ways to ensure that you meet the requirements of CWS if they are involved. For more general information about CWS, please visit http://www.sdcounty.ca.gov/hhsa/programs/cs/child_welfare_services/.

HOW CWS BECOMES INVOLVED IN A DV CASE

CWS becomes involved in a DV case after a referral to the Child Abuse Hotline has been made. A "referral" is when a person calls the Hotline to report that he/she has suspicions that a child has been physically, emotionally, psychologically, or sexually abused. The referral can be made by anybody, although frequently mandated reporters are the source of the calls. More information on mandated reporters is found on page 58.

California's definition of child abuse includes instances where children observe domestic violence in their homes.[b] Children witnessing DV is considered emotional abuse because of the harmful emotional/psychological effects that this can have on children's development and because other types of abuse are frequently present in families experiencing DV.

Once a referral has been received by the Child Abuse Hotline, social workers or law enforcement will investigate whether a CWS case should be opened. If the initial investigation supports the suspicions of abuse, then CWS will officially open a case and immediately begin intervening with the family.

WILL MY CHILDREN BE REMOVED?

The goal of CWS is to keep children with their families if possible. However, if parents do not take adequate steps to remove the risk of abuse then CWS will remove children as a last resort to protect them. Thus, it is imperative that you cooperate with the social worker that is assigned to your case and actively work to create a safe and healthy environment for your children. As a DV victim you

[a] Information for this section was drawn from the California Department of Social Services Office of Child Abuse Prevention's booklet entitled *The California Child Abuse & Neglect Reporting Law*, and the San Diego County Child Welfare Service's Powerpoint presentation entitled *Child Abuse Mandated Reporter Training*.
[b] See PC 11166.05

may be deemed "unfit" (i.e., incapable of providing a safe and healthy environment for your children) if your abuser continues to be largely present in their lives. Thus, you may have to work with your social worker to determine the appropriate steps that you must take to show that you are capable of protecting your children. If your social worker does not feel like you can achieve this, then he/she may recommend that your children be removed until the risk of abuse is removed.

MANDATED REPORTING LAWS

A "mandated reporter" is someone who is required by law to report suspicions of child abuse to the CWS Child Abuse Hotline. If a mandated reported fails to report reasonable suspicions of abuse, he/she will face criminal penalties.[c] A mandated reporter must report all reasonable suspicions of abuse when acting within the scope of their jobs (i.e., when they are at work or providing services).

Here is a list of people who are mandated reporters (and therefore must report suspicions of child abuse)[d]:

- School Employees (teachers, administrators, etc.)
- Childcare Providers
- Health Practitioners (doctors, nurses, etc.)
- Therapists/ Counselors
- Law Enforcement Officers
- Clergy (spiritual advisors)
- Court Appointed Special Advocates
- Child Visitation Monitors
- Social Services Employees (social workers)
- Firefighters
- Animal Control Officers
- Commercial Film and Photo Processors

MEETING CWS REQUIREMENTS

If CWS has opened a case on your family, you (as the non-abusing parent) will be required to remove the risk of further abuse before CWS will close your case.

[c] PC 11163
[d] PC 11165.7

You will need to actively work toward meeting CWS requirements and be respectful and cooperative with the social worker. The social worker will require different things depending on the unique circumstances of your case. However, frequent requirements include living away from the abuser, obtaining a restraining order against the abuser, and seeking counseling for yourself and your children. The Family Justice Center can assist you in meeting many of these requirements.

CHAPTER 7 - DIVORCE, CHILD CUSTODY, AND OTHER CIVIL LEGAL ISSUES

This section will discuss various other legal issues that are commonly experienced by DV victims. If you have further questions about these issues, or are in need of services to address these issues, our staff can provide you with the appropriate referrals.

DIVORCE AND SEPARATION[96]

If you are married to your abuser, and are trying to leave him/her, you may decide that you want to get a legal separation or dissolve the marriage (get a divorce). This section will discuss some basic information about obtaining a divorce in San Diego County. It will also discuss the difference between divorce and a legal separation. It is highly recommended that you get the assistance of an attorney to assist you with either process. Our office can refer you to attorneys who can assist you pro bono (for free) or on a sliding fee scale if needed.

LEGAL SEPARATION V. DIVORCE:[97] Legal separation is when a married person wishes to completely separate from the spouse (live apart, divide property, etc.), but not completely dissolve the marriage. A divorce is when a married person wishes to completely end the marital relationship and be restored to single status.

DIVORCE ELIGIBILITY: To be eligible to get a divorce you must be a resident of California for 6 months prior to filing for divorce. Additionally, you must be a resident of San Diego County for 3 months prior to filing.

DIVORCE PROCESS: The divorce process can be time consuming and confusing. Here is a list of the different steps that may be involved in a divorce:

1. Prepare dissolution petition/forms
2. File with Family Court Filing Office (usually the business office)
3. Pay filing fee or fill out fee waiver request

[96] Some information in this section about divorce eligibility and process came from the YWCA of San Diego County Legal Advocacy Program's presentation entitled *General Training on DV and Legal Issues for Community Agency Staff and Volunteers*. For more information, please go to www.sdcourt.ca.gov or come in to our office.

[97] For more information, please go to www.sdcourt.ca.gov and click on the Family tab at the top of the screen. Then click on Divorce & Paternity.

4. The respondent (your abuser) is personally served with the dissolution petition
5. Respondent files a response with the court
6. The Court holds a hearing for child custody, visitation and support (if applicable)
7. You may be ordered to attend mediation to determine custody and visitation matters
8. Parties prepare and serve Preliminary Declarations of Disclosure
9. Case Classification Conference
10. Case Management Conference
11. Settlement conference and/or Trial

COMPLETING THE DISSOLUTION PETITION: This is the first step toward getting a divorce. All of the forms necessary to file for divorce are available on the San Diego Courts website at www.sdcourt.ca.gov (click on the Family tab at the top of the page, then Divorce & Paternity). You will need to file the following forms:

- ***Petition*** (Form # FL-100): This is the form that notifies the courts that you want a divorce from your spouse. You will have to provide information about the date when you were married, any children you have with your spouse, all property that you own with your spouse or by yourself, and the reason why you want a divorce.
- ***Summons*** (Form # FL-110): This will be served on your spouse and will notify him/her that he/she has 30 days to respond to your petition. It also will include restraining orders that are automatically binding on both spouses (concerning each spouse's ability to move children, transfer funds and property, etc.). Note, however, that if you are fearful of your spouse, you also may want to pursue a domestic violence restraining order (DVRO, see page 25).
- ***Certificate of Assignment*** (Form # D-49): This form tells the court that you are within the jurisdiction of the court (that you or your spouse reside within San Diego).
- ***Declaration under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*** (Form # FL-105): This form is filled out only if you have children with your spouse.

FILING THE PETITION/FORMS WITH THE COURT: You should make ***2 additional copies*** of all of the forms listed above. Bring the originals and 2 copies to the court for filing. There is usually a $350 fee to file the petition. If you are unable to pay the filing fee, you may complete an ***Application for Waiver***

of Court Fees and Costs (Form # FW-001). You will be required to provide information regarding your income and financial status.

The court will take the originals and stamp the 2 copies of the forms. One set of copies is for your records, and the other set is to serve on your spouse.

SERVING YOUR ABUSER/SPOUSE: You must serve a copy of all of the forms on your spouse. You also must serve him/her with a blank **Response** (Form # FL-120). If children are involved, you must also include a blank **UCCJEA** form (Form # FL-105 – see above). A person who is over 18 years old and who is not involved in the case must serve the papers on your spouse. You then must provide the court with **Proof of Service of Summons** (Form #FL-115). This form must be filled out by the person who served the papers on your spouse.

ITEMS TO PREPARE BEFORE MEETING WITH YOUR ATTORNEY: We highly recommend that you get the assistance of an attorney if you are seeking a divorce or legal separation. When you meet with the attorney, you will need to have certain information on hand:

- Financial Records (bank records, account numbers, check books, bank book, etc.).
- Pay Stubs and W-2s for both you and your spouse.
- Copy of previously filed joint tax returns (you can request this from the IRS – Form 4506).
- List of all debts.
- List all real estate and personal property (copies of deeds to houses, cars, boats, etc.)
- Copies of all insurance policies

NOTE: If you think that you may want a divorce in the future, you should go ahead and start collecting as many of the items listed above as you can. Then, put all of the documents in a safe place (like a safe deposit box), where you can access them easily in the future.

CHILD CUSTODY

Here is a list of legal terms[1] that relate to child custody:

- ***Visitation:*** The designated time in which the non-custodial parent shall have responsibility of the children.

[1] This list was obtained from www.sdcourt.ca.gov on 1/8/18.

- ***Legal Custody:*** The rights and responsibilities of parents to make decisions relating to the health, education and welfare of their children.
- ***Joint Legal Custody:*** Both parents share in the right and responsibility to make decisions relating to the health, education and welfare of a child.
- ***Sole Legal Custody:*** One parent has the right and responsibility to make decisions relating to the health, education and welfare of a child.
- ***Physical Custody:*** How much time the children spend with each parent; where the children live; how day-to-day responsibilities are fulfilled.
- ***Joint Physical Custody:*** Children spend a significant amount of time with each parent

If you and your abuser have joint custody over your children, you may want to consider filing with the court for sole custody/supervised visitation rights. You can also ask the court to modify currently existing custody/visitation schedules. The court will award custody/visitation as it sees fit to ensure the best interests of the child. The Court may refer you to mediation to determine an appropriate custody/visitation plan. For more information on mediation, please see page 52.

You will have to make a motion with the court by filing an ***Order to Show Cause*** (OSC). We recommend obtaining assistance from an attorney for help with this process, and we can provide appropriate referrals to you. However, all of the forms necessary are available online. The following forms must be filed with the court[99]:

- ***Order to Show Cause*** (Form #FL-300)
- ***Application for Order and Supporting Declaration*** (Form #FL-310)
- ***Attached Declaration*** (Form #MC-031)
- ***Family Court Services Screening Form*** (Form #FCS-046)

CHILD/SPOUSAL SUPPORT

If you would like to change existing child or spousal support orders, you can make a motion with the court to do so. This process is very similar to that of changing a child custody/visitation schedule (see above). You will have to file an Order to Show Cause with the court. The assistance of an attorney is recommended, and we can give you referrals to attorneys that may be able to help you. All of the necessary forms, however, are available to you online at

[99] You can download copies of all of these forms by going to www.sdcourt.ca.gov, clicking on the Family tab at the top of the screen, and then clicking on the Forms link.

CHAPTER 8 - INFORMATION ABOUT THE CRIMINAL LEGAL SYSTEM

If your abuser is being criminally prosecuted for domestic violence, then you have the right to be present during all of your abuser's criminal hearings. Additionally, the prosecuting attorney may ask you to be a witness and testify or make a statement during the hearing. Even if you are not participating in the hearing, you may attend and observe the hearing.

This section will tell you about court locations, criminal process regarding your abuser's hearings, court services available to you, and other information about the criminal legal system.

COURT LOCATIONS

There are four criminal court locations in San Diego County. Information about each location is provided below:

DOWNTOWN (CENTRAL COURTHOUSE):
Address: 220 W. Broadway, San Diego, CA 92101
Business Offices (open 8:30 am – 3:30 pm, excluding court holidays):
Misdemeanors – First Floor, Room 1001
Records, Felonies – Second Floor, Room 2005
Mental Health, Appeals – Third Floor, Room 3005
Phone:
Domestic Violence – 619-450-5600
Felonies and Misdemeanors – 619-450-5400
Fine Payment – 619-450-7153

Note: More information about the Central Courthouse is available in the next section.

EAST COUNTY REGIONAL CENTER:
Address: 250 East Main Street, El Cajon, CA 92020
Business Office: 1st floor (open 8:30 am – 3:30 pm, excluding court holidays)
Phone: 619-456-4100

NORTH COUNTY REGIONAL CENTER:
Address: 325 South Melrose, Vista, CA 92081
Business Office: First Floor, Suite 500 (open 8:30 am – 3:30 pm excluding court holidays)
Phone: 760-201-8600

SOUTH COUNTY REGIONAL CENTER:
Address: 500 3rd Avenue, Chula Vista, CA 91910
Business Office: Second Floor (open 8:30 am to 3:30 pm, excluding court holidays)
Phone: 619-746-6200

CENTRAL COURTHOUSE INFORMATION

The Central Courthouse can be very confusing. This section will discuss parking and tell you where to go if you need additional assistance in the courthouse.

PARKING INFORMATION:
There are multiple pay lots just north of the courthouse (ranging from $10 - $20 for the day). Unfortunately, free parking is not close by. Two hour metered parking is also available on the streets (you will need $1.25 in quarters for every hour). If you park at a meter, be sure to watch the clock to make sure that you do not run over the 2 hour time limit without putting more money in the meter!

WHERE TO GO FOR MORE INFORMATION:
The Information Desk (located directly beyond the entrance to the courthouse) is always staffed with a sheriff who can answer any questions that you may have. The sheriff can help you find the appropriate courtroom, and direct you to other departments as necessary. If you are confused, do not hesitate to go to the Information Desk or ask any sheriff for assistance.

CRIMINAL PROCESS[101]

This section will explain the different steps that are involved in the criminal process, including all of the hearings that are typically involved. As a DV victim, you are entitled to be present (and often to make a statement) at several of your abuser's hearings.

PROCESS FOR MISDEMEANORS:
1. Arrest
2. Defendant (your abuser) is taken to jail, then either:
   a. Defendant posts bail and is released,
   b. Defendant is released with date for future hearing, or
   c. Defendant remains in custody until court hearing (arraignment).
3. Arraignment
   a. Defendant is informed of the charges,
   b. Defendant is advised of his/her constitutional rights,
   c. Defendant is appointed an attorney,
   d. A plea is entered (Not guilty, Guilty, No Contest), and
   e. Bail is set or Defendant is released pending next hearing.
4. Pretrial/Readiness Hearing
   a. Discovery (information) is exchanged between both sides,
   b. Pretrial motions may be filed, and
   c. Defendant's plea may be changed.
5. Trial (either jury trial or bench trial with no jury)
   a. Defendant is either found not-guilty and released, or
   b. Defendant is found guilty and arrangements are made for sentencing.
6. Sentencing for misdemeanors can include probation, court ordered programs, county jail term of one year or less, or maximum of $6,000 fine.

PROCESS FOR FELONIES:
1. Arrest is made.
2. Defendant (your abuser) is taken to jail, where he/she is either
   a. Released with no charges,
   b. Released after posting bail until future court date,
   c. Released without bail until future court date, or
   d. Remains in custody until court date.
3. Arraignment
   a. Defendant is informed of charges,

[101] The information for this section was drawn from the San Diego Superior Court website, www.sdcourt.ca.gov, on 1/7/2010.

   b. Defendant is advised of his constitutional rights,
   c. Defendant is appointed an attorney,
   d. A plea is entered by defendant (either not guilty, guilty, or no contest), and
   e. Bail is set, and defendant is remanded to custody, or defendant is released without bail until future court date.
4. Preliminary Hearing
   a. Prosecuting agency files an information document,
   b. Judge determines if there is sufficient evidence to hold the defendant for trial.
5. Readiness Conference
   a. Discovery (information) is exchanged between both sides,
   b. Pretrial motions may be filed, and
   c. Defendant's plea may be changed to Guilty or No Contest.
6. Trial (either jury trial or bench trial with no jury)
   a. Evidence is tried by either the jury or the judge,
   b. The defendant is found either guilty or not guilty,
   c. If the defendant is found guilty, the defendant is either sentenced immediately or a date is set for sentencing.
      i. Sentencing for felonies can be for probation, local custody, state prison, or death.
   d. If the defendant is found not guilty, the defendant is released.

ADVOCATE SERVICES

Both the City Attorney's and District Attorney's office will provide a Victim/Witness Advocate to assist you during your abuser's prosecution.[102] The advocate will be able to explain the court process to you, provide updates about your abuser's case, and connect you with other services available.

If your abuser is being prosecuted for a felony, your advocate will be provided by the District Attorney's office. If your abuser is being prosecuted for a misdemeanor, your advocate will be from the City Attorney's office. Here is the contact information for both offices:

City Attorney's Office (DV Unit): 619-533-5500
District Attorney's Office: 619-531-4041

[102] This service is subject to certain limitations. For example, an advocate will not be provided if a victim is hostile to the prosecution (just willingly answering questions or being forthright).

INTERPRETER SERVICES

Interpreter services are available to you during your abuser's criminal proceedings if you are participating in some way (i.e. testifying or making a statement). You can request interpreter services from the attorney prosecuting your case and from the Victim Advocate who is working with you.

CHILDREN'S WAITING ROOM

If at all possible, you should arrange child care before coming to the courthouse. However, the courthouse will likely have a Children's Waiting Room available for parents/legal guardians of children who cannot make other arrangements for childcare. This service is available on a *first come first served* basis, and limited space is available. Your child must be at least 2 months old to be eligible to stay in the Children's Waiting room. For more information, you may contact the program manager (Julia Meyers) at 619-450-7176.

There are seven court locations with Children's Waiting Room locations in San Diego County: Central (Downtown), East County (El Cajon), North County (Vista), South County (Chula Vista), Juvenile Court, Family Court and Madge Bradley.

Note: The Children's Waiting Room in the *Central Courthouse* is located on the 4th floor of the South Tower in room 4002.

MARSY'S LAW

Marsy's Law (also known as the Victim's Bill of Rights) guarantees all crime victims certain rights and protections. A list of these protections is located in section 1 of the *Rights After Your Abuser Has Been Arrested* portion of this manual, page 10.

INFORMATION AVAILABLE ON THE INTERNET

A lot of information about the criminal system, the San Diego courts, and specific cases is available on the internet. Listed below are steps to find information that you may be interested in:

DATE, TIME AND LOCATION OF YOUR ABUSER'S HEARINGS:

1. Go to www.sdcourt.ca.gov
2. Click on "Court Calendar" (in the Quick Links area on the screen), there is a picture of a calendar next to the link.

3. Click on the "Calendar Search" at the top left corner of the screen
4. Check "Criminal" for the Division
5. Enter your abuser's **last name** in the "Party" section
6. Click "Start Search"
7. The date, time, and courtroom of your abuser's hearings will appear on the next screen

TO FIND OUT WHETHER YOUR ABUSER IS IN JAIL:

1. Go to www.sdsheriff.net
2. Click the "Who's In Jail" link in the gray section of the screen
3. Enter your abuser's last name
4. Click "Look Up"
5. Browse the names until you locate your abuser's name
6. Click on your abuser's name for more information
   *Note: You can register with the sheriff's office to be notified of changes in your abuser's status (i.e., if he/she is scheduled for release) by clicking on the "Register with VineLink" option (see more about VINELink below).

TO FIND OUT WHETHER A RESTRAINING ORDER OR PROTECTIVE ORDER HAS BEEN SERVED ON YOUR ABUSER:

1. Go to www.sdsheriff.net
2. Click the "Restraining Orders" link in the gray section of the screen
3. Enter your abuser's last name
4. Click "Look Up"
5. Browse the names until you find your abuser's name. The date that the order was served will be listed.
6. Click on your abuser's name for more information

EXPIRATION DATE OF RESTRAINING ORDER OR PROTECTIVE ORDER:

1. Follow the same steps as above, the expiration date will be listed as well.

VICTIM'S SERVICES AVAILABLE/NOTIFICATION OF ABUSER'S RELEASE REGISTRATION (VINE):

1. Go to www.sdsheriff.net
2. Click on "Victim's Services" in the gray section of the screen
3. You will see a list of services that are available to you as a victim of domestic violence, including steps to register with VINE (Victim Information and Notification Everyday) to be notified of changes in your abuser's status, including release dates. You can register with VINE for free.

*Note: You can also register with VINELink (the online version of VINE), which will send you timely notifications concerning your abuser's status by email, text message, or phone. VINELink is a free service! You can learn more about VINELink by visiting www.vinelink.com or calling 1-877-411-5588. You can also see a video demonstration at http://www.appriss.com/VINEDemo.html.

MORE INFORMATION ABOUT VINE[103]:

- Your abuser will not know that you are registered with VINE.
- VINE stands for Victim Information and Notification Everyday. By registering with VINE, you will be notified if your abuser is in jail, is being released or transferred, or escapes.
- When you register, you will need to enter a four-digit Personal Identification Number (PIN). Make sure you use a PIN that you will remember easily, and keep your PIN recorded in a safe place. VINE will ask for the PIN when it calls you.
- If you are not home, VINE will leave a message on an answering machine or continue to call for up to 48 hours.
- VINE calls automatically when your abuser's custody status changes. As a result, you may be called in the middle of the night.
- You can leave more than one phone number with VINE.
- Incorporate VINE into your safety plan. Do not rely on VINE alone to protect you.

[103] Information in this section was obtained from the VINE brochure by the California State Victim Notification Service.

CHAPTER 9 - DOMESTIC VIOLENCE INFORMATION

This section will discuss general facts and statistics about domestic violence, explain the Power and Control wheel, discuss dangers and symptoms of strangulation, and aid you in completing a risk assessment and safety plan. Our Legal Network Staff can answer any further questions that you may have about domestic violence generally or about the specifics of your situation.

FACTS AND STATISTICS[104]

Domestic Violence is defined as "the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior perpetrated by an intimate partner against another." Emotional abuse, controlling behavior, and psychological abuse are often present. Domestic violence often occurs in multiple generations in the same family, and has lasting psychological and physical effects on victims.

Domestic violence knows no boundaries. It affects people of all races, cultures, religions, socio-economic statuses, and sexual orientations.

[104] The information in this section was drawn from the National Coalition Against Domestic Violence (NCADV) handout entitled *Domestic Violence Facts*.

IMPORTANT STATISTICS:

Generally:

- 1 in 4 women will experience DV
- 1.3 million women are estimated to be victimized by an intimate partner each year
- 85% of DV victims are women
- Females between the ages of 20-24 are at the greatest risk of nonfatal DV
- Most cases of DV are never reported to the police
- 1 in 6 women and 1 in 33 men have experienced an attempted or completed rape
- Sexual assault or forced sex occurs in around 40-45% of battering relationships
- 1 in 12 women and 1 in 45 men have been stalked
- 81% of women stalked by a current or former partner are also physically assaulted by that partner

DV and Children:

- Witnessing DV between parents is the strongest risk factor of transmitting violent behavior between generations
- Boys who witness DV are twice as likely to abuse their own partners
- 30-60% of abusers also abuse children in the household

Homicide and Injury:

- Almost 1/3 of female homicide victims reported in police records are killed by an intimate partner
- Less than 1/5 of victims reporting an injury from DV sought medical treatment
- DV results in more than 18.5 million mental health care visits per year.

Economic Impact:

- The cost of DV annually exceeds $5.8 billion, $4.1 billion of which is for direct medical and mental health services
- DV victims lose almost 8 million days of paid work annually because of the violence they experience
- There are 16,800 homicides and $2.2 million medically treated injuries due to DV each year, which costs $37 billion

Protection Orders:

- About 1/3 of the 1.5 million people who experience DV annually obtain a civil protection order
- About ¼ of the orders obtained by women are violated
- More than 2/3 of the restraining orders against partners who raped or stalked the victim were violated

POWER AND CONTROL WHEEL

Domestic violence involves many different forms of abuse beyond physical abuse. The Power and Control Wheel[105] (below) is a tool to help identify various types of abusive behaviors that may be present in your relationship. All of the types of abuse included are ways in which an abuser will control his/her partner.

[105] Developed by the Domestic Abuse Intervention Project in Duluth, MN

CHILDREN IN VIOLENT HOMES[106]

Children are often the unintended victims of DV. Children in violent homes can witness traumatic events and are threatened with physical assault. Children of abused parents may:

- Be injured during an incident of parental violence;
- Be traumatized by fear for their mother/father and their own helplessness in protecting her/him;
- Blame themselves for not preventing the violence or for causing it;
- Identify with the abuser and abuse others;
- Be abused or neglected themselves

The risk of child abuse is significantly higher when partner assault is also reported.

- Nearly half of men who abuse their female partners also abuse their children
- Nationally, 75 % of battered women say that their children are also battered.
- Woman being battered are less able to care for their children. Eight times as many women report using physical discipline on their children while with their batterer than when living alone or in a non-battering relationship.

Witnessing Parental Violence

- Over 3 million children are at risk of exposure to parental violence each year.
- Children from violent families can provide clinicians with detailed accounts of abusive incidents that their parents never realized they had witnessed.

The Impact on Children

The damage inflicted by living in a home with severe parent-to-parent violence is often overlooked. The immediate impact of this exposure can be traumatic, and result in fear for their self, for their parent's safety, and self-blame.

- The range of problems among children who witness parental violence includes psychosomatic disorders, such as stuttering, anxiety, fear, sleep disruption, and school problems.
- Children older than five or six have a tendency to identify with the aggressor and to lose respect for the victim.

[106] Adapted from *Courts and Communities: Confronting Violence in the Family*. State Justice Institute Conference. San Francisco, CA. March 31-28, 1995.

Over a longer period of time, the child's exposure to violence may lead her/him to become violent and to have other serious emotional and behavioral problems.

- Violence witnessed at home is often repeated later in life. Violent parental conflict has been found in 20 to 40 % of the families of chronically violent adolescents. Seventy-five percent of boys who witness parental abuse have demonstrable behavioral problems.
- A comparison of delinquent and non-delinquent youth found that a history of family violence or abuse was the most significant difference between the two groups.
- Child and adult victims of abuse are more likely to commit violent acts outside the family than those not abused. Abused children are arrested by the police four times more often than non-abused children.

Courts should consider the effects of parental violence in custody and visitation cases. Counseling should be available to help children from violent homes to avoid the serious consequences of abuse.

DOMESTIC VIOLENCE AND THE MILITARY[107]

Active duty military personnel, military families, and veterans, are more likely to experience various risk factors that increase the likelihood that domestic violence (DV) will be present in their lives. Specifically, members of the military are more likely to experience Post-Traumatic Stress Disorder (PTSD), depression, substance abuse, chronic health problems, and anger/emotional problems as a result of their service. All of these issues have been shown to be risk factors for DV. For example, veterans with PTSD have been shown to be two to three times more likely to be involved in a DV relationship. Furthermore, service members who experience one of these issues are likely to experience others at the same time, which increases the risk of abusing others or experiencing abuse themselves.

If present, the abuse may manifest in different ways than it frequently does in the civilian population. For example, military DV often involves isolating the victim in various ways (controlling access to military I.D. cards, living off base, using

[107] The information in this section was drawn from a variety of sources, including: Stephanie Noles' (Oct., 29, 2009) article *Domestic violence can be a dangerous enemy following combat*; www.pewsoldiers.org; and Jillian Carrick's (Military Liaison, San Diego Family Justice Center) presentation *Domestic Violence and the Military*.

dependent status as control mechanisms, etc.), restricting allotments during deployment, and using weapons to intimidate the victim.[109]

The military (and other community agencies) recognize the unique aspects of military DV. Thus, there are services available specifically for military families and individuals who are experiencing DV. Our Legal Network Staff can provide the appropriate referrals for you, and can connect you with the FJC Military Liaison. There are also Military Protective Orders that you may apply for that are issued by the commanding officer (usually in collaboration with the Family Advocacy Program, see below). Here is a list of services available to you if you are a service member, veteran, member of a military family, or person being abused by a service member:

- ***Family Justice Center Military Liaison:***
  Address: 707 Broadway, Suite 200, San Diego CA 92101
  Phone: (619)533-3592 or (619)533-5317
  Website: www.sandiego.gov/sandiegofamilyjusticecenter/
  Services: communication classes, stress management classes, parenting classes, financial counseling, anger management, individual and family counseling, substance abuse counseling, legal assistance, referrals
- ***Family Advocacy Program:***
  Locations and Phone Numbers:
  Regional Navy Family Advocacy (619)556-8809
  MCRD (619)524-0465
  Miramar (858)577-6585
  Pendleton (760)725-9051
  Services: screening and referrals, court facilitation and support, crisis intervention and safety planning, treatment and counseling, ongoing case management and victim advocacy, transitional compensation, child counseling, support groups, and new parent support program
- ***After-Hours Victim Advocacy (Navy Medical Center San Diego):***
  Services: victim advocates are available after-hours in the Emergency Room for support, advocacy, information and referrals. Advocates will respond within an hour of an incident.
  Hours: Monday-Sunday 5:00pm-7:30am; Holidays 24-hour coverage
- ***Important Numbers and Websites***

[109] See the *Military Power and Control Wheel*, National Center on Domestic and Sexual Violence, www.ncdsv.org

Naval Medical (Emergency Room): (619)532-8274
Military One Source 24 Hour Hotline: 1-800-540-4123:
www.militaryonesource.com
Operation Homefront: (866)424-5210
National Center for PTSD: www.ncptsd.va.gov
Military Spouse Career Center: www.military.com/spouse
Armed Services YMCA: (858)751-5755

TEEN DATING VIOLENCE[110]

Teen dating violence can start as young as age 11 and continues through age 20 for young adults who do not live with their partner. Teen dating violence is very similar to domestic violence, but teens often face different types of barriers when trying to find safety. For example, many teens are dependent on parents for basic needs (housing, clothes, etc.) and have little control over the school they attend. Additionally, many states do not allow minors to apply for restraining orders by themselves, although some states allow minors to apply through a parent or guardian. All of these factors can serve as barriers that keep teens in violent relationships, or make teens feel like they cannot report the abuse.

Research indicates that around 32% of teens experience teen dating violence, with estimates that 1.5 million teens have experienced physical dating violence. This high rate of teen dating violence is often unknown to parents.

In addition to frequent behaviors found in domestic violence (physical, sexual, and emotional abuse), teen dating violence is often committed through frequent/inappropriate text messaging, instant messaging, or postings on social networking sites (MySpace, Facebook, etc.). The effects of teen dating violence can often lead to lower grade point averages, lower self-esteem, and a lower ability to learn. A unique characteristic of teen dating violence is that the abuser and victim often attend the same school, which may make avoiding the abuser very difficult.

Safety Tips for Teens[111]:

[110] The factual information in this section is from the Violence Against Women Online Resources' article entitled The Facts About Teen Dating Violence, retrieved .
[111] These safety tips are from the American Bar Association's National Teen Dating Violence Prevention Initiative's article entitled Teen Dating Violence Prevention Recommendations, retrieved February 25, 2010 from http://www.safeyouth.org.

- You do not deserve to be treated this way, and you deserve respect!
- Identify a friend or family member that you trust, and talk to them about your relationship.
- Talk to a guidance counselor or school teacher that you trust for help.
- Identify a safe place that you can go to if needed.
- Always keep a cell phone with you, if possible.
- Keep a set of clothes at a friend's house.

Safety Tips for Parents:

- Spend quality time with your teen.
- Keep asking questions, even if your teen gets mad.
- Give your teen positive feedback and help them build confidence.
- Talk about sex, relationships, and other "uncomfortable" situations.
- Teach your teen that both sexes are equal.
- Be a good role model about drug/alcohol use and relationships.
- Talk with your teen about negative life experiences and how to avoid them.
- Do not assume that your teen's relationship is healthy, always keep your eyes and ears open.
- Educate yourself on an on-going basis about the warning signs of teen dating violence (depression, self-mutilation, suicidal thoughts, etc.).
- Consider counseling for both you and your teen.

STALKING[111]

Stalking can be defined as "a course of conduct directed at a specific person that would cause a reasonable person to feel fear." Stalking is a crime in all 50 states. Seventy-seven percent of female and 64% of male victims know their stalker. The stalker is often an intimate partner, and other forms of abuse frequently also occur (including physical abuse, sexual abuse, etc.). Stalking can have detrimental effects on the victim's life, including fear, lost time from work, and even lethal violence.

If you are being stalked by your abuser, please consider reporting it to the police. If you are interested in obtaining a restraining order, be sure to include a

[111] All of the factual information in this section was drawn from the Stalking Fact Sheet from the National Center for Victims of Crime Stalking Resource Center, www.ncvc.org/src.

detailed account of the stalking behavior that your abuser has exhibited. It may be helpful to keep a log/journal of your abuser's stalking behavior, noting the date, time, and type of behaviors. See below for a chart that you can use to log your abuser's stalking behaviors.

Common stalking behaviors include unwanted and/or frequent phone calls or text messages, unwanted letters or other items, vandalized property, killing/threatening to kill a family pet, and unannounced visits. This list is not exhaustive. Be sure to note all behaviors that make you feel fear.

Monitor and Log Your Abuser's Stalking Behaviors
Here is a log that you can use to document your abuser's stalking behaviors. Feel free to create your own log if you need more room or wish to add/change the categories to meet your needs:

Date and Time	Location	Stalking Behavior	Other Comments

DANGER ASSESSMENT

Jacquelyn C. Campbell, Ph.D., R.N.

Several risk factors have been associated with increased risk of homicides (murders) of women and men in violent relationships. We cannot predict what will happen in your case, but we would like you to be aware of the danger of homicide in situations of abuse and for you to see how many of the risk factors apply to your situation.

Using the calendar, please mark the approximate dates during the past year when you were abused by your partner or ex partner. Write on that date how bad the incident was according to the following scale:

1. Slapping, pushing; no injuries and/or lasting pain
2. Punching, kicking; bruises, cuts, and/or continuing pain
3. "Beating up"; severe contusions, burns, broken bones
4. Threat to use weapon; head injury, internal injury, permanent injury
5. Use of weapon; wounds from weapon

(If any of the descriptions for the higher number apply, use the higher number.)

Mark Yes or No for each of the following. ("He" refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

____ 1. Has the physical violence increased in severity or frequency over the past year?
____ 2. Does he own a gun?
____ 3. Have you left him after living together during the past year?
3a. (If have never lived with him, check here___)
____ 4. Is he unemployed?
____ 5. Has he ever used a weapon against you or threatened you with a lethal weapon?
(If yes, was the weapon a gun?____)
____ 6. Does he threaten to kill you?
____ 7. Has he avoided being arrested for domestic violence?
____ 8. Do you have a child that is not his?
____ 9. Has he ever forced you to have sex when you did not wish to do so?
____ 10. Does he ever try to choke you?
____ 11. Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, "meth", speed, angel dust, cocaine, "crack", street drugs or mixtures.
____ 12. Is he an alcoholic or problem drinker?
____ 13. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car? (If he tries, but you do not let him, check here: ____)
____ 14. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.")
____ 15. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: ____)
____ 16. Has he ever threatened or tried to commit suicide?
____ 17. Does he threaten to harm your children?
____ 18. Do you believe he is capable of killing you?
____ 19. Does he follow or spy on you, leave threatening notes or messages on answering machine, destroy your property, or call you when you don't want him to?
____ 20. Have you ever threatened or tried to commit suicide?

____ Total "Yes" Answers

Thank you. Please talk to your nurse, advocate or counselor about what the Danger Assessment means in terms of your situation.

Scoring Summary:

Please come in to see the Legal Network staff to discuss your results. We are certified to evaluate your Danger Assessment scores. If you cannot make it back to our office, here is a summary of what your results mean:

1. Add total number of "Yes" responses, 1 through 19 _____
2. Add 4 points for a "Yes" to question 2 _____
3. Add 3 points for *each* "Yes" to questions 3 and 4 _____
4. Add 2 points for *each* "Yes" to questions 5, 6 and 7 _____
5. Add 1 point for *each* "Yes" to questions 8 and 9 _____
6. Subtract 3 points if 3a is checked _____
7. Calculate your Total _____

Custody and Divorce Mediation

Barbara J. Hart, J.D.

Traditionally, custody and divorce disputes reach resolution either by negotiation (attorneys for each party negotiate the terms of a custody or divorce agreement) or litigation (judges preside over hearings in which both parties offer the court evidence to assist the judge in deciding how custody should be arranged, property divided and other economic matters resolved). In a growing number of communities today, however, *mediation* is the method by which custody and divorce matters are handled.

Custody or divorce mediation is a process in which a trained, neutral third party helps a divorcing or separating couple agree on how to resolve some or all of the issues in their case in order to avoid a lengthy, expensive trial. The idea is that, in cases such as a marriage, especially where there are minor children, the parties are going to have to maintain some kind of ongoing relationship. If they can reach agreement through mediation, they can:

- Emerge from the divorce with a plan in place for dealing with ongoing issues such as child-rearing.
- Avoid spending on litigation valuable family resources which family members will need in order to support the two households resulting from the separation.

In mediation, after careful consideration of all the issues the couple decides to address, the mediator attempts to help the parties reach agreement on each issue. The parties then have each of their lawyers review the agreement and draft it into a legal document that can be submitted to the court. The court enters it, just as it would an order resulting from a trial, and it has the same binding effect.

Equality of Capacity and Power Essential for Mediation

Mediation may be a fine idea in cases where there is no domestic violence and, in fact, where the parties are both willing to work together for a fair outcome. However, where there is domestic violence, the analysis changes. It is a principle of mediation that the parties should have relatively equal power in the relationship, full information about the resources available to each person and the family, comparable financial sophistication, equivalent skills in negotiation and planning, a willingness to recognize the post-separation needs of the other party and any child, and the ability to protect their own interests in the process of mediation.

Domestic violence creates huge power imbalances. Men batter their wives and partners through a variety of tactics all designed to achieve power and control over them. The batterer

commonly claims the right to make all the decisions for the family and to have his partner and children follow the rules unquestioningly. Battered women report that batterers almost always prevail in major disagreements in the relationship. Batterers frequently monopolize speaking time, interrupt to stop any dispute, and use subtle and in-your-face methods of intimidation to control dialogue. They believe they are entitled to control all aspects of their partners' lives and are justified in resorting to any and all methods, including violence, to keep that control.

Therefore, batterers cannot "cooperate" in the mediation session and are unwilling (and virtually unable) to "cooperate" thereafter in the implementation of any agreement produced. On the contrary, they seek only those separation and divorce arrangements which permit them maximum access to their victims, i.e. the power to intrude upon their lives at will and to require interaction with them to make decisions or to acquire economic resources. Batterers thus almost invariably prefer mediated agreements or court orders which require frequent and continuing contact between themselves and their victims--one which require a high level of cooperation between the parties in implementation of the agreement or order.

Voluntary/Private vs. Mandatory/Court-Affiliated Mediation

Mediation may be either voluntary or ordered by the court. In voluntary mediation, the parties decide they would prefer this route to their final court order, select their mediator, meet for several sessions to work out the details of their agreement before giving it to their lawyers for final drafting and presentation to the court, and pay their mediator for each session by whatever terms they have agreed to. As indicated, a victim of domestic violence rarely if ever should volunteer for mediation with her abuser.

But what if she doesn't have a choice? A growing trend today is for state law or court rules to require separating parents and divorcing couples to try to reach agreement about custody and divorce issues in mediation and to give them access to litigation in court only if mediation fails. Couples generally start the mandatory mediation process by going to mediation orientation or screening. The court typically contracts with mediators to conduct these sessions. The couple is usually assigned to a mediator and has only a limited number of mediation sessions available to settle their differences. Where mediation is court-ordered, the parties may have to pay court fees which cover mediation costs, however the state or county may pick up some of the cost of mandatory mediation, especially for those who cannot afford these expenses.

Although in private mediation, the mediator is bound by state law or rules of ethical practice not to reveal what transpired in the mediation session and the reasons why the couple did not reach agreement, some communities require the mediator in cases where court-ordered mediation fails to report to the court the reasons for the failure and perhaps to make recommendations to the court about outcomes the judge might order. Thus, unless the mediator is well-trained and experienced in handling

matters involving domestic violence, he or she may fail to understand a victim's fear and distrust of engaging in the mediation process with her batterer and report unfavorably to the court about the victim.

Chances that the mediator will have such training and experience are slim. Certification requirements are minimal. They may require as little as two hours training on domestic violence, and none specify that the mediator should undergo the 40 hour minimum training that domestic violence programs offer to their volunteers and staff. Thus, in reality, most certified mediators are not knowledgeable about domestic violence, the patterns of abuse inflicted against adult and child victims and the adverse impact on survivors.

How to Escape Mandated Mediation if You Decide it is Not Right For You

In view of the inappropriateness of mediation where there is an imbalance of power such as exists in cases of domestic violence and the risk that the victim may be the one penalized if mediation proves unsuccessful, the question becomes how to get out of mandatory mediation if you want or need to. There may be several ways available:

- Opt out—in some communities, a victim can simply choose not to take part in mediation which otherwise would be required. The process may be as simple as including a statement in your pleadings or court papers that you and/or your child have been abused. In other communities, you may be able to opt out only if legal action has been taken against the abuser. In that case, you will have to include in your court papers the dates, court docket numbers, charges or legal action taken in order to exercise the opt-out option.
- Screening—although screening for domestic violence is still the exception rather than the norm, an increasing number of jurisdictions are requiring mediators to screen all court-referred or -mandated cases for the presence of domestic violence. The process is new and screening tools are still in the developmental stage, but screening might include such information as a review of any prior litigation between the couple, criminal and child abuse histories, prior and current protection orders issued, and compliance with support orders. Screening usually involves filling out a questionnaire which attempts to identify the details of the parties' history of family violence. A pamphlet is available from the National Domestic Violence Hotline entitled – Quiz, How is Your Relationship? Designed to help adults evaluate whether their marriage or partnership might be identified as abusive, the pamphlet might help court personnel and mediators screen for domestic violence. Call 800/799-SAFE to obtain a free copy.
- Assessment—in some jurisdictions, cases where domestic violence or child abuse is found are immediately screened out of mediation. More often, the mediator assesses the case to evaluate whether, despite the violence, it is appropriate for mediation. The assessment should follow these steps:

1. Assess past abuse. Where violence is frequent, injurious, terroristic, involves weapons (including firearms, motor vehicles, knives, and blunt instruments); includes multiple, sustained acts of violence; is witnessed by children or establishes patterns of coercive controls; mediation is not appropriate.
2. Assess "separation violence," violence which occurs at or after the time the abused person leaves the batterer, or even when the abuser suspects that his partner is thinking about leaving the marriage or relationship. Separation violence is often even more severe, frequent or frightening than prior abuse in the relationship and may involve stalking. It is designed to coerce the victim to return to the batterer and to make it clear that it will be safer to return than to pursue separation. If these tactics don't work, the violence may escalate to murder. Violence which continues after separation should rule out mediation as a process for resolving custody and divorce matters.
3. Assess the risk of future violence. A number of risk assessment tools have been devised, which typically look at a variety of factors:
   - Whether the abuser has made threats of homicide or suicide, and the extent to which he has attempted or planned either.
   - Whether the abuser is in despair over the ending of the marriage or relationship, including whether he sees death as a way to deal with the loss; whether he is without hope for the future, whether he can imagine life without the partner; and, where there are children, whether he can visualize a parental role independent of the relationship with the abused partner.
   - The extent to which the abuser believes he owns or is unalterably entitled to the battered partner and to her loyalty, service, obedience, care-giving, deference, and devotion.
   - Whether the batterer is increasingly risking his own personal safety or social and legal adverse consequences in pursuit of the abused partner.
   - Whether the abuser is acutely depressed or suffering from other severe mental health problems.
   - Whether the violence is escalating in frequency or severity.
   - Whether the abuser has used or is threatening the use of firearms against the partner or children.

- Whether the batterer is increasing the amount of drugs or alcohol consumed, is more frequently intoxicated or is otherwise changing patterns of consumption.

- Whether the abuser has unprotected access to the battered partner and children.

While the prediction of future violence is not certain, research demonstrates that the best predictor of recurring violence is past violence. When more than one of these factors is present, the danger of life-imperiling violence is significant and mediation should be found inappropriate.

4. Assess the impact of domestic violence on abused adults, the children and the batterer in evaluating whether mediation might yet be a safe and appropriate method for resolving divorce and custody disputes. The assessment must consider two things – capacity of the parties, and the possibility of reaching a fair agreement which fully protects the abused adult and vulnerable children. Will the battered woman be able to engage in any negotiation with the abuser in which she must assert a claim against his interests? Is she likely to trust that he will agree to conditions which would restrict his access to her or the children or include firm protections against future abuse? Is the batterer able to cooperate in pursuit of a fair and safe agreement through mediation? Can he engage in arms-length, non-coercive negotiation? Can he cooperate in carrying out the terms of a fair agreement? If the answer to any of these questions is negative, the case is inappropriate for mediation.

Making a Decision About Mediation

You should carefully evaluate all the dispute resolution options available in the community where you will be seeking a divorce or an order of custody. Mediation, negotiation and litigation may all be possible, but there are likely to be advantages and drawbacks to each. In evaluating whether to choose mediation, you should:

- Make a thorough assessment of the violence inflicted by the batterer and the continued risks posed by the batterer toward you and the kids.

- Evaluate whether you and the batterer can safely, competently and fairly participate in mediation.

- Figure out what the necessary outcomes of any custody or divorce process must be to ensure that you and your children can live safely and independently.

- Become knowledgeable about legal rights related to divorce and custody.

- Identify protections necessary to participate safely in divorce or custody proceedings and assess whether mediation or other method(s) can offer adequate protections.

- Investigate whether there is a specially designed mediation system for domestic violence cases.

- Determine whether mediators in your area are experts on domestic violence and child abuse.

- Evaluate whether participants are penalized if they withdraw from mediation before an agreement is reached.

- Ascertain what issues the law and/or court rules in your area allow to be mediated.

- Find out if mediated custody or divorce agreements in the context of domestic violence in your area contain standard protections, e.g. limitations on the abuser's access to you and the children, protected exchanges of the children for visitation, supervised visitation, posting of a bond by the batterer to ensure that he will comply with terms of the agreement, batterer counseling, prohibitions related to drug and alcohol consumption, and any costs resulting from carrying out the agreement assigned to the abuser.

- Ask to see several orders previously entered after mediation and determine if they contain any obvious biases unfavorable to battered women.

- Evaluate the costs of mediation and the amount of time it typically takes, as contrasted with the other methods of dispute resolution.

Taking all the above into consideration, you can make an informed assessment about whether mediation is a safe and just process for resolution of your divorce or custody matters. Before making a decision for or against participation in mediation, you should discuss your analysis with your advocate and your attorney if you have one. Whichever dispute resolution method you choose, you should continue regular consultation with counsel and advocates throughout.

How To Gather Evidence To Present At Trial

Ruth Jones, J.D.

Understanding the Law

Before you can decide what evidence to gather for trial, you need to understand what you must prove in court. The court will generally consider the best interests of the child in making custody decisions. In determining the best interests of the child, the court may consider factors such as which parent has been the primary caregiver, whether there has been a history of abuse, and financial ability to care for the children. Usually, the particular factors the courts in your jurisdiction will consider are listed in state statutes.

To find the applicable statute and learn what you must prove, consult with local organizations. Many communities have domestic violence organizations, victim services offices, and law school clinics that can probably help you. These organizations often have materials explaining the legal process and the relevant statutes. These groups may also help you prepare legal documents, gather evidence, and even accompany you to court.

Gathering Evidence

Once you have learned what you must prove in court, you need to prepare evidence to convince the judge to award you custody of your children. There are different types of evidence, including testimonial, documentary, and physical evidence. All of these different types of evidence can be used to prove your case.

Testimonial Evidence

The most important evidence the court will consider will be the testimony of witnesses. You will probably be the most important witness in your case, so it is important that you present the most effective testimony. When you go into court, you must prove to the judge that you should get or retain custody of your children. Many people have difficulty testifying in court because they want to tell the judge their story in the same way they would tell a friend a story.

The judge, unlike your friend, will be less interested in hearing about your feelings than hearing facts about why you are the better parent. Therefore, you should describe events or state facts that show why you should have custody of the children. For example, stating that the children would be better off with you because you love them will not be the most effective testimony. The more effective testimony will not only tell the judge that you love the children, but will also describe how you have been the parent responsible for feeding the children, taking them to school, and taking them for medical checkups.

When describing events for the court, it is important to provide the date, time, and place that events occurred. If you cannot remember the exact dates when events occurred, you can give approximate dates. You should also give the details of events. An excellent way of preparing your testimony is to write an outline of what you need to tell the judge. This outline can also guide you in

gathering physical and documentary evidence to corroborate your testimony and the testimony of other witnesses.

Most jurisdictions now require the judge to consider evidence of abuse between the parents in making custody decisions. The court's primary concern will be the impact of any abuse on the children. Therefore, your testimony should describe any abuse in detail and include a description of how it has affected the children. You can explain how the children were affected by describing incidents of abuse when the children were present and any behavior or statements the children have made showing their awareness of the violence.

Besides hearing the testimony of the parents, the court will also consider the testimony of other witnesses. If there are witnesses to the abuse, you should ask that they accompany you to court to describe what they saw to the judge. Also consider witnesses who can testify about your parenting skills and your relationship with the children. Your witnesses may be able to testify about events to show that the other parent should not have custody. Although your children may have witnessed violence against you, many courts will not hear testimony directly from the children. Depending on the age of the children and the practice of the court in your state, the judge may appoint a lawyer or social worker to tell the court what the children observed and their views on custody.

Although each case will require different testimony based on the particular, consider the following topics when drafting your testimony.

Testimony Topics

A. Relationship Between the Parents

1. What is the current status of the parties?

   Are you married, divorced, living together?

2. Is the father named on the birth certificate, or must paternity be proven?

3. Which parent has had primary responsibility for the children?

   Who prepares them for school, prepares their meals, arranges childcare, takes them to the doctor for checkups, and helps with homework?

4. If you have not been the primary caregiver, how have you been involved with children?

B. Evidence of Abuse

1. How long has the violence been going on?

2. How have you been injured? Describe incidents of violence in detail with dates, times, and places if possible.

3. Has the violence increased in the last few years or months?

4. Does the abuser have access to a weapon?

5. Have the children been abused? If so, describe the incidents in detail, giving dates, times, and places.

6. Have the children witnessed the abuse against you?

7. How have you protected the children from abuse?

8. Have the children made any statements about the abuse, had nightmares, or difficulty in school?

C. Custody Arrangement Requested

There are various custody arrangements the court can order, such as joint custody, physical custody with visitation to the non-custodial parent, and supervised visitation.

1. What type of custody arrangement are you requesting, and why would this arrangement be in the best interest of the children?

2. If you are seeking supervised visitation, how and where will the visitation take place?

D. Response to Respondent's Allegations

The other party may attempt to contradict your evidence or to show that you are not capable of properly taking care of your children. Usually, the other party must provide a written notice of his/her allegations against you. You must not only deny these allegations or explain the circumstances in your testimony, but you should also gather other evidence to support your testimony. You may need to respond to the following allegations:

1. That you have acted abusively toward him and/or the children.

2. That you have been using drugs.

   He may describe the way you look and act.

3. That you have been neglecting your children.

   He may have phoned Child Protective Services.

4. That you have been unstable or have a mental condition that prevents you from being a good parent.

5. That you have been acting immorally in front of your children (e.g. engaging in sexual activity in front of them.)

6. That you have been unable to get or hold a job (no welfare.)

7. That you are living in a bad neighborhood and leaving the children in a stranger's care all or most of the time.

E. Other Respondent Arguments

The children's father may make additional arguments to prove that he should have custody. These arguments may include the following:

1. He may have a new wife or girlfriend who doesn't work and is able to take care of the children at home.

2. He may have a steady income with which he can give the children more than they need.

3. He may own his own home and live in a safe, quiet neighborhood.

Physical and Documentary Evidence

Once you have outlined the possible trial testimony, you need to gather physical and documentary evidence to corroborate the testimony. You should start gathering evidence as soon as possible because there will frequently be a lengthy delay in getting a response to your request for documents. You should bring at least two copies of the documents to court so that you can leave one copy with the court. The type of evidence needed in each case will depend on the specific factual allegations. In considering the evidence, you must prove your case. Consider the following examples of physical and documentary evidence:

A. Evidence of the Relationship Between the Parties

Courts can only hear cases when there is a certain relationship between the parties. This means that you must be ready to prove the relationship. Evidence of the relationship includes a marriage license, birth certificates, baptismal papers, and divorce or separation papers. If you don't have copies of these documents, you can get copies for a small fee at a local government offices, usually the county clerk's office where the event occurred.

B. Evidence of Abuse

In addition to your testimony about abuse, you should bring to court as much documentary or physical evidence as possible to prove that you were abused by the other party. Such evidence might include:

1. Certified copies of medical and dental records.

   Since medical records are usually confidential, you will probably have to sign a release for your medical records. If your doctor or hospital does not have a release form, you can write a letter requesting a certified copy of your medical records. Include the dates of treatment, your date of birth, and the name of the treating physician in the letter requesting the record.

2. Photos.

   Bring to court any pictures of injuries caused by the other party. You don't have to remember who took the picture, but be able to state when the picture was taken.

3. Copies of police reports and 911 calls.

   States differ in how you can get copies of these materials. Contact the precinct where you filed the police reports to learn how to get copies. Local victim services organizations may also be able to help you.

4. Threatening letters or cards written by the batterer.

5. Answering machine tapes of threats or other statements by the abuser.

   Make sure to bring a tape recorder to court to play the tape.

6. Diary or letters you have written describing the abuse.

   Keep in mind, however, that if the diaries or letters are considered by the court, they will not be kept confidential.

7. Copies of restraining orders, petitions, etc. issued by court.

   If you do not have copies of these documents, get certified copies from the clerk's office where the orders were issued.

C. Other Legal Proceedings

In some jurisdictions, abuse cases are handled in several different courts. You should know the status of all proceedings and have copies of any settlements or judgments.

The status of criminal cases is also important information to present. If there are criminal cases against the other party, bring the name and phone number of the prosecutor handling the case. You should get the status of the criminal case before going to court on the custody case.

D. Evidence About the Children

The court will be interested in the physical and emotional condition of the children. Even if the judge appoints a lawyer or social worker to give an opinion on the best interests of the child, you will want to bring your own evidence to show that the existing custody arrangement should be made permanent or that the custody arrangement should be changed. The following are some suggestions for custody evidence:

1. Copies of the child's school or daycare records.

2. If the children are in counseling, a copy of the counseling records.

3. Medical records of the children.

4. Letters of support.

   If you can't get witnesses to come to court and testify about your parenting skills, bring a notarized letter from a doctor, teacher, school principal, or a scout leader describing observations of you with your child.

5. Pictures of your home.

   If there is an issue about your ability to provide an adequate home for the children, you may want to bring pictures to court of where the children will live.

6. Evidence of proposed visitation arrangement.

   If you are requesting supervised visitation, you need to have a plan for who will supervise the other parent's visits with the children. You should have a letter from the individual or group that agrees to supervise visitation.

E. Information About the Other Parent

It is useful to have a recent photo of the other parent in case you need to give it to the police or process servers so that they can locate and serve papers on the other parent. In addition, if you know that the other parent has a criminal record, request his record from the police department. You will need to provide them with his name and date of birth.

F. Response to the Other Parent's Allegations

If your mental health has been raised as an issue by the other party, you must carefully consider how to present evidence of your mental condition. If you have been in counseling, consider having your counselor testify to explain your condition. Find out what they would say in advance, however, so you can make an informed decision about whether or not they should testify.

You will need to present information about your financial resources and show how you will support the children. Consider including pay stubs and letters from employers. If you are looking for a job, be prepared to describe what you have done to find employment. If you have other sources of funds, such as savings or friends, bring bank statements or letters to verify them.

Allegations of drug and alcohol abuse are a serious charge. If you do not have a problem with drugs or alcohol, you must tell the court this and provide explanations for any unusual behavior. If you have had a problem with drug or alcohol abuse in the past, provide evidence that this is no longer a problem. Such information might include the treatment you have received and how long you have been drug or alcohol free. More information about drug and alcohol abuse is also included in this booklet.

Conclusion

Evidence can be a powerful tool in proving to the court that you should have custody of your children. The key is to think creatively about proving what happened to you and your children.

Unsupervised Visitation and Safety Planning

Donna Medley

Because safety planning cannot guarantee safety in unsupervised visitation, the best initial strategy may be to pursue vigorously an order for supervised visitation (if any potential contact is denied). Whether you get an order for supervised or unsupervised visitation, you should ask the court to include terms that support a safety plan. For example, the judge can:

- Order the father to attend a batterers' education program, an alcohol/substance abuse program, and parenting classes.
- Restrict the batterer from consuming drugs or alcohol before and during the visitation.
- Designate a safe, neutral drop-off/pick-up location.
- Require anything reasonable to accomplish the purpose of the order.

If you think unsupervised visitation would not be safe for you or your children but the court did not rule in your favor, there are still some measures you can take to protect yourself and your children better.

Safety Planning

How you approach your children to present the idea of safety planning will set the tone. If you appear fearful and hopeless, the children will probably share your feelings and are not likely to follow the plan. On the other hand, you can explain to them that there are times when children or adults might be hurt or be afraid of getting hurt, so planning and practicing what a person can do to get away from being hurt or to get help is a smart thing to do.

The point is to communicate a sense of purpose and action and to place the possible harm involved in the visitation in the same category as other events in a person's life that might be harmful. A safety plan can be developed for situations like fire safety, keeping persons safe, safe touch, bicycle safety, street and school safety, etc. This larger view of safety planning takes the focus away from the personal. It will help the children know that they are not being asked to blame their father or to choose one parent over the other. At the same time, multiple safety plans can reinforce basic principles, such as:

- No one has the right to be violent.
- Children have the right not to be harmed.

- A person can't control another person's violence.
- Children have the right to plan how to avoid or respond to harmful situations.
- Children have the right to get help to stop someone from hurting them.

Safety plans are generally done with a child seven years or older. However, some pre-schoolers can be taught to dial 911 and not to hang up, even if they can't utter a word. Also, many 911 services can track calls even if the caller hangs up. The safety plan should be kept simple and age appropriate. *Review* it regularly and make changes for changing circumstances. It should also be practiced regularly.

The following are some steps to child safety planning that have been suggested by formerly battered women, shelter staff, and other child advocates:

A. Name everything you have noticed in the past that may be a clue that violence is about to happen.

1. Who was around? What did their faces look like? What did their voices sound like?
2. What words and hand movements were used?
3. Where were people hurt? Where might you get hurt?
4. What time of the day or night was it when people got hurt?
5. What was on TV?
6. What special thing happened that day?
7. What were people talking about before the violence started?
8. Were people using drugs or drinking a lot? How did they act?
9. If you were a light in the room where the violence took place, what else would you notice?

B. Draw a safety map.

1. Draw the places where you weren't safe because you or someone in the house was hurt. Color code those places "red".
2. Color "green" the doors, windows, elevators, stairwells, or fire escapes that you could safely use to escape an unsafe place.
3. Mark black dots where each telephone or computer is located.

If you make a call or use a computer to contact someone for help, the call or computer message might be erased, so don't use them if you have other ways to get help, unless it's okay if the contact is discovered or in an emergency.

4. Place an X if you know where any guns or other weapons are kept.
5. Place yellow dots anywhere you can easily and privately keep your "safety treasure box."

   A safety treasure box is your own collection of help tools, like:

   - An address book with helpers' names and phone numbers;
   - Pictures of your mom, dad, and you;
   - A copy of your mom's custody or protective order;
   - Emergency cash for phone calls or bus or taxi fares;
   - A small note pad and pen to write messages;
   - A cell phone or a panic button, if needed and available;
   - Any special thing that makes you feel strong, safe, and loved.

C. Practice asking for the help you need.

1. Make a list of all your helpers, their addresses, and their phone numbers.

   Your helpers are mom, mom's friends, family, police, doctors and nurses, domestic violence hotline, school teachers, counselors, friends of faith, dad's neighbors, etc. They must be trusted adults who agree to help if you call them or use a code word for "help."

2. Choose your code word for "help."
3. Know how to dial 911, say where you are, and ask for help.

   Don't hang up, even if you don't know where you are. Know how to leave a message with an answering service. Know how to use automatic dial numbers on the cell phone.

4. Even if you don't know what kind of help you need, you can tell a helper what made you upset or hurt.

   Always tell the truth when you're asking for help. If an adult asks you a question, it's okay to say you don't know or you don't remember if that's the truth.

5. Know when you need to yell or run for help.
6. Besides asking for help, you can try things to keep safe.

   What have you tried in the past? How did it work? What didn't work? What else could you do?

D. Know and trust your feelings.

1. Keep a visitation journal.

   When you return home, write down (or draw) important feelings you had (good and bad). What was happening? Why do you think you felt that way? Do you want a trusted adult to help you understand your feelings?

2. Sometimes words can hurt a great deal.

   This includes not just name-calling, but words that are used to threaten you or someone you love, to make you promise to keep secret something that's uncomfortable, or to make you think something terrible has happened when it hasn't. Check out words that have scared you or made you uncomfortable with a trusted adult. Ask for examples of things you can think, say, or do when someone uses words to hurt or confuse you.

A child's safety plan can be developed by the child and you, the child and an advocate or counselor (sometimes advisable when your credibility or motivation is under attack), you alone, or you and an advocate (when the child is too young to participate). There is no single format or a 'right' set of questions.

A short version of a safety plan may be useful for immediate situations. A thorough plan can be developed over time. A safety plan is only as good as it is useful; feel comfortable revising it or seeking court protection if it doesn't work.

Even though a safety plan cannot be expected to control violence, it can help children to learn and practice protective and empowering skills. It can strengthen the relationship between you and your children by sharing feelings. It can teach children to respect themselves and to expect respect. And, finally, safety planning should involve your community in stopping violence and providing the help that you and your children deserve.[1]

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[1] Please see Appendixes for sample safety plans for adults and children.

Tips For Dealing With Custody Evaluators, Gal's And Casa's

Lee S. Rosen, J.D.

When you deal with people who are investigating what goes on in your family, you need to think about what you tell these people. Probably the most important thing to understand is that court personnel may not have had adequate training in the issues of domestic violence. Even if they had some training, they may not have had much experience with cases involving domestic violence. Therefore, you may need to educate these people about what your life has been like and about why you acted the ways you did.

Before you talk to evaluators, guardians *ad litem* (GAL's) or court appointed special advocates (CASA/s), you should step back and look at the ways that your abuser tried to maintain control and power over you. Once you think about the things he did and how you reacted, you may realize that you acted in ways that would reduce both the severity and/or the frequency of the domestic violence. So even when you were not taking any obvious actions, you might have been preventing greater harm.

Above all, evaluators, GAL's and CASA's want to know that you did everything you could to protect yourself and your child from violence, even when what you did do might look, to the uninformed observer, as though you were 'sitting tight.' Evaluators and GAL's need to see that you may have chosen not to take action precisely in order to prevent further and worse violence. This is a fundamental thing to keep in mind when you are involved in interviews with people whose job is protecting children. You need to explain to them why you didn't leave or why you didn't remove the children from the house sooner than you did. The reason is often that you were afraid everyone would get more hurt, or killed, if you did take such action.

But, there are other things you should remember as well when you meet with evaluators, GAL's and CASA's. First, ask questions about what particular matters or issues the GAL or CASA had been assigned to investigate. In other words, find out as much as you can about how the GAL or CASA sees his or her own function in the court process. Ask whether what you say will be repeated to anyone else (the batterer, the judge, a district attorney, an agency case worker) or whether what you say is kept confidential. Find out, too, what specific tasks the GAL or CASA intends to carry out, and over what period of time. With whom will he or she be conducting interviews? Are there other people you can suggest they should talk to? If so, tell them what you think these people have seen or know about. What records will the evaluator be reviewing? Are there other records you think they should see? If so, let them know about those, too.

For all of your own interviews with the evaluator, be as prepared as possible. This means being able to present detailed information about your child's life: what the child's daily schedule is like; what sort of clothing, health and school needs the child has; the names of other professionals who have been involved with the child (for example, doctors, school officials); the names of all other people who have regular contact with the child; and what your child has disclosed to you about life with your batterer. Be able to explain, too, how you chose the child's physicians, dentists, and daycare facilities. Remember that the evaluator should see you as a person who is very involved in your child's life and as active as possible in looking out for your child's welfare. Taking in your child's drawings and school records to show the evaluator will also demonstrate your level of involvement with the child.

With respect to incidents of domestic violence, try to give as clear a picture as possible about what went on between you, the batterer and the child or children. When did the violence occur? How many times? Whom did the batterer abuse each time? What action(s) did you take, if any? If you called the police, do you have the names of the officers you spoke with? If you went to the hospital, when was that? Did anyone take pictures of the physical effects of the battering? If possible, gather up photographs and other physical evidence to show to the evaluator. Were there eyewitnesses who can corroborate the abuse incidents? Do you have any suspicions of sexual abuse of the child? If so, what did you do about such suspicions? If you didn't take any action, be prepared to explain why or what other ways you explored for safeguarding the child.

In addition to being (1) careful that the evaluator understands why you did the things you did and (2) as prepared as possible to talk about your child's needs and your child's life, take an active role in the evaluation process by (3) doing the things outlined in this short article. Be cooperative in coordinating appointments for evaluation interviews with yourself and the child; speak up about what you would see as the best outcomes for yourself and the child; take care that the child's comfort will be assured in his or her interviews with third parties. With this sort of planning and advance preparation, a system that sometimes goes awry is less likely to go awry.

Sample Language For Pro Se Custody/Visitation Orders

General provisions.

Visitation between father and child shall take place every (specify which day, or which days, of each month) from (time of beginning) to (end of visitation) at (fill in place) in the presence of (name supervising person, if the visitation is to be supervised).

Mother (or her designate) shall be responsible for dropping off the child for visitation at least 10 minutes prior to the beginning of the visitation period and for picking up the child no later than 15 minutes after the end of the visitation period. Father shall leave the place where visitation occurs prior to the arrival of mother or her designate for pick-up of the child; and father shall not stay in that area awaiting mother's arrival for pick-up of the child. Father's failure to obey this anti-harassment provision

Father shall not use alcohol or illegal drugs during visitation with the child, and also not during the twenty-four hour period prior to visitation. Should the person monitoring drop-off of the child for visitation suspect that father has violated this provision, then visitation shall be denied on that occasion.

During visitation with the child, father shall not travel with the child more than ____ miles from the drop-off/pick-up point for visitation.

Visitation with the father may be denied as to any specific scheduled visitation under this order, if father is more than 30 minutes late for a scheduled visitation and has not contacted mother (or her designate) to explain the reasons for his delay.

Provision concerning assistance of third party.

(Name of person) has agreed to assist the parties in transporting the child from mother's place of residence to father's place of visitation. If father is not at the place for visitation at the appointed time and the delay has not been announced in advance and excused by mother, (name of person assisting) shall be entitled to return the child to mother.

Provision concerning protection against abusive non-parents.

While the child is visiting with father, father shall protect the child from emotional and physical abuse by other persons, including but not limited to (name[s]). If mother deems it necessary for the child's protection, she may prohibit father from bringing the child into contact with such person or persons, including but not limited to (name[s]). Father's violation of this provision shall disqualify him from continued visitation under this order.

shall entitle mother to suspend all future visitations in order to protect herself and the child. If she wishes, mother may travel accompanied to and from these drop-offs or pick-ups from visitation.

Father's visitation shall be supervised by (name of professional). Father shall pay $_____ per visitation to defray the costs for such supervised visitation.

Provision concerning use of public place (for exchange).

(For use when there is no third-party supervision of visitation and no other person assists with exchange of child) Drop-off and pick-up of the child shall occur at the police station at (address), in the lobby. Father shall remain with the child at least 20 minutes at the station after the mother has dropped off the child and mother has left the station. At the end of visitation, father must remain at the station for 20 minutes while mother leaves with the child.

Provisions regarding particular conditions.

Commencement of father's visitation with the child shall be triggered by father's completion, to the satisfaction of this court, of the following program for perpetrators of domestic violence: (name of program). Or until father has completed, to the satisfaction of this court, the (name of program) for perpetrators of domestic violence, father shall not have any overnight visitation with the child.

Visitation between father and child shall be conditioned upon father's receiving weekly counseling from (name of group or person) for (fill in number of) weeks, beginning with (date). The goal of such counseling shall be (fill in blank, whether parenting therapy or individual therapy or some combination thereof). Mother shall be entitled to contact (group or person) to verify that father is attending such sessions; and father has agreed to waive his therapist-patient privilege to the extent of permitting mother to receive this information about father's attendance. Should mother learn that father is not attending these counseling sessions, mother shall be entitled to deny visitation to father.

Continuing visitation between father and child shall also be conditioned upon father's paying for the child's mental health treatment with (name of provider). Such treatment shall consist of (specify frequency of visits between child and mental health professional), and shall continue until the treating professional deems treatment had been satisfactorily concluded. Father may pay for such services directly, or through his health insurance. Those charges not reimbursed by health insurance, however, shall be paid for entirely by father.

In the event that father is unable, because of his work schedule, illness or other emergency, to arrange for a particular visitation, the parties shall endeavor to arrange for an alternate day to replace the missed visitation for the same period of time.

Child Support, Paternity Establishment, and Privacy Protections

Marilynn Sager*

For many battered women, regular child support payments are crucial to making ends meet and remaining independent. This section will tell you about some of the basics of getting support for your children. Every case is different, though, so this is not a substitute for getting legal advice from a local attorney or child support agency staff person who knows your situation and the laws in your state.

Child Support Enforcement Agencies (IV-D Agencies)

Child support is one of the only areas of family law where the government will help you with your case for free or for a very low fee. Every state receives Federal money to enforce child support and is required to have certain kinds of child support laws. The state child support enforcement agency is often called the "IV-D agency" (pronounced "4-D"), after the section of Federal law that covers child support. The IV-D agency in your state may be part of the welfare department, the department of social services, the department of revenue, the family court, or the district attorney's office. Also, some states have local child support enforcement agencies in each county, instead of one state agency.

If you receive welfare or Medicaid, your case will automatically be sent to the child support enforcement agency, unless you claim "good cause." (See "Child Support and Public Assistance" section below.) If you do not receive public assistance, you can receive child support enforcement services by filling out an application and, in some states, paying a small fee.

Your child support enforcement agency can help you:

- Find the address of the other parent of your children.
- Establish paternity.
- Get court orders for child support and health insurance.
- Collect and keep track of payments.
- Enforce your support order if the other parent does not pay.

Child Support Orders

Every state has its own "child support guidelines," which are used in almost all cases to calculate how much support one parent must pay the other. These guidelines are mathematical formulas that look at factors like the parents' income, how many children there are, how old they are, and other needs such as day care and health insurance. The formulas are often complicated and are different from state to

*Senior Counsel, Massachusetts Department of Revenue, Child Support Enforcement Division. This article represents the opinions and legal conclusions of its author and not necessarily those of the Department of Revenue.

state. You should be able to get a copy of your state's child support guidelines from your child support enforcement agency, family court, or an attorney.

Using guidelines means that in most cases, the court simply asks for each parent's income, does the math, and enters a child support order. If the other parent of your children works at a job with regular hours where taxes are taken out of his paycheck, there will be very little to argue about when it comes to deciding the amount of child support. Your case may be more difficult if the other parent's income is hard to predict because he is self-employed, works seasonally, or is currently unemployed. In these cases, you should gather as much information as you can to show the court what you think the other parent is or could be earning. This could include information about special skills (for example, an electrician's license), lifestyle (an expensive house or car), and past earnings (tax returns and old pay stubs). Also keep in mind that unemployment benefits, workers compensation, and certain other benefits count as income that can be used to pay child support.

In some states, both parents are required to bring information about their income to court. In other states, you may need to find out the rules for getting the other parent to produce financial records and for getting the judge to accept them as evidence.

Child support orders are usually set for weekly or biweekly amounts, depending on how often the parent paying support is paid. The parent who owes support is also called the "obligor." As long as the obligor is regularly employed, payments should be made through "income withholding" (also called "wage attachment" or "wage garnishment"). This means that the obligor's employer must take child support out of his paycheck, just like taxes, and send the money to the child support agency, or sometimes the court, which forwards the payments to you. (If you receive welfare, see "Child Support and Public Assistance" section below for more information.)

Federal law requires courts to order income withholding in all cases, unless a judge finds there is a good reason not to order it (usually that the parent is self-employed or not working regularly) or both parents agree not to have income withheld. Income withholding is the most reliable way to ensure that you and your children receive the support you need and deserve. Since the checks are written by the employer and processed by the child support agency or the court, you can avoid contact with an abusive parent who might otherwise insist on delivering checks in person to harass you or could include threatening notes with checks sent by mail. As long as the obligor has income that can be withheld for support, you should insist on having the court order withholding.

In addition to cash support, child support orders should require the parent paying support to provide health insurance for your child.

Child support will generally be ordered until a child turns eighteen. In a number of states, support is available past age eighteen for children who are still in high school or attending college.

Interstate Cases

If you live in a different state from the parent who owes you support, your case is likely to be more complicated and take longer. Congress has required states to put in place many child support laws and procedures that will make it easier to process interstate cases. As of January 1, 1998, all states are to have made the Uniform Interstate Family Support Act (UIFSA) part of their state laws.

UIFSA is a set of standard rules for which state's courts can decide a child support case when the parents live in different states. These rules are very complicated - if you have an interstate case, you should seek assistance from your child support enforcement agency.

Enforcement

When the other parent does not pay what he owes under a support order, you will need to take action to enforce the order. Some of the ways that your local child support agency may help you collect on your order include:

- Filing a contempt case in court.
- Intercepting tax refunds.
- Putting liens on houses and other property.
- Seizing money from bank accounts.
- Revoking driver's licenses.
- Reporting child support debts to credit bureaus.
- Criminal prosecution.

Some of these enforcement actions, such as contempt, are also available through private attorneys.

Paternity Establishment

If you are not married to the father of your children, you will have to establish paternity, or make him the legal father, before you can receive child support. The easiest way to establish paternity is for both parents to sign a voluntary acknowledgment of paternity. Federal law now requires that unmarried parents have a chance to sign one of these forms in the hospital when their child is born. The father's name cannot be put on the birth certificate until both parents sign an acknowledgment form or a court enters an order establishing paternity.

If you have any doubt that a man is the father of your child, you should not sign the acknowledgment form and should ask your child support agency for help getting genetic testing. In most states, these tests no longer require you to give blood. Instead, there is a much easier process called buccal swab testing. This involves collecting cells by wiping large cotton swabs inside the mouths of each parent and the child. The test can be done on infants.

It is important for you to think about paternity establishment issues before you have your baby - in most hospitals, you will be offered the chance to sign an acknowledgment form right after you give birth. Establishing paternity gives your child a legal father and allows you to seek child support. It also gives the father a right to seek visitation or custody. In a few states, the mother has custody of the child if she is unmarried until a court orders differently. In other states, both parents have equal access to the child. If the father of your child is abusing and you have concerns about your safety or the safety of your child, you may need to assert "good cause" (see Safety and Privacy Protection) for not identifying the father of the child. Or you may live in a state that provides a confidential address for battered

women receiving child support. Consult a local battered woman's program, a family lawyer, or the IV-D agency about the rights and remedies available to you.

If you are married when your child is born, your husband is generally presumed to be the legal father of your child. This is true in most states as long as you are not divorced, even if you have been separated for a long time. If you are married to someone else and want your child's biological father to be named the legal father, you will probably need to go to court. The law in these cases is complicated and different in every state. You should speak with an attorney or your child support agency for more information.

Sometimes, a husband will try to fight paying child support by saying that he is not the father of children born during the marriage. Usually, courts will dismiss these accusations, especially if your husband is the only father your children have ever known. However, if your husband asks for genetic tests and you object, it is important for you to do so before the tests are done. Again, the law in these cases can be complicated, and you should seek legal advice.

Child Support and Public Assistance

If you receive public assistance, you are required to sign over your right to receive child support to the state. Your case will be automatically referred to the child support agency, which will start a case to establish paternity, if necessary, and to get a child support order. You will be asked to provide information about the father of your children and to show up in court. If the amount of support paid by the father of your child, combined with any money you earn, is more than your monthly benefits, you will stop receiving public assistance. If the support payments are not high enough for you to leave welfare, the state will keep the support to reimburse it for your benefits. In some states, you will receive some of the child support paid, up to a certain amount.

If you believe that helping the state to collect child support from the father of your children could endanger your safety or your children's, tell your caseworker that you want to claim "good cause." Each state has its own rules for good cause, but you usually can make a claim if you are a victim of domestic violence or your child was conceived as a result of rape or incest. You will need to provide evidence to support your good cause claim, such as a restraining order, medical records, or your own written statement. Battered women's programs, legal services lawyers, and the welfare agency itself may be able to help you with collecting evidence and proving good cause. If the state approves your good cause claim, you will not be required to cooperate with child support enforcement.

Safety and Privacy Protections

If you have been in an abusive relationship, a strictly enforced child support order can help you be financially independent, but it may also provoke a violent partner who sees he is losing his economic control over you. Your safety plan should include plans for when and how you can seek child support without risking harm to yourself or your children. Ask your child support agency how they can help you get support safely. They may be able to keep your address off of court papers, keep the other parent in court longer so you can leave without being followed, or ask the judge to excuse you from coming to court.

Finally, if you have fled domestic violence and live in a confidential location, you should ask your state child support agency what you need to do to safeguard information about yourself in the Federal Parent Locator Service (FPLS) databases. FPLS is a Federal information service that is used to locate parents in child support cases. FPLS information can also be used to locate parents in custody, visitation, and parental kidnapping cases.

To improve child support enforcement, FPLS will be expanded over the next two years to include information about child support orders, addresses, employers, and social security numbers of parents and children. Information from FPLS is only available to certain categories of people, but your batterer could get your address as part of a custody, paternity establishment, or support case.

Under a new Federal law, FPLS and state child support agencies must take steps to avoid releasing the addresses of domestic violence and child abuse victims in certain circumstances, although courts will still be able to get this information. Your child support agency should be able to tell you what privacy protections are available and what actions you can take to reduce the chance that your address will be released to your batterer.

Guidelines For Selecting An Expert Witness

Terry Risolo, Psy.D.

Domestic violence is fostered in an atmosphere of silence. Frequently, women are ashamed and afraid to reveal the nature and frequency of the violence they experience. Once a woman can pursue legal action against her batterer, either in civil or criminal court, she may need to use the services of an expert witness. The role of the expert witness is to provide a framework in which past and current events can be understood by the Court. The expert witness may be key to having the Court understand the validity of the victim's claims, thereby leading to a finding of liability against, or the conviction of the perpetrator.

There are several considerations in the selection of your expert. Prior to choosing an expert to work with you on your case, it is important to decide what you want the expert to do. Professionals in the field of mental health call this a "Referral Question." You must specify in advance the scope of the work you want the expert to perform. By developing a precise "referral question," you can find the expert who can provide you with the most help.

For example, do you want/need an expert to "educate" the Court? An expert can explain who the victims are, how the issues of power and control come into play, and the demographics of this crime, including the social and economic attributes of victim and abuser. An expert can provide an opinion about child visitation issues and/or custody, since these are frequently problematic in domestic violence cases.

In other cases, you may need an expert who can educate the Court about mental health diagnoses. If so, you want an expert who can provide a "diagnostic evaluation," as it relates to clinical states, such as Post Traumatic Stress Disorder. Do you need a child custody evaluation, recommendations for treatment? You may need someone who can provide all of these services: educative, diagnostic assessment, and treatment recommendations.

Careful consideration in the selection of an expert will increase your ability to present the Court with relevant information about the issues of domestic violence as they relate to you and your family. Once you have selected your expert, provide her/him with all relevant information. Your expert can best prepare for the case with a thorough understanding of the facts and issues involved in your situation. The following checklist will assist you in deciding what factors are important in retaining an expert in your case.

Criteria Checklist

A. What is the educational background of the expert you are considering?

Know the laws that define who is allowed to testify as an expert. Are there any special provisions in the state domestic violence codes or mental health codes about testimony? Must the person hold a doctoral level degree (M.D., Psy.D., Ph.D.), or can the expert's training be at the Master's level (M.S.W.)?

B. What is the professional background of the individual you are considering?

Know the kind of professional experience that can help provide the Court with relevant information. Is it more important for the expert to have child welfare experience, or is it necessary to have an individual who is a diagnostician? Is experience with individuals who have been abused the more relevant work experience? Is there an administrator of a domestic violence shelter who can help?

C. Which records or other information might your expert need?

Documentation is important for the expert's review and evaluation. Provide police reports, medical/hospital records, school records, absenteeism records of all children and yourself, calendars that show dates of important events, and diaries.

D. Will the interviews/assessment result in a written report? Is this expert willing to testify in a deposition, a court hearing, in chambers with a judge?

Know the scope of the work to be completed, including interviews, review of documents, and psychological testing.

E. What is the expert's experience in providing testimony or written reports?

Know the other kinds of cases in which the person you're considering has acted as an expert witness. Request a list of trials or hearings in which she/he has participated. Do not eliminate a qualified individual with limited trial experience. These candidates are often more appealing to Courts because they do not appear to be a "hired gun."

F. What compensation is requested for different types of work, e.g. assessment versus trial work?

Know if the expert has a retainer agreement. Ask about the fee schedule and if you can pay over a period of time.

G. What kind of rapport is developed in your conversations with this expert? Can you be open and honest with this person?

Know the kind of qualities that are important to you in a professional relationship. It is most important that you are comfortable with them. You must reveal intimate details of your life, many of which may make you feel ashamed or embarrassed. Your contact with the expert will require honesty and vulnerability; be certain that you can establish a good working relationship.

Relocation: Things You Should Know Before You Relocate With Your Children

Billie Lee Dunford-Jackson, J.D.

If your abuser is the father of your children and you are planning to relocate, it is important to take certain steps to make sure you have and keep custody, whether you will stay in the same state or move to a new one. There are four possible combinations of facts, including whether or not you have a custody order and whether or not you will move to a new state. What follows are the things you need to know about each of these possible combinations of facts in your situation:

You Have a Custody Order and Plan to Move Elsewhere in the Same State

If you have a custody order and plan to move somewhere within the same state, check your order to see whether it requires you to get the court's permission to move. If it does, you must take whatever steps are necessary in your state to get before the court to let the judge know the following:

1. The reasons you are moving.

   For example, when you are the victim of domestic violence, you may need the safety of not living near your abuser. You may have access to a better support system in your new location (friends, family). You may be moving to get or better your employment.

2. Your need for the court to keep your new home and work addresses and phone numbers under seal so the abuser cannot get them.

3. The need for visitation, if any, to be supervised, and the need for the abuser to pay all visitation expenses and do the necessary traveling to the place where the visits will occur.

One of the steps to take is to serve your abuser with notice of the date and time of the court hearing and what you intend to ask the court to do (allow you to move; keep your new address and phone numbers confidential; require visitation, if any, to be supervised). Each state has laws about how to serve the other party and how far in advance of the hearing the notice must be served.

Even if your order does not require you to get the court's permission to move, it is probably a good idea to go through these steps in order to give the court advance notice of your plans. This keeps the abuser from taking you to court and asking the judge to change custody on the grounds that your moving will interfere with his visitation or his relationship with the children. It would be difficult for him to convince the judge that the reason for your move is to interfere with his rights if you are the one bringing this to the court's attention and you are doing it before you move, even though your order doesn't require you to.

You Do Not Have a Custody Order and Plan to Move Elsewhere in the Same State

If you don't have a custody order and plan to move somewhere within the same state, you need to get a custody order to keep the abuser from getting custody. The only question is whether you should get it in the county or city where you and the children have been living or wait and get it in your new county or city. Every state has its own laws about the county or city in which a custody petition must be filed. Usually, a person asking for custody must file the petition in the court of the city or county where the child has been living, since that is where witnesses from school, daycare, doctor, circles of friends and family members, etc. are likely to be located.

You Have a Custody Order and Plan to Move to a Different State

If you have a custody order and want to move with the children to a new state, what is your abuser likely to do? Will he go to court to try to get custody? Will he follow you and continue the abuse? These questions bring up another one: which state's court will hear any matter that you or your abuser files? The last thing you want is to be fighting in the courts of two different states at once. That is why every state has enacted some form of a law called the Uniform Child Custody Jurisdiction Act (UCCJA). When you move across state lines with your children, the UCCJA will determine which court will hear any matters that you or your abuser files about your case.

The state where you, your abuser, and the children have lived for at least six months is called the "home state." It is usually the state where any matters having to do with the parties and/or their children will be heard. Sometimes there are exceptions, though. Here are some examples:

- If an emergency exists so that your or the children's safety is at risk after you move, you may be able to get your new state to take emergency jurisdiction and make a temporary ruling to protect you and/or them.
- If the abuser has moved out of the home state as well, so that no one in the immediate family now is living where you lived together before, the court in your new state will probably take jurisdiction.
- If by the time you go to court, most or all of your and/or the children's significant contacts (school, job, daycare, medical records, counselors, friends, family members, etc.) are in the new state, that state's court might take jurisdiction.

The UCCJA allows the judge in the new state to refuse to take jurisdiction if it appears you have moved across state lines with the children with the specific purpose of interfering with their father's parental rights. Therefore, you must make sure your evidence shows the court that you were forced to flee to escape domestic violence. You also need to make sure the court keeps your address and phone number sealed and allows only supervised visitation, if any.

Even if your abuser convinces the home state court to keep the case, all is not lost. First, this is the court that gave you custody in the first place. Second, you do not have to go back to that court to give evidence in person. You can arrange to give your testimony in the court in your new state, and it will be sent back to the old state for the proceeding there.

Usually, the courts of one state will honor and enforce valid orders from another state. Things get a little more complicated if you are asking the court in the new state to change, rather than merely enforce, the old state court's order. Normally, as long as the abuser lives there, the old state will be the one to modify its own order. Again, it helps to know that, though you may have to use the old state's court, you do not have to go there physically.

You Do Not Have a Custody Order and Plan to Move to Another State

If you don't have a custody order and plan to move to a different state, again, you *must* get a custody order to make sure the abuser doesn't get custody. Can you go to court in the new state, or do you have to use the old one? The new state might find it has jurisdiction for one of the reasons listed above. However, in most cases, the abuser remains in the old state and, at least for some period of time immediately after your move, most contacts are still there. So chances are you'll have to use that court, even if you do so by presenting your evidence in the new state's court to be used in the old one. The key thing is to get a custody order as early as possible.

Finally, you can get the home state court to give you a protection order to keep your abuser from following you or harassing you in your new state. The clerk of court in the city or county you move to, or the sheriff or chief of police there, can tell you how to register your order so that if your abuser comes looking for you, the police can locate the order on the computer and arrest the abuser for violating it. The court in the new state will enforce the order and punish the abuser.

Alcohol, Drugs, And Domestic Violence: What A Woman Should Know Before Going To Court

Andrew R. Klein, Ph.D.

Your batterer may abuse alcohol and other illicit drugs. He may blame his abuse of you on his drug and alcohol use. He may promise the Court that by controlling his alcohol and drug use, he can be trusted to be a good father or husband, notwithstanding his past history of abusing you and the children. The Judge may be prone to accept this on face value as true. It isn't.

The Relationship Between Family Violence and Alcohol and Drug Use

It is important that you understand the relationship between partner and family abuse and alcohol and drug abuse. Drug and alcohol abuse does not cause a person to become a batterer. Many people abuse alcohol and drugs but don't batter their partners or families. Even if the only time he abuses you is when he is under the influence, there is no guarantee that if he stopped drinking and drugging tomorrow, he would never abuse you again.

Some abusers drink or take drugs in contemplation of battering. In other words, they abuse drugs and alcohol specifically to give themselves an excuse to assault or abuse their families. Some batterers, if they stopped drinking and abusing drugs, would become worse batterers, inflicting more injuries than they do when they are drunk or high.

On the other hand, some batterers who are alcoholics or drug abusers might change their behavior, including their battering, if they stopped abusing drugs and alcohol. Part of recovering from alcohol and drug abuse in a twelve step recovery program, Alcoholics or Narcotics Anonymous, for example, is realizing how you have hurt people and making it up to them, in addition to stopping drinking and drugging.

This we know, however, substance abusing batterers cannot be trusted to change their behavior if they continue to drink and take drugs. No matter what kind of batterers intervention program or court-ordered program they are in, promises they have made, or fear they have of re-arrest, the minute the batterer gets high or drunk, the chances are good that he will forget everything he has promised or learned, including his fear of being caught for abusing you.

For all of the above, it is important that you not only tell the Court of his alcohol and drug abuse, but also describe how his controlling and emotionally abusive behavior is not restricted to times he is under the influence, even if his physical abuse is so restricted.

Identifying Alcohol or Drug Abuse

Evidence of alcohol and drug abuse can be obtained simply through monitoring the quantity drunk or used. The average adult who drinks more than two drinks daily, whether beer, wine, or

distilled spirits, is drinking above the amount drunk by a normal, social drinker. If this person then drives after drinking more than several drinks in a one hour time period, he is driving under the influence, whether or not he happens to get arrested for it.

If he ever has been arrested for drunk driving, he probably has a problem. If he scored over 0.15 on the Breathalyzer, it means he has developed medical tolerance to alcohol that indicates chronic, abusive drinking. If he has ever lost his license due to drinking or drugging, make sure you inform the Court.

A simple way to gauge alcohol abuse is through the following test. If any of the following questions are answered "yes," the chances are great the person has a problem. If two questions or more are answered "yes," you can be absolutely certain.

- Has the person ever felt the need to cut down on his drinking?
- Has he ever felt annoyed by your or anyone else's criticism of his drinking?
- Has he ever felt guilty about his drinking?
- Has he ever taken a morning eye-opener drink?

If he has ever blamed his abuse of you on his drinking, he is admitting to alcohol abuse. By definition, social drinking does not effect the drinker's behavior. If he has ever lost a job because of drinking, that too is evidence of serious, chronic abuse. If he has ever received medical attention because of drinking, that is a sign of serious, chronic abuse.

Any illicit drug use is illegal. Use of an illicit drug more than once or twice is problematic. Certainly, weekly or daily use is indicative of chronic abuse and dependency. If family finances are tight, yet needed family income is going to buy drugs, that too indicates problematic use.

Warning! If you reveal to the Court that he has abused heroin, crack, or other illicit drugs, you may be asked how you know. If you answer that you were present when he did, you may be opening yourself up to a criminal charge. For example, in many states it is against the law to be in the presence of heroin use. Even if not charged yourself, you may be pressured by police or prosecutors who learn of your court testimony to reveal information about his drug connections and so on. They could prosecute you for contempt of court if you don't cooperate with them.

Certainly, if you know that he has been arrested for drugs or is on probation or parole, you should make sure that the Court is aware of this and accesses his criminal file.

If he has ever been in treatment for alcohol or drugs, been detoxified, or been in the VA for substance abuse treatment, or even attended AA in the past, let the Court know. People don't go in for treatment or attend AA meetings unless they have a problem.

If he has alcohol on his breath or is under the influence of drugs at the Court hearing, point this out to the Court. If he can't even go to Court straight, what are the chances of his being straight outside the court? On the other hand, if he is straight before the Court, you should explain that this is not what he is like when he is under the influence.

It is important that the Court know of his alcohol and drug abuse. It is also important for the Court to know that his abuse of you is not caused by alcohol or drug use alone. Chances are the man is a batterer and a substance abuser. We call this a "dual diagnosis," two separate behavior problems that need immediate, serious intervention and attention. It is important for the Court to understand that if he is under the influence, whether or not he is physically abusive, he is not safe to be with and is not a good role model for children or anyone else.

What About a Victim's Substance Abuse?

Truthful or not, many batterers will inform the court of a victim's history of or current drug or alcohol abuse as a method of gaining custodial advantage or punishing their partners. If the victim has had a problem, she should be up front about it.

Many battered women have drug and alcohol problems and other emotional problems that may require medication. Often, these problems flow from the primary problem of being abused by a partner in the first place. Victims often self-medicate to deal with the terror of domestic abuse. Frequently, the abuser has convinced his partner that the abuse is her fault and so belittle her that she has become unable to cope without the crutch of drugs or alcohol. Abusers will also insist that their partners drink and drug with them, forcing their partners to behave on their level.

In both instances, the prognosis is good that the victim, once safeguarded from her abuser, will stop abusing drugs and alcohol. Even if the victim had a drug and alcohol history before she became abused, her ability to deal with that problem was certainly undermined by the ongoing abuse.

Victims who do have a problem should do what they can to enter treatment or attend AA meetings or the like as soon as possible to demonstrate to the Court their intention to stay straight. If you are falsely accused of drug use, you should deny that use. You can even offer to submit to a hair or urine test to prove nonuse. Hair analysis done at local and several national laboratories will reveal all drugs (but not alcohol) ingested for a three month period. Urine tests will reveal all drugs and alcohol ingested in the past 72 hours depending on the quantity used.

II. B. Invidiously Discriminatory Intent: Services based upon ideologically distorted and fraudulent bias, UFV/UMP, and misrepresentation:

RESOLUTION

Regarding the Violence Against Women Act

1. **Whereas**, in 2000 Senator Orrin Hatch directed the executive branch to "ensure that men who have been victimized by domestic violence and sexual assault will receive benefits and services under the Act"[1]
2. **Whereas**, despite that statement of Congressional intent, male victims continue to be turned away from VAWA-funded shelters.[2]
3. **Whereas**, the language of the 2005 Violence Against Women Act now recognizes that male victims of domestic violence are in need of treatment and protection, and requires VAWA-funded programs to provide them with such services.[3]
4. **Whereas**, VAWA funds judicial education programs that instruct judges to disregard constitutionally-protected due process provisions,[4]
5. **Whereas,** judges often issue restraining orders without any direct threat of harm,[5,6] and restraining orders are widely used as "part of the gamesmanship of divorce."[7,8]
6. **Whereas,** the Massachusetts Trial Court found that less than half of all restraining orders issued in that state involved even an *allegation* of physical violence,[9]
7. **Whereas,** it has been estimated that each year one million protective orders are issued in the United States, and about 500,000 of such orders represent a direct violation of due process protections,[10,11]
8. **Whereas,** 15% of such protective orders are issued against women and 85% against men.[12]
9. **Whereas,** research shows that most instances of partner aggression are minor in nature,[13] and such cases require counseling, not legal intervention,
10. **Whereas**, VAWA-funded programs and policies often discourage couple counseling and partner reconciliation, and
11. **Whereas,** various VAWA incentives serve to promote family break-up,[14] which results in children losing daily contact with one of their parents.[15]

Therefore, the undersigned organizations request that:

1. The VAWA appropriation bill for FY2007 include report language directing the DoJ Office on Violence Against Women to provide Congress, no later than December 30, 2007, with client utilization statistics of VAWA-funded programs and services, in compliance with the male-inclusive requirements of Section 40002(b)(8) of the 2005 Violence Against Women Act.
2. The Senate and House Appropriations Committees support and approve President Bush's budget request to fund the Violence Against Women Act at the $347 million level in FY2007.
3. The United States Congress establish a panel to investigate the claims that the Violence Against Women Act promotes the excessive issuance of restraining orders, which often leads to family break-up and inappropriate loss of parent involvement.

Signed:

Michael J. Geanoulis
RADAR: Respecting Accuracy in Domestic Abuse Reporting

David R. Usher
ACFC – Missouri Coalition

Alan Rusmisel
Alabama Coalition for Fathers and Children

Michael McCormick
American Coalition for Fathers and Children

Tom Smith
American Union of Men

Eileen Cipnick
BS KIDS

Domestic Violence Homicides Are Predictable

If they are predictable, they are preventable…

…

Violence Policy Center Study (2008)

(www.vpc.org)

- Of the 554 murder-suicide deaths, 234 were suicides and 320 were homicides. 95% of murder-suicides were committed by men.
- Nine murder-suicide events occurred in the United States each week during the study period.
- Seventy-three percent of all murder-suicides involved an intimate partner (spouse, common-law spouse, ex-spouse, or girlfriend/boyfriend). Of these, 94 percent were females killed by their intimate partners.
- Forty-five of the homicide victims were children and teens less than 18 years of age. Forty-four children and teens less than 18 years of age were survivors who witnessed some aspect of the murder-suicide.
- Most murder-suicides occurred in the home (75 percent).
- (Family annihilators are a subset of male murder-suicide perpetrators)

What is it?

- Family Annihilation
- Mass Murder
- Escalating DV
- Failed Intervention
- Societal Breakdown
- A Wake Up Call
- A Call to Action

At its core…this is a war on women…

Rose Jovero

"The Challenge Ahead: Stopping DV Mass Murderers: Family Justice Centers, High Risk Teams, Collaboration, and Lethality Assessment Programs"

Casey Gwinn, J.D.
President, National Family Justice Center Alliance

November 10, 2011

Email: casey@nfjca.org
Website: www.familyjusticecenter.org

Today's Presenters:

Dr. Diane Lass
President
Hope and Strength Psychological Services

VOICES

VOICES Committee Members

VOICES
Domestic Violence 101
Survivor's Perspective

Dr. Diane Lass
Hope and Strength Psychological Services
San Diego Family Justice Center
October 21, 2011

What Is VOICES?

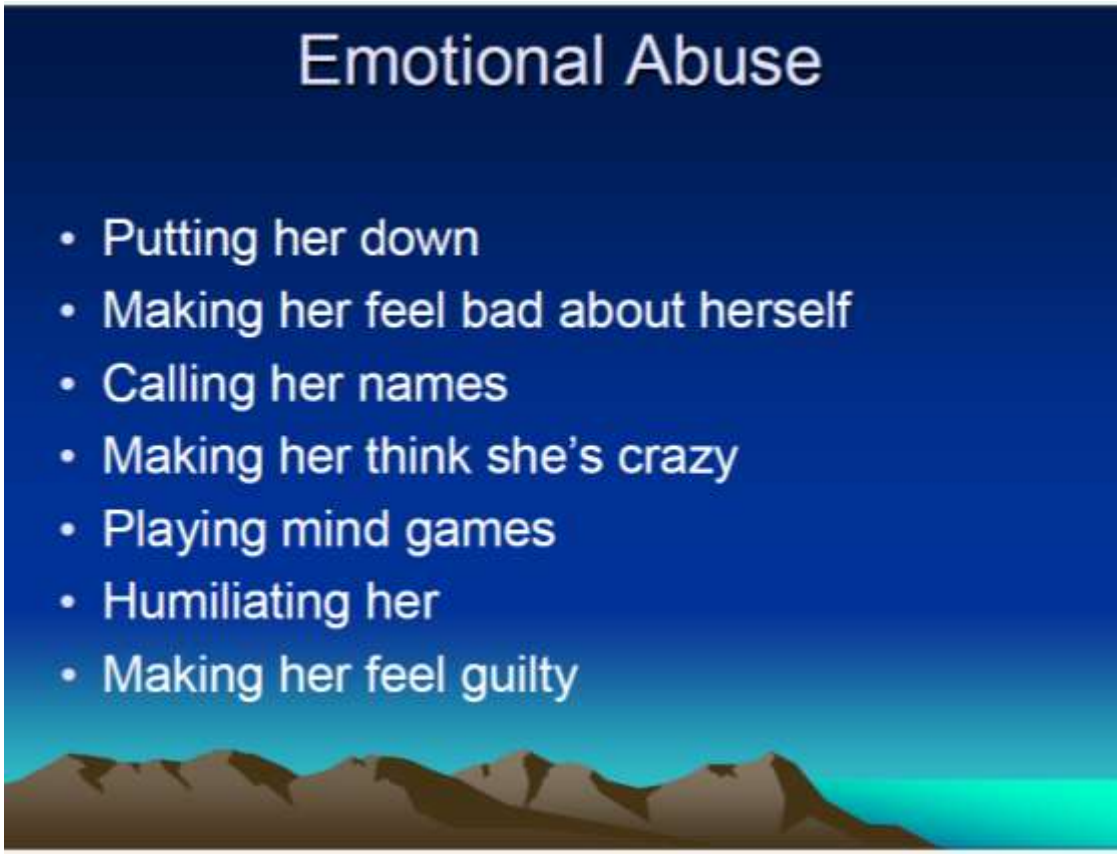
- Survivors of domestic violence and sexual assault who are committed to giving back
- Survivors who are interested in educating the public about domestic violence
- Group with common bonds
- Empowered and strong individuals
- Individuals that inspire us all
- (VOICES Chapters now exist in many Family Justice Center Communities)

Power and Control Wheel

Power and Control

- Intimidation
- Emotional Abuse
- Isolation
- Minimize, Deny and Blame
- Using Children
- Privilege
- Economic Abuse
- Coercion and Threats


Intimidation
• Causing fear by using looks, actions and gestures
• Smashing things
• Destroying property
• Abusing pets
• Displaying weapons


Emotional Abuse
• Putting her down
• Making her feel bad about herself
• Calling her names
• Making her think she's crazy
• Playing mind games
• Humiliating her
• Making her feel guilty

Isolation

- Controlling what she does, who she sees and talks to, what she reads and where she goes
- Limiting her outside involvement
- Using jealousy to justify actions

Minimizing, Denying, Blaming

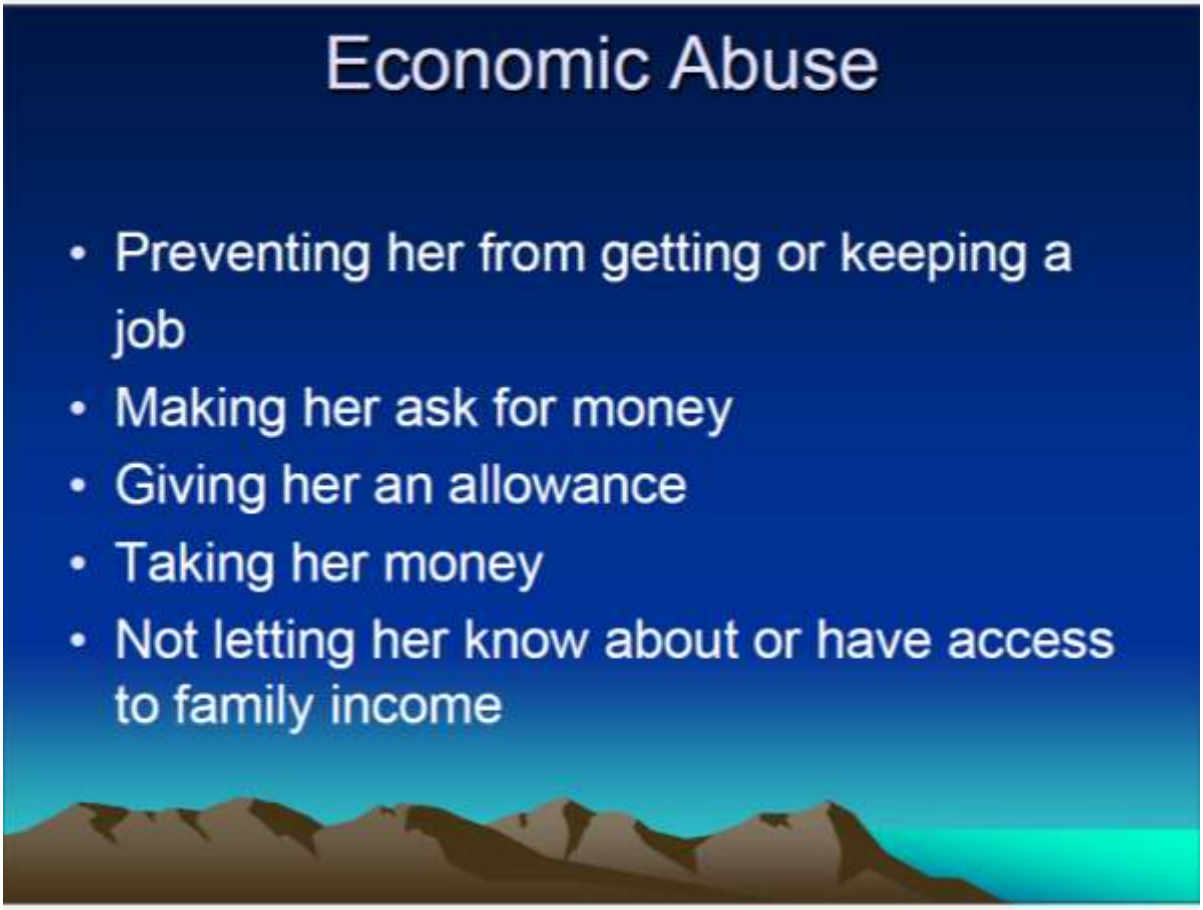
- Making light of the abuse and not taking her concerns about it seriously
- Saying the abuse didn't happen
- Shifting responsibility for abusive behavior
- Saying she caused it

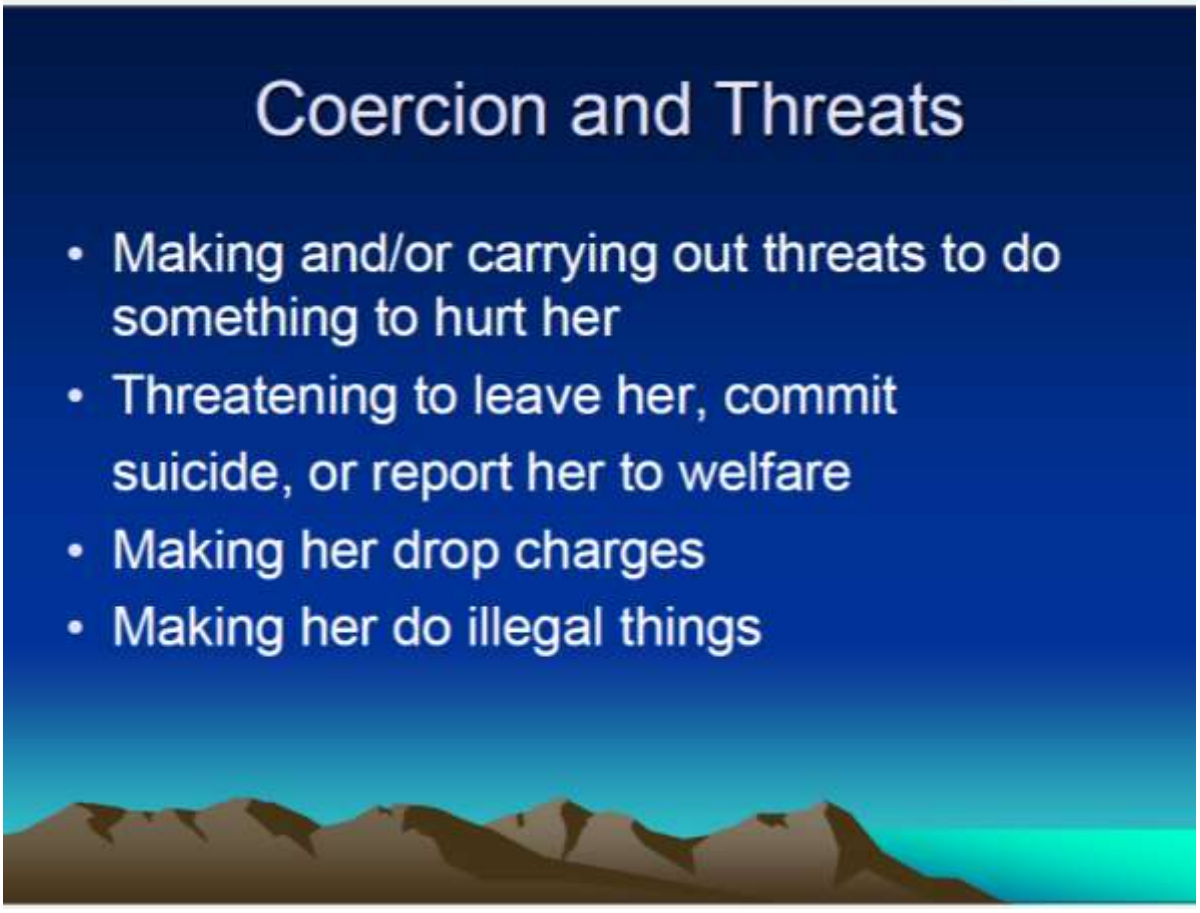
Using Children

- Making her feel guilty about the children
- Using the children to relay messages
- Using visitation to harass her
- Threatening to take the children away

Male Privilege

- Treating her like a servant
- Making all the big decisions
- Acting like the "master of the castle"
- Being the one to define men's and women's roles


Economic Abuse
• Preventing her from getting or keeping a job
• Making her ask for money
• Giving her an allowance
• Taking her money
• Not letting her know about or have access to family income


Coercion and Threats
• Making and/or carrying out threats to do something to hurt her
• Threatening to leave her, commit suicide, or report her to welfare
• Making her drop charges
• Making her do illegal things

Alliance Terminology:

Glossary of Terms

"A Just World": Societal belief that domestic violence does not occur or is an unusual event. When victims claim to have been abused societal response is to believe that we live in a just world and since we do, domestic violence does not happen and if it does it is limited to other parts of town, other societies, and people unlike ourselves. Such a view allows society to discount victims, ask what they did to cause the incident, and ignore the problem of domestic violence.

Battered Woman's Syndrome: Term first used in the 1970s, it is now generally interpreted to refer to the common experiences of, and impact on, women who have been battered by an intimate partner. These include specific psychological and behavioral patterns and their effects upon the beliefs, perceptions, and behaviors of victims. The term "battered woman syndrome" has been criticized as suggesting the battered woman suffers from a syndrome, that is, an illness or pathology; that the term is not specific as it has been used to include learned helplessness, the cycle of violence, and post traumatic stress disorder (PTSD); that the term is unclear as it can be used to refer only to psychological effects of battering, or to the broader effects of living with battering; and that there is a universal pattern of behavior associated with the effects of battering while the term suggests that there is a single pattern.

CV, Curriculum Vitae, Resume, Vita: A listing of relevant education, training, experience, teaching, and writing, and awards prepared for employment and in the case of expert witnesses, for legal proceedings where a person may be called as a witness.

Cycle of Violence: A term coined by Dr. Lenore Walker in 1981, to describe a pattern of behavior present in couples where domestic violence was present. What she labeled "The Three Phase Theory of Domestic Violence", is now called the "Cycle of Violence". Phase one is the "**tension building phase**" in which the batterer baits, criticizes, and belittles the partner. The batterer is angry and seeking a reason, real or imagined, to batter. The victim senses the rising anger and tension and tries to do as the batterer asks. The victim internalizes her anger and fear and become depressed, anxious, and even feel helpless. Victims will try to calm matters to avoid being beaten. If they feel they cannot avoid the beating then some victims will upset the batterer at a time and place where they may be less seriously injured. The ability to provoke, which is really just the ability to determine the time of the attack, may give the victim the idea that the victim causes, and is to blame, for the attack. This also gives the victim the

illusion of having power in the relationship and feeds the batterer's belief that the victim is responsible for causing the violence.

Phase two is the "**acute battering incident**" when the batterer attacks the victim. The batterer often blames the victim for the attack blaming her for not complying with his directives. The victim is grateful for surviving the incident and minimizes how serious it was. Many victims do not immediately seek medical attention for injuries. The victim may call police at this phase and cooperate with them.

Phase three is called by various names such as, "**loving reconciliation**" or "**the honeymoon phase**" or "**loving respite**". The batterer begins a campaign to win the victim back. He is kind, loving, and generous. He may promise to seek counseling and assures her that the attack was an aberration. The batterer wants to be sure that the victim does not leave him. He assures the victim that he would fall apart without her. The batterer says or does whatever he thinks will cause the victim to stay, including making promises, giving gifts, or resorting to threats. The victim wants to believe that his promises are sincere and he really will not strike again. It is during this phase that the initially cooperative victim becomes reluctant and uncooperative with the criminal justice system.

The cycle repeats itself over time. It will escalate in frequency and severity without outside intervention.

Many experts do not believe that the cycle of violence accurately describes the battering relationship. Many victims never have a loving reconciliation period. Instead, after the attack the batterer begins to become more critical and angry until the next incident occurs. Some batterers strike without warning and without a tension building phase. Many experts feel that the Power and Control Wheel better describes the relationship.

Delayed Reporting: Behavior of domestic violence victims to not report incidents of abuse or to delay reporting until a subsequent incident or until injuries are severe. Delayed reporting can be to avoid detection and protect the abuser, out of fear of reprisal by the abuser if the incident is detected, due to embarrassment, or because the victim does not believe anything will happen to make her safe if she does report. Reports can also be delayed until the effects of trauma and crisis have waned.

DSM: The Diagnostic and Statistical Manual of the American Psychological Association (APA) listing conditions and disorders recognized by the APA. Now in its fourth edition.

Differentiating and Distancing: See also "a just world". Societal belief that domestic violence does not occur or is an unusual event. When victims claim to have been abused societal response is to believe that we live in a just world and

since we do, domestic violence does not happen and if it does it is limited to other parts of town, other societies, and people unlike ourselves. Such a view allows society to discount victims, ask what they did to cause the incident, and ignore the problem of domestic violence.

Domestic Violence: A pattern of increasingly frequent and severe physical, sexual, verbal, emotional, spiritual, and economic abuse used by one intimate against another to obtain power and control.

Dominant Aggressor (Formerly Primary Aggressor): Not necessarily the first to strike, but the most significant aggressor. In determining the dominant aggressor an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self defense. Penal Code Section 13701(b).

Dr. Jeckyl and Mr. Hyde: Term used to describe batterers who appear to be responsible and non-violent in public while they are abusive to their intimate partners, children, and sometimes other household members and pets. The batterer may also vary their behavior at home so that the cruel and abusive behavior is intermittent, and are alternated with times when a batterer is charming and loving.

Expert Testimony on Domestic Violence: Evidence from an expert witness provided to the judge and/or jury to provide a general understanding of the general principles of domestic violence including battering and its effects, and to provide a framework for evaluating the facts of the case in issue.

Expert Witness: A person with special knowledge, skill, experience, training or education on a subject beyond common experience. California Evidence Code 720

Foundation or Preliminary Facts: A fact upon which the existence or nonexistence of which depends the admissibility of evidence. Evidence Code 400. It is the evidence that must be offered to permit the judge to decide if evidence sought to be introduced can be presented to the trier of fact (jury).

High Profile: A case that receives heightened attention because of the status of a party, media interest, or the case circumstances.

Hypothetical Question: A question posed to an expert witness that includes facts that the expert must assume to be true. The expert is then asked to state an opinion about an issue in the lawsuit.

Learned Helplessness: The term was coined by Dr. Lenore Walker to describe typical reactions by victims subjected to repeated abuse. Drawing on animal psychology research in which animals who had been subjected to electrical shocks when trying to reach food no longer tried to reach the food even when the electrical shocks were ended, the term is used to describe domestic abuse victims who after several beatings and unsuccessful efforts to change the situation and leave, realize there is nothing they can do, and give up and become hopeless. This concept is often criticized for failing to identify survivor behaviors of many victims and for failing to consider societal failures that fail to protect victims who try to leave.

Minimizing: Victim behavior of understating seriousness of incident or severity of injuries used as a coping mechanism and because victim is grateful that she survived the incident which was not as bad as it might have been. Abuser behavior to understate degree of victim's fear, intensity of the attack, and extent of victim's injuries to reduce personal sense of guilt and remorse and to feel better about himself. Tactic is used with the victim to convince her that she is overreacting, is exaggerating, and has a faulty sense of reality. Abuser also uses this to convince law enforcement and other criminal justice agencies that the incident was not serious and does not require that abuser be held accountable.

Post Traumatic Stress Disorder (PTSD): A collection of psychological symptoms including re-experiencing traumatic events through flashbacks, intrusive thoughts, or nightmares, attempting to avoid situations associated with the traumatic experiences, numbness inability to recall some parts of events, sleep disturbances, difficulty concentrating, irritability, and hypervigilance. PTSD is also associated with somatic and physical complaints, depression, anxiety, and suicidal thoughts and attempts. It is included in DSM IV.

Power and Control: An explanation of the battering relationship devised by Ellen Pence and others in Duluth, Minnesota, after working with victims and batterers. The dynamics are depicted in a wheel. The outer rim lists physical and sexual violence. These are the intermittent behaviors which keep the victim caught in the relationship. The inner spokes of the wheel are the constant, daily behaviors used to control the victim. These include: using coercion and threats; intimidation; emotional abuse, isolation; minimizing, denying, and blaming others; using children; male privilege, and economic abuse.

Pseudo-Hostage: Hostage negotiators typically deal with two different situations. One is where the hostage taker grabs a hostage to assist in an escape after a failed crime or to trade for something of value. The hostage taker makes specific demands to obtain whatever s/he desires. In contrast, there are situatrions where the hostage taker has a hostage but makes no demands. The hostage taker has captured whoever is the target and simply wants to punish, degrade, humiliate, win back, or kill the target. In this situation, the hostage is not a "true" hostage, a

person seized to bargain with, but is a pseudo-hostage, the intended target and goal. Domestic violence hostage taking typically involves pseudo-hostages.

Recanting: Common victim behavior to retract prior explanation for incident and injuries often done to protect the abuser and to protect the victim and other family members and pets from reprisal.

Relevance: Part of legal foundation for admissibility of evidence. Relevance means that the proffered evidence has some tendency in reason to prove a matter in dispute.

Self-Medicating: Victim behavior and coping strategy to use drugs and alcohol to mask the physical and psychological pain of living with domestic violence. It is sometimes called situational alcoholism or addiction beacuse the behavior disappears with the cessation of abuse.

Separation Violence/ Separation Assault: "Separation assault" was coined by Professor Martha Mahoney in "Legal Images of Battered Women: Redefining the Issue of Separation" 90 Mich. L. Rev. 1 (1991) to describe the escalation of violence and the increase in lethal violence when the batterer perceives that the victim has left or is about to leave the relationship. Victims who leave their batterers are seen to commit the ultimate act of rebellion; the batterer responds by seeking to regain control and domination and will use whatever violence, including lethal violence, that is necessary to succeed. Victims understand that leaving will not bring an end to abuse and domination and indeed may increase their danger.

Stockholm Syndrome: Psychological response of some hostages to form significant emotional bonds with a person who has the power of life and death over them. The term was coined after a failed bank robbery in Stockholm. The suspects took several hostages captive and alternated threats to kill with acts of kindness. At the end of the several day ordeal, two tellers testified on behalf of their hostage taker. One bank teller actually married her hostage taker. Some writers have suggested that some battered women form similar attachments with their abusers, such as when the victim focuses on the kindness the batterer showed when he took her to the hospital rather than the attack that necessitated the visit.

Code Sections:

Evidence Code 402: Hearing outside the presence of the jury, to determine whether certain testimony will be received at trial. Four issues must be established: 1) the evidence will assist the trier of fact (jury). Evidence meets this prong even if the jury may have some general understanding of domestic

violence. 2) The evidence is admissible. Under Evidence Code Section 1107, evidence on the experience of a battered woman is generally admissible (except to prove that a suspect committed the charged crime) and expert testimony on behaviors generally of persons who have been battered by intimates, to rehabilitate victim credibility attacked by the other side, to overcome commonly held misperceptions of society, and to explain why victims stay, recant, minimize, and blame themselves are often received by the trial court. 3) The evidence is relevant, that is, material to a fact in dispute in the case, typically, victim behavior and credibility. An expert cannot testify that a particular victim is a victim of domestic violence or is truthful; that a defendant is a batterer. Finally, 4) the expert is competent to testify, that is, the witness' qualifications relating to domestic violence.

Penal Code Section 13710 and 13711: Terms and conditions of a court order remain in effect notwithstanding the actions of the protected party.

"Local Services, Global Reach"

Fundamental Principle:

You cannot protect children if you do not protect their mothers…

CHAPTER 10

Domestic Violence

Domestic or intimate partner violence is a problem with serious health consequences, and in general, its symptoms are not being recognized by health care providers. This chapter aims to sensitize you to the issue of domestic violence and to help you to understand the dynamics, the barriers to identification, to recognize the physical and behavioral symptoms, to give you guidance on how to inquire about it, and recommendations on how to manage it.

The Silent Epidemic[1]

Domestic violence has been called *silent* because it is both hidden and largely unrecognized in spite of recent media attention and coverage. *Epidemic* because the dimensions of the problem are truly staggering. By some estimates about 4 million American women experience a serious assault by an intimate partner during the average 12 month period.[2] Popular misconception sees domestic violence as a phenomenon only of poor and uneducated women. While it is true that past and current victims of domestic violence are over represented in the welfare population, most are there because of debilitating factors related to the abuse.[3] However, the silent epidemic crosses boundaries of age, gender, ethnicity, socioeconomic status and sexual orientation.[4] Women between 19 and 29 with children under 12 are most likely to be abused.[5] Violence also occurs in dating couples, with 20% of adolescents reporting being physically or sexually abused.[6] It is estimated that 10% of professional and working women are victims of battering mates.[7] Intimate partner violence occurs with similar frequency in lesbian and gay relationships.[8] In addition there is evidence that women or elderly with disabilities are at higher risk for abuse at the hands of intimates or caretakers.[9,10] Approximately 3.3 million children a year are exposed to violence by a family member against their mother.[11] Such children are 1500 times more likely to be abused than those coming from homes without partner violence.[12] The long term consequences on the children living in violent households are:

1. **Witnessing domestic violence is the single best predictor of drug abuse, juvenile delinquency and engaging in multiple health risk behaviors.**[13,14]
2. **Boys learn that males are violent and need not respect women. As adults they are 10 times more likely to use violence on their partners. Girls learn that male violence is normal and tend to accept it in adult relationships.**[15]
3. **Depending on their developmental stage, children witnessing domestic violence may develop serious medical and/or psychological problems.**[16]

The economic costs of treating domestic violence are enormous. Estimates put the annual medical cost attributed to domestic violence at more than $2 billion. Annually there are 243,000, or one fourth of all ER visits, 21,000 hospitalizations, about 40,000 clinic visits, and 175,000 disability days, estimated to be attributable to domestic violence.[17,18] According to the National Coalition Against Domestic Violence, domestic violence accounts for more injury to women than from all other causes combined,

and around 2,000 women a year die as a result of it.[19] Homicide is the number one killer of pregnant and post partum (1 year) women.[20,21] Some of the statistics are mere estimates because typically health care providers correctly identify abuse in fewer than 5% of the cases.[22]

The last statistic of 95% of cases presented in health care settings not being identified as such is most alarming to some. Citing these data, a March 2001 JAMA editorial argued that all health care professionals must do a better job in all settings to recognize and provide appropriate treatment to victims of domestic or intimate partner violence.[23]

CULTURAL FACTORS

In general, domestic violence is overwhelmingly perpetrated by men onto women, so our discussion reflects that fact. As a society, we need to examine norms and values that appear to tolerate (perhaps even encourage) violent and coercive behaviors in intimate relationships. Historically, in most patriarchal societies social, religious, and even legal norms have encouraged male control over women.[24] This included either explicit or tacit understanding that a husband could physically "discipline" his wife. One attempt to limit the amount of violence a husband could visit upon his wife came in the form of old English "rule of thumb." It forbade a husband to use a stick thicker than a thumb to beat his wife.[25] The cultural and religious stigma about homosexuality has made violence in same sex domestic relationships even more hidden. It is rarely considered, diagnosed or treated by health care providers.

PATIENT PROFILE 10.1

I'M SO SICK OF YOUR JEALOUSY!

***SETTING**: Rikki and Maury are two homosexual men in their late 30's, living in a large cosmopolitan city. They have been coming to see Greg, an osteopathic physician for minor health problems for a little over a year. He knows that they have been in a committed relationship for 3 years. Rikki has come into the clinic with a bloody towel around his head accompanied by Maury.*

Greg: What have we here? Let me take a look at that.

As he takes the towel off, Rikki winces. There is a 3 cm gash on his scalp just above his right ear.

Maury: He is so clumsy. He left a kitchen cabinet door open and ran into it.

Rikki groans and rolls his eyes, but does not say anything.

Greg is aware of the tensions in their relationship. He suspects that this explanation given by the partner and Rikki's nonverbal gestures might indicate that this is not what really happened.

Greg: Oh Yeah? Rikki you must have been going pretty fast to get a gash that deep.

Maury: Well, you know how Rikki is, kind of flighty. He moves kind of erratically.

Rikki keeps his eyes down and does not say anything. By now Greg is convinced that he needs to get the two separated if he is to find out what really happened.

Greg: OK, I am going to take Rikki into the surgery room to stitch this up. Maury you wait here.

Maury: Oh, no. I'll come. I want to be with him. .

Greg: Sorry, that's against the rules. It won't take long.

In the surgery room:

Greg: I know you two have had some tensions and fights in the past. Has it become violent? Is that what this is about?

Rikki: He's been so possessive lately. He doesn't want me to see any of my friends any more.

Greg: I understand. So, how did you get that gash on your head?

Rikki: I was on the phone talking to a friend, and we were laughing. Maury got jealous and told me to get off the phone. When I didn't, he got really mad and threw an ash tray at me as hard as he could from across the room.

Greg: I see. Was this the first time that he became violent?

55% of serious injuries.[27] The general consensus is that prompt arrest and incarceration deters those abusers who have much to lose from the social consequences.[28] However, unemployed batterers or those with few social ties tend to become more violent after an arrest.[29] When you treat a victim of abuse, and consider possible legal remedies for the woman's safety, this distinction in economic and social status of the batterer is a crucial variable.

BATTERER PROFILE

What kind of man is a batterer? Although batterers come from all racial, religious, and socioeconomic backgrounds, there are a number of characteristics that fit the general profile of a batterer.[30] He objectifies women, and may not even see them as people or as worthy of respect. Rather he tends to see women as sexual objects or even as his property. A batterer may be outwardly successful, and may be seen as a charming, pleasant, "nice" guy. On the other hand, he may come from a chaotic, abusive family, and have feelings of powerlessness. During the pursuit or "courting phase," he may rush into intimacy, convincing his object of love that she is "the one" and that he cannot live without her. However, once he has "captured" her, the process of exercising control over her behavior, freedom of movement and even her thinking will begin almost immediately using the various techniques detailed in the Wheel of Power and Control (Figure 10-1). Victims have described the abrupt change from romantic pursuer to possessive abuser as a Jekyll and Hyde phenomenon.

The Battering Cycle

Relationships involving domestic violence progress through cycles. The first is the **tension building phase**. During this period, the batterer will accuse the significant other of various (often imagined) wrong doings, and in repeated criticisms tell her she can do nothing right. He will start controlling her behaviors by restricting her basic rights, (not letting her drive or leave the house without him), or even ordering her into isolation. The **violent phase** often starts when the batterer uses any real or imagined objectionable act or behavior as a "reason" to launch into explosive violence. In the early phase of a domestic violence situation, this violence may take the form of breaking or throwing objects, or harming or killing pets. As time goes on, the violence of this phase escalates and is directed more and more against their partner. Frequently, the abuser will be under the influence of alcohol or drugs. Once the abuser has released his tension, there follows a calmer phase, also known as the **honeymoon phase**. The batterer becomes remorseful, apologizes, and may make various excuses for his behavior. He may insist that the violence was not intended, that he really loves his partner, and cannot do without her. He will blame it on alcohol, stress at work, or some other external factor.[31] He will promise (often with real tears) that he will *never* do it again. The honeymoon phase, during which the batterer may become a doting husband and loving father, lulls the victim into believing that the perpetrator is truly sorry, that the violence will end, and things will improve. However, without intervention, legal action or counseling, the tension building phase will recommence until it culminates in another violent explosive phase. Over time the abuse tends to escalate in severity and frequency. The honeymoon periods become shorter or may disappear altogether. It has been suggested that this progression is similar to the addictive process, both in the neurochemical reinforcement process in the brain as well as in the tolerance building process which may dictate an increasing violence level to get the same "rush" or release.[32]

RISK FACTORS FOR BECOMING A VICTIM

How do women or any intimate partners get drawn into violent relationships and why do they stay in them? All too often we tend to blame the victim. To understand these questions, we need to look at the typical profile of the woman attracted to batterers, as well as the psychophys-

Figure 10-1. Wheel of Power and Control. From Domestic Abuse Intervention Project, Duluth MN. Used by permission.

iological progression of battering that traps the victim.[33] Many women are drawn to men who call forth their vulnerability and protectiveness. Men who had difficult childhoods were mistreated emotionally, sexually or physically, or who have drinking problems, often seduce women into feeling sorry for them. Women who respond to this kind of man often had a pattern in their childhood or adolescence of having taken injured animals or pets and nursing them back to health. The woman is likely to be even more vulnerable, if in childhood she has been socialized into believing that women are inferior, or that men have the "right" to hit women. This is especially critical if as a child she experienced physical, emotional or sexual abuse, or witnessed domestic violence in her family of origin. Such women as adults are likely to be having feelings of low self worth, and existential guilt. They may be prone to the urge to rescue. They tend to

believe that they can compensate for the man's problems by loving him. The man often evokes this response by saying that *only she* can help him, and that he cannot get along without her.[39]

PATIENT PROFILE 10.2

HE SAYS HE'S REALLY SORRY

***SETTING**: Melody is a 22-year-old college student who has been living with her boyfriend of 1 1/2 years. He is graduating and she is a junior student. Both of them are under a lot of stress because of final exams. They are both Biology majors in a medium-sized mid-Western college. She is a drop in to the student health center and is being seen by Bob, a nurse practitioner.*

Bob: Hello, Melody. My name is Bob Jones. I am a nurse practitioner. How can I help you?

Melody: Hi, it's my boyfriend Henry. He was really sweet and very charming when I first moved in with him. Now he's changed into someone else. I am so shocked and unhappy. I can't sleep. I'm so upset and finals are just around the corner.

Bob: One thing at a time. Slowly now tell me how Henry has changed?

Melody: He slapped me. *(Starts crying.)*

Bob: Hmmm. Here's a Kleenex. Is that what caused that red mark on your left cheek?

Melody: Yes.

Bob: Tell me more about this. Has he ever done this before?

Melody: Yes. It started after the first semester that we lived together. Whenever the push is on for exams or projects, he gets really irritable and everything I do seems to upset him. Now the push is on in his classes for graduating with honors. He keeps saying he'll never do it again. I want to believe him and he got me some flowers. He's being really sweet. Do you think he really means it?

Bob: I don't know but this sounds like domestic violence and let me tell you about how this kind of behavior repeats.

He proceeds to tell her about the Batterers Cycle.

Melody: Oh, he's promised he'll never do it again. And he just slaps me, sort of like what Dad used to do to Mom. Not too bad. I'll just be quiet and nice to him and see what happens. Maybe he'll change. We really care about each other.

Bob: Here's a pamphlet on domestic violence. Will you read it and think about what has happened?

Melody: Sure, after finals.

Bob: If anything else happens, will you come back in to see me?

Melody: Yes, and thanks.

POINTS TO CONSIDER:

- Bob continues to question her because he realizes the importance of clarifying the reasons she has come in to the center.
- Bob's non-judgmental and supportive demeanor is essential to facilitate Melody to share more about the relationship and its dynamics.
- Bob realizes that getting out of an abusive relationship sometimes is a long process and continued education is an essential part of helping Melody.
- Bob has available the appropriate educational materials which when given to Melody at this time can reinforce further proactive behavior on her part.
- Bob makes sure Melody knows she can return to the counseling center for help when she needs it.

Once in an abusive relationship, there are many obstacles facing battered women who want to leave. (See Box 10-1.) One obstacle is the intermittent reinforcement of each honeymoon phase. The victim, experiencing the honeymoon phase, convinces herself that the batterer really does love her and needs her. She may truly believe what many victims have said: "I thought if I loved him enough, he would love himself and not hurt me any more." She may also have well founded fears that the batterer will become more violent or even kill her if she

staying in such a relationship to come out in your questions.

In many instances, you will not have the time to conduct such an in depth interview yourself. However, if you have a protocol for dealing with domestic violence for your office or clinic, it should specify a follow up procedure. Ideally it should include summoning a domestic violence advocate immediately. Some clinics, ER facilities, or offices now have trained domestic violence advocates on their staff (usually a social worker or nurse). This person can then complete the more time consuming tasks, such as a complete psychosocial history, risk assessment and safety planning. If there is time pressure, i.e., the abuser is waiting outside, such a history may need to be taken while you are conducting the physical examination. If you do not have someone on staff trained as a domestic violence advocate, it is recommended that you establish a good working relationship with the nearest domestic violence program or shelter. Many will agree to dispatch an advocate immediately to work with the patient while she is still in the clinic or office.

Treat, Document, Educate — Don't Rescue!

What do you do after you have established that domestic violence is present in your patient's life? The first task is to treat the patient's medical condition(s) and document your findings. You need to conduct a thorough physical examination to determine the extent of injuries or bruises to parts of the torso normally covered by clothes. You also need to conduct a urogenital examination, looking for evidence of forcible rape, or violent insertion of foreign objects into the vagina or anus. If the patient is pregnant, you need to look for abdominal trauma and rule out possible injury to fetus or uterus. Due to the common practice of the abuser taking the victim to different providers to avoid detection of abuse patterns, you also need to inquire about other medical professionals who have treated her. This means obtaining names of all clinics and health care providers she has visited, or from whom she received medications.

When the extent of abuse becomes apparent, your emotions of outrage, sympathy and caring may be aroused. You may be tempted to rescue the victim. While understandable, this would be a mistake that could leave you frustrated, angry, and possibly disgusted with your patient. *It is* ***not*** *your function to get her to leave the batterer. She needs to reach that decision herself.* Your pushing her before she is ready will sabotage the critical work she herself needs to do before she can decide to leave. Remember, due to the barriers listed in Box 10-1, usually it takes multiple attempts at leaving the domestic violence situation before a survivor succeeds in resisting the batterer's pressure to return.

PATIENT PROFILE 10.3

...BECAUSE I LOVE HIM

SETTING: *Rhonda is a 27-year-old married woman with two children, 5 and 3. She is currently being followed because she is pregnant. She has been treated on and off for 3 years for minor bruises and abrasions in a large urban medical office. She is often seen by Sue, a physician assistant, who is aware of the domestic violence and has been talking with her about it for 2 years now. Alerted by the staff that Rhonda had come in with a black eye, Sue tried to summon a domestic violence advocate from the nearby shelter, but was told that both were unavailable.*

Sue: Hi Rhonda, let's take a closer look at that black eye. Did he hit you again?

Rhonda: Yes. Day before yesterday.

Sue: That must have really hurt. Did you get hurt anyplace else?

Rhonda mutely raises her arms to show some bruises on the distal sides of her forearms. Sue marks the locations on the body map she has pulled out.

Sue: Did he choke you?

Rhonda shakes her head.

Rhonda: *(again with tears in her eyes)* Thanks. You have no idea how much that means to me. I feel so alone most of the time.

POINTS TO CONSIDER:

- Sue cognizant of the abusive situation, tries to make it a team effort.
- With pregnancy as a risk factor for increased abuse, Sue focuses on safety concerns for the mother and the fetus.
- Sue is not trying to rescue Rhonda but offers her safety alternatives and lets Rhonda make the decision about how to keep herself safe.
- Understanding the tenuous hold on sanity of someone in Rhonda's position, she offers Rhonda the assurances that symbolize the bridge out of isolation.

GIVING ASSURANCES

But there are certain things you, or an expert in domestic violence with whom you consult, can do to assure her physical and emotional needs while she is in your office or clinic. You can create a supportive environment. Assure her of confidentiality and privacy. Let her tell her story. After listening to her, tell her clearly that she is not crazy. This is a crucial reassurance that will help her to counteract the batterer's brainwashing efforts. Point out to her that she is a **survivor**. Commend her for taking the first step toward improving her life and that of her children. Affirm that she did the right thing by telling someone about the crime that is occurring to her. Emphasize that no one has the right to hurt others, and that no one deserves to be beaten or threatened with violence no matter what responsibility she feels she has for the "problems" in the home.

By being supportive, pointing out the danger to herself and her children, and setting in motion other procedures for helping her, you communicate to her that she is not alone. The recognition that you, your staff, and/or a domestic violence advocate understand how difficult her situation is, and that you stand ready to assist her in planning for her safety, offers her hope that she will survive when she leaves the situation. This is the **bridge out of isolation** that will help the survivor counteract the feeling of being trapped in a sea of helplessness and hopelessness. If she feels understood and cared for, she may be able to take the first steps in the sometimes lengthy process of empowerment for her to reach freedom from abuse and move towards regaining control over her life.

You or a domestic violence advocate can also provide her with information about the community resources available for battered women and their children. You might review with her a brochure from the nearest shelter or Coalition on Domestic Violence. However, giving her a brochure to take home might endanger her safety if the batterer later finds it. You might simply write the number of the nearest domestic violence shelter or of the advocate on one of your business or appointment cards. If you have an advocate present, she can identify options, and devise a safety plan. In many locales, the legal advocate will help the abused person make a report to the police, and/or walk her through the legal system to obtain a court order of protection. The advocate can also explain her medical and legal rights to the woman. For example, the batterer can be made legally liable for the cost of treating the injuries and even for counseling she may need. Free legal assistance is usually also available through the nearest office of the state Legal Aid Society. Because the batterer has restricted her education and employment, she may need to

Assurances to Give to a Victim Who Says She Cannot Leave Now

- "You are not crazy."
- "You deserve better than this."
- "I am afraid for your safety (and the safety of your children)."
- "It will only get worse."
- "I am here for you when you are ready to leave."

apply for welfare and work training programs after she leaves him.

DOCUMENTATION

It is imperative that you clearly document your findings from the physical examination and the history. Using a simple front and back body map, clearly indicate locations of injuries or wounds, and label them. Always reference any injuries drawn on the body map in the medical record and link them to the "suspected violence." If a woman comes in with somatic symptoms only, and you have indications from her that they are connected to the stress of being in a domestic violence relationship, your documentation should use the phrase "related to suspected domestic violence." If a distraught victim spontaneously narrates the circumstances of the abuse, it is recommended that you quote the victim's own words and relate them to the injuries or somatic complaints. Such direct quotes are called **excited utterances** in legal terminology, and they carry weight in court proceedings. Report all laboratory findings and note that they were ordered in connection with injuries or somatic complaints "attributed to domestic violence" as illustrated in Box 10-5. If possible, incorporate the notes from the interview by a domestic violence advocate directly into the record, or at least reference that such an interview was conducted. It is critical to have as many details as possible, because such a record can become evidence against the batterer in subsequent legal proceedings.

Before she leaves your office or clinic, schedule a follow up visit in the near future. Given the rate of no-shows, you might flag your office staff to call the home before the next appointment — and without saying anything about domestic abuse— remind the patient to come for her follow up appointment. If the batterer is present in the clinic, you should also impress upon him the importance of her receiving follow up treatment for the presenting symptoms.

Box 10-5 Sample Documentation

Pt states she was "punched" in the left shoulder two times, beaten on her arms while covering her head and face, and stabbed with a screwdriver in her back.

Pt states husband screamed at her "I am going to kill you" at least three times, while trying to strangle her.

Physical examination of the skin reveals a 3 cm swollen ecchymotic area on left anterior shoulder consistent with a wound from a direct hit. There are three linear ecchymotic areas on each side of the neck consistent with strangulation marks from fingers. There is a closed puncture wound medially near vertebrae of left scapula consistent with stab wound from a blunt instrument. The lateral surfaces of both arms are discolored with blue and red contusions consistent with the blunt trauma as described by patient. See locations marked on body map. X-rays of right and left humerus were without evidence of fractures.

SAFETY PLANNING

Before the end of the first visit, you need to review her situation with her. Your primary aim here is *not* to get her to take action, but simply to focus on safety for herself and her children. First and foremost is her immediate safety if she returns to the home. You, or the domestic violence advocate could discuss a plan on how to get out of the house during a violent incident. Box 10-6 contains the major elements of a safety plan. She may need important documents if she and the children are forced to flee the house with only their clothes on their back. She will need such documents if she later has to apply for welfare assistance or a medical card for herself and her children. Your office can help by having the person who takes the information on her insurance and means of paying, also ask for the driver's license and social security card and make a copy for the medical file.

You and she need to know, that the immediate period after she leaves, or after the batterer has been forced out of the home by police or a

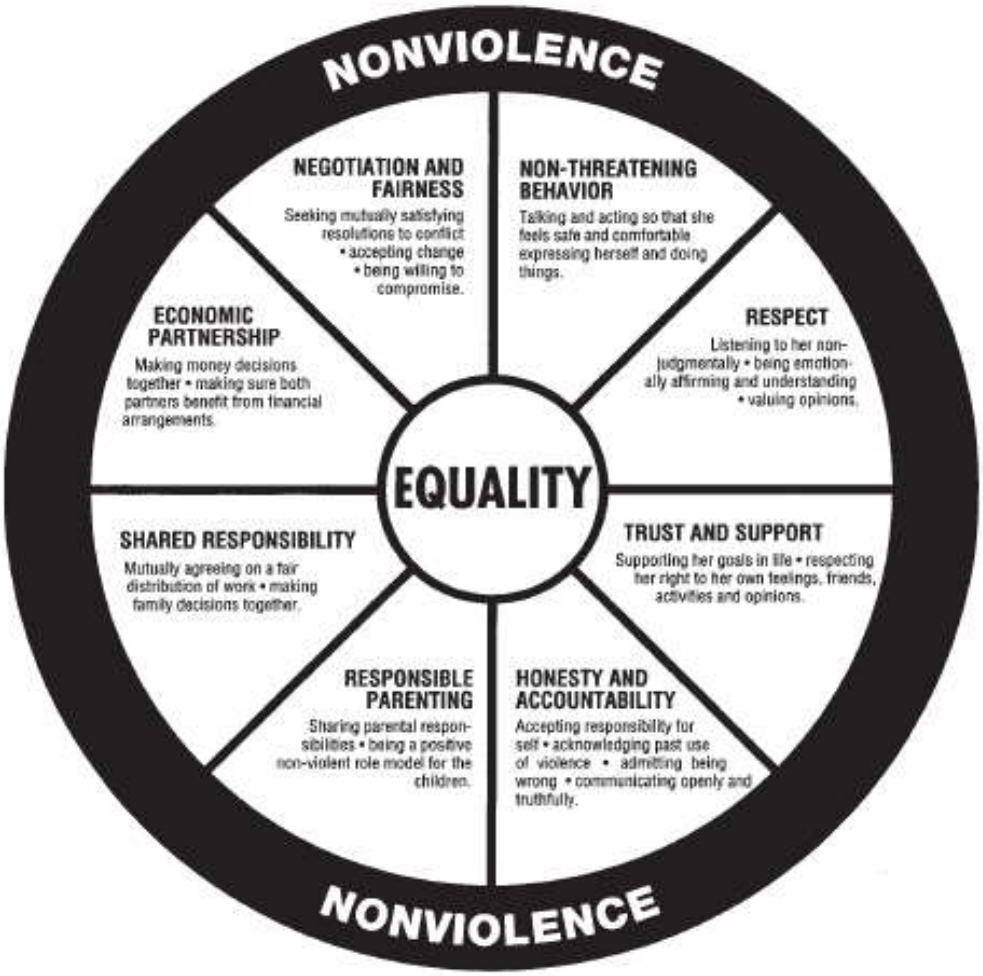


Figure 10-2. Wheel of Non Violence and Equity. From Domestic Abuse Intervention Project, Duluth MN, Used by permission.

tor needs to be alert to the verbal cues of distress of someone who "can't come in," but wants to know what to do for some of the physical or somatic conditions of abuse listed in Box 10-2. Generally, the local shelter or state Coalition on Domestic Violence will be glad to provide training on how to recognize and respond to patients who are potential or actual victims of domestic violence. They will train your staff to be sensitive to the need for non-judgmental support of the victim. Their trainers will help you set up a protocol for alerting everyone in the office or clinic, especially if the batterer is present. They will give you emergency phone numbers for summoning a domestic violence advocate to the office or clinic as quickly as possible.

Managing patients who have been abused can be quite frustrating and stressful. You and staff

Family Justice Center Alliance Casey Gwinn's Explanation of the Cause of Teen Pregnancy, HIV, AIDS, STDs: "Traditional Masculinity"

> Gwinn: ***"People are realizing that their work—even if not connected to sexual violence—is very much connected to traditional masculinity. . . There are a lot of groups working on issues like early fatherhood, HIV and AIDS, or the prevention of STDs. They realize that if we embrace traditional notions of masculinity, we're embracing a lot of risky sexual behaviors."***

See section I.X

Family Justice Center Alliance Leadership and Ideology; In Their Own Words:

Your Presenters Today:

Casey Gwinn,
President and Chief Financial Officer,
FJC Alliance

Gael Strack, JD
Chief Executive Officer
FJC Alliance

www.familyjusticecenter.org

"Local Services, Global Reach"

"Local Services, Global Reach"

DREAM BIG

Casey Gwinn

START SMALL

Gael Strack

Mr Gwinn Empowering Women

Managing Your Divorce: A Guide for Battered Women

National Council of Juvenile and Family Court Judges

Dean Louis W. McHardy, Executive Director

Family Violence Department
Resource Center on Domestic Violence:
Child Protection and Custody

Meredith Hofford, M.A., Director

P.O. Box 8970 • Reno • Nevada • 89507 • 800/527-3223

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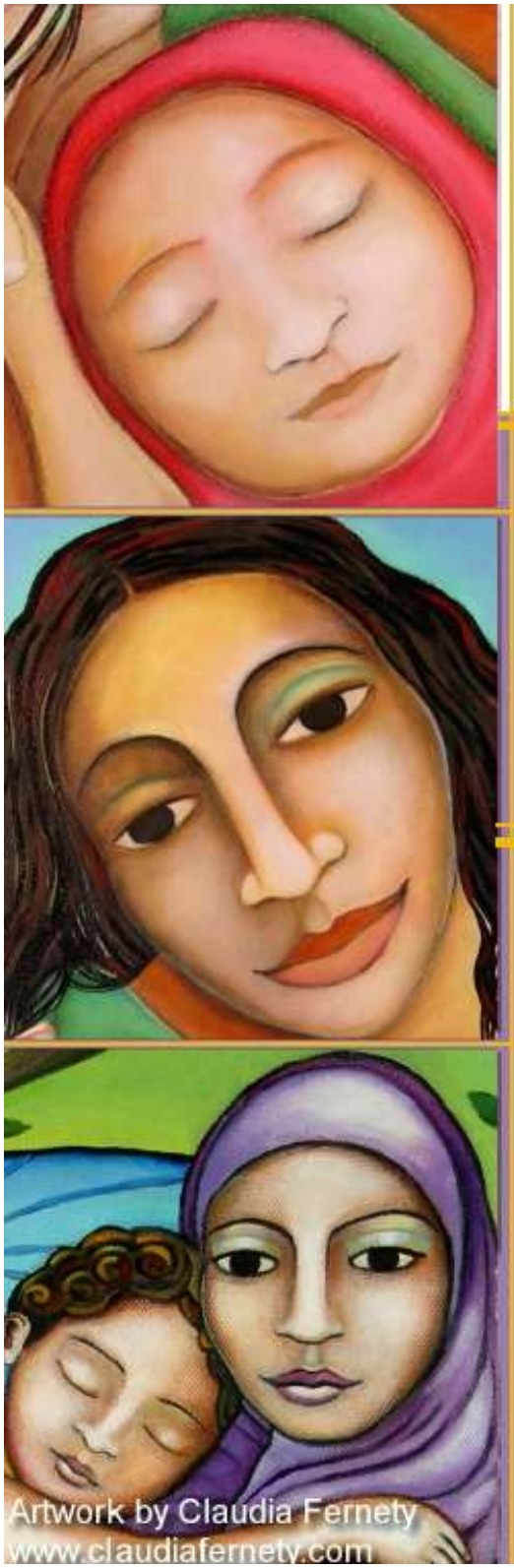
First Printing, 1998



Recruiting and Engaging Men to Speak Out Against Domestic Violence Toolkit

2012

TABLE OF CONTENTS

PLEDGE TO HELP PREVENT GENDER VIOLENCE

I PERSONALLY PLEDGE:

1. To approach gender violence as a MAN'S issue involving men of all ages and socioeconomic, racial and ethnic backgrounds. View men not only as perpetrators or possible offenders, but as empowered bystanders who can confront abusive peers;
2. If a brother, friend, colleague, classmate, or teammate is abusing his female partner -- or is disrespectful or abusive to girls and women in general – to not look the other way. If I feel comfortable doing so, I will try to talk to him about it. I will urge him to seek help. Or if I don't know what to do, I will consult a friend, a parent, a professor, or a counselor. I WILL NOT REMAIN SILENT;
3. To have the courage to look inward. Question my own attitudes. Try hard to understand how my own attitudes and actions might inadvertently perpetuate sexism and violence, and work toward changing them;
4. If I suspect that a woman close to me is being abused or has been sexually assaulted, I will gently ask if I can help;
5. If I am emotionally, psychologically, physically, or sexually abusive to women, or have been in the past, I will seek professional help NOW;
6. To be an ally to women and men in Idaho who are working to end all forms of gender violence. Support the Nampa Family Justice Center and its allied agencies;
7. To attend programs, take courses, watch films, and read articles and books about multicultural masculinities, gender inequality, and the root causes of gender violence. Educate myself and others about how larger social forces affect the conflicts between individual men and women;
8. To not fund sexism. I will refuse to purchase any magazine, rent any video, subscribe to any website, or buy any music that portrays girls or women in a sexually degrading or abusive manner;
9. To mentor and teach young boys about how to be men in ways that don't involve degrading or abusing girls and women;
10. To lead by example.

Signed: _____ Date:_____

Adapted from Jackson Katz's Ten Things Men Can Do to Prevent Gender Violence (http://www.jacksonkatz.com/wmcd.html)

INTRODUCTION

This toolkit is designed to help Family Justice Centers recruit and engage men to speak out against Domestic Violence. Statistics on men's violence against women are staggering: 85% of domestic violence victims are women[1]; in 70-80% of intimate partner homicides, the man physically abused the woman before the murder[2]. However, Family Justice Centers and other community organizations often overlook the myriad of non-violent men who can play a strong, impactful role in ending family violence.

This toolkit invites Family Justice Centers to create a Men's Leadership Forum (Forum) that encourages strong, positive male role models to come together, take action, and commit to ending violence against women and girls. The toolkit specifically focuses on developing, implementing, and maintaining the Forum at the Family Justice Center and turning into an Action Team to benefit the Center in the long-run. This offers a quick step-by-step process on how to identify existing organizations working on recruiting and engaging men; how to host a kick-off event; how to create a Men's Leadership Committee; how to develop outreach materials and social networking strategies, and much more.

The Men's Leadership Forum is a great opportunity to educate the community, brag about the good things the Family Justice Center is doing, and engage more men in the movement. With a little planning and preparation, the Forum can become part of a Center's ongoing service delivery model.

The Alliance would like to thank the Nampa Family Justice Center and for pilot testing this program. Many of the recommended steps and processes found throughout this toolkit are available due to the hard work and tremendous effort of good men affiliated with the Nampa Family Justice Center. Special thanks as well to Ted Bunch and A Call to Men for helping the Alliance develop this special initiative funded by the Verizon Foundation.

Special Note: Items marked with an asterisk (*) are available as a resource in the Appendix of this toolkit.

[1] Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence*, 1993-2001, February 2003.
[2] Campbell, et al. (2003). "Assessing Risk Factors for Intimate Partner Homicide." *Intimate Partner Homicide*, NIJ Journal, 250, 14-19. Washington, D.C.: National Institute of Justice, U.S. Department of Justice.

MODELS AND INFORMATION ON MEN'S ENGAGEMENT

The first step in developing a Men's Leadership Forum is to identify and research existing organizations that recruit and engage men in the family violence movement. Conducting such research will help identify how such models can be adapted for use in the Family Justice Center.

Recommended Organizations and Programs for Adaption and Use in a Family Justice Center

There are many successful and dynamic agencies doing great work around this issue. The Family Justice Center Alliance (Alliance) recommends the following agencies and resources to help you get started in creating your Men's Leadership Forum.

- ***A Call to Men***
  A Call to Men challenges men to reconsider their long held beliefs about women, in an effort to create a more just society. A Call to Men accomplishes their vision by encouraging change in the behaviors of men through a re-education and training process that promotes healthy manhood. Ted Bunch and Tony Porter, the co-founders of A Call to Men are a tremendous resource for the Family Justice Center movement.

  A Call to Men implements their vision by offering various on-site trainings and events. *The Men's Institute* identifies ideas and strategies for engaging men and boys, including starting programs, projects, and initiatives to promote domestic violence and sexual assault prevention. For more information, visit: www.acalltomen.org.

- ***Men Can Stop Rape – A Comprehensive Approach: The Strength Campaign***
  Men Can Stop Rape aims to mobilize men to use their strength for creating cultures free from violence, especially men's violence against women. Men Can Stop Rape's approach is grounded in the social ecological model, advocated by the Centers for Disease Control (CDC) as a framework for the primary prevention of gender-based violence.

  Men Can Stop Rape offers training and curriculum to middle school, high school, and college-aged audiences. Each targeted audience is also encouraged to implement a

Jackson Katz provides training to all audiences. His training focuses on identifying new strategies for involving men and boys in the family violence movement; discussing new ways to think, talk, and write about gender violence; introducing culturally competent ways to approach gender-based violence; learning how to apply critical media literacy skills; and gaining new insights about the relationship between gender violence and other pressing social problems. For more information, visit: www.jacksonkatz.com.

- ***Texas Council on Family Violence – The Men's Nonviolence Project***
  The Men's Nonviolence Project seeks to encourage men to take an active role in ending men's violence against women.

  The Men's Nonviolence Project provides information, resources, and connections to inspire and support the involvement of men and boys in preventing domestic violence. The Men's Nonviolence Project provides a guide to engage men and boys in prevention program. Additional materials and tools are also provided to local communities to use in their men's nonviolence projects. For more information, visit: www.mensnonviolence.org.

Additional Resources and Information

In addition to the recommended organizations above, the following resources may be helpful to learn more about the role of men in the family violence prevention movement.

- ***Family Justice Center Alliance Resource Library, Outreach to Men Category***
  The *Outreach to Men* category contains webinars, publications, and additional materials useful for Centers to learn more and develop a Men's Leadership Forum in their own community. For more information visit www.familyjusticecenter.org, and then "Resources."

- ***National Online Resource Center on Violence Against Women***
  The National Resource Center on Domestic Violence houses thousands of documents on violence against women. Research papers, tools, and publications on men's violence against women are available for download. For more information, visit www.vawnet.org.

Community Strength Project designed to have an impact on their entire school. In addition, Men Can Stop Rape offers public awareness campaigns to influence social norms at the societal level. For more information, visit: www.mencanstoprape.org

- *Alianza*

  The National Latino Alliance for the Elimination of Domestic Violence (Alianza) is part of a national effort to address the domestic violence needs and concerns of underserved populations. Alianza specifically addresses the needs of Latino/a families and communities. A webinar by Alianza, developed during this grant project, is available in the Alliance's online Resource Library at www.familyjusticecenter.com.

  As part of its training and technical assistance services, Alianza organizes national conferences and other training forums that help service providers and advocates who work with Latinas/os to enhance their knowledge and skills. In addition, Alianza develops and distributes culturally and linguistically competent resource materials. For more information, visit: www.dvalianza.org.

- *Futures Without Violence – Coaching Boys Into Men*

  The Coaching Boys into Men program equips athletic coaches with strategies, scenarios, and resources needed to build attitudes and behaviors that prevent relationship abuse, harassment, and sexual assault.

  Coaching Boys into Men offers tools and resources to talk with male athletes about respect for women and girls. Through this program, athletes learn skills to avoid violence and abuse in their relationships. For more information, visit: http://www.futureswithoutviolence.org/section/our_work/men_and_boys/_coaching_leadership/.

- *Jackson Katz*

  Jackson Katz is an anti-sexist male activist. As an educator, author, filmmaker, and cultural theorist, he is internationally recognized for his groundbreaking work in the field of gender violence prevention education and media literacy.

A Call to Men

Men's Leadership Forum

Come join us for a conversation addressing men's violence against women in our community

- Help inspire a national movement of men and their commitment to help shape the attitudes and behaviors of men with a message that violence does not equal strength
- Help inspire a national movement of men and their commitment to help shape the attitudes and behaviors of men with a message of respect for women
- Help inspire a national movement of men and their commitment to the advancement of healthy non-violent masculinity
- Discuss practical approaches toward ending violence against women
- Brainstorm ideas to help develop the next generation of male leadership who will role model strength without violence

Date: March 13, 2012
Time: 8am - 11am @ the Public Safety Building in Nampa. Breakfast will be served.

Stand up, speak out, and say no to violence against women and girls!

Contact person:
Rebecca Lovelace
Nampa Family Justice Center
1305 3rd St. South
Nampa, ID 83651
208-475-5700
lovelacer@cityofnampa.us

WHEN MEN DO NOTHING...

(Inspired by Martin Niemoller's "When they came for me...")

First, he began to tell her what to wear, and I did nothing because, obviously, he cares what she looks like.

Then, he came home from a bad day at work and told her the house looked like crap and said she was a pig, and I did nothing because it is his house, isn't it?

Then, he started calling her bitch and stupid fat whore when he was angry, and I did nothing because I give money to breast cancer research and wear a pink ribbon;

Then, he warned her not to go anywhere with her bitchy best friend, and I did nothing because he was just trying to protect her;

Then, when she did meet her best friend for lunch, he put his fist through the wall a foot from her head, seething with anger and spittle, and I did nothing because he did tell her not to, didn't he?

Then, he told her not to go anywhere without him, and I did nothing because it's not really my business;

Then, when she did, he showed her the gun he bought, and I did nothing because I am active in the peace movement;

Then, when she threatened to call the police, he told her they wouldn't believe her, and I did nothing because the cops can handle this type of thing;

Then, when she told him she didn't want to have sex anymore and he forced her, I did nothing because she's his wife, isn't she?

And then, when she said she was leaving him, he said he would commit suicide if she did, and I did nothing because it was just an idle threat;

And then when she did leave, he found her and shot her, and I did nothing because it was too late.

And besides, isn't there some kind of woman's group that could have dealt with this?
~Stephen McArthur

UFV/UMP is particularly pernicious in the African American Community:

December 10, 2009

SAFE RETURN

DOMESTIC VIOLENCE & PRISONER REENTRY

Webinar for the National Family Justice Center Alliance

IDVAAC

Brought to you in partnership by the Institute on Domestic Violence in the African American Community and the U.S. Department of Justice, Office on Violence Against Women.

Your presenter today:

Oliver J. Williams Ph.D., MPH, LICSW
Executive Director, IDVAAC & Professor, School of Social Work
University of Minnesota
Director of SRI

GOALS OF SRI

- To provide training and technical assistance on effective responses to domestic violence during prisoner reentry.
- To enhance the capacity of domestic violence service providers, institutional corrections, and parole/community supervision, to address the intersection of domestic violence and prisoner reentry.

WHY ATTEND TO THE ISSUES?

- Men being released from prison may have histories of intimate partner violence; regardless of whether he has been charged and sent to prison for that offense.
- Domestic violence maybe among the reasons parole is revoked and men are sent back to prison.

- Battered women may be harassed and victimized by him while he is in prison and after release.
- Attention given to domestic violence can potentially improve his re-entry integration and increase safety.

RECIDIVISM

- Nearly 600,000 men are released from prison each year
- 45% of parolees successfully complete their parole term (1994, national study)
- Within 3 years:
  - 67% of former inmates are rearrested
  - 52% return to prison

Traditional Reentry Efforts

- Education
- Housing
- Substance Abuse
- Employment
- NOT domestic violence

Framework of Reentry

- Reentry should include formal planning that starts at sentencing and continues throughout incarceration and probation/parole.

SOURCES OF CONFLICT:

Men's View on How Men Cause Conflict

- Acting on "street news" about one's wife or girlfriend.
- Maintaining a relationship with another woman/double visits/selling dreams.
- Trying to control from the inside.
- Harassment & threats.
- Accusing wife/girlfriend of having a "second life."

SOURCES OF CONFLICT:

Men's View on How Wives/Girlfriends Cause Conflict

- Unfaithfulness & Punitive Assertiveness
  - 'Breaking up with you!' 'I have a New Man!'
  - Believes bad news/rumors about man.
  - Uses man's Imprisonment to assert herself.
- Failing to meet a man's expectations regarding visits, not providing material support, and being available when he calls.
- Going out to social events.

CHALLENGES & CONFLICT ASSOCIATED WITH REENTRY

- Evidence of "second life/new man"
- Unresolved conflict
- Using incarcerated man's relatives
- Going home to another woman
- Challenging his manhood
- Parole restrictions, threats, and retaliation

DV & REENTRY, *continued*

Photo by Jason Clark, Courier Press

- Unresolved accusations & issues.
- Displaced anger about being in prison.
- Being disrespected.
- Woman as independent & challenges a man's authority.
- Not taking care of business during man's incarceration.

WOMEN'S VIEWS: DOMESTIC VIOLENCE & REENTRY

While in Prison

- Economic costs
- Emotional investment – waiting
- Dealing with partner's insecurities about infidelity

Post-Release

- "Prison mentality" vs. family life
- Men are relieved of adult responsibilities while incarcerated & must adjust
- Unemployment
- Need for authority with partners and children
- Return to 'street life'
- Positive changes can cause stress

WOMEN'S VIEWS: SPECTRUM

- **Fear:** Some could not envision partner changing, e.g. threats continued while he was incarcerated vs. some women were not afraid and wanted him to return upon release. *Fear could be a factor while both in prison and post-release.*
- **Parenting:** Some saw fathers as essential figures in the lives of their children and were transporting children to visit vs. some appreciated single parenting because they didn't have to negotiate parenting philosophies.

Traditional Approaches on domestic violence

- Focus on male sexism
- Focus on men's relationship and behaviors and attitudes about women but particularly with their female partner
- Understand feeling and its relationship to behavior
- Understanding of situations that result in violent behavior and developing a responsibility plan to address it

Expanding the approaches with this population

- Developing problem solving on issues of relevance to the population is important as well as expanding skill sets
- Also expanding topics to address violence in additional areas of their life
- Although there are no guarantees of change, there is the possibility of change among some men

CONSIDERATIONS:

When Working with Men in Prison and on Parole Related to Domestic Violence

- Definitions of manhood
- Social context and identify
- Sexism, attitudes and behaviors toward women (what brand of sexism did he learn and does he practice?)
- Power and control and the reintegration into the family

CONSIDERATIONS:

When working with men, continued

- Healthy fatherhood challenges and co-parenting challenges
- Capacity to take care and sustain oneself
- Legally contributing to family resources
- Impact of past violence and incarceration, on families
- Skill and alternatives to violence in intimate partner, family and community relationships and interactions
- People, places and things
- Multiple partner relationships
- Definitions of respect: by others and toward others
- Experiences of abuse in family, community and in prison
- Attitudes and behaviors that result in him being sent back to prison (including domestic violence)

CONSIDERATIONS:

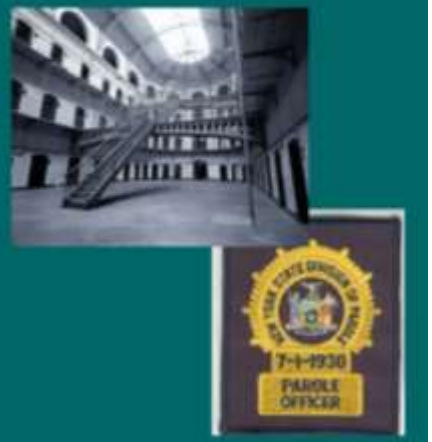
When Working With Women

- Healthy relationships and co-parenting.
- Find out what and if she has fear for self and her children.

- Important to define abuse.
- Identify and discuss fears and challenges of him returning home.
- Develop collaborative and trusting relationships with dv organizations, community services, community supervision and parole.
- Engage in safety planning and defining what safety means
- Identify and gain access to resources.

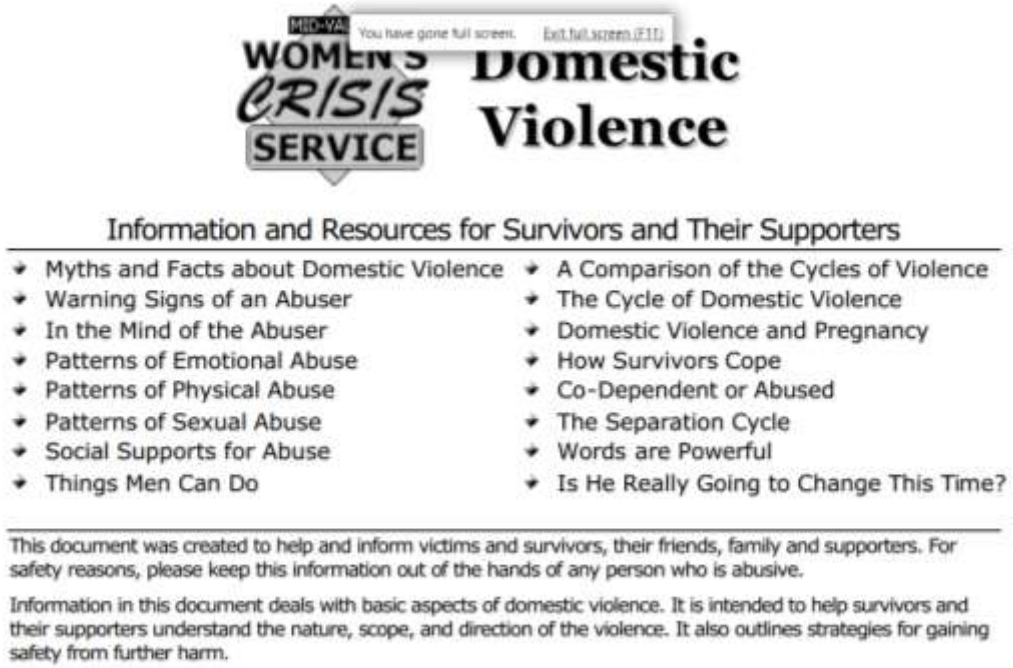
CHALLENGES TO BE ADDRESSED: PRISON/PAROLE PROGRAMS

- May not be trained to identify abusive behaviors in prisoners, particularly those who have not been convicted of DV crimes.
  - Don't routinely screen for a history of dv; provide dv-specific education/treatment, or address ongoing abusive and controlling behaviors while a man is in prison or when reenters to the community.
- Few post-release programs provide either general family services or specific DV services.



Family Justice Center Educational/Training/PR "DV 101 Materials": Adopted from Salem, Oregon Women's Rape/Incest/Domestic Violence Crisis Shelter

The Source for Family Justice Center's "DV 101" Employee/Advocate training materials does not reference the abundant studies on domestic violence provided by well researched governmental or academic studies such as the leading yearly nationwide surveys by the Centers for Disease Control. Instead, the Family Justice Center relies on a Salem, Oregon Women's rape/incest/DV crisis center: The Mid Valley Women's Crisis Center:
http://www.mvwcs.com/documents.html


MID-VAL WOMEN'S CRISIS SERVICE

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Domestic Violence

Information and Resources for Survivors and Their Supporters

- Myths and Facts about Domestic Violence
- Warning Signs of an Abuser
- In the Mind of the Abuser
- Patterns of Emotional Abuse
- Patterns of Physical Abuse
- Patterns of Sexual Abuse
- Social Supports for Abuse
- Things Men Can Do
- A Comparison of the Cycles of Violence
- The Cycle of Domestic Violence
- Domestic Violence and Pregnancy
- How Survivors Cope
- Co-Dependent or Abused
- The Separation Cycle
- Words are Powerful
- Is He Really Going to Change This Time?

This document was created to help and inform victims and survivors, their friends, family and supporters. For safety reasons, please keep this information out of the hands of any person who is abusive.

Information in this document deals with basic aspects of domestic violence. It is intended to help survivors and their supporters understand the nature, scope, and direction of the violence. It also outlines strategies for gaining safety from further harm.

Compare the MidValley Women's Crisis center materials above to the San Diego Family Justice Cetner's identical "DV 101" Materials on their webiste:

http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/356-dv-101-information-a-resources-for-survivors-and-their-supporters-sdfjc.html.

See also feminist resources for San Diego Family Justice Center's "DV 101" materials at:

http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/357-dv-101-domestic-violence.html

http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/355-dv-101-understanding-domestic-violence-ganley.html

http://www.familyjusticecenter.org/index.php/jdownloads/finish/56-domestic-violence-101/354-dv-101-glossary-of-dv-and-bws-terms.html

Family Justice Center Version Below:

San Diego Family Justice Center

Information and Resources for Survivors and Their Supporters

- Myths and Facts about Domestic Violence
- Warning Signs of an Abuser
- In the Mind of the Abuser
- Patterns of Emotional Abuse
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- Patterns of Sexual Abuse
- Social Supports for Abuse
- Things Men Can Do
- A Comparison of the Cycles of Violence
- The Cycle of Domestic Violence
- How Survivors Cope
- Co-Dependent or Abused
- The Separation Cycle
- Is He Really Going to Change This Time?

This packet was created to help and inform domestic violence victims and survivors, their friends, family and supporters. For your safety, please consider keeping this information out of the hands of the person in your life that is abusive.

A survivor of domestic violence has critical needs. Certainly, they include a safe place to be, safe people to be with, and clear, accurate information to help the survivor assess her situation and make decisions.

Information in this packet, provided by the San Diego Family Justice Center, deals with basic aspects of domestic violence. It is intended to help domestic violence survivors and their supporters understand the nature, scope, and direction of the violence. It also outlines strategies for gaining safety from further abuse.

The San Diego Family Justice Center is the most comprehensive "one stop shop" in the nation for victims of family violence and their children. Victims of domestic violence in the City of San Diego can now come to one location to talk to an advocate, get a restraining order, plan for their safety, talk to a police officer, meet with a prosecutor, receive medical assistance, counsel with a chaplain, get help with transportation, and obtain nutrition or pregnancy services counseling.

Our Family Justice Center is a unique, special, safe place where victims of domestic violence are our highest priority. We are committed to providing victims and their children the help they need to break the cycle of family violence that so often damages and destroys families. We are here to help stop domestic violence in the families of San Diego.

If you would like more information, call our toll free Info-Line: **(866) 933-HOPE** (4673). Our trained staff or Volunteers can offer help, schedule an appointment (although not necessary), answer questions, or give you information about the resources available to you at the Family Justice Center.

(Domestic Violence Web V2.0 2/2003)

Female-Oriented Staff and Clientele

The FJC Alliance TA Team

Casey Gwinn, JD

Gael Strack, JD

Natalia Aguirre

Jennifer Anderson

Lori Gillam, CPA

Nancy Lefler-Panela, MSW

Melissa Mack

Mehry Mohseni

Alexia Peters, JD

Jena Valles

Rachel Whiteside

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Lori Gillam, CPA

Alex Kannan, JD

Melissa Mack

Mehry Mohseni

Jena Valles

The FJC Alliance Direct Service Team

Lee Friedman

Karianne Gwinn

Katie Huerta

Alexia Peters, JD

Katie Zumwalt

The FJC Alliance Team

Casey Gwinn, JD

Gael Strack, JD

Sgt. Robert Keetch, Ret.

Jennifer Anderson

Brenda Lugo

Lori Gillam, CPA

Yvonne Coiner

Mehry Mohseni

Melissa Mack

Alexia Peters, JD

"Local Services, Global Reach"

Final Advice for Others

Alliance Epowerment of Women

Your Presenters Today:

Casey Gwinn,
President and Chief Financial Officer,
FJC Alliance

Gael Strack, JD
Chief Executive Officer
FJC Alliance

www.familyjusticecenter.org

"Local Services, Global Reach"

DREAM BIG

Casey Gwinn

"Local Services, Global Reach"

START SMALL

Gael Strack

Secrets – Stay Focused

- Be the Destroyer of Negative Energy
- Remember victims are waiting for you to make good things happen
- Have a sense of urgency

Lessons Learned

- No one has all the answers
- Each organization holds a piece to the puzzle
- Need to learn from each other, cross-train, pollinate, share, collaborate
- Training, Training & more training
- Orientation for new partners and staff
- Tendency will be go back to self-isolation
- Pace yourselves

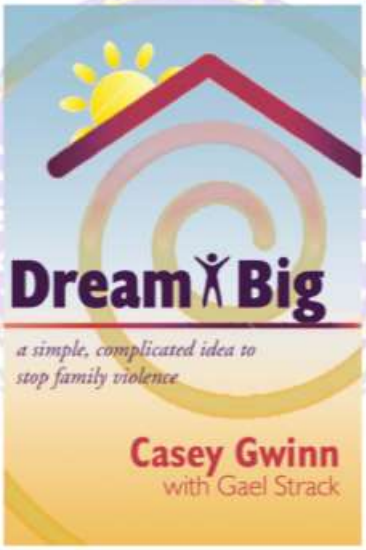
Today's Presenters:

Dr. Diane Lass
President
Hope and Strength Psychological Services

VOICES

VOICES Committee Members

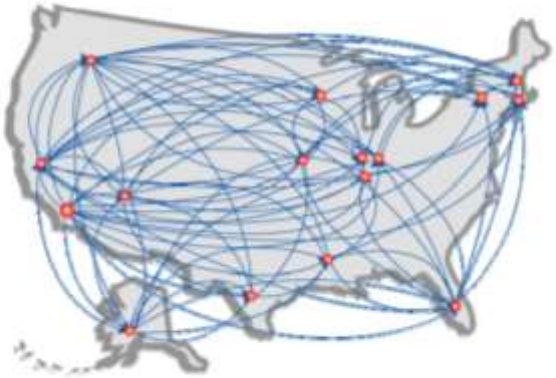
Fall 2010



The Dreams Are Getting Bigger

Designing the Model

FJC Sites



III. Advice, Guidance, and Support in Seeking and Enforcement of Illegal Injunctive Relief

See Exhbiits "D"-"I" also sections I, V.

CR-160

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
DEFENDANT:

CASE NUMBER:

CLETS ENTRY BY:

CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE
(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 273.5(i), and 646.9(k))

☐ ORDER UNDER PENAL CODE, § 136.2 ☐ MODIFICATION
☐ PROBATION CONDITION ORDER (Pen. Code, § 1203.097)
ORDER UNDER: ☐ PENAL CODE, § 273.5(i) ☐ PENAL CODE, § 646.9(k)

This Order May Take Precedence Over Other Conflicting Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED *(complete name)*:
Sex: ☐ M ☐ F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:
☐ The defendant is a peace officer with Department:

1. This proceeding was heard on *(date)*: at *(time)*: in Dept.: Room:
   by judicial officer *(name)*:
2. This order expires on *(date)*: If no date is listed, this order expires three years from the date of issuance.
3. ☐ Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON:
5. ☐ For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
7. **must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. ☐ The court finds good cause not to make the order in item 9.
10. ☐ must have no personal, electronic, telephonic, or written contact with the protected persons named above.
11. ☐ must have no contact with the protected persons named above through a third party, except an attorney of record.
12. ☐ must not come within yards of the protected persons and animals named above.
13. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No. , issued on *(date)*: , as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
14. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
15. ☐ must not take, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in paragraph 5.
16. ☐ The protected persons may record any prohibited communications made by the restrained person.
17. Other orders including stay-away orders from specific locations:

Date:

JUDICIAL OFFICER Department/Division:

WARNINGS AND NOTICES

1. Except as provided in this paragraph, this order takes precedence over any conflicting protective order, visitation order, or any other court order if the protected person is a victim of domestic violence under Penal Code section 13700. However, this order does not take precedence if (1) there is a more restrictive *Emergency Protective Order* (form EPO-001) restraining and protecting the same parties as in this order, or (2) if box 13 or 14 has been checked on page 1 of this order. (Pen. Code, § 136.2(e)(2).)

2. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).

3. **NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a $1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)**

4. **ENFORCING THIS ORDER IN CALIFORNIA**
   - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
   - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

5. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.

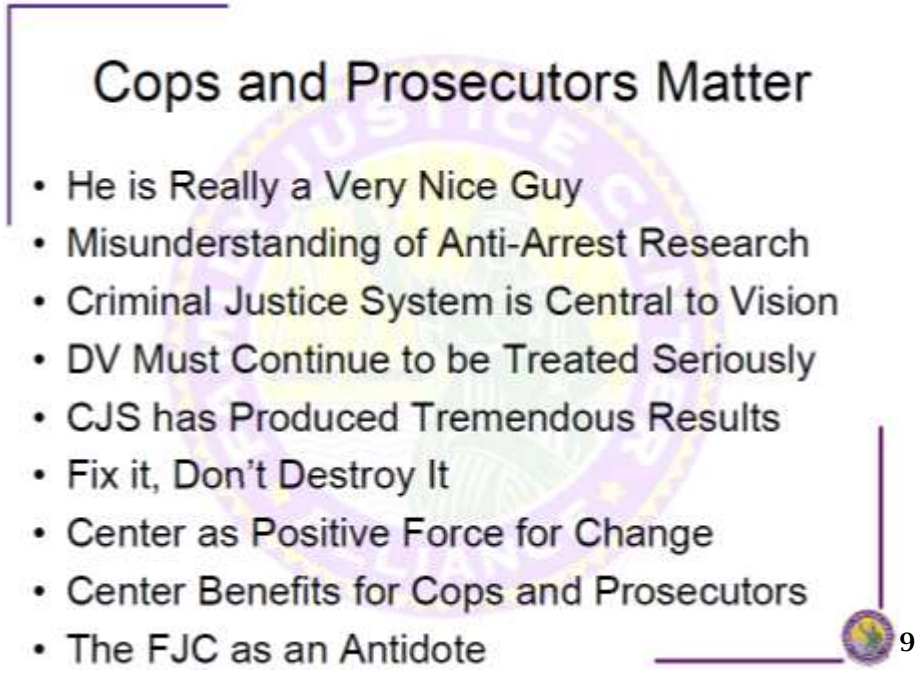
6. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
   - These orders are effective as of the date they were signed by a judicial officer.
   - These orders expire as explained in item 2 on the reverse.
   - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
   - Orders under Penal Code section 1203.097 are probationary orders and the court has jurisdiction as long as the defendant is on probation. (Pen. Code, § 1203.097(a)(2).)
   - Orders under Penal Code sections 273.5 and 646.9 are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, §§ 273.5(i) and 646.9(k).)
   - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.

7. **CHILD CUSTODY AND VISITATION**
   - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
   - Unless box 14 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
   - If box 13 or 14 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

IV. Obstruction of Justice:

Family Justice Center Alliance Integration of Public/Private Services: Malingering, Coaching, Manipulating, Misleading Public Law Enforcement Agencies, Witnesses

A. Family Justice Center Alliance: Integration of public law enforcement/criminal justice/social services:



[9]

[9] See UFV/UMP

Prosecuting Domestic Violence Cases

Casey Gwinn, J.D.
casey@nfjca.org
Resource Information:
National Family Justice Center Alliance
www.familyjusticecenter.org

What We Know…

- Aggressive intervention saves lives…
- The criminal justice system is critical but not exclusively critical…
- Abusers do not stop without intervention…
- Courts/judges must be trained and then held accountable…
- Coordinated community response is the baseline…
- Co-located, wraparound services are the future…in communities where it will increase safety and support for victims and their children

Defining Effective Intervention

- Making the Victim Safer
- Holding the Abuser Accountable
- Stopping and Preventing the Violence
- Never Letting a Victim Die in Vain
- Making Misdemeanors Matter

Personal Reflections

- We need passionate determined prosecutors
- If you don't have passion, go do something else
- If you are burned out, go do something else
- Submit yourself to advocates and survivors…
- Be willing to be unpopular to do what is right…

Evidence Based Prosecution

- 911 tapes and printouts
- Child witness statements
- Neighbor witness statements
- Medical records
- Paramedic log sheets
- Prior police reports
- Restraining orders
- Booking records/Jail Calls
- **Letters from the suspect**
- Videotaped/Audio taped interviews with the victim
- Don't Forget the Defendant's…

It is not...

- It is not "victimless prosecution"
- It is not about replacing the batterer with the criminal justice system
- It is not about revictimizing victims of domestic violence
- It is not a repudiation of victim advocacy
- It is not about ignoring the rights of victims

It is...

- It is focusing on the offender
- It is holding the criminal accountable
- It is about building cases prosecutors can win with or without victim testimony in the case-in-chief
- It is a partnership with advocates
- It is about victim safety
- It is a about effective intervention

Guidance for Prosecutors

- Focus on evidence where V is distraught and describing incident while it is happening
- Focus on on-going threat, emergency, fear, danger
- Train Officers to Be Quiet Upon Arrival!
- Train Your 911 Operators to Focus on Current Emergency!
- Ask V who else she has talked to…avoid Crawford et al completely!
- Develop your arguments for forfeiture by wrongdoing!!!!
- FRE 804(b)(6)

Key for Prosecutors: Focus on the Abuser

- Remove the responsibility for law enforcement intervention from the victim
- Put the responsibility for intervention on the system
- Focus on proving the actions of the abuser
- An evidence-based prosecution approach will survive Crawford v. Washington and its progeny…if we continue to focus on abuser accountability

The Approach of the Prosecutor

- How can I prove this case if the victim does not testify in this case?
- What evidence exists that I have never used before?
- If this was a circumstantial evidence homicide case, how would I prove it?
- Judges need information…prosecutors are the conduit!!!!!

American Bar Association Research – 2001 – Study

- Did the victim want the court to just let him go? Yes 4%/No 96%
- Did the victim want him to go to court for what he did? Yes 55%/ No 45%
- Did the victim think it was good the case was prosecuted? Yes 90%/No 10%
- Would the victim call the police if he harmed her in the future? Yes 79%/No 11%/Maybe 10%
- Overall conviction rate, 96%
- Jury Trial Conviction Rate on Misdemeanor DV Cases: 70%

Are You Putting a Target on Her Chest?

- Who presses charges?
- Who decides the disposition?
- If she says no to prosecution, do you…dismiss? Reduce the charge?
- If she is hard to deal with, do you...
  - Plan less for her safety?
  - Think more of the batterer?
- Does it matter if she never says "thanks?"

Good Question to Ask Suspect

- What will your girlfriend (wife) tell me about what you did?

Batterers Know How to Manipulate Almost Everyone...

- Nicest guy you would ever want to meet…
- I love her but she's very unstable and she needs counseling…has many problems…
- I love her so much I just can't bear to be away from her…
- I am so sorry, I will never do it again...
- This is our business…you stay out of it…
- She is trying to destroy our family…She is turning the children against me...

Mark Wynn:

A person who is being assaulted or is about to be assaulted may realize that they are no match for the violence that is about to be used against them and will often times use a weapon or object as an "equalizer".

The Backlash Movement

- Domestic violence is really 50/50 men and women…
- Women are as violent as men
- Protocols and policies in agencies are biased against men because of the feminist movement
- "It takes two to tango"

What is the future?

- Co-located services
- Multi-disciplinary services
- New communities/cultures
- Criminal and civil justice system professionals plus…community-based domestic violence/sexual assault programs, counseling services, medical services, spiritual support, economic assistance, and…
- A rejection of the categorical social service referral system…
- Creating vehicles for community capacity building

---

4 – Funding and Sustainability

- Solicit Letters of Support Early
- Be Prepared to Use Alternative Forms of Fund-Raising
- Don't Forget Corporate Sponsors
- Develop a Budget for Start-up Costs, Operations & Expansion
- Special Grants that Fund Start-up Costs
- Anticipate Going Over Budget

4 – Funding & Sustainability

- Presenting Your Budget to City or County Officials
- Consider the Funding Needs of On-site Community Partners
- Develop a Sustainability Plan
- Create a Community CV
- Include your DV History
- Start a Foundation or Identify a Nonprofit Organization to Support Your Efforts

4 – Funding & Sustainability

- Seek Volunteer & People Power
- Invest in Strategic Planning
- Recruit a Great Grant Writer
- Don't' be Afraid to Try Something New

From a Shoe Box to…

"Local Services, Global Reach"

DREAM BIG

Casey Gwinn

San Diego FJC – 40,000 sq. ft.

Mixed use building – city rents space

Designing the Model

"Local Services, Global Reach"

Final Advice for Others

Oversight/Training/Advice to First Responders/Investigators

DOMESTIC VIOLENCE INVESTIGATION

A. ARRIVAL

Determine the suspect's location
Were any weapons involved, and if so where are they now?
- Must document weapons involved
- Shall seize weapons for safekeeping or as evidence

Separate the suspect, victim and witnesses
Determine if emergency medical services needed
Note your dispatch and arrival times

B. VICTIM

Note the victim and suspect's relationship
- Length of relationship and cohabitation
- Addresses of prior cohabitation
- Marriage date and location
- List children in common with DOB's

Describe the victim's location on arrival
Describe the victim's emotional condition (may be used for spontaneous statements)
Describe the victim's physical condition (torn or bloody clothing, smeared makeup etc)
Note any spontaneous statements by the victim (audio or video recording recommended)
Document the victim's injuries and symptoms in detail
Document the mechanism how each injury was caused
Document history of prior D.V. to include reported and unreported (list those injuries)
Record symptoms of alcohol or drug use by the victim
List any temporary or future address and phone where the victim can be located
Give the victim required referral information
Do not ask the victim if they want prosecution in a felony case; explain the DA will prosecute

C. SUSPECT

Describe the suspect's location on arrival
Describe the suspect's emotional and physical condition as with the victim
Document any initial statements made by the suspect
Document the suspect's injuries and symptoms in detail
Document any symptoms of alcohol or drug use by the suspect
Interview the suspect prior to custody if possible
Follow-up with Miranda after custody and conduct an interrogation

D. **WITNESSES**

Identify the reporting party and interview.
Identify anyone else who may have called 911 regarding this incident and interview.
Identify all witnesses who had been present, including anyone the victim may have later contacted.
Locate and interview the children in the home.
Document the name and agencies of all EMS or CPS personnel on scene.
Identify the treating physician.
Interview medical staff to determine the extent of injury.
Document victim's statements to medical personnel.

E. **EVIDENCE**

Photograph and describe the crime scene to support statements and to show violence.
Photograph the victim and suspect injuries.
Obtain an identifying photo of the suspect in "at large" felony cases.
Book any evidence pertinent to the case. If possible, photograph or copy evidence prior to booking (victim's pulled hair; phone cords; notes left; shoes; objects used as weapons; recorded messages; printed e mails etc).
Book weapons as evidence or safekeeping
Attempt to determine ownership, possession or prior use of these weapons.
Consider the 911 calls and printout as evidence.
Consider doing a sketch of the scene.
Obtain a signed medical release.
Obtain prior police reports, prior 911 calls and prior reports of medical treatment.
Re-photograph injuries in the days following the assault.

FOLLOW-UP QUESTIONS

Victim's current injury status:
- New bruising *(photograph)*
- Did the victim seek medical treatment *(sign a medical release)*
- Did the victim or someone take photos of these or prior injuries?

Is the suspect calling the victim?
- Apologies
- Threats
- Recorded messages from the suspect *(obtain)*
- Caller ID noted?

Has the suspect mailed / left the victim any letters? *(Obtain)*

Has the victim visited the suspect in jail?

Were there any witnesses not listed in the original report? *(Interview)*
Did the victim do anything to defend themselves?

History - Prior Incidents
- Describe the first incident
- Describe the last incident
- Describe the most serious incident
- Describe any incident that occurred on a special occasion
- Describe any incidents that required medical attention
- Describe any incidents involving weapons
- Describe any incidents out of town *(any prior reports to law enforcement)*

Obtain secondary phone numbers and addresses to later locate the victim.

Confirm the victim and suspects ID.

Heart of the Maryland model

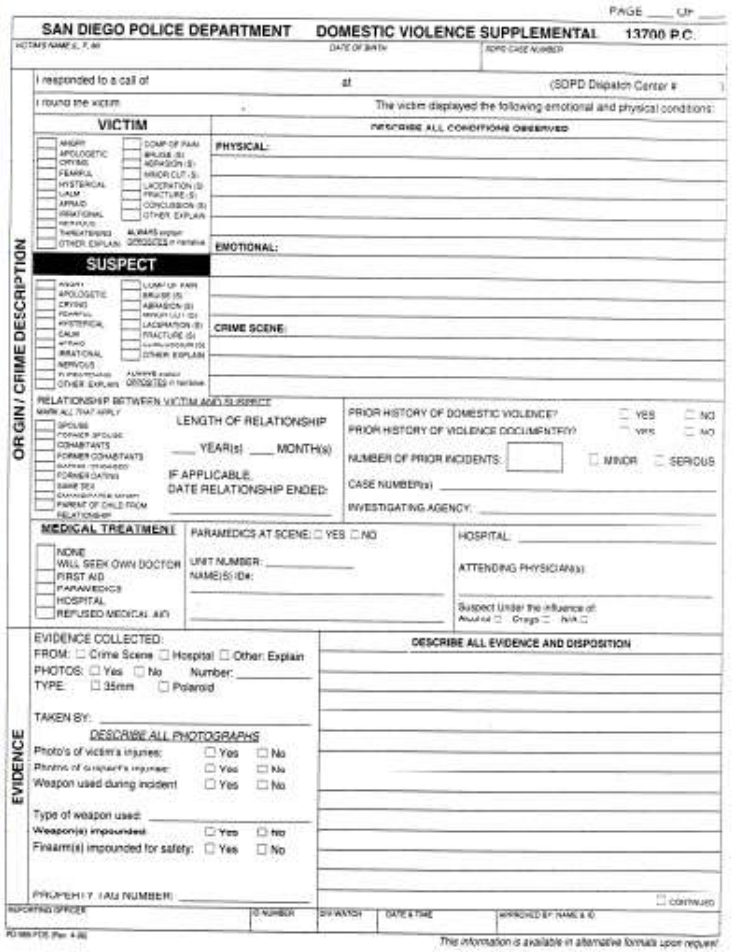
- Officers assess for high risk at scene of crime with 11 questions
- If high risk, officer calls the local hotline and offers the phone to the victim
- If victim declines advocacy support, officer provides "advisal" and referrals
- If victim accepts advocacy support, officer participates in advocacy process as needed.

Experienced Batterers Know How to Hit:

- And Blame it on the Victim (self-defense)
- Without Leaving Immediate Marks
- Without Creating Subsequently Observable Injuries
- Without Predictable Patterns
- Without a "Cycle of Violence"
- Without Hitting…

Specialized DV Form - Front

- Spontaneous Statements
- History of DV
- Photos
- Evidence Impounded
- Medical Treatment
- Paramedics
- Use of drugs/alcohol



PAGE ___ OF ___

SAN DIEGO POLICE DEPARTMENT DOMESTIC VIOLENCE SUPPLEMENTAL 13700 P.C.

VICTIM'S NAME (L, F, MI) | DATE OF BIRTH | SDPD CASE NUMBER

I responded to a call of ___ at ___ (SDPD Dispatch Center #)

I found the victim ___ The victim displayed the following emotional and physical conditions:

ORIGIN / CRIME DESCRIPTION

VICTIM — DESCRIBE ALL CONDITIONS OBSERVED

ANGRY, APOLOGETIC, CRYING, FEARFUL, HYSTERICAL, CALM, AFRAID, IRRATIONAL, NERVOUS, THREATENING, OTHER: EXPLAIN; COMP OF PAIN, BRUISE (S), ABRASION (S), MINOR CUT - S, LACERATION (S), FRACTURE (S), CONCUSSION (S), OTHER: EXPLAIN; ALWAYS explain CIRCLED in narrative

PHYSICAL:

EMOTIONAL:

SUSPECT

ANGRY, APOLOGETIC, CRYING, FEARFUL, HYSTERICAL, CALM, AFRAID, IRRATIONAL, NERVOUS, THREATENING, OTHER: EXPLAIN; COMP OF PAIN, BRUISE (S), ABRASION (S), MINOR CUT - S, LACERATION (S), FRACTURE (S), CONCUSSION (S), OTHER: EXPLAIN; ALWAYS explain CIRCLED in narrative

CRIME SCENE:

RELATIONSHIP BETWEEN VICTIM AND SUSPECT — MARK ALL THAT APPLY

SPOUSE, FORMER SPOUSE, COHABITANTS, FORMER COHABITANTS, DATING, FORMER DATING, SAME SEX, DATING/FORMER SPOUSE, PARENT OF CHILD FROM RELATIONSHIP

LENGTH OF RELATIONSHIP ___ YEAR(s) ___ MONTH(s)

IF APPLICABLE, DATE RELATIONSHIP ENDED: ___

PRIOR HISTORY OF DOMESTIC VIOLENCE? ☐ YES ☐ NO

PRIOR HISTORY OF VIOLENCE DOCUMENTED? ☐ YES ☐ NO

NUMBER OF PRIOR INCIDENTS: ☐ MINOR ☐ SERIOUS

CASE NUMBER(s) ___

INVESTIGATING AGENCY: ___

MEDICAL TREATMENT

NONE, WILL SEEK OWN DOCTOR, FIRST AID, PARAMEDICS, HOSPITAL, REFUSED MEDICAL AID

PARAMEDICS AT SCENE: ☐ YES ☐ NO

UNIT NUMBER: ___

NAME(S) ID#: ___

HOSPITAL: ___

ATTENDING PHYSICIAN(s) ___

Suspect Under the influence of: Alcohol ☐ Drugs ☐ N/A ☐

EVIDENCE

EVIDENCE COLLECTED:

FROM: ☐ Crime Scene ☐ Hospital ☐ Other: Explain

PHOTOS: ☐ Yes ☐ No Number: ___

TYPE: ☐ 35mm ☐ Polaroid

TAKEN BY: ___

DESCRIBE ALL PHOTOGRAPHS

Photo's of victim's injuries: ☐ Yes ☐ No

Photos of suspect's injuries: ☐ Yes ☐ No

Weapon used during incident: ☐ Yes ☐ No

Type of weapon used: ___

Weapon(s) impounded: ☐ Yes ☐ No

Firearm(s) impounded for safety: ☐ Yes ☐ No

PROPERTY TAG NUMBER: ___

DESCRIBE ALL EVIDENCE AND DISPOSITION

☐ CONTINUED

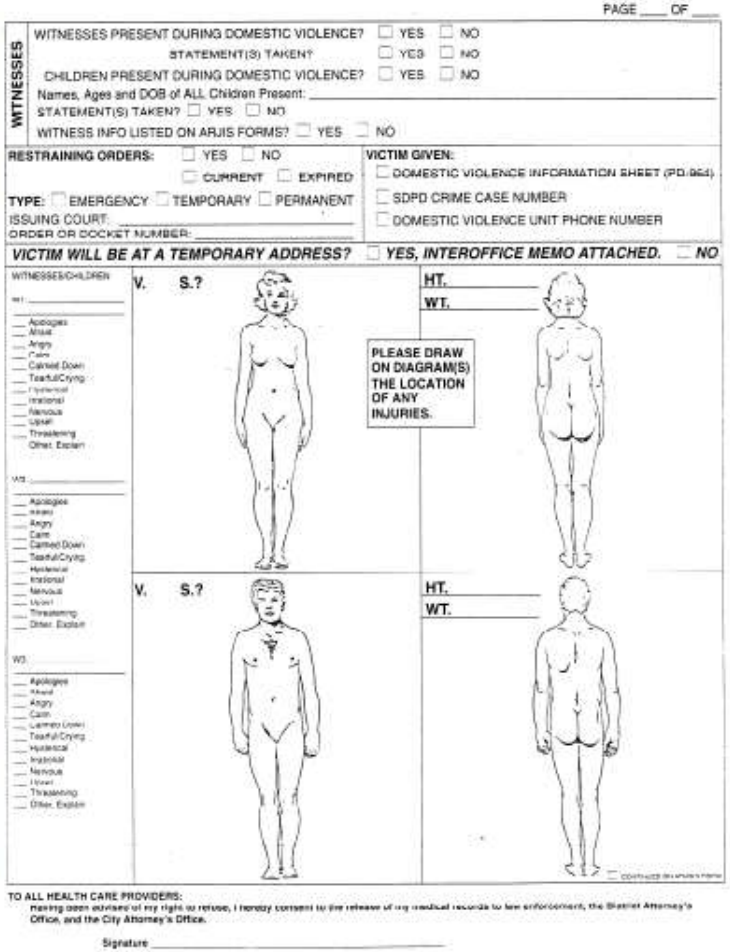
REPORTING OFFICER | ID NUMBER | DIV / WATCH | DATE & TIME | APPROVED BY: NAME & ID

PD 686-FOR (Rev. 4-98)

This information is available in alternative formats upon request

Specialized DV Form - Back

- Information about Children
  - Names, ages, statements & demeanor
- Body chart
- Restraining orders
- Victim information
- Medical release



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WITNESSES

WITNESSES PRESENT DURING DOMESTIC VIOLENCE? ☐ YES ☐ NO
STATEMENT(S) TAKEN? ☐ YES ☐ NO
CHILDREN PRESENT DURING DOMESTIC VIOLENCE? ☐ YES ☐ NO
Names, Ages and DOB of ALL Children Present: _____
STATEMENT(S) TAKEN? ☐ YES ☐ NO
WITNESS INFO LISTED ON ARJIS FORMS? ☐ YES ☐ NO

RESTRAINING ORDERS: ☐ YES ☐ NO ☐ CURRENT ☐ EXPIRED
TYPE: ☐ EMERGENCY ☐ TEMPORARY ☐ PERMANENT
ISSUING COURT: _____
ORDER OR DOCKET NUMBER: _____

VICTIM GIVEN:
☐ DOMESTIC VIOLENCE INFORMATION SHEET (PD-962)
☐ SDPD CRIME CASE NUMBER
☐ DOMESTIC VIOLENCE UNIT PHONE NUMBER

VICTIM WILL BE AT A TEMPORARY ADDRESS? ☐ ***YES, INTEROFFICE MEMO ATTACHED.*** ☐ ***NO***

WITNESSES/CHILDREN

W1: _____
___ Apologies
___ Afraid
___ Angry
___ Calm
___ Calmed Down
___ Tearful/Crying
___ Hysterical
___ Irrational
___ Nervous
___ Upset
___ Threatening
___ Other, Explain

W2: _____
___ Apologies
___ Afraid
___ Angry
___ Calm
___ Calmed Down
___ Tearful/Crying
___ Hysterical
___ Irrational
___ Nervous
___ Upset
___ Threatening
___ Other, Explain

W3: _____
___ Apologies
___ Afraid
___ Angry
___ Calm
___ Calmed Down
___ Tearful/Crying
___ Hysterical
___ Irrational
___ Nervous
___ Upset
___ Threatening
___ Other, Explain

V. S.?

PLEASE DRAW ON DIAGRAM(S) THE LOCATION OF ANY INJURIES.

HT. _____
WT. _____

V. S.?

HT. _____
WT. _____

TO ALL HEALTH CARE PROVIDERS:
Having been advised of my right to refuse, I hereby consent to the release of my medical records to law enforcement, the District Attorney's Office, and the City Attorney's Office.

Signature _____

Specialized DV Form - Lethality

Delaware Domestic Violence Incident Report

RISK FACTORS

In the course of the investigation, attempt to identify any of the following risk factors. Check the corresponding block(s), and give a detailed explanation in the narrative.

- ☐ 1. GUN PRESENT IN THE HOME OR ACCESSIBLE TO SUSPECT.
- ☐ 2. SUSPECT HAS USED OR THREATENED TO USE WEAPON.
- ☐ 3. PARTIES HAD A RECENT SEPARATION OR THREATENED SEPARATION.
- ☐ 4. SUSPECT ABUSES ALCOHOL.
- ☐ 5. SUSPECT USES ILLEGAL DRUGS OR ABUSES LEGAL DRUGS.
- ☐ 6. INCREASE IN FREQUENCY OR SEVERITY OF VIOLENCE.
- ☐ 7. SUSPECT IS VIOLENT OUTSIDE THE RELATIONSHIP.
- ☐ 8. SUSPECT HAS DESTROYED CHERISHED PERSONAL ITEMS.
- ☐ 9. SUSPECT IS JEALOUS OR ATTEMPTS TO CONTROL PARTNER'S DAILY ACTIVITIES.
- ☐ 10. SUSPECT HAS ACCUSED THE VICTIM OF CHEATING.
- ☐ 11. SUSPECT HAS SAID, "IF I CAN'T HAVE YOU, NO ONE CAN."
- ☐ 12. SUSPECT THREATENS TO KILL.
- ☐ 13. SUSPECT CONTEMPLATED, THREATENED, OR ATTEMPTED SUICIDE.
- ☐ 14. SUSPECT VIOLENT TOWARD CHILDREN.
- ☐ 15. SUSPECT HAS INJURED OR KILLED PETS.
- ☐ 16. SUSPECT HAS FORCED VICTIM TO HAVE SEX WHEN VICTIM DID NOT AGREE.
- ☐ 17. SUSPECT HAS DIRECTED VIOLENCE TOWARD PREGNANT PARTNER.
- ☐ 18. VICTIM IS CURRENTLY PREGNANT.
- ☐ 19. VICTIM CONTEMPLATED, THREATENED, OR ATTEMPTED SUICIDE.

CODE	48 CONTINUED ITEMS:	PLEASE DRAW ON DIAGRAM(S)

DOMESTIC VIOLENCE AND CHILDREN EXPOSED TO DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL

SAN DIEGO COUNTY

2008 UPDATE

INTRODUCTION

The California State Legislature has declared that:

(1) "[S]pousal abusers present a clear and present danger to the mental and physical well-being of the citizens of the State of California." (California Penal Code section 273.8.)

(2) "A substantial body of research demonstrates a strong connection between Domestic Violence and Child Abuse." (California Penal Code section 13732(a)).

San Diego County Law enforcement's response to Domestic Violence and Children exposed to such violence will be a focused, coordinated community approach that emphasizes early intervention. This protocol is not intended to address every situation or every potential issue, nor is it intended to substitute for individual officer discretion or individual departmental policies that are consistent with state law. The protocol is intended to promote victim safety, to protect children exposed to Domestic Violence, and to ensure abuser accountability.

BACKGROUND

In August, 1990, the San Diego Police Chiefs and Sheriff's Association voted unanimously to endorse the first San Diego Law Enforcement Protocol. The protocol was prepared in consultation with and in cooperation with domestic violence agencies across the county (Penal Code section 13701(b)). In 1998, the Law Enforcement Committee of the San Diego Domestic Violence Council updated the protocol. Seventy-five agencies countywide were part of the process. In 2007, a multi-agency committee revised and updated the protocol to reflect changes in the law and specifically address topics such as removal of firearms from batterers' hands, as well as the protection of children exposed to Domestic Violence.

SAN DIEGO COUNTY DOMESTIC VIOLENCE AND CHILDREN EXPOSED TO DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL

POLICY STATEMENT

- All law enforcement agencies will respond to acts of Domestic Violence as a crime.
- Victims of Domestic Violence will be treated with respect and dignity and will be given appropriate assistance by law enforcement personnel responding to an incident of domestic violence, regardless of their sexual orientation, gender, age, or immigration status.
- The decision to prosecute a batterer lies within the discretion of the District Attorney and the City Attorney. Victims do not "press charges", "drop charges" or "prosecute" their batterers.
- Law enforcement shall *encourage* the arrest of Domestic Violence offenders if there is probable cause that an offense has been committed.
- Law enforcement shall *require* the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order[1] has been violated.
- When possible and legally reasonable, law enforcement should remove firearms from the scene of Domestic Violence incidents.
- When reasonably possible, prosecutors should notify the court when Domestic Violence defendants have registered firearms.
- Children Exposed to Domestic Violence should be considered as separate victims in Domestic Violence incidents.
- Training will be provided regularly to enhance law enforcement's response to Domestic Violence and children exposed to Domestic Violence.

[1] Includes Emergency Protective Orders, Domestic Violence Restraining Orders, Family Law restraining orders, and Criminal Protective Orders .

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SECTION 1
IMPORTANT DEFINITIONS

DOMESTIC VIOLENCE means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, current or former dating or engagement relationship, or person with whom the suspect has had a child or is having or has had dating or engagement relationship (Penal Code section 13700 (a)).

ABUSE means intentionally or recklessly causing, or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury himself, herself, or another (Penal Code section 13700(a)).

ABUSE + RELATIONSHIP = "DOMESTIC VIOLENCE INCIDENT"
Any crime can be considered a "Domestic Violence Crime," as long as the victim meets the relationship definition in PC 13700. For instance, if a boyfriend vandalizes his girlfriend's car, this would be considered a "Domestic Violence" incident.

COHABITANT means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabitating include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship (Penal Code section 13700(b)).

DATING RELATIONSHIP means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations. (PC 243(f)(10); FC 6210)). Casual, one-time dates or first-time encounters would *not* be considered "dating," and therefore not "Domestic Violence."

DOMESTIC VIOLENCE RESTRAINING ORDERS/PROTECTIVE ORDERS are essentially court orders enjoining one person from contacting another. The most common are Emergency Protective Orders, Domestic Violence Restraining Orders, Family Law Restraining Orders, and Criminal Protective Orders. (Family Code sections 2040, 6200, 6241, 7700, and Penal Code section 136.2) See section 8.

STALKING is willful, malicious, and repeated following, or willful and malicious harassment with a credible threat to place that person in reasonable fear for his or her safety or the safety of his or her immediate family (PC 646.9). Recognizing the Domestic Violence Stalking case is discussed in Section 6.

DOMINANT AGGRESSOR is the person who is the most significant, rather than the first, aggressor. Determining the dominant aggressor is discussed in Section 3.

DUAL ARREST is the arrest of both parties during a domestic violence incident. Dual arrests are discouraged and discussed in Section 3.

SECTION 2
911 OPERATOR/DISPATCHER RESPONSE

I. Call takers who receive Domestic Violence calls shall dispatch officers to the scene. (Penal Code section 13702). Telephone reports are generally prohibited.

II. When speaking to a victim of Domestic Violence, dispatcher(s) or 911 operators will not discuss the victim's desire to "press charges," "drop charges," or "prosecute." Any comment or statement which seeks to place the responsibility for enforcement actions with the victim is inappropriate.

III. During the initial call for assistance, the call taker should ask these questions (not necessarily in this order) and encourage the victim to continue talking:

A. Where is the emergency? What address? What apartment number?
B. What has happened?
C. With whom am I speaking?
D. Are you the victim? If no, are you a witness?
E. Has anyone been injured? Is an ambulance needed? What are the injuries?
F. Who is the suspect? How do you know? Are you in a relationship with that person?
G. Describe the suspect.
H. Is the suspect present?
I. If the suspect is not present, do you know where he/she may be? If so, where, specifically in the residence? In the bedroom, living room, etc. If so, what is he doing right now? Direction of travel? If vehicles involved, type of vehicle?
J. Are weapons involved? If yes, what kind? Where are they located? Have you been threatened by the weapon today or in the past? How was the weapon used?
K. Is the suspect under the influence of drugs or alcohol? If yes, what substance?
L. Are children present? How old? Where are they now?
M. Have the police been to the address before? If yes, how many times?
N. Do you have a protective order?

IV. The safety of Domestic Violence victims, whether the threat of violence is immediate or remote, should be the primary concern of 911 operators. 911 operators shall advise the victim to ensure his/her safety including, but not limited to, waiting for officers at a friend's home or simply leaving the residence.

V. Calls reporting threatened, imminent, or ongoing Domestic Violence and the violation of any Domestic Violence restraining order or protective order shall be ranked among the highest priority calls.

DISPATCHER PRACTICE TIP: RESTRAINING ORDERS

Only a court can change the status of a restraining order. The victim's wishes, desires, or behaviors cannot (Penal Code section 13710(b)). This means that a restrained party is still in violation of a restraining order even if he/she invited the protected party's contact.

SECTION 3
FIRST RESPONDER DUTIES

I. DUTIES

A. **General Pro-arrest Policy:** A pro-arrest policy will be implemented by all departments if there is probable cause that a Domestic Violence offense has been committed (Penal Code Section 13701(b).)

B. **Felony Arrests:** If a peace officer has probable cause to believe that a felony has occurred, an arrest **shall** be made, absent unusual circumstances.

C. **Misdemeanor Arrests in peace officer's presence:** If there is probable cause to believe that a misdemeanor offense has been committed in that officer's presence an arrest **should** be made.

D. **Misdemeanor committed outside a peace officer's presence**: If a person commits an assault or battery upon his or her spouse, former spouse, former cohabitant, current or former dating or engagement relationship or upon the parent of his or her child, a peace officer **may** arrest the person without a warrant where **both** of the following circumstances apply:
   1. The officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed; and
   2. The officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. (Pen. Code, § 836(d).)

MANDATORY ARREST: VIOLATIONS OF VALID DOMESTIC VIOLENCE RESTRAINING ORDERS/PROTECTIVE ORDERS:
Law enforcement shall arrest with or without a warrant, even if the violation occurred outside the peace officer's presence (PC 836(c)(1)). See section 8.

E. **Private Person's Arrest**: If no arrest is made, an officer shall make a good faith effort to inform the complainant of his or hr right to make a citizen's arrest (PC 836 (b)).

F. **Cite and Release Discouraged in Domestic Violence Cases:** Citing and releasing a Domestic Violence suspect is discouraged because of our County's philosophy that Domestic Violence is a criminal violation that should be treated as a safety issue for victims and for the community.

G. **Determining the Dominant Aggressor:** Per Penal Code 13701, the officer shall make a reasonable effort to identify the dominant aggressor in any incident. The dominant aggressor is the person determined to be the most significant, rather than

the first aggressor. In determining whether a person is the dominant aggressor, the officer shall consider the following:

1. The intent of the law to protect DV victims.
2. Any threats—real or implied—which instill fear of physical violence by one partner toward another.
3. Any history of violence between the partners.
4. If either partner acted in self-defense.

Other factors law enforcement personnel should consider:

1. Height/weight of the parties.
2. Criminal history.
3. Level of violence.
4. Presence of fear.
5. Existing court orders.
6. Corroborating witnesses.
7. Demeanor of parties.
8. Use of alcohol/drugs.
9. Offensive/defensive injuries (are the injuries consistent with explanation?).
10. Who was the 911 reporting party?

H. **Dual Arrests Discouraged:** Dual arrests are discouraged, but are not prohibited per Penal Code section 13701. It is the duty of law enforcement personnel to identify and arrest only the dominant aggressor. (See above) It is the purpose of this county-wide protocol to encourage all agencies to adhere to the intent of this mandate and refrain from making dual/mutual arrests. Dual arrests should be the extreme exception and should only be utilized as a last resort when all other investigative efforts fail.

I. **Use of PC 13730 reports:** When no arrest is made law enforcement should consider taking a PC 13730 report.

II. WHAT TO DO AT THE DOMESTIC VIOLENCE SCENE

A. ARRIVAL AT SCENE

1. Determine location and condition of victim(s).
2. Determine if suspect is still at scene.
3. Determine if any weapon is involved.
4. Summon ambulance if injuries require.
5. Separate the victim, suspect and witnesses.
6. Prevent communication between the parties. This includes removing victim and witnesses from suspect's line of sight and range of hearing. Re-ask about weapons once the parties are separated.
7. Determine what, if any, crime has occurred.
8. If a sexual assault is reported, follow the procedures set forth in section 5.
9. If children are present, follow the procedures set forth in section 7.

B. INTERVIEW ALL PARTIES

Interview victim and witnesses separately, including any children who may have witnessed the incident or any prior incidents. **Do not ask the victim whether he/she wishes to press charges.** The decision to prosecute is made by the District Attorney or the City Attorney. The victim and suspect should be advised that he/she has no control over the decision to prosecute.

1. **VICTIM:** Note and document the following:
   a. The victim's physical condition, including
      (1) any injuries—describe in detail
      Determine if medical treatment is necessary and seek appropriate care
      (2) torn clothing
      (3) smeared makeup
   b. The victim's emotional condition
   c. Any evidence of substance/chemical abuse by victim
   d. Determine victim's relationship to suspect
   e. Record any spontaneous statements of the victim
   f. Obtain emergency contacts, telephone numbers, and pager numbers for the victim
   g. Note any statements made by suspect to victim during incident.
   h. **Ask the victim if she/he wants to be notified when the suspect is released from jail.** (The Deputy/Officer can then make this request to the jail staff on behalf of the victim at the time of booking.)
   i. Note any prior history of abuse. Document these incidents in detail. (Evidence Code section 1109.)

2. **WITNESSES:**
   a. Interview all witnesses separately and record names, addresses, phone numbers and emergency contacts.
   b. List the names and ages of children present.
   c. Interview all children pursuant to this protocol. See section 7.
   d. Record names and addresses of emergency personnel.
   e. Interview neighbors (ear-witnesses).
   f. Determine from witnesses if they are aware of a history of abuse. (Evidence Code section 1109.)

3. **SUSPECT:**
   a. Describe suspect's location on arrival.
   b. Describe suspect's physical condition.
   c. Describe suspect's emotional condition.
   d. Document evidence of substance/chemical abuse by suspect, conduct examination and add charge if appropriate.
   e. Record spontaneous statements.
   f. Document, describe and photograph any injuries.
   g. Inform suspect that abuse is a crime and obtain waiver.
   h. Interview suspect.

4. **EVIDENCE**
   a. Describe crime scene. Note signs indicating struggle such as overturned furniture, hair that has been pulled out, blood, broken fingernails, holes in walls, damaged telephones, etc.
   b. Photograph crime scene if applicable.
   c. **Determine if firearms or other deadly weapons are present and seize pursuant to Penal Code section 12028.5.**
   d. Ensure that victim's and suspect's injuries are photographed clearly.
   e. Impound and photograph all weapons and other evidence including all instrumentalities of the crime (i.e. belts, phone cords, hangers, gas cans, lighters, broken lamps, etc.).
   f. When using digital cameras, follow established departmental guidelines as well as the District Attorney's Office guidelines for the storage and transfer of digital images.

5. **MEDICAL TREATMENT**

   If medical treatment is necessary:
   a. Transport or have victim transported to hospital.
   b. Obtain names, addresses and telephone numbers of ambulance or paramedic personnel treating the victim.
   c. When reasonably practical, try and photograph victim's injuries before victim is transported to the hospital.
   d. Obtain signed medical release from victim.
   e. Obtain copy of medical treatment form including doctor's name, address and telephone number.
   f. Interview treating physician and confirm nature and severity of injuries.
   g. Document whether victim made statements to treating personnel regarding injury, incident or prior abuse.

COMPLETE A DOMESTIC VIOLENCE CRIME REPORT

Law enforcement shall complete Crime Reports in all Domestic Violence incidents. (PC13730) Law enforcement should maintain objectivity in reporting and avoid personal opinions regarding comments from victim/suspect.

6. **DUTY TO ADVISE VICTIMS OF SAFETY INFORMATION**
   a. Provide referrals to community resources and relevant phone numbers (See ADDENDUM – SAFETY & DV INFORMATION SHEET). Review the content of the handout with the victim.
   b. For certain jurisdictions you may contact the Domestic Violence Response Team (DVRT) for a trained advocate to assist the victim(s) and their children at the scene of an emergency response (call San Diego County Domestic Violence Hotline 888-DV-LINKS for this service).
   c. Explain the options available to the victim including the private person's arrest process, EPO, temporary restraining orders, and in cases of arrest, the follow-up procedures and ensuing criminal proceedings.

d. BAIL ISSUES: Consider requesting a bail enhancement in situations where the amount listed in the bail schedule is insufficient to ensure the victim's safety.

LEGALLY REMOVE ALL FIREARMS FROM DOMESTIC VIOLENCE SCENES AND FROM THOSE PARTIES SUBJECT TO A DOMESTIC VIOLENCE RESTRAINING ORDER. (PC 12028.5, Family Code 6275)

Law enforcement must remember to seize all firearms pursuant to PC 12028.5. This can be the most important step to preventing future violence.

COMPLETE THE COUNTY APPROVED "DOMESTIC VIOLENCE SUPPLEMENTAL" 2-PAGE FORM

Law enforcement shall complete this form and attach it to each Domestic Violence incident report. This form is extremely helpful to prosecutors, assists them in making issuing decisions, and can serve as useful evidence in trial. This form is attached in Appendix C.

SECTION 4
FOLLOW-UP INVESTIGATION

I. All Domestic Violence reports prepared by officers pursuant to Penal Code section 13700 et. seq., shall be referred to investigative personnel for review and follow-up investigation as needed.

A. "Investigative personnel" refers to a detective, investigative specialist, or other designated personnel.

B. Investigative personnel receiving Domestic Violence related crime and arrest reports shall process them in the same manner as all other criminal violations.

C. Whenever possible, investigative personnel will be specifically designated to handle Domestic Violence cases based on an investigator's desire to handle such cases.

II. Follow-up investigations should consist of the following steps:

A. Review patrol reports and determine whether all steps outlined in Section 3 were completed. If patrol officer failed to complete any of the above, make sure the work is completed. Do not ask the victim whether he/she wishes to press charges.

B. Re-interview the victim, witnesses and children (see section 7).
1. Do not simply "confirm" what is in the patrol officer's report.

2. Interview the victim or witness in detail and document the information received in your follow-up report.
3. Whenever possible, interview the victim in person.
4. Obtain subsequent photographs of the victim even if the patrol officer took photographs.
5. Obtain copies of medical reports and Medically Mandated Report copies - "Suspicious Injury Form," if available.
6. Obtain a copy of the 911 tape and the printout involving the original call for assistance.
7. Locate and interview other corroborating witnesses (such as neighbors) who may have heard the incident, yet had not become involved. These "ear-witnesses" can be invaluable during prosecution.
8. Inform the victim and witnesses of the status of the case and the intended referral to the District Attorney or the City Attorney.
9. Record the names, addresses and telephone numbers of two close friends or relatives of the victim who will know of her/his whereabouts at all times during and after the investigation.
10. Conduct a complete ARJIS history of the suspect and the victim and attach it to the investigator's report.11. Obtain copies of prior police reports, prior 911 printouts and tapes if they exist.
12. Interview the suspect unless he/she has invoked.

C. Investigative personnel handling domestic violence cases should analyze each domestic violence case by considering the following questions:
1. Can the elements of the offense be established without the testimony of the victim?
   a. If yes, the case should be submitted to the District Attorney or the City Attorney for review, irrespective of the wishes of the victim.
   b. If the answer is no, the investigator must determine if the victim is generally cooperative, i.e. will he/she come to court and tell the truth if subpoenaed to do so.
      (1) If the victim will, the case should be submitted to a prosecutor for review.
      (2) If the victim will not, determine whether further corroboration can be obtained to allow the prosecution to proceed without a cooperative victim.
      (3) If the answer is no, and there is no independent corroboration to establish the offense, the case need not be submitted for review but should be filed with records pursuant to PC 13700.
      (4) If the investigator determines there is a high risk of lethality based upon patrol reports and follow-up investigation, discuss the case with a prosecutor.
      (5) Even if the case is not submitted, make sure the victim receives the proper referrals for victim services.

SECTION 5
DOMESTIC VIOLENCE SEXUAL ASSAULTS

I. When a peace officer responds to a call involving domestic violence and learns that a victim has been sexually assaulted, the peace officer shall do the following:
   A. Ensure the victim's safety.
   B. Evaluate the need for emergency medical care.
   C. Evaluate the need for additional units and a supervisor.
   D. Check for possible suspects.
   E. Identify, isolate and interview potential witnesses.
   F. Preserve the crime scene and impound evidence or request assistance from evidence technician.
   G. Conduct an interview of victim.
   H. Determine the need for an evidentiary exam.
   I. Notify a SART facility (see below).
   J. Transport the victim to a SART facility.
   K. Stand by during the Sexual Assault Evidentiary Exam.
      (1) Officers who are the same sex as the victim may remain in the examination room.
      (2) Officers of the opposite sex are not to remain in the examination room, but must remain at the facility.
   L. Provide transportation to the victim upon completion of the examination.
   M. Impound evidence. (See below)
   N. Complete reports and submit them to investigations.

> THE MAIN DEFENSE IN A DOMESTIC VIOLENCE RAPE CASE IS *CONSENT*. GEARING YOUR INVESTIGATION TOWARDS COMBATTING THE CONSENT DEFENSE WILL BE HELPFUL FOR PROSECUTION.

II. SART
   A. The Sexual Assault Response Team (SART) is comprised of three disciplines: law enforcement, the sexual assault examiner and a rape crisis advocate.
   B. SART FACILITIES:
      1. Pomerado Hospital, 15615 Pomerado Road, Poway, CA 92064, (760) 739-2150
      2. Independent Forensic Services, 4276 Suite C 54th Place, SD, 92115, (619) 692-5924
      3. American Forensic Nurses (Male Sexual Assault Evidence Collection), (800) 516-6341
      4. Children's Hospital* Chadwick Center for Children and Families, 3020 Children's Way, San Diego, CA 92123, (858) 966-5980
      5. Palomar Hospital*, Child Abuse Program, 121 North Fig St., Escondido, CA 92025 (760) 739-2150; (888) 211-6347 Nights and Holidays

*Children's Hospital and Palomar Hospital have comprehensive programs to assist in the detection of child abuse and molest. In cases involving child and adolescent victims, officers should transport the victim to one of these facilities.

III. SEXUAL ASSAULT FORENSIC EXAMINATION PROCEDURES FOR SUSPECTS

A. Forensic examinations should be conducted on individuals suspected of committing a sexual assault. Some Law Enforcement agencies may contract with a private company to conduct these exams or the exams. Officers must be aware of their agency's procedures and policies regarding these exams.

B. Once the exam is completed officers must impound all evidence collected.

IV. EVIDENCE COLLECTION AND IMPOUNDS

A. Officers must collect evidence both at the crime scene and at the forensic examinations of both the victim and the suspect.

1. All clothing worn by the suspect at the time of the offense shall be impounded.
2. Clothing worn by the victim that may be contaminated or contain evidence shall be impounded. If a victim's clothing is impounded as evidence, have the victim take a change of clothing to the hospital.
3. Victim and suspect clothing must be impounded in separate **paper** bags. **Do not impound the clothing in plastic bags.**
4. Evidence that cannot be obtained by the responding officer must be protected until the assigned investigator determines if an evidence technician is needed.
5. All other items that could possibly contain evidence (i.e. bedding, condoms and packaging, etc.) shall be collected, bagged separately and impounded.
6. Clothing and rape kits may be impounded on the same property tag, however, the officer must indicate which kit belongs to the victim and which belongs to the suspect and must further itemize all other property.
7. The pink copy of the forensic examination form (OCJP 923 and 925) shall be attached to the rape kit before impounding. All other copies will be forwarded to the appropriate investigative unit with the preliminary investigation.
8. If the assault occurred in a vehicle, it should be impounded as evidence with a hold for the appropriate investigative unit.
9. If the victim may have ingested any drug obtain a *urine* sample as soon as possible. The drug may be detectable within 36 hours after ingestion.

V. INFORMATION TO BE GIVEN TO VICTIMS

A. In accordance with Penal Code section 264.2, sexual assault victims shall immediately be given the "Information for Victims of Domestic Violence/Sexual Assault" form. The form outlines procedures victims should follow after an assault. In addition, it lists various services available to sexual assault victims.

B. Penal Code sections 293 and 293.5 require that officers advise victims of sexual assault that the victim's name will become a matter of public record unless they request otherwise.

1. An officer shall advise the victim of her/his right to anonymity and advise the victim to discuss this right with the Deputy District Attorney handling their case.

2. For purposes of this section, a sex crime is defined as Penal Code sections 220, 261 through 267, and 281 through 292.
3. Law enforcement agencies are prohibited from disclosing the victim's name and address to anyone except the prosecutor if requested by the victim.
4. Officers will use the victim's true name when completing their crime and arrest reports, property tags, hospital records, etc. These records are a necessary part of a criminal investigation.

C. Penal Code section 679.04 says that victims of sexual assault, including spousal rape, have the right to have a sexual assault victim counselor and at least one additional support person chosen by the victim present at any evidentiary, medical or physical examination or interview by law enforcement authorities, district attorneys, or defense attorneys.
1. The initial investigation by Law Enforcement at the crime scene to determine whether a crime has been committed and the identity of the suspects **does not** constitute a law enforcement interview.
2. The law requires that, prior to any interview by Law Enforcement or district attorney contact, the victim shall be notified either orally or in writing by the attending Law Enforcement authority or District Attorney that the victim has the right to have a victim advocate and a support person present at the interview.
3. It is mandatory that all sexual assault victims are interviewed by a Deputy District Attorney prior to the issuance of a sexual assault case absent exigent circumstances. This interview is crucial and required so prosecutors can determine what if any criminal charges should be filed. Investigators must be prepared to transport the victim to the District Attorney's Office for the interview.

SECTION 6
RECOGNIZING THE DOMESTIC VIOLENCE STALKING CASE

STALKING DEFINED: Penal Code section 646.9 defines stalking as:
"Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family."

A. Law enforcement should be thinking about the possibility of stalking when victims report that they have made life changes due to a suspect's actions (i.e. when victims have changed their phone numbers, changed their routes to and from work, changed locks on the doors, etc.). Additional inquiry must be made to determine whether this is an isolated incident or repeated conduct.

B. A **credible threat** means a verbal or written threat or a threat implied by a pattern of conduct or a combination of both made with the intent to place the person that is the

target of the threat in reasonable fear for his or her safety or the safety of his or her family. A **credible threat** also requires that the suspect has the apparent ability to carry out the threat so that the target of the threat is reasonably fearful for his or her safety. It is not necessary to prove that the suspect had the intent to actually carry out the threat. A suspect can make a credible threat even if he/she is in jail. A credible threat can be made electronically or through any electronic communication device. "Electronic Communication device" includes but is not limited to phones, cell phones, computers, video recorders, fax machines, or pagers. (Penal Code sections 646.9(g)(h)))

C. The element of **credible threat** is often the toughest element to prove beyond a reasonable doubt.

> Discuss potential stalking cases with specially trained Stalking prosecutors at the City and District Attorney's offices. Anytime someone is booked for Stalking, law enforcement should contact the Stalking Unit of the District Attorney's office at 619-533-4300.

SECTION 7
CHILDREN EXPOSED TO DOMESTIC VIOLENCE INCLUDING BASIC GUIDELINES FOR CHILD WITNESS INTERVIEWS

Children are often present at Domestic Violence calls. Research studies have consistently found a high correlation between children's exposure to domestic violence and 1) trauma symptoms such as depression, anxiety, posttraumatic stress and an impacted sense of well-being, safety, and stability 2) behavioral, social and emotional problems such as aggression, anger, hostility, and low self-esteem 3) cognitive and attitudinal problems such as poor school performance and lack of conflict resolution skills 4) increased tolerance for violence in relationships and high levels of adult depression.[2]

A. GUIDELINES FOR OFFICERS
   1. Recognize that whenever children are present during a Domestic Violence situation, they may have been direct victims. (i.e. if the child was battered or injured consider PC 242, PC 273a(a))
   2. Recognize that even if a child was *not* present during the immediate instance of Domestic Violence, they may have been exposed to it in the past. (consider interviewing the child for this purpose in order to obtain corroboration or pattern evidence)

[2] Rossman, 2001; Singer, Angelin, Song, and Lunghofer, 1995; Dube, Anda, Felitti, Edwards, & Williamson, 2002; McEwen, 2000; Perry, 2001; CDC, 1999; Malinosky-Rummell & Hansen, 1993; Daro et.al., 2004; Finkelhor 2006; Osofsky, 2004

3. Recognize that if a child was present during Domestic Violence (even in a different room), that child can be a victim pursuant to PC 273a(b)).
4. Recognize that often, children do not "sleep through" the Domestic Violence, despite what a victim may tell you.
5. Interview all children present and take a statement when possible. Children as young as four are often able to describe the violent episode. Children can be reliable witnesses when interviewed properly. (See sample questions below)
6. Interview the domestic violence victim and child witnesses separately from the suspect to prevent undue influence.
7. If children were in the home at the time of the Domestic Violence incident or personally witnessed the Domestic Violence, make sure to list them on the Domestic Violence Incident Report as witnesses or in the body of the report. If a child is a victim of any crime, including such crimes as child endangerment, list the child as a victim in the report or write a separate report.
8. Take color photographs of the crime scene including any evidence of children's exposure to violence, e.g. crib/child's bed in room where victim was injured, toys broken or thrown around room.
9. Note the child's demeanor (as see on the DV Supplemental PC 13700 form): Fearful, angry, calm, tearful/crying, nervous, upset, etc. This assists prosecutors in determining whether the statement will be admissible in court.

WHEN CHILDREN ARE PRESENT DURING A DOMESTIC VIOLENCE INCIDENT CONSIDER CHARGING PC 273a(b), CHILD ENDANGERMENT, AS AN ADDITIONAL CRIME.

B. INTERVIEWING CHILDREN

Children can be reliable and credible witnesses when properly interviewed. The utmost care and consideration for the children's physical and mental welfare is paramount. Here are some interviewing techniques that may assist law enforcement when interviewing children. This list of suggestions is not all-inclusive. Let your training, experience, and department policy guide you. See the San Diego County Child Victim/Witness Protocol for suggestions.

1. Start by establishing rapport.
2. Locate an area where the child will feel safe and comfortable within the residence.
3. Talk to the child at his/her physical level.
4. Talk to the child at his/her educational/developmental level.
5. Ask non-threatening or non-intimidating questions.
6. If possible, remove the child from the victim's and suspect's line of sight.
7. Ask simple, open-ended questions, including:
   a. What happened? (hitting yelling, etc.)
   b. Who was there? (mommy, daddy, etc.)
   c. Did anyone get hurt? (get description of injury "owie")
   d. Who did the hurting? (mommy, daddy, both, etc.)
   e. What was mommy-daddy hurt with? (description of mechanism, fist, belt, etc.)

f. When did it happen? (day, night, etc.)
g. Where did it happen? (location in the house)
h. Has it happened before? (if yes, document frequency)
i. Are you hurt? (If yes, refer to child victim/witness protocol)

8. Allow the child to describe in his/her own words what happened.
9. Avoid asking leading questions.
10. Allow the child time to respond; ask questions again if necessary.

C. USE OF CHILDREN AS INTERPRETERS IS DISCOURAGED.

Using children as interpreters is discouraged. This may increase a child's trauma or puts him/her in a situation of divided loyalty, or he/she may fear repercussions from the aggressor in the incident. The translation may also be unreliable, because it is affected by the child's own emotional state.

D. CROSS-REPORTING TO CHILD PROTECTIVE SERVICES (CPS)

The officer, either alone or with a protective services worker, must also determine whether or not there is a protective issue for the victim and other children in the home. If leaving the children in their current situation would put them at risk, the officer MUST take them into protective custody per Welfare and Institutions Code section 300. Children taken into protective custody should be taken to Polinsky Children's Center, other designated receiving homes, or released to a protective services worker.

When children reside in the home where Domestic Violence occurs, Law Enforcement should determine:

1. If the circumstances do not meet the definition of child abuse and neglect as defined in Penal Code sections 11165.1-11165.5 (requiring a report to CPS), law enforcement should make a referral to a community-based organization that will provide necessary services for the children and the family.
2. If the circumstances meet the definition of child abuse and neglect as defined in Penal Code sections 11165.1-11165.5, a telephone call, as soon as practicably possible, and sending a written follow-up report (DOJ from SS8572) within 36 hours to CPS, are required.
3. If the circumstances meet the definition of child abuse and neglect as defined in Penal Code sections 11165.1-11165.5, use your Department's guidelines to determine whether or not to place the child into protective custody.

E. FORENSIC INTERVIEWS FOR CHILDREN EXPOSED TO DOMESTIC VIOLENCE

In a case where Domestic Violence results in a homicide or attempted homicide, all children living in the home should be interviewed as soon as possible (according to the Child Victim/Witness Protocol) at the Children's Hospital Center for Child Protection or Palomar Hospital. Officers should also consider forensically interviewing children who are critical witnesses to other violent or serious felonies.

SECTION 8
DV RESTRAINING/PROTECTIVE ORDERS

I. GENERAL POLICY:

Domestic Violence restraining /protective orders shall be enforced by all Law Enforcement officers. This includes orders from other states. (PC 13701, PC 836(c)(1)).

II. MANDATORY ARREST POLICY:

PC 13701(b) states that law enforcement **shall arrest** an offender, absent exigent circumstances, if there is probable cause that a DV restraining order/protective order has been violated. (PC 13701(b))

PC 836(c)(1) states that the officer shall make an arrest even without a warrant, and **whether or not the violation occurred in the officer's presence**. (PC 836(c)(1)).

***Important:** Per Penal Code section 13710(b), the terms and conditions of a Restraining or protective order remain enforceable, *notwithstanding the acts of the parties*, and *may be changed only by order of the court*. **This means that, "protected persons" are not in violation of protective orders when they acquiesce or invite the restrained party's contact, and should not be arrested**. (PC 13710(b))

In situations where mutual protective orders have been issued, liability for arrest applies only to those persons who are reasonably believed to have been the dominant aggressor. (PC 836(c)(3). In those situations, before making an arrest, Law Enforcement shall make reasonable efforts to identify, and may arrest the dominant aggressor involved in the incident. The dominant aggressor is the person determined to be the most significant, rather than the first aggressor. In identifying the dominant aggressor, Law Enforcement shall consider a) the intent of the law to protect victims or domestic violence from continuing abuse, b) the threats creating fear of physical injury c) the history of Domestic Violence between the persons involved and d) whether either person involved acted in self defense. (PC 836(c)(3)).

III. WHAT IS A "DOMESTIC VIOLENCE RESTRAINING ORDER/PROTECTIVE ORDER?"

Any order that enjoins one person from contacting another. (Orders issued pursuant to Family code section 2040, Family Code section 6218, Penal Code section 136.2, and those issued by a Criminal Court pending a criminal proceeding, *and Emergency Protective Orders*)

IV. HOW TO DETERMINE WHETHER THE ORDER IS VALID

A. Law Enforcement can check with dispatch to see if a served order is on file.
B. Law Enforcement can access full information about the terms of the order through SDLAW.
C. Law Enforcement can also check on www.sdsheriff.net which lists limited restraining order information for all protective orders that are entered into CLETS.

D. Law Enforcement can also call the Sheriff's Department 24-Hour Law Enforcement Line (law enforcement only) at (858) 974-2457 and ask the following questions:
   1. **Is there a restraining/protective order on file**? (If so, it will be filed under the name of the restrained party)
      IMPORTANT: If Sheriff personnel cannot verify the order, it may still be enforceable. If the responding officer believes in good faith that an order presented to him or her at the scene is valid and the suspect was on notice (see questions B through E below), a *private person's arrest* may be made even though the Sheriff's Department was not provided a copy to enter into DVROS.
   2. **What is the date of the order**? When did/does the Order become effective?
   3. **What is the expiration date**? Has the Order expired?
   4. **What are the terms of the order**? For instance, whether peaceful contact is allowed is important information in determining whether a violation has occurred.
   5. **Was the restrained person served with the Order**? Is there a Declaration of Service on file or has another officer given the needed notice to the person to be restrained?

E. NO RECORD OF SERVICE. If no record of service exists:
   1. Advise the restrained person that there is an Order in effect,
   2. Give a copy of the Order to the restrained person or, if no copy is available to give, have the terms of the Order read over the phone and then verbally inform him/her of those terms,
   3. Advise him/her that s/he is now subject to the terms of the Order and can be arrested for any further violations,
   4. Notify the Sheriff's Department and report that you have served a copy of the Order on the defendant (The Sheriff will record your name, ID number, date, time and location that the suspect received notice),
   5. Prepare and sign a Proof of Service, and
   6. File the Proof of Service as part of the report. Investigations personnel shall ensure the original Proof of Service is filed with the court issuing the Order and a copy retained with the police report.

V. VICTIMS SHALL BE ADVISED ABOUT AVAILABILITY OF *EMERGENCY PROTECTIVE ORDERS:*

An Emergency Protective Order (EPO) can be an important tool for law enforcement in the prevention of future violence. Law Enforcement **shall inform victims of the availability of EPO** when they have reasonable grounds to believe there is an immediate and present danger 1) of Domestic Violence based on the person's allegation of recent abuse or threat of abuse, or 2) the EPO is necessary to prevent the occurrence or recurrence of Domestic Violence. *If the person requests such an order, the officer shall request an EPO from the court.* (Family Code sections 6275, 6251, 6250, PC 646.91)

A. EPO's are available 24-hours a day, 7-days a week.
B. This is not just an after-hours or weekend remedy.
C. The fact that no crime has yet been committed does not eliminate the duty to advise victims about EPO's.

D. **Law Enforcement does not need permission from victims or the request from victims in order to request an EPO from the court.** Law Enforcement can request EPO's on their own. (See Family Code 6250(a))
E. Whether the respondent is in custody or the protected person left the home for safety reasons should have no bearing on the availability of an EPO, and should not be factored into the immediate and present danger determination.
F. If a Protective Order is obtained, a Crime/DV Incident Report shall be prepared on the incident.

VI. HOW TO OBTAIN AN EMERGENCY PROTECTIVE ORDER:

This procedure may be utilized 7 days a week, 24 hours a day.

A. If a protective order is being sought, the officer will complete Form EPO-001 (rev. 1-07) Application for Emergency Protective Order (CLETS).
B. After court hours, weekends and holidays, the officer will telephone the duty judge through the duty telephone at the Sheriff's Office at 858-974-2493 (this is a non-public number).
C. During court hours, the officer will contact a judge through the Family Court at (619) 557-2120 (this is a non-public number).
D. Upon approval by the judge, the officer will complete Form EPO-001 (rev. 1-07), Emergency Protective Order (CLETS). This order may be granted for up to five (5) full court days and will expire at 5:00 p.m. on the last specified court day.
E. The officer will provide the **pink copy** of the application and the order to the issuing agency and the **canary yellow copy** to the protected party. The officer will submit the **white copy** of the application to the restrained party. The **goldenrod copy** of the application will be attached to the crime report for the court.
F. The officer requesting the Order shall carry copies of the order while on duty. (Pen. Code, § 13710(c)) requires the law enforcement officer to make a reasonable effort to serve the restrained party with the EPO.)
G. The officer will encourage the protected party to carry a copy of the Emergency Protective Order with him/her.
H. Make sure to fax the front and back pages of the approved Emergency Protective Order to the Sheriff's office at (858) 974-2492 whether or not the EPO was served to the restrained party. If you are unable to get through, you may try fax (858) 974-2457.
I. Verbal admonishment by a law enforcement officer shall constitute valid service of the order under the following conditions:
   a. Verbal admonishment must be conducted in person.
   b. The terms and conditions must be read to the restrained person. Terms and conditions can be obtained by calling (858) 974-2457.
   c. Advise restrained person to go to the local court to obtain a copy of the order containing the full terms and conditions of the order per Family Code section 6383(g).

PREPARE A CRIME REPORT FOR EVERY DV RESTRAINING ORDER/PROTECTIVE ORDER VIOLATION.

Law enforcement should always prepare and submit a crime report of the appropriate restraining order violation regardless of whether or not the suspect is still present at the scene.

SECTION 9
OFFICER INVOLVED DOMESTIC VIOLENCE PROCEDURES

No person, because of his or her occupation, should be exempt from the application of the laws concerning domestic violence, or the duties proscribed in this protocol. When responding to a domestic violence call involving another officer, the following procedures are recommended:

I. INVESTIGATIONS INVOLVING OFFICERS FROM OTHER AGENCIES

A. These cases will be handled according to Domestic Violence laws, departmental policies, this protocol, and the Peace Officer's Bill of Rights.
B. The supervisor of the investigative unit will notify the agency that employs the officer as soon as possible.
C. A copy of the completed investigation will be provided to the supervisor of the investigative unit completing the investigation.

II. INVESTIGATIONS INVOLVING OFFICERS WITHIN AGENCY

A. These investigations will be handled according to Domestic Violence Laws, Departmental policies, this protocol, and the Peace Officer's Bill of Rights.
B. These are guidelines only. Each agency should develop and follow specific Department Policies and Procedures regarding Officer Involved Domestic Violence consistent with the Peace Officer's Bill of Rights.

III. REFER TO SECTIONS 1-8 IN THIS PROTOCOL FOR ALL OFFICER-INVOLVED DOMESTIC VIOLENCE SITUATIONS.

In addition to sections I and II above, law enforcement shall also refer to sections 1-8 in this County-wide protocol.

SECTION 10
COURTESY REPORTS

If the responding agency determines that the abuse took place in another jurisdiction, the following procedures are encouraged:

A. Attempt to contact the agency where the crime occurred.
B. Ascertain if the agency will send officers to conduct an investigation in a timely manner.
C. While waiting for the responding officers from the jurisdiction where the crime occurred, prepare a short ARJIS 9 to document anything you witnessed first- hand including actions, statements, and demeanor of the victim/suspect.

D. If an officer from the jurisdiction where the crime occurred is unavailable, prepare a "courtesy" report.
   1. The "courtesy" report should meet the same standards as any crime report investigated by that jurisdiction. (Arjis 2)
   2. Law Enforcement should use the DV Supplemental report form (13700 P.C)
   3. An effort should be made to recover any relevant evidence including photographing the injuries.
   4. A case number should be assigned to the case to meet the reporting requirements set forth in Penal Code section 13730.
   5. The case number can be either permanent or temporary based upon the policies and procedures of that specific agency.
   6. Notify the agency where the crime occurred that the report has been made.
   7. Fax a complete copy of the investigation to that agency's record section and/or to the investigative unit responsible to investigate the crime as quickly as possible.

SECTION 11
REMOVAL OF FIREARMS FROM A DOMESTIC VIOLENCE INCIDENT OR SCENE

I. Law enforcement shall make every attempt to legally seize weapons from Domestic Violence incidents. (PC 12028.5)

II. Prosecutors should notify courts when reasonably possible when Domestic Violence defendants have registered firearms.

III. The District Attorney's Office will run the Automated Firearms computer screens in all Domestic Violence cases when feasible, and attempt to notify the courts of relevant information regarding those registered firearms.

ADDENDUM – C

Page _____ of _____

DOMESTIC VIOLENCE SUPPLEMENTAL 13700 P.C.

ORIGIN/CRIME DESCRIPTION

VICTIMS NAME (Last/First/Middle) | DATE OF BIRTH | INCIDENT NUMBER

VICTIM

☐ UPSET ☐ CRYING ☐ FEARFUL	☐ CALM ☐ NERVOUS	☐ OTHER: EXPLAIN	☐ COMP OF PAIN ☐ BRUISE ☐ ABRASION	☐ HEAD INJURY ☐ LACERATION(s) ☐ POSSIBLE BROKEN BONES	☐ OTHER: EXPLAIN ☐ NO COMPLAINT

INJURIES

SUSPECT

☐ UPSET ☐ CRYING ☐ FEARFUL	☐ CALM ☐ NERVOUS	☐ OTHER: EXPLAIN	☐ COMP OF PAIN ☐ BRUISE ☐ ABRASION	☐ HEAD INJURY ☐ LACERATION(s) ☐ POSSIBLE BROKEN BONES	☐ OTHER: EXPLAIN ☐ NO COMPLAINT

INJURIES

☐ ATTACKED CHILDREN ☐ ATTACKED OTHER FAMILY MEMBER

RELATIONSHIP BETWEEN VICTIM AND SUSPECT

MARK ALL THAT APPLY

☐ SPOUSE
☐ FORMER SPOUSE
☐ COHABITANTS
☐ FORMER COHABITANTS
☐ DATING/ENGAGED
☐ FORMER DATING
☐ SAME SEX
☐ EMANCIPATED
☐ PARENT OF CHILD_____
RELATIONSHIP

LENGTH OF RELATIONSHIP
_____ YEAR(S) _____ MONTH(S)

IF APPLICABLE, DATE THAT RELATIONSHIP ENDED: _____

PREVIOUS HISTORY OF ABUSE

PRIOR HISTORY OF ABUSE: ☐ YES ☐ NO

PRIOR ABUSE: NUMBER OF TIMES [ ]

DESCRIBE: _____

CASE NUMBER(S): _____

INVESTIGATING AGENCY: _____

MEDICAL TREATMENT

☐ NONE
☐ WILL SEEK OWN
☐ FIRST AID
☐ PARAMEDICS
☐ HOSPITAL
☐ REFUSED

PARAMEDICS AT SCENE? ☐ YES ☐ NO

UNIT NUMBER: _____

NAME(S) ID#: _____

HOSPITAL: _____

☐ MEDICAL RELEASE SIGNED?
ATTENDING PHYSICIAN(S)

_____

_____

SUSPECT UNDER INFLUENCE OF: ☐ ALCOHOL ☐ DRUGS ☐ BOTH

VICTIM UNDER INFLUENCE OF: ☐ ALCOHOL ☐ DRUGS ☐ BOTH

EVIDENCE

EVIDENCE COLLECTED

FROM ☐ CRIME SCENE ☐ Other: Explain_____
☐ HOSPITAL _____

Photos of victim's injuries: ☐ Yes ☐ No
Photos of suspect's injuries: ☐ Yes ☐ No

WEAPONRY/FIREARMS

Weapons/firearms used during incident: ☐ Yes ☐ No
Type of weapon used: _____
Weapon(s) impounded: ☐ Yes ☐ No
Firearm(s) impounded for safety: ☐ Yes ☐ No
Property Tag Number: _____
Does suspect have/own firearms? ☐ Rifle ☐ Shotgun ☐ Hand gun ☐ Pistol

WITNESSES

WITNESSES PRESENT DURING DOMESTIC VIOLENCE? ☐ Yes ☐ No
STATEMENT(S) TAKEN? ☐ Yes ☐ No

CHILDREN PRESENT DURING DOMESTIC VIOLENCE? ☐ Yes ☐ No
Names, Ages and DOB of ALL Children Present: _____

STATEMENT(S) TAKEN? ☐ Yes ☐ No

WITNESS DID LEAVE ON ARRIVE? ☐ Yes ☐ No

IS VICTIM WILLING TO COOPERATE WITH THE COURT PROCESS? ☐ Yes ☐ No
(DO NOT ASK IN THE PRESENCE OF THE SUSPECT)

REPORTING OFFICER	ID NUMBER	DIVISION/WATCH	DATE AND TIME	

RESTRAINING ORDERS: ❑YES ❑NO
❑CURRENT ❑EXPIRED
TYPE: ❑ EMERGENCY ❑ TEMPORARY ❑ PERMANENT
ISSUING COURT: _____
ORDER OR DOCKET NUMBER: _____

VICTIM GIVEN:
❑ DOMESTIC VIOLENCE INFORMATION SHEET
❑ ADVISED OF 836 PC.
❑ VICTIM ADVISED OF RIGHT TO A SUPPORT PERSON
❑ INCIDENT/CRIME CASE NUMBER
❑ ADVISED OF RIGHT OF EPO
❑ DOMESTIC VIOLENCE/FAMILY PROTECTION UNIT PHONE NUMBER _____

DO VICTIM AND/OR SUSPECT HAVE CUSTODY OF CHILDREN? ❑YES ❑NO

NAME: _____ DOB _____ ❑ M ❑ F
NAME: _____ DOB _____ ❑ M ❑ F
NAME: _____ DOB _____ ❑ M ❑ F
NAME: _____ DOB _____ ❑ M ❑ F
NAME: _____ DOB _____ ❑ M ❑ F
NAME: _____ DOB _____ ❑ M ❑ F
NAME: _____ DOB _____ ❑ M ❑ F

WITNESSES/CHILDREN

W1 _____ M/F _____
Age _____
__ Fearful
__ Angry
__ Calm
__ Tearful/Crying
__ Hysterical
__ Nervous
__ Upset
__ Other: Explain

W2 _____ M/F _____
Age _____
__ Fearful
__ Angry
__ Calm
__ Tearful/Crying
__ Hysterical
__ Nervous
__ Upset
__ Other: Explain

W3 _____ M/F _____
Age _____
__ Fearful
__ Angry
__ Calm
__ Tearful/Crying
__ Hysterical
__ Nervous
__ Upset
__ Other: Explain

V. S.?

❑ PHOTO TAKEN

PLEASE DRAW ON DIAGRAM(S) THE LOCATION OF ANY INJURIES.

HT. _____
WT. _____

V. S.?

❑ PHOTO TAKEN

HT. _____
WT. _____

"She hit me too"

Identifying the Primary Aggressor: A Prosecutor's Perspec

Gael B. Strack, San Diego Assistant City Attorney
1200 Third Avenue, Suite 700, San Diego, California 92101
gbs@sdcity.sannet.gov or www.sandiegodvunit.org

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Introduction

For the last 30 years domestic violence law has been in constant state of flux. One result has been that police response to domestic violence has changed. In the early 1970s, before domestic violence was taken seriously, arrests were infrequent and the preferred police response was "mediation." By the mid-1980s[2] legislative agendas were becoming more hard line and police departments were adopting "pro-arrest policies." These pro-arrest policies resulted in an increase in dual arrests with the proportion of female arrests rising noticeably.[3] In response, primary aggressor laws were passed in the mid-1990s.[4] In California the "primary aggressor" law was passed in 1996. Today, every effort is made to ensure that victims of domestic violence are not being arrested for defending themselves against attack.

But now, despite changes in the law, the proportion of female arrests continues to climb and the experts are baffled.[5] Recent statistics have emerged that suggest the long-standing statistic– that 95% of batterers are men–is changing. The Report on Arrests for Domestic Violence in California for 1998, published in August 1999 by the Office of the Attorney General, Bureau of Criminal Information and Analysis, indicates that the percentage of women arrested for domestic violence has increased from 6% in 1988 to 16.5% in 1998.

Do the recent arrest figures indicate that in the past men have borne a statistically disproportionate share of domestic violence arrests; that today the system is finally recognizing women commit more domestic violence than was previously thought? Or are these recent arrest statistics indicative of an underlying problem in the way the system is working?

I believe the latter is true and given the changes in the way police have approached domestic violence situations, it should come as no surprise that new problems are emerging. These problems are not the fault of the police. Police departments' Domestic Violence protocols are a reflection of public and political demand for a more aggressive approach to crime. In retrospect, these problems should have been anticipated given the fast and furious changes in domestic violence laws. Preparations could have been made for the frequent turnover of police officers, prosecutors and judges handling domestic violence cases; and, the recent focus on primary aggressor training should have been implemented sooner and more collaboratively. It is time to step back and re-evaluate our laws and our protocols, to improve our primary aggressor training, and to ensure everyone has received the most current primary aggressor training available. This is another turning point in the evolution of the criminal justice response to domestic violence.

San Diego's Turning Point:

In 1997, less than a year after Penal Code section 13701(b) was passed to implement policies discouraging dual arrests and promoting the arrest of the primary aggressor, the San Diego City Attorney's Office received a police report of domestic violence that marked a turning point for us. This case did not involve cross-complaints of violence at the scene, but it did illustrate how sophisticated batterers can manipulate the system, how the wrong person can be arrested and why we need to provide ongoing training in the area of the identification of the primary aggressor.

X The "father's rights" movement has engendered an atmosphere of political correctness, muting the debate over the legitimacy of female on male violence.

While there are many theories, and I have struggled mightily with all of them, I have reached the conclusion for now, as have others, that there is no way of knowing which theory or theories are right.

Relying on experience as both a defense attorney and prosecutor, I do not believe women are more violent than in the past. Male batterers have always alleged "she hit me too." On the other hand, it is my opinion that it is now more difficult than in the past for police officers and prosecutors to sort out who is the primary aggressor. It seems we have trained our male batterers well. As Gail Pincus likes to say "The jail cell is a great classroom." Batterers, both male and female, are more savvy about the laws. They have learned that calling 911 first to "tell their story" may help them avoid being held accountable.[6] They have found that it helps to retaliate against the victim for previous police calls because victims naturally become reluctant to make further calls to the police.

In addition to sophisticated batterers, domestic violence laws today are markedly different than they were in the mid-1980s and they continue to change each year. The changes in domestic violence laws have become so frequent that it is practically impossible to digest one before the next one comes along. Further, as soon as police officers are trained and begin to understand the dynamics of domestic violence, they are transferred. The combination of sophisticated batterers, vacillating domestic violence laws, and police turnover have caused confusion. It is becoming apparent that this confusion is making it difficult for officers to identify the primary aggressor. When there is an allegation at the scene that "she hit me too," officers are unsure how to proceed. These domestic violence cases are messy and understandably hard to sort out.

If I'm right that it's more difficult now than in the past to determine the offender at the scene, then the domestic violence community needs to focus on improving training on how to identify the primary aggressor. The key to unraveling the mystery, where both parties allege self-defense, is adequate training of all those involved in prosecuting the case and a thorough investigation by those discovering the facts of the case. With adequate training and strong investigative support, a police officer can identify the primary aggressor and the prosecutor can prosecute. In addition, I believe we need a moratorium on further changes in the law. This would give officers and prosecutors an opportunity to effectively implement what is already in place and allow primary aggressor training to become current with the existing legal requirements.

San Diego's Primary Aggressor Training:

Progress is being made on this front. For example, law enforcement agencies in San Diego deserve special recognition. In 1998, at the request of City Attorney Casey Gwinn who was then President of the San Diego Domestic Violence Council, all law enforcement agencies participated in bringing the 1990 San Diego Domestic Violence Law Enforcement Protocol current. This update included, among other things, more information on the identification of the Primary Aggressor.

The San Diego Police Department, in particular, made a significant effort to educate its officers about the Identification of the Primary Aggressor. The department increased its domestic violence training at the Academy, incorporated primary aggressor training at the Regional Officers' Training Program and added a four-hour menu class on the Identification of the Primary Aggressor with the assistance of Sgt. Dan Plein. Additionally, Lt. Jim Barker, mandated that all of his domestic violence detectives attend this class.

Further, the California Commission on Peace Officer Standards Training and the California District Attorney's Association have included specific training on the "Identification of the Primary Aggressor" in all of their domestic violence training programs.

Recommended Training for Identifying the Primary Aggressor:

Police officers and prosecutors must receive the same "primary aggressor" training. It is necessary that the primary aggressor be identified consistently. Training needs to be ongoing and comprehensive. Among other things, primary aggressor training should include the following components: (1) the primary aggressor law, (2) factors to consider in identifying the primary aggressor, (3) defining mutual combat, (4) criteria for making dual arrests, (5) distinguishing defenses from excuses, (6) the consequences of dual arrests and/or arresting the wrong individual, (7) signs and symptoms of attempted strangulation, (8) when women use violence, (9) distinguishing between offensive and defensive injuries, (10) identifying the sophisticated batterer, (11) battered woman syndrome, (12) evidence gathering, (13) report writing, (14) follow-up investigation, (15) case scenarios, (16) issuing considerations for prosecutors, (17) using police officers as primary aggressor experts at trial and (18) advocacy for battered victims who find themselves as defendants.

1. <u>Primary Aggressor Law</u>

When both parties in a domestic violence situation claim that they have been assaulted by the other party, it will be necessary to determine the who is the primary aggressor. To determine the identity of the primary aggressor, officers need to follow state law and department policy.

California Penal Code section [redacted] (b) provides:

> written polices shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either party acted in self-defense.

Under the policy of the San Diego Police Department, officers are also encouraged to look for the person most likely to inflict injury and the person least likely to be afraid as well as the domestic violence history, both documented and undocumented, to make this determination.

Although documented procedures–whose origins can be traced to state law and well-intentioned department policies–exist, many experienced prosecutors, police officers and instructors recognize that more guidance is needed to overcome some old methods of identifying the primary aggressor. These include:

Myth 1: The Primary aggressor is the person who strikes the first blow.

Myth 2: The Primary aggressor is the person who wins the fight or has no injuries.

Myth 3: The Primary aggressor is the person who is drunk and obnoxious.

While the primary aggressor may be the person who strikes the first blow, wins the fight or may be drunk, the analysis can not end there. Identifying the primary aggressor requires the consideration of many other factors. In 1996, Deputy District Attorney Candace Heisler lead a group of domestic violence experts in a discussion at the California District Attorneys' Domestic Violence Conference. Her goal was to identify additional factors officers and prosecutors could use to determine the primary aggressor. As a result of those efforts and others, many training programs[7] now include additional factors for consideration.

2. Factors to Consider in Identifying the Primary Aggressor

X Age, height and weight of the parties
X Criminal history
X Domestic violence probation

X Corroboration
X Presence of fear
X Offensive/defensive injuries
X Seriousness of injuries
X Motive to lie
X Strength and skill
X Use of alcohol or drugs
X Identity of the 911 reporting party
X Timing of the cross-complaint
X Demeanor of the parties
X Existing protective orders
X Detail of statement
X Admissions
X Evidence of consciousness of guilt
X Presence of power and control behavior
X Defenses: Self defense, defense of others, defense of property, ejectment of the trespasser

These classes also include questions to ask:

X Who is fearful of whom?
X Who in the relationship poses the most danger to the other?
X Who is seeking to stop the violence?
X Who is seeking to avoid punishment?
X Who is at most risk of future harm?
X Who has motive to lie or retaliate?
X Who's story makes the most sense?
X Do the injuries and evidence corroborate the statement?
X Is there evidence of consciousness of guilt?
X Is there a history of domestic violence, as a perpetrator or as a victim?

Another good question to ask both parties at the scene is "what will your partner tell me about what you did?" Then confront the female with the male's version. Find out what she believes. Does she confirm or deny the male's version? Then ask the same set of questions of the other party .

Always ask "what was the argument about?" This question more than any other question will help identify any motive to lie and/or expose any possible defenses. Finally, document the reasons why one version is more believable than the other and the reasons for the arrest.

3. Defining Mutual Combat

In domestic violence situations it is not uncommon for both parties to assert that the other party

was actively engaged in the violence. This pattern of claims is sometimes grouped under the concept of "mutual combat." The term "mutual combat" is often misused and misunderstood by police, prosecutors and judges.

Police officers tend to classify a domestic violence case as "mutual combat" when both parties have injuries and they simply don't have the time to sort out a messy case at the scene, thinking it is the prosecutor's job to sort it out in court.

Prosecutors tend to use it when both parties have injuries or both parties allege self defense at the scene. Prosecutors think if the police officers can't figure it out, nor will the judge or the jury.

Judges and juries use the term "mutual combat" to justify their not guilty verdicts.

Its instructive to think of mutual combat in the context of the western shoot-out. Recall the movie "Tombstone" where Doc Holiday and Johnny Ringo engage each other in a duel. The two men are of the same physical stature. They both have a gun. They are equally matched in skill and both agree to "shoot it out." During the big fight scene, they attempt to stare each other down, each with their hand resting squarely on their gun. The tension builds before Doc Holiday finally says "when" and shoots Johnny Ringo between the eyes. Clearly, this is mutual combat.

But this is not the situation in most homes where domestic violence is present. The parties are rarely evenly matched. Usually, one person is more powerful than the other, not just in size and strength, but in important aspects of their personal relationship. Often, there is no opportunity to "opt out" and the options for domestic violence victims are limited: run, stay or defend yourself.

To date, there are few documented police reports that describe the scene where a wife calmly says over dinner, "Honey, I've had enough of your abusive behavior. It's time to settle our differences. After dinner, let's go out side and fight it out. Winner keeps the house and kids. Loser leaves and pays attorney's fees. "

Misunderstanding "mutual combat" can lead to improper dual arrests, arrests without probable cause and police liability for false arrest.

4. Criteria for Dual Arrests

When both parties allege domestic violence against each other, the police officer must evaluate each allegation separately and determine whether probable cause exists to arrest one or both parties.

Probable cause to arrest requires that the facts or circumstances confronting the officer at the time of the arrest would lead a peace officer of ordinary caution or prudence to believe and entertain a strong suspicion that the person arrested had committed the alleged crime. The San

Diego Law Enforcement Protocol on Domestic Violence (updated 1998) lists factors officers should and should not consider when making an arrest for domestic violence.

If the officer determines that one person was the primary aggressor, the officer must arrest the primary aggressor and not the other person who acted in self defense. If the officer determines that probable cause exists that both parties used violence, not in self defense, then California law permits a dual arrest. A reasonable expected rate of dual arrests, according to retired Sgt. Anne O'Dell, would be 3% of all domestic violence arrests. Anne believes "if a jurisdiction or a law enforcement agency has a higher percentage, it indicates a lack of training or a lack of a clear policy to direct officers in how to properly investigate a domestic violence case." To overcome problems with high dual arrest rates, some police agencies have required their officers to submit separate police reports or narratives in support of each arrest. According to Anne, the "two-police report" rule is an excellent way to encourage police officers to identify the primary aggressor and avoid dual arrests.

A dual arrest made without establishing probable cause against both parties can result in the victim being falsely arrested. False arrests places law enforcement agencies in civil jeopardy.[8] Consequently, it is important to emphasize that if an officer cannot determine the identity of the primary aggressor at the conclusion of his/her investigation and there is no probable cause to arrest either party, then no one should be arrested.

5. Defenses and Excuses

The most common legal defense in a domestic violence case is self defense, followed by defense of others, defense of property and ejectment of a trespasser. All these legal defenses should be considered by officers and prosecutors in determining the identity of the primary aggressor.

There are also non-legal defenses commonly raised by defendants through their defense attorneys such as "self-inflicted" injuries, "some other dude did it," "defense of self," "nothing happened, officer" or the "culture" defense. Despite a prosecutor's objection, these defense arguments sometimes make their way into the trial but are rarely given credence by the jury or the judge. More often than not, they are considered as mitigating evidence at time of sentencing. Nevertheless, both police and prosecutors need to anticipate them.

The "self-inflicted injury" argument tends to come up in attempted strangulation cases. At trial, the defendant attempts to argue the victim is making up the whole thing and scratched herself to get him in trouble. In actuality, what tends to happen is that the defendant was manually strangling the victim with both hands. In an effort to protect herself, the victim violently pulls the defendant's firm grip from around her neck in an effort to survive. During the prying and pulling, the victim may scratch herself.

The "some other dude did it" argument comes up when the defendant is "GOA" (gone on arrival) and the victim does not identify the defendant through a photograph. At trial, with the victim

recanting or testifying for the defense, the defendant attempts to argue the victim had another lover and he abused her, not him.

The "defense of self" argument comes up when the victim is very upset at the scene or may be attending counseling or has a history of counseling. At trial, the defendant attempts to argue that the victim was "out of control" or "crazy" and all he was trying to do was protect her from herself by "lovingly restraining her."

The "nothing happened, officer" comes up in an effort by the batterer to get the police out of the house. This argument is rarely successful because of the evidence to the contrary. According to Fresno Police Detective Mike Agnew, the key is simply to get the suspect committed to this story or "locked in" and let the evidence collected by the officers and detectives speak for themselves.

The "culture defense" comes up most often with immigrant defendants who believe that they should be able to discipline their wives in the same manner as their own country–according to their version–permits. They believe that their "ignorance" of the customs and laws of this country is a legitimate defense. Fortunately, ignorance of the law is no defense in this country. For an excellent discussion on culture defense see "Cultural Considerations in Domestic Violence Cases," a National Judges Benchbook by Maria Ramos and Edited by Michael Runner and produced by the Family Violence Prevention Fund in 1999.

These arguments are not legally recognized defenses. While at times they may have merit, these arguments (mostly excuses) should be documented by police officers and considered by prosecutors, but they should not interfere in the officer's evaluation of probable cause to arrest or the identity of the primary aggressor nor keep a prosecutor from prosecuting the case.

a. Self Defense

Under California Jury Instruction 5.30, it is lawful for a person who is being assaulted to defend him/herself from attack if, as a reasonable person, s/he has grounds for believing and does believe that bodily injury is about to be inflicted upon him/her. In doing so, that person may use all force and means which s/he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. *See also* Penal Code section 693.

In evaluating self defense, officers should also consider whether: (1) the force was reasonably necessary to prevent harm, (2) the harm itself was actual or imminent; and (3) the victim's belief of harm was reasonable.[9]

Rhonda Martinson, Staff attorney for Battered Women's Justice Project, suggests asking the following questions:

1. To determine whether "the force was reasonably necessary to prevent harm":

X What kind of injury is it? A bite or scratch are commonly inflicted in self defense.
X Where are the injuries? A bite to the chest may occur from being restrained. Scratches to the face, hands or arms may occur from someone trying to escape from strangulation.
X What amount of force appears to been used in inflicting the injury?
X What is the level of force used by each party?
X Whose version of events is corroborated by the evidence?

2. To determine whether the harm itself was actual or imminent:

X Is there a history of domestic violence?
X Is there a history of prior threats?
X Have those threats been carried out before?
X Has the suspect hurt other partners in the past?
X Has the suspect engaged in other violent activities?
X Was the suspect handling a weapon in such a way to imply a threat? Maybe twirling a knife? Cleaning a gun? Loading or unloading a gun?
X Was the suspect acting in such a way to imply a threat? Demeanor, voice, tone, looks?

3. To determine whether the victim's belief of harm is reasonable:

X Is there a history of domestic violence? Documented or undocumented?
X Were injuries inflicted in the past? How serious?
X Is there corroboration to prior violence?
X Was the suspect intoxicated during prior incident(s)?
X Does the suspect have a history of mental problems?
X Does the violence appear to be escalating? If so, her perception of danger may also be escalating.
X Were children previously assaulted, being assaulted or threatened?
X Were the threats specific or vague? Any special meaning to the victim?
X Was the suspect appearing to be carrying out a threat? Like sharpening a knife, purchasing bullets?
X Any incidents in public?

b. Use of Weapons

When a woman uses a weapon to defend herself, such as a frying pan, a knife or any other household object, self defense still applies. Remember, California law states a "person may use all force and means which she believes to be reasonably necessary . . . to prevent the injury which appears to be imminent." If the male is bigger and stronger, the defending female is entitled to use a weapon to make things fair or "equalize the power differential." However, if circumstances are reversed such that the male is smaller and the victim is bigger and stronger,

then using a weapon to defend oneself may not be appropriate.[10]

Let's review the following two scenarios frequently used by Retired Sgt. Anne O'Dell in her primary aggressor training:

X Husband comes home drunk. The woman has a history of being battered in her home especially after he has been out drinking and comes home drunk. He becomes argumentative with her and is trying to "pick a fight." She retreats to the kitchen and he follows her. He begins to raise his voice and threaten her with his body language and piercing eyes. She backs up to a drawer, pulls out a knife and tells him to stay away from her.

X Husband comes home drunk. The woman has no history of being battered. She berates him for drinking. She is angry he went out drinking with his friends, leaving her alone with the kids. He ignores her. She continues to berate him. When he snaps back and calls her a "bitch" she pulls a knife from the kitchen drawer and threatens him.

Clearly, the woman in the first scenario is acting is self defense. Furthermore she has no duty to retreat[11] and has the right to defend herself when she is confronted by the appearance of danger.[12] The woman in the second scenario is the primary aggressor. She is responding to being called an insulting name and is not afraid. The law does not permit the use of "self-defense" under this scenario since "a provocative act which does not amount to a threat or an attempt to inflict physical injury, nor words, regardless how offensive or exasperating, is sufficient to justify a battery."[13]

c. Defense of Others

In domestic violence cases, children, family members and/or friends may intervene during a domestic dispute. When they do, the batterer may strike out at them and the victim may then use violence to protect her child, family member, friend or neighbor. When determining the identity of the primary aggressor, officers should also consider defense of others.

California Jury Instruction 5.32 provides:

> It is lawful for a person who, as a reasonable person, has grounds for believing and does believe that bodily injury is about to be inflicted upon another to protect that individual from attack. In doing so, s/he may use all force and means which such person believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

See also Penal Code section 693.

d. Defense of Property

In domestic violence cases, batterers will use power and control tactics to control the victim. They will attempt to take and control the personal property of the victim such as car keys, purses, money, special momentos, photos, remote control units and computer files. The victim may use violence to retrieve her personal property. When determining the identity of the primary aggressor, officers should also consider defense of property.
California Jury Instruction 5.43 provides:

> When conditions are present which, under the law, justify a person in using force in defense of property, that person may use that degree and extent of force as would appear to a reasonable person, placed in the same position, and seeing and knowing what the resisting person then sees and knows, to be reasonably necessary to prevent imminent injury threatened to the property. Any use of force beyond that limit is excessive and unjustified, and anyone using excessive force is legally responsible for the consequence thereof.

See also Penal Code section 693.

e. Ejectment of the Trespasser

A common scenario is when a former boyfriend or girlfriend goes to his/her ex's apartment or house. An argument ensues and s/he is asked to leave. When s/he refuses to leave, the lawful tenant attempts to eject the trespasser. Under California law, it is legal to use reasonable force to eject a trespasser.

California Jury Instruction 5.40 provides:

> The lawful . . . occupant has the right to request a trespasser to leave the premises. If the trespasser does not do so within a reasonable time, the . . . occupant may use reasonable force to eject the trespasser. The amount of force which may be used to eject the trespasser is limited by what would appear to a reasonable person under the existing circumstances, to be necessary to prevent damage to the property or physical injury or death to the occupant and/or his/her family members or guests.

6 Consequences for Dual Arrests or Bad Arrests

Arresting both parties or the wrong individual, sends the wrong message to offenders, victims and children and should be cause for concern.

- X Offenders who cause the other party to be arrested are being rewarded for manipulating the system. They feel invincible.
- X Victims think twice before calling the police. As a result they continue to live in fear.
- X Children are learning to distrust the police. In cases where both parents are arrested, children associate the presence of police with the breakup of the family.
- X Police officer frustration is growing.
- X Batterers are not being held accountable.
- X Victims are not being protected and as a result are increasingly unwilling to seek help.
- X Issues concerning dependency, child custody, housing, immigration and other consequences are emerging.

Clearly, it is important to have a clear understanding of what is and what is not mutual combat in order to avoid dual arrests and arresting the wrong person.

7. The Signs and Symptoms of Attempted Strangulation Cases[14]

Because a victim of an attempted strangulation may not have any visible injury from the attack, police officers need to be particularly diligent in determining the primary aggressor. It is quite possible they may find the male assailant with visible injuries and the female victim with no visible injuries.

Strangulation has only been identified in recent years as one of the most lethal forms of domestic violence: unconsciousness may occur within seconds and death within minutes. Today, we know that victims may have no visible injuries whatsoever —yet because of underlying brain damage by lack of oxygen during the strangling — victims may have may serious internal injuries or die days or several weeks later.

In a study conducted by the San Diego City Attorney's Office of 300 domestic violence cases, visible injuries such as tiny red spots on the face, bloody red eyes, red marks, scratches and bruising on the neck, were only visible 16% of the time. Often, when visible injuries were present, the injuries were subtle and hard to find. Consequently, it is important for officers to take special care in looking for injuries around the eyes, under the eyelids, nose, behind the ears, inside the mouth, neck, shoulders, and upper chest area. Even more critical in the investigation of a strangulation case, is the documentation of symptoms such as:

- X Hoarse or raspy voice
- X Loss of voice
- X Pain and/or difficulty swallowing
- X Coughing
- X Nausea and/or vomiting
- X Internal neck injury

X Difficulty or inability to breathe
X Mental changes
X Lightheadedness
X Involuntary urination or defecation

According to Dr. George McClane, a nationally recognized expert on strangulation, a victim who is strangled may first feel severe pain, followed by unconsciousness and even death. The victim will lose consciousness by any one or all of the following methods: blocking of the carotid arteries (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), and closing off the airway, causing the victim to be unable to breathe. Only eleven pounds per square inch of pressure placed on both carotid arteries for ten seconds is necessary to cause unconsciousness. However, if pressure is released immediately, consciousness will be regained within ten seconds. To completely close off the trachea, three times as much pressure (33 lbs./square inch) is required. Brain death will occur in 4 to 5 minutes, if strangulation persists.

8. When women use violence.

It's important to acknowledge that women use violence. It is a crime for a male or a female to use to violence which is not in self defense. Domestic violence is a crime and domestic violence laws apply equally to men and women. Police and prosecutors are duty bound to apply the laws of California uniformly and fairly. With the increase in the number females being arrested, it is inevitable that some females will be arrested who also have a history of being abused themselves. When this happens, police officers and prosecutors must evaluate each case independently, including the facts of the instant offense and prior domestic violence history. These difficult cases can be more effectively evaluated if it is understood why women use violence. In *Women Who Abuse in Intimate Relationships* (Hamlett 1998), violent women were grouped into three categories:

X One group includes women who use violence in self-defense to escape or protect themselves from their partner's violence. Saunders (1986) found that this was the most frequently reported motivation for women's use of violence.

X In a second group are women who have a long history of victimization at the hands of previous partners as well as during childhood. These women are described as taking a stance in life that "no one is ever going to hurt me that way again" and their violence is interpreted as an effort to decrease their own chances of victimization.

X Violent women in a third group are identified as primary physical aggressors who use their greater physical power to control partners.

Several years ago in a Santa Barbara study based on an analysis of police reports, it was found that in 90% of the cases (in instances where injuries were noted) the injuries were to women

only. In the remaining 10%, both parties had injuries. In all cases where both parties had injuries, the woman's injuries were more severe than the man's injuries.

9. Distinguishing Between Offensive and Defensive Injuries

The head, face and neck are the most frequent places injury is received during domestic violence.[15] Also, common are injuries to the torso such as the chest, breast or abdomen.[16] Battered women are more likely to have abrasions or contusions from being punched (67.5%), pushed (51.3%), kicked (35.1%), slapped (33.8%) or hit with an object (29.9%).[17] Dr. Salber and Dr. Taliaferro have identified the following injuries as characteristic of domestic violence:

X Bilateral injuries, especially to the extremities
X Injuries at multiple sites
X Fingernail scratches, cigarette burns and rope burns
X Abrasions, minor lacerations or welts
X Pattern injuries such as bite marks; marks from jewelry, belts or keys; or designs or patterns stamped or imprinted on or immediately below the epithelium by weapons
X Injuries that are inconsistent with the victim's explanation
X Multiple injuries in various stages of healing
X Injuries during pregnancy

The typical bite mark, according to Dr. Sperber, is a "round or oval, ring-shaped injury consisting of two facing arches, each made up a series of aligned contusions, abrasions and/or lacerations. The enter injury measures 3-4 cm. The individual markings comprising the arches represent the biting surfaces of front teeth distributed around the upper and lower jaws." There are also variations in the pattern:[18]

1. Central ecchymosis - contusion within the center of the bite mark caused by capillary bleeding. It occurs as a result of compression of tissue by the teeth with or without suction.
2. Drag marks - radiating, linear contusions or abrasions at the periphery of the mark indication of scraping of teeth along the skin as the bite occurred.
3. Avulsed bite mark - when the bitten tissue is torn off, leaving a central lacerated defect.
4. One arched bite mark - rare, but may occur.
5. Half bite mark - when only the right or left side of a bite mark shows up.
6. Double bite mark - bite mark within a bite mark. Occurs when skin is bitten, then starts to slip out between teeth and is bitten again.
7. Overlapping bite marks - multiple, separate bite marks made repeatedly in the same general location.
8. Toothless bite mark - shows a contused ring of compatible size and curvature but without well defined, individual tooth marks. Occurs in healing bite marks and bite marks on soft or fatty skin.

Typical domestic violence injuries that may be detected by a dentist[19] are:

- X Intraoral (inside the mouth) bruises from slaps, hits and soft tissue pressed on hard structures like teeth and bones.
- X Soft and hard palate bruises and abrasions from implements of penetration could indicate force from a sexual act.
- X Fractured teeth, nose, mandible and/or maxilla. Signs of healing fractures may be detected in panoramic radiographs.
- X Abscessed teeth could be from tooth fractures or repeated hitting to one area of the face.
- X Torn frenum (a fold of membrane which checks or restrains the motion of a part, such as the fold on the underside of the tongue or upper lip) from assault or forced trauma to the mouth.
- X Hair loss from pulling, black eyes, ear bruises, other trauma and lacerations to the head.

Self-defense injuries, as described by Dr. Dully (a practicing clinical forensic physician at Camp Pendleton) are injuries often found on the aggressor, such as scratch marks and bite marks on the aggressor's body, especially on the chest and face.

- X Scratch marks to the face, hands and/or arms are common when a victim is defending herself from an attempted frontal manual strangulation.
- X Bite marks on the chest are common when the victim is forcibly confined into a bear hug, face pressed into the assailant's torso.
- X Bite marks on the arms are common when the victim is defending herself from an attempted manual strangulation by use of a "carotid restraint" or "chokehold."

Defensive injuries are injuries frequently found on the victim in an effort to defend herself such as the back of the arms or palms (which may be used to block blows), the bottom of the feet (which may be used to kick away the assailant) or injuries to the back, legs, buttocks or back of the head (from being curled in the fetal position).[20]

Hidden injuries are those injuries that are hard to see because of the location of the injury or because victims may be reluctant to report or show her injuries to a police officer. It is important for officers to carefully examine the scalp for cuts and/or bumps which may easily be concealed by hair. Likewise, officers should look for injuries to the face which may be concealed by heavy makeup or glasses; injuries to the neck that may be concealed by a turtleneck sweater, a scarf or jewelry; and injuries to the arms and legs which may be concealed by a long-sleeved blouse or pants.

Dr. Dully has also described "suspicious" injuries, likely caused from an assault, as follows:

- X Wrinkle injuries to the back of the ear from ear pulling, pinching, punching or slapping
- X Pattern injuries to the neck from jewelry being pulled or pressed or abraded into the skin when the victim is being grabbed

X A cut to the face from a ring during a back-handed slap
X Lip injury from being punched or slapped
X Friction injury under the arms from pulling of clothes, also at the collar area
X Wrist injuries from being held down or grabbed
X Inner thigh injuries from being sexually assaulted
X Car injuries resulting from vehicle pursuits, rapid escapes, attempts to run over or crush to prevent vehicle escape, and
X Skin injuries from being slammed up against walls or down to the floor including carpet burns from being dragged across surfaces.
X

Sgt. Dan Plein from the San Diego Police Department frequently instructs officers to look for offensive injuries on the aggressor's hands and to take pictures of, and note, any cuts and abrasions on the aggressor's knuckles.

10. Identifying the Sophisticated Batterer

Batterers, like any criminal, do not want to be caught. They do not want to go to jail. To avoid accountability, batterers will do almost anything to outsmart the police officer who responds to a 911 call. Officers need to know that batterers can be very sophisticated, charming and manipulative. The "Profile of an Assailant" produced by Duluth is a great training video for police officers and prosecutors. It will help you understand the sophisticated batterers and assist with interrogation or cross-examination. Below are some common strategies sophisticated batterers will use to avoid being arrested and prosecuted:

X Hide the evidence.
X Provide first aid to the victim or make her clean-up before police arrive.
X Instruct the victim and the children to lie.[21]
X Hit the victim in places that will leave no marks or will be hard to see.
X Blame the victim.
X Lie by claiming to be the victim or acting in self defense.
X Manipulate the police officer by painting themselves as being "reasonable" and the victim as "crazy."
X Use "power and control" tactics.

11. Understanding the dynamics of Domestic Violence

By understanding the battered woman, police officers and prosecutors will be better equipped to assist victims of domestic violence from the initial 911 call through prosecution. All people have an image of what victims should look like and how they should act. Often that image conflicts with the way battered victims present themselves in their attitude and/or demeanor. The victims presentation is perceived as "unvictim-like" behavior. Battered women have many different reactions to violence and abuse. They may be emotionally upset or emotionally numb. They may be fearful, angry, sad, ashamed, distrustful or in shock. Their cultural background may

influence the way their emotions are expressed. They may be intoxicated and/or under the influence of drugs.

By understanding the battered woman syndrome,[22] post traumatic stress disorder, the cycle of violence[23] and power and control, domestic violence professionals can conduct a better investigation, understand why battered victims may display "unvictim-like" behaviors and avoid becoming frustrated when the victim recants, stays with her abuser or refuses to testify.

X Small Window of Opportunity

When a domestic violence incident is reported, the victim is most likely in the "acute battering" phase. During this phase, she is usually willing to tell the truth and be amenable to intervention. This is the time officers need to take detailed statements about the current incident as well as prior incidents. The window of opportunity to intervene is short. Depending on the victim, her willingness to tell the truth may last only minutes and usually no more than a few days. She may also be experiencing guilt, one of four characteristics of the Battered Woman Syndrome– guilt, denial, enlightenment or responsibility.

X Beware when she says "It's all my fault"

At the time a police officer responds to a domestic violence call, the victim may be blaming herself for the violence in which case she might tell the responding police officer that "it was her fault" when asked what happened. When officers hear "it's all my fault," do not stop your investigation there but follow-up by asking "what do you mean it's all your fault." Generally, what you will hear from a battered woman is something like "Well, he told me not to call my mother. I did. He got angry and he slapped me. I then pushed him back. It's all my fault because I didn't do what he told me to do." Taking a few extra minutes to find out what she means by "it's all my fault" will make for a better case. You will know the reason for her use of violence. If she used violence in self-defense, then you won't arrest the wrong person. If she did not use violence in self defense, then you know you arrested the right person.

X The Recanting Victim

Gail Pincus emphasizes "that about 80% of the time a woman who has been initially assaulted by a boyfriend, husband or lover will recant, change or minimize her story." This recanting does not happen only after there has been a continuing pattern of abuse. Depending on the severity of the incident, it is more likely to occur after a first incident.[24] Victims may recant for many reasons and at any time.

It can happen at the scene when the victim sees a certain "look" or hears a certain "tone." For this reason, officers have been encouraged to separate the parties at the scene. It can happen when the batterer calls the victims from jail and tries to win the victim over through affection, promises or intimidation. For this reason, domestic violence detectives need to work fast and

contact the victim as quickly as possible. When detectives contact victims, they need to consider that the victim may be experiencing one of the four characteristics of the Battered Women Syndrome.[25] She may also have had contact with the batterer and already entering the "honeymoon phase." When the victim recants, officers, detectives and/or advocates should reassure the victim that they are there to help her, provide her with important numbers and discuss a safety plan. After addressing the victim's safety concerns, detectives can help prosecutors by trying to determine why she is recanting:

X Has she had contact with the batterer?
X Is he out of jail?
X Has she had contact with the batterer's family members?
X Has he apologized?
X Is she afraid of retaliation?
X Is she afraid he will take the children?
X Is she afraid he is going to kill her?
X Is she dependent on the batterer for money?
X Do they have children together?
X Is she still in love with him?
X Are there any cultural issues?

Additionally, Fresno Police Detective Mike Agnew takes this opportunity to ask the victim if she believes it's okay for him to abuse her. He finds that even if the victim is recanting, her response is usually: "No, it's not okay for him to treat me this way." He then follows up with questions like, "What would you like to see done?" or "How can we stop his behavior?" This discussion, Mike believes, helps the victim understand why prosecution must go forward in order to stop his behavior even if she continues to recant or does not to participate in the criminal proceedings. It also helps her understand that police and prosecutors are trying to help.

By understanding why victims recant, domestic violence professionals can focus more on the batterer's behavior as opposed to the victim's behavior. Instead of becoming frustrated and losing patience with the victim, domestic violence professionals will be able see through the victim's "protection mechanism," and develop interviewing skills which will illicit truthful information as opposed to "shutting" her down.

12. Evidence Gathering

After the responding officer conducts his/her investigation and determines the identify of the primary aggressor, it is important for the officer to document and photograph all the evidence that supports that conclusion. Do not leave any holes open for the defense to attack. Do not leave any room for lies. In domestic violence cases, documenting and gathering the evidence is the key to a successful prosecution because frequently victims will recant or be unavailable for trial making it easier for defendants to come up with some sort of cockamamy story. However, prosecutors can still proceed with prosecution provided officers collect sufficient evidence of the

crime.

Evidence-based prosecution[26] means documenting the demeanor, description and physical condition of both parties, the use of drugs and/or alcohol, the crime scene (diagram and photo), parties' injuries or lack of injuries, the presence of weapons (as well as impounding all the weapons used in the commission of the crime), the presence and identity of witnesses, history of domestic violence, existence of protective orders, identity of the reporting party, location of the parties, the party's medical treatment, obtaining a medical release from the victim to later corroborate her injuries, and detailed statements from all witnesses. Many agencies use a domestic violence supplemental reporting form[27] for investigating domestic violence cases.

X Demeanor of the Parties

With respect to the parties' demeanor, officers should document if the victim and suspect appeared to be angry, apologetic, afraid, upset, crying, hysterical, calm, irrational, nervous, threatening, complaining of pain, or injured. If the victim or the suspect appeared to be under the influence of alcohol or drugs, evaluate them for charges related to being drunk in public or under the influence of drugs. While California law only requires officers to document the suspect's use of alcohol or drugs, officers are encouraged to evaluate both parties. Their level of intoxication and/or drug use at the time of the incident is relevant and admissible evidence at trial. When no mention is made in the officer's report about the victim's level of intoxication or lack of any alcoholic intake, amazing things happen and mounds of lies get told. For example, a defendant may claim that the victim was falling-down drunk and her injuries were caused when she fell down from being drunk. Or, maybe that the victim came home drunk and locked herself out of the house. She injured herself when she forced entry. He wasn't even there. She made the whole thing up because she was mad he wasn't home. Defense attorneys are good at exploiting holes in an officer's report to the advantage of the defendant.

X Location of the Parties

The location of the parties can be very illuminating. Sometimes officers have located a naked female hiding behind the bushes, crying, fearful and injured, within minutes after running out of the house to escape abuse. Sometimes officers have found male suspects hiding in the closet, underneath cars or at a local 7/11 waiting for the police to leave. At other times, suspects are walking or running away from the scene which prosecutors can use to show conscience of guilt at trial. The demeanor of the parties is an important factor in determining the identify of the primary aggressor.

X Terminology ("fighting" and "hitting")

With respect to taking statements, officers should be sensitive to terminology while interviewing witnesses. Seek clarification when in doubt and always verify the accuracy of witness statements before concluding your investigation. Terminology may direct the course of an

investigation and ultimately cloud the identification of the primary aggressor. For example, children may say "Mommy and Daddy are fighting" which may suggest to the officer that the case may be mutual combat but in actuality the children mean their parents were only raising their voices, that one parent hit the other and/or the other parent was defending him or herself. Neighbors may make 911 calls and report that the neighbors are "fighting" but mean something different.

Another term to watch out for is "hitting." For example, the victim may say, her husband "hit" her. But if the officer asks the suspect if he "hit" his wife, he may say no, although he would admit to pushing or slapping her.

X Interviewing children

The way the child is interviewed can affect the child's disclosure of information. The approach of the interviewer, the wording of the questions and the interviewer's verbal and nonverbal communication can impact how the child interprets and responds to questions.[28] The golden rule when interviewing children in domestic violence cases is to interview them separately from the parents. Just like the statements of domestic violence victims are influenced by the batterer, the statements of children are influenced by the parent. If the abused victim recants, it is likely the child or children will later recant. If the child feels intimidated by one of the parents (the batterer), s/he will likely feel compelled to tell the officer whatever the parent told him or her to say.

For example, in a recent case received by San Diego Police Department the children were taken to the police station by the male batterer. He instructed his children to "tell a lie" about what had occurred in the home. The officer took the children's initial statement and noted in his report:

> I interviewed both children separately and they gave me a statement that was almost identical to their fathers. The only difference was that both kids were very nervous and they recited what had occurred very slowly and were thinking about the story as they told it. Both children told me that their mother was acting strangely due to her having menopause. I asked both children about their mothers bruises and both said, "my mother bruises like a peach."

Later it was discovered that a domestic violence incident had just occurred and the father had left the scene with the children, taking them to the police station where he reported he was a victim of domestic violence. When the officer later re-interviewed the children away from the father, he was told a different story. The officer wrote the following:

> After I brought the kids homes, they confessed they had lied to me at the station. Alexis said "my Dad told us to tell the officers his

> story because he didn't want to go to jail. I know it wasn't right, but we were afraid. Christian and I were really in the car waiting while mom and dad were in the house. We never saw what happened. They have been arguing and fighting a lot. My Dad's moods always change. He'll be happy then mad and angry the next minute . . . ."

To avoid having a child's statement be influenced by one of the parents, it is critical for officers to interview the children away from the parents. A friendly approach to the child can build rapport and the information provided by the child may be more accurate. Interviewers who use rapport building approaches such as smiling, making brief eye contact and conducting the interview at the child's level (rather than from above them) have been found to obtain more accurate information than from "unfriendly" interviewers who do not smile, who make constant eye contact or who do not ask rapport building questions about the child (Goodman, Bottoms & Schartz-Kenny 1991).

X Take Pictures of Both Parties

The number one defense in a domestic violence case is self-defense. If the suspect does not allege self-defense at the scene, s/he will allege it later at trial. At trial, the prosecutor will then need to prove to the jury that the defendant was, in fact, the primary aggressor. The more evidence collected at the scene, the less likely a contrived "self-defense" claim will arise or survive at trial. When photographs are only taken of the victim and not the suspect, the suspect can easily claim "she hit me too and his injuries were not photographed because the officers were biased against me." By taking photographs of both parties as well the children, the broken furniture, the disabled phone, weapons, etc., the officer is perceived as conducting a careful and complete investigation.

13. Report Writing

Police officers are encouraged to include their experience and training in their domestic violence reports. I would like to see officers include something like: "I have received domestic violence training at the academy and received 4-hours of primary aggressor training at a menu class. Over the last four years as a patrol officer, I have responded to hundreds of domestic violence cases . . . ."

With respect to the identity of the primary aggressor, the officer's reasons for arresting the primary aggressor is critical. Below are some examples from reports in San Diego which are helpful: "After conducting my investigation, I determined the primary aggressor to be Jack and the scratch marks sustained by Jack to be the result of Jill's effort to break away from his hold."

> Based on the statements of the two subjects, I believed that Wilson was the primary aggressor in this incident and lost his temper when

> Gardner refused to go along with his plan. I arrested Wilson for spousal abuse due to the visible injuries to Gardner and booked him into county jail.

Good example of the parties' demeanor but bad analysis of the primary aggressor:

> Gloria was extremely intoxicated. She had a strong odor of alcohol, slurred speech, loud, obnoxious, unsteady gait, . . . etc. She told me Jacobs pushed and puncher her in the face. . . . Jacobs was even more intoxicated than Gloria. He was unable to stand or walk by himself. Jacobs told me that Gloria was upset that he accused her of stealing $6,000 from him. Gloria punched him in the face when he demanded the money back. Neither Jacobs or Gloria was credible. But per policy that we have to arrest one of them, we decided to arrest Jacobs.

14. Follow-up investigation

The purpose of the follow-up investigation is to continue the investigation where the patrol officers' leave off and fill in all the missing pieces. Given the likelihood that domestic violence victims will recant, the domestic violence detective must continue to gather evidence by obtaining copies of prior domestic violence reports, documenting the details of prior undocumented domestic violence, identifying additional witnesses, eliminating possible defenses, taking follow-up photographs, checking the criminal history of the parties, obtaining a copy of the 911 printout or tape, obtaining medical or dental records, obtaining releases for medical or dental records, obtaining copies of protective orders and supporting declarations and taking statements from the suspect who may have fled the scene. This additional investigation helps to ensure that the right person was arrested as the primary aggressor, assist the prosecutor in overcoming any contrived claims of self-defense at trial and put any recanting statements into context. In the event the victim does recant to the detective, the detective must document the new statement in his follow-up report. Recanting statements are discoverable and must be disclosed by prosecutors to the defense. Detective Mike Agnew finds that most victims do not completely recant their initial statement, but only portions of their initial statement. They will also confirm many portion s of their initial statement which is important to document.

In the event new information comes to the attention of the detective that suggests the patrol officer may have improperly identified the primary aggressor, it is the detective's duty to set the record straight by identifying the primary aggressor.

15. Illustrations and or case scenarios

Identifying the primary aggressor is not easy. There are many factors for officers and prosecutors to consider. Each case is different and often there are no clearly right or wrong

answers. Things can get pretty murky. As such, "training on policies should focus on case examples so that practitioners can apply the guidelines or rules." This can be accomplished in a primary aggressor class by having the students role-play, review real cases or review video vignettes. Sgt. Dan Plein, in our San Diego Primary Aggressor Class, will generally pick three recent real police reports involving cross-complaints of violence for the students to analyze. Because the class is usually made up of patrol officers, detectives and prosecutors, we can usually expect an animated exchange of discussion among the three sets of professionals and the ultimate discovery that each other's job is not as easy as initially perceived. (Then again, Dan likes to pick cases that ignite debate.) Listed below under resources are several excellent training videos on the subject of primary aggressor that offer video vignettes for training purposes.

16. Issuing Considerations for Prosecutors when Evaluating the Primary Aggressor

Probable cause to arrest the primary aggressor is much different than convicting the primary aggressor. In order for prosecutors to issue a complaint against a suspect, s/he must believe there is a reasonable likelihood of conviction. When both parties allege self defense at the scene, the prosecutor needs to analyze the case similar to the police officer, weigh the credibility of the witnesses, and evaluate the corroborating evidence that supports one version over the other.

X Two credible versions

If both versions are credible, the defendant will receive the benefit of the doubt and the likelihood of conviction is unlikely. Under these circumstances, issuing a complaint may not be appropriate.

X One credible version

If the victim's version is supported by corroborating evidence and is more credible than the suspect's version, then prosecution is likely appropriate. Corroborating evidence includes, but is not limited to: spontaneous statements on 911 tape, injuries, a good photograph of the injury, medical records from the current incident or prior incidents of domestic violence, evidence of documented and/or undocumented history of domestic violence, prior or existing protective orders, sustained fear, independent or corroborating witnesses, evidence of the suspect's consciousness of guilt and the suspect's criminal history.

X Injuries to Both Parties

When both parties allege self defense and have visible injuries, prosecutors will need to work harder to show that one party is the primary aggressor; that victim's version is more credible than the defendant's and there is corroborating evidence to support the victim's version. When both parties are injured, Jurors tend to see the victim's violence (self-defense) as "washing out" the defendant's violence. Consequently, prosecutors need to be ready for an uphill battle in court. They should anticipate all possible defenses: self-defense, defense of others, defense of property,

ejectment of the trespasser, accidental injuries and/or self inflicted injuries. Prosecutors should consult with experts prior to issuing a complaint or prior to trial and evaluate the injuries to determine if they are offensive or defensive, consistent with blunt force trauma as opposed to accidental, and/or eliminate any claim of self-infliction.

X Evidence of victim's prior use of violence

When self defense is alleged at trial, evidence of the victim's prior use of violence will be admissible. Prior to issuing domestic violence cases, prosecutors should review the criminal history of both parties, police reports from prior domestic violence incident(s) and declarations in support of protective orders. If the victim has previously been identified or arrested as a suspect in a domestic violence case or is on domestic violence probation, the victim's credibility will be at issue and conviction is unlikely. It will be difficult to prosecute under these circumstances unless there is an admission, an independent witness or substantial independent corroborating evidence to support the victim's version.

X Evidence of the female defendant being a battered victim.

Given the increase in the number of females that are being arrested, it is unavoidable that prosecutors will be reviewing cases where the female defendant may also have a history of being abused by the male victim. As uncomfortable as it may be, the prosecutor must apply the law equally and follow standard guidelines. If the evidence shows that on that particular incident the female suspect was the primary aggressor and there is a reasonable likelihood of conviction, then the case must be prosecuted irrespective of the prior abuse. In California, neither diversion nor civil compromise is an option for prosecutors. The case is either issued or it is not. However, when a case is issued against a female defendant who has a history of being abused by the male victim, prosecutors should consider the prior abuse as a factor in "mitigation" at sentencing.

17. Using Police Officers as Primary Aggressor Experts at Trial

At trial, officers will be permitted to explain the factors they considered in identifying the primary aggressor and arresting the suspect. During cross-examination and possibly during the defense's case, the officer's investigation and credibility as a witness may be attacked. Prosecutors may rehabilitate the officer's testimony and/or rebut the defense's case by calling an expert witness on the identification of the primary aggressor to assist the jury in sorting through primary aggressor issues. Under Evidence Code section 801, expert witnesses can be used for various reasons to assist jurors, including teaching the jurors about medical, technical, scientific principles or expressing an opinion after evaluating the significance of the facts of the case. It is within the judge's discretion to decide whether a witness is qualified as an expert to express an opinion on a particular subject. In *People v. McAlpin*, 53 Cal. 1289 (1991), the McAlpin court articulated the standard (a case involving the admission of testimony concerning the battered women syndrome) as follows:

> First, the decision of a trial court to admit expert testimony "will not be disturbed on appeal unless a manifest abuse of discretion is shown" (People v. Kelly (1976) 17 Cal.3d 24, 39 and cases cited.) Second, "the admissibility of expert opinion is a question of degree. The jury need not be wholly ignorant of the subject matter of the opinion in order to justify its admission; if that were the test, little expert opinion testimony would ever be heard. Instead, the statute declares that even if the jury has some knowledge of the matter, expert opinion may be admitted whenever it would 'assist' the jury. It will be excluded only when it would add nothing at all to the jury's common knowledge that men of ordinary education would reach a conclusion as intelligently as the witness."

Given the complexities of identifying the primary aggressor, in appropriate cases, prosecutors should consider seeking the testimony of experienced detectives to educate jurors on how to identify the primary aggressor.

18. Advocacy for Battered Victims Who Find Themselves as Defendants

Of concern is the lack of advocacy services for female defendants who may also be victims of domestic violence. In Minneapolis, Minnesota the Domestic Abuse Project has developed a program for battered victims who find themselves as defendants. For more information about this program, call Mary Jo at 612-673-3526 or dap@mndap.org. Unfortunately, prosecutors may not be in the best position to make such referrals. However, it is time to initiate work with the Public Defender's Office and the domestic violence community and to begin the discussion about how advocacy services can be provided to this limited population of women.

Implementing and Evaluating Primary Aggressor Training

As discussed above, California's primary aggressor law was passed to ensure that victims of domestic violence are not being arrested for defending themselves against attack. Law enforcement agencies have incorporated the identification of the primary aggressor into their protocols and added primary aggressor training. But are these efforts enough?

My observation is that the domestic violence communities in many states, not just California, did not do a particularly good job of planning and training on the primary aggressor before the primary aggressor laws were implemented: usually new legal mandates do not come with funds for planning and training. The Duluth Audit offers guidance and an opportunity for jurisdictions to evaluate the puzzling trend of skyrocketing female arrests.

In Duluth, Minnesota, a mandatory arrest policy was implemented by the Duluth Police Department after careful planning and training. Before implementation, a coordinating group of police, prosecutors, the court, probation and advocates determined how under the new approach

each would respond in a manner that would hold batterers accountable and protect battered wome.[29]

Given the number of females being arrested for domestic violence, it is time that each jurisdiction re-evaluate its current practices, procedures, protocols and training on identifying the primary aggressor to ensure that California's primary aggressor law has been implemented in the intended manner.

Fortunately, there's no need to re-invent the wheel. In 1998, Duluth developed a step-by-step audit procedure which is fully explained in the "Domestic Violence Safety and Accountability Audit" written by Ellen Pence and Kristine Lizdas. The Duluth Audit process "involves an interagency team that includes staff from the police department, probation, prosecutor's office, court administrator's office and a victim advocate. The team observes each processing point and interviews the practitioners involved. Such an audit provides a community a full picture of where changes need to be made in the rules that guide practitioner's work and the daily routines used to carry out institutional objectives."[30]

Conclusion:

Identification of the primary aggressor is not an easy task. Today more than ever police officers and prosecutors are finding it a challenge to identify the true offender and hold that person accountable. The solution is to "continue to learn," to take advantage of the most recent courses on how to identify the primary aggressor and to reflect on current practices. As City Attorney Casey Gwinn says, train everyone and then train them again. Through education, awareness and teamwork, we can hold the offender accountable, make the victim safer and end domestic violence. Prevention, not intervention, is the key to changing the world.

Epilogue:

I would like to thank a number of individuals who asked me to write this article: Kiran Malhotra from the Statewide California Coalition for Battered Women, Retired San Diego Police Department Sergeant Anne O'Dell, Mike Pope from Law Enforcement Television Network and Rhonda Martinson from the Battered Women's Justice Project. Their request and words of encouragement have caused me to once again reflect on San Diego's response to domestic violence and take inventory of our policies, procedures and practices as it relates to the identification of the primary aggressor.

Resources:

Los Angeles:

Primary Aggressor Training Video developed in conjunction with the Office of the L.A. City Attorney, the L.A. Police Department and the California Alliance Against Domestic Violence.

To obtain a copy call 1-800-524-4765. Also contact Sgt. Bernice Abrams from the Los Angeles Sheriff's Department to learn more about the training videos they have developed for police officers on the Primary Aggressor.

San Diego:

In a partnership with the San Diego City Attorney's Office, the San Diego Police Department and the Navy, developed a 4-hour primary aggressor class for the San Diego Regional Academy. This class is taught by Dr. Kathleen Dully, Sgt. Dan Plein and Assistant City Attorney Gael B. Strack or Senior Deputy City Attorney Brian Erickson. Call 619-533-5620 for more information or to schedule training for your agency.

POST:

Post has developed two domestic violence courses which include training on the identification of the primary aggressor: The First Responder's Course on Domestic Violence and the 40-hour Investigator's Course on Domestic Violence taught by many instructors throughout the state, including Inspector Tom Walsh and Candace Heisler from San Francisco and Sgt. Mike Agnew from Fresno. Call the San Diego Regional Training Center at 619-792-6501 or the San Francisco Police Department at 415-695-6900.

STOPDV

Retired San Diego Police Department Sgt. Anne O'Dell offers classes and training videos on the Identification of the Primary Aggressor. To contact Anne, visit her web site at www.stopdv.com

LETN

Law Enforcement Television Network has prepared a 30-minute training tape on the Identification of the Primary Aggressor featuring City Attorney Casey Gwinn, San Diego Police Sgt. Dan Plein and Assistant City Attorney Gael B. Strack. To obtain a copy of this tape, please email Marta Overly at mbo@sdcity.sannet.gov.

Additional Resources:

X San Diego Domestic Violence Council's, Domestic Violence Protocol for Law Enforcement, 1990 and updated 1998, www.sandiegodvcouncil.org.

X Coordinating Community Responses to Domestic Violence, Lessons from Duluth and Beyond, Melanie F. Shepard and Ellen Pence Editors, Chapter 10, "Just Like Men? A Critical View of Violence by Women by Shamita Das Dasgupta."

X Domestic Violence Training package (four video tapes and an instructor's manual) for police produced by the Law Enforcement Resource Center (LERC) and developed by the

Duluth National Training Project in Minneapolis, Minnesota, call 612-872-8284 or 218-7222-2781.

X Recognition and Evaluation of Injuries in Victims of Domestic Violence (72 slide presentation, instructor test and 26-page manual) developed by Dr. William Smock and Dr. Sandleback. Slide Program is $159. CD rom is $79.50. Combo package is $185.50. For more information, send an email to domestic@kacep.org.

Endnotes:

1. "How to Improve your Investigation and Prosecution of Strangulation Cases" by Dr. George McClane and Assistant City Attorney Gael B. Strack, October 1998.

2. The Police Response to Spouse Abuse: An Annotated Bibliography by Nancy Egan.

3. Between 1991 and 1996, arrests of women in California climbed 156 percent -- from 3,359 to 8,609 while the arrests of men rose 21 percent -- from 42, 318 to 51, 219, reported in "Arrests of Women Soar in Domestic Abuse Cases" by Mareva Brown, Bee Staff Writer, published December 7, 1997.

4. Guidelines for Law Enforcement Response to Domestic Violence, published 1996 by the Commission on Peace Officer Standards and Training.

5. "Spouse Abuse Crackdown, Surprisingly, Nets Many Women" by Carey Goldberg, The New York Times, November 23, 1999.

6. Male victim reported to a City Attorney Advocate in February 1999 that he "called 911 because that's what they tell you to do in DV class when you get into a fight with your spouse". Male victim was also on domestic violence probation involving another female partner.

7. California District Attorney's Association, Advanced Domestic Violence Conference, San Diego, California, March 1996, Handout on Primary Aggressor prepared by DDA Candace Heisler, Sgt. Anne O'Dell, DCA Gael B. Strack and Inspector Tom Walsh.

8. "Mandatory Arrest and Elminating Dual Arrests" lecture by Lt. Mark Wynn, Nashville Police Department at the National College of District Attorneys' Domestic Violence Conference.

9. "Self Defense" by Rhonda Martinson, Staff Attorney for Battered Women's Justice Project in Minneapolis, Minnesota.

10. California Jury Instruction 5.31 provides "an assault with the fists does not justify the person being assaulted in using a deadly weapon in self-defense unless that person believes and a reasonable person in the same or similar circumstances would believe that the assault is likely to inflict great bodily injury upon him or her."

11. CALJIC 5.50 states "a person threatened with an attack that justifies the exercise of the right of self defense need not retreat. In the exercise of his/her right of self defense a person may stand his/her ground and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and a person may pursue his/her assailant until s/he has secured himself/herself from danger if that course likewise appears reasonably necessary. This law applies even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene."

12. CALJIC 5.51 states "actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an actual belief and fear that s/he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing him/herself in like danger, and if that individual so confronted acts in self-defense upon these appearances and from that fear and actual beliefs, the person's right of self-defense is the same whether the danger is real or merely apparent."

13. CALJIC 16.142.

14. "How to Improve your Investigation and Prosecution of Strangulation Cases" by Dr. George McClane and Assistant City Attorney Gael B. Strack, October 1998.

15. "Intimate Violence Targets the Brain" by Mary Car, PhD OTDS/OTR/L, Prevention Matters, Spring 2000.

16. "The Physician's Guide to Domestic Violence" by Dr. Patricia Salber and Dr. Ellen Taliaferro, 1995.

17. "Battered women: injury locations and types" by Dr. Muelleman, Patricia Lenaghan, RN, MS, CEN and Ruth Pakieser, RN, PhD, published in the Annals of Emergency Medicine November 1996..

18. "Bite Mark Evidence in Crimes Against Prsons" by Dr. Noman Sperber, DDS, publihed in FBI Law Enforcement Bulletin.

19. "Dentistry as a Collaborative partner in Domestic Violence Recognition" by Kathleen A. Shanel-Hogan, D.D.S. and Julie A. Jarrett, RDA, B.S. published in Home Front published by the California District Attorneys' Association, Winter 2000.

20. "Domestic Violence" by Lynn Barkley Burnett, EdD, MS, LLB(c), and Dr. Jonathan Adler.

21. Excerpt from a 1994 police report involving domestic violence: "She told me that she has reported several acts of domestic violence with James before. Every time the

investigator calls for follow-up, James is there. He makes her tell them that everything is fine. She was very afraid to talk with me at the start for fear of James beating her up again."

22. "Validity of Battered Woman Syndrome in Criminal Cases involving Battered Woman" by Mary Ann Dutton and M. Gordon (1996).

23. "The Battered Woman Syndrome" by Lenore Walker (1984).

24. *People v. Gomez*, 72 Cal. App. 4th 405, 594 (1999).

25. The relevance of battered women's syndrome evidence and the common experiences of battered women was initially defined by the criteria set out in *People v. Bledsoe*, 36 Cal. 3d 236, 249-51 (1984).

26. "San Diego City Attorney Domestic Violence Prosecution Protocol" prepared by Casey Gwinn (1989) and "Prosecuting Domestic Violence Cases without Victim Participation" by City Attorney Casey Gwinn.

27. To obtain a copy of the San Diego Domestic Violence Supplemental visit the San Diego City Attorney's Domestic Violence Unit's website under "Library" at www.sandiegodvunit.org.

28. "The Differences Between Forensic Interviews and Clinical Interviews" produced by the Office for Victims of Crime.

29. "Criminal Prosecution of Domestic Violence" by Linda A. McGuire.

30. "Coordinating Community Responses to Domestic Violence, Lessons from Duluth and Beyond" by Melanie F. Shepard and Ellen Pence.

City of Seattle

Victim Defendants

Introduction[1]

Over the past two decades, numerous efforts have been made at the federal, state and local levels to increase safety and justice for domestic violence survivors and criminalize domestic violence. These efforts include domestic violence-related legislation, policies, protocols and training programs, and development of specialized domestic violence units within city and county governments. The King County region is nationally recognized for its many domestic violence-related programs and training projects. In Seattle and King County, Washington, community and criminal justice system-based advocates throughout the region have expressed concerns that an increasing number of domestic violence survivors are being arrested and charged with domestic violence-related crimes. Survivors in this situation are often referred to as "victim-defendants."

The King County Coalition Against Domestic Violence's publication, "Victim Defendants: An Emerging Issue in Responding to Domestic Violence in Seattle and the King County Region" (2003), which is also a part of Seattle's DV Assessment, has contributed to national discussion on the topic of survivors who are also defendants and to growing research on survivors use violence against their battering partners. Some survivors use violence in self-defense, but are inappropriately arrested when the context of self-defense is either not recognized or documented by law enforcement, or who are incorrectly identified as primary aggressors. There are survivors who are arrested because of false accusations by their batterers. Other survivors initiate illegal acts of violence against their battering partners and are appropriately arrested. Those who are convicted are often sentenced to complete batterer intervention programs, which compromise safety and are not appropriate for survivors. There are many negative impacts of arrest and conviction that compromise the safety of survivors.

Recommendations made in the "Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and King County" report take into consideration a review of promising practices compiled from national literature, conversations with researchers and practitioners from other cities and states around the country, as well as discussions with local criminal justice representatives and domestic violence advocates.

Key goals are to ensure that:

- Domestic violence survivors who act in self-defense or who are not primary aggressors are not arrested,
- Charges are not filed or charges are dropped for those who are arrested while acting in self-defense or who were not the primary aggressors in the incident,
- The batterers of those survivors who are defending themselves are held accountable for their threats and/or assaults that resulted in the need for self-defense.
- All victims have access to vigorous and appropriate defense counsel, and supportive community-based advocacy,
- Those who are convicted receive sentences that do not compromise their safety.
- Sanctions acknowledge survivor status and court recommendations consider survivor safety issues.

[1]This material was adapted from the King County Coalition Against Domestic Violence's publication entitled "Victim-Defendants: An Emerging Issue in Responding to Domestic Violence in Seattle and the King County Region," prepared by Meg Crager, Merril Cousin and Tara Hardy

City of Seattle

Recommendations are highlighted below, with a focus on training for all disciplines involved.

1. Leadership should view victim defendants as a significant concern.
Leaders and policy-makers need to lend their support to a collaborative effort to develop a coordinated response for victim defendant cases. This response would include comprehensive and ongoing training, consideration of arrest, charging and sentencing policies, and changes to existing data systems to improve information flow.

2. Law Enforcement—Law enforcement agencies should be able to give officers the time, training, resources, and support they need to correctly identify the primary aggressor in more complex cases. Practices should include carefully evaluating domestic violence incidents for self-defense, prioritizing accurate identification of the primary aggressor, refraining from making mutual arrests, and using interpreters whenever one or both of the parties do not speak English or have limited English skills.

3. Defense Attorneys—The defense bar should train staff, including investigators and social workers, where applicable, in the dynamics of domestic violence, and support them in acquiring tools for defending domestic violence survivors charged with domestic violence-related and other crimes.

4. Prosecutors— Prosecutors should make domestic violence training mandatory for all staff, including training on evaluating cases for self-defense, screening for victim defendants, evaluating the context of the violence and the history of the parties, and recommending appropriate sentences for survivors with consideration to safety.

5. System-Based Advocates—System based advocates, those advocates who work within the criminal justice system are not permitted to work with defendants in the current case, even if the defendant has been identified as the victim in a previous case. Their role is to advocate for the identified victim in the current criminal case. However, they assist domestic survivors charged with domestic violence-related crimes by flagging possible victim-defendant cases for the prosecutor and consulting with the prosecutor about potential safety concern.

6. Court, Probation and Corrections—Ideally, all judicial officers, court, probation and corrections staff should receive training in the dynamics of domestic violence, the tactics of batterers, and assessing the possibility of domestic violence exists in other types of cases. When the case of a domestic survivor is going to be prosecuted, judges should craft sentences that integrate the safety needs of the individual survivor. In some cases, judges may consider alternatives such as deferred sentences, in which the survivor agrees to complete the conditions of sentence, after which charges are dropped

7. Batterer Intervention Programs—As most court-mandated batterers claim to be "the victim" when they begin a batterer intervention program, staff may reasonably become desensitized to that claim and may have difficulty identifying court-referred domestic violence survivors. Therefore, batterer intervention programs should provide training for their staff in victim defendant issues. For those court-mandated clients who are domestic violence survivors and not batterers, staff should clearly document to the court, with the survivor's permission, that the individual is not a candidate for batterer intervention, as she or he is a domestic violence survivor.

8. Community-Based Advocacy Programs—Community-based agencies should develop and integrate comprehensive responses to domestic violence survivors who are charged with domestic violence-related crimes. Some areas to address include:

- Acknowledging in support group and individual work that many domestic violence survivors use violence. Engage in an open conversation about survivors' use of violence, its impacts, and alternatives.
- Providing information to survivors about the criminal justice system and the potential consequences of arrest.
- Increasing opportunities for early contact with victim-defendants through relationships with local law enforcement and the jail.
- Collaborating with defense attorneys on the defense of domestic violence survivors.

In addition, the domestic violence advocacy community should develop some consensus on what mandatory conditions of sentence are appropriate for domestic violence survivors who have committed domestic violence related crimes. Once this consensus is reached, community leaders should work with prosecutors, defenders, and the court to ensure that domestic violence survivors are being sentenced appropriately.

The following reflects recent accomplishments in the work on this issue; many of these activities were guided by the victim defendant assessment report:

- Training for criminal justice practitioners by Gael Strack on identifying primary aggressor (Dec. 2002).
- A four part training series for advocates on working with women who use violence (July and August 2004).
- Training for defenders by a defense law professor from Tulane Law School on victim defendants (September, '04).
- Brochure for jail personnel to disseminate to women arrested for domestic violence.
- Recommendations to judges regarding consequences and recommendations in sentencing survivors contained in a paper, "Some Issues to Consider when Domestic Violence Survivors are Charged with Domestic Violence Related Crimes."
- Presentations about the report findings and recommendations to numerous criminal justice and advocate networking agencies.
- SPD mandatory DV best practice training with primary aggressor (victim defendant) module.
- Participation by the Seattle City Attorney's Office in the National Prosecution focus group sponsored by the National Clearinghouse for Battered Women.
- Seattle Municipal Court and City Attorney's Office established a working relationship with Giving Real Options to Women (GROW), an organization educating women incarcerated at King County jail; women most likely are jailed for charges other than domestic violence, but their history points to domestic violence related situations.

Cross Reference of Other Strategic Issues: Batterer's Intervention, Sanctions, Investigations, and Advocacy and Victim Services

Dominant Aggressor
Predominant Aggressor
Principle Aggressor
Primary Aggressor

Challenges for Law Enforcement

Domestic Violence is not just an incident .....it is a course of conduct

Mark Wynn- Nashville, Tennessee

Considerations *Ellen Pence*

- It's not always as simple as one person having power and control over another with the aggressor only using physical force.
- Sometimes it is one person trying to exert power and control over the other with force and the other is using force to fight back.
- If we arrest the victim who is fighting back, we in turn empower and validate the aggressor's use of power and control. *("I told you so")*

It's a matter of:

- Who is dominant?
- Who is creating the fear?
- Who is more significant?
- Who needs protection?

- It is not who started it.

Factors to Consider

- Size of parties
- Use of weapons
- Who is stronger?
- Who is afraid of whom?
- Is one party specially trained in martial arts, boxing, or hand-to-hand combat techniques?
- Who in the relationship poses the most danger to the other?

Factors to Consider

- Who has the more serious injuries?
- Location and nature of injuries
  - Offensive v defensive
- Did one party escalate the level of violence?
- History of abuse
- Timing of the second arrest situation

Factors to Consider

- Demeanor of the parties
- Use of alcohol / drugs
- Criminal history
- Existence of court protective orders
- Existence of corroborating evidence or witnesses
- Other legal defenses such as self defense

The Experienced Batterer

- No longer strikes the victim in the face or areas that may easily show visible injuries.
- May call 911 first
- May destroy evidence before we arrive to investigate.
- Will intimidate the victim afterwards, being careful to not leave any incriminating text messages or voice messages.
- Cannot take responsibility for their actions and blames the victim

What Happens when we arrest both

- Most prosecutors will not file a criminal charge against both as neither party has to testify in court based on their right against self incrimination.
- If a true victim was arrested, this incident will cause them to be less likely to call for help in the future.
- If children were involved they may have been needlessly placed with others.
- We have reinforced the true batterers threat that the police will arrest the victim.

OFFICERS SHALL NOT CONSIDER THE FOLLOWING FACTORS WHEN DECIDING WHETHER OR NOT TO ARREST:

(g) Complainant's emotional state;

(h) Non-visible injuries;

(i) Location of the incident (public/private);

(j) Victim does not want to prosecute or make private person's arrest;

(k) Speculation that complainant may not follow through with the prosecution; and

(l) The case may not result in a conviction.

OFFICERS SHALL NOT CONSIDER THE FOLLOWING FACTORS WHEN DECIDING WHETHER OR NOT TO ARREST:

(a) Marital status of suspect and victim;

(b) Whether or not the suspect lives on the premises with the victim;

(c) Existence or lack of temporary restraining order;

(d) Potential financial consequences of arrest;

(e) Complainant's history or prior complaints;

(f) Verbal assurances that violence will cease;

SUMMARY

- Follow your agency policy.
- Do not rush your decision as to who is dominant.
- Look at the history of the parties
- Look at self defense issues
- New information may be discovered that changes your decision on who to arrest. Be familiar with your agency policy on how to release someone who has been arrested.

United States Department of Justice
Office on Violence Against Women
Working Together to End the Violence

The President's Family Justice Center Initiative
Best Practices
February 2007

In October, 2003, President George W. Bush announced the creation of the President's Family Justice Center Initiative. The $20 million Initiative created specialized "one stop shop," co-located, multi-disciplinary service centers for victims of family violence and their children. The centers, commonly referred to as "family justice centers," are based on the San Diego Family Justice Center model (www.familyjusticecenter.org); they are designed to reduce the number of places victims of domestic violence, sexual assault and elder abuse must go to receive needed services.

After a reduction of nearly 95% in domestic violence homicides over the last 15 years, the San Diego Family Justice Center is hailed as a national and international model of a comprehensive victim service and support center. Since 2004, the President's Family Justice Center Initiative has opened 15 family justice centers in urban, rural, suburban, and tribal communities across the United States. In February 2007, the United States Department of Justice announced the commitment of up to $3 million in funding to support the development of a comprehensive, co-located family justice center in the City of New Orleans based on the President's Family Justice Center Initiative.

Congress recognized the importance of the family justice center model in Title I of the Violence Against Women Act (VAWA 2005). Family justice centers are now identified as a "purpose area" under VAWA 2005. Using a "wraparound" service delivery model, the family justice center concept seeks to marshal all available resources in a community into a coordinated, centralized service delivery system with accountability to victims and survivors for the effectiveness of the model. As stated by Mary Beth Buchanan, Acting Director of the Office on Violence Against Women:

> "The family justice center is, at its core, a concept that increases community capacity while also providing diverse, culturally competent services to victims and their children from a single location. It is common sense that such an approach, if executed properly, will provide greater assistance to those in need."

The family justice center model is identified as a best practice in the field of domestic violence intervention and prevention services. The documented and published outcomes have included: reduced homicides; increased victim safety; increased autonomy and empowerment for victims; reduced fear and anxiety for victims and their children; reduced recantation and minimization by victims when wrapped in services and support; increased efficiency in collaborative services to victims among service providers; increased prosecution of offenders; and dramatically increased community support for services to victims and their children through the family justice center model.

(See Casey Gwinn, Gael Strack, *Hope for Hurting Families: Creating Family Justice Centers Across America* (Volcano Press 2006).

The family justice center model is not considered appropriate in communities where various government and law enforcement agencies have no history of collaboration and specialization in addressing family violence matters. It is not recommended where law enforcement agencies do not prioritize thorough investigations, early intervention prosecution strategies, increased offender accountability, and heightened victim safety in partnership with community-based domestic violence organizations.

During the President's Family Justice Center Initiative, and in subsequent evaluations, focus groups, client feedback surveys, and national promising practices conferences, the following best practices have been identified:

1. Co-located, Multi-disciplinary Services for Victims of Family Violence and their Children Increases Safety and Support

In the family justice center model, partners to be co-located include: law enforcement officers; prosecutors; probation officers; military advocates (if applicable); community-based victim advocates; civil attorneys; medical professionals; and staff members from diverse community-based organizations. Other partners, such as a Chaplain's Program, are strongly encouraged and meet the expressed needs of clients experiencing trauma from family violence.

2. Pro-arrest/Mandatory Arrest Policies in Family Justice Center Communities Increases Accountability for Offenders

Each family justice center community has law enforcement and prosecutorial agencies that emphasize the importance of arrest, prosecution, and long-term accountability for domestic violence offenders.

3. Policies Incidental to Arrest/Enforcement Reduces Re-victimization of Victims

Each family justice center community should have a demonstrated history of addressing common problems in communities such as dual arrest and mutual arrest. No jurisdiction has policies that require a victim to pay costs for obtaining a restraining order if the victim is financially unable to afford such costs. This includes policies related to dual arrest, mutual restraining orders, charging costs to victims for restraining orders or related services.

4. Victim Safety/Advocacy Must Be the Highest Priority in the Family Justice Center Service Delivery Model

Each family justice center site has readily identifiable processes and staffing to assess and provide for victim safety during the intervention process. All family justice center sites have policies in place to ensure, to every possible extent, security for staff and clients at the planned family justice center. Site security and victim safety polices and procedures should be considered.

5. Victim Confidentiality Must Be a Priority
All family justice center sites have policies and procedures that provide for victim confidentiality to the extent required by law. No private, non-profit victim advocacy or shelter organization should be required to compromise their own victim safety and confidentiality procedures in order to have staff on-site at a family justice center. Victim information can be shared among agencies working in partnership to protect the client but only after informed consent procedures are implemented.

6. Offenders Must Be Prohibited From On-site Services at Centers
No criminal defendants should be provided services at a family justice center. Family justice center sites are oriented towards victims and their children. Off-site services to offenders should be central to any community's response to domestic violence; but no domestic violence offenders should be offered services on-site at a family justice center. Domestic violence victims with a previous history of violence or with a current incident in which the victim is the alleged perpetrator are assessed on a case-by-case basis for eligibility for services at a family justice center site. Identifiable procedures have been created to ensure availability of off-site services for victims in the event a current or prior criminal conviction prevents receiving services at a family justice center site.

7. Community History of Domestic Violence Specialization Increases the Success of Collaboration in the Family Justice Center Model
Every family justice center community should have a history of specialization of services in their community. Specialization generally refers to specially trained advocates, police officers, prosecutors, judges, court support personnel, medical professionals, and other similar domestic violence expertise. In the absence of such a history, family justice center planning should include intensive training for all proposed partners and staff, with an emphasis on victim safety and victim advocacy and collaboration in the co-located services model.

8. Strong Support from Local Elected Officials and Other Local and State Government Policymakers Increases the Effectiveness and Sustainability of Family Justice Centers
All new family justice center communities should demonstrate strong local support from those in positions of authority within the community. The President's Family Justice Center Initiative did not anticipate indefinite federal funding for any family justice center site. Thus, each site was required to seek strong support from local elected officials or other influential policy makers to increase local support at the conclusion of federal funding.

9. Strategic Planning is Critical to Short-term and Long-term Success in the Family Justice Center Service Delivery Model
Each family justice center site should demonstrate a strategic planning process to ensure sustainability of the program, development of the program, and local funding options for future operations. A history of local funding is strong evidence of possible future support. Local revenues to fund specialized intervention professionals demonstrates the commitment of local elected officials and policymakers to the importance of domestic violence intervention and prevention work.

10. Strong/Diverse Community Support Increases Resources for Victims and their Children

All family justice center sites need strong, diverse community support. Strategic planning efforts that include developing and maintaining support from local government, state government, business, labor, diverse community-based social service organizations, and faith-based organizations increases the resources available to victims and their children at a family justice center and thereby increases safety and support.

United States Department of Justice
Office on Violence Against Women
www.ovw.usdoj.gov

Questions

- How prevalent and diverse are social problems and criminal history among domestic violence offenders?
- To what extent is a centralized integrated approach to domestic violence essential to the successful prosecution of a dangerous violent offender?
- To what degree are criminal histories including gang activities more prevalent among repeat offenders of domestic violence?
- Which domestic violence strategies yield the most effective methods to also reduce other violent crimes?

Predictors of Intimate Partner Violence

- Alcohol Abuse- Public Health Issue
- Drug Use- Public Health Issue
- Employment Status- Economic Issue
- Social Inequality- Societal Issue
- Criminal History- Police Issue

Prior Criminal History

- Past criminality is the best predictor of future criminality (Gottfredson, 1987)
- Few academic studies address this issue due to difficulty in obtaining CORI data
- This segment of society is where the police can have the greatest impact

Law Enforcement Findings

- Law enforcement research has found that the presence of prior felony convictions played a greater role as predictor of domestic violence recidivism
- Individuals with prior DV history are more likely to violate a restraining order
- Individuals with a violent criminal history are three times more likely to have a violent domestic assault

Before an Integrated Specialized Response

Under Traditional Policing

- 1. Follow-up conducted by the patrol force
- 2. Detectives were generalists
- 3. Detective assigned to DV carried three times the caseload
- 4. DV clearance rates suffered
- 5. Community Policing Issues

Benefits to Specialization

- Unit commander and line supervisors are also specialists
- Uniform training opportunities
- Consistent delivery of service to victims
- Better suited to compete for public and private funding
- Development of databases to capture significant information on offenders that otherwise would not be available to investigators
- A person with rank can advocate within the agency for personnel, equipment, training, policy, initiatives, etc.
- Consistent with Community Policing Philosophy

Outcomes for Integration and Specialization

- Database Development
- Evidence based prosecutions
- Increase the number of search warrants
- More firearms and cocaine seized as contraband and used in non-domestic criminal prosecutions
- Higher clearance rates

Boston Police Clearance Rates Domestic Aggravated Assault

Year	DV Aggravated Assault	Clearance Rate
2003	1283	76.46%
2004	1291	71.65%
2005	1286	65.71%
2006*	1408	93.21%
2007*	1593	93.57%

* After Domestic Violence Unit centralized

Research on Domestic Violence to Gang Violence

- An active gang member is three times more likely to commit a domestic aggravated assault than an intimate partner abuser with no gang affiliation.
- A firearm is 2-3 times more likely to be brandished by a gang member on an intimate partner
- In many cases these firearms are also used in the commission of other crimes
- Gang members involved in repeated incidents of domestic violence have more prevalence for violence than gang members with no history of DV.

Gang Studies in Boston

- 2005, 2006, 2007 number of gang members involved in domestic incidents with a prior firearm arrest
- DV/Gang Database-close to one thousand entries in two years
- Human Trafficking- Gangs shifting from drugs to prostitution
- Cease Fire Initiative – Multi-Agency strategy to reduce gang violence

The Nexus between DV, Gangs, & Firearms

- Over a two year period 900 gang affiliated were arrested for a domestic violence crime
- Of those 900 gang members a staggering 700 had also been arrested for a possession of firearm offense

DV/Gang Database

- DV/Gang Database flags Impact Players
- Domestic Misdemeanors are <u>not</u> CWOF
- Search Warrants are sought for <u>any</u> evidence
- Impact Players are prosecuted under Federal Guidelines
- Poss. of a firearm while subject to a R.O.
- Poss. of a firearm after conviction of DV misdemeanor 18 U.S.C. 922 (g) a 10 yr felony

The Nexus between DV, Gangs & Human Trafficking

- The average age of a trafficking for sex victim is 15 years old
- Female gang members are either crimed-in or sexed-in
- Significant number of gang members arrested for deriving support have repeated cases of intimate partner violence
- Gang members realize that pimping girls is much more attractive for three reasons;

Gangs moving into Human Trafficking

- 1. It involves less overt violence
- 2. In can be done clandestinely by using cell phones and the Internet
- 3. Large sums of money can be made in a short amount of time

Law Enforcement Strategies for Domestic Violence

- Integrate domestic violence investigations
- Family Justice Center
- Partnerships with community service providers
- High Risk Response Teams
- Develop strategies to reduce recidivism
- Utilize DV data as a useful tool for non-domestic investigations
- Qualify as Experts to render opinions

Family Justice Center

- Police- direct access to prosecutors and victim services
- Prosecutors- greater role for policy recommendations
- Community Service Providers
  - Temporary Shelter
  - Transitional Assistance
  - Legal Services
  - Cultural/Language
  - Sexual Orientation
  - Keep the victims "on board" through disposition

Community Partnerships Expected Outcomes

- Number of reported cases should increase
- Recidivism rates should drop
- Victim cooperation should increase resulting in fewer dismissed cases
- Intimate partner homicide rates could drop
- In the U.S.- police collaborations with non-governmental agencies attract grant money

High Risk Response Teams

- D.A.R.T.- Danger Assessment Response Team
- Partners include police, prosecutors, court, probation, service providers
- Meet weekly to focus on 4-6 offenders who have the greatest potential to inflict serious harm on the victim
- Threat Assessment- CORI, gang affiliation, access to weapons
- Safety Plan- safe house,
- Dangerous Hearing or Bail Consideration
- Fugitive Unit or Warrant Apprehension Team

Questions

- Integration and Specialization?
- Intimate partner violence reduction strategies?
- DV/ Gang Database?
- Gang Violence reduction strategies?

Questions?

Resources

www.FamilyJusticeCenter.org

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Thank you – The End!

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"Local Services. Global Reach"

Identifying the Antecedents of Intimate Partner Violence and the Development of an Integrated Response Program

Lt. Det. Charles Wilson
September 18, 2008

verizon

With special thanks to the Verizon Foundation for sponsoring this webinar training

The FJC Alliance Team

Lt. Det. Charles Wilson

Identifying the Antecedents of Intimate Partner Violence and the Development of an Integrated Response Program

Lt. Det. Charles Wilson

Coordinating Services: Reaching Out to the Community

Coordination may also occur at the community level with both courts and social service agencies involved as active participants. Jackson County, Oregon, is a statewide leader in the comprehensive integration of services. In Jackson County, a "one-stop shop" houses 17 agencies and brings the local agencies together to work with family cases. Of course, not all 17 agencies are involved in each family's case, but the family court, through its court coordinator, is an active participant with these agencies. The court coordinator attends team meetings to provide information on court proceedings, participates in assessing whether additional services might be needed, and carries information back to the court. According to the court's administrator, "The family is our focus, not the court, not the court staff. We want to be flexible. We'll facilitate and coordinate when appropriate, otherwise not."[4]

Conclusion

A family-friendly court provides an effective judicial response to problems between family members. Courts need to make a real commitment to families to ensure not only that their cases are heard and resolved, but also that the problems of families and children are actively addressed rather than exacerbated. Family-friendly courts strive to treat families efficiently, to coordinate the delivery of services, and humanely, to minimize the strain of the court process.

[4] Jim Adams, Jackson County, Oregon, Trial Court Administrator.

ADDITIONAL RESOURCES

"Family Court State Links." State-by-state list of resources and online articles regarding family court programs. www.ncsconline.org/WC/Publications/KIS_FamCTStateLnksPub.pdf

Casey, Pamela, and William E. Hewitt. *Court Responses to Individuals in Need of Services: Promising Components of a Service Coordination Strategy for Courts.* Williamsburg, VA: National Center for State Courts, 2001. (KF 8740.C37 2001)

Flango, Carol R., Victor E. Flango, and Ted Rubin. *How Are Courts Coordinating Family Cases?* Williamsburg, VA: National Center for State Courts, 1999. (KF 505.5.F58)

Uekert, Brenda, Ann Keith, and Ted Rubin. *Integrating Criminal and Civil Matters in Family Courts: Performance Areas and Recommendations.* Williamsburg, VA: National Center for State Courts, 2002. (KF 505.5.U35 2002)

affect both courts. Judicial officers in each court are informed of other cases or actions involving the parties appearing before them. For example, the Miami-Dade County Domestic Violence Court obtains information on related cases from the restraining order petition prepared by an intake counselor from a personal interview with the "client" and from searches of civil, family, and criminal court databases. In addition, specialized court administration staff members help clients prepare petitions for restraining orders, refer domestic violence petitions to social services available in the community, and consider safety planning. This model may require organizational, staffing, and data management changes, but it can be effective in addressing domestic violence issues coming before the court through its civil, family, and criminal divisions.

Case Coordination: Ensuring Continuity in Legal Representation and Using CASAs

Design of a family-centered court should address whether continuity of nonjudicial actors who come in contact with a family (e.g., prosecutors, public defenders, and court-appointed attorneys) is important in a case and whether one representative should participate in all of the proceedings involving a single family. For example, should a guardian ad litem who represents a child in juvenile court also represent that child in criminal court? In St. Paul, Minnesota, one prosecutor is responsible for all child abuse and neglect cases in the juvenile division and also oversees the attorneys who prosecute criminal charges that involve the same children as victims in the criminal division.

Court-appointed special advocates (CASAs) assist children in court in two ways: as investigators and as advocates. In King County, Washington, the court, through its CASA program, obtains the information it requires to determine which services are needed for children and how these services can be coordinated. With ongoing CASA assistance, the court is appraised of the effectiveness of its orders and case supervision. If a subsequent petition of dependency is filed, the CASA continues to represent the child and may be appointed in that action, as well.

Case Coordination: Using a Courthouse Facilitator

Several courts use trained paralegals as "family law facilitators." These courthouse facilitators do not offer legal advice but provide information. Many times they assist the large number of litigants who are not represented by an attorney (pro ses) in family law cases. Law facilitation requires a wide range of services from instructing court clients on which legal forms are needed to providing information on how to initiate or respond to a marriage dissolution. Facilitators also provide information about hearing schedules and ways to improve pertinent court- or community-sponsored services and resources. Family law facilitators help a court to be significantly more efficient. Addressing basic procedural questions before the hearing date should lead to fewer continuances of scheduled hearings. More adequate self-representation should result in higher-quality judgments and provide more balance to proceedings when an attorney represents the other party.

Case Coordination: Using Family Group Conferencing

This model was first used in New Zealand, where the approach was legislated in 1989 to address child welfare and youth justice issues. Courts that use this approach (the family court in Bend, Oregon, and the children's court in El Paso, Texas) have a multidisciplinary team. This team, preferably with the family's input, develops a comprehensive plan based on family needs and interests. El Paso's family group conferencing program, Familias Primero, regularly works with families to establish treatment plans, resolve problems, and assure the safety of children when reunifying families.[2]

Innovative Methods of Coordinating Services to Families

The court's role in providing and coordinating services involving children and families is expanding, not because courts are assuming responsibilities once held by child welfare and social service agencies, but because they now recognize the need for coordination across courts and agencies. State legislatures often impose a responsibility on courts to see that their services are delivered, and, indeed, federal law calls on courts to monitor social service agencies.

Coordinating Services: Using Liaisons

Several models of coordination between courts and social service agencies are in use. In Delaware Family Court, for example, social workers from the Department of Services to Children and Families are located in the court to coordinate the agency's activities. Representatives from social service agencies work at the court in Louisville, Kentucky.[3] Each judicial officer has a social worker on staff in the courtroom to assist in making determinations, as well as to link families to social services and provide other nonlegal assistance.

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[2] *The El Paso, Texas, 65th Judicial District Children's Court: Evaluation of Model Court Activities* (Reno, NV: National Council of Juvenile and Family Court Judges, 2002).

[3] In the November 5, 2002, election, the Kentucky electorate overwhelmingly approved the family court experiment and ratified the need for family courts by a ratio of 4 to 1. Chief Justice Joseph Lambert noted, "It would appear there's a mandate for family courts. . . . The highest priority will be (in Kentucky) family courts."

The National Center for the Prosecution of Violence Against Women

THE voice

Helping Prosecutors Give Victims a Voice

American Prosecutors Research Institute
The Research and Development Division of NDAA
Volume 1
Number 8

Why the Abused Should Not Become the Accused

BY
ERIN S. GADDY[1]

Many domestic violence prosecutors have found themselves struggling with what to do about recanting or uncooperative victims.[3] The primary goal of prosecution is to do justice,[3] by making the best legal case possible based on the admissible evidence; to achieve this goal, prosecutors push as hard as they can within their ethical boundaries to make society safe from domestic violence by convicting and punishing offenders. However, this approach does not always allow for victim autonomy in deciding whether to prosecute a case; this decision is ultimately made by the prosecutor.[4] How can prosecutors acknowledge the victim's voice in her[5] own life while following the no-drop policy in effect in many prosecutors' offices today?[6] One question repeatedly surfaces in domestic violence prosecutions: Why not just arrest the victim for her recantation and failure to cooperate with the prosecution of her case?[7] While arresting the victim might seem to solve the immediate problem of what to do with one domestic violence case, it creates much larger problems for the victim, the defendant, and the prosecutor.[8]

THE IMPACT OF ARRESTING THE VICTIM

Research helps explain why many domestic violence victims are reluctant to support prosecution of their abusers. "The fact is that after an arrest [of the defendant in a domestic violence case], victims quickly realize that once a case enters the court process, they may lose control to what is perceived as an impersonal and overbearing bureaucracy."[9] A victim's refusal to cooperate with prosecution and fear of what may happen if she cooperates may be justified because "women's fears of offender dangerousness as a consequence of arrest are often quite accurate."[10] In fact, "increased prosecution rates for domestic assault... were associated with *increased* levels of homicides"[11] in several demographic groups. Furthermore, recent studies have established that victims' lethality assessments may actually underestimate what may happen if they cooperate with the prosecution of their abusers.[12] None of this means that the prosecution of domestic violence should stop, or even slow, but prosecutors must be aware that victims are not unreasonable in fearing their abusers, regardless of the victims' level of cooperation with the prosecution.

For a victim of domestic violence, the consequences of arrest are both obvious and not-so-obvious. Arrest means entry into the criminal justice system: being handcuffed, arraigned, posting bail, pleading guilty or going to trial. In short, the victim becomes a defendant — a frightening and humiliating process for most victims.[13] The same law enforcement officers and prosecutors who promised the victim they would protect her from her abuser have now placed her under arrest and set her abuser free. If convicted, the victim has had her credibility stripped, and is then subject to impeachment on the basis of a crime of dishonesty in any future trial.[14] The victim has been taught that the system is not in her favor, that the prosecutor's office is not a safe place to go for help, and that future abuse should not be reported if she does not want to go to jail.

Arresting the victim also sends a strong message to the abuser by reinforcing his notions of power and

continued ➤

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control. It "proves" that the defendant **does** control the victim, that he successfully scared or intimidated her into not coming to court, and that the State was unsuccessful in overcoming his will and tactics. It teaches him that he can beat or rape the victim with impunity. It teaches him that the State will not protect the victim and will not prosecute him effectively, which may encourage him to continue and even escalate his abusive behavior.[13]

What happens to the victim's children when she is arrested? Are they left in the care of the abuser, taken into protective custody, or just allowed to fall through the cracks of the system? The short- and long-term consequences for those children may be overwhelming. Children who witness abuse in the home are more likely to become abused or abusive in later life.[14] The victim may very well be the only protection in the home against the defendant. The defendant may use the children against the victim, either by threatening to harm or harming the children, or by threatening the victim with social services intervention and removal of the children. If the children are actually removed from the home into foster care as a result of investigating the abuse, the children and the victim are taught that they will be punished for reporting, and are encouraged not to report in the future. A conviction for the victim could negatively impact her in child custody proceedings, interaction with the child welfare system and the obtaining of public benefits, all of which directly affect her children's welfare.

THE DECISION-MAKING PROCESS

For many good reasons, prosecutors tend to treat domestic violence cases differently than other cases. However, just like any other case, they must evaluate many factors in judging whether to arrest a witness in the case. This is not to say that prosecutors should never request the arrest of an alleged victim, but that those cases should be **extremely** rare. Prosecutors are obligated to evaluate all of the evidence in a given case. In a case where the typical dynamics of domestic violence recantation or failure to prosecute are *not* in operation, and the evidence indicates that the alleged victim made a false report, prosecution should occur as it normally would in that jurisdiction.[17] In a case where the dynamics of domestic violence *are* operating, prosecutors should consider whether some of the options listed below in this article might work better for the victim and the case than having the victim arrested.

Prosecutors must evaluate the ethical considerations involved in determining whether to arrest a victim. If the prosecutor believes the victim was telling the truth in the initial report to police and has then made a false recantation of those facts, s/he cannot ethically prosecute a false report to law enforcement charge because s/he believes the false report charge is not supported by probable cause.[18] Similarly, if the prosecutor has a reasonable belief that the victim is under duress when lying on the stand (if she testifies to her recantation), prosecuting a perjury charge would be unethical.

The victim in a domestic violence case is ultimately a fact witness, without whom the case may still be proved (granted, frequently with more difficulty after *Crawford v. Washington*[19] and its progeny). For example, if there is an unwilling or unavailable witness in an armed robbery or drug distribution case, even if it is the alleged victim, many times the case can go forward by using the testimony of other witnesses to prove the elements of the crime.[20]

Similarly, prosecutors of domestic violence should try to prove their cases without the victim, since even in the post-*Crawford* age, they are not required to have the victim on the stand to admit 911 calls[21] and evidence of fresh injuries to the victim. There are no confrontation clause issues to a neighbor testifying that she heard arguing (excited utterances), observed that only two people were in the apartment, and saw the victim with injuries while the defendant was

unscathed. As she sees how much evidence is mounting against the defendant, the victim may feel the chances of conviction improving and feel more confident in her own safety. The evidence may be so compelling that it may empower the victim and even convince her to testify by the end of the case-in-chief. "The less coercive the strategy used to gain victim support, the more likely the victim's sense of empowerment will increase."[22]

ALTERNATIVES TO ARREST

What are some alternatives to arresting the victim that might still allow prosecution of the domestic violence committed against her? Some of the following ideas may be helpful:

- *Start with a proactive advocacy plan.* Have in-house advocates make contact with victims as quickly as possible when a case posts to the office. If a victim is supported from the beginning of the case, she may be more willing to testify, partially because she will know she has a safety and support network that was probably lacking before the charges were filed.
- *Provide victims with information on counseling and other sources of support,* especially community-based advocacy, as soon as possible.[23] Prosecutors obviously cannot force a victim to go to counseling, but might convince a hesitant victim by asking her to "try it, just once."
- *Draw the victim's family members back into contact* (with her permission, of course). Many abusers "encourage" their victims to cut off contact with the victim's family, partly to make the victim feel more isolated.[24]
- *Help the victim convince her abuser that she has tried to assist his case.* Several strategies may be effective:
  - Allow the victim to sign a drop-charge form,[25] and let the law enforcement officer and victim advocate know that it will not harm the prosecution of the case. In fact, a drop-charge form can strengthen the case rather than weakening it, because it serves as further evidence of the victim's susceptibility to domestic violence dynamics. Give the victim a copy for the defendant or his family, in case they are harassing or threatening the victim.[26]

  - Have law enforcement serve the victim with subpoenas for every court appearance if she needs or wants them.[27]
  - Have the law enforcement officer or victim advocate speak with the victim within earshot of the defendant (with the victim's permission). S/he might tell the victim, "I told the prosecutor you wanted this dropped, but s/he said it was her/his case and s/he will not drop it."[28]
- If the victim is willing to make a complaint against the family, *refer her to law enforcement to report any threats or harassment.*
- To bolster the case for forfeiture by wrongdoing,[29] *check for three-way or direct calling from the jail* if the defendant remains in custody pending trial.
- If the defendant is not in custody and the victim is willing, *file a bond revocation motion* on the basis of third-party contact with the victim alleging that the defendant is encouraging his family to contact her (if that is the case). File harassment or intimidation warrants if the defendant attempts to influence the victim's testimony or threatens her in any way.
- *Offer training to law enforcement officers* so that they understand just how tough domestic violence cases are, and that prosecutors need more evidence, not less, in these cases. Make sure they understand domestic violence dynamics and do not blame victims for their lack of cooperation.
- *Determine a safe way to communicate frequently with the victim,* and make sure she knows the lines of communication are open, regardless of whose side she takes in court.
- *Make the victim feel like she is believed and believed in,* which must be true or the State would not be prosecuting her case.

CONCLUSION

Ultimately, there is no need to arrest victims of domestic violence, regardless of their level of cooperation with the prosecution. Creative case management and genuine care for victims will help solve these challenging cases.[30] The mere appearance of the victim in the courtroom frequently resolves these cases, since the defendant knows what she will say if placed under oath.[31] The defendant is betting that he is smarter than the prosecution team…**prove him wrong**.

Prosecutors receiving STOP[1] or GTEA[2] funds, both authorized and funded under the auspices of the Violence Against Women Act of 2005 (VAWA),[3] should consider that arresting domestic violence victims may endanger funding, not only for the prosecutor, but for allied professionals in victim advocacy and law enforcement. (While a given prosecutorial agency may not be directly funded under STOP or GTEA, it may benefit indirectly from funds administered under these grants for an in-house victim advocate or for training.)

Agencies funded under STOP grants are "strongly discouraged from proposing projects that include any activities that may compromise victim safety such as the following: …Requiring victims to report sexual assault, stalking, or domestic violence crimes to law enforcement or forcing victims to participate in criminal proceedings…; and Procedures that would force victims of domestic violence to testify against their abusers or impose other sanctions on them. Rather, procedures that provide victims the opportunity to make an informed choice about whether to testify are *encouraged*."[4] In addition, in order to receive funding under GTEA, "applicants must: (1) certify that their laws or official policies – (a) encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed; …(2) demonstrate that their laws, policies **or** practices **and** their training programs discourage dual arrests of offender and victim…."[5]

Throughout VAWA, the principles of offender accountability and victim safety are paired. By encouraging or requesting the arrest of victims, prosecutors may be endangering their own funding or that of their partner agencies.

[1] FY2006 Services*Training*Officers*Prosecutors (STOP) Violence Against Women Formula Grant Program, available at http://www.usdoj.gov/ovw/fy2006stopsolicitationfinal.pdf (last visited November 1, 2006) (hereafter, STOP).
[2] Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program, available at http://www.usdoj.gov/ovw/fy06arrestsolicitationpostingversion.pdf (last visited November 1, 2006) (hereafter, GTEA).
[3] Most recently renewed as the Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong (2006), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h3402enr.txt.pdf (last visited November 1, 2006) (hereafter, VAWA). STOP is reauthorized under §101 of the bill, and GTEA is reauthorized under §102.
[4] STOP, 8-9 (emphasis in original). Similarly, see GTEA, 11.
[5] GTEA, 5 (emphasis in original).

NCPVAW Prosecution Toolkit

Are you a prosecutor or allied professional involved in the prosecution of violence against women? Request assistance from the Prosecution Toolkit at http://www.ndaa.org/phpdocs/prosecution_toolkit.html

Information available on the following topics, plus many more:

- *Crawford v. Washington* and its progeny
- Lethality factors in domestic violence
- Evidence-based prosecution
- Voir dire
- HIPAA
- Expert witnesses
- Opening and closing arguments
- Pre-trial motions
- Charging decisions
- Strangulation
- Teen victims
- Sexual assault

Need information on State Domestic Violence Reporting Requirements?
http://www.ndaa.org/apri/programs/vawa/dv_reporting_requirements.html

Want to learn about State Rape Reporting Requirements?
http://www.ndaa.org/apri/programs/vawa/state_rape_reportings_requirements.html

Looking for state statutes relating to violence against women? http://www.ndaa.org/apri/programs/vawa/statutes.html

Have a prosecution question relating to violence against women cases? http://www.ndaa.org/apri/programs/vawa/contact.html

Managing Your Divorce: A Guide for Battered Women

National Council of Juvenile and Family Court Judges

Dean Louis W. McHardy, Executive Director

Family Violence Department
Resource Center on Domestic Violence:
Child Protection and Custody

Meredith Hofford, M.A., Director

P.O. Box 8970 • Reno • Nevada • 89507 • 800/527-3223

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First Printing, 1998

- If the child has been kidnapped or feels unsafe and is in a public location, he/she can ask for help by writing a note on a napkin or paper towel and leaving it in a restroom.

Exercises

- Draw a map of the father's house with escape routes including doors and windows the child can open. Draw or highlight the telephone location(s).
- Draw safe people that we know, i.e., family, friends, therapist, teachers and neighbors.
- Draw safe helpers that we don't know, i.e., police officers, firefighters and store clerks.
- Draw safe buildings, i.e., schools, neighbors house, police station, fire station and hospitals.
- Rehearse the safety plan. To avoid creating anxiety, the rehearsal should be practiced just as any other safety measure, like bike safety or a fire escape plan.

Helpful Reminders

- Keep recent photographs and videos of your children.
- Have your children fingerprinted.
- Keep in a safe place: photographs, identification(s), social security card(s) immunization record(s) and any medical information. Make copies of everything.
- Write a physical description of your children including scars and birthmarks. Update your children's height, weight and clothing sizes frequently.
- If your protection order or custody order was modified, make a copy for the child to have with him/her during visitations.
- Before each visit write a list of items the child took on the visit.
- Document all visitations and interactions.
- Update safety plans as necessary.

Casey Gwinn

Presentation

The Basic (and Historical) Rule

- Most domestic violence programs adhere to this basic rule:

A client's information is not shared outside the agency unless the client gives the agency permission to do so.

Why FJC clients may not benefit from information sharing?

- Victim safety compromised
- Breach of client trust destroys future opportunities to help
- Legal consequences for disclosure

Privacy is like oxygen to a survivor of domestic violence…

- Privacy is power. Any breach of privacy shifts power to abusers. Breachs may be life-imperiling.
- "I am not one-dimensional. I am a woman, a mother, a friend, a worker, a woman of faith, a contributor to my community. I am not just and forever a battered woman. Let me tell you who I am and what I need."
- The stigma of domestic abuse may have profound, adverse social and economic consequences.
- Victims may choose privacy over justice, safety, economic well-being, etc.

Recent Privacy & Confidentiality Protections

- **1991**. Address Confidentiality Laws. WA was first. 20 more.
- **90's**. Government benefits privacy & confidentiality
- **Over last 15 years**. Telephonic, computer, database, court records, electronic privacy laws/protections.
- **2000, 2005.** VAWA confidentiality.
- **2001.** Notice laws re: breach.
- **2003.** HIPPA Rules

Confidentiality Facilitates

- Help-Seeking
- Information Processing
- Options Exploration
- Problem-Solving
- Strategic Planning
- Resistance to Coercive Controls
- Advocacy for Self & Children

Confidentiality Policy:

- Avoids disclosure to abusers;
- Binds staff by the law and policy; to hold confidential or to release;
- Requires uniform procedures/forms for recordkeeping; garbage in, garbage out
- Operates cognizant of the law;
- Anticipates informed consent of client as the primary basis for disclosure;
- Establishes guidelines for disclosure/information sharing;
- Incorporates issues re: co-location;
- Recognizes that "loose lips sink ships" and designs practice to avoid breaches

Historical Roots

- **PRIVACY; fundamental principle of safe homes, hotlines and shelters**
- **1981 (January);** litigation; PAAR; limited privilege between survivors & rape crisis center staff
- **1981 (December);** PA legislation; absolute privilege
- **1982 (check on this);** PA legislation; survivor and domestic violence program staff
- **Litigation since;** privileges upheld

What's Confidential?

- Identity of service participants
- Location of residence
- Use of Services
- Communications
- Program Records
- Safety Planning
- Decision-Making
- Actions Contemplated/Pursued

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Recordkeeping

- "LESS IS BEST"
- Limited records confirming fact of service, not content of communications nor "progress" nor verbatim acct
- √√s on forms, not narratives
- Necessary; statistical/grant rpt.
- Necessary to protect fr. liability

Informed Consent

- Cannot be a condition of service
- Prepared by releasing agency
- Must be knowing; fully informed, cognizant of risks/benefits of disclosure
- Voluntary; no compulsion/duress
- Purpose articulated
- Limited scope and time
- Extraordinary, not routine
- Right to rescind
- Right to notice of disclosure
- Never a substitute for survivor communication
- Not 4 convenience of professionals
- Signed by survivor

What must be Disclosed?

- Child Abuse Reports; forms, no duty to investigate
- Adult Protective Service Reports; forms, no duty to investigate
- Healthcare Provider Reports of injuries & weapons re: enumerated crimes
- Documents or testimony that a court orders released
- Participant records to participants

Permissive Disclosure

- Per client informed consent;
- As defined by professional rules, ethics and not otherwise precluded by law or rules;
- Articulated in state and federal law;
- Aggregate numbers for funders;
- Proof of participation forms

Other Limits on Privilege

- Victim Disclosure
- Duty to Warn/Protect
- Expiration on death of victim
- Fatality reviews

Information-Sharing by Co-Located Services

- Intake - Only to those agencies victim retains; written consent required.
- Mandated Reports - Only that required by statute.
- Public records; police & court orders.
- Information on abuser; Picture. Numeric identifiers, e.g. DOB, VIN, # of license/tag, driver's license. Description, including scars, tatoos, etc.
- Risk Assessment; only with written consent to specified agencies

Recordkeeping Pitfalls

- Verbatim statements of victim
- Retention of "neutral" information
- Safety plans of survivor
- Opinions about client
- Narrative records
- Holding/file cabinet for participant documents
- Unlimited access to & authority to write, edit, redact records by staff, board & volunteers

Practice Pitfalls

- Assisting legal & human services in investigation/case prep.
- Communicating with survivors in the presence of 3rd parties
- Disclosing information about survivor to GAL/Evaluator or at CCR
- Failing to advocate for victim participation in deliberations concerning any legal case
- Failing to engage in critical thinking with survivors about participation in communications with any agency/official and desired outcomes
- Speaking for survivor
- Sharing with co-located services w/o consent

Review.
Confidentiality Based on:

- Contract w/Victim
- Agency Policy
- Co-location Agreement
- Public Policy
- Contract w/ Funders
- Law and Regulations

Confidentiality

- Every Survivor's Right

- Every Program's Obligation

Technology, Data Sharing, and Confidentiality (Thank you to Cindy Southworth, NNEDV)

Why Confidentiality, Privacy, Data Safety?

- Victims won't come through our doors without it
- Information could get to perpetrators, community, etc.
- Inappropriate information could end up in the wrong place
- Information in records could get into hands of the abuser's attorney

Confidentiality, Co-Location, and Coordinated Community Responses

I. Physical Security, Equipment, and Location
   A. Location & Ownership
   B. Use
   C. Physical Security

II. Centralized Intake Systems for Multi-agency Sites
   A. Database Design
   B. Data Security
   C. Data Retention

Co-Location, SART, & CCR Issues to Consider

1. Informing victims of your job role, in regards to privilege/confidentiality laws & policies
2. Shared space – lunchrooms, hallways, waiting areas, windows
3. Shared tech – networks, internet, computers, copiers, faxes
4. Background checks: do any government agencies do them on victims?
5. Mandatory reporting requirements: e.g., mandated reporters of child abuse

For Assistance:
Contact Safety Net:

the National Safe & Strategic Technology Project

Cindy Southworth, MSW
Director of the Safety Net Project at the
National Network to End Domestic Violence
660 Pennsylvania Ave, SE Suite 303
Washington, DC 20003
phone: 202-543-5566 fax: 202-543-5626
www.nnedv.org
SafetyNet@nnedv.org

Reasons Behind the Basic Rule

Reflects three important goals of DV advocacy:

1. Preserve the victim's **safety** to avoid an abusive partner from retaliating against the victim and her children.
2. Provide **privacy** necessary for victims to talk freely with advocates and share details essential to planning for safety.
3. Victim **autonomy and self-determination**. Place control of information in the victim's hands and demonstrate advocates' commitment to autonomy and self-determination.

But the FJC vision…

- Prioritizes information sharing
- Facilitates collaboration among agencies
- Seeks to create a team of agencies working to support victims in need
- Views isolated agency work as potentially dangerous to a victim of domestic violence
- Looks to the client for authorization to share information (and receives it…)

Privileges

FJC Partners

- Police
- Prosecutors
- Investigators
- Government Advocates
- DV or Sexual Assault Advocate/Counselor
- Medical – Doctors/Nurses
- Therapists
- Chaplains
- Paramedics
- Civil Attorney
- Military
- Probation
- FJC Management Staff
- Volunteers

"Privilege": A Legal Concept

- "Privileged communications:" statements and conversations made under circumstances of assured confidentiality which must not be disclosed.
- Based upon public policy: one should be able to speak freely to certain persons without fear of repercussions.

Privilege & Protected Information

Privilege

- Attorney-client
- Physician-patient
- Psychotherapist-client
- Clergy-pentitent
- Domestic violence victim –counselor
- Sexual assault victim – counselor
- Human Trafficking Victim -Caseworker

Protected Information

- Official information
- Making a Police Report
- Public Records Act
- Police Records
- Court Records
- Confidential Personal Information
- Medical Records
- Attorney workproduct

Grant Requirements

- Some funders may require that positions supported by grant funds be mandated reporter positions
- Some funders may require grantees to provide confidential information about clients
- These requirements may be more stringent than the laws in your jurisdiction
- Failure to comply with the requirement may jeopardize your agency's funding

Consent/Waiver/Informed Consent

Permission to Disclose

- Concerns about confidentiality do not arise when the client grants you permission to disclose information.
- Use a written form that:
  1. Lists what specific information you can disclose
  2. Says to whom it can be disclosed
  3. Is signed by the client/service participant
  4. Includes an expiration date
  5. Provides a notice that she can rescind her permission if she/he chooses.
  6. Ensure service delivery systems that handle the information responsibly and for the benefit of the client

Formal

- Subpoena – A court order for a person to appear in court and testify
- Subpoena Duces Tecum – A court order for a person to bring records to court
- Order to show cause – Contempt for failure to produce records or appear in court

What Do You Do If You Receive a Subpoena?

- Advise your supervisor
- Advise the prosecutor
- Advise the FJC director
- Also, seek support from your Agency's Attorney, Legal Aid Office, or State or National Victims' Rights Organization.
- Have a strategy ready before the SDT

Reminders for Enhancing Confidentiality and Responsible/Safe Information Sharing at the FJC

- Do not discuss cases in public (hallways) or in front of others (support persons)
- Do not put client information in emails
- Share most information informally and verbally as necessary and when authorized
- Lock your records – purchase your own locked filing cabinets
- Use a separate fax machine
- Be *careful what you record.*
- Keep minimal information in client files.
- Shred notes as soon as they are no longer needed.
- Advise victims in advance about what information is confidential and what is not
  - E.g . I am a mandated reporter for …..

Questions?

Are you really confused now?
Want to go to law school?

Technical Assistance

- Nat'l Family Justice Center Alliance, 888/511-3522 (FJCA) www.familyjusticecenter.org
- NNEDV/Safety Net, 202/543-5566 SafetyNet@nnedv.org
- Battered Women's Justice Project 800/903-0111, ext. 1, www.bwjp.org
- CSAJ (LAV grantees), 202/265-0967 www.csaj.org

Discovery

Civil & Criminal

- Civil
  - Family Court
    - Divorces
    - Child Custody
    - Restraining Orders
  - Civil Court
    - Law suits
  -
- Criminal
  - Arrest
  - Police Report
  - Prosecutor
  - Criminal
  - Jail/Fines
  - Violations of court orders
  - Vandalism
  - Assaults
  - Threats

Common Rules for Criminal Disclosure

- Disclose information which tends to mitigate or negate the defendant's guilt
- Disclose information that tends to reduce the defendant's punishment
- Disclose "exculpatory" or "potentially exculpatory" evidence.
- Penalty for non-disclosure can be dismissal of all charges with prejudice

Court Orders cont'd

Discovery in civil cases:

- Varies from jurisdiction to jurisdiction, but is generally less generous than in criminal cases (higher right to confront and cross-examine witnesses in criminal cases under 6th Amendment and ICRA).

Requests for Information

Formal

- Subpoena – A court order for a person to appear in court and testify
- Subpoena Duces Tecum – A court order for a person to bring records to court
- Order to show cause – Contempt for failure to produce records or appear in court

What Do You Do If You Receive a Subpoena?

- Advise your supervisor.
- Advise the prosecutor.
- Advise the FJC director – City Attorney will represent the FJC.
- Also, seek support from Agency's Attorney, Legal Aid Office, or State or National Victims' Rights Organization.

Informal Request

- Oral
- Writing

Reminders for Enhancing Confidentiality at the FJC

- Do not discuss cases in public (hallways) or in front of others (support persons)
- Watch your emails
- Lock your records – purchase your own locked filing cabinets
- Use a separate fax machine
- Be *careful what you record.*
- Keep minimal information in client files.
- Shred notes as soon as they are no longer needed.
- Advise victims in advance about what information is confidential and what is not
  - I am a mandated reporter for …..

Family Justice Center

Confidentiality, Information Sharing and More Legal Stuff

Gael Strack, JD

List reasons why we shouldn't share information?

- Victim safety
- Breach of trust
- Legal Consequences

The Basic Rule

- Most domestic violence programs adhere to this basic rule:

A client's information is not shared outside the agency unless the client gives the agency permission to do so.

Reasons Behind the Basic Rule

Reflects three important goals of DV advocacy:

1. Preserve the victim's **safety** to avoid an abusive partner from retaliating against the victim and her children.
2. Provide **privacy** necessary for victims to talk freely with advocates and share details essential to planning for safety.
3. Victim **autonomy and self-determination**. Place control of information in the victim's hands and demonstrate advocates' commitment to autonomy and self-determination.

Attorney Work Product

- "The work product of an attorney is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." California Code of Civil Procedure section 2018, subdivision (b). Subdivision (c) provides: "Any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." Code Civ. Proc., § 2018, subd.(c).
- It is the burden of the party asserting the work product privilege to prove that the material in question is work product and therefore privileged. BP Alaska Exploration, Inc. v. Superior Court, (1988), 199 Cal.App.3d 1240, 1252 ["the party asserting a privilege has the burden of proving the essential elements of the privilege."]

Mandated Reporting

Child Abuse, Domestic Violence and Elder Abuse

Child Abuse

- **THE CALIFORNIA CHILD ABUSE & NEGLECT REPORTING LAW**
- The first child abuse reporting law in California was enacted in 1963.
- Over the years, numerous amendments have expanded the definition of child abuse and the persons required to report.
- Procedures for reporting categories of child abuse have also been clarified.
- The California Abuse Reporting Law is found in Penal Code Sections 11165-11174.5.

Proponents argue:

- The primary intent of the reporting law is to **protect the child**.
- Protecting the identified child may also provide the opportunity to protect other children in the home.
- It is equally important to **provide help for the parents**.
- The report of abuse may be a catalyst for bringing about change in the home environment, which in turn, may help to lower the risk of abuse in the home.

What is Child Abuse?

- The law defines child abuse as:
  - Physical abuse
  - Neglect
  - Sexual abuse
  - Emotional maltreatment

Who must report?

- *Legally mandated reporters include, but are not limited to:*
  - *"child care custodians,"*
  - *"health practitioners,*
  - *"employees of a child protective agency."*

Child Protective Agency

- A police or sheriff's department, a county probation department, or a county welfare department. School district police or security departments are not child protective agencies.
- (Pen. Code, § 11165.9)

When Do You Report?

- Child abuse must be reported when one who is a legally mandated reporter…. "has knowledge of or observes a child in his or her professional capacity, or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse…" (Pen. Code, § 11166[a])
- "Reasonable suspicion" occurs when "it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position drawing when appropriate on his or her training and experience, to suspect child abuse." (Pen. Code, § 11166[a])

Proponents Argue Reporting can:

- Save lives.
- Prevent further violence to the victim.
- Break the cycle of violence.
- Lift the burden of reporting off the victim and establish accountability for the offender.
- Prevent child abuse or child endangerment.
- Save time and money.
- Better treatment to patients.
- Avoid civil and criminal liability.

Opponents Argue Reporting can:

- Put the victim more at risk.
- Prevent the victim from reporting.
- Offend the patient.
- Breach patient-physician confidentiality
- It's not my job.
- I don't have time.
- I'm not comfortable asking about DV.

Advocacy Challenges in a CCR: Protecting Confidentiality While Promoting a Coordinated Response

Sandra Tibbetts Murphy

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The Battered Women's Justice Project
1801 Nicollet Ave S. Suite 102 Minneapolis, MN 55403
technicalassistance@bwjp.org
800-903-0111, prompt 1

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Advocacy Challenges in a CCR: Protecting Confidentiality While Promoting a Coordinated Response

Sandra Tibbetts Murphy[1]

Introduction

Effective and safe advocacy on behalf of battered women requires stringent adherence to the protection of their information. Confidentiality remains one of the most basic caveats of advocacy: A survivor's information is not shared outside the program unless she gives the staff permission to do so. This protection reflects and reinforces three vital goals of advocacy: 1) to preserve a battered woman's safety and further retaliation from her abusive partner; 2) to provide the privacy needed to allow a battered woman to talk freely with an advocate and share details of her abuse in order to effectively plan for safety; and 3) to place control of information in the battered woman's hand, thus recognizing and reinforcing her autonomy. In fact, there is evidence that victims may not seek legal assistance, counseling or help altogether without an assurance of confidentiality from an advocate or counselor.[2] Based on trust, a core component of the advocacy relationship remains the preservation and protection of confidential information.[3]

When and how confidential information is protected varies among the states. Different protections, and levels of protections, apply to confidential communications depending upon a number of factors, including: to whom the communication was made; who else was present when the communication was made; where the communication occurred; what information was shared; and how information about that communication is protected. Many states have enacted statutory privileges for advocates that protect a battered woman's information from a forced release. For advocates in several states, however, there is no statutory or court rule providing this protection.[4]

Improper handling of survivor information and records can cause great harm to individual victims. Obviously, the release of information about a survivor's residence or location can make her accessible to the perpetrator and thus endanger both her and her children. Additionally, some

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[1] Sandra Tibbetts Murphy serves as an Attorney Advisor with the Battered Women's Justice Project and its Legal/Policy Team.

[2] Report to Congress: *The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation* (1995).

[3] A "confidential communication" is defined as a statement made under circumstances showing that the speaker intended the statement to be heard only by the person addressed. Thus, if the communication is made in the presence of a third party whose presence is not reasonably necessary for the communication, it is not privileged. A "privileged communication" is defined as those "statements made by a certain person within a protected relationship . . . which the law protects from forced disclosure on the witness stand at the option of the witness . . . ." Hence, whether a "confidential communication" is "privileged" depends on the relationship between the parties and the circumstances under which the communication is made.

[4] For listing of state confidentiality provisions, please see *State Statute Chart 2010*, The Confidentiality Institute, available through www.confidentialityinstitute.org.

kinds of information about a survivor or her children can provide ammunition to an abuser seeking to punish or intimidate her through custody battles or child protection complaints. Finally, release of certain information to the abuser, even through his attorney, can complicate or harm the state's case in any criminal proceeding brought against the perpetrator, thereby placing survivors in further jeopardy. Beyond the effects on individual victims and their particular circumstances, the improper handling or disclosure of such confidential information can have a chilling effect on other victims within a program's community and may limit their willingness to seek assistance from the program.

In addition to the vital protection of confidentiality, advocates have long recognized the need to collaborate with various agencies, legal and other, to ensure that system interventions on behalf of battered women prioritize victim safety. Referred to as a "coordinated community response" (or "CCR"), these collaborations take many forms and have differing members but have an overall goal of coordinating services within a community to enhance responses to victims. Many states have enacted laws that encourage or mandate the formation of multidisciplinary teams to encourage coordination in communities around domestic violence (*e.g.* coordinating councils, dv/cps teams).[5] In fact, the Office on Violence Against Women grant programs often require evidence of such coordination for eligibility for grant funds.[6] The primary function of a CCR approach prioritizes the sharing of information among community partners as a means of creating effective policy and tracking and monitoring cases.[7]

It is between these two principles – the need for confidentiality and the need for collaboration – that a conflict exists for advocates. How does an advocacy program balance these two seemingly competing interests? How does an advocacy program remain an effective partner within a CCR while still protecting the confidentiality of the battered women it serves?

Review of Confidentiality Requirements for Advocates[8]

Legal requirements for confidentiality come in many forms, including federal and state laws, funding contracts and rules of court. Like the variety of forms, the extent or degree of protection afforded that information also varies. At the federal level, confidentiality protections are required as conditions of funding in the Victims of Crime Act (VOCA), Family Violence Prevention and Services Act (FVPSA) and Violence Against Women Act (VAWA) grant programs. Both VOCA and FVPSA impose rather generic confidentiality mandates on grant

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[5] See e.g. MN Stat. §626.558.

[6] OVW Fiscal Year 2010 grant solicitation, The Community-Defined Solutions to Violence Against Women Program (formerly the Grants to Encourage Arrest and Enforcement of Protection Orders Program) at http://www.ovw.usdoj.gov/docs/fy2010-comm-defined-solutions.pdf.

[7] Paymar, Michael, et. al., *Building a Coordinated Community Response to Domestic Violence: Trainer Guide*, Praxis International (2010).

[8] Adapted from Julie Kunce Field et al., *Confidentiality: An Advocate's Guide*, Battered Women's Justice Project, Sept. 2007 (rev'd), available at www.bwjp.org/resources/advocacy.

recipients, requiring programs to "honor confidentiality," to protect any client records and limit disclosure of the location of shelter facilities.[9]

The Violence Against Women Act provides a more specific definition of the kinds of information subject to confidentiality restrictions for its grant recipients, as well as the limited exceptions or waivers. Pursuant to VAWA, grantees (and subgrantees) are prohibited from disclosing any "personally identifying information" about a client.[10] Such personally identifying information includes the more obvious details such as names and addresses, but also any details about a survivor that, when combined with other information, thus becomes personally identifying.[11] The VAWA further prohibits the disclosure of such information unless compelled by statute or court mandate, or upon completion of an informed, written and reasonably time-limited release executed by a client.[12] The VAWA confidentiality protections, however, do not prohibit a grantee from providing non-identifying, aggregate data for reporting, evaluation or other data collection purposes.

The types and levels of confidentiality protections given by state statutes, case law or court rules vary; these sources protect confidential information and records from disclosure in a variety of ways and in differing degrees. Advocacy information in different states may enjoy different types of privilege, from an absolute protection to the more common qualified protection. As with the VAWA provisions, battered women can waive these state-granted protections by signing a release. Additionally, if a third party is present during a battered woman's meeting with an advocate, the confidentiality protection is waived, unless that third party serves only to facilitate the communication, such as an interpreter. These state-level authorities commonly include exceptions to confidentiality protections – situations where disclosure to some extent is mandatory. The most common exceptions include mandatory reporting of child abuse or neglect, disclosure when there is imminent risk of death or serious harm to an individual, or reporting the impending commission of a serious crime.[13]

Overview of Record-Keeping Practices[14]

Clearly, domestic violence programs must keep some files and program records related to the delivery of their services to battered women and children. Records serve as useful tools for strategic planning and budgeting, to document services provided and to meet reporting requirements for funding sources. Records provide helpful documentation of the need for services and may facilitate communication among staff at the program. Additionally, many

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[9] Victim of Crime Act (VOCA), 42 U.S.C. §10604(d), 28 C.F.R. Part 22; Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. §10402(a)(2)(E).

[10] Violence Against Women Act (VAWA), Section 3, 42 U.S.C. §13925 (2007).

[11] Id. The specific definition reads as follows: "information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault or stalking, including … name or address; contact information…; social security number or date of birth; racial, ethnic or religious identity; or any other information that would serve to identify an individual."

[12] Id. If an advocacy program is mandated by statute or court order to release a battered woman's information, the VAWA provisions also require the program to notify the battered woman of the impending disclosure.

[13] The Confidentiality Institute's Summary of State Laws Related to Advocate Confidentiality (2010) provides state legal citations and discussion on state privilege and legal definitions, and is updated periodically, *supra* n. 3.

[14] Adapted from *Confidentiality: An Advocate's Guide*, *supra* n.7.

survivors choose to have advocates share at least some of their documented information with various public agencies, and program files help track these authorized communications. Data from records may also assist in research projects or the auditing of program operations. Record-keeping, or more precisely the information contained in records, however, can endanger battered women as there is always a risk that such confidential information will be shared or disclosed with the survivor's consent. Even in states with statutorily-recognized victim/advocate privilege, courts may overrule the privilege's application and order the release of information. Stated otherwise, anytime a program documents and retains information about a survivor, she loses some control over the information; the information is always vulnerable. Therefore, it is imperative that domestic violence programs and advocates develop sound record-keeping policies that facilitate program services while also preserving confidentiality to the greatest extent possible.

Even the most careful record-keeping practices, coupled with zealous protection of program files, cannot create a completely inviolable wall against disclosure. Eventual disclosure and misuse of any such information cannot be predicted. One thing that is predictable, however, is that even the most neutral and objective information, if disclosed, can compromise the privacy, safety or legal interests of a battered woman. Information that appears helpful to a battered woman from a program or advocate perspective could be used, unforeseeably, to her detriment. Therefore, programs must be prepared for any potential court-ordered release of sensitive information by balancing the need to collect and maintain certain kinds of information against the need to protect the safety and privacy of battered women. Domestic violence programs have fiduciary responsibility to protect confidential communications and records of the battered women they serve. While it is necessary that programs keep client case files and program records to provide effective services, manage shelters and advocacy programs, and to satisfy funding agencies, it is equally critical that they do so in a manner that best protects battered women's information.

"Less is Best"

The most effective record-keeping practice adheres to a "less is best" philosophy; that is, records and files include only the most basic and limited information about and from the battered women served. Rather than including lengthy descriptions of a battered woman's safety plan or her efforts to comply with a court-imposed parenting plan, records should be limited to confirmation of the types of services provided to her, such as shelter, legal advocacy, or economic planning. A form with checkmarks indicating services accessed, rather than narrative descriptions of the use of any such services, is much more protective of a battered woman's privacy and safety, even if such information ends up being disclosed. Clearly, some information must be included in these client files, such as emergency contacts and basic medical needs, in order for the program to protect itself from any possible liability. Such information, however, can be in checkmark or brief "fill-in-the-blank" format and should be limited to the absolute minimum needed.

Securely Located

All records, whether client files or program management information, should be maintained in secured locations, providing access only to designated and necessary staff. Program records, such as financial documents and personnel records, should be stored separately

from survivors' individual files (*e.g.*, shelter intake files), and only designated staff should have authority and ability to review such files or make notations in them. Board members should not have access to individual files or program records, except in specific situations determined by the director and the program's legal advisor. Funders and researchers should have access to only aggregate statistical information.[15] SafetyNet, a program of the National Network to End Domestic Violence (NNEDV), has specific and more detailed recommendations regarding storage and access of records and challenges posed by technology and electronic records, and are often available to discuss particular issues or practices.[16]

Retention and Destruction

When a battered woman is no longer using any of the domestic violence program's services, certain records should be destroyed. This purging should not occur until she has ceased use of all of the program's services, not just after leaving shelter. Each program must have a written policy regarding the retention, access and destruction of survivors' files and other sensitive program records, delineating a length of time such records are maintained and how they are destroyed. Different types of files may have distinct retention and destruction schedules. Funding agencies may have specific time requirements for retention of records. Once adopted, all staff must strictly adhere to the written policy. Destruction or purging of files, however, should not occur if the program is involved in any litigation implicating such information. Once program staff has received a subpoena for documents, or has notice that such a subpoena is forthcoming, the program has a duty to preserve all records subject to that subpoena; this would be a specific exception to the program's policy for record destruction.

Of course, there may be, and often are, many situations in which a battered woman will choose to share her information with those outside of the advocacy program, or even ask an advocate to do so. An advocate's role in such a situation is to ensure that a battered woman is making such a decision with full awareness of all possible consequences and an appreciation for the possible unforeseeable consequences. Again, once a survivor shares information about her herself and her situation, she loses some control over how that information is shared or used. When choosing to share information with workers in other "systems," it is a better practice to help the battered woman to have those discussions directly, with the assistance and accompaniment of an advocate. For those times, though, when a battered woman wants her information kept confidential, minimal record-keeping practices may often alleviate potential effects a forced disclosure could have on her safety or legal outcomes.

CCR Challenges

Overview

For advocates, participation in a CCR program presents various challenges to their obligation of confidentiality. There are the challenges presented in individual situations when helping a battered woman decide whether to share information or helping protect her information

[15] The Violence Against Women Act of 2005, section 5, 42 U.S.C. §13925.
[16] The Safety Net Project of the National Network to End Domestic Violence (NNEDV), www.nnedv.org/nnedvprojects/safetynet.

from legal challenges. There are challenges created by an approach that encourages collaboration and information-sharing among professionals who have different obligations and responsibilities. There are challenges created by legal rulings and precedents which require careful consideration of what could happen to information in different arenas. Advocates must balance their obligation to protect confidentiality with their vital role in formulating and assessing a community's response to domestic violence.

MOUs and Partnership Agreements Among Agencies

Domestic violence programs and shelters obtain the vast majority of their operational funding from a variety of grant programs, including federal, state and local sources. Such funding sources, certainly at the federal level, require grant recipients to develop partnerships and collaborations with other civil and criminal justice practitioners in their service area; such collaborations often are demonstrated by contracts or memoranda of understanding between participating agencies. Whether establishing case review teams or space-sharing or other coordination of efforts, these partnership agreements must be carefully drafted so that confidentiality for advocates remains acknowledged, respected and protected.

In any "relationship" agreement, domestic violence programs must clearly identify their confidentiality obligations in comparison to other members of the partnership and have a clear statement that the mere fact of the collaboration does not alter those obligations. Additionally, confidential information must also "look" protected and partnership agreements can help with this by specifying how information is held by the domestic violence program and what types of information can be shared with partners, and under what circumstances.

Any collaboration agreement, especially one that envisions some kind of space-sharing arrangement or multi-disciplinary project, must establish clearly the independence of the domestic violence program and any participating advocate. There must be no question that an advocate who shares space at the police station does not report to the shift commander regarding her work performance; there must be no question that other partners, such as a prosecutor's office, have no oversight of the domestic violence program or its staff or any access to its records. While the sharing of information, appropriately, across agencies is vital to the goals of a CCR, those partnership agreements should not imply the creation of an "agency" relationship between the domestic violence program and other practitioners.[17]

Co-Location of Agencies and Services

Another common manifestation of the CCR approach is that of co-location; this can be multiple agencies sharing one physical site such as a family justice center model or representatives from one agency having space inside another agency's office like an advocate with a desk at the local police department. Such individuals who are hired by, work for and are supervised by the domestic violence program are covered by any privilege or confidentiality

[17] *State v. Rand*, A07-1522 (Minn.App.Ct. Feb. 5, 2008)(unpubl'd)(defense argued that MOU language created "agency relationship" between domestic violence program and prosecutor and thus, any information within advocate's knowledge should be presumed to be in custody or control of prosecutor and subject to discovery requirements; judge ruled that collaboration, without more, did not create such relationship, but did require prosecution to surrender information already shared by advocate).

requirements conferred on other advocates who work for the program.[18] Even if the individual is housed at police department or prosecutor's office, that advocate has the same authority to keep information from battered women confidential as advocates who work primarily in the shelter. As with MOUs or contracts, however, it is advisable to make to make this line of authority explicit in any documentation of the partnership; the advocate is an employee of the domestic violence program, is only subject to supervision and personnel policies of that program, and all records or work product created or maintained by the advocate remain in the sole possession, control and access of advocate in accordance with the program's record-keeping and confidentiality procedures.

Sharing physical space with "non-advocates" creates other practical obstacles to maintaining confidentiality. Advocates placed in these other offices must consider issues that may implicate those protections: Where does the advocate meet with battered women and who else can see or possibly overhear any such conversations? Such placements also present advocates with the challenge of conversations "over the water cooler;" that is, having informal conversations with partners that may inadvertently involve potentially confidential information. Additionally, such shared space arrangements also involve issues around use of technology and access to information in all its forms – written, verbal and electronic. This requires clear agreements among the partners about ownership and access to information – whether on computers or hard drives, available over internet connections, transmitted by fax machines and even images captured by copier machines. To maintain a strong claim of confidentiality in the face of any legal challenge, it is vital that information purported to be protected LOOK protected.[19] No matter its manifestation, however, adherence to good record-keeping practices remains vital in a co-location or shared space arrangement.

Case Review Meetings

Another common manifestation of coordinated community responses is multidisciplinary case review meetings, where partners from different agencies meet regularly to review specific domestic violence cases and each agency's response, as well as suggesting next steps. This sharing of information allows for identification of particularly high-risk offenders as well as possible critique of unsuccessful responses by the partner agencies to a particular case. For such meetings, each partner shares information about the specific case or response, in an effort to better inform and coordinate the actions of each agency. It is this information-sharing that presents a dilemma for domestic violence advocates.

Because these case review teams almost always include law enforcement and prosecution, it is vital that advocates understand the obligations of a prosecutor to share information with a defendant or his counsel in a criminal case. The U.S. Supreme Court in *Brady v. Maryland*[20] sets forth the prosecutor's duty to disclose exculpatory information and is the cornerstone for imputing information held by other agencies to be within the care, custody or control of the prosecution, thus making that information subject to discovery. Prosecutors must

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[18] This assumes that such staff comply with all personnel and training requirements for advocates employed with the domestic violence program.

[19] The Safety Net Project of NNEDV has numerous recommendations for domestic violence programs regarding issues of technology sharing and access, *supra* n. 15.

[20] 383 U.S. 83 (1963)

disclose relevant and exculpatory evidence to defense counsel prior to trial. Such evidence may include statements by a battered woman in which she completely recants her prior description of an assault. Exculpatory evidence subject to disclosure is that evidence which is "favorable to an accused" and "material to guilt or punishment."[21] Such evidence is material if it undermines a prosecutor's confidence in the outcome of a trial or if it "may make a difference between conviction and acquittal."[22] A prosecutor is generally responsible for all police documents and information as well as those of a crime lab.[23] The *Brady* obligations have also been held to apply to medical centers that perform SART exams.[24] State case law or rules of court may also require prosecutors to disclose other relevant evidence such as names and addresses of witnesses, statements made by a defendant and any criminal records of a defendant or witnesses. Thus, once information is shared at such a case review meeting, it becomes subject to the prosecutor's duty to disclose under *Brady*.[25]

Advocates, therefore, must be careful about their participation in such meetings. Absent a valid release from a battered woman, of course, an advocate cannot and should not be sharing any information about the case with other team members. This does not mean, however, that advocates play a lesser role in such meetings. To the contrary, these meetings represent a valuable opportunity for domestic violence advocates to engage in vital and necessary system advocacy work. Domestic violence advocates can still talk generally about many things useful to the group, even without sharing specific information about a battered woman. For example, advocates may make suggestions for follow-up investigation or highlight facts evidenced in a police report that indicate higher risk – all based on general knowledge and experience. Such participation is the CCR work needed from advocates –to identify what is or is not working in the collective response of the partners; build, monitor and evaluate changes in the infrastructure of case processing by team members; and ensure attention to the context and severity of violence in each intervention.

It is important to remember, however, that protecting information is only part of effective advocacy practice. There are times when it may be appropriate to share information about a specific battered woman's situation with CCR partners. In fact, safety plans often include the sharing of information with other agencies. For advocates, however, such a sharing must only occur with a valid release from a battered woman, and for that, advocates must assist battered women in understanding how the team operates and how it may be a benefit. Battered women must be informed of every agency that is part of the team, each agency's individual role and

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[21] *Brady v. Maryland*, 373 U.S. 83 (1963).
[22] *U.S. v. Bagley*, 473 U.S. 667 (1985).
[23] See e.g., *Kyles v. Whitney*, 514 U.S. 419 (1995); *Newsome v. McCabe* , 256 F.3d 747 (7th Cir. 2001); and *In re Brown*, 952 P.2d 715 (Cal. 1998).
[24] See *People v. Uribe*, 76 Cal.Rptr.3d 829 (Cal.Ct.App. 2008).
[25] However, *Brady* does not apply to all governmental agencies, and has been held not to apply to non-governmental agencies whose work is not investigatory in nature or otherwise directed by the prosecutor. See e.g., *U.S. v. Avellino*, 136 F.3d 249 (2nd Cir. 1998); *U.S. v. Morris*, 80 F.3d 1151 (7th Cir. 1996); *People v. Washington*, 654 N.E.2d 967 (N.Y. 1995); and *People v. Berkley*, 549 N.Y.S.2d 392 (N.Y.App.Div. 1990) (set for factors to use in determining if agency and its documents are within prosecutor's control: 1) whether potential cross-examination materials are in actual possession of a primarily law enforcement agency; 2) whether a compelling reason exists to keep information confidential; 3) whether material in question is equally accessible to defendant). For help assessing how *Brady's* requirements or exceptions may apply to specific situations, please contact the Battered Women's Justice Project, 1-800-903-011, ext 1, www.bwjp.org.

purpose, any protections for information that is shared, the risks and benefits of each team member/agency having access to that information, and how team members coordinate their work.

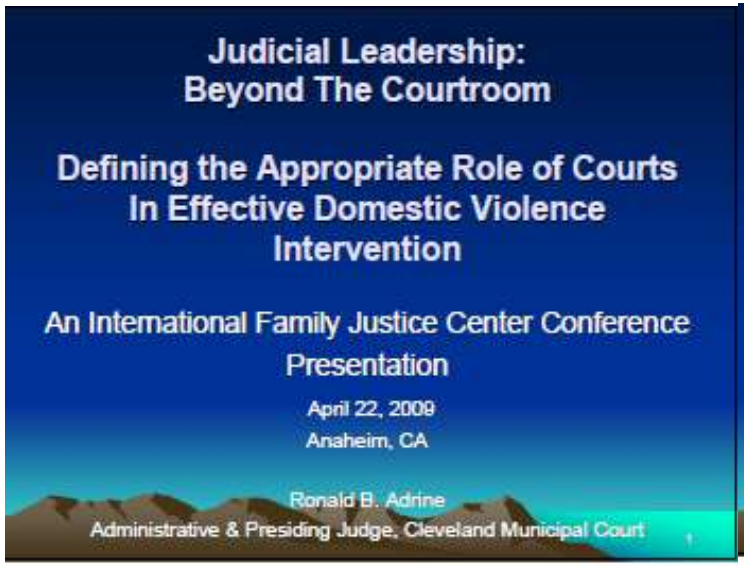
Conclusion

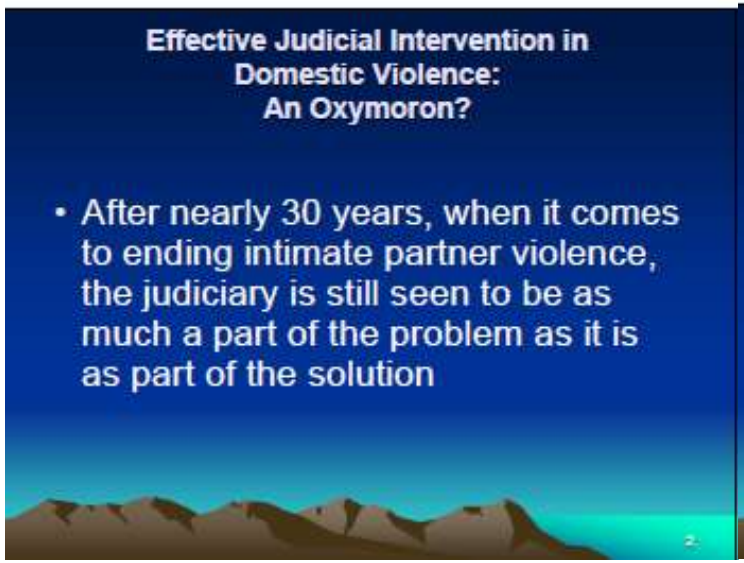
Advocates thus play a critical role in the effective operation of a coordinated response to domestic violence, both in helping to protect the confidentiality of battered women as well as helping battered women assess the risks and benefits of sharing information with other agencies. When deciding whether and what information to share with a CCR team, advocates and BW together should ask themselves the following questions:

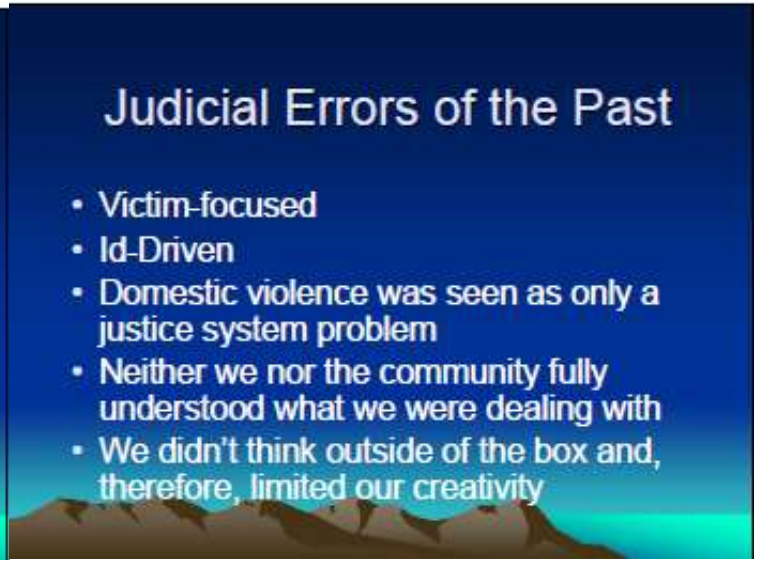
- Who is seeking the information?
- For what purpose is the information sought or needed?
- Where else might the information go?

In assisting battered women with this analysis, it is vital that advocates repeatedly inform battered women of their right to confidentiality and privacy, and to obtain informed releases each time a decision is made to share information. By engaging in responsible individual *and* system advocacy work, advocates play a critical role in the effectiveness of any coordinated response to domestic violence.

V. Unchartered Malingering Between Private/Public Entities







Domestic Violence and the Judiciary: A Little History

- Prior to 1990
- Civil and Criminal Curriculums developed by the Family Violence Prevention Fund
- VAWA and the USDOJ's OVW
- National Judicial Institute on Domestic Violence

Domestic Violence in the U.S.: The Facts

- DV has accounted for 30% of all female homicides in the U.S. since 1976; 5% of male homicides
- A Connecticut study found that 1 in four suicides were DV related.

Domestic Violence in the U.S.: The Facts

- According to the Bureau of Justice Statistics, in 1998, 1,830 people were killed by an intimate partner; 3 out of 4 were female.
- The same source reports that 85% of the victims of non-lethal intimate violence were also female.

Domestic Violence in the U.S.: The Facts

- Another study determined that of rape victims over the age of 30, 50% were battered women
- Police Spend More Than 1/3 of Their Time Responding to Domestic Calls
- Medical Costs from Domestics Range in the Hundreds of Millions Each Year

Domestic Violence and U.S. Children: The Facts

- The American Psychological Association found that 40 to 60% of the men who abuse their wives also abuse their children.
- The more severe the abuse of the partner, the more severe the abuse of the children.

Domestic Violence and U.S. Children: The Facts

- According to one study, children growing up in a violent home are 74% more likely to engage in acting-out, destructive and assaultive behaviors. Male children are particularly affected.
- A study in Oregon found that approximately seven out ten delinquent youths in treatment programs had witnessed a caregiver's abuse or were abused themselves

Domestic Violence and U.S. Children: The Facts

- Another study found that 27% of domestic homicide victims were children. The DOJ Bureau of Justice Assistance reports that in homes where partner abuse occurs, children are 1500 times more likely to be abused

Why worry about the court's participation anyway?

- The top of the Justice system "food chain"
- The perfect catalyst for change
- Brings credibility to the effort
- An educational opportunity
- Even if the court does not help, invitation may prevent active opposition

Why Judges, In Particular, Should Be Concerned about Domestic Violence

- Negative impact of domestic violence on dockets
- Unique ability to do something about it
- A question of control–Theirs or ours?

Developing a Judicial Philosophy for Domestic Violence Cases

Some Definitions

- Random Violence
- Instrumental Violence
- Classic Domestic Violence
  - What the classic domestic violence victim wants from the justice system and what the justice system wants from the classic domestic violence victim are not *necessarily* the same things

Why do we need a philosophy in domestic violence cases?

- **Domestic Violence Negatively Impacts Many of Society's Worst Problems**
  - Homicide
  - Suicide
  - Rape
  - Child Abuse
  - Juvenile Delinquency
  - Substance Abuse
  - Stalking

Why do we need a philosophy for domestic violence cases?

- The relationships are intricate, complicated, conflicted, and inscrutable
- The goals of domestic violence victims differ from those of most other victims and from our own
- The offenders are practiced manipulators
- We all have a natural aversion to involving ourselves in the "private affairs" of others

A Judicial Philosophy (Cont.)

- **Primary Objectives**
  - 1. Prevent Additional Harm
  - 2. Obtain Control
  - 3. Decide To Either
  - 4. Punish Past Acts or Prevent Future Violence
  - 5. Preserve Relationships or Vindicate the Rule of Law

A Judicial Philosophy On Domestic Violence

- **Goals**
  - 1. A Just Result
  - 2. Safety for the Victim
  - 3. Offender Accountability
  - 4. Elimination of Recidivism

A Judicial Philosophy (Cont.)

- **Tools Available**
  - 1. Self-Education
  - 2. Consistent Application
  - 3. A Coordinated Community Response
  - 4. ***Jail***

The Court's Dilemma

Is it possible to be an activist without being (***or appearing to be***) an advocate?

Why some courts are uncomfortable with participation in a coordinated community response to domestic violence.

- Sworn to be impartial
- See no appropriate judicial role
- Fear of ethical violations
- Fear of political repercussions
- Already overworked
- Dislike the issue or the advocates
- Personal Baggage

RESOLUTION 22, CONFERENCE OF CHIEF JUDGES

Problem Solving Courts: are recognized as an effective and necessary way to address complex social problems in a way that differs from traditional civil and criminal adjudication, focusing on remedies grounded in therapeutic jurisprudence, and best accomplished by the establishment of dedicated courts and calendars.

22

Ethically, What can a court do on its own to address Domestic Violence?

- The Court can set the tone for handling D.V. cases by:
  - establishing its evidentiary expectations
  - establishing clear expectations for the processing of D.V. case by justice system personnel
  - Questioning inappropriate prosecutions
  - Underscoring the seriousness with which the court regards all D.V. cases

Ethically, What can a court do on its own to address Domestic Violence?

From the Bench, the court can sensitize its response by:

- Ensuring fairness, but avoiding re-traumatizing the victim in the courthouse.
- Seeking enhancement of victim safety as a top priority.
- Holding convicted abusers accountable

The Essentials of Effective Judicial DV Education

- It must address judges' ethical concerns
- It must be flexible, hands-on and focused on the pragmatic
- It must must be even-handed and not preachy
- It should be resource-laden
- It must be ***on-going***

Michael's List:
Some of the 50 things a judge can do about D.V. today

- Find out exactly what D.V. victims who ask your staff and your clerk for help are told.
- Find out how many D.V. calls in your jurisdiction last year resulted in the arrest of both parties
- Be the catalyst for a D.V. death review panel
- Arrange for one speaking engagement to describe the role of your court in handling D.V. cases
- Find out if your orders to remove all guns from D.V. suspects are really being carried out by the police
- Monitor the Batterers' Program(s) in your jurisdiction
- Make lethality assessment a part of D.V. pre-sentence reports

Promising Judicial Practices: An Incomplete National Survey

- Judicial Education Opportunities on D.V.
  - Ten years ago, there was virtually no training for judges on domestic violence issues. Now, solid instruction is offered both nationally and by some state judicial educators on:
    - victim/batterer dynamics
    - ethical considerations
    - unusual evidentiary considerations–expert testimony, hearsay exceptions, etc.
    - sentencing considerations

  among many other relevant topics

National Council of Juvenile and Family Court Judges

A Judicial Guide to Child Safety in Custody Cases

A Judicial Guide to Child Safety in Custody Cases
Table of Contents

A Judicial Guide to Child Safety in Custody Cases

Introduction

Custody and visitation decisions are among the most difficult that judges make. Whether by statute, case law, or custom, all state and tribal courts employ some form of "the best interest of the child" standard in making these decisions. A child's physical, emotional, and psychological safety are always in his or her best interest. This tool is designed to maximize a child's safety as you determine issues of custody and visitation and can help you

- Assess whether a child or parent is at risk for physical, emotional, or mental abuse.
- Review the evidence so that the safety of the child is the primary factor in determining his or her best interest.
- Evaluate safety risks at various stages of a case, from initial filing through post-disposition.
- Make findings that explain and prioritize safety concerns.
- Draft custody and visitation orders that maximize family safety.

This tool will also assist you in conducting a thoughtful exploration of the child's safety risks when abusive behavior has been part of the family fabric. Sometimes, the parties may not articulate clearly either the abuse or the child's safety risks during litigation. Indicators may be present that require you to explore the possibility that one parent is putting the other parent or the child at risk of abuse. Because the abused parent might not directly raise issues of physical abuse or other forms of control, you will want to be aware of indicators of abusive behaviors that may alter the dynamics of the litigation process. This tool will explore the various behaviors that you might encounter, both from the controlling and abusive parent, and from the controlled and abused parent.

Organization of the Bench Tool

This supplemental guide and the attached bench cards follow your decision-making from the initial filing through drafting and enforcing the order. While much of the material is presented in procedural order,[1] there are also bench cards and chapters devoted to topics and issues that can arise throughout litigation.

The authors suggest that you first read the cards as an introduction to the topics addressed. This supplement, to which the cards are keyed, offers additional information and suggests further resources at the end of the guide, and in footnotes.

1. The stages of litigation might be named differently in various state and tribal jurisdictions. The process of filing, hearing, and decision-making are familiar enough that the procedural references made in this volume are likely to be easily adapted to the actual practice in your court.

I. Children, Abuse, and Custody

Numerous studies document the negative effects on children who are exposed to the abuse of one parent by the other. The studies provide evidence of the problems associated with their psychological, emotional, and cognitive functions, and longer-term development.[2] Children who witness violence and coercive control by one parent toward the other experience at least the same level of serious effects as those who were direct targets of the abuse.[3] The research also shows that each child's experiences, perceptions, and responses are unique. Any intervention should be tailored to that child's particular risk set and situation.[4]

Studies also support that children are at greater risk of being abused when one parent is abused by the other parent.[5] Abuse of the children, or threatened abuse, is a powerful tool of control.[6]

Abuse directly perpetrated on the child happens frequently after parental separation when the abusive parent may no longer have ready access to the other parent. This means that children are at risk post-separation even if they were never directly abused by the abusive parent previously.[7] Sometimes, abuse of a child can lead to "reconciliation" if the abused parent believes that resuming the relationship is the only way to keep the child safe.[8]

A. [§1.1] Indications that Abuse Exists in a Child's Life

As with adults who have been subjected to physical abuse or other forms of coercive control, there is no one pattern of behavior that will be observed in children who have experienced abuse, whether they were abused themselves or whether they have lived in a family where one parent has abused the other. Given the range of psychological and physical injury to a child from an abusive parent and the many elements that contribute to or delay a child's recovery, assessing risk to the child from the abusive parent is a complex process.[9] Sometimes, child behaviors can be confusing or counterintuitive. Children who have experienced abuse might

- Be better behaved with either the at-risk or the abusive parent, or, on the contrary, act disrespectfully toward him or her.
- Identify with the parent who is perceived as more powerful.[10]

2. For a review of these studies, see J. L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. Interpersonal Violence 839-870 (1999).
3. *See, e.g.*, UNICEF, Child Protection Section, Behind Closed Doors: The Impact Of Domestic Violence On Children (2006).
4. *See generally* J. L. Edleson, VAWnet, National Resource Center, Problems Associated With Children's Witnessing Of Domestic Violence (revised).
5. Studies show that if a mother is abused, her children are at a 30-60% greater risk of being abused. *See generally* A.E. Appel & G.W. Holden, *The Co-occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*, 12-4 J. Fam. Psych. 578-599 (1998); S.M. Ross, *Risk of Physical Abuse to Children of Spouse-Abusing Parents*, 20(7) Child Abuse & Neglect 589-598 (1966).
6. Please note that this tool addresses child safety in the context of private, civil legal custody cases involving abuse or coercive control by one parent over the other.
7. *See generally* L. Bancroft & G. Silverman, Assessing Risk To Children From Batterers (2002), http://www.lundybancroft.com/pages/articles_sub/JAFFE.htm.
8. *See generally* Future Interactions With Battered Women And Their Families (Jeffrey Edleson & Zvi Eisikovits, eds, Sage Publications 1996).
9. *Id.* at 6.
10. Some people may assume that a person who abuses an intimate partner would not abuse their children out of love for them. However, love is not a preventative and does not foreclose abuse. Likewise, the fact that children love an allegedly abusive parent is no indication that abuse did not occur. Children often bond with the abuser. This is sometimes referred to as "traumatic bonding." L. Bancroft & J. Silverman, The Batterer As Parent: Addressing The Impact Of Domestic Violence On Family Dynamics 39-40 (2002).

- Act lovingly toward or comfortable with an abusive parent.
- Assume the role of parent.
- Be anxious when away from the abused parent.

Those children may also

- Suffer from depression or other mental health problems.
- Self medicate with drugs or alcohol (adult victims often do the same).

B. [§1.2] The Best Interest of the Child Standard

Generally speaking, it is considered detrimental to a child and not in his or her best interest to be placed in sole custody, joint legal custody, or joint physical custody with the abusive parent.[11] The most important protective resource to enable a child to cope with exposure to abuse is a strong relationship with a competent, nurturing, positive adult—most often, that adult will be the non-abusing parent.[12] Providing for the physical, mental, and emotional safety of the child will include providing safe visitation by the abusive parent, if truly safe visitation can be arranged. You should award visitation to an abusive parent only if you find that adequate provisions for the child's and the abused parent's safety can be made, assuming that contact with the abusive parent is advised at all.[13]

At-risk parents may advocate for limited or supervised contact between the abusive parent and the child; their reasons may not be clearly or easily articulated. Any allegations of abuse, whether made by the at-risk parent or the child, should be taken seriously. Often when viewed through the lens of abuse and coercive control, though, the case comes into focus. It is important that abusive parents' access to their children occur only in safe environments or when safety of both the child and the at-risk parent can be ensured. Even if you find that the behaviors of a parent do not seem to meet the definition of "abuse" as defined in this tool, the best interest of the child standard demands that the child be placed in the custody of the more appropriate, and safer, parent.

II. Abusive Behavior and Evidence of Risk

A. [§2.1] How This Tool Defines "Abusive Behavior"

It is important to remember that abusive behavior, often described as domestic violence, is not limited to physical violence against a parent. Physical violence is generally one of

11. National Council Of Juvenile And Family Court Judges (hereinafter NCJFCJ), Family Violence: A Model State Code (hereinafter Model Code) §401 and its commentary (1994).
12. J. D. Osofsky, *The Impact of Violence on Children*, 9 Domestic Violence And Children 38 (1999).
13. NCJFCJ, Model Code §405(1) (1999).

several tactics used to maintain control over another person. For purposes of this tool, we are defining abusive behavior as "a pattern of assaultive and coercive behaviors that operate at a variety of levels – physical, psychological, emotional, financial or sexual – that one parent uses against the other parent.[14] The pattern of behaviors is neither impulsive nor 'out of control,' but is purposeful and instrumental in order to gain compliance or control."[15]

Although the definition refers to a pattern of behavior, you may consider one incident of physical violence to be abusive behavior and therefore sufficient to put a child at risk.[16] This tool may use either the term "abusive behavior" or the term "coercive or controlling behavior" to refer to similar types of behavior patterns. Abusive or coercive behavior directed at an intimate partner, no matter how defined, can create serious safety risks for children.[17]

In recent years, a growing body of social science research has addressed the wide range of violent and abusive behavior in families, documenting its severity, frequency, and injurious outcomes, and arguing about who perpetrates it and for what apparent purpose.[18] Determining the level of risk for both parent and child is a crucial first step in making custody and visitation decisions. If you have any lingering safety concerns, put protections in place that address the source of the concerns prior to ruling on custody and visitation.

B. [§2.2] How Abusive Behaviors Might Manifest Themselves in Court

Often, the abusive parent will seek to control the at-risk parent through a mixture of criticism, verbal abuse, economic control, and isolation. The abusive parent may employ an array of other tactics, many of which may be more difficult to quantify for evidentiary purposes than physical or sexual assault.[19] Abusive behaviors within a parenting relationship are complex and often go unrecognized or unidentified in legal proceedings.[20] These behaviors, too, might not be readily or easily connected to any definition of abuse during the course of custody litigation.[21] The reactions of the at-risk parent to the abuse will be unique to the individual and the circumstances. Similarly, each child will experience domestic violence in unique ways depending on a variety of factors that include direct

14. This definition is derived from NCJFCJ Clare Dalton et al., Navigating Custody And Visitation Evaluations In Cases With Domestic Violence: A Judge's Guide 8 [hereinafter Navigating Guide] (2004, revised 2006), citing Anne L. Ganley, *Understanding Domestic Violence: Preparatory Reading for Trainers* in Anne L. Ganley & Susan Schechter, Domestic Violence: A National Curriculum For Child Protective Services 1-32.
15. *Id.*
16. This statement presumes the incident of physical violence by the abusive parent, and not an incident of resistive violence by the at-risk parent.
17. *See* §1.1 for a discussion of the impact of abusive behavior on children, whether or not the children were the intended targets of the controlling and violent behavior.
18. Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 Fam.Ct. Rev. 500 (2008).
19. Bancroft & Silverman, *supra* note 7 (citing J. Herman, Trauma And Recovery: The Aftermath Of Violence (Basic Books, New York 1992).
20. *See* L. Frederick & J. Tilley, Battered Women's Just. Project, Effective Interventions In Domestic Violence Cases: Context Is Everything (2001) at http://www.bwjp.org/documents/contextiseverything.htm.
21. Even the attorney representing the abused parent might not recognize domestic violence, especially where there has been little or no physical abuse.

physical abuse of the child, his or her gender and age, the time since exposure to violence, and his or her relationship with adults in the home. Some children may show no apparent negative developmental problems despite witnessing repeated violence.[22]

You may observe behavior in court that may not be readily identifiable as evidence of risk. Abusive parents and at-risk parents may behave in unpredictable ways depending on the circumstances of each case.[23] Some at-risk parents as a survival technique will minimize or deny that they have been abused, even when evidence of abuse is overwhelming. Both parents might minimize or deny the impact of the violence on the child. Or, the at-risk parent may express fear that the abusive parent will hurt the children, even if there is no evidence of prior child abuse.

C. [§2.3] Courtroom Demeanor of the Abusive Parent

As described elsewhere, there is no one pattern of behavior that you will observe in either the abusive parent or the at-risk parent. There are some behaviors, however, that indicate disrespect toward the other parent. These behaviors should raise red flags for you to determine whether they result from a pattern of control.

Often abusive parents present well, as they are skilled at maintaining control. An abusive parent might

- Believe or claim that the other parent is stupid, unsophisticated, or inflexible.
- Anger easily.
- Behave in an arrogant or superior manner.
- Attempt to present as the true victim in the relationship.
- Appear vulnerable or otherwise engender empathy with the court or with third parties.
- Be unwilling to understand another's perspective.
- Expect the child to meet the parent's needs.
- Advocate or adhere to strict gender roles.
- Patronize the other party, counsel, and even the court.
- Attempt to create an alliance with you.
- Minimize, deny, blame others for, or excuse inappropriate behavior.

This controlled courtroom presence of the abusive parent may contrast with the at-risk parent's behavior.

22. Edleson, *supra* note 4, at 7.
23. Frederick & Tilley, *supra* note 20.

D. [§2.4] Courtroom Demeanor of the At-Risk Parent

The at-risk parent may not present as well and might

- Have difficulty presenting evidence for any number of reasons: cognitive impairments resulting from abuse, fear, or a conviction that she[24] will not be believed.
- Demonstrate inappropriate affect resulting from fear, depression, post-traumatic stress disorder, or other response to abuse.
- Be extremely anxious and unfocused in the presence of the abusive parent.
- Be aggressive or angry when testifying.
- Show signs of distress when listening to the other parent's testimony.
- Appear numb, unaffected, or disinterested.

E. [§2.5] Distinguishing the "High-Conflict" Case

Both legal and mental health professionals acknowledge the relevance of parent-to-parent abuse and coercive control in determining the best interest of the child.[25] Family law cases involving evidence of abuse may be (and in fact, often are mistakenly) labeled "high-conflict." Abuse cases may have high-conflict characteristics, but they require a different set of considerations in order to promote safety for the at-risk parent and child.

High-conflict cases are those intense and protracted disputes that require considerable court and community resources during litigation and possibly after.[26] They are distinguished by mutual mistrust of each partner, poor impulse control, and cycles of reaction and counter-reaction which further erode the possibility of trust.[27] In cases with abuse, on the other hand, one parent exhibits attitudes and behaviors designed to exert inappropriate control over the other parent.[28] To add to the confusion, there may be responsive violence or protective behaviors by the victim parent, which may make the case appear to be high-conflict on the surface.

[§2.6] Remember: Abusive behaviors occur in all economic levels. Low-income at-risk parents may not have access to the resources they need in order to safely leave an abusive situation with their children. Parents who experience abuse in middle- and upper-class households may have different hurdles to overcome. They may be discredited by the abusive parent who may have special status in the business or local community. In addition, wealth and education can be confused with the ability to leave an abusive situation. The reality is that control is maintained by creating fear and is not related to wealth, although many at-risk parents may not have independent access to resources within the family while in the abusive situation, even in wealthy families.

24. Although the majority of victims of abuse and coercive control are women, this tool and the accompanying cards would apply equally where the at-risk parent is male. *See* Bureau Just. Stat., U.S. Dep't Just., Intimate Partner Violence, 1993-2001 1 (2003), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf (finding that about 85% of victimizations by intimate partners in 2001 were against women).
25. Peter G. Jaffe, Claire V. Crooks & Hon. Frances Q.F. Wong, *Parenting Arrangements After Domestic Violence: Safety as a Priority in Judging Children's Best Interest*, 6 J. Ctr Families, Child. & Cts. 81, 83 (2005), *citing* Janet R. Johnston, *High-Conflict Divorce*, 4 Future of Child. 165 (1994).
26. *Id.*
27. *Id.* at 84.
28. *Id.*

III. Analyzing the Evidence

Of course, one of a judge's primary functions is to consider the evidence, determine its credibility, and find facts based upon his or her assessment of that evidence. Often in family law matters, the temptation is to view competing or opposing evidence of abuse as "he said/she said." This perspective can result in ruling against the parent who has the burden of proof on the theory that without additional testimony to tip the scales, the court lacks sufficient evidence to rule otherwise.

The abusive parent benefits from that perspective. Often that parent has invested effort in convincing the at-risk parent that she will not be believed if she discloses the abusive behavior. The coercive parent's attempts to influence you in order to discount the other parent's testimony about the abuse is a method of manipulation aimed at you, as well as the other parent.

As a judicial officer, familiarity with the dynamics of abusive behavior and coercive control will enable you to assess the testimony and other evidence, and create a plan that is in the best interest of the children.[29]

A. [§3.1] Cross-Allegations

Cross-allegations of abuse are not uncommon.[30] Sometimes, it is the abusive parent who raises issues of abuse in an effort to discredit the at-risk parent. To sort through this type of testimony,

- Determine whether any alleged physical act was part of a pattern of emotional, physical, financial, or sexual abuse.
- Determine whether any alleged physical acts were done in response or in reaction to other forms of abuse and control, including financial control, isolation, physical violence, sexual abuse, or humiliation.[31]

29. For an excellent outline of abusive behaviors, see NCJFCJ, National Judicial Institute On Domestic Violence (hereinafter NJIDV), Understanding the Victim.
30. It is important to distinguish between levels of harm as well as to determine which parent engaged in a pattern of controlling behavior. Statistically, the mother is at far greater risk of being abused by the child's father than he is by her. *See* Bureau Just. Stat., U.S. Dep't Just., Family Violence Statistics: Including Statistics On Strangers And Acquaintances 1 (2005), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf (finding that females were 84 percent of spouse abuse victims, 86 percent of victims of abuse by a boyfriend or girlfriend, and 58 percent of family murder victims). *See also* Patricia Tjaden & Nancy Thoennes, Full Report Of The Prevalence, Incidence, And Consequences Of Violence Against Women 18-61, IV (2000) (finding that women (64 percent) were significantly more likely than men (16.2 percent) to report being raped, physically assaulted, and/or stalked by a current or former intimate partner and that women who were raped or physically assaulted by a current or former intimate partner were significantly more likely to sustain injuries than men who were raped or physically assaulted by a current or former intimate partner) as cited in NCJFCJ, Claire Dalton Et Al., Navigating Guide 7-9 (2004), revised 2006).
31. For an excellent discussion on the importance of differentiating types of violence in custody cases, see Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence; Toward a Differentiated Approach to Parenting Plans*, 46 Fam. Ct. Rev. 500 (2008).

- Consider whether one parent inflicted more harm.
- Consider the impact of the alleged abusive behavior on the other parent or the child.
- Consider a parent or child's fear of the other parent.

The more familiar you become with the dynamics of coercive control, the easier it will become to analyze the evidence in order to determine whether a pattern of abusive behavior is present.

B. [§3.2] Using Third-Party Information for Decision-Making

In the contested case, there may be sources of information that you will consider admitting into evidence, such as the reports of custody evaluators or expert witnesses. Determining whether to admit the reports or testimony into evidence and the extent to which you rely on them must be carefully considered, especially in cases where the safety of a child or a parent is at issue.[32] A good test of the source's expertise is whether any recommendations take into account the need to protect the physical and emotional safety of the child and the at-risk parent, and whether the recommendations offered make full use of the range of available alternatives.[33] While you may have one or more expert recommendations regarding the child's best interest, the ultimate responsibility for decision-making on issues of custody and visitation of course lies with you.

C. [§3.3] A Word of Caution about Parental Alienation[34]

Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation syndrome, or "PAS." The theory positing the existence of PAS has been discredited by the scientific community.[35] In *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999), the Supreme Court ruled that even expert testimony based in the "soft sciences" must meet the standard set in the *Daubert* case.[36] *Daubert*, in which the court re-examined the standard it had earlier articulated in the *Frye*[37] case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. PAS does not pass this test. Any testimony that a party to a custody case suffers from the syndrome or "parental alienation" should therefore be ruled inadmissible and stricken from the evaluation report under both the standard established in *Daubert* and the earlier *Frye* standard.[38]

32. For an excellent discussion on admitting the reports of custody evaluators and expert testimony, see generally NCJFCJ Clare Dalton et al., Navigating Guide.
33. *Id.*
34. This section, including the footnoted material was excerpted from Navigating Guide at 24-25.
35. According to the American Psychological Association, " ... there are no data to support the phenomenon called parental alienation syndrome ..." Am. Psychol. Ass'n, Violence And The Family: Report Of The American Psychological Association Presidential Task Force On Violence And The Family 40, 100 (1994) (stating that custody and visitation disputes appear to occur more often in cases in which there is a history of domestic violence).
36. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).
37. *Frye V. U.S.*, 293 F. 1013 (D.C. Cir. 1923).
38. These are federal standards, but many states adhere to them at least generally and should still exclude any proffered evidence of PAS.

The discredited "diagnosis" of PAS (or an allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the child's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the child's responses by acting in violent, disrespectful, intimidating, humiliating, or discrediting ways toward the child or the other parent. The task for the court is to distinguish between situations in which the child is critical of one parent because they have been inappropriately manipulated by the other (taking care not to rely solely on subtle indications), and situations in which the child has his or her own legitimate grounds for criticism or fear of a parent, which will likely be the case when that parent has perpetrated domestic violence. Those grounds do not become less legitimate because the abused parent shares them, and seeks to advocate for the child by voicing his or her concerns.

IV. Respectful Interaction and Safety in Custody Cases with Child Safety Issues

A. [§4.1] Respectful and Safe Interaction

To encourage **respectful interaction** during the course of litigation, you may wish to

- Insist that the attorneys treat all parties with respect. If the abusive parent's attorney is allowed to be disrespectful toward the opposing counsel, the opposing party, or any witnesses, that behavior serves to empower the abusive parent and can thereby increase the safety threat to the at-risk parent.
- Because the at-risk parent may need additional time to answer questions, insist that the attorneys give each party adequate time to respond.
- Insist that counsel maintain a respectful distance from the witness.
- Warn the parties and counsel against the use of sarcastic or other disrespectful remarks or tone.
- Impose sanctions for the continued use of disrespectful tone, remarks, or tactics.
- Watch out for and intervene to stop any controlling non-verbal behavior by one parent toward the other.
- If one or both parents are *pro se*, require all questions and answers in court to be funneled through you.

To ensure **safety** during the course of litigation when you suspect that one parent has been controlled by the other parent, you may wish to

- Inform security that the suspected abusive parent must be kept a safe distance from the

financial reasons. The same jurisdictional laws apply to these moves except that temporary emergency jurisdiction may not be available.[46]

E. [§5.6] Tribal Jurisdiction

Tribal courts vary in their responses to custody issues and family violence. As sovereign nations, tribes have their own laws addressing civil protection orders, custody and visitation, and parent-child relationships. If you have a case involving Indian children or jurisdictional issues with a tribe, you should communicate with the tribal court.

VI. Temporary and Emergency Orders

Often, one of the parties requests that the court enter an interim order of custody or visitation at the outset of a case. In cases where the pleadings or affidavits in support of such a request contain allegations that raise safety concerns, or you have such concerns for some other reason, you should consider scheduling a hearing, even if your jurisdiction allows temporary or emergency custody and visitation rulings without a hearing. The hearing can provide you with an opportunity to gather important information and conduct a safety assessment.

Some examples of concerning allegations are:

- A child is unsafe with one parent.
- A child has been subjected to adult behavior that is inappropriate for a child to witness.
- One of the parents has been physically abusive to the child, the other parent, or a new or former partner.
- One parent is a sex offender or has a new partner who is a sex offender.
- Child or adult protective services has been involved with this family or individual family members.
- A parent or other caregiver has a substance abuse problem.
- A child engages in sexualized behavior.
- One parent has committed an act of psychological or emotional abuse.
- One parent controls the financial resources.
- The parent alleged to be abusive has a history of being abused either as a child or as an adult.
- The parent alleged to be abusive has a history of witnessing abuse as a child.

46. For further discussion, see Deborah Goelman & Darren Mitchell, *Interstate Custody Cases*, in ABA, The Impact Of Domestic Violence On Your Legal Practice (2004) at 257; Billie Lee Dunford-Jackson, *The Uniform Child Custody Jurisdiction and Enforcement Act: Affording Enhanced Protection for Victims of Domestic Violence and their Children*, 50 Juv. & Fam. Ct. J. 55 (1999).

- One parent is not contributing substantially to the support of the child.
- One parent does not permit the child to bring toys or clothing to the other parent's house.
- A parent's immigration or disability status makes that parent unsuited to be the child's primary custodian.[47]

As with the initial filing, you may not have substantial evidence before you at this stage; nevertheless, you may observe statements or behaviors that trigger your concern for a child's physical, emotional, or mental health with one or the other of the parents. Though coercive control can be subtle and the things that concern you are only nuances, they should not be disregarded. They serve to keep you alert for other indicia as the case progresses.

A. [§6.1] Why Financial Control is Relevant to Early Decisions

Financial control is frequently part of coercive behavior and can be sufficient in itself to maintain control over the entire family. Controlling finances can also be a method of limiting the other parent's ability to parent effectively. For example, abusive parents might want to pay family expenses directly, rather than make support payments to the other parent. More typically, financial control appears as part of a complex of controlling behaviors.[48]

B. [§6.2] Moving toward Certainty

At this stage, you may feel that you do not have sufficient information to make a decision on custody and visitation based upon the pleadings or other evidence presented. As long as you have unresolved safety concerns, you should refrain from any decision. Steps you can take to move toward the certainty you need include

- Ordering the parties to provide essential information.
- Appointing a third party trained and experienced in safety and abuse issues to make a factual investigation regarding claims made by the parents or to otherwise secure information that you need.
- Giving the parents clear deadlines to provide specified information or otherwise comply with an order.
- Directing court personnel to assist *pro se* clients locate needed information.

Whenever you have concerns regarding the safety of a child or a parent, you should consider protective measures such as professionally supervised visitation or limited access

47. G. Pendleton, *Ensuring Fairness to Noncitizens Survivors of Domestic Violence*, 54 Juv. & Fam. Ct. J. 69, 72 (2003).
48. *See generally* NCJFCJ, NRCDV, Perpetrator's Abusive Tactics.

by the abusive parent if there are no formal supervised visitation centers in your community. You could order enrollment and strict attendance in a certified treatment program for the abusive parent.[49] While compliance with a treatment program order does not ensure that an abusive parent has changed the concerning behavior, non-compliance can be a clear indicator that a parent does not respect boundaries. Not respecting rules and boundaries (including the terms of your orders) is often characteristic of individuals who engage in tactics of coercive control.

VII. Initial Filing

It is troublesome to consider that the individuals who appear before you may be causing harm to their children, whether they are doing so directly or indirectly. The earlier in a case that you recognize signs of coercive and controlling behaviors, the earlier you can take steps to create safety for the child and the at-risk parent. Often, you may be able to recognize signs of abuse at the very beginning of a case, long before an evidentiary hearing is calendared.

A. [§7.1] Review the Pleadings and Case History

It is important to review thoroughly the content of the pleadings as well as the litigants' court history very early on. Even though most judges feel the pressure of a busy docket and know that the claims pled and remedies requested may change during the course of the litigation, taking time to consider carefully the information that initial filings contain is a good use of resources. In fact, spending time considering what is – and what is not – contained in the pleadings may save substantial time as the litigation proceeds. The earlier you become aware that safety may be a consideration in the case, the earlier you can issue appropriate orders.

For example, was cruelty or abuse alleged in the pleadings? Allegations of abuse must be taken seriously as a warning sign that household members could be unsafe. Of course, the parties will have to provide evidence to the court to support any claim of abuse; yet, the fact that one party has made the allegations should alert you to be mindful of safety issues. At this stage of the litigation, you simply want to be aware of the fact that abuse has been raised and that further exploration on your part is required.

B. [§7.2] Review the Family's History

You might consider obtaining a history of prior court proceedings by the parties. Information contained in civil protection orders, prior family court pleadings, and criminal

49. Under many state statutes, judges have discretion to order a variety of remedies that promote the safety and well-being of the child, including attendance in and successful completion of an intervention program for batterers. *See, e.g.*, 10 MASS. GEN. LAWS ch. 209 § 38 (2007), ARIZ. REV. STAT. § 25-403.03 (2006). *See also* NCJFCJ, MODEL CODE § 405 2(C) (1994).

records might indicate that the family is high-risk and that the children might not be safe. Even though it is far too soon for findings in the case, it is important at this stage to be alert to the fact that safety is a likely factor.

C. [§7.3] A Word of Caution about the Absence of Allegations

The absence of allegations of abuse or the absence of requests for sole custody does not mean that safety risks are not present. For any number of reasons, victims of abuse may fail to disclose the abuse in their initial pleadings; among them, a fear of increasing the level of dangerousness,[50] embarrassment or shame, or advice from an attorney that asserting such claims may be detrimental to their case or delay resolution. Continuing to be sensitive to safety risks as the case proceeds will help you make appropriate safety assessments.

D. [§7.4] A Word of Caution about Requests for Sole Custody

Requests to exclude one parent substantially from any form of shared parenting may be made for one of two reasons: the abusive parent might be attempting to control the litigation and the at-risk parent by requesting sole physical custody or sole decision-making authority regarding the child;[51] or, if abuse has occurred, the abused parent may be making the request as a safety strategy for both the abused parent and the child. In essence, either parent's request for sole custody may be a warning that family members have experienced abuse. Because there may be safety concerns underlying the request for sole custody, explore the reasons behind the request prior to making any determination about custody or visitation.

[§7.5] Remember: Performing a sufficient initial safety assessment is critical to good decision-making. Paying attention to potential safety issues at the outset of the case reduces the risk of harm to abused family members and helps ensure that the court proceeds in a positive direction. Early assessment and intervention also result in a savings of time for the court later. Additional hearings in order to put safety measures in place at a later time, when access issues break down, are potentially avoided. Careful scrutiny through a safety lens early on can help ensure that the best interest of the child is met.

50. Jaffe et al., *supra* note 25, at 82.
51. Your jurisdiction might use different nomenclature. Physical custody, primary residential parent, sole physical or legal custody might be used to describe when one parent has primary custody or makes the final decisions regarding a child. Visitation might be called parenting time or custodial time. For the purposes of this guide, we use the terms physical custody, visitation, and decision-making authority.

VIII. The Pretrial Process

A. [§8.1] The Discovery Process

A number of strategies are available to control the discovery process and enhance safety:

- Enforce no-contact orders so that the parties are not both present at depositions.
- Permit counsel to interrupt a deposition to consult with a client by telephone outside the presence of the other parent.
- Use remote video or other technology for deposition testimony, with the abusive parent being out of sight and earshot of the at-risk parent.
- Order the attorney requesting discovery to submit a safety plan[52] to the court for your approval.

B. [§8.2] Appointment of Third Parties

When you determine that a situation requires a third-party professional and the safety of the child or a parent is at issue, it is critical that you appoint professionals who are qualified. It is essential that **any**[53] professional brought into such a case, in whatever capacity, has extensive training in the dynamics of abuse and coercive control. As stated earlier, this pattern of behaviors is complex. Abuse and the responses to it are sometimes counterintuitive, susceptible to misinterpretation, and can lead to serious harm to the parent who is the target of abuse and to any child exposed to it.

C. [§8.3] The Pretrial Conference

Many jurisdictions require a pretrial conference to narrow the trial issues and settle those issues on which the parties agree. Your jurisdiction might require the parents to meet to discuss settlement prior to appearing at the pretrial conference. In cases where a protection order is in effect, you might amend the meeting requirement so that only the attorneys meet, if both parents are represented. To require the parties to come face-to-face where a protection order specifically prohibits such an event sends mixed messages to the parents, sets up a potential power imbalance between them, and can increase the level of harm to the at-risk parent.

52. *See e.g.*, Jill Davies, VAWNET APPLIED RESEARCH FORUM, SAFETY PLANNING (1997), available at http://new.vawnet.org/Assoc_Files_VAWnet/DaviesSafetyPlanning.pdf.
53. Professionals may include guardians *ad litem*, custody evaluators, parenting coordinators, mental health professionals, or unpaid volunteers such as court appointed special advocates (CASAs).

D. [§8.4] Drafting the Pretrial Order

Whenever you draft a pretrial order, be as clear and specific as possible. In cases where coercive control does exist, the abusive parent will likely use every contact with the other parent as an opportunity to continue the abuse. Therefore, the less room for contact or for differing about the meaning of a term of your order, the greater the safety. In some cases, where risk is high, you may need to provide for no contact between the parties or between the abusive parent and child, at least at this stage of the proceedings.

[§8.5] Suggestions: In appropriate cases, consider an award of substantial attorneys fees at the outset of the case. This corrective action is important where, for example, the abusive parent controls access to the financial information or controls the purse strings, so the at-risk parent lacks the means to finance necessary discovery.

E. [§8.6] Litigation Abuse during the Pretrial[54] Process

A parent who uses tactics of coercive control may find litigation to be an effective means of controlling the other parent.[55] Contact with the at-risk parent is critical to effectuating control strategies, and family court processes allow many opportunities for contact. Often court proceedings are the only contact available if the two parents are living separate and apart, with a protection order in place.

When both parents are *pro se*, court processes permit them direct access both in and out of court. When the abusive parent has legal representation, frequent court hearings reinforce the imbalance of power for unrepresented, at-risk parents and run up legal costs for at-risk parents who have retained counsel. For the at-risk parent, multiple pretrial appearances tend to maximize emotional trauma and increase the risk of losing employment by requiring time away from work.

Pretrial restrictions on custody and visitation are an especially powerful trigger for abusive behavior. Very often, abusive parents make multiple appearances seeking to undo orders that they perceive to be unfavorable to them, even in the absence of any change in circumstance between hearings. In addition, abusive parents may make multiple requests for continuance or otherwise seek to postpone final judgment. A final judgment will provide one less means of access to the at-risk parent and possibly to the child.

54. Litigation abuse is not limited to the pretrial process and can occur at any point in the case, whether pre- or post-trial.
55. Legal process tactics of control can be present whether or not a party is represented by counsel.

The Approach of the Prosecutor

- How can I prove this case if the victim does not testify in this case?
- What evidence exists that I have never used before?
- If this was a circumstantial evidence homicide case, how would I prove it?
- Judges need information…prosecutors are the conduit!!!!!

VI. Illegal Practice of Law

See “confidentiality” and “Family Justice Center Legal Network.”

Family Justice Center Instructions to Social Workers:
How to Draft a Motion to Quash a Grand Jury Subpoena to FJC Clients; How to File a Motion for a Protective Order to Hide Documents/Information from Legal Process:
Providing “TA”, including “community-appropriate” ideology and legal opinions—to Alliance/partners nationwide

Family Justice Center Alliance

- Launched in April 2006 as a program of the SDFJC Foundation
- Separate, Non-profit Organization in January 2008
- Provide Technical Assistance, Training, Consulting & Strategic Planning to pending and existing Family Justice Centers across the globe
- Serve as the official TA provider for PFJCI, New Orleans and OVW Grantees
- Work with all federal TA providers
- Work with a National Advisory Board

Family Justice Center Alliance

- Host the International FJC Conference in April
- Host Free Monthly Webinars
- Develop International Internships & Work Exchanges
- Develop Resource Materials: Books, Protocols, etc
- Develop National Standards and Identify Best Practices
- Developing the Family Justice Center Institute, a specialized training and on-line learning center for professionals working in Family Justice Centers and for survivors of domestic violence and their children.

In Their Own Words; The Closing Slide to Numerous Alliance Seminars to Social Workers:

Questions?

Are you really confused now?
Want to go to law school?

Malingering/Obstruction of Justice, influencing judges, appearance of bias, non-immune coaching

TODAY'S AGENDA

- Identify Civil Legal Promising Practices:
  - What is the value?
  - Why is it needed?
  - What is being done?
    - FJCs Leading the Way
  - How do you get started?
    - Food for Thought
  - Questions
  - Next Steps
- Updates

WHAT IS THE VALUE?

- Promising Practices for Civil Legal Matters within FJCs:
  - Fax Filing
  - E-Filing
  - Video-Teleconferencing
  - Other

WHAT IS BEING DONE? FJCS LEADING THE WAY

- Examples from FJCs: Anaheim, CA; Montgomery County, MD; Riverside, CA; Tacoma, WA; Tulsa, OK
- What
  - are you doing? Fax Filing, E-Filing, Video-Teleconferencing, etc.
- Why
  - did your Center decide to do this?
- How
  - did you get started?
- What
  - is your relationship like with the court?
  - is the process?
  - is the volume?
  - is the equipment you use?
  - is the budget for the equipment and process?
- What are the benefits and outcomes?

FJCS LEADING THE WAY: ANAHEIM, CA

- What are you doing?
  - Video-Teleconferencing for TROs
- Why did your Center decide to do this?
  - For the benefit and safety of our clients
  - To become a "one-stop shop"
- How did you get started?
  - Began three years ago with initial discussions with the court and worked closely with them to get it set up
- What
  - is your relationship like with the court?
    - Our relationship with the court remains good, mostly because of the relationship with personnel from the Center and the court. Specifically, one of our partners, Community Service Programs (CSP), provides a victim advocate, who actually takes clients through the process.
  - is the process?
  - is the volume?
    - Average of 40 per month
  - is the equipment you use?
  - is the budget for the equipment and process?
    - The budget is comprised of maintenance for the equipment. Personnel costs are borne by CSP as part of our partnership with them at the Center.
- What are the benefits and outcomes?
  - No hard data available. However, it seems as though clients are more likely to follow-through with permanent restraining orders later in the process, as the environment is relaxed and the clients are more comfortable at the FJC

FJCS LEADING THE WAY: TACOMA, WA

- What are you doing?
  - Protection Order Kiosks
  - "LINK" Software Program
    - The Pierce County Legal Information Network Exchange (LINX) system is an integrated criminal and civil justice information system initially developed in 1993. It is now used by 1000 employees in Pierce County's Prosecutor's Office, Courts, Department of Assigned Council, Corrections Bureau, Probation Department, Family Justice Center and by more than 1000 private attorneys.
- Why did your Center /Community decide to do this?
  - Kiosk:
    - Community began this program in 2004; Center began using kiosks in 2005
    - Began using this system to enhance victim safety and make it easier for victims to obtain protection orders
  - LINK:
    - LINK was developed to facilitate data sharing and exchange and to reduce redundancies in data entry. LINK is available on the Internet at
- What
  - KIOSK:
    - Petitioners can apply for TROs via kiosks located around the county
  - LINK:
    - Subscribers can view upcoming superior court calendars, list case information, obtain selected court forms, view filed documents and view the jail roster. Attorneys who get LINK accounts can view court documents, electronically file selected documents, and confirm or strike commissioner proceedings.
    - The Pierce County Clerk maintains the automated official court record, including a complete docket in LINK. Superior Court case files are tracked using bar codes in LINK.
    - Another resource provided through LINK is the module allowing for remote, electronically filed Protection Orders via kiosk. This was first piloted in 2003. Pierce County has approved LINK to be released as open source under the GNU General Public License version 3
- What are the benefits and outcomes?
  - Simplified petition process
  - Streamlined reporting

NFJCA - August 2010

FJCS LEADING THE WAY: TULSA, OK

- What are you doing?
  - Video-Teleconferencing for EPOs
- Why did your Center decide to do this?
- How did you get started?
  - The FSC in Tulsa has conducted telephonic/video EPO hearings since we opened in 2006

NFJCA - August 2010

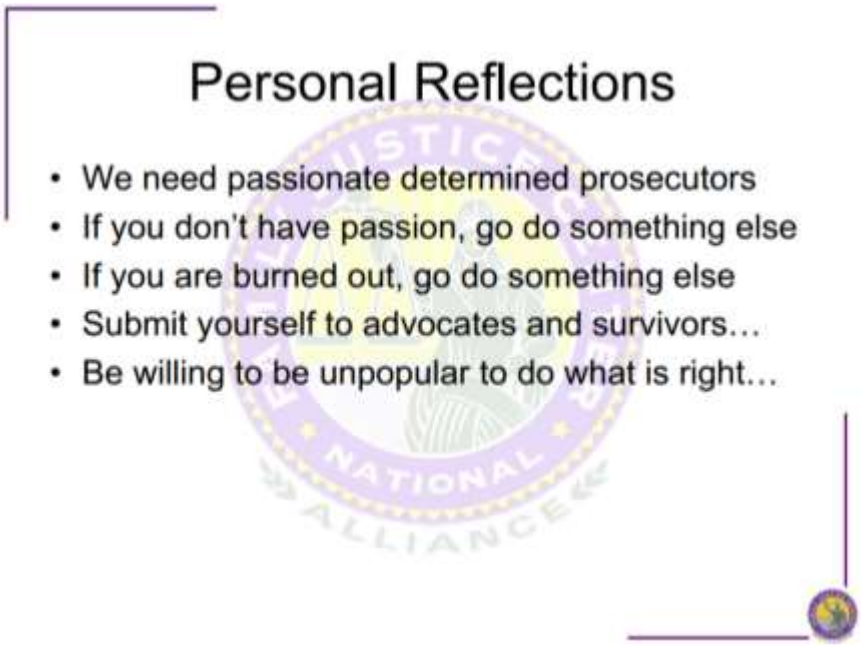
FJCS LEADING THE WAY: TULSA, OK (CONTINUED)

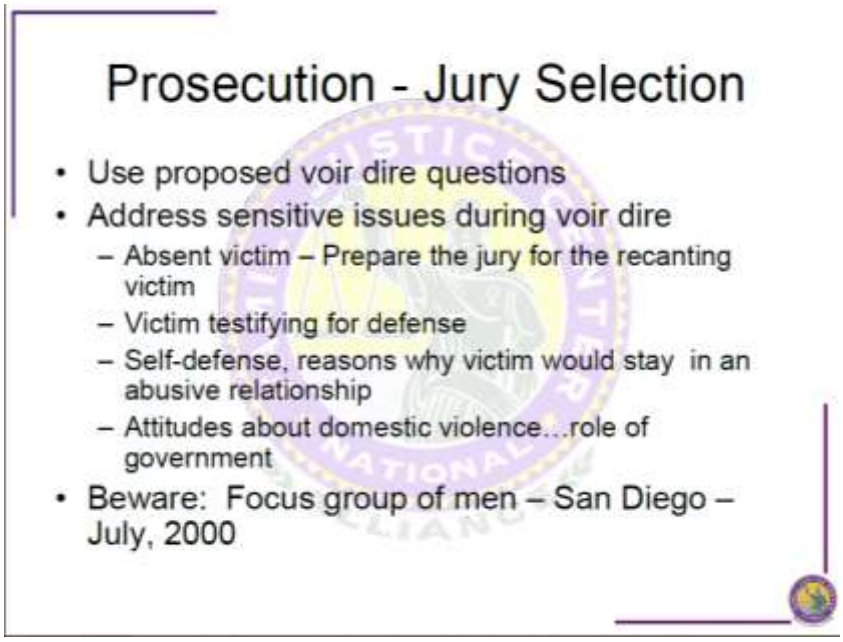
- What
  - Is your relationship like with the court?
    - The FSC has an excellent working relationship with all of the Family Relations judges. They tell us that they have confidence in the EPOs we file on behalf of the clients because of the eligibility screening and personal assistance we provide to each client.
  - Is the process?
    - Our district judge calls at a designate time each day (Monday – Friday) and takes testimony from each client present. The client hears the judge, but the judge hears and sees the client. The judge grants or denies the EPO during the hearing and discusses emergency custody or other family relations issues that arise during testimony. Our advocates, translators, and chaplain are present in the hearing room to support the clients. The completed EPO packet has been faxed to the Family Relations Court Clerk earlier in the day and delivered to the EPO judge at the Courthouse prior to the hearing. Our office then picks up the signed and filed EPOs and returns them to the clients at the Family Safety Center within 30 to 45 minutes most days. We use the post-hearing time to show an instructive video on what to expect during the full PO hearing in two weeks at the Courthouse and provide counseling and other services where requested.
  - Is the volume?
    - We currently see nearly half of all protective order clients in Tulsa/Tulsa County (1,600 annually) and would like to centralize the protective order services under the FSC.
  - Is the equipment you use?
    - Our equipment is old and we are in the process of replacing and upgrading our system so we will have video access in both directions for the future—more like a video arraignment. In spite of that, the process works well. We now have a single, dedicated protective order judge, but we have relied on a revolving judicial docket in the past.
  - Is the budget for the equipment and process?
- What are the benefits and outcomes?
  - The Court grants 96% of our Family Safety Center-prepared EPOs, while the EPOs heard only at the Courthouse, without the same level of advocacy and support services (victim counseling, DA victim-witness, law enforcement investigative, civil legal, etc.) here, are issued in the 75% range.

HOW DO YOU GET STARTED? FOOD FOR THOUGHT

- What are you state laws regarding Fax Filing, E-Filing, Video-Teleconferencing, etc.?
- How lenient is your court with pilot projects?
- How strong is your relationship with the court?
- What is your current volume of TROs, Contested Hearings, Mediation, etc?
- What will be your focus (TROs, Mediation, Contested Hearings)?
- What will the screening process look like?
- What type of equipment will you need to get started?
- Where will the funding for this project come from?

Family Justice Center Alliance Leadership, Advice, Education for Prosecutors and Courts:





Jury Selection, continued:

- Educate the jury
- Identify batterers and victims
- Focus on the state vs. the batterer
- Study shows that 1 out 3 jurors will lie
- Discuss sensitive issues in private
- Lower the expectation for level of violence

Prosecution - Opening Statement q

- Tell the story 3 times
- Re-create the emotion of the crime
- Use your evidence - 80/20 Rule
  - 911 tape, weapons, photos
  - Create evidence – People v. Brian Krueger (9/2002)
- Pick a theme
  - Power & Control, Accountability, Effective Intervention
- Prepare jury for an absent victim
- Use powerpoint in your opening

Prosecutors

- Don't File Everything
- Once you file, make it stick!
- Educate the court with studies, research, and statistics in bail arguments
- File trial briefs…Bring the terror and passion of DV to the court…or find another area to work in…
- Advocate for graduated sanctions (30/90/Max)

Effective Intervention Themes

- Making the Victim Safer
- Holding the Abuser Accountable
- Stopping and Preventing the Violence
- Never Letting a Victim Die in Vain
- Making Misdemeanors Matter

Putting on Your Case

- Put a police officer on first, last
- Alternative: Expert first, cop in the middle, and cop last
- Never put your victim on first
- Believe in your cause/Be passionate (or go do something else for a living)
- If you don't have good physical evidence, create some!

VII. Family Justice Center Alliance Reliance on Funding by United States, Private Financial Supporters

Family Justice Center Alliance

- Publicly and privately funded national alliance modeled after the National Children's Advocacy Center
- National TA Team – On-site assistance, On-line assistance
- National standards/Web TV (Coming)/Video teleconferencing/Staff Exchanges/International Conferences/Webinars
- Coordinated with OVW Funded-National FJC Technical Assistance Project for federally funded sites
- FJC Institute funded by Verizon Foundation (including technology-based pilot projects)
- www.familyjusticecenter.org

Office on Violence Against Women

- FJC Purpose Area in VAWA 2005
- On-going TA for PFJCI sites
- TA for other federally funded FJC communities
- Today, 45 operating Family Justice Centers in the U.S. and around the world, 50-60 Centers in planning stages…
- Family Justice Center Alliance Now Launchedo-
- Co-located Services Evolving Around the World

OMB Number: 1122-0020
Expiration Date: 6/30/2013

U.S. Department of Justice
Office on Violence Against Women (OVW)

OVW Fiscal Year 2013 Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program

Eligibility

Applicants are limited to States; units of local government; Indian Tribal governments; and State, local, Tribal, and Territorial courts.
(See "Eligibility," page 7)

Deadlines

Application: All applications are due by 11:59 p.m. Eastern Time (E.T.) on March 25, 2013.
(See "Deadlines: Application," page 5)

Registration: To ensure all applicants have ample time to obtain a Data Universal Number System (DUNS) Number and complete the registration processes, applicants should register online with the System for Award Management (SAM) and with Grants.gov well in advance of the application deadline.
(See "Deadlines: Registration," page 6)

Pre-Application Conference Calls: OVW will conduct Pre-Application Conference Calls for anyone interested in submitting an application for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program. Participation in these calls is optional. Interested applicants who do not participate are still eligible to apply.
(See "Pre-Application Conference Calls" page 6)

Contact Information

For assistance with the requirements of this solicitation, contact OVW at (202) 307-6026.

In Fiscal Year 2013, OVW applications will be submitted through Grants.gov. For technical assistance with Grants.gov contact the Grants.gov Customer Support Hotline at 1-800-518-4726.

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OMB Number: 1122-0020
Expiration Date: 6/30/2013

OVW Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (CFDA 16.590)

Overview

The Office on Violence Against Women (OVW) is a component of the United States Department of Justice (DOJ). Created in 1995, OVW implements the Violence Against Women Act (VAWA) and subsequent legislation and provides national leadership on issues of sexual assault, domestic violence, dating violence, and stalking. Since its inception, OVW has supported a multifaceted approach to responding to these crimes through implementation of grant programs authorized by VAWA. By forging state, local and tribal partnerships among police, prosecutors, judges, victim advocates, health care providers, faith leaders, and others, OVW grants help provide victims with the protection and services they need to pursue safe and healthy lives, while improving communities' capacity to hold offenders accountable for their crimes.

About the OVW Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program

The Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) recognizes that sexual assault, domestic violence, dating violence, and stalking are crimes that require the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution of violent offenders, and through close judicial scrutiny and management of offender behavior.

This discretionary grant program is designed to encourage State, local, and Tribal governments and State, local, and Tribal courts to treat sexual assault, domestic violence, dating violence, and stalking as serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system. The Arrest Program challenges the community to listen, communicate, identify problems, and share ideas that will result in new responses to ensure victim safety and offender accountability.

For additional information on the Arrest Program, including what past Arrest Program grantees have accomplished with their grant funds and to view the Arrest Program performance measures, see http://muskie.usm.maine.edu/vawamei/cdsarrestmain.htm.

Deadlines

Application

All applications will be submitted electronically. The deadline for submitting applications in response to this grant announcement is **11:59 p.m. E.T. on March 25, 2013**. Applications submitted after **11:59 p.m. E.T. on March 25, 2013** will not be considered for funding.

Violence Against Women Act
Measuring Effectiveness Initiative
Muskie School of Public Service, University of Southern Maine

January 1, 2011—June 30, 2011
Office on Violence Against Women

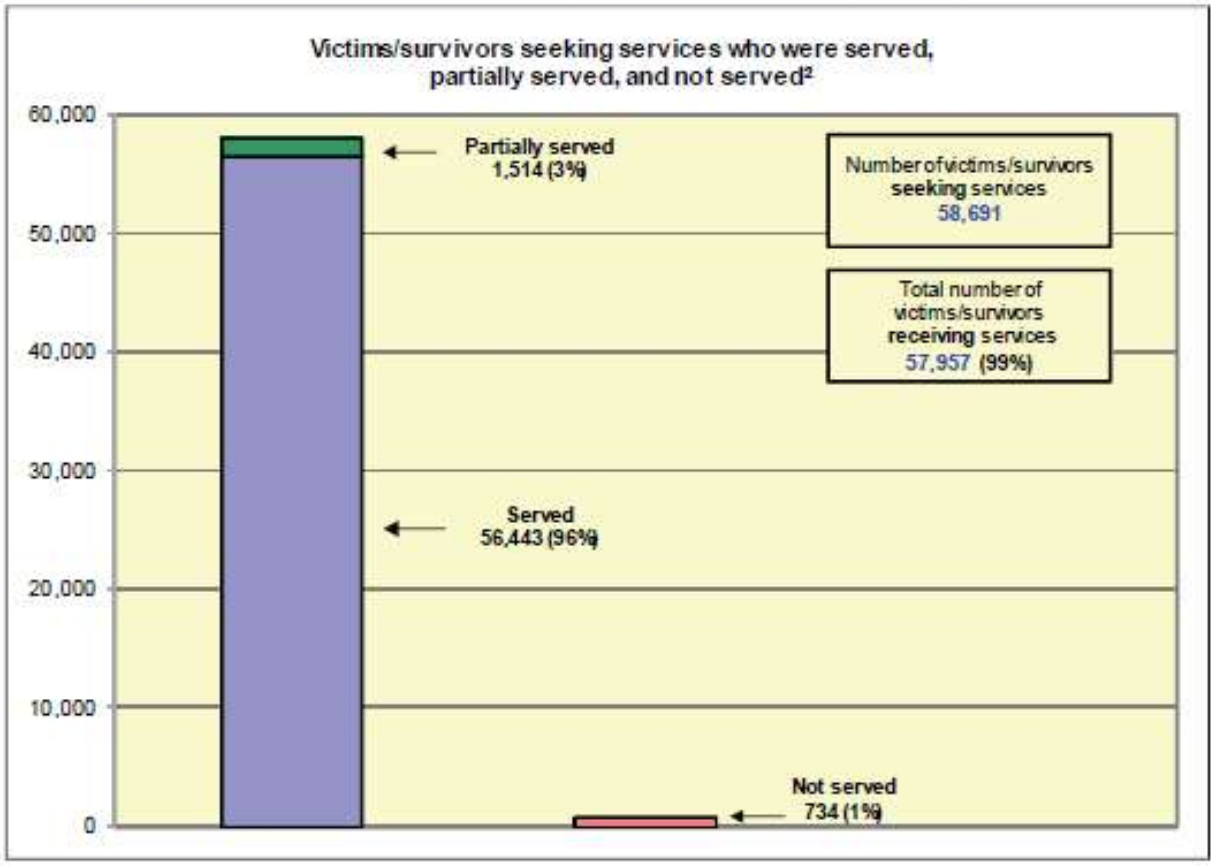
Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program)[1]

The purpose of the Arrest Program is to encourage state, local, and tribal governments and state, local, and tribal courts to treat sexual assault, domestic violence, dating violence, and stalking as serious violations of criminal law requiring coordination with nonprofit, nongovernmental victim advocates and representatives from the criminal justice system. This program challenges the whole community to communicate, identify problems, and share ideas that will result in new responses and the application of best practices to enhance victim safety and offender accountability.

Number of grantees reporting	199

Victim Services: Arrest Program grantees provided services to more than 57,900 victims/survivors of sexual assault, domestic violence, dating violence, and stalking to help them become and remain safe from violence.

Number of grantees using funds for victim services: 155 (78% of all grantees reporting)



[1] This report contains selected data submitted by Arrest Program grantees on a semi-annual progress report.
[2] Percentages are based on victims/survivors seeking services.

OMB Clearance # 1122-0027
Expiration Date 04/30/2015

U.S. Department of Justice
Office on Violence Against Women
SEMI-ANNUAL PROGRESS REPORT FOR
Engaging Men and Youth in Preventing Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program

Brief Instructions: This form must be completed for each Engaging Men and Youth in Preventing Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program (Engaging Men and Youth Program) grant received. A grant administrator or coordinator must ensure that the form is completed fully with regard to all grant-funded activities. Grant partners, however, may complete sections relevant to their portion of the grant. Grant administrators or coordinators are responsible for compiling and submitting a single report that reflects all information collected from grant partners.

Following are some guidelines and examples regarding sections of this form that must be completed by Engaging Men and Youth Program grantees:

- All grantees must complete the following: Subsection A1, Section B, Subsection C6, and Section D.
- In subsections A2, C1-C5, C7, and C8 grantees must answer an initial question about whether they engaged in certain activities during the current reporting period. If the response is yes, then the grantee must complete that subsection. If the response is no, the rest of that subsection is skipped.

For example,

1) If you are in the planning phase, you should complete A1, A2, B, C1, C6, and D.

2) If you are providing education programming with staff or volunteers and distributing manuals that you developed under this grant, you should complete A1, A2, B, C4, C5, C6, C8, and D.

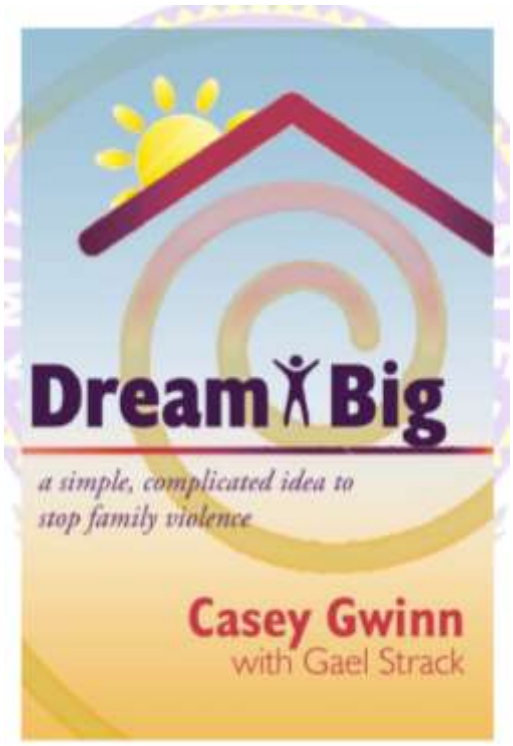
3) If you are providing training with staff funded under this grant, you should complete A1, A2, B, C2, C6, and D.

The activities of volunteers or interns should be reported if they were coordinated or supervised by Engaging Men and Youth Program-funded staff or if Engaging Men and Youth Program funds substantially supported their activities.

For further information on filling out this form, refer to the separate set of instructions, which contains detailed definitions and examples illustrating how questions should be answered.

Lessons Learned

- Location should be anonymous (if possible) but need not be secret
- Location should be close to courthouse if lawyers will be located in the center
- Need bus line or easy access, free parking or validated parking
- Building options: Public building, private (rented building), Purchased building, Stand –Alone building, mixed use building



Designing the Model

VIII. The Family Justice Center's Diagnosis of it's own Impediments to Growth: Struggles for "power and control" within Alliance:

What is the biggest problem so far in Family Justice Centers?

POWER AND CONTROL!!!

It Should Not Surprise Us…

- Human beings who move in together…display their own stuff in the relationship…
- Mistrust, dishonesty, disrespect will not magically disappear when we get married and move in together…
- Differing value systems produce different priorities for different people…
- Poor communication leads to unhappy relationships…
- Some people should not get married…even if they are both good people…

The Biggest Challenges so far…

- Power and Control
- Personality conflicts
- Turf battles
- Ego clashes
- Stress
- Anger
- Unhealthy relationships
- Disrespect
- Selfishness
- Gossip

What are the biggest problems developing true collaboration?

- **Power and control**
- Personality conflicts
- Ego struggles
- Politics/Competition/Limited resources
- Different value systems, priorities, goals
- Different visions for service delivery
- Lack of grace, mercy, forgiveness
- Lack of accountability and mutual respect
- Poor, inconsistent communication
- Lack of compromise, negotiation
- No one listens to survivors and let's them participate in the design of the service delivery model
- Weak collaborative leadership

Power and Control Is a Familiar Problem Sometimes Readily Diagnosed by Feminists:

Paternalism

"Behavior, by a person, organization or state, which limits some person or group's liberty or autonomy for their own good. Paternalism can also imply that the behavior is against or regardless of the will of a person, or also that the behavior expresses an attitude of superiority. Source: Wikipedia"

From Battered Women's Justice Project: "Power and Control Wheel" of Paternalism.

Family Justice Center Aliance's Advice on How to Manage "Power and Control" Struggles in Human Relationships:

What we did right

- Bottom Line – What is Best for Victims?
- Put egos aside
- Be Flexible – Constantly!
- Clear Focus – Never give up hope
- Asked for help when it is needed
- Never say never
- Ability to Get it Done!

*"There is **Always** more power in collaboration. There is **Always** more opportunity to meet the diverse needs of victims and their children when we work together."*

-Casey Gwinn

Reflections

- The Journey of Social Change Organizations and Movements…Reinvention is Critical
- Check Your Ego at the Door
- Leadership Matters
- Relationships…Relationships… Relationships…

Reminders for Dreamers

- Be Focused and Persistent
- Be Overcomers: Politics, Turf Issues, Competing Priorities, Enemies, Money, and Personality Conflicts
- Stay Humble
- Learn from past mistakes
- Listen to advocates/survivors
- Always aspire, never settle
- Beyond services…what is your Camp Hope?

Defining Effective Intervention

- Making the Victim Safer
- Holding the Abuser Accountable
- Stopping and Preventing the Violence
- Never Letting a Victim Die in Vain
- Making Misdemeanors Matter

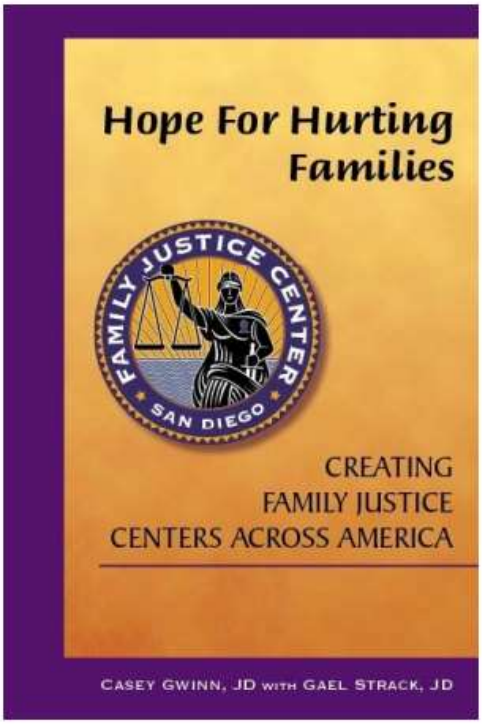
The Backlash Movement

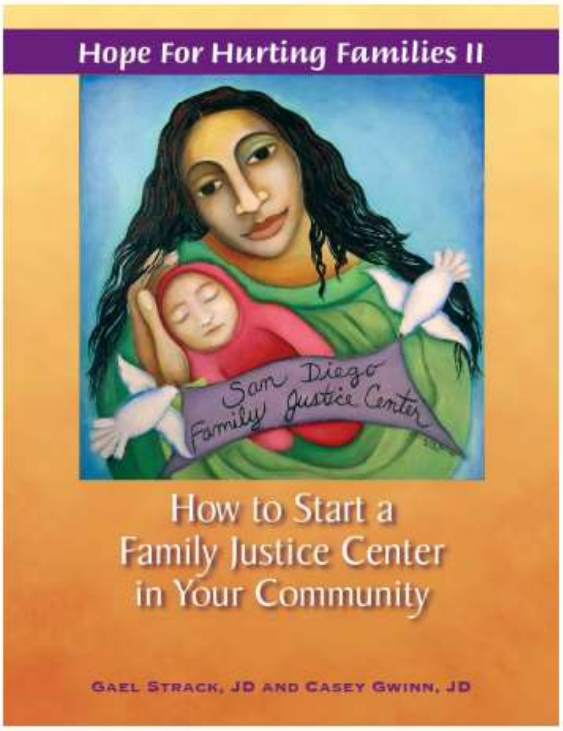
- Domestic violence is really 50/50 men and women…
- Women are as violent as men
- Protocols and policies in agencies are biased against men because of the feminist movement
- "It takes two to tango"

VII. Resources: The exhibits herein are excerpted from files—mostly power point presentations and other documents—created or compiled by the Family Justice Center Alliance, presently located in the Alliance "resource" library located as http://www.familyjusticecenter.org/jdownloads.html.

Family Justice Center Promotional Materials: "Helping Families":

Read the Books





Available at www.familyjusticecenter.org

and other types of co-located service models are now developing and expanding in so many communities.

For thousands of years we have tolerated violence against women. And for thousands of years family violence has been documented. The problem is as old as Cain and Abel. It has been ignored, condoned, and sometimes even glorified. Throughout the centuries, violence in intimate relationships has been normative in most cultures around the world. No one did anything about it until the last few hundred years. And only in the last 50 years, with the development of the battered women's movement, has any real progress been made. In the 1960s and 1970s, the battered women's movement evolved out of the women's movement and focused on providing shelter to women and their children fleeing abusive and violent men.

In 1982, Susan Schecter did an excellent job of looking at the history of the domestic violence movement in the 1960s and 1970s.[3] But the history goes back much further than the modern development of the battered women's movement.[4] In 1868, the legal doctrine of *family privacy* was articulated by courts in North Carolina and across the country with the following statement: "However great are the evils of ill temper, quarrels, and even personal conflicts inflicting only temporary pain, they are not comparable with the evils which would result from raising the curtain and exposing to public curiosity and criticism the nursery and the bed chamber."[5]

Ellen Pence cites research looking back as early as 1640 for the genesis of the struggle against *wife beating* and the call for the government to play a role in providing protection for abused women.[6] Pence writes:

> The suffrage and progressive social reform movements of the late 19th century produced legislative changes, ending more than 200 years of regulating wife beating, and criminalized the practice regardless of the woman's behavior. By 1911, laws forbidding wife beating had been passed in every state. Because no infrastructure of local efforts existed to advocate for implementation of the new laws, they were noted in law books and shelved until 70 years later,

Copyrighted Material

> when the next wave of feminism gained momentum and activists insisted on their enforcement.[7]

In the 1960s, the women's movement began to call on male-dominated institutions throughout our culture to start paying attention to violence against women. Violence in intimate relationships was only one of many issues addressed by the women's movement, but it soon became a very identifiable movement in and of itself. The focus on culturally acceptable violence against women was new in the 1960s. Indeed, one of the first major legal decisions in America to address the new awareness of the issue was not published until 1964 when the North Carolina Supreme Court said it was better to "forgive and forget," but acknowledged the reality that some violence in the home had to be criminalized when it rose to such a level that serious injury or death occurred.[8]

In the 1970s, the battered women's movement began to grow out

of the much larger women's movement and included the anti-rape movement. The battered women's movement was a loosely arranged group of survivors of family violence and feminist advocates who began to organize survivors into an identifiable group of activists. The movement grew slowly at first, but then more quickly as private shelters and privately funded social service programs developed. Although it was made up primarily of women, small numbers of progressive men supported the movement even in the late 1970s and early 1980s. And though the movement was distinct from other powerful social change movements developing in America, it found common allies in the civil rights movement and later in the child abuse movement.

In the 1980s, feminist advocates began demanding legal protections for battered women. Del Martin's seminal book, published in 1976, became a clarion call for caring people across America to step forward and act to stop family violence.[9] Class-action and individual lawsuits were filed by victims and survivors attempting to treat violence against women as a civil rights issue under state and federal law. One of the most famous lawsuits was litigated and became a published court decision in 1983 when Tracy Thurman successfully sued

$2.3 million, but it "was widely reported in popular press and in academic journals. It graphically confirmed the extreme financial penalty that could be imposed on police departments when they abjectly fail to perform their duties. In addition, it confirmed that in appropriate cases these massive liability awards would be upheld."[11]

The Tracy Thurman story became a movie and educated many about the terror and trauma of domestic violence. Many individual victims began using civil litigation to demand monetary compensation from law enforcement agencies that failed to protect them from their abusers. Mandatory arrest laws, restraining order laws, pro-prosecution policies, and a host of legal mandates came forward in legislatures across the country. Specialized police officers, advocates, and prosecutors sprang up in jurisdictions across the nation as we began to realize the difficulty of dealing with domestic violence cases in the criminal justice system.

In 1984, then-Attorney General Edwin Meese created the first national task force on domestic violence issues with the support of President Ronald Reagan. For the first time, the federal government looked at the broad nature of family violence issues. Still today, the *Task Force Report* is an excellent primer on the complex history of family violence issues in America. It also yielded a powerful set of recommendations that helped launch many initiatives in the mid-1980s.

As the newly established domestic violence intervention movement developed political power, more and more policy makers and elected officials began to advocate for resources, legislation, and policy changes related to America's response to violence in the home. Nationally and internationally, more and more attention was being given to the issue of domestic violence.

In the 1990s, the mainstreaming of a feminist view of domestic violence (violence as a power and control behavior exercised through

male privilege) continued. Specially trained police officers, prosecutors, and judges, all products of the feminist movement, began advocating their views within the criminal justice system itself. In 1991, the National College of District Attorneys held its first ever national conference on the prosecution of domestic violence. Judges, prosecutors, police officers, and advocates from across the country came together for the first time.

Prosecutors attending the first and subsequent conferences of the National College of District Attorneys learned how to prosecute cases even if the victim did not want to "press charges." Evidence-based prosecution, first advocated by law enforcement agencies in Minnesota in the early 1980s, was endorsed by the National College of District Attorneys as the best approach to victim safety and abuser accountability. Simply put, evidence-based prosecution was the strategy to prosecute a batterer even if the victim refused to press charges or testify. Jurisdictions such as San Diego, California, Quincy, Massachusetts, and Baltimore, Maryland, led the way in training prosecutors in newly developed prosecution techniques. For the first time anywhere in America, the responsibility for law enforcement intervention in family violence cases was slowly removed from the shoulders of victims and placed squarely on the criminal justice system itself. Advocates, police officers, prosecutors, and judges began working together cooperatively to develop coordinated approaches to deal with the long-neglected crime of domestic violence. While controversy swirled around so-called "mandatory arrest" laws and "no-drop" prosecution policies, more and more jurisdictions began treating domestic violence as seriously as any other major crime.

Though the issue remains somewhat controversial in some jurisdictions, the thesis of aggressive prosecution with or without victim participation is simple. If we don't ask victims of other serious crimes

Table B.1
Supplemental Materials

The attached materials are not produced by the Alliance or its partners and are included herewith for background and reference purposes only.

Identity of the Claimant:

CALIFORNIA COALITION

FAMILIES & CHILDREN

Education
Compassion
Action

San Diego Family Courts and Professionals are trained and paid to resolve family disputes efficiently. They rarely do. Why?

Courts, attorneys, and service providers are ineffective in assisting families in transition. In fact, they *encourage* conflict and expense that harms litigants, their children, and your community.

Reducing conflict may seem impossible. But with a few *readily available and free alternatives*, you can make a difference. Here's the truth you won't hear from tonight's panel by the litigants whom you failed to invite.

If the only tool you have is a hammer, every problem looks like a nail.
~Abraham Maslow

You were hired to assist litigants in efficiently transitioning through a family dissolution.

Litigants come to you hurt, angry, and fearful about an uncertain future for the most important things in their lives: their children, family, and financial security. Unmanaged, that uncertainty and fear leads to conflict.

Your duty to your client and community is to end conflict, end fear, and let them move on.

Yet Family Courts presently offer few tools to calm emotions, while providing abundant tools to make them even more destructive. Courts and evaluators sit in passive judgment, yet rarely render guidance. Evaluators are *scientifically incapable* of identifying the "better" parent—yet earn millions from desperate parents by pretending they can. Attorneys rarely end conflict, but regularly use courts to *encourage* litigation, *absorb* resources, and *harm their clients, children, and community.*

California Coalition
For Families and Children
www.ccfconline.net

You Can Help

Readily-Available, Free Alternatives to Conflict That You Can Implement Today

1. **Change Your Attitude:** You don't work in a sterile Court of Appeals. You work in people's lives. Divorce hurts. Families in transition need healing and support—not sharp advocacy, endless services, and harsh judgment. Give compassion in their crisis.

2. **Change Your Procedures:** Easy OSCs and unpredictable outcomes *encourage* litigation, *drive* costs, *increase* conflict, and *facilitate abuse*. Give restraint and predictability.

3. **Change Your Resources:** Books in a waiting room are useless. Free, easy resources like www.uptoparents.org focus parents on working together in promoting their child's best interests independently Give education and direction to establish long-term peace.

4. **Change Peoples' Lives:** Years after divorce, *both* parents will say "it's a cesspool benefiting attorneys, evaluators, and courts, but *immeasurably harmed me and my children.*" In other words, *you're not doing your job.* At the end of your career, will you be able to say "I helped to prevent that harm and to achieve peace and prosperity for my community, clients, and their families?"

We will. Join us.

RADAR Publications:

Domestic Violence Programs are Often Ineffective, Sometimes Harmful

Most domestic violence programs are not effective in reducing partner abuse. Worse, aggressive law enforcement strategies are sometimes placing victims at greater risk of future violence. That conclusion is based on a report researched by RADAR—Respecting Accuracy in Domestic Abuse Reporting.

The report, *Why Have Domestic Violence Programs Failed to Stop Partner Abuse?*, is the most comprehensive review ever undertaken of the domestic violence research. The full report can be viewed at: http://www.mediaradar.org/docs/RADARreport-Why-DV-Programs-Fail-to-Stop-Abuse.pdf .

The report summarizes the research that evaluates the effectiveness of four major strategies promoted by domestic violence laws:

1. Treatment services
2. Restraining orders
3. Mandatory arrest
4. No-drop prosecution

Treatment Services

Domestic violence courts often mandate abusers to participate in treatment programs. But researchers have concluded that:

- Current treatment programs are generally ineffective for male abusers
- Gender-specific services are generally unavailable for female abusers.

The reason that treatment programs for men are ineffective is they are based on ideologically-driven assumptions that are not consistent with good psychological practice.

> *"In many ways, we turned a blind eye to many women's use of violence, their drug use and alcoholism, and their often harsh and violent treatment of their own children."* – Ellen Pence, founder of the Duluth Domestic Abuse Intervention Project

Restraining Orders

Two to three million civil restraining orders are issued each year in the United States. In half of these orders, physical violence is not even alleged.

Many researchers doubt usefulness of protection orders. According to studies:

- Restraining orders may reduce psychological abuse.
- Restraining orders are generally *ineffective* in preventing future physical violence.
- Among unmarried partners, such orders may actually *increase* future violence.

The Independent Women's Forum has concluded that at best, restraining orders only "lull women into a false sense of security."

> *"The adoption of certain types of protection order statutes is associated with ... increases in the number of black women killed by their unmarried partners."* – Researcher Lora Dugan

Mandatory Arrest

Domestic violence laws have encouraged the implementation of mandatory arrest laws for assault and violation of restraining orders. But are these aggressive law enforcement measures helping or hurting?

Mandatory Arrest for Partner Assault

Many states have enacted laws that require arrest for partner assault. But victims who summon the police often want the situation to be stabilized, but they don't want their partner to be arrested.

A recent Harvard University study concluded that in 15 states, mandatory arrest laws actually *increased* subsequent partner homicides by 60%, probably because these laws discourage victims from reporting subsequent abuse.

> *"Mandatory arrest laws are responsible for an additional 0.8 murders per 100,000 people."* -- Harvard economist Radha Iyengar

Mandatory Arrest for Violation of Restraining Orders

In 33 states, violation of a restraining order is cause for mandatory arrest. One Department of Justice-funded study found that such policies actually place victims at greater risk: "Increases in the willingness of prosecutors' offices to take cases of protection order violation were associated with *increases in the homicide* of White married intimates, Black unmarried intimates, and White unmarried females."

Civil Rights Concerns

Mandatory arrest laws have also given rise to a number of civil rights concerns, including disregard of the innocent-until-proven-guilty principle and gender-profiling in the name of primary aggressor assessment. Effective approaches to stopping partner violence need to respect the civil liberties of the accused.

> *"Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply...In many cases, allegations of abuse are now used for tactical advantage."* – Elaine Epstein, former president of the Massachusetts Bar Association

No-Drop Prosecution

Two-thirds of prosecutors' offices have implemented "no-drop" prosecution policies. One study found that only one factor reduced abuser recidivism—allowing the victim to select whether the prosecutor would pursue the case. Obviously a no-drop prosecution policy eliminates the ability for the victim to make that choice.

One analysis reached this sobering conclusion: "We do not know whether no-drop increases victim safety or places the victims in greater jeopardy."

> *"Many women of color are reluctant to seek intervention from the police, fearing that contact with law enforcement will exacerbate the system's assault on their public and personal lives."* -- Law professor Kimberle Crenshaw

Many are Unhappy with Our Current Approach to Stopping DV

Others have reached a similar conclusion as the RADAR report. New York University vice provost Linda Mills wrote: "At worst, the criminal justice system increases violence against women. At best, it has little or no effect."

Leading family violence researcher Richard Gelles has stated, "Policy and practice based on these factoids and theory might actually be harmful to women, men, children, and the institution of the family."

And several women's groups have criticized our approach to curbing partner abuse:

- *Ms. Foundation for Women:* "Criminalization of social problems has led to mass incarceration of men, especially young men of color, decimating marginalized communities."
- *True Equality Network:* Our domestic violence laws have "spawned an abuse industry that continually expands the definition of domestic violence and condones the filing of false allegations, while ignoring the needs of true victims."
- *Independent Women's Forum:* "Men may become alienated from and hostile to the system in the conviction that it is stacked against them."

DV Victims Deserve Better

Domestic violence is a national tragedy and all victims, women and men, need our help. But they deserve programs that actually work, that emphasize substance over symbols.

Following the 1994 passage of the Violence Against Women Act, RADAR now calls on the Congress to listen to the voices of victims, to take heed of the research, and to insist that domestic violence programs be held accountable for results.

(((RADAR

Respecting Accuracy in Domestic Abuse Reporting

A coalition of over 75 organizations around the country has come together to educate the public about the need to develop effective domestic violence programs:
www.mediaradar.org/docs/VAWA-Resolution.pdf

For more information, contact:
RADAR: Respecting Accuracy in Domestic Abuse Reporting
P.O. Box 775, Westfield, New Jersey 07090
Internet : www.mediaradar.org
E-mail : info@mediaradar.org

Widespread Civil Rights Violations Under the Violence Against Women Act

Partner abuse is an important social problem, and domestic violence programs have helped many needy individuals. But many believe that the Violence Against Women Act is at the root of widespread civil rights violations of millions of innocent Americans.

These complaints come from a broad range of groups:

> *Independent Women's Forum:* "Men may become alienated from and hostile to the system in the conviction that it is stacked against them."
> *Ms. Foundation for Women:* "Some women are arrested as a result of false accusations by their batterers."
> *Eagle Forum:* "VAWA funds the re-education of judges and law enforcement personnel to teach them…how to ride roughshod over the constitutional rights of men."

How does the Violence Against Women Act – and the 1,500 state laws it has spawned -- violate the civil rights of Americans?

Judicial Education

VAWA funds the training of judges and law enforcement personnel. These programs are often biased and factually-misleading.[i]

In one New Jersey program, a judge dispensed this advice: "Your job is not to become concerned about all the constitutional protections of the man that you're violating as you grant a restraining order. Throw him out on the street, give him the clothes on his back, and tell him, 'See ya' around.'"[ii]

Restraining Orders

VAWA-funded training programs encourage judges to grant restraining orders. Now, 2-3 million restraining orders are issued each year.[iii] About 15% of these orders are issued against women.

In most states, domestic violence is defined so broadly that almost anything qualifies as "abuse." A study by the Massachusetts Trial Court found that less than half of the domestic orders involved even an *allegation* of physical violence. Attorneys say judges treat temporary restraining orders like a rubber-stamping exercise and that subsequent hearings are often a "sham."

Harry Stewart, a lay minister in Weymouth, Mass., opened the door of his ex-wife's apartment building to help his 5-year-old son get inside. That was considered a technical violation of the restraining order. Stewart was required to serve a six-month jail sentence.

Arrest Policies

As a result of VAWA, 22 states have mandatory arrest laws for domestic violence, and 8 states that encourage arrest. Such laws often pressure police officers to ignore basic legal considerations of probable cause.

Research shows over half of all partner aggression is mutual.[iv] But VAWA discourages dual arrests, even when both persons show signs of injury.

Further aggravating the problem is VAWA's promotion of "primary aggressor" laws.[v] Now, 24 states have primary aggressor laws, which in practice become a form of gender profiling.

> *Former New England Patriots linebacker Ted Johnson was arrested for allegedly assaulting his wife. But a week later, his wife had a different story to tell: "My husband, I adore him, and, it was my fault," explained Jackie Johnson. "It breaks my heart to think I would be responsible with one emotional, irresponsible call in destroying this beautiful man's reputation."*

Adjudication

Adjudication procedures for domestic violence cases often give short-shrift to due process protections.

For example under a "Fast Track" system used in Colorado, persons charged with domestic violence are not allowed legal representation. As one female defendant put it, "It ain't about justice, that's for sure."[vi]

In Warren County, Pennsylvania, persons arrested on a charge of domestic violence are given two options: Go to jail, or sign a pre-printed form that says, "I have physically and emotionally battered my partner." The procedures eliminate any possibility the defendant will be adjudged as innocent.

"Innocent until proven guilty" has been replaced with "guilty with no opportunity to prove innocence."

Services for Male Victims

Research has consistently shown that women are just as likely – or even more likely -- to commit domestic violence as men.

Yet men represent less than 5% of persons who receive VAWA-funded victim services. So in 2000 the U.S. Senate directed the Department of Justice to "ensure that men who have been victimized by domestic violence and sexual assault will receive benefits and services" under VAWA.[vi]

Despite that mandate, men who seek VAWA-funded services continue to be met with ridicule, hostility, and outright rejection. One director of a Washington state shelter admitted, "Whenever I speak of male abuse, I am met with disbelief and, even worse, laughter."[vii]

Families and Children At Risk

Allegations of domestic violence are made in the context of a divorce proceeding. Analysts say a large number of those allegations are made simply to gain a legal edge.

Elaine Epstein, former president of the Massachusetts Bar Association, once noted, "Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply…In many cases, allegations of abuse are now used for tactical advantage."

When children are removed from daily contact with one of their parents – usually their father – they are placed at far greater risk of child abuse, academic difficulties, and legal problems.

The Intrusion of State Power

The Violence Against Women Act was originally conceived with good intentions – to reduce partner violence. But over time, VAWA's ability to intervene in every marital dispute and impose criminal penalties for even minor incidents has left millions of innocent Americans caught up in a system that ignores their rights, their wishes, and their needs.

The American Coalition for Fathers and Children says, "Americans' most fundamental constitutional protections and human rights are violated openly, intentionally, and systematically."[viii] The Ms. Foundation for Women sums up the problem this way: "Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over."[ix]

Time to Reform VAWA

The intrusion of the government into the affairs of families and couples and the criminalization of private activity lies at the heart of civil rights abuses of the Violence Against Women Act.

It's hard to think of any other law that has cost the American taxpayer so much, has lead to the break-up of so many families, has violated the civil rights of so many innocent citizens, and has done so little to help women.

Reform of the Violence Against Women Act is overdue.

(((RADAR

Respecting Accuracy in Domestic Abuse Reporting

RADAR is spearheading the VAWA Reform Coalition, a group of organizations around the country that is working to educate the public about VAWA abuse:
www.mediaradar.org/docs/VAWA-Reform-Coalition-Declaration.pdf

For more information, contact:
RADAR: Respecting Accuracy in Domestic Abuse Reporting
P.O. Box 775, Westfield, New Jersey 07090
Internet : www.mediaradar.org
E-mail : info@mediaradar.org

[i] RADAR: Bias in the judiciary: The case of domestic violence. Respecting Accuracy in Domestic Abuse Reporting, 2006.
[ii] Bloemer R. N.J. judges told to ignore rights in abuse TROs. New Jersey Law Journal April 24, 1995.
[iii] RADAR: Without restraint: The use and abuse of domestic restraining orders. Respecting Accuracy in Domestic Abuse Reporting. 2006.
[iv] Straus MA. Dominance and symmetry in partner violence by male and female university students in 32 nations. May 23, 2006. Table 2. http://pubpages.unh.edu/~mas2/ID41D2.pdf
[v] RADAR: Justice denied: Arrest policies for domestic violence cases. Respecting Accuracy in Domestic Abuse Reporting, 2006.
[vi] Congressional Record, October 11, 2000, pp. S10191-92.
[vii] RADAR: VAWA programs discriminate against male victims. Respecting Accuracy in Domestic Abuse Reporting, 2006.
[viii] American Coalition for Fathers and Children: Family violence in America: The truth about domestic violence and child abuse. Washington, DC, 2006.
[ix] Ms. Foundation for Women: Safety and justice for all. New York, NY, 2003.

Women Ask: "Has VAWA Lived Up to its Promises?"

The Violence Against Women Act was passed in 1994 to protect persons from partner abuse. But many are now wondering whether VAWA has delivered on its promises. There are 10 areas of concern:[i]

1. No Proof that Domestic Violence Laws Reduce Abuse

The Department of Justice reports that intimate partner homicides began to fall as early as 1976.[ii] Partner homicides had already dropped 29% by 1994, the year that VAWA was enacted into law:

2. May Place Women at Greater Risk of Violence

Aggressive law enforcement measures may place women at greater risk of harm.

One DoJ-funded study concludes, "Increases in the willingness of prosecutors' offices to take cases of protection order violation were **associated with increases in the homicide** of white married intimates, black unmarried intimates, and white unmarried females."[iii]

3. Lulls Women into a False Sense of Security

Many VAWA programs have been shown to be ineffective in stopping partner abuse. Treatment programs usually don't work. A report from the Independent Women's Forum says restraining orders are often ineffective and may "lull women into a false sense of security."[iv]

4. Makes it Harder for Real Victims to Get the Help They Need

Severely abused women complain it's hard for them to get the help they need. That's because our legal system has become flooded with minor allegations. For example, half of all restraining orders are issued without even an *allegation* of physical abuse.

The National Institute of Justice warned about mandatory arrest laws, saying that "arrests for all suspects may unnecessarily take a community's resources away from identifying and responding to the worst offenders and victims most at risk."[v]

5. Ignores Women's Preferences

Many law enforcement agencies have implemented "no-drop" prosecution policies that ignore women's wishes. If the woman refuses to testify against her allegedly abusive partner, the prosecutor may threaten to take away her children.

Women who have experienced inflexible mandatory arrest laws are far less likely to request police assistance in the event of future abuse.

Women's Groups Are Criticizing VAWA

Women's groups are saying that VAWA may be hurting families and children more than it helps:

- *Ms. Foundation for Women:* "Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over."
- *Independent Women's Forum:* "Men may become alienated from and hostile to the system in the conviction that it is stacked against them and unjustly favors women."
- *True Equality Network:* "VAWA has spawned an abuse industry that continually expands the definition of domestic violence and condones the filing of false allegations, while ignoring the needs of true victims."
- *Eagle Forum:* "VAWA funds the re-education of judges and law enforcement personnel to teach them...how to ride roughshod over the constitutional rights of men."

6. Promotes Overly-Aggressive Law Enforcement Policies

The Violence Against Women Act has encouraged states to pass get-tough laws. But many believe these laws go too far and victimize the innocent.

About 2-3 million temporary restraining orders are issued each year – 15% of them against women.[vi]

And 30 states have enacted laws that encourage or mandate arrest for domestic violence. As a result, the number of women arrested for DV has risen dramatically – in California, mandatory arrest policies caused the number of women arrested to soar by 446%, even though many of those arrests may have been considered unnecessary by the woman's partner.

7. Ignores the Needs of Abusive Women

Women are as likely as men to engage in domestic violence, but female-specific treatment programs are usually non-existent.

Researcher Susan Steinmetz tells of receiving letters from abusive women who knew they needed help, but were "turned away or offered no help when they called a crisis line or shelter."

8. Abuse Shelters May Not be Addressing Women's Needs

Women's shelters may be staffed by volunteers with no professional qualifications. Some shelters emphasize political activism over providing practical solutions for victims' needs.[vii]

9. Removes Children from Their Homes

The definition of child abuse has been expanded in many states so simply *witnessing* parental aggression is considered to be abusive to children. As a result, children have been removed from their homes, based only on an *allegation* of abuse:

> *Susan contacted a local abuse shelter to get counseling for herself. Even though there had been no physical abuse involving either the parents or the children, the kids were taken away and placed in foster care for 38 days. The woman concluded, "These people have no idea the damage they have done. I compare it to someone coming into your home and ransacking it."*[viii]

10. Promotes Couple Break-up, Not Reconciliation

Most cases of domestic abuse are minor and reconciliation is usually desirable. But no-contact restraining orders and policies of women's shelters preclude persons from receiving couple's counseling or mediation.

Time to Reform VAWA

Many persons question whether our nation's domestic violence laws are really helping. Growing numbers of women are saying, It's time to reform the Violence Against Women Act.

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RADAR is spearheading the VAWA Reform Coalition, a group of women's, shared parenting, children's rights, and other organizations around the country that is working to educate the public about VAWA abuse: www.mediaradar.org/docs/VAWA-Reform-Coalition-Declaration.pdf

For more information, contact:
RADAR: Respecting Accuracy in Domestic Abuse Reporting
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[i] RADAR: Has VAWA delivered on its promises to women? 2007.

[ii] Catalano S. Intimate partner violence in the United States. Washington, DC: Department of Justice, 2006.

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[iv] Independent Women's Forum. Domestic violence: An in-depth analysis. Washington, DC, 2005, p. 25.

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[viii] Sacks G. Domestic violence system manhandles woman, family. E-newsletter October 31, 2006.

VAWA Stands in the Way of a Prosperous America

In 1994 Congress passed a law called the Violence Against Women Act. Each year the federal government spends $1 billion for VAWA and related laws. Those monies are used for aggressive law enforcement and prosecution programs, as well for victim services.

But VAWA has had severe effects on wage-earners, families, and the American economy.

Wage-Earners Forced out of a Job, Our Homes and Nation at Risk

The 1996 Lautenberg Amendment prohibits persons who are under a restraining order from owning or using a firearm. But states define domestic violence so broadly that almost anything counts as abuse.

By policy, military personnel charged with DV are also barred from combat roles and subject to immediate discharge. In Colorado Springs, Colo., home to several military facilities, at least 1,000 soldiers are forced out of the military each year.[i]

In addition, Department of Defense policies require that a mere *allegation* of criminal domestic violence is sufficient to rescind the security clearance of employees or military personnel.[ii]

Police departments are similarly affected. It was recently reported that the Minneapolis police department was practically disarmed because so many officers had restraining orders against them.[iii]

As a result, thousands of American wage-earners lose their jobs each year – and the security of our homes and our nation is placed at risk.

Highly-decorated Eric Washington of Essex County, NJ had twice been awarded the Medal of Honor. But in 2001 he was accused of domestic violence, a claim that forced him to work a desk job. Several years later, he was acquitted of all charges.

Family Break-Down Fuels Expanding Welfare Rolls

Stable families are the most important institution for creating social capital. Conversely, family break-down is a major cause of poverty and welfare dependency. The economic consequences of divorce are conservatively estimated to run $33.3 *billion* each year.[iv]

VAWA is the driving force behind the 2-3 millio restraining orders that are issued each year. But i half of those orders, physical abuse is not even *alleged*.[v]

Restraining orders serve to escalate partner confli prohibit partners from getting counseling, and pu women to get a divorce -- even when the abuse w mutual or minor. Many divorces are driven by a claim of domestic violence – even though a large portion of those allegations are minor or even false.[vi]

As a result, children grow up in a single-parent household. That places kids at far higher risk for broad range of social pathologies, including, chil abuse, teenage pregnancy, and juvenile delinquency.

These problems fuel the demand for more social welfare services, causing social dependency and higher tax burden.

DV Programs are Costly, but Ineffective in Stopping Abuse

Even though billions in taxpayer money have bee spent, there is no proof that VAWA has any impa on rates of partner abuse.

Partner homicides began to drop in the mid-1970 By 1994, the year that VAWA was enacted, homicides had already fallen by 29%. Afterwards homicide rates continued to follow the same tren[vii]

Undermines Welfare Reform

The 1996 welfare reform act (PRWORA) has been credited with cutting welfare rolls by half and reducing child poverty rates.

But a little-known provision of PRWORA is the Family Violence Option, which allows persons who claim to be victims of partner abuse to avoid federal requirements for:

- Time limits for welfare benefits
- Residency requirements
- Family cap provisions

Forty-one states have adopted the Family Violence Option and 6 other states have implemented equivalent policies.[viii]

While such options are appropriate for severely abused persons, state laws now define domestic violence so broadly that almost any disagreement between a couple counts as DV.[ix]

Larded with Waste, Fraud, and Abuse

The General Accounting Office has repeatedly documented non-compliance by VAWA grantees.[x,xi,xii] The Department of Justice Office of the Inspector General has likewise revealed widespread waste and abuse:

- A 2005 audit of Legal Aid of Nebraska identified $1.3 million in non-allowable and questionable expenses.
- An audit of a grant to the Texas Office of the Governor found that $852,000 in claimed matching costs could not be documented.
- An audit of Dane County, WI concluded that 99% of the grant expenditures were questionable.

Back-Door Strategy to the Welfare State

Domestic violence laws have steadily expanded their eligibility criteria and benefits. But they have proven to be ineffective in stopping intimate partner violence, all the while undermining the family structure and harming children.

Thousands of productive wage-earners are dismissed from their jobs each year as a result of minor abuse accusations. Our homes and nation are being placed at risk.

But the domestic violence industry, seemingly immune from oversight, resists all efforts to improve accountability and program effectiveness. Reform of the Violence Against Women Act is long overdue.

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RADAR is spearheading the VAWA Reform Coalition, a group of organizations around the country that is working to educate the public about VAWA abuse: www.mediaradar.org/docs/VAWA-Reform-Coalition-Declaration.pdf

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[i] Communication with Charles Corry, PhD, Equal Justice Foundation, Feb. 22, 2007.
[ii] Department of Defense Directive, Number 5220.6. Attachment 10 to Enclosure 2, Guideline J. January 2, 1992.
[iii] Burdick J. Pro-gun activists say women are taking away their rights with domestic laws. Seattle Post-Intelligencer. Jan. 7, 2007.
[iv] David G. Schramm. Individual and Social Costs of Divorce in Utah. http://ndspi.org/index.php/site/blog/david_schramm_study_divorce_costs_the_tax_payers_of_north_dakota_60_to_80_m/
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[vi] RADAR: A culture of false allegations: How VAWA harms families and children. 2007.
[vii] Catalano S. Intimate partner violence in the United States. Washington, DC: Department of Justice, 2006.
[viii] Legal Momentum: Family Violence Option: State by state summary. New York, NY. July 2004.
[ix] RADAR: Expanding definitions of domestic violence, Vanishing rule of law. 2006.
[x] General Accounting Office: Justice discretionary grants. GAO-02-25. November 2001.
[xi] General Accounting Office: Justice impact evaluations. Washington, DC. GAO-02-309. March 2002.
[xii] General Accounting Office: Violence Against Women Office: Problems with grant monitoring and concerns about evaluation studies. GAO-02-641T. April 16, 2002.

Alliance Feminist Ideology:	*Neutral Source Response:*
Quotes or concepts extracted from Alliance literature available in Exhibits "B"-"I"[1]	*Summations, quotations, or screnshots from alternative sources with citations for corroboration*
Myth: *"America is undergoing an epidemic increase in domestic violence"*	*Accuracy-Read it for Yourself:* *Fact: Domestic violence rates since 1979 have dropped precipitously by 29% (before VAWA or "get tough" laws were passed). However, since 1994, domestic violence has not seen a significant drop. The Alliance proclaims a "domestic violence epidemic"—while catchy, the diagnosis would more accurately be a "domestic violence misinformation epidemic." The definition of "domestic violence" and feminists' (including the Alliance) efforts to instigate women to report what previously would have been "normal" and nonviolent domestic disputes as "violence" or has been wildly successful. See "UFV/UMP" and below.*

1. No Proof that Domestic Violence Laws Reduce Abuse

The Department of Justice reports that intimate partner homicides began to fall as early as 1976.[ii] Partner homicides had already dropped 29% by 1994, the year that VAWA was enacted into law:

[1] To assist the reader in distinguishing between the writer's contributions to material quoted, where possible direct "screen shots" or "whole cloth" copies have been inserted as they exist in original publication. Where not possible, source text has been inserted with source formatting remaining. This writer's commentary exists under "Myth" and "Fact" *dual*-column boxes and within quoted passages, in ***bold italicized***, with the intent to maintain integrity of quotation and context over semantic cohesion. The quotations from RADAR are inserted in original with no alterations.

It's Time to Tell the *Truth* About Partner Abuse

Partner Violence: An Equal Opportunity Problem

What is the truth about intimate partner aggression? Nearly 200 scientific studies point to this simple conclusion: **Women are at least as likely as men to engage in partner aggression.**

This is what leading researchers say:

"Research indicates that women can be just as violent as their partners." – Irene Hanson Frieze, Psychology of Women's Quarterly, 2005

"Differences were observed in the rates of male and female partner violence, with female violence occurring more frequently." – Renee McDonald, Journal of Family Psychology, 2006

"A recent meta-analysis found that a woman's perpetration of violence was the strongest predictor of her being a victim of partner violence." – Daniel Whitaker, American Journal of Public Health, 2007

"Several studies, including large and nationally representative sample, have found that the most prevalent pattern is mutual violence." – Murray Straus, Prevention of Partner Violence, 2008

What Does the Latest Research Say?

- A national survey of married and co-habiting partners found that 8% of women engaged in severe partner violence, while only 4% of men were involved in severe violence. *Renee McDonald, Journal of Family Psychology, March 2006.* www.smu.edu/experts/study-documents/family-violence-study-may2006.pdf

- An international study of over 13,000 university students in dating relationships in 32 countries found that 11% of couples had experienced severe violence in the past year. Among those couples, 29% had female-only violence, 16% had male-only violence, and in 55% of couples both persons were violent. *Murray Straus, Children and Youth Services Review, 2007*

Men are often injured by their wives or girlfriends. According to a 2000 meta-analysis by John Archer, PhD, men suffer 38% of all injuries arising from partner aggression. But men often don't report the incident, so they endure their pain in silence.

As a result, the media often presents a one-sided view of domestic violence.

What's Wrong with Making False Claims?

Domestic violence industry advocates often make claims such as "men are overwhelmingly the perpetrators of partner violence" and "95% of DV victims are women."

These false statements only make the problem worse because:

- Service providers refuse to help male victims.
- False allegations of abuse escalate partner conflict and sever parent-child bonds.
- Abusive women can't get the help they need.
- Domestic violence laws promote overly-aggressive and harmful prosecution efforts.

Warren Moon was the first Black quarterback to be elected to the Pro Football Hall of Fame. One evening Warren Moon got into a fight with his wife. The police were called and Mr. Moon was arrested. Against Mrs. Moon's wishes, the case went to trial.

Placed on the witness stand, Mrs. Moon admitted that she was the one who had started the fight by throwing a candlestick, and that her husband had only acted in self-defense. Warren Moon was acquitted.

Domestic violence is not a gender-specific problem.

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Myth:	*Fact:*
Males commit Domestic Violence far more frequently than females, so domestic violence is a "male issue"	***While wildly varying claims such as this abound in layman "first hand accounts" such as the ones relied on by the Alliance in "DV 101", the overwhelming body of scientifid study by federal agencies, national academic institutions, and peer-reviewed journals finds exactly the opposite:***

Domestic Violence occurs with roughly equal frequency among women and men, though some interesting distinctions are found.

· The U.S. Centers for Disease Control and Prevention report, "In nonreciprocally violent relationships, women were the perpetrators in more than 70% of the cases. Reciproassociated with more frequent violence among women, but not men." [Source: Whitaker, Haileyesus, Swahn and Saltzman, Differences in Frequency of Violence and Reported Injury Between Relationships With Reciprocal and Nonreciprocal Intimate Partner Violence, American Journal of Public Health, May 2007, Vol 97, No. 5, pp. 941-947, http://www.ajph.org/cgi/content/abstract/97/5/941]

· Psychologist John Archer reviewed hundreds of studies and concluded, "Women were slightly more likely than men to use one or more act of physical aggression and to use such acts more frequently." [Source: John Archer: Sex differences in aggression between heterosexual partners: A meta-analytic review. Psychological Bulletin, Vol. 126, No. 5, pages 651-680]

The entire 41 page report is available at: http://www.csulb.edu/~mfiebert/assault.htm

· Law professor Linda Kelly noted, "leading sociologists have repeatedly found that men and women commit violence at similar rates." [Source: Linda Kelly: Disabusing the definition of domestic abuse. Florida State University Law Review, Vol. 30, pages 791-855, 2003. Accessible at: http://www.law.fsu.edu/journals/lawreview/downloads/304/kelly.pdf]

· An international survey of violence between dating partners in 16 countries concluded: "Perhaps the most important similarity is the high rate of assault perpetrated by both male and female students in all the countries." [Source: Murray Straus: Prevalence of violence against dating partners by male and female university students worldwide. Violence Against Women, Vol. 10, No. 7, 2001]

· Cal State Psychology Professor Martin Fiebert has assembled a bibliography of 175 scholarly investigations: 139 empirical studies and 36 revie*Cal State Psychology Professor Martin Fiebert has assembled a bibliography of 175 scholarly investigations: 139 empirical studies & 36 reviews &/or analyses, which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships w/ their spouses or male partners.

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*According to “Stop Abusive & Violent Environments” (SAVE): A 10,000 household survey shown 11% of respondents said they’d been falsely accused. 81% of the falsely accused were men.

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*A 1998 Department of Justice study found that 834,000 or 36% of the 2.3 million victims of domestic violence are men. Over 100 other studies support that finding.

*According to the National Family Violence Survey, female victims of DV are 9X more likely to call the police than male DV victims. The % who called the police in response to the assault were: Women: 8.5%, Men: 0.9%. [Source: JE Stets & MA Straus: Gender differences in reporting marital violence & its medical & psychological consequences. In Straus & Gelles (editors): Physical violence in American families, 1990, Table 15.] ws and/or analyses, which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships with their *Cal State Psychology Professor Martin Fiebert has assembled a bibliography of 175 scholarly investigations: 139 empirical studies & 36 reviews &/or analyses, which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships w/ their spouses or male partners.

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Source: JE Stets & MA Straus: Gender differences in reporting marital violence & its medical & psychological consequences. In Straus & Gelles (editors): Physical violence in American families, 1990, Table 15. http://www.csulb.edu/~mfiebert/assault.htm

· An analysis of the data collected by the National Violence Against Women (NVAW) Survey found that more women than men engage in controlling behavior in their current marriages, but there was no statistically significant difference between men's and women's use of controlling behaviors in former marriages. Controlling husbands were not particularly likely to engage in frequent, injurious, or unprovoked violence. Husband and wives did not differ in their motivation to control. [Source: Sociology Professors Richard B. Felson (Penn State) and Maureen C. Outlaw (Providence College) "The Control Motive and Marital Violence," Violence and Victims, 2007, Vol. 22, Issue 4

http://www.unboundmedicine.com/medline/ebm/record/17691548/full_citation/The_control_motive_and_marital_violence_

Researchers from the CDC reported in the American Journal of Public Health that in half of all relationships in which violence occurs, the violence is reciprocal. And surprisingly, the CDC researchers found that "in nonreciprocally violent relationships, women were the perpetrators in more than 70% of the cases." (http://ajph.aphapublications.org/cgi/content/abstract/97/5/941)

From the CDC Report:

ABSTRACT

“Objectives. We sought to examine the prevalence of reciprocal (i.e., perpetrated by both partners) and nonreciprocal intimate partner violence and to determine whether reciprocity is related to violence frequency and injury.

We analyzed data on young US adults aged 18 to 28 years from the 2001 National Longitudinal Study of Adolescent Health, which contained information about partner violence and injury reported by 11 370 respondents on 18761 heterosexual relationships.

Results. Almost 24% of all relationships had some violence, and half (49.7%) of those were reciprocally violent. In nonreciprocally violent relationships, women were the perpetrators in more than 70% of the cases. Reciprocity was associated with more frequent violence among women (adjusted odds ratio [AOR]=2.3; 95% confidence interval [CI]=1.9, 2.8), but not men (AOR=1.26; 95% CI=0.9, 1.7). Regarding injury, men were more likely to inflict injury than were women (AOR=1.3; 95% CI=1.1, 1.5), and reciprocal intimate partner violence was associated with greater injury than was nonreciprocal intimate partner violence regardless of the gender of the perpetrator (AOR=4.4; 95% CI=3.6, 5.5).

Conclusions. The context of the violence (reciprocal vs nonreciprocal) is a strong predictor of reported injury. Prevention approaches that address the escalation of partner violence may be needed to address reciprocal violence."

Read More: http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2005.079020.

And the CDC researchers are not the only scientists who've found that result. Psychology Professor Martin Fiebert of California State Univ. has compiled a bibliography, available from his Cal. State webpage, that lists more than 270 scholarly investigations, with an aggregate sample size of over 365,000, all of which find that women are at least as physically aggressive as men in their relationships with their spouses or male partners.

http://www.csulb.edu/~mfiebert/assault.htm

Men experience one-third of DV-related injuries.

· Of all persons who suffer an injury from partner aggression, 38% are male. [Source: John Archer: Sex differences in aggression between heterosexual partners: A meta-analytic review. Psychological Bulletin, Vol. 126, No. 5, pages 651-680]

· Of all persons who require medical treatment as the result of partner aggression, 35% are male. [Source: John Archer: Sex differences in aggression between heterosexual partners: A meta-analytic review. Psychological Bulletin, Vol. 126, No. 5, Table 5]

· Men who are victims of severe domestic violence suffer other problems, as well [Source: Richard J. Gelles: Intimate Violence in Families, 1997]:

◦30% experienced depression

◦ 14% required bed rest to recuperate from the injuries

◦ 10% needed to take time off from work

Men are far less likely to report DV incidents than women.

· According to the National Family Violence Survey, female victims of DV are nine times more likely to call the police than male DV victims. These are the percentages of victims who called the police in response to the assault:

Women: 8.5%
Men: 0.9%

[Source: JE Stets and MA Straus: Gender differences in reporting marital violence and its medical and psychological consequences. In Straus and Gelles (editors): Physical violence in American families, 1990, Table 15.]

Feminist myths about domestic violence:

Richard Gelles, an internationally-recognized expert on domestic violence, has identified a number of "urban myths" about domestic violence:

· MYTH: "According to the FBI, a woman is beaten every 15 seconds"

· MYTH: "4,000 women each year are killed by their husbands, ex-husbands, or boyfriends · There are nearly three times as many animal shelters in the United states as there are shelters for women"

· MYTH: "Battering during pregnancy is the leading cause of birth defects and infant mortality"

· MYTH: "Women who kill their batterers receive longer prison sentences than men who kill their partners"

Source: Richard Gelles, an internationally-recognized expert on domestic violence, refers to many of these claims as "factoids from nowhere."

[http://www.mincava.umn.edu/documents/factoid/factoid.html]

Many of these Feminist myths are based on DV studies that use biased survey methods.

· Some studies survey women but not men. Predictably, these studies yield one-sided findings.

· The DOJ National Crime Victimization Survey is flawed because persons do not consider most forms of domestic violence, such as slapping, shoving, or throwing an object at a partner, to be a crime.

· The DOJ National Violence Against Women survey prefaces the questions by repeatedly using the phrase "personal safety." Those words bias the responses because women are more concerned about personal safety than men.

· Some studies of domestic violence assess both physical and verbal abuse. That inflates and distorts the picture of physical violence.

Source: MA Straus: The controversy over domestic violence by women: A methodological, theoretical, and sociology of science analysis. In XB Arriaga and S Oskamp: Violence in intimate relationships. Sage Publishers, 1999. http://pubpages.unh.edu/~mas2/CTS21.pdf

In fact, domestic violence rates since 1979 have dropped precipitously by 29% (before VAWA or "get tough" laws were passed). However, since 1994, domestic violene has not seen a significant drop.

Partner Abuse State Of Knowledge (PASK) Website

PASK Findings At-a-Glance:

◦ Higher victimization for male than female high school students

- Rates of female-perpetrated violence higher than male-perpetrated (28.3% vs. 21.6%)

◦ Among large population samples, 57.9% of IPV (intimate partner violence) reported was bi-directional, 42% unidirectional

◦ 13.8% of the unidirectional violence was male to female, 28.3% was female to male

◦ Male and female IPV perpetrated from similar motives - primarily to get back at a partner for emotionally hurting them, because of stress or jealousy, to express anger and other feelings that they could not put into words or communicate, and to get their partner's attention.

Source: http://domesticviolenceresearch.org/pdf/FindingsAt-a-Glance.Nov.23.pdf

Myth:	*Fact:*
Every 9 seconds in the United States, a man beats a woman. In Oregon, crisis service hotlines annually receive more than 50,000 emergency calls and 37,000 non-emergency calls from survivors of domestic violence.	***Read more for yourself below.***

One hundred sixteen organizations and prominent individuals were surveyed regarding whether they made a public statement or listed as factual the statement: *Domestic Violence Is the Leading Cause of Injury to Women.*

The statement is false:

The Centers for Disease Control: "National Hospital Ambulatory Medical Care Survey: 1992 Emergency Department Summary" shows that the leading cause of injury, to both women and men, is accidental falls, followed by motor vehicle accidents. According to the CDC, 13.6 percent of injuries to women seen in emergency rooms are from car accidents—a total of nearly 2 million, or almost 10 times the number of injuries from domestic violence. Twice as many women visit emergency rooms due to being injured by an animal (459,000 a year) than by a male partner.

The survey was limited to discovering whether the listed organization or official made a false statement for public dissemination regarding the extent of physical injury to women as a result of domestic violence. There were several types of variations on the general statement made; in a majority of cases, the false information was qualified to a certain extent by the age range of women said to suffer this injury, although this qualification was also false. The wording of the false statement is noted for each of the listed groups or individuals. Where it was given by those surveyed, the source of the information that they disseminated is listed. In all but three instances given as a source by these organizations or individuals (Stark and Flitcraft 1985, the staff report of the committee on the Judiciary—according to the survey, the two least commonly quoted source authorities—and the National Coalition Against Domestic Violence), the source given never made the statement.

The survey did not, except in a few cases, attempt to examine further news media dissemination of the false data, although a cursory examination of some news media outlets indicates that it may be extensive.

Myth:	*Fact:*
Early Intervention by restraining orders and mandatory arrest decreases the risk of violence; Mandatory arrest policies and Early Intervention by Criminal Justice Reduces Domestic Violence	***Early Intervention is effective in a limited number of cases where the family has something to lose by police interferance—a job, community respect, or a relationship. The mere fear of intervention is a significant motivator to avoid causing intervention.*** ***If invervention poses no significant disruption otherwise, and in some socioeconimic and ethnic groups, actual invevention escalates conflict. Moreover, most early interventin is ilegal. In short, intervention is modestly effective in some populations that are probably amenable to less drastic inervention, completely unaffect in most others, recklessly dangerous in others, and almost always illegal.***

A similar inconsistency came up in a 2001 report funded by the National Institute of Justice, which examined the effectiveness of restraining orders in preventing abuse and related deaths. The report concluded that bringing violations of these orders to court increased the likelihood of death for unmarried African American women and married Caucasian women.

A 2002 study also funded by the National Institute of Justice was specifically designed to address whether the criminal justice system and related strategies, such as shelter stays, were effective in reducing domestic violence homicide rates. Although there were overall declines in violence for women who visited shelters in rural areas, and shelters in urban communities contributed to declines in violence for Hispanic women, they did not necessarily have this effect on Caucasian and African American women's lives.

Furthermore, in a perplexing twist, the presence of these shelters in cities seemed to contribute to declines in domestic violence against African American *men*. In other words, sheltering African American women seemed to protect them from hurting their partners, but not the reverse. The researchers concluded that "the findings are surprising in terms of the relative weak, or null, overall net effect of criminal justice system response." It is particularly disappointing to learn that African American women, who are most at risk for homicide, are least likely to benefit from the protective strategies offered them.

These studies suggest that prevention strategies may be strongly influenced by race and class issues in ways that we are just beginning to recognize: holding abusive men accountable and encouraging their victims to seek shelter

There is substantial doubt whether restraining orders do anything more than lull victims into a false sense of security.[9]

Mandatory Arrest:

Mandatory arrest laws were implemented as a result of VAWA 2000. Even though mandatory arrest was removed from the 2005 version of VAWA, such laws are still on the books in 23 states.[10] A recent analysis from Harvard University shows that mandatory arrest laws actually *increase* intimate partner homicides by 60%.[11]

Thirty-three states have laws that impose mandatory arrest for violation of a restraining order, leading to arrests of persons for sending their children a birthday card and similar actions.[12] One study concluded that prosecuting violations of restraining orders was "associated with *increases* in the homicide of white married intimates, black unmarried intimates, and white unmarried females."[13]

Eight years later, when Professor Sherman published a follow-up study on the same question, he drew his couples from a different city—Milwaukee, Wisconsin—with decidedly mixed results. Arrest deterred violence, he and his colleagues found, when men had something to lose as a result of the arrest, like a job or their marriage. But for those men who were unemployed, unmarried, or African American, arrest actually increased the likelihood of future violence.

Sherman underscored the significance of this discrepancy: If the Milwaukee police arrest ten thousand Caucasian men, these men subsequently commit 2,504 *fewer* acts of domestic violence than they do when they are simply warned. On the other hand, if the police in Milwaukee arrest ten thousand African American men for domestic violence crimes, these arrests subsequently produce 1,803 *more* acts of domestic violence. If these men had been warned rather than arrested, the research suggested, these acts of violence might not have occurred or would have been delayed.

that study, they guaranteed there would be no female intimate terrorists by using only the data on male perpetrators. For a lecture in Montreal, I examined 12 Canadian studies. Ten of the 12 reported only assaults by men. The most recent example occurred in the spring of 2006 when a colleague approached the director of a university survey center about conducting a survey of partner violence if a recently submitted grant was awarded. A faculty member at that university objected to including questions on female perpetration, and the center director said he was not likely to do the survey if the funds were awarded.

Method 3. Cite Only Studies That Show Male Perpetration

I could list a large number of journal articles showing selective citation, but instead I will illustrate the process with official document examples to show that this method of concealment and distortion is institutionalized in publications of governments, the United Nations, and the World Health Organization. For example, US Dept. of Justice publications almost always cite only the National Crime Victimization study, which shows male predominance (Durose et al. 2005). They ignore the Department of Justice published critiques, which led to a revision of the survey to correct that bias. However, the revision was only partly successful (Straus 1999), yet they continue to cite it and ignore other more accurate studies they have sponsored which show gender symmetry.

After delaying release of the results of the National Violence against Women for almost two years, the press releases issued by the Department of Justice provided only the "lifetime prevalence" data and ignored the "past-year prevalence" data, because the lifetime data showed predominantly male perpetration, whereas the more accurate past-year data showed that women perpetrated 40% of the partner assaults.

The widely acclaimed and influential World Health Organization report on domestic violence (Krug et al. 2002) reports that "Where violence by women occurs it is more likely to be in the form of self-defense (32, 37, 38)." This is selective citation because almost all studies that have compared men and women find about equal rates of self-defense.

Moreover, it also illustrates Method 4 (conclusions that contradict the results) because reference 32 (Saunders. 1986) reports that 70% of the minor violence and 60% of the severe violence was not in self-defense. Reference 37 Dekeseredy, Saunders, Schwartz *et al.*, 1997) used a similar method, and got similar results: 37% of the minor violence and 43% of the severe violence was initiated by women. In addition neither of these studies had data on self-defense by men, so neither provide a basis for concluding that violence by women differs from violence by men.

Method 4. Conclude That Results Support Feminist Beliefs When They Do Not

The studies cited above, in addition to illustrating selective citation, there are also examples of the ability of ideological commitment to lead researchers to misinterpret the results of their own research. A study by Kernsmith (2005), for example, states that "Males and females were found to differ in their motivations for using violence in relationships and that "female violence may be more related to maintaining personal liberty in a relationship than gaining power" (p. 180). However, although Kernsmith's Table 2 shows that women had higher scores on the "striking back" factor, only one question in this factor is about self-defense. The other questions in the factor are about being angry and coercing the partner. So, despite naming the factor as "striking back" it is mostly about anger and coercion. Therefore, the one significantly different factor shows that women *more than* men are motivated by anger at the partner and by efforts to coerce the partner. In addition, Kernsmith's conclusion ignores the fact that the scores for men and women were

approximately equal in respect to two of the three factors ("exerting power" and "disciplining partner"). Thus, Kernsmith's study found the opposite of what was stated as the finding.

Method 5. Create "Evidence" by Citation

The Kernsmith study, the World Health Organization report, and the pattern of selective citation show how ideology can be converted into what can be called "evidence by citation" or what Gelles (1980) calls the "woozle effect." A woozle effect occurs when frequent citation of previous publications that lack evidence mislead us into thinking there is evidence. For example, subsequent to the World Health Organization study and the Kernsmith study, papers discussing gender differences in motivation will cite them to show that female violence is predominantly in self-defense, which is the opposite of what the research actually shows. But because these are citations of an article in a scientific journal and a respected international organization, readers of the subsequent article will accept it as a fact. Thus, fiction is converted into scientific evidence that will be cited over and over.

Another example is the claim that the Conflict Tactics Scales (Straus et al. 1996) does not provide an adequate measure of PV because it measures only conflict related violence. Although the theoretical basis of the CTS is conflict theory, the introductory explanation to participants specifically asks participants to report expressive and malicious violence. It asks respondents about the times when they and their partner "[...]disagree, get annoyed with the other person, want different things from each other, or just have spats or fights because they are in a bad mood, are tired or for some other reason."

Despite repeating this criticism for 25 years in perhaps a hundred publications, none of those publications has provided empirical evidence showing that only conflict-related violence is reported. In fact, where there are both CTS data and qualitative data, as in Giles-Sims (1983), it shows that the CTS elicits malicious violence as well as conflict-related violence. Nevertheless, because there are at least a hundred articles with this statement in peer reviewed journals, it seems to establish as a scientific fact what is only an attempt to blame the messenger for the bad news about gender symmetry in PV.

Method 6. Obstruct Publication of Articles and Obstruct Funding Research That Might Contradict the Idea that Male Dominance Is the Cause of PV

I have documentation for only one case of publication being blocked, but I think this has often happened. The more frequent pattern is self-censorship by authors fearing that it will happen or that publication of such a study will undermine their reputation, and, in the case of graduate students, the ability to obtain a job.

An example of denying funding to research that might contradict the idea that PV is a male-only crime is the call for proposals to investigate partner violence issued in December 2005 by the National Institute of Justice. The announcement stated that proposals to investigate male victimization would not be eligible. Another example is the objection by a reviewer to a proposal a colleague and I submitted because of our "[...]naming violence in a relationships as a 'human' problem of aggression not a gender-based problem." When priority scores by the reviewers are averaged, it takes only one extremely low score to place the proposal below the fundable level. Others have encountered similar blocks; for example Holtzworth-Munroe (2005). Eugen Lupri, a pioneer Canadian family violence researcher, has also documented examples of the resistance to funding and publishing research on female perpetrated violence (Lupri 2004).

Method 7. Harass, Threaten, and Penalize Researchers Who Produce Evidence That Contradicts Feminist Beliefs

Suzanne Steinmetz made the mistake of publishing a book and articles (Steinmetz 1977, 1977–1978) which clearly showed about equal rates of perpetration by males and females. Anger over this resulted in a bomb threat at her daughters' wedding, and she was the object of a letter writing campaign to deny her promotion and tenure at the University of Delaware. Twenty years later the same processes resulted in a lecturer at the University of Manitoba whose dissertation found gender symmetry in PV being denied promotion and tenure.

My own experiences have included having one of my graduate students being warned at a conference that she will never get a job if she does her PhD research with me. At the University of Massachusetts, I was prevented from speaking by shouts and stomping. The chairperson of the Canadian Commission on Violence against Women stated at two hearings held by the commission that nothing that Straus publishes can be believed because he is a wife-beater and sexually exploits students, according to a Toronto Magazine article. When I was elected president of the Society for the Study of Social Problems and rose to give the presidential address, a group of members occupying the first few rows of the room stood up and walked out.

Concluding Comments

The seven methods described above have created a climate of fear that has inhibited research and publication on gender symmetry in PV and largely explain why an ideology and treatment modality has persisted for 30 years, despite hundreds of studies which provide evidence on the multiplicity of risk factors for PV, of which patriarchy is only one. Because of space limitations and because I am a researcher not a service provider, I have not covered the even greater denial, distortion and coercion in prevention and treatment efforts. An example is the director of a battered women's shelter who was terminated because she wanted to ask the residents whether they had hit their partner and the context in which that occurred. An example of governmental coercion of treatment is the legislation in a number of US states, and policies and funding restrictions in almost all US states that prohibit couple therapy for PV.

Finally, it was painful for me as feminist to write this commentary. I have done so for two reasons. First, I am also a scientist and, for this issue, my scientific commitments overrode my feminist commitments. Perhaps even more important, I believe that the safety and well being of *women* requires efforts to end violence *by* women and the option to treat partner violence in some cases as a problem of psychopathology, or in the great majority of cases, as a family system problem (Straus and Scott, in press; Hamel and Nicholls 2006).

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DISTORTING INTIMATE VIOLENCE FINDINGS: PLAYING WITH NUMBERS

Nicola Grahm-Kevan
E-mail: Ngraham-Kevan@uclan.ac.uk
Department of Psychology, University of Central Lancashire

Having been involved from the very beginning in researching family violence, Straus is in a unique position to provide a commentary on Graham-Kevan (2007).

Straus' commentary provides an excellent but worrying synopsis of the methods that have been employed by some feminist scholars and advocates for over 30 years to suppress research and dialogue that is perceived as having the potential to undermine the feminist conceptualization of domestic violence. The effects of this are insidious, and distort an entire research area. I not only fully endorse Straus' commentary but also would like to add one additional method that I frequently come across. This method relies on people's fear of statistics to misrepresent information for ideological reasons.

Method 8: Playing with numbers

As statistical rigor becomes more important in the design of official surveys, so the bias' evident in many older data sets are eliminated. This has the effect of making the results more valid. This is a problem if the author is motivated by ideological beliefs, as methodologically sound studies consistently find parity in the use of partner violence by men and women. In the case of official data, the authors charged with writing up reports can not merely ignore the findings (Straus' methods 1 and 2). In these cases ideologically driven authors manipulate the figures in such a way as to make women's victimization more visible while obscuring men's. The US department of Justice reports (http://www.ojp.usdoj.gov/bjs/ are a good place to look to find examples of playing with numbers (although you could equally look on many other official statistic websites e.g., the UK Home Office site).

Using 1998 figures we are told that 3.7% of all murders of men are by intimate partners, whereas 33.5% of murders of women were by intimate partners. In the same report we are told "[I]ntimate partner violence made up 20% of violent crime against women in 2001. By contrast, during the year intimate partners committed 3% of all nonfatal violence against men." (p. 2). The implication is that intimate partner violence and homicide are overwhelmingly a concern for female victims, and that male victimization is so unusual it can be ignored. This is not the case as well designed studies, using nonbiased sampling procedures find that men and women are equally likely to be subjected to violence from an intimate partner. Which begs the question: how can the figures above appear in governmental reports? The answer lies in the way statistics are routinely manipulated to misrepresent the nature of partner violence. For example, if you go to the US Department of Justice website (http://www.ojp.usdoj.gov/bjs/homicide/gender.htm you can calculate the proportions of all homicide victims that are men. Here we are informed that male victims constitute 74.5% of all victims of homicide, with both male and female perpetrators being more likely to target male rather than female victims. Interestingly you do not get his information in any of the US update documents for homicide (http://www.ojp.usdoj.gov/bjs/pubalp2.htm you have to calculate it. What this tells us is that men are more vulnerable to becoming a victim of homicide than are women per se. Men are three times more likely to be killed than women, by a more diverse range of perpetrators. A more honest figure, therefore, is the proportion of all intimate homicide victims that are men. Now this figure is not given, but if you go back to the document on intimate violence in 1998 (http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf), you can work out that in 28% of all intimate partner homicides the victims are men. This proportion undermines claims that men are not victims of partner violence and so such figures are not presented.

This type of reporting appears to be a deliberate attempt to distort findings to either support preexisting beliefs or avoid the wrath of those that do hold such beliefs. While some advocates may be unaware of the empirical literature on domestic violence, this excuse is not available to academics who by the very nature of their profession have a duty to be aware of conflicting evidence within their research areas. The reason for this suppression cannot, therefore, be the result of simple omission. The methods detailed by Straus and above suggest active suppression and subversion. Such behaviors have no place in academia or governmental responses to the problem of family violence.

Myth:	*Fact:*
"The Violence Against Women Act finally effectively addresses Domestic Violence"	***The Violence Against Women's Act is highly controversial even among women. It is at best experimental, but because women's activist groups view it as the key or the only issue, it has achieved political success. It is, nevertheless, plagued by abundant criticism that it wrecks enormous harm, is wildly misguided, and largely unconstitutional***

Women's Groups Are Criticizing VAWA

Women's groups are saying that VAWA may be hurting families and children more than it helps:

- *Ms. Foundation for Women:* "Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over."
- *Independent Women's Forum:* "Men may become alienated from and hostile to the system in the conviction that it is stacked against them and unjustly favors women."
- *True Equality Network:* "VAWA has spawned an abuse industry that continually expands the definition of domestic violence and condones the filing of false allegations, while ignoring the needs of true victims."
- *Eagle Forum:* "VAWA funds the re-education of judges and law enforcement personnel to teach them…how to ride roughshod over the constitutional rights of men."

"The sweeping proposal to revise the Violence Against Women Act, which will provide nearly $5 billion in funding over five years "to prevent violence against women, and for other purposes," is dangerous legislation based on faulty information. While some critics claim that it is Bill Clinton's payoff to "gender feminists" for finally coming to his defense regarding the Paula Jones case, it clearly serves as a means of providing services to some of the women and children who have lost income due to welfare cuts through a surreptitious back door. That back door requires that applicants claim that they and/or their children were victims of some form of domestic violence or sexual assault, but it offers abundant rewards for doing so - including the "rights" to refuse custody and even visitation to accused fathers with virtually no requirements of proof; no means of detecting false claims and not even means of verifying real ones. However, the real beneficiaries of VAWA II are not battered women or their children at all. Instead, it is the providers of services

to battered women who will benefit if it is enacted. If VAWA II was really meant to help battered women and their children then some form of jobs, job training or income replacement, or long-term, low-income housing would have been written into the bill. Instead, the only one of the above supported by VAWA II is the creation of a handful of jobs providing assistance to battered women - jobs that depend on the perpetuation of the false statistics and faulty beliefs on which VAWA II is based for their continuation."

Source: Dr. Susan Sarnoff on VAWA II
http://www.mediaradar.org/archivedArticles/Saroff_VAWA_II.htm

Problem	Explanation
1. VAWA programs have been ineffective in reducing partner abuse, and in some ways, have placed victims at greater risk of violence.	*Treatment of Abusers:* Many jurisdictions in the United States mandate abuser treatment programs based on the Duluth Model that have consistently been shown to be ineffective and disallow treatment based on sound science.[1,2] In many states, persons who conduct batterer intervention programs have no mental health training or qualifications.[3] Furthermore, few VAWA-funded services are available to help abusive women.[4] *Restraining Orders:* Research reveals that restraining orders are generally ineffective in preventing future physical violence.[5,6,7] One study found that protection order statutes were associated with an *increase* in the number of black women killed by their unmarried partners.[8] There is substantial doubt whether restraining orders do anything more than lull victims into a false sense of security.[9] *Mandatory Arrest:* Mandatory arrest laws were implemented as a result of VAWA 2000. Even though mandatory arrest was removed from the 2005 version of VAWA, such laws are still on the books in 23 states.[10] A recent analysis from Harvard University shows

2. VAWA undermines basic notions of civil liberties and the presumption of innocence.

Definitions of Domestic Violence:

Civil law definitions of DV are so broad and evidentiary standards are so weak that any verbal dispute or disagreement between partners can be construed as domestic "violence" and becomes the grounds to issue a restraining order.[17]

False Allegations:

False allegations of domestic violence have become widespread.[18] In some cases, women who are involved in an extra-marital affair falsely accuse their husband of abuse once he discovers the affair.[19]

Primary Aggressor Policies:

Primary aggressor arrest policies and prohibitions on dual arrest promote gender profiling: "there is a growing effort to avoid arresting female *perpetrators* under a policy of arresting the 'primary offender'"[20] and "police may be adopting a more lenient attitude toward females."[21]

3. VAWA programs have had a disproportionate negative effect on minority and low-income populations.

Mandatory Arrests:

Mandatory arrests have had a disproportionate effect on African Americans, who now represent 23% of all arrests between spouses and 35% of arrests between boyfriends/girlfriends.[22] The Ms. Foundation for Women notes, "Criminalization of social problems has led to mass incarceration of men, especially young men of color, decimating marginalized communities."[23]

Legal Aid:

Free legal services are available to alleged victims, but not to alleged offenders. Lower-income persons accused of domestic violence have little or no ability to find legal services. These persons are often forced to agree to an allegation for an offense they did not commit. Only 4% of recipients of VAWA-funded Legal Assistance for Victims services are male.[24]

Problem	Explanation
4. VAWA undermines the family, escalates partner conflict, and discourages reconciliation.	DV intervention programs typically do not distinguish between a one-time couple disagreement and severe physical violence; thus intrusive DV programs serve to escalate minor partner conflict. The safest place for men and women is in the intact family.[25] DV programs should seek to support the intact family whenever possible.[26] But VAWA-funded program policies[27] and state laws[28] actually discourage/prohibit couple counseling and mediation.
5. VAWA fosters sex-based discrimination.	The Omnibus Crime Control and Safe Streets Act of 1968, as amended, prohibits discrimination on the basis of sex. In 2005 Congress added the following requirement to VAWA: "Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title."[29] Despite this provision, the DoJ continues to employ discriminatory language in its grant program titles (e.g., "Grants to Reduce Violence Crimes Against Women on Campus" and grant solicitations (e.g., "entities engaged in violence against *women* activities").[30] As a result, male victims continue to be subjected to widespread discrimination.[31]

6. VAWA promotes half-truths, myths, and falsehoods about domestic violence.	*Findings:* Most of the findings in the VAWA law are one-sided, misleading, or false. *Training and Education:* VAWA-funded training and education programs often lack balance and factual accuracy, routinely depicting men as aggressors and women as victims. That bias is so widespread that it is believed to be undermining civil liberties and prejudicing the even-handed administration of justice.[32] *National Institute of Justice Evaluations:* Most domestic violence evaluations conducted by the DoJ National Institute of Justice substantially downplay, or ignore altogether, male victims of domestic violence.[33] That violates congressional intent, and also violates 28 CFR 46.111(3), which requires DoJ-funded research to assure "equitable" selection of research subjects.[34]
7. VAWA encourages immigration fraud.	*Immigration:* VAWA amends the Immigration and Nationality Act so illegal aliens can obtain permanent residency, work permits, and U.S. citizenship from the Citizenship and Immigration Service by making an accusation of domestic violence, even if the allegation is unsubstantiated.[35,36]

Facts:

1. in 2000 Senator Orrin Hatch directed the executive branch to "ensure that men who have been victimized by domestic violence and sexual assault will receive benefits and services under the Act"1

2. Despite that statement of Congressional intent, male victims continue to be turned away from VAWA-funded shelters.2

3. The language of the 2005 Violence Against Women Act now recognizes that male victims of domestic violence are in need of treatment and protection, and requires VAWA-funded programs to provide them with such services.3

4. VAWA funds judicial education programs that instruct judges to disregard constitutionally-protected due process provisions,4

5. Judges often issue restraining orders without any direct threat of harm,5,6 and restraining orders are widely used as "part of the gamesmanship of divorce."7,8

6. The Massachusetts Trial Court found that less than half of all restraining orders issued in that state involved even an *allegation* of physical violence,9

7. It has been estimated that each year one million protective orders are issued in the United States, and about 500,000 of such orders represent a direct violation of due process protections,10,11

8. 15% of such protective orders are issued against women and 85% against men.12

9. Research shows that most instances of partner aggression are minor in nature,13 and such cases require counseling, not legal intervention,

10. VAWA-funded programs and policies often discourage couple counseling and partner reconciliation, and

11. Various VAWA incentives serve to promote family break-up,14 which results in children losing daily contact with one of their parents.15

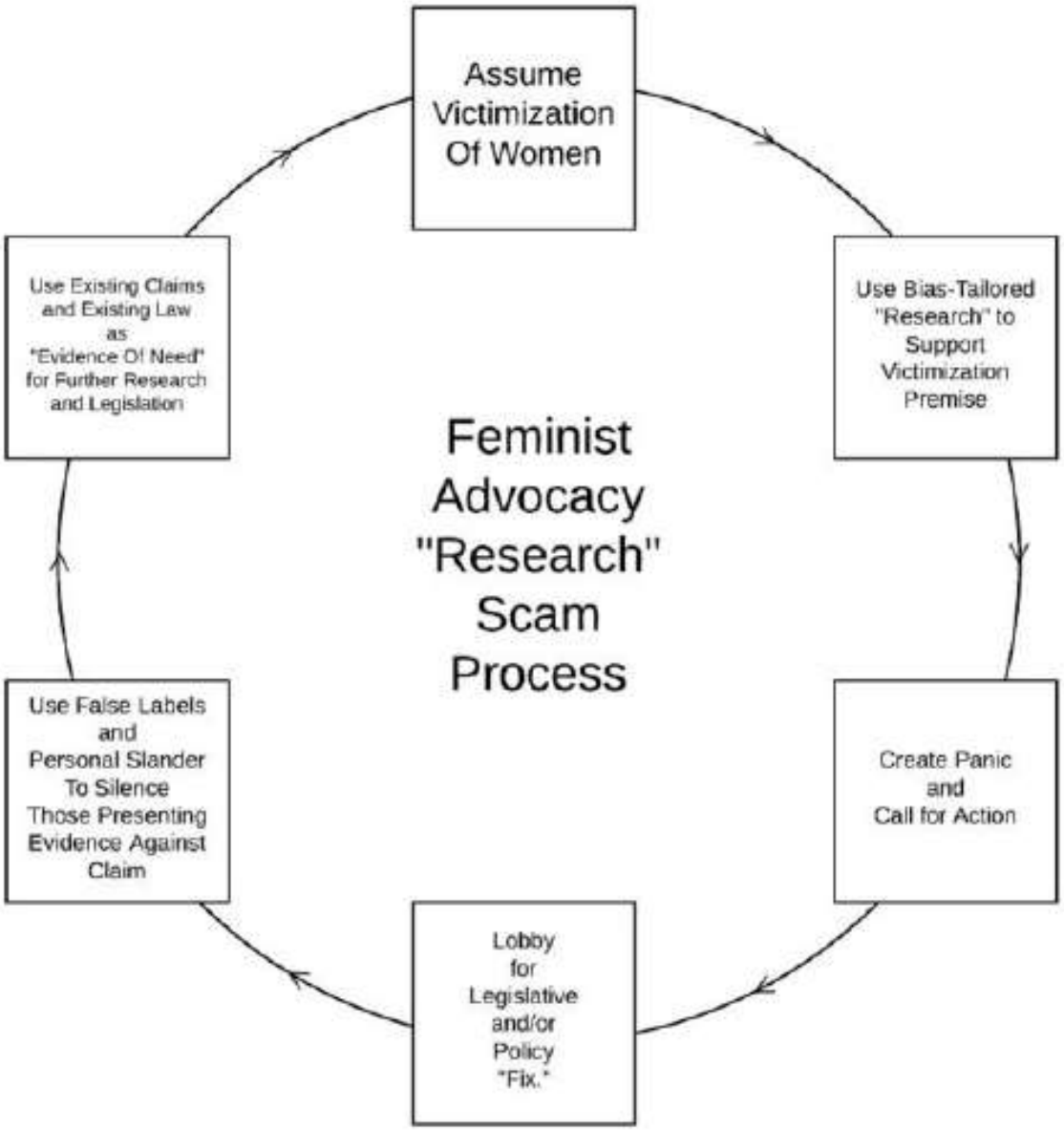
Source: http://www.mediaradar.org/docs/VAWA-Resolution.pdf

http://mediaradar.org/docs/RADARflyer-HR739-SAFE-Act.pdf

Myth:	*Fact:*
Violence Against Women Funding Grants Are Based on Accurate Scientific Studies	***Studies on which Grant Applicants such as the Alliance and its partners base their funding applications under the Violence Agaisnt Women Act are fraudulent in violation of 18 U.S.C. 371.***

The feminist advocacy "research" scam

avoiceformen.com Della Burton June 20th, 2013 view original



Feminist legislative advocacy is a self-defined, self-perpetuating cycle.

Step 1. Assume Victimization of Women, begins with a general supposition, such as "There exists an epidemic of sexual violence against women in the United States, perpetrated mainly by men." The less detailed base-assumption for this supposition would be the general concept of female victims and male violence.

Step 2. Use Bias Tailored "Research" to Support Victimization Premise, involves designing a method of research specifically to return "data" which appears to support the initial supposition. Feminist organizations have pressured government agencies to adopt their biased methods, and with some success such as with the feminist-influenced CDC's 2010 National Intimate Partner and Sexual Violence Survey, in which researchers used questions with broad or poorly defined applications, interpreting the respondent's recall of having *felt* harassed in a public place as an incident of sexual violence, and placing drunk sex and sex under false pretenses in the same category as being subjected to physical force or threats of physical force by counting sexual activity taking place under those circumstances as an act of forced penetration (rape.) The survey combines discussion of ambiguously distasteful acts (the subject being exposed to someone else's nudity, without including in the survey the stipulation that the act was deliberate) with discussion of imposition (made you show your sexual body parts to them) to justify attributing personal violation to answers not necessarily indicative of it. This treats accidentally walking in on an individual's nudity the same as being forced to strip, pose nude, or perform for pornographic video.

This pattern is continued throughout the survey: Questions on stalking including questions which could count telemarketing and collections calls as stalking behavior, as well as awareness of an unwanted person's presence in public places as stalking behavior (regardless of the person's reason for being there)... and the giving of unwanted gifts. Questions on coercive control treat concern for a partner's whereabouts as coercion if *ever* expressed, not just if pursued excessively. Under that definition, most teens in nurturing families are subjected to stalking by their parents. Partners in families with tight schedules may also be guilty of stalking each other. Under Control of reproductive health, the survey asks if a partner "refused to use a condom when you wanted them to use one" but doesn't ask whether that was followed by nonconsensual sex, leaving the implication that if one chooses to have sex with a partner who refuses to wear a condom, the refusing partner is guilty of sexual violence (control of reproductive health) even when the decision to continue the act is a *choice* made by the "victim."

The researchers didn't ask the respondents to define their experiences, but instead made the definitions themselves, greatly padding their numbers in a way which would demonstrate an epidemic of sexual violence in the United States. Upon completion of the survey, which produced "evidence" of violence perpetrated by both sexes, and of victims of both sexes, the CDC published a report. In it, the authors directly mentioned lifetime rape findings for both sexes, as this showed a gap between male and female experiences, but only mentioned the figure for *women* during the last 12 months... with no numbers for men. The inconsistency of this omission becomes even more glaring considering that in every instance where men's numbers were lower the report mentions both.

Reading the description for the researchers' definition of rape explains the gap in numbers between men and women, as they used a definition of rape which omitted victims who were forced to penetrate the perpetrator, limiting the male experience to being penetrated, the same as a female. This effectively excludes the victim's sex organ from the definition of rape, where the victim is a man. Consequently, in the report, the authors make the claim that the majority of male rape victims reported male perpetrators. According to the report, excluding (report-defined) rape, non-contact sexual violence, and stalking, perpetrators of every (other) type of sexual violence (which would include being forced to penetrate) were mostly female. Were the researchers to include the category "forced to penetrate," in their definition of rape, the 2010 rape numbers would even out between the genders of victim, and the percentage of female perpetrators of rape would greatly increase.

The report also emphasizes male perpetration where it is not merited, with statements like "Nearly half of male stalking victims also reported perpetration by a male," the correction of which would be "*More* than half of all male stalking victims reported perpetration by a *female*." Instead of pointing out the prevalence of female perpetrators in that finding, they emphasized the *presence* of male perpetrators, masking the majority by mentioning the minority.

The "Discussion" section of the report focuses primarily on female victims, citing violence as a health risk to both sexes but specifying that women are heavily effected, and repeating the emphasis on male perpetrators of stalking.

Then there is this:

Other features of NISVS also are designed to reduce underreporting, such as use of only female interviewers...

Question: If victims of sexual violence perpetrated by males would be too intimidated to give honest answers to a male interviewer, wouldn't victims of sexual violence perpetrated by females be too intimidated to give honest answers to a female interviewer?

Step 3. Create Panic and Call for Action, involves disseminating the findings to the general public, beginning with publication of the initial results, release of them to news organizations with dramatic claims which support the original supposition. Continuing on with the same example, the Implications for Prevention section of NISVS, while much of the assertions made are gender-neutral, the authors specifically cite "beliefs and social norms" that "reinforce negative stereotypes about masculinity, or that objectify and degrade women" as contributing factors to partner and sexual violence within society, but make no mention of the reverse; negative stereotypes about femininity, or objectification and degradation of men. Apparently, Play**boy** contributes to "rape culture," but Play**girl** does not?

Less than 2 hours after the initial data was released, the National Resource Center on Violence Against Women went into action, engaging its online network in a Tweet Up to promote the study's claims, and releasing talking points on the study, emphasizing female victims, that same day. Interestingly, one response to the Tweet campaign involved participants asking "How might the measured impacts studied in NISVS be useful in supporting positive outcomes in child custody cases?" For the significance of this question, read Restraining Order Abuse and Vexatious Litigation, part two.

The release of the study and report was followed by articles from various outlets. The New York Times introduced the report with the headline, "Nearly 1 in 5 Women in U.S. Survey Say They Have Been Sexually Assaulted," followed by a story which emphasized the survey's findings on female victimization, the stated experiences of women, and the consequences to women... with only a brief mention of violence against men. CNN did just about the same, with the headline "Survey: 1 in 3 women affected by partner's violent behavior," and another story focused on female victims, though there is more mention of males than in the Times. Consultant360.com, which describes itself in its "about" page as "the No. 1 independent clinical journal among office-

based primary care physicians," published a February 2012 article Intimate Partner Violence: The Silent Epidemic which was largely a reiteration of the CDC's NISVS claims and conclusions... *for only female victims.*

The report was similarly shared on college campuses, as with the presentation at Slippery Rock University using graphics which combined images suggestive of male-on-female violence with statistics from the report, and with the campus website's article, which focuses entirely on victimization of females, ending with the claim that men are the perpetrators of 95 percent of cases of sexual violence, which is *not* actually supported by the study's results.

Step 4. Lobby for Legislative and Policy "Fix," involves activist campaigns as well as continued writing and advocacy calling for lawmakers and organization administrators to respond to the "research" claims with changes to law and policy.

In January 2012, the official website of the National Organization of Women posted an activism initiative asking members to urge their legislators to reauthorize the Violence Against Women Act, citing the NISVS claims about female victims as evidence that "violence is prevalent."

Further encouragement from lobbying came from media sources. Debora Tucker, executive director of the National Center on Domestic and Sexual Violence cited NISVS in her post Violence Against Women Act is Working, published in US News's Debate Club forum under the question "Should the Violence Against Women Act Be Reauthorized?"

Bloomberg News article U.S. Senate Passes Aid to Victims of Domestic Violence quoted the white house citing NISVS in support of reauthorizing VAWA.

Citation of NISVS in support of reauthorization of VAWA shows up in a variety of sources – publishing a full list of them would take hours, and fill pages – but here are a few examples:

Senators Patrick Leahy (D) and Mike Crapo (R)

Terry Poore of The Hill's Congress blog

Ms. Magazine

Sexuality Information and Education Council of the United States

The Daily Nebraskan

Jewish Women International

The National Alliance to End Sexual Violence

Ohio Alliance to End Sexual Violence

http://feministcampus.org/ (republish of the Ms. Mag article, sans links)

United Methodist Women

Step 5. Use False Labels and Personal Slander to Silence Those Presenting Evidence Against Claim, is an ongoing effort which began well before the current controversy. One only has to read about the experiences of Warren Farrel as his feminist colleagues learned that he was more interested in facts, rather than propaganda, and reality than ideology. Erin Pizzey, founder of the Chiswick Women's Aid, one of the first women's shelters in the modern world, could tell you much about feminist harassment of advocates who contradict feminist ideology and stand in the way of feminist goals... as could Richard J. Gelles, along with, Murray A. Straus, and Suzanne K. Steinmetz. In addition to harassing researchers with whom they disagree, feminists use six other methods to suppress information that does not support their claims.

Step 6. Use Existing Claims and Existing Law as Evidence for Further Research and Legislation. This is often done during the research phase. The text of the official report on NISVS calls for further research more than once:

> *Ongoing data collection and monitoring of these problems through NISVS and other data sources at the local, state, and national level must lead to further research to develop and evaluate strategies to effectively prevent first-time perpetration of sexual violence, stalking, and intimate partner violence.*

Source: http://www.avoiceformen.com/feminism/feminist-corruption/the-feminist-advocacy-research-scam/

Myth:

Women universally report satisfaction with criminal justice "intervention" "mandatory arrest" and "victimless prosecution" policies, so they work to curb domestic violence.

Fact:

Women are often unwilling participants in the roller coaster of early intervention and widely report regret and most harrowingly, reluctance to reach out to police for more serious issues in the futre. Prosecutors and police effectivvely deprive a woman (or man) of the very authonomy Feminism seeks to advance, effectively substituting state dependence and ultimately abuse fro domestic. Prosecutors scratch their heads when women later report regret for calling police and claim they won't in the future, calling such "victims" (and indeed victims they are) "ungrateful." Alliance's own exit studies demonstrate this perverse reality (see Exhibit B, Sec. IV, "Victimless Prosecution" slides). In this way, Feminism shows less concern for empowerment of women over their own lives than empowerment of Feminism over everyone's lives—including non-feminist women. Such policies are ineffective at best, dishonest, tyrannical, and your participation in them illegal.

Unrepentant Perpetrators

Many battered women hope that if they call the police on their partners, those partners may finally be forced to get help for their violent behavior. Batterer intervention programs were supposed to answer that need. But have they?

In one of the only rigorous studies of Duluth-model batterer intervention programs, researchers followed two groups of male offenders participating in BIPs—a group in Broward County, Florida, and a group in Brooklyn, New York. The results were disappointing.

Researchers found that batterers in the Broward group who were facing the possible loss of jobs, homes, families, and good reputations were less likely to reoffend after attending the program than those who had little or nothing to lose. In other words, as the Milwaukee study on mandatory arrest also suggested, a significant number of men were "beyond the reach" of the program. Indeed, men who did not attend most or all of the sessions of the twenty-six-week BIP—approximately 34 percent of those who participated in the study—were more likely to get rearrested for violence than those *who did not attend treatment at all*. Only those men who attended all of the treatment sessions experienced a reduction in their violence. The study also found that men didn't change their attitudes about violence after attending the entire program—even when they became less violent.

The Brooklyn study revealed that men who attended treatment for a longer period of time (twenty-six weeks) were less likely to commit new acts of violence than those who only completed an eight-week program. Unfortunately, however, men were far more likely to complete the shorter program, simply because it took less time and cost less money. Here, too, there was no noted change in attitudes toward domestic violence after completing either program. In other words, the reform was based on behavior modification as a result of perceived or possible negative outcomes ("I better do this, or I'm going to be in more trouble") rather than on a new understanding that hurting one's partner is wrong ("I now see my violence and my relationship in an entirely different light and accept responsibility for my actions").

BIPs are rarely successful even to this limited extent, though, because many men find them so alienating that they drop out after the first session. Only recently have judges developed follow-up measures to ensure compliance with the treatment mandate. With judicial monitoring, the program may be more

effective than it has been alone. But as researchers at the Center for Court Innovation have pointed out in their 2007 study, it isn't enough that courts *issue* a treatment mandate; they must also *enforce* such mandates "by sanctioning those who are noncompliant." Many men escape detection when judges fail to follow up on the treatment orders they issue.

Why are so many men resistant to BIPs? Consider the following scenario. Richard is a traveling salesman; Janet, his wife, stays home with their two children. Janet's drinking is a point of tremendous tension in the marriage, but their fights have never become physical. One evening, after Richard returns from a road trip, Janet drunkenly announces that she has been unfaithful in his absence. Richard flies into a rage and punches Janet in the stomach, breaking a rib. Because Richard has never been arrested before, he is offered the option of attending a BIP for twenty-six weeks instead of going to jail.

Richard finds the class extremely frustrating because he doesn't feel solely responsible for what happened. The teacher tells him that he needs to walk in his wife's shoes and develop a less dominating attitude. Dominators are "losers." Every time he raises the issue of his wife's infidelity and drinking, the teacher tells him he is blaming her for his violence. Richard completes the program because he is afraid of losing his job, but he is left feeling bitter and misunderstood. The difficulties in the marriage that caused the violence remain unaddressed.

Ungrateful Victims

In 1999, the football star Jim Brown was prosecuted in Los Angeles for attacking his wife's car with a shovel and threatening to kill her. Mrs. Brown escaped to a neighbor's house and called 911. When the operator asked if there was a history of domestic violence in the relationship, she said yes.

But when the case came to trial, Monique Brown's story morphed into something different, and she refused to testify against her husband; she told the jury that her husband had *not* threatened to kill her. In fact, she claimed that she'd called 911 to punish him because she believed he "was having an affair." As a result of her change of heart in the courtroom, Jim Brown was acquitted of threatening to kill his wife and convicted on a misdemeanor vandalism charge.

Monique Brown behaved the way most victims of domestic violence behave; when faced with the likelihood of her husband going to jail, she revised her story, choosing to protect her relationship with her husband rather than ally herself with the criminal justice system, which sought to punish him.

Linda Fairstein, a crime novelist and former head of the Sex Crimes Unit in the Manhattan District Attorney's office, states the problem forthrightly: "The greatest frustration for law enforcement is the overwhelming number of times a woman—typically, it's a woman—will call 911 to have police stop an attack.

But then they don't want the violator arrested for any number of reasons. Maybe it's, 'I love him when he's good,' or maybe it's financial."

Many of us find these stories enraging. Can't these women see their batterers for "who they are" instead of who they want them to be? Don't they realize that they are likely to become violent again? I would argue that many of these women *do* know that their partners may become violent again, and that they would welcome some other form of assistance, but throwing someone they love in jail simply isn't an acceptable alternative for them. We should ask ourselves a similar set of questions: Do we really see the criminal justice bureaucracy as it is, or as we want it to be? And do we really think that these violent men will be any less violent once they've come through the system?

It would be nice to think that the reforms of the last thirty years have made the criminal justice bureaucracy more hospitable toward battered women, but that isn't precisely the case. It has become more hospitable toward women who are sure that they are ready to leave their batterers—a small minority. For everyone else, however, it is a minefield.

When I talk with legal professionals working in the system, they often report being distressed and frustrated by what they see. One New York public defender, who spoke to me confidentially, has more than a decade of experience in handling domestic violence cases. She described Manhattan's criminal court as a "miserable" place where overworked and distracted judges, prosecutors, and defense attorneys scream at one another all day, and everybody is at their "absolute worst while trying to make the most important decisions about the lives of other human beings." After all, for most people, having a relative or partner arrested is both frightening and humiliating, and other bad things frequently follow: people lose their jobs; kids get taken away from their parents; families get kicked out of public housing. In sum, she said, "Manhattan's criminal court is a dysfunctional mess," and this sentiment is not specific to New York City or defense attorneys.

One East Coast prosecutor, who also spoke on the condition of anonymity, told me that he has become totally disillusioned with the system after only a few months on the job. A particular disappointment has been the lack of domestic violence training that new prosecutors receive. He attended one three-hour session on domestic violence that included clips of bloody and bruised women. The purpose was to "scare us and show us how bad things are." But what was missing from the training—something he regarded as critically important—was insight into the psychological reasons that lead to domestic violence. This omission, he feels, contributes to a general ignorance as to why violence happens and a lack of empathy for those caught in the system. He is particularly disturbed by the way female victims are treated. "I can't count the number of times I've heard the word 'crazy' applied to victims by cops, prosecutors, victim advocates, and others," he said.

To make matters worse, the inflexibility of mandatory arrest and prosecution policies too frequently lead to the escalation of minor family incidents into serious crimes. Two years ago, Sarah McPherson, a public health expert, found her assumptions about the fundamental benevolence of the system shattered when she became unexpectedly entangled with the criminal justice bureaucracy in California. I first spoke with Sarah when she contacted me for advice on how to address her situation. "I tried to tell the truth and cooperate in good faith. I thought the system was there to help me," she said, "but, instead, it ended up becoming my greatest enemy."

One evening, Sarah and her husband, Jeff, a computer programming engineer, were just getting home, and tensions were running high. The family's two dogs were being especially rambunctious, and Jeff lost his temper and started hitting one of the dogs. Sarah was extremely upset by this and hurried to intervene, kicking her husband to get him away from the dog. As Jeff staggered, his glasses fell off; unable to see properly and off-balance, he struck Sarah in the face so that the frames of her own glasses cut her close to her eye. Both husband and wife were extremely disturbed by the incident: nothing like this had ever happened in their marriage.

The cut required stitches at the hospital, where Sarah, in the company of her husband, tried to explain frankly how she had been hurt. Sarah told the nurse that Jeff had never hit her during their fifteen years together. At the same time, she recognized that what had happened between them, while it hadn't been an intentional injury, was also a result of serious stress within the marriage. She hoped that they might receive counseling to help them negotiate this difficult period in their domestic life. What happened next, however, sent the family into an emotional and financial tailspin from which they still have not fully recovered.

Sarah says that police officers questioned her in a demeaning way, trying to "put words in my mouth." In what would become an ongoing mantra, she repeatedly told everyone at the hospital that night that the violence that occurred between her and her husband was *not* a pattern of behavior. It had been, emphatically, a onetime occurrence. She stressed that she was not battered, nor was her husband a batterer. All they wanted from the system was counseling to help them work out their problems. One of the officers responded that she "could be dead next time."

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That same day, the district attorney informed Sarah that she was charging her husband with a felony. The charge was based on the number of stitches she'd received. Had she only had severe bruising, the D.A. said, the offense would have been classified as a misdemeanor. In the end, Jeff accepted a plea bargain for a felony in exchange for lifting the restraining order; he attended fifty-two sessions of batterer treatment and the family paid some $16,000 in legal bills.

"I was shocked at how disempowered they made me feel through this whole process," says Sarah. "I was treated like a victim who was unable to think or speak for myself. It was clear that the police, the D.A., and the victim advocate viewed me as a typical battered woman and that this perception colored everything that I did or said in their eyes." The D.A. and victim advocate informed her that there were few, if any, success stories in these cases: usually, the violence continues, and the woman eventually leaves or dies. "No matter how articulate I was about what I wanted or what our family needed, no one listened to me. I wondered why I did not have a say. I wondered why everyone I came in contact with in the system assumed that our family situation would not get better and that divorce was imminent. I don't think it helped that the D.A. assigned to my case only worked with cases of domestic violence."

Silencing the Battered Woman

From the beginning, feminists have talked about empowering battered women. What that nearly always meant, however, was empowering battered women who were ready to leave their violent relationships. But so many of the laws that have been enacted in the name of battered women have, in fact, further stripped them of power. After a woman—often in a moment of intense fear—makes that call to the police, many of the consequences of her actions have already been decided for her. (Sarah McPherson, of course, didn't go to the police; she simply went to the hospital.) Her husband or lover may be arrested and even prosecuted and convicted without her consent. In fact, in some instances, a prosecutor will explain to the judge or jury that a woman's attempts to defend her husband—by not testifying or going so far as to testify on his behalf—are the result of the Battered Woman Syndrome.

Can these reforms really be seen as empowering strategies for women? The dismaying truth is that any woman who isn't prepared to give up her voice altogether should be wary of using the system. If the system prosecutes a man against his wife's or his girlfriend's will, is this likely to weaken or strengthen the bond between them? And if the woman has herself been violent in the relationship, what are her options? To admit her guilt and get arrested herself, or to go along with the mythology of domestic violence supported by the courts, to avoid a record.

Whether we like it or not, the questions of strength and weakness, choice and coercion, are very complicated in intimate relationships. Do many battered women overestimate their power in their marriage? Yes. Do they often lose power over the course of the relationship? Yes. But at the same time, many of these women are also incredible survivors, and some even acknowledge that they participate in various destructive patterns with their partners. Is taking away even more of their power really the best way to make them stronger? Or can depriving them of their decision making ability have the opposite effect from the one we intended?

Barbara Fedders of the Criminal Justice Institute at Harvard Law School has described how the new laws can backfire:

> After an incident of domestic violence, for example, a woman might wish to call the police and have them come to her home. She might reason that a police officer could diffuse an explosive situation or frighten her batterer into ceasing his abuse. She may engage in a careful cost-benefit analysis and determine that, while police *presence* would be useful, an *arrest* would not. A woman may be dependent on the income of her batterer, for example, or she may not want their children to witness their father's arrest. Such a woman, if aware of a mandatory-arrest policy in her jurisdiction, would likely refrain from calling the police at all, and would thereby be deprived of a potentially useful tool in her struggle to end the violence in her life.

In a 2006 study entitled "What Do Battered Women Want? Victims' Opinions on Prosecution," Sara C. Hare, a sociology professor at Indiana University Southeast, noted that women are empowered when they control the prosecutorial process and can use the threat of prosecution to reduce their partners' violence. Ironically, Hare comments, "the criminal justice system is pursuing a policy that takes the control away from the very group who could use it to reduce revictimization."

Creating opportunities for victims of domestic violence to tell more complete stories—whether in court or through the treatment they participate in with their partners—in ways that also ensure their safety is surely a goal we should strive to attain. A woman recanting on the witness stand, changing her testimony after an arrest has been made, or perhaps, even worse, not being given an opportunity to tell a jury what *really* happened the night her husband was arrested isn't beneficial for anyone involved. Encouraging openness and honesty among men and women, including those in same-sex couples—whether or not one's story fits the feminist mold—must be developed in ways we have not yet imagined. This is especially true for those who remain silent because they fear that their story doesn't jibe with what society thinks they should do—leave and never look back.

What Next? Criminal Justice Reform and Beyond

No one denies the fact that the criminal justice system is an irrefutable part of fighting domestic violence. But we still need to be vigilant about reevaluating and improving the systems we are putting in place. If BIPs are serving little purpose other than reassuring society that it is taking the "right stand," other avenues of treatment should be explored. If more African American women are being beaten by their partners than ten years ago, mandatory arrest, restraining order policies, even shelter stays need to be revisited. And if most women in abusive relationships still aren't calling the police, we shouldn't be too quick to pat ourselves on the back, thinking that we've solved the problem of domestic violence.

The larger point is that the criminal justice system cannot be the *only* method we have for confronting this social problem. The much-ignored but irrefutable fact is that most people who are involved in violent relationships do not want to end the relationships, and they certainly don't want their partners to go to prison; they simply want the violence to stop. Empowering people either to heal the relationships or to disengage from them without further violence is clearly the goal, but it is equally clear that the police and the courts are not ideally suited for this purpose.

To make matters worse, the inflexibility of mandatory arrest and prosecution policies too frequently lead to the escalation of minor family incidents into serious crimes. Two years ago, Sarah McPherson, a public health expert, found her assumptions about the fundamental benevolence of the system shattered when she became unexpectedly entangled with the criminal justice bureaucracy in California. I first spoke with Sarah when she contacted me for advice on how to address her situation. "I tried to tell the truth and cooperate in good faith. I thought the system was there to help me," she said, "but, instead, it ended up becoming my greatest enemy."

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Minneapolis study examined three alternative interventions after a violent incident: arrest, counseling the parties when the police arrived at the scene, or separating the couple for several hours after the altercation with the threat of a subsequent arrest. After a six-month follow-up, the researchers found that arresting the abuser had been the response most likely to deter a future incident of violence. This study, together with the Thurman verdict, became the impetus for encouraging arrest in domestic violence cases nationwide.

Eight years later, when Professor Sherman published a follow-up study on the same question, he drew his couples from a different city—Milwaukee, Wisconsin—with decidedly mixed results. Arrest deterred violence, he and his colleagues found, when men had something to lose as a result of the arrest, like a job or their marriage. But for those men who were unemployed, unmarried, or African American, arrest actually increased the likelihood of future violence.

Sherman underscored the significance of this discrepancy: If the Milwaukee police arrest ten thousand Caucasian men, these men subsequently commit 2,504 *fewer* acts of domestic violence than they do when they are simply warned. On the other hand, if the police in Milwaukee arrest ten thousand African American men for domestic violence crimes, these arrests subsequently produce 1,803 *more* acts of domestic violence. If these men had been warned rather than arrested, the research suggested, these acts of violence might not have occurred or would have been delayed.

our original definition of domestic violence sufficiently inclusive? And if not, how can we broaden and refine it?

Are Women Safer?

Generally speaking, yes. Domestic violence homicides have dropped dramatically over the past three decades—as have homicide rates overall. Casey Gwinn, San Diego's former city attorney and one of the nation's most voluble and effective advocates of mandatory responses to domestic violence, believes that these policy changes have, in fact, reduced the murder rate. In an interview with Oprah Winfrey in 2003, Gwinn declared, "We need to be intervening earlier and earlier, holding batterers accountable and preventing escalation until we no longer have broken bones and dead bodies." Gwinn's attitude reflects the popular belief that by taking the responsibility for arrest and prosecution away from the victim and placing it in the hands of the court, the victim is insulated from a batterer's anger and retaliation and can't be coerced into dropping charges.

When one delves into the research, however, the correlation between the new policies and the drop in murder rates is far from clear. In a 2007 research report about domestic violence, Rana Sampson, a national policing consultant and a former White House Fellow, noted the general decline in nearly all forms of violent crime and then added, "It is unknown whether domestic violence is paralleling these declines for the same or different reasons." Richard L. Davis, a retired lieutenant from the Brockton, Massachusetts, police department and an

subsequent arrest. After a six-month follow-up, the researchers found that arresting the abuser had been the response most likely to deter a future incident of violence. This study, together with the Thurman verdict, became the impetus for encouraging arrest in domestic violence cases nationwide.

Eight years later, when Professor Sherman published a follow-up study on the same question, he drew his couples from a different city—Milwaukee, Wisconsin—with decidedly mixed results. Arrest deterred violence, he and his colleagues found, when men had something to lose as a result of the arrest, like a job or their marriage. But for those men who were unemployed, unmarried, or African American, arrest actually increased the likelihood of future violence.

Sherman underscored the significance of this discrepancy: If the Milwaukee police arrest ten thousand Caucasian men, these men subsequently commit 2,504 *fewer* acts of domestic violence than they do when they are simply warned. On the other hand, if the police in Milwaukee arrest ten thousand African American men for domestic violence crimes, these arrests subsequently produce 1,803 *more* acts of domestic violence. If these men had been warned rather than arrested, the research suggested, these acts of violence might not have occurred or would have been delayed.

A 2002 study also funded by the National Institute of Justice was specifically designed to address whether the criminal justice system and related strategies, such as shelter stays, were effective in reducing domestic violence homicide rates. Although there were overall declines in violence for women who visited shelters in rural areas, and shelters in urban communities contributed to declines in violence for Hispanic women, they did not necessarily have this effect on Caucasian and African American women's lives.

Furthermore, in a perplexing twist, the presence of these shelters in cities seemed to contribute to declines in domestic violence against African American *men*. In other words, sheltering African American women seemed to protect them from hurting their partners, but not the reverse. The researchers concluded that "the findings are surprising in terms of the relative weak, or null, overall net effect of criminal justice system response." It is particularly disappointing to learn that African American women, who are most at risk for homicide, are least likely to benefit from the protective strategies offered them.

These studies suggest that prevention strategies may be strongly influenced by race and class issues in ways that we are just beginning to recognize: holding abusive men accountable and encouraging their victims to seek shelter

husband, tried to explain frankly how she had been hurt. Sarah told the nurse that Jeff had never hit her during their fifteen years together. At the same time, she recognized that what had happened between them, while it hadn't been an intentional injury, was also a result of serious stress within the marriage. She hoped that they might receive counseling to help them negotiate this difficult period in their domestic life. What happened next, however, sent the family into an emotional and financial tailspin from which they still have not fully recovered.

Sarah says that police officers questioned her in a demeaning way, trying to "put words in my mouth." In what would become an ongoing mantra, she repeatedly told everyone at the hospital that night that the violence that occurred between her and her husband was *not* a pattern of behavior. It had been, emphatically, a onetime occurrence. She stressed that she was not battered, nor was her husband a batterer. All they wanted from the system was counseling to help them work out their problems. One of the officers responded that she "could be dead next time."

Sarah was informed that her husband was going to be arrested and that she needed to obtain a restraining order against him. She begged the officers not to put Jeff in jail. She told them that he'd just begun a new job and was required to be out of town the next morning. At that moment, all she could think about was how important this new job was; it meant financial stability for their family. At great hardship, the couple posted $11,000 in bail to keep Jeff out of jail.

A few days after the incident, a victim advocate contacted Sarah and pressed her to consider a legal separation, divorce, and/or a move to a shelter.

may in fact be making some women's further injury and death more likely rather than less so. Given that the largest increase in domestic violence incidents has been among African American women, and that Native American women face three times as many domestic violence attacks as white women, it is important for advocates, law enforcement officials, and the women themselves to understand just how helpful or harmful obtaining a restraining order might be. The research also suggests that we need to continue to evaluate these policies, even if—*especially if*—we may learn that they aren't as effective as we'd hoped. The battered women's movement was fueled by women's rage that society would rather turn away from domestic violence than fight to save the lives of its victims: the inconvenient truths about this social problem had to be confronted, not swept under the rug, no matter how tempting it was to do so. Now those of us who consider ourselves activists in the movement must hold ourselves to that same high standard.

Women as the New Criminals

On the evening of Monday, October 15, 2007, thirty-nine-year-old Jill Dean of Conway, South Carolina, called 911 to report that her husband had beaten her, but forty-five-year-old Charles Dean had left the house before the police arrived. He returned nine hours later and stabbed his wife to death.

Mandatory arrest policies were designed to interrupt and prevent exactly this type of life-threatening situation. For better or worse, however, this is only one type of domestic violence. As anyone who regularly watches the reality show *Cops* can tell you, the police often arrive on the scene to discover a drunk and mutually combative couple yelling at each other, shoving each other, and

Mandatory arrest policies were designed to interrupt and prevent exactly this type of life-threatening situation. For better or worse, however, this is only one type of domestic violence. As anyone who regularly watches the reality show *Cops* can tell you, the police often arrive on the scene to discover a drunk and mutually combative couple yelling at each other, shoving each other, and hotly declaring that the other person started it. Even when there is no evidence that any serious injury has been inflicted by either party, many state laws now demand that someone be arrested. And when an arrest *does* take place, it's no longer necessarily the man who gets taken in. Indeed, the largest increase in arrests of domestic violence perpetrators since mandatory or preferred arrest policies have been adopted has been among women.

In one study of California, funded by the Department of Justice, the researchers found that the increase in arrests of men between 1987 and 1995 was 37 percent, whereas the increase in arrests of women was 446 percent. Convictions for domestic violence offenses between 1987 and 1999 grew at a rate of 131 percent for men—and an astounding 1,207 percent for women.

Despite the primary aggressor laws now on the books in most states, police often feel they must arrest both parties when confronted with a he-said/she-said scenario, even though many states will force them to justify that decision in their report. In other instances, police officers conclude that it was the woman who started the violence, and arrest policies force them to incarcerate her. This was certainly not what feminist advocates originally envisioned. And when there are children at home and the police are taking away *both* parents, it can be devastating for the family as a whole.

Beyond the Reach of the Police

In 2000, Patricia Tjaden and Nancy Thoennes conducted a study funded by the National Institute of Justice and the Centers for Disease Control on the "extent, nature and consequences of intimate partner violence." Tjaden and Thoennes discovered that, even after decades of reform, only *one-fourth* of the women who experienced a physical assault called the police. A little less than two-thirds of the women who did *not* call the police said that they did not think the police would believe them; 32 percent explained that they did not want the police or courts involved. And among those women who did call the police, 99.7 percent reported that they did not think the police could do anything about their victimization. Such findings led the researchers to observe that "most victims of intimate partner violence do not consider the justice system an appropriate vehicle for resolving conflicts with intimates." Then why did they call in the first place? Moments of extreme danger often prompt us to reach out for the only help available to us, even when we are not confident that it will address the problem. If you live with a pyromaniac, you call the fire department when the house is going up in flames, even though you doubt that it will be able to stop your partner from lighting matches in the future.

Several states have instituted Fatality Review Teams—made up of police officers, court personnel, children's services workers, advocates for victims, batterer treatment personnel, and other community members—to analyze why a domestic violence death has occurred. Over a two-year period in Arizona,

Leaving the sisterhood: A recovering feminist speaks

avoiceformen.com Elly Tams August 13th, 2012 view original

There is a recently published book by a group of feminists in the UK, entitled The Lightbulb Moment. It is a collection of accounts by women about the precise moment they "saw the light" and became feminists. Religious, Road To Damascus style imagery aside, this book's title resonates with me. I have experienced quite a few "lightbulb moments" myself with regards to feminism, especially in the last two years. But my realizations and illuminations have been of a quite different nature to those described in the book. For I am writing this after having been raised, educated and – yes – indoctrinated in feminist dogma for over 40 years, but my "journey" has involved leaving the sisterhood. And the sisterhood, that lovely, touchy-feely, all-girls-together, "feminine" club has punished me severely for my decision.

In 2010 I began writing a blog, using the pseudonym Quiet Riot Girl. I have been a participant in a few online communities over the years, and I have always enjoyed the way they give us the opportunity to play with our identities, develop personas and explore ideas and practices we may not have done under our "real names." But when I created Quiet Riot Girl, I had no idea just how life-changing my explorations would be. I was still a feminist when I started blogging (and tweeting) in 2010. As a critical feminist, I was aware how divided and sometimes incoherent feminists are on important issues such as sex, economics and bodily autonomy. But I was a "sister" nonetheless. If you take a look at my first QRG Blog you will see how clearly I identified as a feminist back then. But only a year later I had completely split from feminism and was writing as an "anti-feminist," for example in my controversial essay, Against Feminisms.

So what changed? And why? My rejection of feminism (and its rejection of me) is not just about choosing to use different labels to identify myself and my politics these days. This has been a dramatic sea-change on my part, which means I see the world completely differently now. There have been quite a few twists and turns in my personal 'revolution'. Here are some of the key ones.

1) Rape Culture And Other Feminist Myths

The feminist blogosphere is full of articles and discussions describing what feminists call "rape culture." According to them, women are not able to walk down the street or enjoy a drink in a bar without the fear of being hit on, harassed, and raped by men, those dirty dogs. When I first began engaging with feminists online, I was immediately struck by the fact that I did not recognize the phenomenon of "rape culture" they were talking about. And I certainly did not recognize men to be villains, as they were portraying them. I noticed that both men as a whole and individual men were being demonized by feminists. Julian Assange for example, still has not even been charged by the authorities, but feminist bloggers have already branded him a "rapist."

In 2010 I wrote a piece called Why Rapist Is A Dirty Word and the reactions from feminists were telling. Some (as you can see in the comments) said I had no right to speak about rape as I have never been raped. Others called me a "rape apologist" or said I was "rapey!" My status as a woman was put into question, and "sisters" called for my feminism card to be revoked. When I tried to get my work on rape culture published by feminist websites and publications online, I was met with stony silence. It seemed as if I had broken a "taboo." Undeterred, I continued to explore the issue and in September 2011, having given up on challenging the concept of rape culture within feminism, I had my article Rape Culture And Other Feminist Myths published at

the Good Men Project. In that piece I said:

> *When I hear the word "rapist" I think of a man, and not a man who is capable of change, of reflection. We have to speak about and talk to men who commit sexual assault as if they are able to change, and we also must acknowledge men are not the only perpetrators, if we want to reduce sexual and intimate partner violence in society. Rape Culture is a myth. I reject it outright.*

As a result of my stance, feminists, who still see "rape" as primarily sexual violence done by men to women, rejected me.

2) The Sex Wars

When I did finally realize how badly feminism treats men and masculinity, I was not able to identify as feminist anymore.

Sex is of course universal, and universally complex. My own sexuality and sexual politics have shifted over time. One of the reasons feminism and I parted company, is the "sex wars." For all the puritanism that comes out of feminism, those girls are remarkably interested in sex! And especially the evils of heterosexual men.
Back in 2010 I wrote a post called Sex For Sale. Though I now disagree with my former self about much of it, the piece is important to me because it shows how I refused even then to accept the feminist panic over sex work. As I say in the article, "When I talk about sex work I include myself in the picture. And I include you too. If we don't talk about it as participants, then we are "othering" the women who overtly exchange sex for money. (And now I would say "men and women!")

The term "othering" is key here. Feminists LOVE to talk about sexual objectification, by which they mean the sexual objectification of women. But I know that in the 21st century, men are also objects of desire, and young men in particular are splashed across billboards and TV screens wearing next to nothing. But this metrosexual masculinity is ignored by feminism. Feminists maintain that it is women, not men who are objectified in our culture. And they love to blame the sex industry, and heterosexual men's desires, for women's "othered" status as "sex objects," as victims of the "male gaze," and ultimately as victims of sexual violence by men. But in my view it is feminists who objectify men and women the most. Whether they are "sex positive" feminists or "anti-sex and anti-sex industry" feminists, they simplify and objectify people into caricature portraits of "victims" or "perpetrators." I refuse both labels and therefore I don't fit the feminist mould.

3) No, Seriously, What About The Men?

The first time I remember hearing the term misandry was only a few years ago. I was a director of a feminist non-profit providing training for women in the music industry. We were at an "equal opportunities" training day and a man there suggested my organization might be sexist. I was angry, and incredibly dismissive of him and his views. I thought the "misandry" that he spoke about didn't exist.

I don't want a medal for realizing it does. I am recounting this anecdote to underline just how rare it is for feminists to take sexism against men seriously. During my PhD gender studies program I referred often to a "dictionary of feminist theory." The entry for "misogyny" was long and detailed. There was no entry for "misandry."

When I did finally realize how badly feminism treats men and masculinity, I was not able to identify as feminist anymore. In an article at the Good Men Project I wrote about the awful jokey retort feminists and their allies use when anyone brings up men's issues in a discussion: "whatabouttehmenz?". Incidentally, I *do* think I deserve a medal for the fact I was banned from the website called No, Seriously, What About Teh Menz?. NSWATM is supposedly a forum for people who care about men, misandry and masculinity, but I was banned for challenging Sady Doyle, the prominent American feminist blogger, activist and, er...man hater!

The list of well-known feminists who spend a good deal of their time and energy demonizing and putting down men is long. We all have our "favourites" – Amanda Marcotte, Melissa McEwan, Cath Elliott, Jill Filipovic and Gail Dines spring to mind. But I have found myself identifying the UK Guardian journalist Suzanne Moore as particularly guilty of misandry. In one of her weekly columns, Moore relayed a story about her young daughter asking her why she is a feminist. Her reply?

"Because men do horrible, horrible things."

4) Who Is Silencing Whom?

Feminists, especially online, often talk about Silencing. They claim that men attempt to shut feminist women up using a variety of nasty techniques. These include "mansplaining," "gaslighting" and "sexual bullying." I won't explain the concepts – A Voice For Men readers will be familiar with them, as I am sure they have been used against you in many an argument with feminists. In a rather strange discussion on Feministe blog a while ago, I was accused of all the things men are supposed to do to silence feminists. In fact they called me a man and awarded me an "honorary penis" which I treasure to this day.

The lovely ladies at Feministe also banned me from commenting on their blog. In April 2011 I made a list of all the people who ban and block me online, named after a feminist blog of the same name, called 101 Wankers. I have now reached and surpassed my "target" and have stopped counting. But this didn't shut me up, so in March 2012 Julie Bindel the well-known anti-sex industry UK feminist, along with some of her friends, "outed" me. My pseudonym Quiet Riot Girl was revealed to belong to me, Elly Tams, and I was labeled an "anti-feminist," "homophobic," and a "troll."

The term "troll" is particularly effective, because it is so generally accepted, way beyond the feminist blogosphere, as a word meaning someone "bad," "untrustworthy," "subhuman" even. I have been called a troll on many occasions, and even though I know it is used politically, the label hurts. When there are TV programmes about "RIP trolls" who trawl Facebook for tributes to recently deceased people and then deface them and abuse grieving relatives, it is difficult to be called a troll and stand tall and proud. But overall, in the light of my treatment by feminists and others who don't like what I have to say, I am left with one question.

Who is silencing whom?

5) Lies, Damn Lies and Statistics

One of the things I have found hardest to accept about feminism is just how incoherent it is, and how it often uses dodgy data and – well, actual lies – to promote and justify its statements. I studied gender to PhD level and beyond, and so have based a lot of my own work on feminist theory and feminist-influenced research. Was it all wrong? The answer is yes and no. In my Against Feminisms essay I show that I reject ALL feminist assumptions and basic positions. But I do not claim everything written by a feminist to be useless. Feminist theorists and writers whose work I have not abandoned altogether include Camille Paglia, Judith Butler and Gayle Rubin. But I think they all still focus too much on women, and women's issues, which weakens their arguments. I need another article, or maybe a second PhD to demonstrate how feminists are inconsistent in their views, and how research they use is often very poor. But here are a couple of recent examples:

In her recently published book, The Sex Myth, Brooke Magnanti, more famously known as Belle de Jour, showed how anti-sex industry feminists use bad data and poor analysis to come up with what I can only call lies about adult entertainment and "misogyny." Magnanti shows how feminist campaigners have based some of their activism on wrong stats about the relationship between the number of lap dancing clubs in an area, and the level of rape in that same place. UK based feminist organizations such as Object UK and the Fawcett Society often present "facts" about violence against women that on closer inspection are not facts at all. Or are only part of the story.

The Fawcett Society provide us with another example of feminist dodgy data. They currently have a campaign about the way women are economically hit harder by the recession than men. I find the figures they use to be particularly insulting to all of our intelligence, because they ignore the "fact" that we all know from our own lives, that in the vast majority of cases, men and [redacted] ort each other. hildren, and who hers of their children considerable amounts of money in child support.

6) The Bigger Picture

The issue of fathers and fathers' rights is one which brings me onto my last point. In my recent conflicts with feminists, particularly on the internet, I have found them to be incredibly small-minded, insular and unaware of wider issues in society that don't affect them directly. The feminist blogosphere is dominated by young, white, middle class women who do not have to worry about whether they are allowed to see their children or not, if they are likely to be called up to fight in a war, or where the next meal is coming from. Globally, when it comes to major crises such as famine, natural disasters, armed conflict and unemployment, everyone, not just women, suffers. Even in America, the military draft is compulsory for young men, not women, but feminists have dismissed that as an important gender issue.

The constant whining by well-heeled feminist women about so-called male privilege, was probably the final straw for me as far as my relationship with feminism was concerned. Privilege? What privilege?

In the title of this piece I call myself a "recovering feminist." Whilst I don't think I was "addicted" to feminism, the phrase was deliberate. Giving up the dogma that has dominated my life thus far has not been easy. There are even parallels between how alcohol or drugs, say, can serve as a "prop," a "safety net," a way of trying to avoid some of the harsher aspects of reality and what feminism offered me. Without the comfortable delusion of feminism I am more vulnerable now. Without the "gang," the "club" (the "cult?") I sometimes feel alone. Sometimes I am alone. But I have no regrets. Apart from feminism's misandry, lies, silencing tactics, and oppressive sexual politics, in writing this I have been reminded that even when I was still a feminist, who happened to think for herself, I was cast out and derided. Being a feminist, for me, was often being in the sisterhood without any sisters. I will never go back.

Thanks to Dean Esmay for encouraging me to write this. And thanks to my own sister who was never convinced by feminism, and is enjoying saying "I told you so!"

NB: My spellcheck does not recognize the word "misandry." Maybe my PC is a feminist.

Princeton WordNet Definitions: http://wordnet.princeton.edu/

Con Artist:

- S: (n) confidence man, con man, con artist (a swindler who exploits the confidence of his victim)

Manipulation:

Noun

- S: (n) manipulation, use (exerting shrewd or devious influence especially for one's own advantage) *"his manipulation of his friends was scandalous"*
- S: (n) handling, manipulation (the action of touching with the hands (or the skillful use of the hands) or by the use of mechanical means)

Abuse:

Noun

- S: (n) maltreatment, ill-treatment, ill-usage, abuse (cruel or inhumane treatment) *"the child showed signs of physical abuse"*
- S: (n) abuse, insult, revilement, contumely, vilification (a rude expression intended to offend or hurt) *"when a student made a stupid mistake he spared them no abuse"; "they yelled insults at the visiting team"*
- S: (n) misuse, abuse (improper or excessive use) *"alcohol abuse"; "the abuse of public funds"*

Verb

- S: (v) mistreat, maltreat, abuse, ill-use, step, ill-treat (treat badly) *"This boss abuses his workers"; "She is always stepping on others to get ahead"*
- S: (v) pervert, misuse, abuse (change the inherent purpose or function of something) *"Don't abuse the system"; "The director of the factory misused the funds intended for the health care of his workers"*
- S: (v) abuse, clapperclaw, blackguard, shout (use foul or abusive language towards) *"The actress abused the policeman who gave her a parking ticket"; "The angry mother shouted at the teacher"*
- S: (v) abuse (use wrongly or improperly or excessively) *"Her husband often abuses alcohol"; "while she was pregnant, she abused drugs"*

Violence:

Noun

- S: (n) violence, force (an act of aggression (as one against a person who resists)) *"he may accomplish by craft in the long run what he cannot do by force and violence in the short one"*

- **S: (n) ferocity, fierceness, furiousness, fury, vehemence, violence, wildness (the property of being wild or turbulent) *"the storm's violence"***
- **S: (n) violence (a turbulent state resulting in injuries and destruction etc.)**

Batter*:*

Noun:

- **S: (n) batter, hitter, slugger, batsman ((baseball) a ballplayer who is batting)**
- **S: (n) batter (a liquid or semiliquid mixture, as of flour, eggs, and milk, used in cooking)**

Verb:

- **S: (v) buffet, knock about, batter (strike against forcefully) *"Winds buffeted the tent"***
- **S: (v) clobber, baste, batter (strike violently and repeatedly) *"She clobbered the man who tried to attack her"***
- **S: (v) dinge, batter (make a dent or impression in) *"dinge a soft hat"***

Family:

Noun:

- **A group consisting of parents and children living together in a household.**

Adjective:

- **Designed to be suitable for children as well as adults.**

Conspiracy to Deprive Civil Rights: (1) A conspiracy; (2) to deprive plaintiff of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting therefrom." *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993).

Conspiracy: Agreement and concerted action. *Babbar v. Ebadi*, 2000 U.S. App. LEXIS 11798 (10th Cir. 2000); *Crabtree v. Muchmore*, 904 F.2d 1475, 1476 (10th Cir. 1990).

18 U.S.C. 1964 (b)

(b) It shall be unlawful for any person through a pattern **of racketeering activity** . . . to acquire or maintain, directly or indirectly, any interest in or control of any **enterprise** which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. 1964 (c)

c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

18 U.S.C. 1961 (4)

Enterprise:

. . . any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

18 U.S.C. 1961 (1)

Racketeering Activity (Predicate Acts):

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;

(B) any act which is indictable under any of the following provisions of title 18, United States Code:

- Section 201 (relating to bribery),
- section 224 (relating to sports bribery),
- sections 471, 472, and 473 (relating to counterfeiting),
- section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious,
- section 664 (relating to embezzlement from pension and welfare funds),
- sections 891–894 (relating to extortionate credit transactions),
- section 1028 (relating to fraud and related activity in connection with identification documents),
- section 1029 (relating to fraud and related activity in connection with access devices),
- section 1084 (relating to the transmission of gambling information),
- section 1341 (relating to mail fraud), section 1343 (relating to wire fraud),
- section 1344 (relating to financial institution fraud),
- section 1351 (relating to fraud in foreign labor contracting),
- section 1425 (relating to the procurement of citizenship or nationalization unlawfully),
- section 1426 (relating to the reproduction of naturalization or citizenship papers),
- section 1427 (relating to the sale of naturalization or citizenship papers),
- sections 1461–1465 (relating to obscene matter),
- section 1503 (relating to obstruction of justice),
- section 1510 (relating to obstruction of criminal investigations),
- section 1511 (relating to the obstruction of State or local law enforcement),
- section 1512 (relating to tampering with a witness, victim, or an informant),
- section 1513 (relating to retaliating against a witness, victim, or an informant),
- section 1542 (relating to false statement in application and use of passport),
- section 1543 (relating to forgery or false use of passport),
- section 1544 (relating to misuse of passport),
- section 1546 (relating to fraud and misuse of visas, permits, and other documents),

- sections 1581–1592 (relating to peonage, slavery, and trafficking in persons)
- section 1951 (relating to interference with commerce, robbery, or extortion),
- section 1952 (relating to racketeering),
- section 1953 (relating to interstate transportation of wagering paraphernalia),
- section 1954 (relating to unlawful welfare fund payments),
- section 1955 (relating to the prohibition of illegal gambling businesses),
- section 1956 (relating to the laundering of monetary instruments),
- section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),
- section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire),
- section 1960 (relating to illegal money transmitters),
- sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children),
- sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles),
- sections 2314 and 2315 (relating to interstate transportation of stolen property),
- section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works),
- section 2319 (relating to criminal infringement of a copyright),
- section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances),
- section 2320 (relating to trafficking in goods or services bearing counterfeit marks),
- section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes),
- sections 2421–24 (relating to white slave traffic),
- sections 175–178 (relating to biological weapons),
- sections 229–229F (relating to chemical weapons),
- section 831 (relating to nuclear materials),

(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501 (c) (relating to embezzlement from union funds),

(D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States,

(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act,

(F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b (g)(5)(B).

Exhibit J

Ex. J

Case law Describing Relevant Immunities

Citation	Legal Significance for Immunity/Clearly Established Rights Relating to Activities and Entities Identified in Table A
Butz v. Economou, 438 U.S. 478 (1978); *Botello v. Gammick*, 413 F.3d 971 (9th Cir. 2005); *Swift v. California*, 384 F.3d 1184 (9th Cir. 2004).	Administrators, including civil servants,[1] social workers, executives, and prosecutors or judges performing "non-judicial" or "non-prosecutorial" acts are only entitled to "qualified immunity" (see infra) regardless of their rank or the scope of their responsibilities, even when acting within the scope of their authority.
Imbler v. Pachtman, 424 U.S. 409 (1976)	Prosecutors and judges are entitled to "absolute immunity" only for acts "intimately associated" with the *criminal* process; "absolute immunity" applies only to civil actions for money damages; even if immunized from civil action at law, violations of the Civil Rights Statutes are nonetheless criminal acts, and may constitute indictable acts if committed individually or

[1] A note on terminology: Social workers are in the exhibits variously described as "advocates" "support persons" or other terms not found within the case law. Because courts apply a "functional approach" to any immunity analysis—whether and to what extent a given government employee is entitled to immunity depends not on the job title, but on the function performed. Thus, while a prosecutor may enjoy absolute "prosecutorial" immunity for actions in, for example, in-courtroom prosecution of her duties, she will not enjoy "absolute" immunity (if any immunity at all) for, for example, advising alleged victims of crime regarding civil protective orders, investigation of alleged crimes, or child custody proceedings. See *Mishler v. Clift*, 191 F.3d 998 (1999). In determining which type of immunity an entity may assert as a defense to a liability claim, courts do not look exclusively to the "job title", but instead to the "function" being performed. Thus, a City Attorney prosecutor may be entitled to "absolute prosecutorial immunity" for making a closing argument in court, but only "qualified immunity" for advising police, victims, social workers, judges, or others in a criminal investigation. Similarly, a "victim advocate" may be entitled to "qualified immunity" for acts in managing a client's housing needs, but "absolute immunity" in testifying as a witness to, for example, physical injury to the victim. Unfortunately, which, if any, level of immunity particular social workers or others may enjoy is not certain. Thus, job title is only partially indicative of level of immunity.

We draw attention to this issue to alert you particularly to the question of what, if any, level of immunity may apply to the entities and activities described in Exhibit A—social workers, police, and prosecutors performing social services. See, *Hoffman v. Harris*, 511 U.S. 1060 (1994). For persons with job titles such as "victim advocate" who may work with prosecutors, or "prosecutor" who may perform the role of a social worker or counselor, "absolute prosecutorial immunity" likely will not protect either actor in such "nontraditional" roles.

	in conspiracy under 18 U.S.C. 242 (and by implication section 241)
Burns v. Reed, 500 U.S. 478 (1991); *Henzel v. Gerstein*, 608 F.2d 654 (5th Cir. 1979); *Skokos v. Rhoades*, 440 F.3d 957 (8th Cir. 2006); *Jensen v. Wagner*, 603 F.3d 1182 (10th Cir. 2010); *Michaels v. New Jersey*, 50 F.Supp. 2d 353 (D.N.J. 1999);	Prosecutors and judges are not entitled to absolute immunity for "non-judicial" acts, including administrative, public relations, consulting, general governmental advisory, civil, criminal (or otherwise) advice to or collaboration with other law enforcement officials such as police and social workers/advocates, legal (or otherwise) advice to victims not related to criminal trials, and the like. In all cases in which a prosecutors actions are accused of illegal constitutional violations, "[t]he presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties."
Hartman v. Moore, 547 U.S. 250 (2006)	Prosecutors and police are not entitled to immunity for unconstitutional arrests, searches, or taking of property without probable cause, under fraudulent assertions of probable cause, or with malice.
Kalina v. Fletcher, 522 U.S. 118 (1997); *Morely v. Walker*, 175 F.3d 756 (9th Cir. 1999); *Genzler v. Longanbach,* 410 F.3d 630 (9th Cir. 2005); Morley v. Walker, 175 F.3d 756 (9th Cir. 1999); *Sommer v. U.S.,* 713 F. Supp. 2d 1191 (S.D. Cal. 2010).	Prosecutors enjoy no immunity for untruthful statements in certifications of probable cause for arrest or charging.
Mireles v. Waco, 502 U.S. 9 (1991); *Robichaud v. Ronan*, 351 F.2d 533 (9th Cir. 1965); *Bauers v. Heisel*, 361 F.2d 581 (3d Cir. 1966*), cert. denied*, 386 U.S. 1021 (1967)	Absolute judicial or prosecutorial immunity does not extend to "non-judicial" acts such as private assaults or other acts outside the narrow bounds of specific judicial duties.
Malley v. Briggs, 475 U.S. 335 (1986)	Law enforcement officers are not entitled to absolute immunity when acting as a complaining (action-initiating) witness.
Lampton v. Diaz, 639 F.3d 223; Lacey v. Maricopa County, 693 F.3d 896 (9th Cir. 2012).	Government action not "intimately associated" with the *criminal* phase of prosecution not immune from liability (e.g., actions reporting alleged wrongdoing to agencies, including media, social services, etc. other than the presiding criminal court not protected).
United Steelworkers of America v. Milstead, 705 F.Supp. 1426 (D. Ariz. 1988)	Supervisors of law enforcement officials (including police, social workers, and prosecutors/judges supervising "non-judicial" ad "non-prosecutorial" acts) may be independently liable for failing to protect against constitutional deprivations in perform

	"supervisorial" activities such as plan, direct, oversee, and observe the officials' to assure protection of constitutional rights of citizens affected by the law enforcement official's actions; retaliatory arrest actions taken with malice defeat a defense of "good faith" belief in probable cause to arrest.
Richardson v. Fleming, 651 F.2d 366, 373 (5th Cir. 1981)	Prosecutors are not entitled to immunity in their actions in conspiring in the illegal acts of non-prosecutors.
Dornheim v. Sholes, 430 F.3d 919 (8th Cir. 2005)	A prosecutor's "planning and execution" of a criminal investigation, raid, or arrest with law enforcement and/or witnesses is not entitled to prosecutorial immunity.
Procunier v. Navarette, 434 U.S. 555 (1978); *Waggy v. Spokane County Washington*, 594 F.3d 707 (9th Cir. 2010).	Law enforcement administrators (including judges, staff, and prosecutors performing an administrative function) are presumptively protected by qualified immunity, and are liable for violations of "clearly established" at the time of the violation which a reasonable person in the administrator's shoes would have been aware of.
Lynch v. Johnson, 420 F.2d 818 (6th Cir. 1970); *Robichaud v. Ronan*, 351 F.2d 533 (9th Cir. 1965); *Bauers v. Heisel*, 361 F.2d 581 (3d Cir. 1966*), cert. den.*, 386 U.S. 1021 (1967); *Tower v. Glover*, 467 U. S. 914, 922–923 (1984); *Rehberg v. Paulk*, 566 U.S. __ (2012); Ex. J.	Any public employee or private entity performing a public function who acts under color of law in excess his or her chartered authority to deprive any person of rights, privileges, and immunities is subject to strict liability for such deprivations as a trespasser without any defense of immunity.
Brady v. Maryland, 373 U.S. 83 (1963),	Prosecutors and advocates must preserve and disclose all potentially evidence—including exculpatory evidence—to a defendant in a criminal prosecution, including all evidence in the possession of other agencies to which they or other agencies have access, custody, or control.
Manning v. Ketcham, 58 F.2d 948 (6th Cir. 1932)	A prosecutor's or judge's acts beyond the scope of their official judicial duties which result in injuries to others or deprive them of their legal rights are liable to injured parties "as a" "whether he is actuated by malice, corrupt and impure motives or not."
Troxel v. Granville, 530 U.S. 57 (2000)	Described "the interest of parents in the care, custody and control of their children--as perhaps the oldest of the fundamental liberty interests recognized by this Court."
Jensen v. Wagner, 603 F.3d 1182 (10th Cir. 2010)	"There is perhaps no more delicate constitutional barrier protecting individual freedom from

	governmental interference than that which protects against state interference with parental autonomy."
Connick v. Thompson, 131 S.Ct. 1350 (2011); *Carter v. City of Philadelphia*, 181 F.3d 339 (3rd Cir. 1999)	Municipal entities are required to adequately train those employees who, like police officers, civil servants, administrators, and social workers, have not received formal education in constitutional law, are not subject to no local, state, and/or national professional ethical supervision, licensure, and discipline, and receive no on-the-job training specifically directed to protecting against violation of citizen's civil rights. Without such training, municipalities (such as the city and county of San Diego and those private entities collaborating with them) face liability under section 1983 and 1985 for failure to train. See *City of Canton v. Ohio*, 489 U.S. 378 (1989). Regardless of whether their acts are immune, government workers, including prosecutors, judges, and "administrative" advocates, are required to "assure justice is done" rather than "merely convict." *Connick*, *supra*.
Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)	"California law expressly imposes liability on a public employee for his own act or omission. (Cal. Gov't.Code § 820 (a public employee is "liable for injury caused by his act or omission to the same extent as a private person." "Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission." (Cal.Gov't.Code § 820.8.); A government employee may be liable to injured parties not only for his or her own acts, but for acts "set in motion:" "Anyone who "causes" any citizen to be subjected to a constitutional deprivation is also liable. The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury."
Vierria v. California Highway Patrol, 644 F.Supp.2d 1219 (E.D. CA 1219); *U.S. v. Angelilli*, 660 F.2d 23 (2d Cir. 1981)	Neither absolute judicial or prosecutorial nor qualified immunity extend to criminal "predicate acts" (see Exhibit K, Table B.1) defined under 18 U.S.C. 1961, and civil prosecution therefore under 18 U.S.C. §§ 1596 and 1962.
Clement v. City of Glendale, 518 F.3d 1090 (9th Cir. 2008); Gonzalez v. Spencer, 336 F.3d 832 (9th Cir. 2003); Wyatt v. Cole - 504 U.S. 158	Qualified Immunity is not available to private nonprofit entities such as the Alliance and its partners, investors, supporters, and collaborators when working with color of law actors even if the government employee may be so entitled, except in rare circumstances;

(1992); Richarson v. McKnight, 521 U.S. 399 (1997); cf. Filarsky v. Delia, No. 10-1018 ___ U.S. ____, 2012 U.S. LEXIS 3105.	
Beltran v. Santa Clara County, 514 F.3d 906 (9th Cir. 2008); *Cruz v. Kauai County*, 279 F.3d 1064 (9th Cir. 2002).	A prosecutor does not have absolute immunity if he fabricates evidence during a preliminary investigation, before he could properly claim to be acting as an advocate, or makes false statements in a sworn affidavit in support of an application for an arrest warrant.

Exhibit K

Ex. K:
Civil Rights Criminal and Civil Statutes ("CRCCS")

42 U.S.C. § 1986

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1985

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully

assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

18 U.S.C. § 241

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 242:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 1343

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1341

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1503

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other

committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

18 U.S.C. § 1505

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

18 U.S.C. § 1512

(a)

(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 30 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,, [1] parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,, [1] parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 1513

(a)

(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 30 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(g) A prosecution under this section may be brought in the district in which the official proceeding (whether pending, about to be instituted, or completed) was intended to be affected, or in which the conduct constituting the alleged offense occurred.

18 U.S.C. 1515

(a) As used in sections 1512 and 1513 of this title and in this section—

(1) the term "official proceeding" means—

(A) a proceeding before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Court of Federal Claims, or a Federal grand jury;

(B) a proceeding before the Congress;

(C) a proceeding before a Federal Government agency which is authorized by law; or

(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;

(2) the term "physical force" means physical action against another, and includes confinement;

(3) the term "misleading conduct" means—

(A) knowingly making a false statement;

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

(D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

(E) knowingly using a trick, scheme, or device with intent to mislead;

(4) the term "law enforcement officer" means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant—

(A) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

(B) serving as a probation or pretrial services officer under this title;

(5) the term "bodily injury" means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary; and

(6) the term "corruptly persuades" does not include conduct which would be misleading conduct but for a lack of a state of mind.

(b) As used in section 1505, the term "corruptly" means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

(c) This chapter does not prohibit or punish the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

18 U.S.C. § 1581

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

18 U.S.C. § 1589

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

18 U.S.C. § 1590

(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the

violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).

18 U.S.C. § 1592

(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person—

(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or1594 (a);

(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or

(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

(c) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a).

18 U.S.C. § 1593A

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581 (a),1592, or 1595 (a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.

18 U.S.C. § 1594

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592shall be punished in the same manner as a completed violation of such section.

(c) Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both.

(d) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(e)

(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(f) Witness Protection.— Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

18 U.S.C. § 1595

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)

(1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose.

18 U.S.C. § 1951

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

18 U.S.C. 1961:

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled

Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons)., [1] section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with

restrictions on payments and loans to labor organizations) or section 501 (c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b (g)(5)(B);

(2) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) “person” includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) “pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) “unlawful debt” means a debt

(A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and

(B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) “racketeering investigator” means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) “racketeering investigation” means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) “documentary material” includes any book, paper, document, record, recording, or other material; and

(10) “Attorney General” includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C. § 1962

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. 1964

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

U.S. Constitution

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Coalition for Families and Children
Parents' and Children's Resource for Child Custody, Divorce, Family Law, and The U.S. Constitution. Welcome!

TAGS

ccfc, ccfc stuart, colbern stuart, Cole Stuart, croix, croix stuart, emad tadros, judges, lynn stuart, st. croix, stephen doyne, tadros stuart

CCFC Cease and Desist Letter to Judge Lorna Alksne re: Family Justice Center Alliance

July 25, 2013

(http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-alksne-v-8.pdf)

CCFC Wertheimer (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-wertheimer.pdf)

CCFC Rosenstein (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-rosenstein.pdf)

CCFC Roddy (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-roddy.pdf)

CCFC McAdam (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-mcadam.pdf)

CCFC Longstreth (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-longstreth.pdf)

CCFC Hugugenor (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-hugugenor.pdf)

CCFC Jessop (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-jessop.pdf)

CCFC Katz (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-katz.pdf)

CCFC Lansdowne (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-lansdowne.pdf)

CCFC Lewis (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-lewis.pdf)

CCFC Hon. Timothy Walsh (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-hon-timothy-walsh.pdf)

CCFC Hon. Robert Trentacosta (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-hon-robert-trentacosta.pdf)

CCFC Hon. Maureen Hallahan (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-hon-maureen-hallahan.pdf)

CCFC Hon. David Danielson (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-hon-david-danielson.pdf)

CCFC Hallahan (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-hallahan.pdf) CCFC Filner-signed (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-filner-signed1.pdf)

CCFC Goldsmith (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-goldsmith.pdf)

CCFC Gore (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-gore.pdf)

CCFC Groch (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-groch.pdf)

CCFC Griffin-Tabor (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-griffin-tabor.pdf)

CCFC Alksnse Cease and Desist (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-alksne-signed.pdf)

CCFC Dumanis (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-dumanis.pdf)

CCFC C Goldsmith (http://croixsdadsblog.files.wordpress.com/2013/07/ccfc-c-goldsmith.pdf)

From → Divorce, Law

One Comment

1. **charl1010 permalink**
   Child Abuse is everybody's business, and Why do people who don't want a child take an innocent child home abuse, use and then deliberately destroy and dispose of us like pure trash, I did happen to me my whole entire life time and now I am a baby boomer. to treat an innocent child like an outcast and an outsider is criminal.

   Reply
   Edit

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 2

No. _____

In The

Supreme Court of the United States

EMAD TADROS, M.D.,

Petitioner,

vs.

WILLIAM R. LESH and
STATE BAR OF CALIFORNIA,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of California

PETITION FOR WRIT OF CERTIORARI

EMAD TADROS, M.D.
Pro Se
4060 Fourth Ave., Ste. 120
San Diego, CA 92103
(858) 775-2122
tadrosmd@gmail.com

QUESTIONS PRESENTED

In *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), this Court reiterated that "strict scrutiny" protection under the Fourteenth Amendment's Equal Protection Clause is applied at least to classes of race, national origin, and alienage. The Ninth Circuit Court of Appeals has acknowledged that strict scrutiny protection extends to discrimination beyond race or gender, to include discrimination against persons or classes "identified by Congress or the courts as needing special protection." *Sever v. Alaska Pulp Corp.,* 978 F.2d 1529 (9th Cir. 1992). A class is entitled to heightened scrutiny provided it can show a "governmental determination that its members require and warrant special federal assistance in protecting their civil rights." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985); *Denney v. Drug Enforcement Admin*., 508 F.Supp.2d 815 (E.D. Cal. 2007). In *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971) this Court held that groups which have historically been subjected to "invidious discrimination" are entitled to heightened protection under the Equal Protection Clause.

The rights at stake in the present action – parental rights and rights of association and speech – are fundamental rights, and their status under California law entitles the 13700 class to "special protection." *See Troxel v. Granville*, 530 U.S. 57 (2000) ("the interests of parents in the care, custody, and control

QUESTIONS PRESENTED – Continued

of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Sever*, *supra*, at 1535-36; *Jensen v. Wagner*, 603 F.3d 1182 (2010) ("There is perhaps no more delicate constitutional barrier protecting freedom from governmental interference than that which protects against state interference with parental autonomy.").

Though no court has so ruled, Petitioner submits herein that the state of California has *already defined* a specific "domestic relations" class – including all of the family court litigants affected by the actions of the State Bar of California below – as a group entitled to "special protection" under *Sever v. Alaska Pulp Corp*. California Penal Code section 13700 defines this special class as any "adult or a minor who is a spouse, former spouse, cohabitant, or former cohabitant" or other enumerated relationships while engaging another similarly situated in that relationship. *See Cal.Pen.C.* 13700. For purposes of this Petition, the subject class described under California Penal Code section 13700 shall be referred to as California's "13700 Class."

1. Does California's standard for evaluating attorney misconduct, described under California Business and Professions Code section 6106 as "the commission of any act involving moral turpitude, dishonesty or corruption" ("Moral Turpitude Standard") – impermissibly offend Due Process as arbitrary and effectively ex-post facto?

QUESTIONS PRESENTED – Continued

2. Does California's application in this case (and thousands of other similar cases) of the "Moral Turpitude Standard" violate the Equal Protection rights of Petitioner and the 13700 Class under strict scrutiny, or any standard of review?

PARTIES TO THE PROCEEDING

As listed in the caption, Petitioner here, Complainant below, Emad Tadros, M.D., adverse to Respondents here, Respondents below, State Bar of California and Mr. Robert Lesh, Esq., Chair, Family Law Subsection, San Diego County Bar Association. No parent or subsidiary entities are known.

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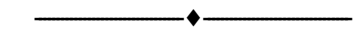
OPINIONS BELOW AND BASIS FOR JURISDICTION

Petitioner seeks review of the State Bar of California's December 22, 2011 (App. 7) and November 21, 2012 (App. 2) denials ("State Bar Denials") of Petitioner's October 11, 2011 professional misconduct complaint regarding Mr. Robert Lesh, Esq. ("Lesh Complaint") (App. 13). Petitioner sought review of the State Bar Denials from the Supreme Court of California on January 14, 2013. The Supreme Court of California on March 13, 2013 denied Petitioner's Petition (App. 1). This Petition for Certiorari on the State Bar Denials ensues.

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review on writ of certiorari The Supreme Court of California's March 13, 2013 denial.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Section 1 of the Fourteenth Amendment to the United States Constitution forbids any State to "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the United States Constitution provides no citizen of the United States shall "be deprived of life, liberty, or property, without due process of law."

STATE STATUTES

California Business and Professions Code section 6106 prohibits an attorney from committing "any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise."

California Penal Code section 13700 defines "Domestic violence" as

> abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

STATEMENT OF THE CASE

Introduction

Petitioner contends the State Bar's Denials of Petitioner's Complaint to the State Bar against attorney Robert Lesh, Esq. (App. 13) under the "Moral Turpitude Standard" of California Business and Professions Code § 6106 violates the Fifth and Fourteenth Amendments to the United States Constitution as it:

1. Applies an unconstitutional "Moral Turpitude Standard" which, when seen in light of a comparison of Petitioner's Complaint with existing state law precedent and relevant evidentiary standards at issue, is an illusory and ex-post-facto law in violation of Due Process.

2. Offends Equal Protection of the Laws for Petitioner – a member of and advocate for a class of "domestic relations" persons entitled to heightened protection under state and federal law.

There was a time, perhaps, when most anyone capable of defining the term would also agree to what lawyerly acts amounted to "moral turpitude." *Cal. Bus. & Prof. C*. § 6106. Apparently standards evolve.

According to Respondents, the State Bar of California ("State Bar") and San Diego County Bar Association Family Law Subsection Chair, Robert Lesh, Esq., the evidence presented by Petitioner to The State Bar below failed even to establish "probable cause" of "moral turpitude" or "dishonesty" required to initiate a disciplinary investigation against Mr. Lesh. *Cal. Bus. & Prof. C*. § 6106. Petitioner

submits that the evidence presented to the State Bar below *comprises abundant* probable cause of a nascent conspiracy among San Diego County divorce bar attorneys to, inter alia, falsify court records, suborn perjury, obstruct justice, violate client confidences and trust funds, and commit widespread fraud on clients, the courts, and the public. If true, the ramifications for the accused attorneys – dozens of California divorce lawyers – were *breathtakingly severe*. Perhaps, it seems, *too* severe for the State Bar to risk a closer look.

Respondent State Bar's inability to observe probable cause to investigate Petitioner's Complaint impermissibly – and unconstitutionally – ignores more than sufficient evidence to establish "probable cause" to investigate as authorized under California law. It is submitted that such refusal results from a failure of procedural Due Process, and constitutes a deprivation of Petitioner's rights to Due Process and Equal Protection of the laws, such that review of the constitutional fitness of the "Moral Turpitude Standard" – on its face and in application for this Petitioner and the suspect class of which he is a member and advocate – is warranted.

Background

A. The Lesh Email

This case originates from Petitioner's intercept of an allegedly incriminating email from Mr. Robert Lesh, Certified Family Law Specialist and Chairman

of the Family Law Subsection, San Diego County Bar Association, to a private "listserv" consisting of dozens of San Diego County Bar Association Family Law Subsection members. (App. 10-12). The October 1, 2009 email (the "Lesh Email") states:

> *I have been advised that a press conference occurred today (October 1) which involved the issue of custody evaluations and the submission to the Court of the attached Family Law Forms 326 and 327. As you may be aware from a prior e-mail I sent to all of you, these forms are mandatory and have been for some time. Whenever you are involved in a custody evaluation matter, you need to make sure that your custody evaluators sign form FL-326 and that that gets filed with the Court, as there is a strong possibility that the custody evaluator will not be paid for work that they perform prior to the form being signed and submitted to the Court.*
>
> *As to Family Law 327, that also needs to be signed and contained in the case file.*
>
> *It seems apparent that there is going to be a tremendous amount of scrutiny being placed upon these forms and if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately as you risk claims from your client that the matter was not properly handled, if they later disagree with the recommendations from the evaluator.*

> *If you have any particular questions regarding this, feel free to contact me.*
>
> Bob Lesh CFLS [Certified Family Law Specialist] Chair

(App. 11-12).

The Lesh Email was intercepted from the closed "listserv" mailing list by an intended recipient and forwarded to San Diego County parents'/children's rights activist, Mr. John Van Doorn, who forwarded the same to Petitioner, San Diego Psychiatrist Dr. Emad Tadros, by email on February 17, 2010. (App. 10).

Dr. Tadros detected in the email possible unethical and/or criminal activity and independently investigated the matter further. His investigation uncovering additional evidence of untoward activity within the "family law community" that received the Lesh Email, Dr. Tadros thereafter filed a formal Complaint with the State Bar alleging misconduct by Mr. Lesh, providing detailed explanations, timelines, and exhibits, and requesting the State Bar investigate the allegations. (App. 13-20) ("Complaint").

After cursory evaluation, on December 22, 2011, the State Bar initially closed the Complaint without action, concluding that the Complaint "would not likely meet [the] burden of proof" of "clear and convincing evidence." (App. 8). The State Bar Deputy Trial Counsel, Ms. Diane Meyers, concluded that:

"*Mr. Lesh said to make sure the forms were filed appropriately. In other words, each attorney was to determine whether the form may still be filed retroactively. We concluded that Mr. Lesh does not have an ethical duty to meet with you, because you are not his client.*"

(App. 8). Ms. Meyers advised she was closing the Complaint and that Petitioner could request that the Audit and Review Unit re-open the Complaint, and submit "new evidence or a showing that closing your complaint was made without any basis." (App. 8-9).

On March 16, 2012, Petitioner filed a request to re-open the Complaint with the Review and Audit Unit. (App. 2). Petitioner provided (1) additional detail not previously identified, (2) further explanation of the significance of the Lesh Email as indicative of a conspiracy to illegally back-date and back-file professional custody evaluator eligibility forms in potentially hundreds of court case files, (3) additional correspondence identifying ongoing investigation by the former San Diego City Attorney and the presiding Family Court Judge Lorna Alksne, and (4) additional evidence consisting of written accounts from over a dozen angry parents frustrated with the disclosure in the Lesh Email. (App. 2).

In response, on November 21, 2012, Deputy Trial Counsel Mr. Mark Hartman advised his office had received Petitioner's March 16 correspondence as well as a "package of additional materials from the Office of the district Attorney of the County of San Diego.

(App. 2-3). Mr. Hartman concluded that no further investigation was warranted, explaining: "Although the email might have been a mistaken comment, it does not prove by the high standard of clear and convincing evidence that Mr. Lesh committed an act of moral turpitude or dishonesty. Accordingly, the State Bar cannot prosecute him." (App. 5).

Dr. Tadros timely petitioned for review of the State Bar Denial to The California Supreme Court. The California Supreme Court denied Petitioner's petition without comment on March 13, 2013. (App. 1). This Petition ensues.

B. Professional Child Custody Evaluators: Why?

The significance of the Lesh Email is better understood in the context of the family court "professional child custody evaluator" history, powers, and reason for "FL Forms" at the center of this dispute.

Under California Family Code section 730, a State of California Superior Court judge presiding over a family law (marital dissolution, adoption, parentage, dissolution, annulment, etc.) matter involving custody of a child may appoint a private "custody evaluator" to "evaluate" the "best interests of the child" in a dispute between parents. The appointee is empowered to "evaluate," inter alia, each contending parent's relative fitness and make decisions and/or recommendations to the court about how and with whom the child will live.

Acting pursuant to statutory court appointments, evaluators attain sweeping jurisdiction over the family's daily interactions during the pendency of the appointment which may last for *years*. They can and often do insert themselves as de facto "judges" to micromanage virtually any parental dispute affecting the child's welfare, which can include everything a parent of dependent children does. They commonly make "recommendations" to the parents or, if unsuccessful, to the court, regarding even minute details of a child's (and his or her parents') life. Further, evaluators can and do "recommend" referrals to a wide variety of third party "professional services" for parents and children, including extensive counseling and education, paid for by the parents. The recommendations have the effect of binding decisions, and are often imposed as a condition on any parent/child contact whatsoever.

A custody evaluator's "recommendations" are subject to review by a court, but are given great deference by a judge. In custody matters, a judge is empowered to, and in California courts often does, adopt drastic or controversial "recommendations", imposing complicated, expensive, and highly controversial "therapeutic" and/or "rehabilitative" referrals to a vast network of "service professionals." Such "recommendations" regularly threaten or deprive one *or both* parents of constitutional rights of free association and parental autonomy *with little or no Due Process*.

In essence, once appointed, a "professional custody evaluator" inserts him or herself as a default

"co-parent" with virtually unchecked authority to run every aspect of the children and parents' lives. At often upwards of $300 per hour, broad jurisdiction, and a flexible "best interests of the child" mandate, private custody evaluators become expensive and *surprisingly invasive* parental "co-pilots" who, once secured by court order and empowered to tilt custody at a whim, are not easily ejected.

Not surprisingly, given the scope of discretionary power wielded by "professional evaluators," their history in the state has not been unblemished by abuse. As detailed in Petitioner's August 27, 2011 Complaint (App. 13-20), the "FL Forms" at the center of this case were adopted and have evolved in response to a pattern of substantial harm inflicted on unsophisticated divorcing parents and their children by unscrupulous "professional child custody evaluators." Offenses included soliciting and obtaining appointments without adequate qualifications, training, and supervision, malpractice, overbilling – even bribery – and general incompetence or malfeasance. The field was populated by a variety of professionals from other fields, including social work, psychology, education, and general child care. With few standards, less scrupulous "evaluators" functioned as "snake oil salesmen," fed by unsophisticated warring parents. (App. 13-17). *See also* Hagen, *supra*, 233-34.

C. Professional Custody Evaluators: "Training" and "Oversight" (?)

It was (and is) recognized by all parties that "professional custody evaluators" must be accountable, adequately educated, trained, monitored, vetted, and subject to meaningful oversight. However, prior to the enactment of the "FL Forms" (and ongoing even today where the Forms are not properly used), training and oversight of these otherwise "free radical" professionals fell to no one. With no specific professional oversight body,[1] training or degree curriculum, licensing discipline, or professional standards body, quality assurance was difficult or impossible.

The environment necessitating use of the forms as "gatekeeping" devices is peculiar to the California "professional custody evaluator" profession. Unlike more "traditional" professions of medicine, psychology, social work, law, etc., the education, training, and oversight of the "custody evaluator" profession has no traditional training, education, or "best practices" heritage; no formal undergraduate or graduate academic curriculum; no specific local, state, or national professional licensure, regulatory, discipline, or oversight body; and scant little state or federal regulatory attention.

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[1] Some *Psychologist* evaluators (though not their social worker brethren) are monitored by the California Board of Psychology. However, because of their "special" status as "forensic" as opposed to "clinical" psychologists, the Board of Psychology carves out "unique" professional standards for the profession.

Though abandoned by their erstwhile academic and scientific professional cousins, "professional custody evaluators" nonetheless found welcome among social science *practitioners* – particularly in the law. In essence, "professional child custody evaluators" became free agents grafted onto the court system from traditional "soft science" disciplines of psychology, education, social work, and sociology. Yet despite aspiring close-degree-filiality to those professional communities, the "professional child custody evaluator" profession has been adopted by none.

This lack of or, more accurately, inability to regulate, supervise, train, and discipline "professional custody evaluators" led to abuses too voluminous to indulge here. However, the situation has been recently described in a 1997 publication by Dr. Margaret Hagan:

> The abuses and excesses of so many child welfare specialists should not be allowed to obscure the indisputable fact that there are many decent, caring, hardworking professionals who do their absolute best with huge caseloads to help the children as well as they can be helped with the psychological tools available. It would be cruel and ungrateful and stupid to say otherwise.
>
> The problem for them and for us is that the psychological tools just do not exist for them to do their jobs, and no one can or is willing to admit that. It is just too difficult to deal with the awful reality that in the three million annual cases of alleged abuse, our

already overworked police forces would be called on to investigate and make determinations essentially without any evidence at all of where, with whom, and by whom abuse has occurred. Who can blame the police and the prosecutors' offices – along with our courts – for wanting the assistance of professionals who know what they are doing?

It is just too bad that there are none available.

Both in custody cases involving allegations of grave risk to children in the home, and in cases arising where parents cannot agree on custody for reasons both profoundly serious and dismayingly foolish, our judges – our whole family legal system – desperately seeks guidance about where to find and where to place the best interests of the children involved. Agencies, parents, and judges alike turn to psychological professionals to help them find the truth or make their case.

Our common desperation seems to have produced the common delusion that experts actually exist who really can determine with the unerring instinct of a homing pigeon exactly where the best interests of a child lie, where a child should live, whether and how a child has been hurt, how a child should be protected, who will be the superior parent, and who is unfit to be a parent at all, who should have the right and the duty to care for a child, who should see the child only under restricted conditions, and who should be kept away from the child altogether.

> Acceptance of their expertise has led us to trust professionals to make these decisions for the family court system. That means ultimately that we also grant them the power to make these decisions for our own families. The abstract need of society to protect its children becomes inevitably the rape of the rights of the real parents of individual children. Once again, the institutionalization of society's desire to "do good" results in terrible harm for those in the path of the do-gooders.
>
> The marriage of law and psychology has reached the heights of disproportionate power for the psychologists not just in family courts but in all legal disputes in which a psychological matter is at issue. Judges buy the validity of the expertise of the confident psychological practitioner and no doubt welcome the opportunity to make their own decisions on some foundation other than personal opinion and bias.

Professor Margaret A. Hagen, Ph.D., *Whores of the Court; The Fraud of Psychiatric Testimony and the Rape of American Justice* (Harper Collins 1997), p. 233-34.

Notwithstanding the "professional child custody evaluators'" lack of formal professional methodology, training, licensing, educational curriculum, or certifications, demand for their "services" among courts and divorce attorneys remains. To meet the demand, the California legislature attempted to impose at least nominal order in the otherwise chaotic field. The

device erected to perform the otherwise absent "gate-keeping" function: filing procedures requiring representations under oath that the "professional child custody evaluator" filer had obtained specific relevant minimum standards of education, licensure, training, and eligibility: The "Family Law" or "FL" Forms 325, 326, and 327.

D. The FL Forms

The "FL Forms" referred to in Mr. Lesh's email – "FL 326" and "FL 327" – are not mere "name-rank-and serial number" perfunctory forms – They are intended to impose education, training, experience, certification, and licensing, standards and accountability on the entire profession. (App. 24-28).

The Forms require:

Sections 1, 2: Evaluator's name, place of business, legal affiliates, and date of formal appointment by the court;

Section 3 "LICENSING REQUIREMENTS": The evaluator must disclose and represent whether he or she is a physician, a psychologist, a marriage and family therapist, or a clinical social worker, and any board certifications (sections 3(a) and (b)).

Section 3(c) advises that if the evaluator does not meet the criteria in 3(a) or 3(b), the evaluator may perform work on the case only if (1) the court determines that there are no available evaluators who meet the licensing requirements; (2) the parties have

stipulated that the person may conduct the evaluation; and (3) the court approves the person's appointment.

Sections 4, 5 "EDUCATION AND TRAINING REQUIREMENTS": The evaluator must represent to litigants, attorneys, and the court that the evaluator has completed: 4(a) "basic and advanced domestic violence training requirements", 4(b) "40 hours additional training for a private child custody evaluator", 5(a), (b) the annual hourly update training required by California Rules of Court 5.225(h) and 5.230.

Sections 6, 7, 8 "EXPERIENCE REQUIREMENTS" and "USE OF INTERNS": The evaluator must represent whether and how the evaluator meets experience requirements under California Rules of Court 5.225(g) (completed four court-appointed child custody evaluations in the preceding three years) and whether the evaluator intends to use interns during the evaluation.

The FL Forms must be filed and served *within ten days of appointment and prior to beginning an evaluation* – a critical protection for parents and courts to enable parents to review the veracity of the representations and otherwise "vet" the evaluator. (App. 27).

The cumulative effect of these detailed "mandatory" representations is to assure that all appointed evaluators possess a high level of training, education, and experience to enable litigants, attorneys, and courts to obtain qualified, honest services from a private provider. The Forms are effectively the only oversight of "professional child custody evaluators."

Any professional unable to represent under penalty of perjury that the evaluator meets the detailed requirements of the Form is "weeded out" from the pool of eligible evaluators, ensuring that only truly eligible professionals can receive court-appointed work.

The Forms moreover enable the litigants and their attorneys to hold accountable the custody evaluators. Should the evaluator fail, refuse to file, or fraudulently file the Forms, or commit malpractice during the evaluation, the evaluator is potentially responsible to parents for malpractice, misrepresentation, or fraud. For intentional malfeasance, the Forms provide an avenue for criminal prosecution.

E. Lesh's Instructions to "Family Law Community" Attorneys: A Nascent Conspiracy to Obstruct Justice

Given the import of the FL Forms and the protections for vulnerable parents, children, and courts their use ensures, it is understandable that the October 1, 2009 press conference revealing that a significant number of evaluators and attorneys had not properly prepared and/or filed the Forms was *alarming* – enough so to prompt Mr. Lesh to broadcast an *immediate warning and instruction* to the entire "Family Law Community." Mr. Lesh's advice on how to respond to what *even he* anticipated to be a "tremendous amount of scrutiny being placed upon these forms" was:

" . . . if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately." (App. 12).

Mr. Lesh's email also expresses fear that the attorneys "risk claims from your client that the matter was not properly handled" and that "the custody evaluator will not be paid." (App. 11-12). Tellingly, Mr. Lesh's fear is not related to the eligibility, integrity, or accuracy of the representations by the (illegally-appointed) evaluators; not for the family law clients' (or their children's) interests in competent, fair evaluation services; not for the integrity of the custody evaluation or legal process; and not for the Family Law Subsection attorneys' potentially serious breach of their professional responsibilities – but ***only for the pecuniary interests of the lawyers facing claims from their clients that the "matter was not properly handled" and that "the custody evaluator will not be paid."*** (App. 12).

Mr. Lesh's instructions, even to a forgiving eye, read as a shrewd suggestion to embark on an after-the-fact conspiracy to cover-up what appeared to be *widespread* failures to file the FL Forms *to avoid an avalanche of client lawsuits*. A less-forgiving view would recognize Mr. Lesh's instructions effectively to be: "I've learned that you likely have a problem with your handling of the FL Forms. To deal with it, *back-date and back-file the Forms before our clients or the courts figure this out and sue us. Shhh – Pass it on*." While perhaps a client facing criminal obstruction of justice charges would hope to receive such (illegal)

"advice" from a *retained* attorney, Mr. Lesh's instructions were directed *to an entire "community"* of attorneys with whom he enjoyed no attorney-client relationship. "Do it but just don't get caught" is never good advice; especially when simultaneously broadcast to the entire world.

In both letter and spirit, Mr. Lesh's advice premeditates nothing less ambitious than a "Family Law Community"-wide conspiracy to commit, *inter alia*, fraud on the court, fraud on family court clients and their children, obstruction of justice, evidence tampering, subornation of perjury, and violate litigants' rights actionable under state and federal law. The "Family Law Community's" response to Mr. Lesh's inducement of conspiracy shows that at least one evaluator understood the Lesh's Email to be exactly that. The September 23, 2009 form FL 326 filing by custody evaluator Dr. Stephen Doyne was completed and filed in response to the revelation of the filing errors, nearly *a year after his initial appointment*, in direct contravention of the "NOTICE" on the Form.[2] (App. 15-19, 24-28). Even the State Bar Deputy trial Counsel, Diane Meyers, understood Lesh's

[2] Petitioner has brought separate actions against Dr. Stephen Doyne for obtaining a fraudulent "Diplomate" certificate from an alleged "diploma mill" – the American College of Forensic Examiners International ("ACFEI") and its director, Mr. Robert O'Block. ACFEI's fraud has subsequently been exposed by PBS Frontline (http://www.pbs.org/wgbh/pages/frontline/real-csi/) and by the national public interest media organization ProPublica (http://www.propublica.org/article/no-forensic-background-no-problem).

instruction to implicate potentially illegal activity: "[E]ach attorney was to determine whether the form may still be filed retroactively." (App. 7).

F. The Lesh Complaint

San Diego Family Law Subsection members recognized the gravity of Mr. Lesh's instructions. A "Family Law Community" whistleblower intercepted and forwarded the email to John Van Doorn, who subsequently forwarded Mr. Lesh's email to Petitioner, noting "I can and will testify under oath as to the conditions that I received this communication under and the integrity of the individual who forwarded this document to me and his/her professional affiliation (a practicing member of the family law section of the San Diego Bar Association). . . ." (App. 10-11).

Petitioner – a San Diego Psychiatrist, at the time the Vice-Chief of Behavioral Science at Scripps Mercy Hospital in San Diego, and activist for California parents and children enduring divorce proceedings – upon receiving the intercepted email investigated further and, finding reasonable suspicion of widespread wrongdoing, delivered a formal Complaint to the State Bar Office of Chief Trial Counsel Intake Unit as well as the San Diego County District Attorney's Office. (App. 13-20).

Dr. Tadros's Complaint was detailed and corroborated: it provided State Bar counsel with an extensive explanation and exhibits, including a timeline of events, explanation of the FL Forms, relevant legal

and historical context, and his concerns for the harmful consequences to family court litigants from the improper implantation of the FL Forms as directed by Mr. Lesh. (App. 13-20). Though Petitioner, a trained physician and naturalized U.S. citizen whose native language is not English, in writing the pro se letter Complaint did not perhaps draft a model of written legal analysis, his Complaint provided documentary evidence, witness accounts of widespread abuse, and sincerely expressed the understandable outrage that thousands of California parents feel toward the predatory tactics of "family law community" courts, judges, and lawyers. *Id.*

Dr. Tadros's State Bar Complaint articulated that widespread abandonment of the FL Forms by evaluators, attorneys, and courts effectively abrogated important procedural safeguards, thereby exposing parents to the caustic predatory environment that existed prior to adoption of the Forms. Hence, because the Forms were the "new (and only meaningful) Sheriff in town" when adopted, the "Family Law Community's" failure to require their use cast the profession back into its previous state of regulatory purgatory – and the concomitant jeopardy threatened to vulnerable parents and children.

G. The State Bar Investigation

The State Bar of California's investigation and response to Dr. Tadros' Complaint was summarily dismissive:

"Although the email might have been *a mistaken comment*, it does not prove by the high standard of clear and convincing evidence that Mr. Lesh committed an act of moral turpitude or dishonesty." (italics added). (App. 5).

Deputy Counsel Mark Hartman's conclusion that the Lesh Email was a "mistaken comment" is at least disingenuous – a conclusion enabled, as discussed below, by the unconstitutionally illusory "Moral Turpitude Standard." It is difficult to comprehend how a disinterested regulatory authority could read Mr. Lesh's email as innocently as a "mistaken comment" – whatever species of "comment" that may be.

Equally inauthentic, Mr. Hartman's professed *inability* to surmount a standard of "clear and convincing evidence" of a violation *applied the wrong standard of proof* at this – the intake – stage. It's not surprising that an examiner could conclude that a single email – read in isolation – failed to satisfy the ultimate burden after instigation and trial. It's *shocking*, however, that the examiner failed to recognize the damning implications of a nascent conspiracy detectable by proper investigation. State bar precedent discussed herein demonstrates that the "smoke" of Mr. Lesh's instruction and corroborating evidence of compliance in furtherance of conspiracy raised – at the very least – questions of "fire" substantial enough to establish probable cause to investigate.

Nevertheless, Mr. Hartman dismissively garaged the Lesh Complaint. It is submitted that, though

prosecutorial intake decisions are entitled to a "presumption of regularity", such deference does not shackle a reviewing court to abide deliberate indifference to well-founded claims – particularly where the decision bears the "invidiously discriminatory" hallmarks of a deprivation of Equal Protection for a suspect class. At the very least, the Lesh Complaint and the accompanying seminal body of insinuating evidence warranted further investigation into what, if fleshed out as suspected, appeared (and still appears) to be a premeditated conspiracy *to defraud hundreds or thousands of California parents and children in the crisis of a divorce*.

Petitioner respectfully urges that the Court grant no deference to Mr. Hartman's oddly deferential myopia, and conduct or require observation through fresh eyes.

REASONS FOR GRANTING THE WRIT

I. The State Bar Denial Is Enabled By An Unconstitutionally Illusory "Moral Turpitude Standard" Constituting A Failure Of Due Process

The State Bar Denial is enabled by a constitutionally-flawed standard of proof: "an attorney must not commit any act involving moral turpitude, dishonesty, or corruption. . . ." (App. 5). *Cal. Bus. & Prof. C*. § 6106. As applied in this and in the cases cited

below, the "Moral Turpitude Standard" is so illusory as to constitute a failure of Due Process.

As defined by the State Bar, an act of "moral turpitude" is "one that is contrary to honesty and good morals." The primary purpose of the moral turpitude standard is "not to punish practitioners but to protect the public, the courts, and the profession against unsuitable practitioners." *In re Calaway*, 20 Cal.3d 165 (1977). An attorney may be disciplined for convictions of crimes involving moral turpitude that are completely unrelated to his or her law practice; no "nexus" to the practice of law is required. *Segretti v. State Bar*, 15 Cal.3d 878, 887-88 (1976) (conviction for election law violations).

The Fifth and Fourteenth Amendments to the United States Constitution prohibit states to "deprive any person of life, liberty, or property, without due process of law." Petitioner, as a member of and advocate for a class of California citizens – parents and children in domestic relationships – is entitled to fair adjudication of complaints against attorneys for offenses on the public at large, and particularly those directed to the "domestic relations" 13700 Class. In responding to Petitioner's Complaint, the State Bar acknowledged that Petitioner possessed sufficient standing and interest to assert a complaint. (App. 2-4). As such, Petitioner possesses sufficient standing and property interest in the State Bar Denials and discipline process to assert a violation of Equal Protection and Due Process. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-77 (1992).

The "Moral Turpitude Standard" offends Due Process and Equal Protection as it "subjects the individual to an arbitrary exercise of the powers of government." *Duncan v. State*, 152 U.S. 377 (1894); *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976).

The "Moral Turpitude Standard" is – by its own definition and in use – wholly illusory. California courts define the standard as one that "depends upon the state of public morals, and may vary according to the community or times, as well as on the degree of public harm produced by the act in question." *In re Calaway*, 20 Cal.3d 165 at 170 (1977).

Yet this "definition" on its face and in application constitutes a mere tautology – a circular definition – which may be understood by the following analysis:

Q: What conduct is subject to discipline in California?

A: Conduct that involves "Moral Turpitude." (*Cal. Bus. Prof. C.* § 6106).

Q: What conduct constitutes "Moral Turpitude"?

A: Conduct involved is "sufficiently serious to merit discipline." *In re Calaway* at 170.

Q: What conduct is "sufficiently serious to merit discipline"?

A: "'Moral Turpitude' depends upon the state of public morals, and may vary according to the community or times, as well as on the degree of public harm produced by the act in question." *Id.*

As the circular "Moral Turpitude Standard" is merely a specious tautology, it is effectively illusory, and therefore "an absence of any meaningful Due Process at all." *See Duncan* at 382.

While it may be asserted that the "Moral Turpitude Standard," on its face, aims at objectivity, and perhaps in a past era commanded enough consensus to achieve that goal, as applied its chameleon DNA is expressed. The State Bar's determination that the Lesh Email did not present even probable cause is – literally – inexplicable, as Mr. Hartman's brave supposition that "it may be a mistaken comment" reveals. Mr. Hartman cited no precedent, definition, or workable process to enable anything close to a regular analysis by a reviewing court. (App. 5).

For similar reasons, the "Moral Turpitude Standard" is an illusory ex-post facto law: "one which imposes a punishment for an act which was not punishable at the time it was committed." *Cummings v. Missouri*, 4 Wall. 277 (1867); *Smith v. Doe*, 538 U.S. 84 (2003). As "moral turpitude" in this case is construed not to indicate even probable cause for further investigation of potentially dozens of state and federal felonies – it's malleability reduces it to a trivial artifice.[3]

[3] The caprice of this standard becomes more acute when combined with the reluctance of disciplining authorities to discipline their own. *See, e.g., The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 721. The discretion enjoyed by prosecutors –

(Continued on following page)

The illusory nature of the "Moral Turpitude Standard" is exposed by an analysis of the State Bar's own historically capricious treatment of the standard. The "Moral Turpitude Standard" "depends . . . on the violator's own motivation as it relates to his moral fitness to practice law." *In re Fahey*, 8 Cal.3d 842 (1973); *see also ABA Model Rule 8.4(b)* – "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Crimes involving "moral turpitude" as a matter of law include those of the general nature of the crimes alleged by Petitioner/Complainant below: Crimes involving an intent to defraud or intentional dishonesty for the purpose of personal gain (forgery, extortion, bribery, perjury, etc.) (*In re Fahey*, 8 Cal.3d at 849); conspiracy to assist others in wrongdoing, including money laundering, tax evasion,[4] evidence tampering, and perjury (*In re Berman,* 48 Cal.3d 517, 522-23 (1989)); making or filing of false pleadings or

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including State Bar prosecutors – is enormously powerful in both its use and misuse. *See, e.g.*, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 Iowa L. Rev. 393. This discretion must, however, be exercised within the bounds of Due Process. *U.S. v. Armstrong*, 517 U.S. 456 (1996); *U.S. v. Redondo-Lemos*, 955 F.2d 1296 (1992).

[4] Psychological evaluations escape taxpayer reporting because fees paid to evaluators are rarely reported by the client – a divorcing parent. Insurance does not cover or pay evaluators, and payments are not tax deductible by any payor. The FL Forms filed with the court clerk are the *only handy record for corroboration of tax filing data*. Without third-party income reporting or accurate internal recordkeeping, potentially millions of dollars in tax revenue may be underreported with impunity.

documents (*Drociak v. State Bar*, 52 Cal.3d 1085 (1991)); overseeing filing of false declarations (*Matter of Downey,* 5 Cal. State Bar Ct.Rptr. 151, 155 (2009)); signing a client's name without authority and deliberately misrepresenting client's county of residence (*In re Brimberry*, 3 Cal. State Bar Ct.Rptr. 390, 395 (1995)); encouraging perjury (*Read v. State Bar*, 53 Cal.3d 394, 416 (1990)); altering filed court documents (*Lebbos v. State Bar,* 53 Cal.3d 37, 45 (1991)); evidence tampering or suppression (*In re Matter of Field*, 5 Cal. State Bar Ct.Rptr. at 178 (2009)).

"Moral turpitude" "includes acts of dishonesty, including intentional misrepresentation or concealment of material facts." *Matter of Jeffers,* 3 Cal. State Bar Ct.Rptr. 211, 220-221 (1994); *Matter of Taylor,* 1 Cal. State Bar Ct.Rptr. 563, 576 (1991). But for the interception, the "Family Law Community" conspiracy to back-date and back-file sworn eligibility declarations would, thanks in large part to Mr. Lesh's clandestine coordination, have gone unnoticed by the victimized parents, children, and court. Thus, the email alone is sufficient evidence for a finding of "Moral Turpitude" as it discloses wrongs *the mere covering up for which* are grounds for discipline. *Read v. State Bar*, *supra*, 53 Cal.3d at 421-422 (collecting fees for services in probate matter without court approval).

Mr. Lesh's email points to activity that crosses many, if not all, of these demarcations of the "Moral Turpitude Standard." The email evinces Mr. Lesh's understanding of the magnitude of the professional

responsibility violations and their implications for clients of the "community" attorneys: he warns that the problems in the failure to file may lead to "claims" from clients.

To find moral turpitude, no evil intent is required; nor need it be shown that the attorney was acting in bad faith. All that is required is a general purpose or willingness to commit the act or permit the omission. *McKnight v. State Bar,* 53 Cal.3d 1025, 1034 (1991). "Moral Turpitude" includes gross negligence: "Gross carelessness and negligence constitute violations of the oath of an attorney to faithfully discharge his duties to the best of his knowledge and ability, and involve moral turpitude as they breach the fiduciary relationship owed to clients." *Giovanazzi v. State Bar*, 28 Cal.3d 465, 475 (1980); *Matter of Malek-Yonan*, 4 Cal. State Bar Ct.Rptr. 627, 635 (2003) – "where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support a charge of violating section 6106" (internal quotes omitted); *Matter of Downey,* 5 Cal. State Bar Ct.Rptr. 151, 155 (2009) – attorney who executed and filed verification that falsely stated his clients were out of county acted with gross negligence where he unreasonably concluded clients were absent based on insufficient facts and analysis.

Even if Mr. Lesh did not instruct others to commit the crimes he did, his *mere failure to report* the apparently widespread intentional disregard for the California Rules of Court revealed at the "press

conference" itself may constitute Moral Turpitude. Though "honest mistake" is a valid defense to a State Bar case, the burden lies on the accused to establish the lack of ill intent, and in this case the evidence appears at least to suggest – if not clearly establish – seriously dishonest conspiratorial conduct. *See, e.g., In re Klein,* 3 Cal. State Bar Ct.Rptr. 1 (1994).

State Bar Counsel's "head in the sand" intake administration disregards California's very welcoming standard of probable cause.[5] This admittedly cursory survey of relevant California law reveals that the evidence before the State Bar Examiner of Lesh's own acts – not to mention the dozens of criminal acts he conspires to instruct others to commit – provides abundant probable cause to warrant further investigation. While it is not surprising that the State Bar concluded that a single email – by itself – does not surmount the "clear and convincing" burden of proof, it is *shocking* that Deputy Trial Counsel Hartman saw nothing more potentially culpable than a "possibly mistaken comment." (App. 5).

It is submitted that the State Bar Denial of the Lesh Complaint in spite of Petitioner's presentation

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[5] "Reasonable or probable cause is shown if a man of ordinary care (or caution) and prudence (or a reasonable and prudent person) would be led to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty." *People v. Lewis*, 109 Cal.App.3d 599, 608-09 (1980); *People v. Campa*, 36 Cal.3d 870, 879 (1984); *Rules Proc. of State Bar*, §§ 12.10-12.40; *Jacobs v. State Bar*, 20 Cal.3d 191 (1977).

of inculpating emails, identification of available witnesses, evaluators, clients, attorneys, other section members, and even Mr. Lesh himself, is arbitrary, capricious, unsupported by any substantial evidence, and deprives Petitioner of rights to procedural and substantive Due Process, warranting review, reversal and/or remand.

II. The State Bar Denial Inflicts Deprivation Of Equal Protection Of The Laws On A Suspect Class – California's Domestic Relations "13700 Class" For a Fundamental Right

The "Moral Turpitude" standard as wielded by the State Bar in this case and thousands of others offends Petitioner and the suspect class of which he is a member and advocate rights to Equal Protection of the laws as it perpetuates "invidious discrimination" against a protected class of persons based upon "domestic status." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *Adarand Constructors v. Peña*, 515 U.S. 200 (1995). California federal courts have acknowledged that Equal Protection extends beyond race or gender to prevent discrimination against persons or classes "identified by Congress or the courts as needing special protection." *Sever v. Alaska Pulp Corp.,* 978 F.2d 1529 (9th Cir. 1992). Under Ninth Circuit precedent, a class is entitled to heightened scrutiny provided it can show a "governmental determination that its members require and warrant special federal assistance in protecting their civil

rights." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985); *Denney v. Drug Enforcement Admin*., 508 F.Supp.2d 815 (E.D. Cal. 2007).

The rights at stake in the present action – parental rights and rights of association and speech – are fundamental rights, and their status under California law entitles the 13700 class to "special protection." *See Troxel v. Granville*, 530 U.S. 57 (2000) ("the interests of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Sever*, *supra*, at 1535-36; *Jensen v. Wagner*, 603 F.3d 1182 (2010) ("There is perhaps no more delicate constitutional barrier protecting freedom from governmental interference than that which protects against state interference with parental autonomy.").

A. The "13700 Class": Domestic Relations Already Identified As A Suspect Class Under California Law

Though no controlling precedent has so ruled, the class which is the benefactor of the FL Forms, and the victims of the State Bar Denials here, is the type of class entitled to heightened scrutiny under the Ninth Circuit Equal Protection analysis. The state of California has *already defined* this "domestic relations" class – including virtually all family court litigants – as a group entitled to "special protection." California Penal Code section 13700 defines the class: Any "adult or a minor who is a spouse, former

spouse, cohabitant, or former cohabitant" or other enumerated relationships while engaging another similarly situated in that relationship. *See Cal. Pen. C.* § 13700.

Like marital status, the 13700 Class is defined by a "relational" characteristic – persons in a current or former relationship, but also certain behavior of such persons within the same identified relationship. For example, a husband and wife are within the 13700 Class for interactions with one another, but not so for their interactions with the rest of the world.

It will not be disputed that California has identified the 13700 Class members as uniquely vulnerable and therefore entitled to "special protection:" under state law. *See Sever* at 1535. For example, California has adopted an extensive scheme of statutory and administrative privileges, programs, services, protections, set asides, funding, and immunities, including 13700 Class-specific social services, law enforcement resources and processes, and social welfare programs with the honorable aim of addressing the "governmentally-determined" special needs of this Class. *Id.* The motivation for carving out the 13700 Class for "special treatment" was to provide heightened sensitivity to domestic violence and child abuse. The mechanisms for identifying and "protecting" the 13700 Class have become ensconced in California Penal Code sections 13700, 136.1, 136.2, 646.91, etc., and Family Code sections 6250, 6320, and 6380 and voluminous similar statutes, rules, and regulations directed specifically to the 13700 Class.

B. The State Bar Denials Demonstrate Impermissible De Facto Discrimination Against A Suspect Class

Under any standard of review, the State Bar Denials result from impermissibly discriminatory application of the laws to the interests of 13700 Class members. By failing to enforce the filing requirements and investigate the coordinated defiance directed by Lesh, The State Bar's summary dismissal of the Lesh Complaint is de facto perpetuation of historic and ongoing invidiously discriminatory treatment of parents and children of divorce.

The Fourteenth Amendment's Equal Protection clause was adopted to prohibit exactly this type of selective enforcement of protective laws – "there was, it was said, no quarrel with the state laws on the books. *It was their lack of enforcement that was the rub of the difficulty*." *Monroe v. Pape*, 365 U.S. 167 (1961) (italics added). Selective prosecution to deprive a suspect class of Equal Protection has been specifically prohibited in California for decades. *See, e.g., People v. Superior Court (Hartway),* 19 Cal.3d 338 (1977). In the present case, the State Bar Denials result from California's systemic and premeditated "lack of enforcement" of civil protections for targeted members of the 13700 Class – vulnerable parents and children during a divorce proceeding.

As detailed above, the FL Forms were initially enacted to provide protection against pilfering of vulnerable 13700 Class members by unqualified,

unscrupulous, or incompetent private evaluators. However, in the environment in which the "Family Law Community" has failed to police itself, and as The State Bar appears not only aware of, but suspiciously indifferent to the same, the legitimacy of The State Bar's illusory "Moral Turpitude Standard" is further refuted. Would The State Bar have applied the "Moral Turpitude Standard" equally in light of the welcoming "probable cause" burden, it would have found abundant reason *at least* to pursue a proper investigation of Mr. Lesh and his co-conspirators on suspicion of *indictable wrongdoing* by "Family Law Community" members. *See, e.g.,* cases cited in section H. 1., *supra*. Conveniently, The State Bar here saw "nothing here to see." The State Bar Denials effectively re-elect the foxes to (yet) another term in the hen-house. Such invidious disparate enforcement of the laws providing protections to vulnerable parents and children undergoing custody evaluations violates the Equal Protection rights of the 13700 Class.

The State Bar Denials under the illusory "Moral Turpitude Standard" deprive Petitioner and the 13700 Class – who *have no* ***effective*** *advocates in divorce proceedings* – Equal Protection of the laws.

———♦———

CONCLUSION

Petitioner respectfully submits that the present Petition and underlying Complaint identify laws and practices relating to an arbitrary State Bar "Moral Turpitude Standard" inflicting widespread deprivation of fundamental constitutional protections on thousands of California citizens, particularly the vulnerable "13700 Class" already defined and entitled to "special protection" under California law. Petitioner submits that issues worthy of federal review are presented, and prays for issuance of the Writ.

Respectfully submitted,

EMAD TADROS, M.D.
Pro Se
4060 Fourth Ave. Ste. 120
San Diego, CA 92103
(858) 775-2122
tadrosmd@gmail.com

S208293

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Accusation of EMAD G. TADROS, M.D. Against an Attorney.

(Filed Mar. 13, 2013)

The petition is denied.

CANTIL-SAKAUYE
Chief Justice

[SEAL]

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE
CHIEF TRIAL COUNSEL
AUDIT & REVIEW

1149 SOUTH HILL STREET,
LOS ANGELES, CALIFORNIA
90015-2299

TELEPHONE: **(213) 765-1612**
FAX: **(213) 765-1442**
http://www.calbar.ca.gov
(415) 538-2558

November 21, 2012

PERSONAL AND CONFIDENTIAL

Dr. Emad G. Tadros
3914 Third Avenue
San Diego, CA 92103

Inquiry No.: 11-31506
Respondent: Mr. William R. Lesh

Dear Dr. Tadros:

The Audit and Review Unit of the State Bar's Office of the Chief Trial Counsel has completed its review of your request to re-open your complaint against Mr. William R. Lesh. After examining the information and evidence, we have concluded that at this time, there is not a sufficient basis to reopen your complaint.

On October 11, 2011, the State Bar received your complaint. On December 22, 2012 [sic], the State Bar sent you a letter closing your complaint. On March 16, 2012, you sent the State Bar a letter requesting review.

On July 25, 2012, the State Bar received a package of additional materials from the Office of the District Attorney of the County of San Diego. With these materials there was a cover letter, in which Deputy District Attorney Gina Darvas asserted that the Office of the District Attorney had declined to prosecute Mr. Lesh and was forwarding your complaint to the State Bar.

In your request for review, you describe your complaint as follows:

> Mr. Lesh privately prompted attorneys and evaluators to go to ***old*** cases and file those (missing but mandatory CRC) FL forms on ***old*** cases instead of prompting attorneys to Due Diligence, and never touch the forms or old cases, and to acknowledge the violated parents immediately. **Mr. Lesh absolutely proves clear, conscious knowledge of the details of 5.225 and FL-326. He admits that monies were collected illegally from the SD Families in the absence of filing those forms – the Rules are crystal clear and *mandatory* that no work is to begin before the forms are completed and filed with the clerk of the court.** Upon discover [sic] of this email and behavior, Dr. Tadros formally requested to meet with Mr. Lesh, and he neither pursued any Due-Diligence nor met with Dr. Tadros.

In the email with which you are concerned, Mr. Lesh stated the following:

> "[Family Law Forms 326 and 327] are mandatory and have been now for some time. Whenever you are involved in a custody evaluation matter, you need to make sure that your custody evaluators sign form FL-326 and that that gets filed with the Court, as there is a strong possibility that the custody evaluator will not be paid for work that they perform prior to the form being signed and submitted to the court.
>
> "As to Family Law 327, that also needs to be signed and contained in the case file."
>
> "It seems apparent that there is going to be a tremendous amount scrutiny being placed upon these forms and if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately as you risk claims from your client that the matter was not properly handled, if they later disagree with the recommendations from the evaluator."

In order to prosecute an attorney for misconduct, the State Bar must establish by clear and convincing evidence that the attorney willfully violated a provision of the Rules of Professional Conduct or the State Bar Act. Clear and convincing evidence must be clear enough to leave no substantial doubt about a matter and convincing enough to command the unhesitating assent of every reasonable mind. The State Bar's burden of proof in a disciplinary action is close to the

burden of proof in criminal cases (i.e., proof beyond a reasonable doubt). Also, in a disciplinary proceeding, all reasonable doubts must be resolved in favor of an attorney accused of misconduct.

It might be that an attorney has violated a provision of the Rules of Professional Conduct or the State Bar Act. Prosecution, however, requires the State Bar to prove by the high standard of clear and convincing evidence that the attorney committed misconduct. The law does not require an attorney to prove his or her innocence.

Pursuant to section 6106 of the Business and Professions Code, an attorney must not commit "any act involving moral turpitude, dishonesty, or corruption. . . ." Your complaint and request for review claim that Mr. Lesh committed fraud by sending this email to other attorneys. Although the email might have been a mistaken comment, it does not prove by the high standard of clear and convincing evidence that Mr. Lesh committed an act of moral turpitude or dishonesty. Accordingly, the State Bar cannot prosecute him.

Under applicable law and State Bar policy, the Audit and Review Unit will re-open a complaint if the Unit finds that the State Bar arbitrarily failed to take appropriate action or if there is new evidence or information of acts by the attorney that would result in discipline. In the current matter, I have determined that the State Bar's decision to close your case was not arbitrary and that you have not presented

new information or evidence that would result in discipline. For the reasons discussed above, your complaint will remain closed. If you disagree with this decision, you may file an accusation against the attorney with the California Supreme Court. A copy of the applicable rule is enclosed. (See Rule 9.13, subsections (d) through (f), California Rules of Court.) If you choose to file an accusation, you must do so **within 60 days of the date of the mailing of this letter**. The State Bar cannot give you legal advice or representation. If you have not already done so, you may wish to consult with an attorney for advice regarding any other remedies, which may be available to you. You may contact your local or county bar association to obtain the names of attorneys who might assist you further in this matter.

Very truly yours,

/s/ [Illegible]
Mark Hartman
Deputy Trial Counsel

MH/mh
Enclosure

[SEAL]

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE
CHIEF TRIAL COUNSEL
INTAKE
Dane Dauphine,
Assistant Chief Trial Counsel

1149 SOUTH HILL STREET,
LOS ANGELES, CALIFORNIA
90015-2299

TELEPHONE: **(213) 765-1000**
FAX: **(213) 765-1168**
http://www.calbar.ca.gov

December 22, 2011

Emad G. Tadros, M.D.
3914 Third Avenue
San Diego, CA 92103

RE: Inquiry Number: 11-31506
Respondent: William Lesh

Dear Dr. Tadros:

An attorney for the State Bar's Office of the Chief Trial Counsel has reviewed your complaint against William Lesh to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have stated that Mr. Lesh, Chair of the Family Court Services Subcommittee for the San Diego County Certified Family Law Specialists, sent an email on October 1, 2009 to all attorneys in San Diego County advising them to retroactively file FL-326, which became effective in January 2005, or else they could be subject to client malpractice complaints. You

suggest this is unethical and illegal. Mr. Lesh has not responded to you.

Based on our evaluation of the information provided, we are closing your complaint. We have the burden to prove ethical violations to the State Bar Court by clear and convincing evidence. We concluded that we would not likely meet this burden of proof. In the e-mail, Mr. Lesh said to make sure the forms were filed appropriately. In other words, each attorney was to determine whether the form may still be filed retroactively. We concluded that Mr. Lesh does not have an ethical duty to meet with you, because you are not his client.

If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Specialist. You may leave a voice message with the State Bar's Complaint Specialist at (213) 765-1695. Be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Specialist will return your call within two business days.

The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your

complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within **90 days of the date of this letter**, to:

State Bar of California.
Audit & Review Unit,
1149 South Hill Street
Los Angeles, CA 90015-2299.

Please note that telephone requests for review will not be accepted.

Thank you for bringing your concerns to the attention of the State Bar.

Sincerely,

/s/ [Illegible]
Diane J. Meyers
Deputy Trial Counsel

Fwd: Email from Robert Lesh to Family Law Community
2 messages

Emad Tadros< tadrosmd@pol.net> Fri, Jan 4, 2013
To: TadrosMD <TadrosMD@gmail.com> at 10:13 PM

-----Forwarded Message-----

From: jvandoorn@cox.net
To: tadrosmd@pol.net, strictlybusiness2k@yahoo.com
Sent: Wednesday, February 17, 2010 12:34:31 AM
GMT -08:00 US/Canada Pacific
Subject: Email from Robert Lesh to Family
Law Community

Emad,

Below is a forwarded email I received from an anonymous source who is a member of the San Diego Family Law community. I was told that this email was sent as a mass emailing to all members of the San Diego County Bar Association who practice in family law. I had originally received this email in early October of 2009 and as you recall, had forwarded it to you and various other members of the 'Doyned' community at that time.

If required, I can and will testify under oath as to the conditions that I received this communication under and the integrity of the individual who forwarded this document to me and his/her professional affiliation (a practicing member of the family law section of the San Diego Bar Association) in order that you can

legally establish the veracity of this document with the courts.

Regards!
John van Doorn

Robert Lesh [mailto:wrl@leshlaw.com]
Sent: Thursday, October 01, 2009 5:19 PM
To: SDCBA Family Law Section
Subject: [sdcbafamilylaw] Important Custody Evaluation Forms/Orders

SDCBA Community Message Sent by: W. Lesh. To reply privately to W. Lesh, Click Here

Note: By replying to this message, your response will be e-mailed directly to the individual sender. Click "Reply to All" in your e-mail client to send your response to all SDCBA Family Law Section members instantly. This is a PRIVATE list for members of the SDCBA's Family Law Section. Do not forward messages or post confidential case or client data on this list server. For a list of SDCBA list serve guidelines, click here.

To permanently unsubscribe from this listserve, Click Here

I have been advised that a press conference occurred today (October 1) which involved the issue of custody evaluations and the submission to the Court of the attached Family Law Forms 326 and 327. As you may be aware from a prior e-mail I sent to all of you, these forms are mandatory and have been now for some time. Whenever you are involved in a custody evaluation matter, you need to make sure that your custody

evaluators sign form FL-326 and that that gets filed with the Court, as there is a strong possibility that the custody evaluator will not be paid for work that they perform prior to the form being signed and submitted to the Court.

As to Family Law 327, that also needs to be signed and contained in the case file.

It seems apparent that there is going to be a tremendous amount of scrutiny being placed upon these forms and if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately as you risk claims from your client that the matter was not properly handled, if they later disagree with the recommendations from the evaluator.

If you have any particular questions regarding this, feel free to contact me.

Bob Lesh
CFLS Chair

Emad Tadros MD – Diplomate American Board
of Psychiatry and Neurology.
3914 Third Ave. San Diego CA 92103
TadrosMD@pol.net
619-291-4808 & Fax: 619-291-4426

August 27, 2011

The California State Bar
Office of the Chief Trial Counsel – Intake Unit
1149 S. Hill Street, Los Angeles, CA 90015-2299
Atten: UPL Project

Re: Attorney Bob Lesh, a.k.a. Robert W. Lesh

I am submitting a formal complaint asking for your immediate attention in regards to grave concerns about one of the Bar representatives, attorney Bob Lesh, Certified Family Law Specialist CA, President-Elect of the Executive Committee of the San Diego County Certified Family Law Specialists, and last but not least, the Chair of the Family Court Services Subcommittee for the San Diego County Certified Family Law Specialists.

History of the FL 326: In the nineties, California Families and Family Courts suffered countless complaints about incompetence, fraud, unprofessionalism and misrepresentation conducted by the Private Child Custody 730 Evaluators. The California Judicial Counsel/CJC decided to take the upper hand with firm measures by placing this serious matter under both judicial and parental control.

As a result, starting 2000, the CJC met on the average twice a year with every CA county court CEO

along with the county's presiding judges. It was considered pivotal that the public be present in those meetings to share their views and actually voted on how to serve the California Counties with a Statewide standard. CJC met in this public forum at least twice annually and since that time there have been other specific changes to the CJC forms FL326 and FL327.

Purpose of FL326: In 2001 CJC established CRC 5.225 that relates to the Appointment, Qualifications and Credentials of 730 Private Custody Evaluators. This was the birth of FL326 to be served on the parents where it would be filed by the Private Custody Evaluator at the Clerk's Office and FL327 would be filed by the appointing judge, at the clerk's office, as CJC strongly recommended. From its inception, FL326 was mandated to be signed under the penalty of perjury by the custody evaluator, for good reasons.

Evolution of FL326: Over the following few years, the CJC evolved this pivotal FL326 with more specific details about qualifying 730 Evaluators, requiring their educational background, qualifications, credentials, expertise and continuing education hours that are specified according to CJC State Family law, to be properly submitted before appointing each and every private custody evaluator.

Legality of FL 326: This FL 326 form continued to be signed "Under the Penalty of Perjury . . . regardless."

The CRC 5.225(k)(1)(B) *[re-lettered to now be (l)(1)(B)]* is boxed and bolded on the Mandatory FL326 as follows:

> NOTICE:
>
> Private Custody Evaluators must complete this form and file it with the clerk's office no later than 10 days after notification of each appointment and ***before*** beginning any work on the child custody evaluation. (Cal. Rules of Court Rule 5.225(k)(1)(B)

FL 326 becomes Mandatory: Starting on January 1st 2005, CJC MANDATED this specific rule 5.225(k)(1)(B) &(l)(1)(B) that only applies to FL326. CJC mandated that FL326 must be served on the parties involved in the custody action, signed under the Penalty of perjury by the 730 Evaluator and be filed with the Clerk of the Court, "*no later than 10 days after notification of each appointment and before any work on each child custody evaluation has begun*."

CJC made sure to demand that such FL326 forms continue to be signed under the penalty of perjury, and mandated that new forms are filed individually for each and every new private custody evaluation case. CJC did not allow for any exemptions or alternatives. The CJC pursued such mandatory steps for good reasons.

Consequences of Violating FL326: In June 2009, it was discovered by a frustrated parent that the San Diego Superior Court CEO, Michael M. Roddy had

been aware of the new CRC [5.225(k)(1)(B) and (l)(1)(B)] mandatory rules, but chose not to implement them. As a result not one single FL326 form was filled out, and/or turned in, for any Custody Evaluation case. This is to say that not one member of the San Diego Bar Association bothered to even Read the Court's new Rule Book. And if they did they either kept quiet or were told to do so: even after these rules became mandatory. This violation story broke on ABC news and is currently posted under the www.thepubliccourt.com and http://www.thepubliccourt.com/archives/1.

On 9-29-09, my attorney Mr. Mike Aguirre, past San Diego City Attorney, directed a formal communication (attached) to the Family Court Supervising Judge Hon. Lorna Alksne requesting the immediate compliance of such "mandatory but somehow missing" FL326 rules. Otherwise, some San Diego families were going to file a "Federal Relief Act."

Following this 9-29-09 letter by Mr. Aguirre, the Hon. Judge Lorna Alksne sent an immediate notice to all San Diego County attorneys asking them to make sure that the FL326 forms were filed by their appointed evaluators in a timely manner (10 days *before* any custody evaluation work starts) and to follow the mandatory CRC as the law mandates.

Why Advance Notice about FL326 was Mandated to be given to parents: The main purpose for filing these missing FL326 forms is to give the parents a chance to check out, and make an educated decision

to either hire or fire their appointed custody evaluator, *before* any work starts. However, in addition to robbing San Diego families of their new rights by lacking the filing of these mandatory forms with the Clerk's office, this violation omitted who charged who and how many Thousands of Dollars the families were charged by the involved attorneys and custody evaluators.

Consequences of lacking the proper filing of FL326: By not complying with these rules in a timely manner, the question of Felony Tax Evasion on both the State and Federal levels by San Diego Attorneys and Private Child Custody Evaluators is now on the table. Otherwise, one wonders why these rules were not implemented when they became mandatory in January of 2005.

Filing the FL 326 after the Fact: Asking San Diego attorneys and/or Private Child Custody Evaluators, directly or indirectly, to go back to old case files and sign the FL326 forms, under the penalty of perjury, months/years after the work was started and/or completed is meaningless, unethical, and even criminal.

If any, it behooves each and every San Diego Attorney to contact the violated families (who were never allowed to be knowledgeable, or were ever timely served these mandatory FL326 forms), advise them of the violation committed and offer them a fair and equitable remedy due to the violations of the Mandatory Rules of Court caused by the involved attorneys and evaluators.

Mr. Lesh's Professional Obligation: With Mr. Lesh being a Certified CA Family Law Specialist, the President-Elect of the Executive Committee of the San Diego County Certified Family Law Specialists, and last but not least, the Chair of the Family Court Services Subcommittee for the San Diego County Certified Family Law Specialists., he had a due diligence to notify the parents whose rights were violated; however, to date this has not been done. Mr. Lesh was also ethically and professionally obligated to advise San Diego County attorneys that filing these FL326 forms on any old cases is not only unethical, but illegal and criminal: especially if doing so would mean signing forms under the penalty of perjury after the fact, when the law mandated that they be signed "at least 10-days before any work started."

Mr. Lesh Privately Prompts Family Attorneys to go to old cases: On October 1, 2009 Mr. Lesh sent a mass private email to all San Diego attorneys (attached) on the SDCBA list-serve. In that email Mr. Lesh stated:

> "It seems *[present tense]* apparent that there is going to be *[future tense]* a tremendous amount of scrutiny being placed *[Present tense]* upon these forms and if you have any ***old*** *[Past tense]* cases, where these forms have not been used *[Mandatory Rule applies – 10 days* ***before*** *any custody work starts]* please make sure that they are *[present tense]* filed appropriately, as you risk claims from your client that the matter was not

> properly handled, if they later *[future tense]* disagree with the recommendations of the evaluators."

In above email, Mr. Lesh asks San Diego Family Law attorneys to file these past due forms "appropriately." Does this mean they are being filed only with the county clerk, or also with the parents whose rights were violated? I have written to Mr. Lesh asking to meet with him in this regard, however I have not heard from him.

I ask that the State Bar Association undertake whatever steps that it deems are necessary and appropriate, in keeping with the guidelines of how the Bar Association defines itself. For example at the Free Online Law Dictionary website (at http://legal-dictionary.thefreedictionary.com), the Bar Association defines itself as "*An organization of lawyers established to promote professional competence, enforce standards of ethical conduct, and encourage a spirit of public service "pursued" in the spirit of a service of furthering the administration of justice according to law.*" The article goes on to describe members of the Bar association (or lawyers) as those who "*encourage*" and/or "*offer Pro Bono . . . services.*" **When in-fact Mr. Lesh was prompting the attorneys to the untimely FL326 filing so they would NOT have to refund any money back to the violated families, instead of prompting them to call the families and acknowledge that their rights were clearly violated.**

On the behalf of countless San Diego families and on the behalf of California Coalition for Families and Children/CCFC, I appreciate your seriously needed attention to this matter. We ask the California State Bar Association to undertake the next step that would deem appropriate towards San Diego County Violated Families.

Thank you for your prompt attention to this serious matter.

Respectfully,

/s/ Emad Tadros, M.D.

Emad Tadros, M.D.

CC: Various Members of the Public.

Enclosures:

1 – Mr. Lesh Private Email to the San Diego County Attorneys dated October 1-2009.

2 – Stephen Doyne Psychologist following Mr. Lesh's commands to the T.

3 – Attorney Mike Aguirre's letter to the San Diego Family Court Presiding Judge.

No Paper Trail – Dr. Stephen Doyne PhD
by Admin – http://www.thepubliccourt.com/no-paper-trail/

No Paper Trail – Dr. Stephen Doyne PhD

*You must Register and Log in to post comments.

Form FL-326 Missing

Virtually all Divorce Related Transactions including Attorney fees, 730 psychological Evaluations, Private (social worker) Mediation, Therapy, Supervision, and Child Exchanges are paid by Cash or Check, and sometimes by Credit Card. It is also important to realize that virtually NONE of this money is reported to the IRS simply because NONE of it is Tax Deductible. In addition, since almost none of these bills are paid by insurance (i.e. Blue Shield, Aetna, etc.), therefore, almost no family court officials, and/or court-ordered Specifically Named Service Providers receive 1099 forms, since their bills are paid by cash or checks by divorcing parents.

Therefore, at the end of each year the income that these people have received – often in the hundreds of thousands, if not millions, of dollars – may not be, and many think is NOT reported to the IRS since there is no way to audit them.

Dr. Stephen Doyne PhD

For example, *Dr. Stephen Doyne PhD* is known to have performed about 4000 custody evaluations in the last 25 years. So, for example, if he does approximately

150 evaluations a year with an average evaluation estimated to cost 15,000 dollars (?), this amounts to $2,250,000.00 a year in income for this one evaluator. Note also that this does not include other services that they may provide: such as therapy, mediation, lectures, etc.

In the absence of FL326 and/or FL327 forms that were both mandated to be filed at the clerk's office at the court house, a paper trail vacuum was created, and thus the IRS and State Franchise Tax Board have no way to accurately audit these officials for tax years 2001-2009.

And to this date, Nobody in the San Diego Family court system has been held to account for this in the least bit: other than that – because a Robbed and Abused parent discovered the 'oversight' and complained (to other parents: who then went public) – the San Diego court was pressured to recently implement rules that were strongly advised in 2001, and mandatory in 2005.

Stephen Doyne Is Above The Law

"Stephen Doyne is Above The Law" . . . Pay attention to the second page where It's bolded and boxed-in, saying "NOTICE." They are making this area extra Important for a reason. It says that Evaluators must complete and file the form no later than 10-days after notification of each appointment, and "before" beginning any work on the child custody evaluation. The 10-day period is to allow parents time to examine,

accept or reject the appointed evaluator. CA Rules of Court MANDATED that this very form (FL-326) must be signed under the penalty of perjury by the appointed Custordy [sic] Evaluator.

Dr. Stephen Doyne PhD declared that he was appointed on October 22, 2008 as you see on page one, item No. 2. According to the mandated requirements on this form, of signing under the penalty of perjury, Stephen Doyne must complete, sign and file this form any time on or after October 22, 2008, but no later than November 5, 2008 (ten working days after October 22). However, San Diego Superior Court allows Stephen Doyne, PhD to be "above the law," and to also totally disrespect and disregard The Penalty of Perjury by completing, signing and filing this MANDATED form on or after September 18, 2009, almost an entire year after the mandatory requirement, and after the work started!

This form is a living example that San Diego Family Court Litigants undergoing custody evaluations are held captive and deprived of their civil rights, legal due process, and are discriminated against as a special class of litigant:

1 – By not implementing any rules of court, even if they were mandatory.

2 – By Allowing Stephen Doyne, Judges' Election Campaign donor, to be "Above the Law."

3 – By never allowing Due Process to San Diego Families when Perjury was committed by San Diego's own court friendly operators (Stephen Doyne)!

FL-326

EVALUATOR *(Name and address):* Stephen E. Doyne, Ph.D. 9834 Genesee Avenue, Suite 321 La Jolla, CA 92037 TELEPHONE NO.: 858.452.5900 FAX NO. *(Optional):* 858.452.7610 E-MAIL ADDRESS *(Optional):*	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 1555 Sixth Avenue MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Family Law Court	(Filed Sep. 23, 2009)
PETITIONER/PLAINTIFF: [redacted] RESPONDENT/DEFENDANT: [redacted]	
DECLARATION OF PRIVATE CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	CASE NUMBER: [redacted]

1. I, *(name)*: Stephen E. Doyne, Ph.D., declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.

2. On *(date)*: October 22, 2008, I was appointed by the court to perform a child custody evaluation in this case.

LICENSING REQUIREMENTS

3. a. ☑ I am licensed as a psychologist, marriage and family therapist, or clinical social worker;

   b. ☐ I am licensed as a physician and I am a board-certified psychiatrist or I have completed a residency in psychiatry; or

   c. ☐ I am not licensed as indicated in 3a or 3b.

   NOTICE: If Item 3c is checked, the court may not appoint the person to perform a child custody evaluation in this case unless, under Family Code section 3110.5(d) and rule 5.225(c)(2)(B) of the California Rules of Court, all the following criteria have been met:

   (1) The court determined that there are no evaluators who meet the licensing requirements who are willing and available, within a reasonable period of time, to perform child custody evaluations;

   (2) The parties have stipulated that the person may conduct the evaluation; and

   (3) The court approves the person's appointment.

EDUCATION AND TRAINING REQUIREMENTS

4. I have completed:

   a. ☑ The basic and advanced domestic violence training requirements for a private child custody evaluator under rule 5.225(e); and

   b. ☑ The 40 hours of education and training requirements for a private child custody evaluator under rule 5.225(d).

5. I have completed:

   a. ☑ The annual 8 hours of update training requirements for a private child custody evaluator under rule 5.225(h); and

   b. ☑ The annual 4 hours of domestic violence update training requirements for a private child custody evaluator under rules 5.225 and 5.230.

EXPERIENCE REQUIREMENTS

6. ☑ I have complied with the experience requirements for a private child custody evaluator in rule 5.225(g) because I participated in the completion of four court-appointed child custody evaluations in the preceding three years I *(specify)*:

   a. ☐ Independently conducted and completed the child custody evaluation as stated in rule 5.225(g)(1)(A);

   b. ☐ Materially assisted another evaluator as stated in rule 5.225(g)(1)(B); or

c. ☑ Complied with the requirements stated in rule 5.225(g)(2), and I am deemed to meet the experience requirements of rule 5.225(g) until December 31, 2009.

7. ☐ I have not complied with the experience requirements for child custody evaluators in rule 5.225(g)(1).

NOTICE: If Item 7 is checked, the court may not appoint a court-connected evaluator to perform a child custody evaluation unless, under rule 5.225(g)(3), all the following criteria have been met:

a. The court determined that there are no child custody evaluators who meet the experience requirements for child custody evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;

b. The parties have stipulated that the person may conduct the evaluation; and

c. The court approves the person's appointment.

USE OF INTERNS

8. ☐ I intend to use interns to assist with the child custody evaluation in the manner disclosed and agreed to by the parties and attorneys in the case. Each intern will have complied with the criteria of rule 5.225(*l*)

and will work under my supervision at all times.

NOTICE

Private child custody evaluators must complete this form and file it with the clerk's office no later than 10 days after notification of each appointment and before beginning any work on the child custody evaluation. (Cal. Rules of Court, rule 5.225(k)(1)(B))

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 18, 2009

Stephen E. Doyne, Ph.D. (TYPE OR PRINT NAME)

► Stephen Doyne (SIGNATURE OF DECLARANT)

SIGNATURE BY FAX

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 3

CCFC Amicus Brief re: Doyne

May 25, 2013
The link below is an explanation of the lack of regulation and "free radical" status of Doyne and other court-appointed evaporators. Bottom line: If they try to screw you over (and many allege they have), you have no recourse. As in NO WAY to report, sue, punish, recover from, jail, etc. etc. etc. other than appeal to a Family Court judge (with whom they work on a regular basis–they're practically business partners). I can't see how any family law lawyer can ethically recommend use of Doyne or any of these "immunized" to any of their clients–they should be sued for conspiracy to defraud under federal law.

The eye-opening brief:

California Coalition for Families and Children Brief re: Stephen Doyne (http://www.californiamenscenters.org/wordpress/wp-content/uploads/2009/11/tadros-v-doyne-amicus-brief.pdf)

From → Uncategorized

One Comment

1. **Cole Stuart permalink**
   Parents: If you have a complaint against Doyne or other CA custody evaluators, file it with the CA Board of Psychology HERE. Also it will be helpful to listen to the last half of the interview of the Board about what type of complaints work and which don't. I'll post an article summarizing the Board's advise about how to file effective complaints soon–stay tuned!

   https://www.dca.ca.gov/webapps/psychboard/complaints.php

   Reply
   Edit

Colbern C. Stuart, III (SBN 177897)
G. Hans Sperling (SBN 206395)
LEXEVIA, PC
4139 Via Marina PH 3
Marina Del Rey, CA 90292
Telephone: (310) 746-6112
Facsimile: (424) 228-5272

Attorneys for *Amici Curiae*,
CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, NATIONAL COALITION FOR MEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

EMAD G. TADROS, M.D.,

Plaintiff,

v.

STEPHEN DOYNE, Ph.D., and DOES 1 THROUGH 100,

Defendants.

Case No. 37-2008-00093885-CU-BT-CTL
Judge: Honorable Jay M. Bloom
Dept.: C-70

COMBINED (1) APPLICATION FOR LEAVE TO FILE AS *AMICI CURIAE* AND (2) *AMICUS CURIAE* BRIEF OF PROPOSED *AMICI CURIAE*, (A) CALIFORNIA COALITION FOR FAMILIES AND CHILDREN AND (B) NATIONAL COALITION FOR MEN, IN SUPPORT OF PLAINTIFF DR. EMAD TADROS' MOTION TO CONTINUE HEARING AND CONDUCT DISCOVERY

Date: November 20, 2009
Dept: C-70
Time: 11:00 a.m.
Hon. Jay Bloom

This (1) Application for Leave To File as *Amici Curiae* and (2) *Amicus Curiae* Brief[1] is respectfully submitted by *Amici* herein, the CALIFORNIA COALITION FOR FAMILIES AND

[1] *Amici* acknowledge that *Amicus Curiae* Briefs are ordinarily submitted to the appellate courts in this state. *Amici* carefully researched the preferred procedure for filing *Amicus* Briefs in trial courts and found no relevant provisions prohibiting this submission. In fact, in the matter of *California Valley Miwok Tribe v. California Gambling Control Com.* Case No. 37-2008-00075326-CU-CO-CTL (San Diego Sup. 2008), The Hon. Joan Lewis received an *Amicus* Brief from interested non-parties in San Diego Superior Court. Given the widespread impact and important interests at stake in this case, and the likelihood that this issue could be mooted before it ripens on appeal, *Amici* have taken the unusual step of filing this combined "Application For Leave to File *Amicus* Brief" and "Brief of *Amici Curiae*" at this very early, yet critical, stage.

CHILDREN ("CCFC"), and NATIONAL COALITION FOR MEN ("NCFM"), collectively, *Amici*, in support of Plaintiff Dr. Emad Tadros' ("Dr. Tadros") Motion to Continue Hearing and for Discovery ("Motion") from Defendant Dr. Stephen Doyne ("Dr. Doyne").

I. Statement of Identity of *Amici*

Amici are nonprofit organizations comprised primarily of parents who have experienced a marital dissolution proceeding in San Diego, Orange, or Los Angeles Counties. Our members are professionals or others who are very highly motivated to devote time and resources to promote the health and success of Southern California families and children by addressing special social problems antithetical to such success, and which are currently being caused or contributed to by the present marital dissolution or other processes involving custody issues.

Amici CCFC are presently organizing as a Southern California-based Chapter of the American Coalition For Fathers And Children ("ACFC"), based in Washington, D.C.[2] *Amicus* NCFM are founded in 1977 NCFM is the oldest continuously running men's rights organization in the United States of America with members throughout America and in several countries.

II. Statement of Interest of *Amici*

Amici CCFC: According to the CCFC and the ACFC's common Mission Statements (attached hereto as Exhibit "A"), we collectively dedicate ourselves and our efforts to the creation of a family law system, legislative system, and public awareness which promotes equal rights for all parties affected by divorce, and the breakup of a family or establishment of paternity. We believe equal, shared parenting time or joint custody is the optimal custody situation.

Amicus NCFM: NCFM is committed to the removal of harmful gender based stereotypes, particularly as they adversely impact men and boys. NCFM supports equitable rights for all parents. NCFM enthusiastically joins CCFC and others on this brief.

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[2] The Application to the ACFC of *Amici* has been submitted only very recently and as such cannot yet claim any official affiliation with the ACFC, but such is expected in coming weeks.

III. Introduction

The appointment and usage of private child custody evaluators in family law disputes has been a longstanding concern for hundreds of thousands of Southern Californians, courts, political representatives, and the family law community for many years. Most high-conflict cases center on disputes over child custody. Unfortunately, the experience of thousands of Southern Californians suggests that many child custody evaluators misrepresent their qualifications or otherwise demonstrate unethical behaviors that confound the resolution of such cases, increase conflict, expense, and harm to the involved families—particularly the children. It also appears from experience that a lack of effective judicial oversight, accountability, and concern is largely responsible for creating an environment in which such malfeasance exists.

The specific issue before the Court in Dr. Tadros' Motion to Conduct Discovery is whether or not Dr. Doyne, a prominent San Diego psychologist often appointed or selected by stipulation as an evaluator or mediator by family courts, may prohibit Dr. Tadros from conducting discovery in Superior Court regarding Dr. Tadros' claims that Dr. Doyne committed fraud on his clients, patients, the San Diego family law community, the courts, the Southern California public, and the federal government of the United States concerning important alleged misrepresentations about his credentials, education and experience, his eligibility to perform evaluations, billings, and qualifications, and many other real and believed violations of law. As this case has public import well-beyond the *Tadros* case, *Amici* respectfully submit this combined "Application For Leave To File *Amicus Curiae* Brief" and "Brief of *Amici Curiae*."

Amici argue herein below that the process of discovery is intended to enable litigants to understand and examine the factual support for all litigants' (including their own and their opposition's) positions. It is long-held precedent that California courts permit litigants to perform broad discovery of "all relevant evidence, or evidence likely to lead to the discovery of relevant evidence." Amici suggest herein that to thwart Dr. Tadros at this early stage will not only harm Dr. Tadros' case, it will also curtail many very important public interests at stake, identified in detail below.

Applicants hereby apply to this Court for Leave to submit, and hereby submit, this

Amicus Brief to assist the court in understanding the significant broader interests at stake in this Motion and litigation. *Amici* respectfully submit herein that refusing—at such a nascent stage—to permit Dr. Tadros to conduct any discovery in this matter would have a tremendous and very harmful "chilling effect" on thousands of San Diegans to conduct their own investigations as to alleged fraudulent misfeasance/malfeasance, or other violations of law and the public trust committed by such important professionals, most of whom are subject to no oversight other than the type of civil lawsuit initiated by Dr. Tadros.

IV. Discussion

A. The Relevant Public Interests Impacted by This Court's Decision

It goes without saying that protection and promotion of the well being of San Diego families and children involved in the difficult process of a marital dissolution is a paramount interest of this state and its citizens. Marital dissolutions often involve incredibly difficult, life-changing circumstances for children and their parents—changes in living arrangements, financial instability, and conflict, all of which can have a tremendously negative impact on children, parents, extended families, relevant communities, and the general well-being of our local and state economy if not handled with extreme care by honest, unbiased, competent and thorough professionals.

The state and county also have an interest in promoting healthy relationships between children and both their healthy parents. There is no dispute among family health care experts that supporting healthy, robust relationships between children and parents after divorce stabilizes families and promotes peaceful, healthy relationships between children, their parents, and the parents themselves. Assuring that courts—and the "experts" on which they frequently rely—are doing an excellent job of honestly evaluating the best prospects for promoting such healthy relationships is a primary interest of public welfare.

There also exist important fundamental Constitutional rights guaranteed to parents and children under the 4th, 5th, 13th, and 14th Amendments to the United States Constitution and related provisions of the California Constitution to assure that the legal process is competent, unbiased, fair, efficient, and balanced.[3] Assuring that those interests are honestly, competently, and accurately evaluated and protected by those practicing in Dr. Doyne's profession is critical to protecting and promoting our communities' families and assuring the best likelihood for their future health, harmony, common wealth, and success.

San Diego, Orange, and Los Angeles County family law community professionals also have an important interest in enforcing high standards of accountability, responsibility, integrity, and professionalism amongst their own. Dr. Doyne is one of—if not the—most commonly used custody evaluators in San Diego, and has achieved widespread notoriety and success due to his many professional referrals. His success is based largely on his reputation among this community, his publications, his speaking engagements and notoriety. Due largely to his influence within this community, Dr. Doyne has earned *tens of millions of dollars* over his career from San Diego families and professional referrals, a rate that is currently estimated to be *near or in excess of $1,000,000 (one million dollars) per year*. Members of the family law community—who themselves owe a duty of care to their own clients whom they frequently refer to Dr. Doyne—expect Dr. Doyne to uphold the highest standards within his profession. These articulated public interests are even more important given that Dr. Doyne enjoys a high level of

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3 A recent 6-3 United States Supreme Court opinion penned by Justice Sandra Day O'Connor and joined by the Chief Justice has articulated this longstanding interest thusly:

> "The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, e.g., *Stanley v. Illinois*, 405 U.S. 645, 651. Pp. 5—8." *Troxel v. Granville*, 530 U.S. 57 (2000).

influence among these relevant communities.

State Courts also have an interest in maintaining public trust and confidence in the impartiality of the adjudicative process by observing the California Code of Judicial Ethics to "avoid even the appearance of impropriety," as well as all state and federal laws, tax laws, Rules of Court, and Local Rules. California Supreme Court Chief Justice Ronald George has recently expressed deep concern that the family court community is failing to "police themselves."[4]

The Court may recall that in this case Dr. Doyne has asserted he is a "quasi-judge" entitled to quasi-judicial immunity as a key defense in this case. However, unlike judicial officials, Dr. Doyne never passed the rigors of appointment by a Governor or other political body, is not subject to oversight or election by a concerned public, is not monitored by any internal Judicial Staff or officer (in fact, he and hundreds like him are rarely, if ever, monitored at all), is rarely if ever required to stand by his record, insists on working under strict privacy and confidentiality, may (and often does) refuse to disclose his records, and his work is never subject to review on appeal. Judges (and most other professions) are.

Further, unlike ordinary psychologists, Dr. Doyne and his fellow evaluators are not subject to review by the client or clients paying him—any person hiring a normal clinical psychologist (or lawyer, physician, builder, plumber, or any other conceivable independent contracting professional) has at least some—if not all—control over the performance of the profession's services and thus can correct, guide, and—most importantly—fire that professional if unhappy with their work. Not so with Dr. Doyne and his colleagues, none of whom can be directed, disciplined, and fired by the clients they work for.

Similarly, Dr. Doyne is often appointed as a mediator in the same role as J.A.M.S.-Endispute. However, unlike retired Judges or other professional mediators who must perform

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[4] *Elkins v. Superior Ct.*, 41 Cal. 4th 1337, 63 Cal. Rptr. 3rd 160 (2007) .See fn. 7, infra.

for their clients (i.e., *settle* disputes quickly and efficiently) and uphold rules of ethics and professionalism, or fail to earn repeat business, clients cannot fire Dr. Doyne, have little or no control over the scope of his investigation, the information provided to him, the amount of time he spends attempting to resolve the dispute, and if he is unsuccessful (i.e., prolongs rather than settles) have little recourse because they are likely single-stop shoppers.

Thus, Dr. Doyne and most of his fellow evaluators are "free radicals," selling breathtakingly expensive services at over $300 per hour while beholden to no client, no one affected by their decisions, (i.e., children whose lives are often dramatically altered, yet children whom have little understanding of the impact of these decisions until years later—when it's too late to object), no colleagues with whom they work, and no superiors. Dr. Doyne is not bound or guided by the Cannons of Judicial Ethics (or any other moral, ethical, or professional code specific to their profession as evaluators). He works under extreme confidentiality with little or no public visibility or oversight, no rigorous and guided review on appeal, no public scrutiny in the press and otherwise, and no public or private watchdog groups (other than those similar to *Amici*).

Despite this near 'carte blanche' discretion, Dr. Doyne seeks the exact same immunity as judicial officials who are subject to extraordinary scrutiny, work in a public courtroom, are subject to scrutiny by the press, the public, colleagues, appellate judges, court officers, superiors, watchdog groups, politicians, and must run for re-election.

Amici urge that this "free radical" status creates and extremely risky and dangerous potential for abuse of such extraordinary power, wealth, and discretion by professionals such as Dr. Doyne.

Further, to the extent that Dr. Doyne and his colleagues claim to be judicial officials, it would be potentially demeaning to the bench and our entire legal profession to permit one who is

not a member of the bench or of the legal profession to assert the deference and legal protections achieved by the judiciary, only to behave in a way that is inconsistent with those very high standards.

It also goes without saying that San Diegans have an interest in ferreting out illegal, unethical, and harmful behavior of professional evaluators. Whether Dr. Doyne is considered a "quasi-judicial" official or a private psychologist, the question of whether or not he is committing the crimes, malpractice, unethical and harmful behavior of which he is accused is an important public interest which will be trampled if discovery is not permitted.

Based on years of experience, it is the common perception of *Amici* and others that current practices are *not* in fact promoting these important interests and, in the case of Dr. Doyne and others, these experts are in fact *harming* such important interests by performing extravagantly expensive services incompetently, fraudulently, and in violation of state and federal laws and regulations.

B. <u>These Important Public Interests Could be Severely Trampled by Denying Discovery</u>

The public interests identified above could be severely impacted by denying Plaintiff's motion. Dr. Tadros' allegations that Dr. Doyne failed the public trust placed in him are quite serious. They include allegations of fraud on Dr. Doyne's current and former clients, fraud on the public, Fraud on the San Diego family law community, fraud on the courts, fraud on the United States government, fraud on his own professional community, violation of federal patient privacy laws, California Health and Safety Codes, and violation of state consumer-protection laws.

C. <u>Few, If Any, Alternatives Exist To Obtaining Relevant Discovery</u>

There are currently few, if any, viable alternatives for protecting these important public

interests other than through better self-regulation or oversight inspired by the prospects of a lawsuit or close public scrutiny. Moreover, the San Diego public has no other effective relief to address their grievances other than in San Diego Superior Courts. Unfortunately, all efforts to address this alleged harm through the family courts has been frustrated by the inherent limitations on jurisdiction, resources, and expertise of family courts.

1. Jurisdiction of Family Courts is Narrow

Because the jurisdiction of the family courts is expressly limited to deciding matters relating to dissolution, child custody, parentage, and juvenile matters, family courts are not empowered to address the matters raised in this lawsuit. While litigants may compel psychologists such as Dr. Doyne to testify at hearing before a family court judge and may request or subpoena his individual patient records pertaining to their individual case, it is difficult or impossible to obtain records relevant to a complete analysis of Dr. Doyne's professional behavior through family courts.

For example, Psychologists such as Dr. Doyne regularly refuse informal requests for even their own patient's records, claiming that it is "against policy" to release records. While Dr. Doyne and other psychologists normally produce a patient, child, or couple's own files pertaining to the requesting patient, it is often difficult or impossible to obtain the broader records requested by Dr. Tadros.[5]

2. Family Courts Lack the Resources to Manage Broader Discovery

In some cases Dr. Doyne and other San Diego psychologists simply refuse to produce, asserting that the records contain private business records, records irrelevant to the psychologist's testimony, or otherwise protected psychological patient or business information.

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[5] These records include tax records, billing records, records of other patients, credential/education/and work history records, and a host of other records which would be directly relevant to Dr. Tadros' claims and the claims of *Amici* herein.

This may of course be true in many cases, but these privacy and other interests may be addressed more effectively within the context of ordinary Superior Court litigation procedures such as document redaction, protective orders, limiting the scope of discovery, or other protective measures regularly implemented in state and federal courts. Unfortunately such procedures are rarely adopted by family courts, making them ill equipped to fashion effective protective discovery tools. Instead, family courts tend to simply severely limit discovery to the narrow family issues within their limited jurisdiction.

3. Family Courts Apparently Lack Expertise to Manage Broader Discovery

Finally, it has recently and often been reported that the California family courts in which Dr. Doyne maneuvers are not doing a good job of "policing themselves". California Supreme Court Chief Justice Ronald M. George recently acknowledged a dysfunction in family courts, expressing (in a rare self-penned opinion) unusual frustration with the California Family Court's "inability to police itself."[6] Empowering litigants who allege that they have been victimized by

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[6] One commentator, Ms. Kathryn Joan Dixon, described the Chief Justice's opinion thusly:

"In *Elkins v. Superior Ct.*, 41 Cal. 4th 1337, 63 Cal. Rptr. 3rd 160 (2007) Chief Justice George stated: In the present case, the trial court applied the sanction in a mechanical fashion without considering alternative measures or a lesser sanction resulting in the exclusion of all but two of petitioner's 36 exhibits. Had the court permitted petitioner to testify, he could have provided some foundation for his exhibits. In applying the local rule and order mechanically to exclude nearly all of petitioner's evidence – and by proceeding in the words of the trial court by "quasi-default" – the trial court improperly impaired petitioner's ability to present his case, thereby prejudicing him and requiring reversal of the judgment.

The California Supreme Court has invalidated a county court rule that required divorce trials be submitted on written declarations and prohibited oral testimony except in "unusual circumstances." The rule also required parties to establish in their pretrial declarations the admissibility of all exhibits they sought to introduce at trial. A divorce litigant whose evidence was excluded because he had failed to establish its admissibility in the pretrial stage challenged both sets of rules.

The court acknowledged that local courts have rulemaking authority, however, "local courts may not create their own rules of evidence and procedure in conflict with statewide statutes." Avoiding the constitutional issues presented by the case, the court analyzed the statewide evidence and procedure statutes, the case law concerning hearsay admissibility, and the history of trial procedure in the state, concluding that the local rule conflicted with these statewide evidence rules regarding hearsay.

the precise family court inattention identified by Chief Justice George to seek redress outside of family court will give family courts greater incentive to "police themselves"—hopefully

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> The Supreme Court acknowledged that the local rules were designed in response to increasing caseloads and limited judicial resources. However, on balance, that did not justify the violation of basic trial procedures.
>
> That a procedure is efficient and moves cases through the system is admirable, but even more important is for the courts to provide fair and accessible justice. In the absence of a legislative decision to create a system by which a judgment may be rendered in a contested marital dissolution case without a trial conducted pursuant to the usual rules of evidence, we do not view respondent's curtailment of the rights of family law litigants as justified by the goal of efficiency. ... While the speedy disposition of cases is desirable, speed is not always compatible with justice. Actually, in its use of courtroom time the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment."
>
> Regarding the court's sanction of excluding evidence for failure to establish admissibility in pretrial proceedings, the court concluded that "The trial court abused its discretion ... by excluding the bulk of his evidence simply because he failed, prior to trial, to file a declaration establishing the admissibility of his trial evidence.... The sanction was disproportionate and inconsistent with the policy favoring determination of cases on their merits."
>
> Elkins v. Superior Court (California Supreme Court August 6, 2007)
>
> The Supreme Court Justice threw a couple of profound barbs at the Contra Costa County Judges: "…. we do not view respondent's curtailment of the rights of family court litigants as justified by the goal of efficiency." (Page 32)
>
> "We are most disturbed by the possible effect the rule and order have had in diminishing litigants' respect for and trust in the legal system" (Page 34)
>
> "In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice." (Page 35)
>
> The Chief Justice also proposes a task force be established by the Judicial Council to seek to streamline family law court systems, yet "ensure access to justice for litigants". This statement could imply that the Chief Justice places little faith in the ability of the Contra Costa County Superior Court to properly police itself. . . .
>
> The Family Law Court is that one area of the any court system where compassion, fairness, and transparent judgment are essential. It is acknowledged by mental health experts that divorce is a life altering experience especially when custody disputes over children is involved and the financial stability of the parents is an issue. Contra Costa County superior courts have chosen to implement restrictive rules that impose expensive, unfair burdens on family law litigants and their attorneys. Then to compound the arrogance and error of these regulations the court places commissioners and judges on *the family* law bench whose sole concern seems to be their *own* work schedule."

A copy of Ms. Dixon's publication is attached as Exhibit "C." A copy of *Elkins v. Superior Court*, 41 Cal. 4th 1337 (2007) is attached as Exhibit "D."

improving the quality of the administration of justice in family court by holding evaluators accountable to the courts and the public.

For all of these reasons, denying Dr. Tadros the ability to conduct entirely routine discovery extinguishes any ability of Dr. Tadros—and effectively hundreds of similarly situated parties from conducting similar relevant discovery. Such an outcome would be tantamount to an *endorsement of* malpractice, malfeasance, billing fraud, credential fraud, patient fraud, consumer fraud, HIPPA violations, violation of state law, state and local court rules, state and federal tax evasion, and more. Such a ruling would effectively make Dr. Doyne—and by example dozens like him—"The Untouchables".

Amici suggest that such a perverse outcome is inconsistent with this Court's, county's and state's purpose and intent, and would be absolutely antithetical to the interests of *Amici* and millions of similarly situated families across The State of California.

D. The Broader Impact of This Court's Ruling on Similarly-Situated Professionals Within the Family Law Community, Among *Amici*, and Thousands More

It is also apparent that there are many San Diego psychologists, psychiatrists, family court evaluators, employees, professionals, and ordinary citizens closely following this case.[7]

Further, many local family law evaluators closely follow Dr. Tadros' case as a critical "test case." If the efforts of Dr. Doyne here are successful in avoiding public scrutiny and thwarting the Superior Courts' powers re: discovery, Dr. Doyne's tactics will be "blessed" and likely mimicked by dozens of professionals in future suits seeking to uncover wrongdoing. It is submitted that these professionals will tailor their own professional ethics, conduct and

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[7] This matter has been widely reported by San Diego media, including two reports by ABC/Channel 10's award-winning investigative journalism "I-Team" reporter Lauren Reynolds, articles in the San Diego Union Tribune, the San Diego Reader, and other regional or local publications. It is also the subject of numerous Internet blogs, chat boards, email distribution lists, or other Internet discussion channels relating to family law, mental health, professional qualification sites, and more. A simple "Google" search of "Dr. Stephen Doyne" would reveal ten or more such sites discussing this case or the similar widespread displeasure expressed by the San Diego public. A sample of some of these publications is attached as Exhibit "E".

standards—for better or for worse—depending on this Court's rulings on Dr. Tadros' present Motion and in this case.

As such, the outcome of this case will send a clear message—one way or the other—about whether dozens of other professionals can commit the acts Dr. Doyne has been accused of without fear of being subject to ordinary discovery to reveal wrongdoing.

Moreover, Dr. Tadros' lawsuit represents a far-too-rare opportunity to provide guidance and affect change within Dr. Doyne's under-regulated profession. Civil litigation is expensive, and many affected families with grievances similar to Dr. Doyne's (see signature list below) could not afford an attorney of the caliber of Mr. Aguirre's office. Dr. Tadros' case is not a "mass tort" contingency fee or "slip and fall" case. He apparently does not seek to recover millions of dollars. This is a complex and expensive case, seeking primarily injunctive relief, not money.

Thus, the Court's actions in this rare opportunity could empower many currently disempowered parents with tools to hold the *hundreds* within Dr. Doyne's profession more accountable, transparent, and to the highest ethical standards which they themselves profess (but often do not obey). *Amici* submit that Defendant Dr. Doyne's present request that this court prohibit Plaintiff Dr. Tadros from conducting normal discovery is entirely inconsistent with the many important public interest issues at stake.

E. <u>The Interests of the Public Far Outweigh any Alleged Burden on Dr. Doyne</u>

The interests of Dr. Doyne in thwarting such discovery pales in comparison to the important public interests implicated. It is true that Dr. Doyne will inevitably face some expense, time and trouble in responding to discovery by responding to relevant form and special interrogatories, producing certain patient records, billing records, licensure records, tax returns, bank records, patient/appointment calendars, resumes/C.V.s, educational records, degrees, certification records, correspondence, and appearing at depositions of him, his relevant staff,

relevant professional colleagues, and other relevant witnesses. However, the burden of such discovery placed on Dr. Doyne, a professional earning about one million dollars per year, is no different from that placed on any of thousands of San Diego litigants responding to routine litigation discovery. In addition, Dr. Tadros will be required to respond to a similar burden of contention interrogatories, damages discovery, and the like. In short, the ordinary litigation burdens placed on Dr. Doyne are no greater than those placed on every other litigant, including Dr. Tadros.

Yet, the benefit gained from permitting discovery in this case far outweighs these ordinary burdens placed on both parties. Dr. Tadros has raised, and Dr. Doyne has disputed, allegations which raise the very serious criminal, ethical, and social questions described above. If Dr. Tadros is incorrect in all of his claims, this case will likely be dismissed. If he is correct regarding some or all of his claims, Dr. Tadros will likely request that Dr. Doyne correct any illegal, unethical, immoral, negligent, or otherwise harmful activities, perhaps request damages for the same if appropriate, and perhaps additional relief as deemed just and proper by this court.

Moreover, given Dr. Doyne's notoriety, such requests will not only address any proven wrongdoing by Dr. Doyne, they will very likely have the effect of changing any similar wrongdoing caused by many of Dr. Doyne's San Diego colleagues, and other similarly-situated professionals throughout the state and nation. Permitting discovery in this case could thus be a proverbial "shot heard around the world" to improve accountability, professional performance, ethics, and professionalism in a family court system which has in recent years been the target of tremendous and outspoken public criticism and scrutiny.

IV. Conclusion

Amici respectfully request that this Court grant Leave to file this Brief requesting that this Court observe the long-held precedent that California courts permit litigants to perform broad

discovery of "all relevant evidence, or evidence likely to lead to the discovery of relevant evidence." The process of discovery is intended to enable litigants to understand and examine the factual support for all litigants (including their opponent's and their own) positions.

Amici respectfully submit herein that refusing—at such an early stage—to permit Dr. Tadros to conduct any discovery would have a tremendous and very harmful "chilling effect" on efforts by San Diego citizens to conduct their own investigations as to alleged fraudulent misfeasance/malfeasance, or other serious violations of law and the public trust committed by such important professionals, representatives, and politicians.

Respectfully submitted,

Colbern C. Stuart, III (SBN 177897) | President/CEO CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
LEXEVIA, PC
Counsel for *Amici Curiae*, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
http://www.lexevia.com
D: 310.746.6112
F: 424.228.5272
877-LEXEVIA

Laura Zeigler, Esq.
Vice President/General Counsel, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Bessemer Trust
Los Angeles, CA

Deve McLaughlin
Secretary, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Los Angeles, CA

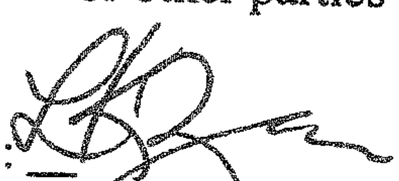
UC Irvine, Class of 1987 (BA)

Paralegal Certificate, USD, 2006

Single parent to 2 children

858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

Signature: 

By: Laura K. Zeigler

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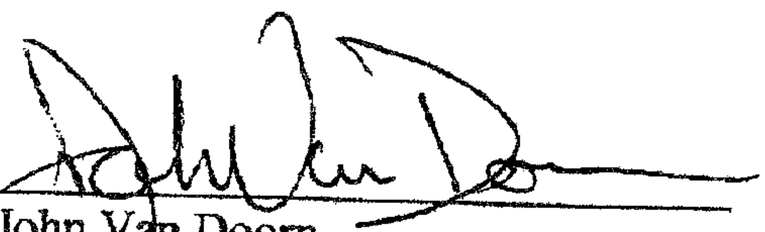
By:___

Deve McLaughlin
Secretary, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Los Angeles, CA



John Van Doorn
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Candidate, County Supervisor, San Diego County, 2008
University of California - Irvine
Bachelor of Science, Electrical Engineering
Father of six children
858-449-4492

Maureen Miller, RN
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of California at Los Angeles
CA Hospital School of Nursing,
Los Angeles
Mother of three: 18 yrs, 16yrs, and 14 yrs
Phone: 760-845-3665

Jennifer De Marco, M.S.
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Professor, Health Education
Mother of one boy, one girl
619-405-9966

Sharon L. Brown
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Doctor of Chiropractics
Santa Monica College
Southern California University of Health Sciences
858-775-2107

Cheryl McManus
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Manager – McManus Valley Estate LLC
Mother of one son--619-466-6633

_____
George Kenner
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Licensed California Real Estate Broker
United States Border Patrol Agent, Retired
Graduate Gemologist, Gemological Institute of America
619-723-5714

_____
Allison Abbasi
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UC Irvine, Class of 1987 (BA)
Paralegal Certificate, USD, 2006
Single parent to 2 children
858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

_____
Brad L. Johnson, Esq.
Oregon State Bar Member (No. 80426)
Divorced Parent of Two Children
Former "Client" of Stephen Doyne
858-201-8356

Signature: _____
By:_____

Signature: _____
By:_____

Signature: _____
By:_____

Signature: _____
By:_____

Signature: _____

George Kenner
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Licensed California Real Estate Broker
United States Border Patrol Agent, Retired
Graduate Gemologist, Gemological Institute of America
619-723-5714

Allison Abbasi
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UC Irvine, Class of 1987 (BA)
Paralegal Certificate, USD, 2006
Single parent to 2 children
858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

Signature: _____
By: James B. Trujillo

Signature: _____
By: BRAD L. JOHNSON, ESQ.
MEMBER, OREGON STATE BAR
J.D., 1980, LEWIS + CLARK LAW SCHOOL

Signature: _____
By: _____

Signature: _____
By: _____

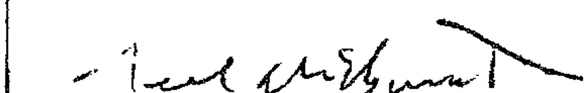
Signature: _____
By: _____

Signature: _____
By: _____

Doug & Joann Siegfried (Grandparents)
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
USN Retired Commander Editor/Writer Tailhook Association
Interior Designer
USC, National Univ., Design Inst. of San Diego
619-435-2978

Sean Kelly
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Musician
The Samples
858-213-1162

Paul Salerni
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Career Naval Officer & Civil Servant
Father of two daughters
619-972-6710



Neal McBurnett
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of Texas, Arlington, BBA
Personal Investment
Father of Two Sons and One Daughter
Frisco, TX (Formerly of Rancho Santa Fe, CA)
858-776-6308

Harold Rose
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Sr. Customer Support Engineer – PerkinElmer Life and Analytical Sciences Inc.
U.S. Armed Forces Reservist Ret. And U.S. Coast Guard and Air National Guard Ret.
Father of one son
760-274-5203

Eileen Theofanous-Lasher

Eileen Theofanous-Lasher
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Associates Degree from St. John's University Medical Office Manager
Mother of one girl, one boy
619-847-8094

Ben Siegfried 11-13-2009

Ben Siegfried
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UCSD, B.A.
Emergency Medical Technician
Father of one daughter
858-945-0760

Emad Tadros MD 11-13-09

Emad Tadros, M.D.
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Diplomate American Board of Psychiatry and Neurology
Vice Chief, Scripps Mercy Behavioral Health Services
Father of one boy
858-775-2122

Sylvia Montoya

Sylvia Montoya
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Loan Consultant
Mother of three (11, 10, and 7)
619-980-3801

Armida Montoya

Armida Montoya (Aunt)
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
323-828-4912
Ruben Montoya (Uncle)
Paralegal
626-536-9267

Eileen Theofanous-Lasher
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Associates Degree from St John's University Medical Office Manager
Mother of one girl, one boy
619-847-8094

Ben Siegfried 11-13-2009
Ben Siegfried
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UCSD, B.A.
Emergency Medical Technician
Father of one daughter
858-945-0760

Emad Tadros, M.D.
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Diplomate American Board of Psychiatry and Neurology
Vice Chief, Scripps Mercy Behavioral Health Services
Father of one boy
858-775-2122

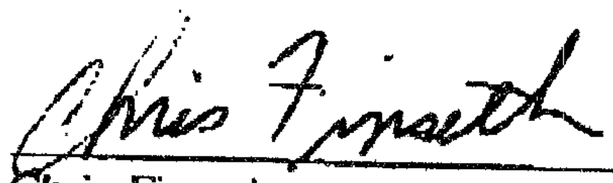
Sylvia Montoya
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Loan Consultant
Mother of three (11, 10, and 7)
619-980-3801

Armida Montoya
Armida Montoya (Aunt)
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
323-828-4912
Ruben Montoya (Uncle)
Paralegal
626-536-9267

Imelda Montoya (Aunt)
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
562-942-2479

Brad Johnson
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Attorney at Law
Father of two one boy, one girl
858-201-8356

Heather Hughes
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Aeronautics Major
Air Traffic Control Candidate
Mother of one son, one daughter
858-472-2826



Chris Finseth
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of Texas, B.A.
Father of one son
619-818-5478

Stephen E. Lockwood, DMD
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UC Irvine- BS Biology
Oral Roberts University- School of Dentistry, DMD
Father of three children
Business Owner, Dentist, La Jolla, CA
(858) 558-3050
www.drstevelockwood.com

Doug & Joann Siegfried (Grandparents)
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
USN Retired Commander Editor/Writer Tailhook Association
Interior Designer
USC, National Univ., Design Inst. of San Diego
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Father of two daughters
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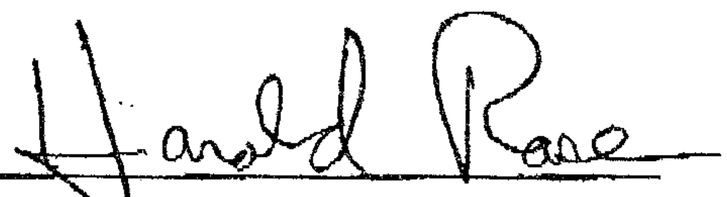
Neal McBurnett
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of Texas, Arlington, BBA
Personal Investment
Father of Two Sons and One Daughter
Frisco, TX (Formerly of Rancho Santa Fe, CA)
858-776-6308



Harold Rose
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Sr. Customer Support Engineer – PerkinElmer Life and Analytical Sciences Inc.
U.S. Armed Forces Reservist Ret. And U.S. Coast Guard and Air National Guard Ret.
Father of one son
760-274-5203

Hebe Bridges

Hebe Bridges
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Part time student at Mesa College
Homemaker
Mother of three daughters
858-453-0538

Anna Wozniak
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of Gdansk, M.A.□
Real Estate Agent□
Mother of son and two daughters□
619-994-8065

Rosa Montoya (Grandmother)
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
562-942-2479

Arturo Montoya (Uncle)
951-689-0520
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Imelda Montoya (Aunt)
562-942-2479

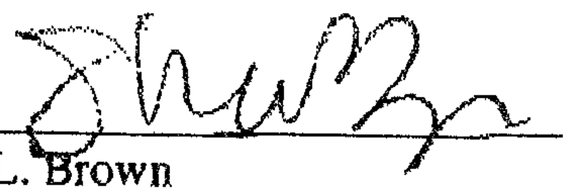
Erin Blanchard
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of Connecticut
Real Estate Sales Agent
Mother of two boys, one girl
760-274-6061

Deve McLaughlin
Secretary, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Los Angeles, CA

John Van Doorn
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Candidate, County Supervisor, San Diego County, 2008
University of California - Irvine
Bachelor of Science, Electrical Engineering
Father of six children
858-449-4492

Maureen Miller, RN
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
University of California at Los Angeles
CA Hospital School of Nursing,
Los Angeles
Mother of three: 18 yrs, 16yrs, and 14 yrs
Phone: 760-845-3665

Jennifer De Marco, M.S.
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Professor, Health Education
Mother of one boy, one girl
619-405-9966



Sharon L. Brown
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Doctor of Chiropractics
Santa Monica College
Southern California University of Health Sciences
858-775-2107

Cheryl McManus
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Manager – McManus Valley Estate LLC
Mother of one son--619-466-6633

Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN

UC Irvine, Class of 1987 (BA)

Paralegal Certificate, USD, 2006

Single parent to 2 children

858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

Signature: Maureen Miller, RN

By:___ Maureen Miller

Signature: __

By:___

Signature: __

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By:___

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By:___

Signature: __

By:___

Signature: __

By:___

George Kenner
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Licensed California Real Estate Broker
United States Border Patrol Agent, Retired
Graduate Gemologist, Gemological Institute of America
619-723-5714

Allison Abbasi
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UC Irvine, Class of 1987 (BA)
Paralegal Certificate, USD, 2006
Single parent to 2 children
858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

Signature: _____
By: Leesa Juergens

Signature: _____
By: _____

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George Kenner
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Licensed California Real Estate Broker
United States Border Patrol Agent, Retired
Graduate Gemologist, Gemological Institute of America
619-723-5714

Allison Abbasi
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UC Irvine, Class of 1987 (BA)
Paralegal Certificate, USD, 2006
Single parent to 2 children
858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

Signature: _____
By: James B. Trujillo

Signature: _____
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By: _____

George Kenner
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
Licensed California Real Estate Broker
United States Border Patrol Agent, Retired
Graduate Gemologist, Gemological Institute of America
619-723-5714

Allison Abbasi
Member, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN
UC Irvine, Class of 1987 (BA)
Paralegal Certificate, USD, 2006
Single parent to 2 children
858-270-7209

The Undersigned are pending members of the CALIFORNIA COALITION FOR FAMILIES AND CHILDREN or other parties in support of *Amici*.

Signature: Albert Gearing
By: Albert Gearing
Grandparent of 2 - Barleson, TX

Signature: Mildred Gearing
By: Mildred Gearing
Grandparent of 2 - Barleson, TX

Signature: _____
By: _____

Signature: _____
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Signature: Greg LeBon
By: GREG LEBON

Signature: Kathleen LeBon
By: Kathleen LeBon

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By: Michael Cornelius
Civil Engineer, MBA

Signature: _____
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By: James S. Wittmack

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EXHIBIT A

ACFC MISSION STATEMENT

We, the members of the American Coalition for Fathers and Children, hereby dedicate ourselves and our efforts to the creation of a family law system, legislative system, and public awareness which promotes equal rights for ALL parties affected by divorce, and the breakup of a family or establishment of paternity. It is our belief through our involvement and dedication, we can have a positive effect on the emotional and psychological well-being of children.

We believe equal, shared parenting time or joint custody is the optimal custody situation.

We believe the best parent is both biological parents.

We believe grandparents should have rights and access to their grandchildren.

We believe gender bias should be eliminated from family law and from future legislation.

We believe BOTH biological parents should be responsible for the emotional and psychological wellbeing of their children, as well as financially responsible.

We believe in the concept of fairness and equity in support for ALL families; and, that all children involved in a blended family should have equal rights, and do deserve equal rights and equal protection under the law.

We believe child support orders should be reasonable, realistically reflect the cost of the children's basic needs, and reflect the relative parenting contribution of both parents in a shared parenting plan.

We believe when parents are given equal rights, equal responsibility follows; when parents have equal access to their children and support levels are reasonable and reflect the true cost of raising a child, parents will comply with court orders.

We believe when equity is created in our laws, the conflicts inherent in divorce situations dissolve and that, in the end, this is the greatest gift which we, as parents, could possibly bestow on our children.

EXHIBIT B

National Coalition For Men (NCFM)

· *932 C Street, Suite B, San Diego, CA 92101* · **619-231-1909**
since 1977 · www.ncfm.org · *501(c)3 tax- exempt corporation*

November 12, 2009

Founded in 1977 NCFM is the oldest continuously running men's rights organization in the United States of America with members throughout America and in several countries. NCFM is committed to the removal of harmful gender based stereotypes, particularly as they adversely impact men and boys. NCFM is also a staunch supporter of equitable rights for all parents. Hence, the Board of Directors hereby supports the Amicus Curiae brief in Tadros v. Doyne.

The appointment and usage of private child custody evaluators in family law disputes has been a longstanding concern for many. Most high conflict cases involve disputes over child custody. Unfortunately, evidence suggests that some child custody evaluators misrepresent their qualifications and otherwise demonstrate unethical behaviors that confound the resolution of such cases and cause harm to the involved families, particularly the children; it appears a lack of effective oversight and judicial concern is largely responsible for creating an environment in which such malfeasance freely exists absent any meaningful accountability.

It is our understanding the Superior Court of San Diego County rejects responsibility for verifying the qualifications of child custody evaluators, even those to whom judges routinely refer litigants or independently appoint from the bench – all of which is (1) a violation of applicable rules and procedures requiring the Courts to annually and fully vet child custody evaluator qualifications as well as making such information available to the public and (2) is clearly harmful to the best interests of children and the public at large.

As the Amicus Curiae points out, it is essential that broad discovery be allowed to protect the public. However, here, such discovery becomes substantially moot by the San Diego Courts' apparent unwillingness to comply with well established guidelines adopted and followed by virtually all other counties in California. Clearly this creates more than an appearance of impropriety.

NCFM therefore joins with the California Coalition for Families and Children (CCFC) and others as a signatory to this Amicus Curiae.

Respectfully,

_____

Harry A. Crouch
President, NCFM
WITH APPROVED BY THE BOARD OF DIRECTORS

Dedicated to men, their families, children, and the women that love them

EXHIBIT C

CONTRA COSTA COUNTY FAMILY LAW COURTS' LOCAL RULES STRUCK DOWN BY CALIFORNIA SUPREME COURT

Judge Barry Baskin caught in a lie. Chief Justice George terms Baskin's ruling "mechanical".

by Kathryn Joanne Dixon © 8/8/07

In an August 7, 2007 decision authored by Chief Justice Ronald M. George and joined by all the California Supreme Court Justices, except by Justice Kathryn Werdergar, in part, the Court delivered a death blow to the family law courts of the Contra Costa Superior Court. The Family Law judges of Contra Costa County must not only chuck their old Local Rule 12.5(b)(3), which was adopted in 2005 regarding family law trials immediately, they must also eliminate their new Local Rule which modified the old one just slightly when amended on January 1, 2007. Those Local Rules provided and provide that trial litigants could present only written declarations. Only in "unusual circumstances" could witnesses be cross-examined, and only upon request could declarants be cross-examined. The admissibility of all exhibits were and are required to be established in pretrial declarations

Jeffrey Elkins, a self-employed consultant, represented himself in a dissolution trial before Contra Costa County Superior Court Judge Barry Baskin. His ex-wife Marilyn Elkins had sued him for divorce. Substantial property issues were at stake.

At trial, Contra Costa Superior Court Judge Barry Baskin applied the Contra Costa Local Court Rule and Trial Scheduling Order that had been enacted by a majority vote of the local bench. He excluded all but 2 of Elkin's 36 exhibits because Elkins did not provide a declaration to establish the foundation for their admissibility prior to trial. He would not allow Jeffrey Elkins to testify. Jeffrey Elkins, hearing this, threw up his hands in despair. Then Baskin applied the rules as strictly as possibly – in effect he defaulted Jeffrey Elkin of his property rights in his dissolution case because he did not, could not or was simply unable follow Contra Costa County Local Rules. Elkins filed his writ. The First District Court of Appeal denied it, but the Supreme Court opened the door and heard it.

Money is no object and this was proven when foremost appellate attorney Jon B. Eisenberg was hired to defend Contra Costa County's local rules. He presented a defense of the indefensible – a defense of unfettered and untested hearsay declarations.

The Supreme Court did not reach the heights of the constitutional due process issues presented by Elkin's counsel Garrett C. Daily, but it did hold that the local rule that provided for trial by declarations, rather then live testimony in court, was a violation of the state Evidence Code and

Code of civil procedure, specifically the hearsay rule. Therefore Judge Baskin is reversed. Elkins case must go to trial again.

When the Supreme Court of California threw out Contra Costa County's Local Rules, it opined that all declarations are hearsay and are inadmissible at trial unless there is an exception to the hearsay rule or they are stipulated into evidence. (Note: the Supreme Court acknowledged that for purposes of family court *law and motion* proceedings, declarations are still admissible.) The Court stated that the opportunity to call witnesses and cross-examine them is essential to a litigants' having his or her day in court. Credibility of witnesses is important and must be tested by cross-examination in court. Mere written declarations do not allow for credibility to be tested.

The countless family law litigants and the manipulated children must be wondering what the Contra Costa Superior Court judges were thinking? Hundred, perhaps thousands of families have been subjected to the Local Laws that, in many ways, smacked at outright fascism. Because the Supreme Court's ruling did not directly address the issue of constitutional due process it is unclear how many litigants and their children have been denied their due process in the Family Law Courts of Contra Costa County.

The Supreme Court was generous in finding some degree of sympathy for the Contra Costa Court whom it found wanted to promote "efficiency". However, no statistics were presented in the court filings to account for how many hours each family court judge spent at various tasks such as reading paperwork for pending cases, review of motions, preparing and signing orders, and interaction with litigants, attorneys and court personnel. The unanswered question is how many hours a Family Law Judge spends on the job and how many hours they spend socializing on the golf course, at art shows, and or at Family Law Associations meetings.

As for "efficiency", Mussolini boasted of efficiently making the trains Italy run on time as his campaign platform. And what is "efficiency" to a couple caught up in the grinding machinery of dissolution – one, if not the only, matter in their lifetimes which is of critical importance – child custody and visitation, support, division of property.

One Judge who has consistently focused on heavy work loads and limited time for judges is Judge Barry Baskin, the judge on the Elkins case. What did Chief Justice George say about Judge Baskin? First the Chief Justice recounted the facts.

Judge Baskin had "tentatively sustained" Marilyn Elkin's objections to 34 of 36 of Jeffrey Elkin's exhibits, because he had no declaration to back up 34 of them, subject to "further argument," as the Judge said, "after the morning break. Chief Justice George stated (See page 7 of the opinion) that, "No such break ensued."

In plain English, Judge Baskin lulled proper litigant Elkins into a false sense of security implying that he would probably allow additional arguments by Elkins later on. In truth Judge Baskin lied to Elkins because Baskin alone controlled the conduct in his courtroom. Judge Baskin did not allow the break he had alluded to from the bench. Instead Marilyn Elkin's declaration and her exhibits were entered into evidence and she rested. Jeffrey Elkins was promptly stripped of his right to testify and all of his 34 exhibits were excluded. His right to be heard were eliminated by a judge who lied to him while maintaining the illusion of impartiality.

Chief Justice George wrote:

> Without providing the anticipated "morning break", the court invited closing argument. Although observing that the trial was proceeding "quasi by default so to speak", the court stated that both parties still should address the subjects of the "furniture lists" and the contents of the safety deposit box."

The Chief Justice noted both the matter of the furniture and safety deposit box contents had been subject to stipulation prior to trial.

Once again judge Barry Baskin created the illusion of a fair and just hearing pretending to consider issues that the judge fully knew had already been agreed to by both parties. So in October 2005, Judge Baskin divided most of the community property in accordance with the declarations submitted by Marilyn Elkins. Then Judge Barry Baskin defaulted Jeffrey Elkins out of all but one-half interest in his family home, a matter previously resolved between the parties.

Chief Justice George stated:

> In the present case, the trial court applied the sanction in a mechanical fashion without considering alternative measures or a lesser sanction resulting in the exclusion of all but two of petitioner's 36 exhibits. Had the court permitted petitioner to testify, he could have provided some foundation for his exhibits. In applying the local rule and order mechanically to exclude nearly all of petitioner's evidence – and by proceeding in the words of the trial court by "quasi-default" – the trial court improperly impaired petitioner's ability to present his case, thereby prejudicing him and requiring reversal of the judgment.

The Supreme Court Justice threw a couple of profound barbs at the Contra Costa County Judges:

> .... we do not view respondent's curtailment of the rights of family court litigants as justified by the goal of efficiency. (Page 32)
>
> "We are most disturbed by the possible effect the rule and order have had in diminishing litigants' respect for and trust in the legal system" (Page 34)
>
> "In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice. (Page 35)

The Chief Justice also proposes a task force be established by the Judicial Council to seek to streamline family law court systems, yet "ensure access to justice for litigants". This statement could imply that the Chief Justice places little faith in the ability of the Contra Costa County Superior Court to properly police itself.

What does the future hold for the Contra Costa family law courts and Judge Barry Baskin and most of all, for litigants subjected to this court in light of the Supreme Court's decision?

It can be anticipated that the Contra Costa County bench will at least revoke the local rules cited in the Elkins ruling sometime within the next 30 days. That would appear to be a timely act

respecting the Supreme Court decision. However, under Presiding Judge Terrence Brunniers' loose reins and the secrecy imposed by Court Administrator Ken Torre, the Contra Costa County Superior Courts find themselves in crises.

The Family Law Court is that one area of the any court system where compassion, fairness, and transparent judgment is essential. It is acknowledged by mental health experts that divorce is a life altering experience especially when custody disputes over children is involved and the financial stability of the parents is an issue. Contra Costa County superior courts have chosen to implement restrictive rules which impose expensive, unfair burdens on family law litigants and their attorneys. Then to compound the arrogance and error of these regulations the court places commissioners and judges on the family law bench whose sole concern seems to be their own work schedule.

Judge Barry Baskin is typical of the type of individual overseeing family law disputes in Contra Costa County. Judge Baskin is a product of the South African legal system before moving into California's civil litigation arena. A man who went through a bitter divorce himself, one would assume he would understand the trauma and emotional devastation such an experience leaves in its wake. But apparently that is not the case. In the courtroom Judge Baskin is always in absolute control to the point that he often does not let litigants before him time to express their thoughts and present their evidence. He is brisk, abrupt and about efficiently moving a case right along regardless of the effect of the parents or the children involved. Chief justice Ronald George said it best when he described Judge Baskin's ruling as "mechanical".

The Supreme Court of the State of California has found that the Contra Costa County Judicial Bench invented its own rules and created its own fiefdom and, in so doing, disregarded the laws of the state of California. Will the Contra Costa bench finally recognize that it is not a kingdom that can dictate to its citizenry regardless of the constitution or will this court continue to rule without a conscience ?

Kathryn Joanne Dixon © 8/8/07

Notes:

The ruling is *Elkins v. Superior Court* (*Elkins)*, 07 C.D.O.S. 9285.

Supreme Court decision PDF http://www.courtinfo.ca.gov/opinions/documents/S139073.PDF

Jeffrey Elkins was represented by Garrett C. Dailey, an Oakland sole practitioner, who argued his case.

The Contra Costa Superior Court was represented by Jon B. Eisenberg of Eisenberg & Hancock, Oakland, CA who argued his case and by David S. Ettinger Horvitz & Levy.

Marilyn Elkins was represented by Leslie Paige Wickland of Fancher & Wickland, San Francisco who argued her case and by Daniel S. Harkins of Harkins & Sargent.

High Court: Fair Trial Trumps Efficiency

by Mike McKee © *Cal Law*, 08-07-2007 Page printed from: http://www.callaw.com

While sympathetic with the heavy caseloads borne by family courts statewide, the California Supreme Court on Monday nonetheless voided a controversial Contra Costa County rule aimed at streamlining court proceedings.

"That a procedure is efficient and moves cases through the system is admirable," Chief Justice Ronald George wrote for a unanimous panel, "but even more important is for the courts to provide fair and accessible justice."

George recommended in a footnote that the state's Judicial Council establish a task force to investigate how to help family courts run more efficiently while maintaining access to justice for their litigants, most of whom are *pro per*.

At issue in Monday's opinion was the Contra Costa County Superior Court's Local Rule 12.5(b)(3), which was adopted in 2005 to reduce delay and minimize conflict between opposing parties in family court. It authorizes judges to reject documents not made available five calendar days before a hearing, and requires all exhibits to be enclosed in binders with explanatory declarations attached.

Most troubling to critics, though, was the requirement that limited testimony to written declarations, while allowing the trial judge discretion to take direct oral testimony only in unusual cases.

Jeffrey Elkins, representing himself, challenged the rule in 2005 after Superior Court Judge Barry Baskin invoked it to reject all but two of the 36 exhibits Elkins wanted to present during a divorce proceeding with his wife Marilyn. He argued that by severely limiting his documentation and simultaneously not letting him testify, the judge gave him no way to defend his position in a dispute over property division.

Elkins, a self-employed consultant who used to be the chief executive officer of Danville's CalTech International Telecom Corp., sought review with the First District Court of Appeal. He argued the Contra Costa rule established a system of "trial by declaration" that violated his constitutional due process rights, and placed an "unreasonable burden" on litigants. His writ petition was summarily denied.

In Monday's ruling, the high court sidestepped Elkins' due process arguments. Instead, the justices found that Contra Costa's rule violates state statutes that regard written declarations as hearsay that can't be admitted as evidence in contested trials. Testimony is crucial in divorce cases, the

court held, because it gives the judge the chance to determine credibility.

"Ordinarily, parties have the right to testify in their own behalf," George wrote, "and a party's opportunity to call witnesses to testify and to proffer admissible evidence is central to having his or her day in court."

Contra Costa amended the rule earlier this year to permit testimony in addition to, but not in lieu of, declarations. But George said that still fell afoul of state statutes.

The chief justice also noted that several *amici curiae* — including the Northern and Southern California chapters of the American Academy of Matrimonial Lawyers — had sided with Jeffrey Elkins. In addition, he pointed out, a survey of family law practitioners in Contra Costa found most "decidedly critical" of the local rule.

George took a shot at the trial court judge too, accusing him of "prejudicing" Elkins by applying the rule "in a mechanical fashion" without considering "alternative measures."

In a concurring opinion, Justice Kathryn Mickle Werdegar came to Baskin's defense by noting he was only following the rules of his court. "In my view," she wrote, "the trial court's rule and order, rather than the particular actions of the court in this case, are to blame for the exclusion of [Elkins'] evidence."

Oakland solo practitioner Garrett Dailey, who represented Jeffrey Elkins on appeal, said the ruling upholds the principle that "the rules of evidence, including the right to offer direct testimony, must be preserved."

He said the ruling sends the case back for further proceedings on property division.

Oakland lawyer Jon Eisenberg, a partner at Eisenberg and Hancock who represented the Contra Costa court, called the ruling "a meticulous opinion on the narrow hearsay issue and the broader policy issues."

"It sends the superior court back to the drawing board with clear directions," he added.

The ruling is *Elkins v. Superior Court* (*Elkins)*, 07 C.D.O.S. 9285.

Justices Reject Local Rule Aimed at Expediting Family Law Trials

by Kenneth Ofgang, Staff Writer © 8/7/07, *Metropolitan News-Enterprise*

Contra Costa Superior Court rules aimed at expediting family law trials are contrary to state law and unenforceable, the California Supreme Court ruled yesterday.

"[W]e reach this conclusion because, pursuant to state law, marital dissolution trials proceed under the same general rules of procedure that govern other civil trials," Chief Justice Ronald M. George wrote for the court.

The rules and standard pretrial order struck down by the court—which have been recently superseded in part by new rules—made declarations admissible at trial in place of direct examination, which was not permitted in the absence of "unusual circumstances," and required the parties to establish in their pretrial declarations the admissibility of all exhibits they sought to introduce at trial.

The rules were challenged by Jeffrey Elkins, a self-represented litigant in a divorce proceeding in which his wife had counsel, after nearly all of his exhibits were excluded as sanctions for failing to comply with the court's requirements. The state Supreme Court agreed to hear the case after the Court of Appeal summarily denied his writ petition.

Sympathy for Court

While expressing sympathy for the court's efforts to deal with the high volume of family law cases, George said the appellate courts will not hesitate to strike down local rules where "a local court has advanced the goals of efficiency and conservation of judicial resources by adopting procedures that deviated from those established by statute, thereby impairing the countervailing interests of litigants as well as the interest of the public in being afforded access to justice, resolution of a controversy on the merits, and a fair proceeding."

The Contra Costa procedures, the chief justice said, are contrary to the Evidence Code provisions governing hearsay and setting forth procedures to be followed prior to trial.

George distinguished cases allowing procedures similar to those challenged with regard to family law motions. Where the resolution of contested issues of fact will result in a judgment, the chief justice emphasized, the rules of family law are no different from those applicable to other civil matters.

"Courts must earn the public trust," he wrote. "...We fear that respondent's rule and order had the opposite effect despite the court's best intentions."

In a footnote, George suggested that the Judicial Council establish a task force to study how to balance the need for efficiency in family law courts with the need for fairness to litigants.

Concurring Opinion

The opinion was signed by all members of the court except Justice Kathryn M. Werdegar, who wrote in a concurring opinion that the majority, while reaching the correct result, was unnecessarily wandering into issues of policy best addressed by the Judicial Council or the

Legislature.

Amicus briefs criticizing the rules were submitted by a number of family law and local bar groups, including the Los Angeles County Bar Association and its family law section, as well as retired Court of Appeal Justices Donald King and Sheila Prell Sonenshine and retired Los Angeles Superior Court Judge Richard Denner.

The case is *Elkins v. Superior Court (Elkins)*, 07 S.O.S. 4910.

http://www.metnews.com/articles/2007/elki080707.htm

Click. **ELKINS FAMILY LAW TASK FORCE APPOINTED BY SUPREME COURT OF CALIFORNIA.**

Click. **(Metropolitan) Court of Appeals Justice Laurie Zelon to lead Elkins Family Law Task Force.**

Click. **THE CALIFORNIA SUPREME COURT CONFRONTS CONTRA COSTA COUNTY JUDGES ABOUT THEIR LOCAL RULE THAT DEPRIVES FAMILY LAW LITIGANTS OF A FAIR TRIAL**

by Kathryn Joanne Dixon

EXHIBIT D

Elkins v. Superior Court, 41 Cal. 4th 1337 (Copy w/ Cite) Pages: **24**

JEFFREY ELKINS, Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; MARILYN ELKINS, Real Party in Interest.

S139073

SUPREME COURT OF CALIFORNIA

41 Cal. 4th 1337; 163 P.3d 160; 63 Cal. Rptr. 3d 483; 2007 Cal. LEXIS 8214

August 6, 2007, Filed

PRIOR-HISTORY:
Court of Appeal of California, First Appellate District, Division One, No. A111923. Superior Court of Contra Costa County, No. MSD01-05226, Barry Baskin, Judge.
Elkins (Jeffrey) v. S.C. (Elkins), 2007 Cal. LEXIS 5697 (Cal., May 15, 2007)

COUNSEL: Garrett C. Dailey for Petitioner.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller and Shara Beral Witkin for Southern California Chapter of the American Academy of Matrimonial Lawyers, Northern California Chapter of the American Academy of Matrimonial Lawyers, Los Angeles County Bar Association, Los Angeles County Bar Association Family Law Section, Orange County Bar Association, Honorable Donald B. King, Honorable Sheila Prell Sonenshine, Honorable J.E.T. Rutter and Honorable Richard Denner as Amici Curiae on behalf of Petitioner.

Horvitz & Levy, David S. Ettinger; Eisenberg and Hancock and Jon B. Eisenberg for Respondent.

Fancher & Wickland, Paige Leslie Wickland; Harkins & Sargent and Daniel S. Harkins for Real Party in Interest.

Fox and Bank, Ronald S. Granberg, Dawn Gray, Linda Seinturier, Kathryn Fox, Brigeda D. Bank; and Stephen Temko for Association of Certified Family Law Specialists as Amicus Curiae upon the request of the Supreme Court.

Lee C. Pearce for the Family Law Section of the Contra Costa County Bar Association as Amicus Curiae upon the request of the Supreme Court.

JUDGES: George, C. J., with Kennard, Baxter, Chin, Moreno, and Corrigan, JJ., concurring. Concurring opinion by Werdegar, J.

OPINION BY: George

OPINION

GEORGE, C. J.—Petitioner Jeffrey Elkins represented himself during a trial conducted in marital dissolution proceedings instituted by his wife, Marilyn Elkins (real party in interest), in the Contra Costa Superior Court. A local superior court rule and a trial scheduling order in the family law court provided that in dissolution trials, parties must present their cases by means of written declarations. The testimony of witnesses under direct examination was not allowed except in "unusual circumstances," although upon request parties were permitted to cross-examine declarants. In addition, parties were required to establish in their pretrial declarations the admissibility of all exhibits they sought to introduce at trial.

Petitioner's pretrial declaration apparently failed to establish the evidentiary foundation for all but two of his exhibits. Accordingly, the court excluded the 34 remaining exhibits. Without the exhibits, and without the ability through oral testimony to present his case or establish a foundation for his exhibits, petitioner rested his case. As the court observed, the trial proceeded "quasi by default," and the court's disposition of the parties' property claims demonstrated that the court divided the marital property substantially in the manner requested by petitioner's former spouse.

Petitioner challenges the local court rule and trial scheduling order on the grounds that they are inconsistent with the guarantee of due process of law, and that they conflict with various provisions of the Evidence Code and the Code of Civil Procedure. Respondent court counters that the promulgation of the rule and order comes within its power to govern the proceedings before it, and that its rule and order are consistent with constitutional and statutory provisions.

We need not reach petitioner's constitutional claim because, as applied to contested marital dissolution trials, the rule and order are inconsistent with various statutory provisions. [1] As we explain below, we reach this conclusion because, pursuant to state law, marital dissolution trials proceed under the same general rules of procedure that govern other civil trials. Written testimony in the form of a declaration constitutes hearsay and is subject to statutory provisions governing the introduction of such evidence. Our interpretation of the hearsay rule is consistent with various statutes affording litigants a "day in court," including the opportunity to present all relevant, competent evidence on material issues, ordinarily through the oral testimony of witnesses testifying in the presence of the trier of fact.

FOOTNOTES

1 Our conclusion does not affect hearings on motions.

Although we are sympathetic to the need of trial courts to process the heavy caseload of dissolution matters in a timely manner, a fair and full adjudication on the merits is at least as important in family law trials as in other civil matters, in light of the importance of the issues presented such as the custody and well-being of children and the disposition of a family's entire net worth. Although respondent court evidently sought to improve the administration of justice by adopting and enforcing its rule and order, in doing so it improperly deviated from state law.

Subsequent to the trial (and our grant of review) in the present case, respondent incorporated much of its trial scheduling order into regularly adopted and published local rules of court. As of January 1, 2007, respondent's local rules were amended to provide that although declarations still are required from each witness in a dissolution trial, litigants have the option of calling witnesses for direct examination *in addition to* filing declarations. [2] This amendment does not render petitioner's case moot, because the prior rule and order were enforced against petitioner. In addition, the amended rules still require the admission into evidence of hearsay declarations, a practice inconsistent with the Evidence Code.

FOOTNOTES

2 The local rule effective January 1, 2007, is similar to the trial scheduling order except that, in *addition* to the *required* declarations, it permits parties to present live testimony limited to the scope of the material in the declaration (Super. Ct. Contra Costa County, Local Rules, rule 12.8 F.1.a, italics added). The rule also provides that "[a]ny required evidentiary foundation (including stipulations) for admission of the proposed exhibits shall be completely set forth in the declaration(s), as *all rulings will be based on the declarations alone.*" (*Id.*, rule 12.8 F.5.a), italics added.)

In addressing the issues raised by petitioner, we also exercise our inherent authority to ensure the orderly administration of justice and to settle important issues of statewide significance. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110 [51 Cal. Rptr. 3d 98, 146 P.3d 547]; *In re Roberts* (2005) 36 Cal.4th 575, 593 [31 Cal. Rptr. 3d 458, 115 P.3d 1121]; *Konig v. Fair Employment & Housing Com.* (2002) 28 Cal.4th 743, 745–746, fn. 3 [123 Cal. Rptr. 2d 1, 50 P.3d 718]; *Burch v. George* (1994) 7 Cal.4th 246, 253, fn. 4 [27 Cal. Rptr. 2d 165, 866 P.2d 92].) In addition to providing guidance to the trial courts, our discussion highlights the unusual burdens and restrictions that have been imposed upon family law litigants at the local level in response to increasing caseloads and limited judicial resources. We observe that this problem may merit consideration as a statewide policy matter, and suggest to the Judicial Council that it establish a task force for that purpose.

I

Marilyn and Jeffrey Elkins were married on April 20, 1980. They had one child, who was born in 1991. After Marilyn subsequently instituted marital dissolution proceedings, the issue of date of separation was bifurcated and tried first. Property issues were to be tried on September 19, 2005.

The matter proceeded subject to a local rule of court providing that at trials in dissolution matters, "[d]irect examination on factual matters shall not be permitted except in unusual circumstances or for proper rebuttal. The Court may decide contested issues on the basis of the pleadings submitted by the parties without live testimony." (Super. Ct. Contra Costa County, Local Rules, former rule 12.5(b)(3), eff. July 1, 2005.) In addition, the rule provided that "[s]ubject to legal objection, amendment, and cross-examination, all declarations shall be considered received in evidence at the hearing." (*Ibid.*) Under the rule, a party's failure to file responsive pleadings, including declarations, in the time prescribed by the rules authorized the court to "permit the matter to proceed as a default," or order a continuance and impose a

monetary sanction on the "untimely party." (*Id.*, former rule 12.5(b)(4).)

A trial scheduling order (TSO or order) imposed additional restrictions and sanctions. Like the rule, it ordered that all direct testimony at trial be presented prior to trial in the form of declarations "filed in lieu of oral direct testimony, subject to cross-examination." Indeed, even if a party's witness refused to sign a declaration, the party was required to file an unsigned declaration.

Under the TSO, the parties were ordered to file initial declarations executed by themselves and by their witnesses 10 court days prior to trial, along with trial briefs. The order provided that the declarations were to "explain" the appended complete set of trial exhibits, and that "[a]ny required evidentiary foundation for admission of the proposed exhibits shall be completely set forth in the declaration(s)."

Sanctions for failure to comply with the TSO were severe. "Failure to provide initial declarations may result in there being no direct testimony on that issue and issue sanctions may result. Failure to file a trial brief indicates to the court that no cases are being relied on by that side. Failure to provide a declaration because a witness refused to sign it *shall not excuse the filing of* [*any*] *unsigned declarations*." (Italics added.)

The TSO directed the parties to file responsive declarations and exhibits five court days prior to trial, along with any objections to exhibits, as well as responsive briefs and any demands for the production of declarants for the purpose of cross-examination. The TSO concluded with the following warning: "Failure to comply with these requirements will constitute good cause to exclude evidence or testimony at trial and/or to make adverse inferences or findings of fact against the non-complying party."

Marilyn, who was represented by counsel, filed her declaration, exhibits, and trial brief on September 2, 2005, and her responsive declaration on September 8, 2005. Jeffrey, who was not represented by counsel, filed his trial brief and declaration on September 2, 2005. He failed to attach his exhibits, however, and his binder of 36 exhibits was not delivered to the court and to opposing counsel until one court day prior to the date set for trial.

According to Marilyn's declaration, the issues to be determined at trial included (1) valuation and disposition of the family home; (2) Jeffrey's right to reimbursement for postseparation improvements to the home; (3) the characterization and division of a multimillion-dollar litigation settlement awarded to Jeffrey's business; (4) the amount of Jeffrey's income from specified sources; (5) the characterization and division of assets withdrawn by Jeffrey from community accounts; (6) division of a retirement account held in Marilyn's name; (7) the status of certain property declared to be the separate property of Marilyn; (8) division of the contents of a joint safe deposit box; and (9) Marilyn's attorney fees. The issue of child support was reserved, and the parties waived spousal support.

The matter came on for trial. Counsel for Marilyn objected to all but two of Jeffrey's exhibits because, contrary to the TSO, Jeffrey's declaration failed to refer to the exhibits or offer a basis for their admission into evidence. The court had not received its copy of Jeffrey's declaration or exhibits when trial began, forcing it to review Jeffrey's copy on the bench. Marilyn's counsel announced he would not cross-examine Jeffrey if the court sustained counsel's objection to Jeffrey's exhibits, and asserted that Jeffrey therefore was "not entitled to offer any further evidence."

When Jeffrey explained that the procedure he had followed was the same he had engaged in at the trial of the bifurcated issue of the date of separation, the court admonished Jeffrey that he had misunderstood the objection raised by Marilyn's counsel. The court explained: "In order to get a document admitted into evidence under the trial scheduling order ... it says that the evidentiary basis and foundation for each exhibit must be set forth in the declaration so the other side can object to see, you know, if exhibits have an evidentiary basis or not. And [Marilyn's counsel is] saying that those exhibits don't have any foundation in your declaration. [¶] So if you can point me to the foundations *in your declarations*, then we—we'll dispose of that argument quickly[.] If not those—those exhibits that don't have an evidentiary foundation *will be stricken*." (Italics added.)

The court provided a "typical example of what I'm talking about with foundation," noting that Jeffrey's proposed exhibit No. 5 was not referred to in Jeffrey's declaration, "[s]o there's no way of knowing what this document is *without any testimony—direct testimony saying what this is or what it purports to* [*be*]." (Italics added.) Jeffrey attempted to explain that his exhibit No. 5 "refers to an accounting given to my wife—given by my wife to me, and this document is in relation to that."

The court responded: "I understand that. I've already reviewed your declaration. Tentatively, I am going to rule in favor of [Marilyn]. I'm going to allow you at one of the breaks that we have so as not to disrupt the flow right now to rethink your argument and give me the specific evidentiary foundations for these documents, but *I don't see it in your declaration*. Particularly, the one we were specifically taking about, Exhibit 5, *I don't see any specific reference to it in your declaration*. There's a general reference to a general category." (Italics added.) Jeffrey responded: "Your Honor, there are no specific references in any document." The court, after asking Jeffrey not to interrupt, continued: "There's a general reference, and under that general category, arguably, every document that's ever been filed in this case would be generally referred to, but *what's required under the trial scheduling order* are the specific evidentiary foundations so that I can rule on them. [¶] There being no evidentiary support for [Jeffrey's exhibits] with the exception of Exhibit 3 and 12 [to which counsel for Marilyn had not objected because the foundation for the evidence appeared in Jeffrey's declaration], the objections will be sustained tentatively subject to further argument after the morning break." (Italics added.) No such break ensued.

Marilyn's declaration and exhibits were admitted into evidence, and she rested her case. Counsel for Marilyn objected to any consideration of the proposed order filed by Jeffrey because the filing of that document was untimely under the TSO.

The court stated its understanding, based upon Jeffrey's declaration, that Jeffrey did not wish to cross-examine Marilyn and that he consented to a dissolution of the marriage. Jeffrey stated he was resting his case. The court confirmed that Jeffrey had withdrawn his request to cross-examine Marilyn, and Jeffrey added that he also wished to withdraw his request to cross-examine expert witness Eggers. The court stated: "Well, before you rest, I'm assuming you would like to admit into evidence your declaration," but Jeffrey stated he did not wish to do so. Accordingly, Jeffrey's declaration was not admitted into evidence. Without providing the anticipated "morning break," the court invited closing argument. Although observing that the trial was proceeding "quasi by default, so to speak," the court stated that both parties still should address the subjects of "the furniture lists" and the contents of the safe deposit box. Counsel for Marilyn responded that those issues had been settled by stipulation prior to trial.

Jeffrey confirmed the stipulations and further offered to relinquish his interest in the family home and in his automobile. The court responded that Jeffrey's offer was too drastic and that the court would permit him to reconsider, stating that the court would "render a decision along the lines of [Marilyn's counsel's] proposed order after trial, despite your request here, because that was not what was before me to be tried today. And so the tenor of what you've just said is in contrast to the declaration that you submitted to me that I prepped on, your trial brief ... ."

Jeffrey responded that he was not referring to the proposed order he had submitted prior to trial. He declared: "My concern is that *I came into the trial with the intent of presenting my position, and I'm being cut out of that completely with only reliance on two exhibits which are —no way can defend my position*. So I might as well give up my position and leave it to the best well-being of my family.? (Italics added.)

The court responded that Jeffrey would be well advised to secure legal counsel, and that the exclusion of Jeffrey's exhibits would not lead to an order depriving him of his interest in the family home, referring again to the proposed order submitted prior to trial by Marilyn's counsel. Jeffrey responded: "Your Honor, if you take a spreadsheet and you add up and deduct everything that [counsel for Marilyn] is asking for, I am left with nothing. Zero dollars. Zero house. Zero car. Nothing. So what's the difference?"

The court took the matter under submission. Marital status was terminated, and additional issues were reserved for future trial. The court asked the parties to decide by the end of the week whether to submit a settlement agreement (presumably reflecting Jeffrey's last-minute waiver of any interest in the community property) or instead to ask the court to rule upon the proposed orders that were submitted to the court prior to trial. Apparently the parties selected the latter option; on October 3, 2005, the court filed a final disposition of the property issues still reflecting Jeffrey's half-interest in the family home. The order noted the parties' stipulation concerning child custody and visitation and the court's reservation of jurisdiction over the matter of child support. By further stipulation, the parties waived spousal support, and the court's jurisdiction over that issue was terminated. The community interest in Marilyn's retirement account was divided, and the court resolved the additional property issues identified in Marilyn's declaration in a manner substantially reflecting the order proposed by Marilyn.

Jeffrey filed a petition for writ of mandate or prohibition in the Court of Appeal. He asserted that there was no statutory authority for the local rule and order preventing the parties from presenting the direct examination of witnesses and requiring the evidentiary foundation for proposed exhibits to be established in a declaration filed well in advance of trial. He further argued that the local rule and order established a system of "trial by declaration" that violated due process principles and placed an "unreasonable burden" on litigants. Jeffrey's petition also contended that the sanctions established by the rule and order were inconsistent with the policy favoring trial on the merits, and that their enforcement by the trial court constituted an abuse of discretion requiring reversal of the judgment that resolved the parties' community property dispute.

The Court of Appeal summarily denied the petition. We subsequently granted petitioner's petition for review and ordered the Contra Costa County Superior Court to show cause why the challenged local rule and trial scheduling order should not be deemed invalid for the

reasons stated in the petition for writ of mandate or prohibition. [3] Prior to hearing oral argument, this court requested and received briefing on the question whether the local rules and order conflicted with the hearsay rule. (Evid. Code, § 1200.)

FOOTNOTES

3 Thereafter, we invited and received amicus curiae briefs from the Family Law Section of the Contra Costa County Bar Association, the California Association of Certified Family Law Specialists, and the Northern and Southern California Chapters of the American Academy of Matrimonial Lawyers, who were joined in their brief in support of petitioner by the Los Angeles County Bar Association, the Los Angeles County Bar Association Family Law Section, the Orange County Bar Association, the Honorable Donald B. King, Justice of the First District Court of Appeal (Retired), the Honorable Sheila Prell Sonenshine, Justice of the Fourth District Court of Appeal (Retired), the Honorable J.E.T. Rutter, Judge of the Orange County Superior Court (Retired), and the Honorable Richard Denner, Judge of the Los Angeles County Superior Court (Retired).

II

A

As respondent court asserts, trial courts possess inherent rulemaking authority as well as rulemaking authority granted by statute. (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 [67 Cal. Rptr. 2d 16, 941 P.2d 1203] (*Rutherford*); Code Civ. Proc., §§ 128, 177, 575.1; Gov. Code, § 68070.) "It is ... well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. [Citation.] ... '... That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation ... in order to insure the orderly administration of justice. [Citation.]' " (*Rutherford, supra*, 16 Cal.4th at p. 967.)

The scope of a court's inherent rulemaking authority has been discussed in various decisions (see, e.g., *Rutherford, supra*, 16 Cal.4th at pp. 967–968), and the outer limits of such authority are clear. [4] A trial court is without authority to adopt local rules or procedures that conflict with statutes or with rules of court adopted by the Judicial Council, or that are inconsistent with the California Constitution or case law. (*Rutherford, supra*, at pp. 967–968; see also *Hall v. Superior Court* (2005) 133 Cal.App.4th 908, 916–918 [35 Cal. Rptr. 3d 206].) As provided in Government Code section 68070, subdivision (a): "Every court may make rules for its own government and the government of its officers *not inconsistent with law or with the rules adopted and prescribed by the Judicial Council.*" (Italics added; see also 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § 204, p. 272; *id.* (2006 supp.) § 204, pp. 87–88.) In sum, local courts may not create their own rules of evidence and procedure in conflict with statewide statutes.

FOOTNOTES

4 In speaking of the limits of a trial court's authority, we note that constitutional issues concerning separation of powers between the judicial branch and the legislative branch are

not involved in the present case. (See, e.g., *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45 [51 Cal. Rptr. 2d 837, 913 P.2d 1046].)

Reviewing courts have not hesitated to strike down local court rules or policies on the ground they are inconsistent with statute, with California Rules of Court promulgated by the Judicial Council, or with case law or constitutional law. Appellate decisions have invalidated local rules or restricted their application in many areas of affected litigation, including dissolution actions, [5] litigation under the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.) (fast track litigation), [6] complex litigation (Cal. Rules of Court, rule 3.400 et seq.), [7] and general civil litigation. [8] We also have disapproved rules and procedures adopted by the Courts of Appeal (see *People v. Pena* (2004) 32 Cal.4th 389, 400 [9 Cal. Rptr. 3d 107, 83 P.3d 506]), as well as rules adopted by the Judicial Council. (See *People v. Hall* (1994) 8 Cal.4th 950, 963 [35 Cal. Rptr. 2d 432, 883 P.2d 974].)

FOOTNOTES

5 In *Hogoboom v. Superior Court* (1996) 51 Cal.App.4th 653, 656 [59 Cal. Rptr. 2d 254], for example, the reviewing court invalidated a trial court rule imposing its own family law mediation fee in addition to fees specifically established by statute. In *McLaughlin v. Superior Court* (1983) 140 Cal.App.3d 473, 481 [189 Cal. Rptr. 479], the reviewing court held that a local rule denied due process of law in purporting to permit a custody mediator to make a written recommendation to the court without providing a factual basis and without facing cross-examination.

6 See *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 655 [40 Cal. Rptr. 3d 501] (local courts cannot shorten the statutory notice period or alter standards for production of evidence for summary judgment hearings); *Hock v. Superior Court* (1990) 221 Cal.App.3d 670, 673–674 [270 Cal. Rptr. 579] (invalidating local fast track rule under which counsel could not be substituted subsequent to trial setting conference without court's approval).

7 See *First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 336 [94 Cal. Rptr. 2d 104] (invalidating trial court's case management order that prohibited filing motions for summary judgment absent compliance with various nonstatutory conditions).

8 See *Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1086 [94 Cal. Rptr. 2d 575] (local rule authorizing granting motion for summary judgment based solely on the absence of opposition was inconsistent with applicable statute); *Pacific Trends Lamp & Lighting Products, Inc. v. J. White, Inc.* (1998) 65 Cal.App.4th 1131, 1135–1136 [76 Cal. Rptr. 2d 918] (local rule improperly required parties to "meet and confer" prior to filing motion for new trial; sanctions for violation of local rule were inconsistent with statutory procedure); *Sierra Craft, Inc. v. Magnum Enterprises, Inc.* (1998) 64 Cal.App.4th 1252, 1255–1256 [75 Cal. Rptr. 2d 681] (local rule improperly permitted grant of summary judgment on grounds inconsistent with statute); *Kalivas v. Barry Controls Corp.* (1996) 49 Cal.App.4th 1152, 1158 [57 Cal. Rptr. 2d 200] (*Kalivas*) (local rule governing summary judgment requiring that parties file joint statement of disputed and undisputed facts was invalid because it was inconsistent with statute); *Wells Fargo Bank v. Superior Court* (1988) 206 Cal.App.3d 918, 922–923 [254 Cal. Rptr. 68] (invalidating local rule requiring

"extensive" or "complicated" motions for summary judgment to be specially set under notice period shorter than that established by statute); *St. Vincent Medical Center v. Superior Court* (1984) 160 Cal.App.3d 1030, 1033–1034 [206 Cal. Rptr. 840] (invalidating trial-setting-conference order shortening time for exchange of expert witness lists to less than what was provided by statute).

A common theme in the appellate decisions invalidating local rules, and one that also appears in the present case, is that a local court has advanced the goals of efficiency and conservation of judicial resources by adopting procedures that deviated from those established by statute, thereby impairing the countervailing interests of litigants as well as the interest of the public in being afforded access to justice, resolution of a controversy on the merits, and a fair proceeding.

In *Lammers v. Superior Court* (2000) 83 Cal.App.4th 1309 [100 Cal. Rptr. 2d 455], for example, a local court rule governing family law proceedings required the parties to file a timely request that the court review the case file prior to a hearing on a contested matter. In order to avoid obvious constitutional issues, the reviewing court refused to endorse the trial court's view that the local rule relieved the court of the obligation to read the case file *at all* when the request to do so was untimely. The Court of Appeal explained that "a measure implemented for the sake of efficiency cannot jeopardize the constitutional integrity of the judicial process [citation]. In other words, court congestion and 'the press of business' will not justify depriving parties of fundamental rights and a full and fair opportunity to present all competent and material evidence relevant to the matter to be adjudicated." (*Id.* at p. 1319.) [9]

FOOTNOTES

[9] See *Lokeljak v. City of Irvine* (1998) 65 Cal.App.4th 341, 342 [76 Cal. Rptr. 2d 429] (disapproving a local court policy discouraging the filing of motions for summary judgment because, according to the local courts, the statutory procedure was "unduly time-consuming"); *Jovine v. FHP, Inc.* (1998) 64 Cal.App.4th 1506, 1532 [76 Cal. Rptr. 2d 322] (trial court's policy of referring summary judgment motions to a referee did not comport with statute; " '[e]fficiency is not more important than preserving the constitutional integrity of the judicial process' "); see also *Mediterranean Construction Co. v. State Farm Fire & Casualty Co.* (1998) 66 Cal.App.4th 257, 265 [77 Cal. Rptr. 2d 781] (trial court erred in declining to hear oral argument on a motion for summary judgment; reviewing court urged trial courts not to ?elevate judicial expediency over [a statutory] mandate").

This court made similar observations in *Garcia v. McCutchen* (1997) 16 Cal.4th 469 [66 Cal. Rptr. 2d 319, 940 P.2d 906] (*Garcia*), involving fast track litigation. (Gov. Code, § 68600 et seq.) We concluded a trial court was without authority to dismiss an action for failure to comply with local fast track rules, because such a dismissal contravened a statute establishing that sanctions for failure to comply with these rules should fall on counsel, and not on the party, if counsel was responsible for the failure to comply. (*Garcia, supra*, 16 Cal.4th at p. 471.)

We rejected the trial court's argument that such power to dismiss was essential to serve the

goal of reducing delay in litigation. We pointed out that the Trial Court Delay Reduction Act did not elevate delay reduction over the right of a litigant to present his or her case to the court, nor was delay reduction favored over deciding cases on the merits. " 'Cases filed in California's trial courts should be resolved as expeditiously as possible, *consistent with the obligation of the courts to give full and careful consideration to the issues presented, and consistent with the right of parties to adequately prepare and present their cases to the courts*.' [Citation.] Thus, in establishing delay reduction programs, the Legislature recognized *competing* public policy considerations and 'attempt[ed] to balance the need for expeditious processing of civil matters with the rights of individual litigants.' [Citation.]" (*Garcia, supra*, 16 Cal.4th at pp. 479–480.)

B

Although some informality and flexibility have been accepted in marital dissolution proceedings, such proceedings are governed by the same statutory rules of evidence and procedure that apply in other civil actions (with exceptions inapplicable to the present case). The Family Code establishes as the law of the state—and superior courts are without authority to adopt rules that deviate from this law—that except as otherwise provided by statute or rule adopted by the Judicial Council, "the rules of practice and procedure applicable to civil actions generally ... apply to, and constitute the rules of practice and procedure in, proceedings under [the Family Code]." (Fam. Code, § 210; see *In re Marcus* (2006) 138 Cal.App.4th 1009, 1017 [41 Cal. Rptr. 3d 861]; *In re Marriage of Mallory* (1997) 55 Cal.App.4th 1165, 1170 [64 Cal. Rptr. 2d 667]; cf. *Fewel v. Fewel* (1943) 23 Cal.2d 431, 438–439 [144 P.2d 592] (conc. opn. of Traynor, J.) (*Fewel*); see also 11 Witkin, Summary of Cal. Law (10th ed. 2005) Husband and Wife, § 99, pp. 152–154; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2007) ¶¶ 13:80, 13:81, pp. 13-22 to 13.23; Samuels & Mandabach, Practice Under the Cal. Family Code (Cont.Ed.Bar 2007) §§ 16.3–16.5, pp. 745–746.)

The rule and order that were applied in the present case called for the admission of declarations in lieu of direct testimony at trial. It is well established, however, that declarations constitute hearsay and are inadmissible at trial, subject to specific statutory exceptions, unless the parties stipulate to the admission of the declarations or fail to enter a hearsay objection. (Evid. Code, § 1200; *Lacrabere v. Wise* (1904) 141 Cal. 554, 556–557 [75 P. 185] (*Lacrabere*); see also *Estate of Fraysher* (1956) 47 Cal.2d 131, 135 [301 P.2d 848]; *Fewel, supra*, 23 Cal.2d at pp. 438–439 (conc. opn. of Traynor, J.); *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1107 [27 Cal. Rptr. 3d 741]; *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal. App. 3d 586, 597 [155 Cal. Rptr. 63]; *Reifler v. Superior Court* (1974) 39 Cal. App. 3d 479, 484–485 [114 Cal. Rptr. 356] (*Reifler*); *Estate of Horman* (1968) 265 Cal. App. 2d 796, 805 [71 Cal. Rptr. 780].)

The law provides specific exceptions to the general rule excluding hearsay evidence (see, e.g., Evid. Code, § 1220 et seq.), including those governing the admission of affidavits or declarations. For example, in the marital dissolution context, Family Code section 2336 requires various items of proof of fact to be submitted to the court in support of a *default* judgment and requires such proof to be in the form of an affidavit. (Fam. Code, § 2336, subd. (a).) But there is no general statutory exception to the hearsay rule for contested marital dissolution *trials*. On the contrary, the existence of a specific statutory exception for default judgments, where an adversary proceeding is waived or forfeited, only serves to support the general rule that hearsay declarations are inadmissible at contested marital dissolution trials.

Another statutory exception to the hearsay rule permits courts to rely upon affidavits in certain motion matters. (Code Civ. Proc., § 2009.) [10] Although affidavits or declarations are authorized in certain *motion* matters under Code of Civil Procedure section 2009, this statute does not authorize their admission at a contested *trial* leading to judgment. As this court explained in *Lacrabere, supra*, 141 Cal. 554, Code of Civil Procedure section 2009 "has no application to the proof of facts which are directly in controversy in an action. It was not intended to have the effect of changing the general rules of evidence by substituting voluntary *ex parte* affidavits for the testimony of witnesses. The section only applies to matters of procedure,—matters collateral, ancillary, or incidental to an action or proceeding,—and has no relation to proof of facts the existence of which are made issues in the case, and which it is *necessary to establish to sustain a cause of action*." (*Lacrabere, supra*, at pp. 556–557, italics added; see also *Fewel, supra*, 23 Cal.2d at p. 438 (conc. opn. of Traynor, J.) ["The fact that section 2009 permits [the admission of affidavits] 'upon a motion' does not mean that the issues in a contested case may be determined and a judgment rendered on the basis of written statements of parties not before the court"]; Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 13:106, p. 13-30.)

FOOTNOTES

10 Code of Civil Procedure section 2009 provides: "An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or *upon a motion*, and in any other case *expressly permitted by statute*." (Italics added.)

The same point was emphasized in *Reifler, supra*, 39 Cal. App. 3d 479. In that case the Court of Appeal considered a challenge to a Los Angeles Superior Court policy of adjudicating long-cause hearings on postjudgment *motions* in marital dissolution matters solely on the basis of affidavits. The reviewing court acknowledged that affidavits ordinarily are excluded as hearsay, but concluded Code of Civil Procedure section 2009 provides a hearsay exception that grants a trial court discretion to decide *motions* on the basis of affidavits—even when facts are controverted—*but only so long as the controverted facts do not require factfinding resulting in a judgment*. (*Reifler, supra*, at pp. 484–485.) The court expressed no doubt that hearsay was inadmissible at a contested marital dissolution trial.

A recent decision by this court demonstrates the limited application of Code of Civil Procedure section 2009, and also illuminates the policy underlying application of the hearsay rule when questions of credibility arise, as they certainly do in dissolution trials. (*People v. Johnson* (2006) 38 Cal.4th 717 [42 Cal. Rptr. 3d 887, 133 P.3d 1044] (*Johnson*).) In *Johnson*, we concluded that at a pretrial hearing on a motion to suppress evidence in a criminal case (Pen. Code, § 1538.5), the prosecution cannot carry its burden by submitting affidavits in lieu of live testimony. The pertinent statute, Penal Code section 1538.5, did not provide for such a procedure, and the historic practice long had been to require oral testimony. (*Johnson, supra*, 38 Cal.4th at pp. 726, 728.)

Moreover, as we explained in *Johnson*, "allowing a prosecutor to oppose a suppression motion with written affidavits in lieu of live testimony would be inconsistent with the trial court's vital

function of assessing the credibility of witnesses." (*Johnson, supra*, 38 Cal.4th. at p. 729, fn. 8; see *id.* at p. 726.) A suppression motion "presents issues as to which the credibility of witnesses often is of critical significance" (*id.* at p. 731), and the witness's personal presence and oral testimony is significant because it " 'enable[s] the trier of fact to consider the demeanor of the witness in weighing his testimony and judging his credibility' " (*id.* at p. 733).

We also observed in *Johnson* that, unlike a pretrial suppression motion, the motions referred to in Code of Civil Procedure section 2009 are on "preliminary or ancillary procedural matters" that historically have been decided on the basis of affidavits alone, whereas it is well settled that section 2009 does not change the rules of evidence. (*Johnson, supra*, 38 Cal.4th at p. 730.) Quoting *Lacrabere, supra*, 141 Cal. 554, 556–557, we confirmed that section 2009 " 'has no relation to proof of facts the existence of which are made issues in the case, and which it is *necessary to establish to sustain a cause of action*.' " (*Johnson, supra*, at p. 730, italics added.)

We conclude that respondent's rule and order are inconsistent with the hearsay rule to the extent they render written declarations admissible as a basis for decision in a contested marital dissolution trial. As we shall discuss, our conclusion is consistent with fundamental principles established in other statutes. All relevant evidence is admissible, including evidence bearing on the issue of witness credibility (Evid. Code, §§ 210, 351), and the oral testimony of witnesses supplies valuable evidence relevant to credibility, a critical issue in many marital dissolution trials. Permitting oral testimony rather than relying upon written declarations also is consistent with the historically and statutorily accepted practice of conducting trial by means of the oral testimony of witnesses given in the presence of the trier of fact. (See Evid. Code, §§ 711, 780; Code Civ. Proc., §§ 2002, 2005.) The conclusion we reach also permits us to avoid the difficult question whether the local rule and order violate petitioner's right to due process of law, "[m]indful [as we are] of the prudential rule of judicial restraint that counsels against rendering a decision on constitutional grounds if a statutory basis for resolution exists." (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1190 [86 Cal. Rptr. 2d 778, 980 P.2d 337].) This rule directs that "if reasonably possible, statutory provisions should be interpreted in a manner that avoids serious constitutional questions." (*Id.* at p. 1197.)

As noted, evidence bearing on the issue of credibility of witnesses comes within the basic rule that all relevant evidence is admissible, except as specifically provided by statute. (Evid. Code, §§ 210, 351.) Describing a party's fundamental right to present evidence at trial in a civil case, Witkin observes: "One of the elements of a fair trial is the *right to offer relevant and competent evidence on a material issue*. Subject to such obvious qualifications as the court's power to restrict cumulative and rebuttal evidence … , and to exclude unduly prejudicial matter [citation], denial of this fundamental right is almost always considered reversible error. [Citations.]" (3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 3, pp. 28–29, italics added.) Ordinarily, parties have the right to testify in their own behalf (*Guardianship of Waite* (1939) 14 Cal.2d 727, 730 [97 P.2d 238]), and a party's opportunity to call witnesses to testify and to proffer admissible evidence is central to having his or her day in court. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 677 [56 Cal. Rptr. 2d 803]; see *Spector v. Superior Court* (1961) 55 Cal.2d 839, 843, 844 [13 Cal. Rptr. 189, 361 P.2d 909].)

As stated by an appellate court in 1943 with reference to a trial court's refusal to permit a witness to testify in a marital dissolution matter: "We are fully cognizant of the press of

business presented to the judge who presides over the Domestic Relations Department of the Superior Court ... , and highly commend his efforts to expedite the handling of matters which come before him. However, such efforts should never be directed in such manner as to prevent a full and fair opportunity to the parties to *present all competent, relevant, and material evidence* bearing upon any issue properly presented for determination. [¶] Matters of domestic relations are of the utmost importance to the parties involved and also to the people of the State of California. ... To this end a trial judge should not determine any issue that is presented for his consideration until he has heard all competent, material, and relevant evidence the parties desire to introduce." (*Shippey v. Shippey* (1943) 58 Cal. App. 2d 174, 177 [136 P.2d 86], italics added.)

Oral testimony of witnesses given in the presence of the trier of fact is valued for its probative worth on the issue of credibility, because such testimony affords the trier of fact an opportunity to observe the demeanor of witnesses. (*Ohio v. Roberts* (1980) 448 U.S. 56, 64 [65 L. Ed. 2d 597, 100 S. Ct. 2531].) A witness's demeanor is " 'part of the evidence' " and is "of considerable legal consequence." (*People v. Adams* (1993) 19 Cal.App.4th 412, 438 [23 Cal. Rptr. 2d 512]; see *Meiner v. Ford Motor Co.* (1971) 17 Cal. App. 3d 127, 140–141 [94 Cal. Rptr. 702] ["[O]ne who sees, hears and observes [a witness] may be convinced of his honesty, his integrity, [and] his reliability ... because a great deal of that highly delicate process we call evaluating the credibility of a witness is based on ... 'intuition' "].)

The testimony of witnesses given on *direct* examination is afforded significant weight at trial in ascertaining their credibility; cross-examination does not provide the sole evidence relevant to the weight to be accorded their testimony. "In a contested hearing, the precise words and demeanor of a witness during direct as well as cross-examination bears on the credibility and weight the trier of fact accords the witness's testimony. Moreover, observation of a witness on direct is important to the planning and execution of effective cross-examination." (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1513–1514 [33 Cal. Rptr. 3d 89].)

Ordinarily, written testimony is substantially less valuable for the purpose of evaluating credibility. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 269 [25 L. Ed. 2d 287, 90 S. Ct. 1011] ["Particularly where credibility and veracity are at issue ... written submissions are a wholly unsatisfactory basis for decision"]; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 414 [58 Cal. Rptr. 2d 875, 926 P.2d 1061] [" 'it's pretty difficult to weigh credibility without seeing the witnesses' "].) "A prepared, concise statement read by counsel may speed up the hearing, but it is no substitute for the real thing. Lost is the opportunity for the trier of fact and counsel to assess the witness's strengths and weaknesses, recollection, and attempts at evasion or spinning the facts ... . [¶] ... [W]ith a scripted statement, prepared and agreed to by one party in advance, comes the passage of time and with that lapse may come the party's unyielding acceptance of the script. Lost to cross-examination is the opponent's ability to immediately test and dissect adverse testimony." (*Denny H. v. Superior Court, supra*, 131 Cal.App.4th at p. 1514, italics omitted.)

The historical pattern of a trial as an oral examination of witnesses in the presence of the trier of fact rather than an exchange of written declarations is reflected in Evidence Code section 711, which provides that "[a]t the *trial* of an action, a *witness can be heard only in the presence* and subject to the examination of all the parties to the action, if they choose to attend and examine." (Italics added.) Also in conformity with the historical form of a trial, Evidence Code section 780 directs the trier of fact to evaluate witness credibility by, among other methods, *observing* the witness's demeanor "*while testifying*" as well as his or her

"attitude toward the action in which he testifies or toward the giving of testimony." (Italics added.)

Although Code of Civil Procedure section 2002 provides that the testimony of a witness may be taken by affidavit, [11] deposition, [12] or oral examination, deposition testimony is admissible at trial only as prescribed by certain statutes not at issue in the present case. Moreover, affidavits (a term including declarations made under oath), as explained, constitute hearsay and are inadmissible at trial in the absence of stipulation or lack of objection, or as otherwise provided by law.

FOOTNOTES

11 An affidavit constitutes a "written declaration under oath, made without notice to the adverse party." (Code Civ. Proc., § 2003.)

12 A deposition constitutes "a written declaration, under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine." (Code Civ. Proc., § 2004; see Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 13:125, pp. 13-34 to 13-35 [use of discovery at trial].)

The only remaining means recognized in Code of Civil Procedure section 2002 for taking the testimony of a witness is *oral examination*. In a provision that again reflects the historical form of the adversary trial in which live witnesses are examined in the presence of the parties and the finder of fact, oral examination is defined as "an examination *in* [*the*] *presence* of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal *from the lips of the witness*." (Code Civ. Proc., § 2005, italics added.) [13]

FOOTNOTES

13 Marilyn, real party in interest, contends "sworn declarations of witnesses present at the trial and available for cross-examination are not hearsay … ." Marilyn reasons that when a declaration is properly sworn, the declarant becomes a witness who "testifies" within the meaning of Code of Civil Procedure section 2002, and at least as long as the declarant is present at the hearing, the declaration does not fall within Evidence Code section 1200's prohibition on hearsay evidence. We agree with the court in *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719 [255 Cal. Rptr. 453], which rejected a similar argument that an affidavit itself constitutes "testimony" at a hearing. (*Id.* at p. 731 ["Code of Civil Procedure section 2002 cannot be used to read into every other statutory use of the word 'testimony' a license to use affidavits or deposition transcripts for all the same purposes as oral examination"].) Moreover, as petitioner points out, Marilyn's theory would authorize courts to adopt a system of trial by declaration in *any* civil action, despite the restrictions of Code of Civil Procedure section 2009 and the hearsay rule.

In sum, consistent with the traditional concept of a trial as reflected in provisions of the Evidence Code and the Code of Civil Procedure, we conclude that respondent's rule and order calling for the admission and use of declarations at trial conflict with the hearsay rule.

C

Respondent contends courts have authority to adopt nonstatutory exceptions to the hearsay rule and that prior decisions approve of such exceptions in marital dissolution matters. Cases cited in support of the latter proposition, however (see, e.g., *Reifler, supra*, 39 Cal. App. 3d 479), conclude that statutory authorization, namely Code of Civil Procedure section 2009, exists for deciding *motion* matters in marital dissolution proceedings on the basis of declarations. As we have explained, this statute does not authorize the introduction of hearsay evidence at a contested *trial*. Respondent has not offered any persuasive argument in support of its claim that an individual local court may adopt a hearsay exception applicable solely to marital dissolution trials despite state law providing that marital dissolution proceedings are to be conducted in accordance with the ordinary rules governing civil trials, except as specified by statute. (Fam. Code, § 210.) [14]

FOOTNOTES

[14] The same statutory provision defeats respondent's claim that English tribunals historically resolved marital dissolution actions in courts of equity, in which declarations assertedly served as the primary basis for factfinding.

Respondent relies upon this court's decision in *In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947 [38 Cal. Rptr. 3d 610, 127 P.3d 28] (*Brown & Yana*) for the proposition that courts have discretion not to hold a full evidentiary hearing in contested family law matters. Respondent's reliance is misplaced, as we shall explain.

When parties have been unable (privately or through mediation) to agree on custody, "the court shall set the matter for hearing on the unresolved issues." (Fam. Code, § 3185, subd. (a).) It is undisputed that such a hearing is an ordinary adversarial proceeding leading to a "final judicial custody determination." (*Brown & Yana, supra*, 37 Cal.4th at p. 959; see *id.* at pp. 955–956; *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256 [109 Cal. Rptr. 2d 575, 27 P.3d 289]; see also *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31–32 [51 Cal. Rptr. 2d 444, 913 P.2d 473].) But once a *judgment* has been entered in the custody matter, a postjudgment *motion* or request for an order to show cause for a change in custody, based upon an objection to the custodial parent's plan to move away, requires an evidentiary hearing only if *necessary*—that is, only if the moving party is able to make a prima facie showing that the move will be detrimental to the child or has identified "a material but contested factual issue that should be resolved through the taking of oral testimony." (*Brown & Yana, supra*, 37 Cal.4th at p. 962; see *id.* at p. 959.)

Our decision in *Brown & Yana, supra*, 37 Cal.4th 947, did not suggest litigants must make a prima facie showing of some kind in order to be entitled to proceed to *trial*. Nothing we said undermines the requirement that at a contested marital dissolution trial, prior to entry of *judgment*, the court must hold an evidentiary hearing on the disputed issues, at which the usual rules of evidence apply. Indeed, we explained that a trial court had authority to deny a full evidentiary hearing in *Brown & Yana* in part *because* the custody issue already had been fully litigated and the resulting judgment therefore was entitled to substantial deference in the absence of a showing of a significant change of circumstances. (*Id.* at pp. 955–956, 959–960;

see *Burchard v. Garay* (1986) 42 Cal.3d 531, 535 [229 Cal. Rptr. 800, 724 P.2d 486] [change of circumstances requirement is based upon res judicata principles]; *In re Marriage of Burgess, supra*, 13 Cal.4th at p. 38.) Nor did we discuss Code of Civil Procedure section 2009 or the hearsay rule in that case. [15]

FOOTNOTES

15 Respondent also cites *County of Alameda v. Moore* (1995) 33 Cal.App.4th 1422 [40 Cal. Rptr. 2d 18]. In that case, the court determined that the informality of family law proceedings had gone too far when disputed factual matters in a district attorney's child support hearing were determined upon the mere unsworn statements of counsel. Although the court referred to local rules applicable to family law motions and contested *trials* under which declarations could be admitted in evidence (*id.* at p. 1427 & fn. 5), the court did not consider Evidence Code section 1200, Code of Civil Procedure section 2009, or Family Code section 210, provisions the court, of course, lacked authority to disregard. *County of Alameda v. Moore, supra*, 33 Cal.App.4th 1422, is disapproved to the extent it is inconsistent with our opinion in the present case.

Respondent also refers to Evidence Code section 765 as authority to admit hearsay declarations as a means of presenting the testimony of witnesses under direct examination. That statute provides in pertinent part: "The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment." (Evid. Code, § 765, subd. (a).)

This provision never has been interpreted as affording a basis for disregarding the statutory rules of evidence or working a fundamental alteration in the nature of a trial. Respondent's argument would prove too much; under its analysis, Code of Civil Procedue section 2009 would be unnecessary, because Evidence Code section 765 (a recodification of former Code Civ. Proc., § 2044, enacted in 1872) would confer authority to conduct any hearing or trial on the basis of affidavit evidence.

Respondent contends Evidence Code section 765 should be interpreted to afford trial courts the authority to require declarations in lieu of oral direct examination of witnesses, because assertedly similar language in rule 611(a) of the Federal Rules of Evidence (28 U.S.C.) has been interpreted to supply such authority to the federal courts. (See *In re Adair* (9th Cir. 1992) 965 F.2d 777, 779.) Respondent does not claim, however, that federal procedure includes provisions similar to Code of Civil Procedure section 2009, permitting affidavits in certain types of proceedings not leading to judgment, nor does respondent compare the rules of evidence and procedure we have discussed in the previous part of this opinion with the rules applicable in federal district courts. (Cf. also Fed. Rules Evid., rule 807, 28 U.S.C. [granting courts authority to admit reliable hearsay in the court's discretion].)

Respondent claims that if we conclude that declarations should be excluded as hearsay in contested marital dissolution trials, our decision will overturn settled practice and cause serious disruption. It does not appear, however, that respondent's description of settled practice is accurate. As is evident from our consultation of treatises and practice manuals, it is well settled that the ordinary rules of evidence apply in marital dissolution trials.

"The same rules of evidence apply at trial in a marital action as in civil actions generally. Thus, facts must be established by admissible evidence, and objections must be properly stated and based on the Evidence Code or other applicable statutes or court rules. ... [¶] A litigant has a right to present evidence at trial and, although the court can exclude otherwise admissible evidence because it is unduly time-consuming, prejudicial, confusing, or misleading, outright denial of the right to present evidence is error. [Citations.] The court's discretion to exclude oral testimony entirely ... does not apply to trials." (Samuels & Mandabach, Practice Under the Cal. Family Code, *supra*, § 16.5, pp. 745–746.) The same source recognizes that some courts nonetheless attempt to place special restrictions upon the introduction of evidence, noting that "[t]raditionally, trial judges have often regarded trials in marital actions as somehow less important than other civil litigation. This attitude has been both recognized and strongly criticized by appellate courts. [Citation.]" (*Id.*, § 16.10, p. 748; see also 11 Witkin, Summary of Cal. Law, *supra*, Husband and Wife, § 99, pp. 152, 154 [provisions governing civil trials apply unless otherwise specified by statute or Judicial Council rule, including the rules of evidence].) Another practice manual explains: "At a contested trial, affidavits are not competent evidence; though made under oath, they are hearsay ... ." (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 13:106, p. 13-30; see also *id.*, ¶ 13:81, p. 13-22.1.)

Commenting upon Justice Traynor's concurring opinion in *Fewel, supra, 23 Cal.2d 431*, and this court's decision in *Lacrabere, supra, 141 Cal. 554*, respondent asserts we have limited the admissibility of declarations only when there is no opportunity for cross-examination. Although our decisions indeed have noted the absence of an opportunity for cross-examination, more broadly they have interpreted Code of Civil Procedure section 2009 as applying solely to hearings on motions, and *not* to a trial of issues leading to a judgment. (See *Lacrabere, supra, 141 Cal. at pp. 556–567*; see also *Fewel, supra, 23 Cal.2d at pp. 438–439* (conc. opn. of Traynor, J.).) Respondent also claims the opportunity for cross-examination satisfies the policy underlying the hearsay rule. As we have explained, however, in addition to allowing a party to cross-examine adverse witnesses, the hearsay rule assures that the witness will appear in the presence of the trier of fact on direct examination, thereby further aiding it in evaluating the witness's demeanor and determining his or her credibility.

Marilyn contends that the distinction between hearings on motions (at which *Reifler, supra, 39 Cal. App. 3d 479*, permits the introduction of hearsay evidence) and trials is illusory in the context of marital dissolution proceedings and should not be the basis for our decision in the present case. As she asserts, in many instances the family court retains jurisdiction over marital dissolution matters for an extended period, responding to repeated motions for interim rulings and for modification of orders. Yet we have drawn a distinction between hearings at which a judgment is entered, and hearings on postjudgment motions. A postjudgment motion for modification of a final child custody order, for example, requires the moving party to demonstrate a significant change of circumstances warranting departure from the judgment. (*Montenegro v. Diaz, supra, 26 Cal.4th at p. 256*.) A presumption exists that the judgment is correct and should not be disturbed—a presumption that would not be well founded were the judgment to be based upon hearsay (unless admitted into evidence upon stipulation of the parties). Marilyn fails to support her claim that, for the purpose of the hearsay rule, there is and should be no procedural or substantive distinction between motions and trials in the context of marital dissolution proceedings.

D

Marilyn claims petitioner forfeited any claim challenging respondent's rule barring oral examination of witnesses on direct examination, because he did not object on that basis. We do not agree that petitioner forfeited his claim. It should have been evident to the trial court that petitioner's inability to proceed stemmed both from the local rule precluding direct testimony and the order governing the admissibility of evidence.

In any event, even if petitioner failed to preserve his claim with respect to the prohibition on oral examination of witnesses, he certainly objected to the exclusion of nearly all of his evidence for noncompliance with the court's trial scheduling order. The trial court abused its discretion in sanctioning petitioner by excluding the bulk of his evidence simply because he failed, prior to trial, to file a declaration establishing the admissibility of his trial evidence. The sanction was disproportionate and inconsistent with the policy favoring determination of cases on their merits.

Although authorized to impose sanctions for violation of local rules (Code Civ. Proc., § 575.2, subd. (a)), courts ordinarily should avoid treating a curable violation of local procedural rules as the basis for crippling a litigant's ability to present his or her case. As the court declared in *Kalivas, supra*, 49 Cal.App.4th 1152, in the absence of a demonstrated history of litigation abuse, "[a]n order based upon a curable procedural defect [including failure to file a statement required by local rule], which effectively results in a judgment against a party, is an abuse of discretion." (*Id.* at p. 1161.)

This court made a similar point in *Mann v. Cracchiolo* (1985) 38 Cal.3d 18 [210 Cal. Rptr. 762, 694 P.2d 1134], in which an attorney failed to file opposition to a motion for summary judgment within the time prescribed by local rules. We concluded that the trial court abused its discretion in refusing to consider the tardy opposition. (*Id.* at p. 30.) " 'Judges ... generally prefer to avoid acting as automatons and routinely reject requests by counsel to function solely in a ministerial capacity. Rigid rule following is not always consistent with a court's function to see that justice is done. Cognizant of the *strong policy favoring the disposition of cases on their merits* [citations], judges usually consider whether to exercise their discretion in applying local court rules and frequently consider documents which have been untimely filed.' " (*Id.* at pp. 28–29, italics added.) [16]

FOOTNOTES

16 Terminating sanctions such as an order granting summary judgment based upon procedural error " 'have been held to be an abuse of discretion unless the party's violation of the procedural rule was willful [citations] or, if not willful, at least preceded by a history of abuse of pretrial procedures, or a showing [that] less severe sanctions would not produce compliance with the procedural rule. [Citations.]' " (*Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co.* (2005) 133 Cal.App.4th 1197, 1215 [35 Cal. Rptr. 3d 411]; *Security Pacific Nat. Bank v. Bradley* (1992) 4 Cal.App.4th 89, 97–98 [5 Cal. Rptr. 2d 220] ["Sanctions which have the effect of granting judgment to the other party on purely procedural grounds are disfavored"].)

Even under the fast track statute, a demanding efficiency scheme that does not apply in family law matters (Gov. Code, §§ 68608, subd. (a), 68609, subd. (b)), the preference for trying cases on the merits prevails. For example, in *Hernandez v. Superior Court* (2004) 115

Cal.App.4th 1242 [9 Cal. Rptr. 3d 821], the reviewing court held that the trial court abused its discretion in refusing, in reliance upon a local fast track rule, to reopen discovery. "Strict adherence to these delay reduction standards has dramatically reduced trial court backlogs and increased the likelihood that matters will be disposed of efficiently, to the benefit of every litigant. [Citation.] Here, the trial court's orders promote judicial efficiency by maintaining strict time deadlines. [¶] But efficiency is not an end in itself. Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. [Citations.] Accordingly, decisions about whether to grant a continuance or extend discovery 'must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency.' " (*Id.* at p. 1246.) The fast track rules were not intended to override the strong public policy in favor of deciding cases on the merits when possible (*Garcia, supra*, 16 Cal.4th at p. 479), and we see no basis for disregarding the same strong public policy in marital dissolution actions. [17]

FOOTNOTES

17 To demonstrate the harshness of respondent's application of its rule and order, we recall that under the fast track statutes, the burden of sanctions may not be imposed upon the client if it was the attorney who was responsible for violating the fast track rules. (Gov. Code, § 68608, subd. (b); *Garcia, supra*, 16 Cal.4th at pp. 481?482.) Under the fast track scheme, had Jeffrey been represented and had his counsel been responsible for making the mistakes attributed to Jeffrey, the trial court would not have been authorized to impose what amounted to issue sanctions affecting the merits of Jeffrey's case.

In the present case, the trial court applied the sanction provision of its local rules in a mechanical fashion without considering alternative measures or a lesser sanction, resulting in the exclusion of all but two of petitioner's 36 exhibits. Had the court permitted petitioner to testify, he could have provided some foundation for his exhibits. In applying the local rule and order mechanically to exclude nearly all of petitioner's evidence—and proceeding, in the words of the trial court, "quasi by default"—the trial court improperly impaired petitioner's ability to present his case, thereby prejudicing him and requiring reversal of the judgment. [18]

FOOTNOTES

18 Respondent claims its efforts to assist petitioner were rejected, pointing to its offer to allow him to reconsider his position at a break in the court proceedings. But the court never announced a break, and the record supports our view that at best the court merely offered petitioner an opportunity to demonstrate that his declaration actually *complied* with the rule and order by providing a foundation in that document for the admission of his exhibits.

III

Respondent claims "[f]irst and foremost" that efficiency and the "expeditious resolution of family law cases" support its rule and order. It also seeks to justify these requirements on the

theory that they serve to reduce rancor and "adversarial confrontation between estranged spouses," and to assist the many self-represented litigants in the family law courts by "giving them direction as to how to prepare for trial, how to frame issues properly, and how to provide evidentiary support for their positions and ... avoid being 'blindsided' by the adverse party."

That a procedure is efficient and moves cases through the system is admirable, but even more important is for the courts to provide fair and accessible justice. In the absence of a legislative decision to create a system by which a judgment may be rendered in a contested marital dissolution case without a trial conducted pursuant to the usual rules of evidence, we do not view respondent's curtailment of the rights of family law litigants as justified by the goal of efficiency. What was observed three decades ago remains true today: "While the speedy disposition of cases is desirable, speed is not always compatible with justice. Actually, in its use of courtroom time the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment ... ." (*In re Marriage of Brantner* (1977) 67 Cal. App. 3d 416, 422 [136 Cal. Rptr. 635].)

Moreover, the amicus curiae briefs we have received strongly dispute respondent's assertion that its rule and order promote efficiency, reduce rancor or costs, promote settlement, or aid unrepresented litigants. In their brief, the Northern and Southern California Chapters of the American Academy of Matrimonial Lawyers (Academy) argue that the local rule and order only increase the burden on the trial courts and further strain limited judicial resources, because it is more time consuming for the court to examine lengthy declarations than it is to listen to testimony, leaving courts "with two options: (1) spend more time than they have available at court to read the lengthy materials, or (2) just give the written materials a cursory review, and rule by 'guesstimate.' This is not a choice favored by litigants, lawyers, or judicial officers."

The same brief characterizes as an "absurdity" respondent's claim that the rule and order help self-represented litigants by describing in detail how they must prepare for trial. On the contrary, the brief claims, "[t]he burdens created by the local court rule and [order] are so onerous that they overwhelm most attorneys, let alone self-represented litigants." According to the Academy's brief, the rule and order restrict access to justice by increasing the cost of litigation. The brief points to the added costs of preparing exhaustive declarations of all *potential* witnesses, including an evidentiary foundation for all proposed exhibits, and taking the deposition of nonparty witnesses in the event they refuse to prepare a declaration.

The Family Law Section of the Contra Costa County Bar Association commissioned a professional survey of family law practitioners in the county, and the great majority of those surveyed were decidedly critical of the rule and order, including the successor to the order at issue in the present case, believing the order did not increase judicial efficiency and, along with their clients, questioning whether courts have the time to read the voluminous binders of declarations and exhibits required by the rule. A substantial majority of family law attorneys in the county also reported finding the rule and order inordinately time consuming, difficult, and costly to comply with. [19]

FOOTNOTES

19 The Association of Certified Family Law Specialists (ACFLS) filed a brief generally supporting petitioner's contentions. The ACFLS's brief also pointed to specific difficulties caused by respondent's order and rule. "With [respondent's] imposition of a discovery cut-off before any judicially supervised settlement, a litigant is forced to either [forgo] potentially necessary depositions or [incur] unnecessary expense. This creates a larger schism in the ever-widening two-tiered justice system—that for litigants who can afford to opt out of the public court system and retain private judges who do not impose unreasonable and arbitrary deadlines and that for those who cannot afford to do so." Further, the ACFLS complains that respondent's deadlines are very difficult to meet. For example, a party's notice of intent to call the opposing party as a witness, along with a description of "the testimony the party expects to elicit," is due the same day the initial declarations are due. (Super. Ct. Contra Costa County, Local Rules, rule 12.8 F.1.a, b, eff. Jan. 1, 2007; *ibid*., eff. July 1, 2006.)

Respondent suggests its rule and order encourage settlement by "apprising both sides, well in advance of trial, of the facts that will be presented." Local attorneys reported, however, that unfortunately the rule and order have not aided settlement, because parties take extreme positions in their declarations, causing an increase in animosity and a diminished likelihood of settlement. The various amici curiae, including local practitioners, confidently claim that any increase in settlements achieved by the rule and order occur because litigants generally cannot afford the substantial added litigation costs created by compliance with the rules.

We are most disturbed by the possible effect the rule and order have had in diminishing litigants' respect for and trust in the legal system. The Contra Costa survey confirmed that litigants believed the rule and order deprived them of the essential opportunity to "tell their story" and "have their day in court," and felt the rule and order caused the lawyers who drafted the declarations to be the persons testifying, not themselves. "Members uniformly report that their clients are stunned to be told that they will not get to tell their story to the judge," and express "shock, anxiety and outrage" along with the belief that "they had been denied their right to have their case heard by a judicial officer." Overwhelmingly, practitioners criticized the rule and order for creating what their clients understood to be a lesser standard of justice for family law litigants.

A recent statewide survey reflects a similar concern with court procedures that do not permit family law litigants to tell their story, a circumstance reported by litigants to diminish their confidence in the courts. (Judicial Council of Cal., Admin. Off. of Cts., Rep. on Trust and Confidence in the California Courts (2006) Phase II, pp. 31–36 [self-represented litigants "express[ed] frustration that they did not have a chance to fully explain their side of the story to the judge"; "public trust and confidence in the courts ... will continue to be negatively affected [by] procedures [that] do not permit [litigants] to tell their story at some length and in their own words"].)

We are aware that superior courts face a heavy volume of marital dissolution matters, and the caseload is made all the more difficult because a substantial majority of cases are litigated by parties who are not represented by counsel. (See Judicial Council of Cal., Rep. on Statewide Action Plan for Serving Self-Represented Litigants (2004) Exec. Summary, p. 2 [80 percent of the cases have at least one unrepresented party by the time of disposition].) In its 2006 report, the Judicial Council estimated that "although family and juvenile cases represent 7.5 percent of total filings, they account for nearly *one-third* of the trial courts' judicial workload ...

." (Judicial Council of Cal., Ann. Rep. (2006) p. 26, italics added.)

In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice. Litigants with other civil claims are entitled to resolve their disputes in the usual adversary trial proceeding governed by the rules of evidence established by statute. It is at least as important that courts employ fair proceedings when the stakes involve a judgment providing for custody in the best interest of a child and governing a parent's future involvement in his or her child's life, dividing all of a family's assets, or determining levels of spousal and child support. The same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings.

Trial courts certainly require resources adequate to enable them to perform their function. If sufficient resources are lacking in the superior court or have not been allocated to the family courts, courts should not obscure the source of their difficulties by adopting procedures that exalt efficiency over fairness, but instead should devote their efforts to allocating or securing the necessary resources. (See Cal. Stds. Jud. Admin., § 5.30(c).) As stated in the advisory committee comment to the California Standards for Judicial Administration: "It is only through the constant exertion of pressure to maintain resources and the continuous education of court-related personnel and administrators that the historic trend to give less priority and provide fewer resources to the family court can be changed." (Advisory Com. com., Cal. Stds. Jud. Admin., foll. § 5.30(c).)

Courts must earn the public trust. (See Cal. Stds. Jud. Admin., § 10.17(b)(5)(A), (B).) We fear that respondent's rule and order had the opposite effect despite the court's best intentions. [20]

FOOTNOTES

20 We recommend to the Judicial Council that it establish a task force, including representatives of the family law bench and bar and the Judicial Council Advisory Committee on Family and Juvenile Law, to study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented. Such a task force might wish to consider proposals for adoption of new rules of court establishing statewide rules of practice and procedure for fair and expeditious proceedings in family law, from the initiation of an action to postjudgment motions. Special care might be taken to accommodate self-represented litigants. Proposed rules could be written in a manner easy for laypersons to follow, be economical to comply with, and ensure that a litigant be afforded a satisfactory opportunity to present his or her case to the court.

IV

The judgment rendered by the Court of Appeal summarily denying the petition for writ of mandate or prohibition is reversed, and the matter is remanded to that court with directions to issue a writ in terms consistent with this opinion.

Kennard, J., Baxter, J., Chin, J., Moreno, J., and Corrigan, J., concurred.

CONCUR BY: Werdegar

CONCUR

WERDEGAR, J., Concurring.—I agree that the superior court's local rule and trial scheduling order were inconsistent with statutory provisions of the Evidence Code and Code of Civil Procedure, particularly the hearsay rule of Evidence Code section 1200. (Maj. opn., *ante*, at pp. 1354–1363.) I also agree the trial court abused its discretion in excluding petitioner's exhibits; because the rule and order were inconsistent with state law, enforcing these invalid measures to exclude virtually all of a party's evidence was necessarily an abuse of discretion. But given the existence of the local rule and order at the time of trial, I would not conclude that the trial judge acted arbitrarily or unduly "mechanically" in excluding petitioner's evidence. (See maj. opn., *ante*, at p. 1365.) The trial court excused one breach of the order (petitioner's late submission of his exhibits) and explained to petitioner the other (failure of petitioner's declaration to establish the foundation for his exhibits). The court then offered petitioner an opportunity to cure the violation, an opportunity petitioner, for whatever reason, did not pursue. Despite petitioner's sudden offer to give up his interest in the family home, moreover, the court ordered his interest preserved. In my view, the trial court's rule and order, rather than the particular actions of the court in this case, are to blame for the exclusion of petitioner's evidence.

Finally, while I join the majority in recommending that the Judicial Council study ways for trial courts to balance efficiency and fairness in dissolution proceedings (maj. opn., *ante*, at p. 1369, fn. 20), I find it unnecessary to join the majority's policy critique of the Contra Costa County rule and order (*id.* at pp. 1365–1369). The court properly holds the local rule and order invalid because they conflict with state statutes, not because they are poor policy. The criticisms voiced by family law practitioners, although important, would be better considered by the Judicial Council or the Legislature than by this court. As we have sound statutory grounds for holding the local rule and order invalid, I would leave the weighing of competing policy, at least in the first instance, to other institutions.

Colbern C. Stuart, III (SBN 177897)
G. Hans Sperling (SBN 206395)
LEXEVIA, PC
4139 Via Marina PH 3
Marina Del Rey, CA 90292
Telephone: (310) 746-6112
Facsimile: (424) 228-5272

Attorney for *Amici Curiae*,
CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, NATIONAL COALITION FOR MEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

EMAD G. TADROS, M.D., Plaintiff, v. STEPHEN DOYNE, Ph.D., and DOES 1 THROUGH 100, Defendants.	Case No. 37-2008-00093885-CU-BT-CTL Judge: Honorable Jay M. Bloom Dept.: C-70 **PROOF OF SERVICE** Date: November 20, 2009 Dept: C-70 Time: 11:00 a.m. Hon. Jay Bloom

I am, and the time of service hereinafter mentioned ,a citizen of the United States and a resident of the County of San Diego. I am over the age of eighteen years, and not a party to the within action. My business address is: Lexevia, PC, 4139 Via Marina Ste PH1303, Marina Del Rey, CA 90292.

On November 13, 2009, I served the following document:

COMBINED (1) APPLICATION FOR LEAVE TO FILE AS *AMICI CURIAE* AND (2) *AMICUS CURIAE* BRIEF OF PROPOSED *AMICI CURIAE*, (A) CALIFORNIA COALITION FOR FAMILIES AND CHILDREN AND (B) NATIONAL COALITION FOR MEN, IN SUPPORT OF PLAINTIFF DR. EMAD TADROS' MOTION TO CONTINUE HEARING AND CONDUCT DISCOVERY AND EXHIBITS THERETO

By transmitting via electronic mail the documents listed above to the e-mail address set forth below on this date before 5:00 p.m.

Christopher J. Zopatti, Esq.
CALLAHAN THOMPSON SHERMAN 7 CAUDILL, LLP
111 Fashion Lane
Tustin, CA 92780-3397
(949) 261-2872
F: (949) 261-6060
Email: czopatti@ctsclaw.com

Michael J. Aguirre
Aguirre, Morris & Severson LLP
444 West C Street, Suite 210
San Diego, CA 92101
Ph: 619-876-5364
Fax: 619-876-5368
Email: maguirre@amslawyers.com

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Dated: 11/13/09

Signature: Dave J McLaughlin

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 4

California Coalition for Families and Children
Parents' and Children's Resource for Child Custody, Divorce, Family Law, and The U.S. Constitution. Welcome!

How NOT to get divorced… Maybe someday we'll laugh about it?

June 7, 2013
Welcome Folks!

To those of you seeking information about Stephen Doyne and San Diego Child Custody Evaluators, I here offer what will hopefully be an enlightened perspective from a parent who's seen several sides of the issue. Feel free to comment here or join the discussion at **http://www.carpedicta.com (http://www.carpedicta.com)**. Stay tuned for some big news coming up.

In the meantime, a bit of history. I attach below a letter I originally delivered to Dr. Doyne in early 2009 after many months and many thousands of dollars of "mediation" that became a highly destructive money pit. I recently "unearthed" this letter from my records (it's now four years old). Reading the letter after years of dealing with this man and the cesspool of divorce courts, evaluators, and attorneys is eye-opening.

With perspective I can see that I was extremely naive in thinking my input to Doyne would receive fair attention. He billed (and bills) himself as a "forensic psychologist"–someone who goes deeper than merely listening to complaints and helping work out problems. However, in my case he did no forensic work whatsoever–In fact, Doyne ignored all of the red flag warning signs I highlighted for him. He performed no investigation whatsoever into the very serious concerns of child and spousal abuse.

After months and thousands of dollars with no progress, shortly after I sent this letter (and after receiving yet another $2,500 bill from Doyne) I told him I was done–he was making no progress on any issue I advanced, but was instead focusing on an endless list of petty "concerns" by my ex. You can see my frustration in the letter.

His inaction was surprising–Doyne sells himself to attorneys, parents, and courts as the "high-conflict" and "forensic" (investigative) expert, and charges parents exorbitant fees for his "expertise." However, I can tell you I've worked with dozens of "forensic" experts in my career–I'm a lawyer specializing in technically complex lawsuits. Doyne's training, methodology, and opinions are worthless–as Gertrude Stein said of Los Angeles–there's no "there" there.

He's neither a forensic nor a clinician–he's a very convincing fraud. Though he charges huge bills, he did in my case no "forensic" work whatsoever. He relies heavily on the MMPI–a controversial "personality survey." Rather than do the digging required for real forensic work, he prefers the MMPI "crystal ball." Ask any "real" psychologist and you'll learn the entire profession of psychology treats

Doyne and his "evaluator" colleagues as carnival midway sharpers. I'll post more later on a book by Margaret Hagen that's available now online for free at **www.whoresofthecourt.com (http://www.whoresofthecourt.com/)**. If you're parent it's an eye-opening read.

What Doyne does well is encourage strife and perpetuate fees. In my case he did nothing whatsoever to even address the very serious "forensic" issues I raised, instead billing to "resolve" petty non-issues that any fifth grader with a two-sided coin could have resolved. When I read the letter below today I get chills recalling the terror he blindly allowed, and billed extravagantly, to overtake our divorce.

In short, the people he pitches his services to–"high conflict"–are far more likely to be harmed (and bankrupted) than helped. If you're into bloodlust, be my guest. You'll regret it soon enough. The people who have a peaceful time don't need him anyway, but he'll be happy to fill his empty appointment calendar and take your child's college fund or your next vacation fund for as long as you need him to make you feel better. (Fast forward ten years: "Thanks Mom! Thanks Dad! Feel better now that I have to take $100,000 in loans just to go to Junior College? But, hey, at least we can qualify for low income loans since you tanked everyone's savings and career in the divorce! THANKS!!!).

If you want a crook, you've found him in Doyne. If you want peace, *run*. Especially if he or she is angry, manipulative, and/or aggressive. If he/she's not (and/or you're not), you don't need Doyne anyway, so why spend the money? Resources like uptoparents.com are free and far, far more healthy.

Best of luck parents. I hope you can learn from my mistakes, and the mistakes of other victims of the San Diego divorce industry.

God Bless.

[redacted]

[redacted]

Dr. Stephen Doyne
9834 Genesee Ave Ste 321
La Jolla CA 92037

Re : [redacted] Mediation
Patient No. : 1625

Dr. Doyne:

You have asked the parties to submit proposed parenting schedules in advance of our Thursday, February 26, 2009 session. I enclose herewith a calendar detailing my proposed *compromise* schedule which I hope will be self-explanatory. Please note that the enclosed calendar is a *compromise* schedule conditioned upon [redacted]'s agreement to address the psychopathology concerns raised herein.

You have also suggested that both parties continue to advise you of our concerns regarding custody and parenting. I have provided you with detailed declarations, documentation, corroboration, and other evidence detailing my many concerns in your binder. I herewith supplement and update those issues, and enclose the San Diego County Sheriff's Report and Scripps Emergency Room Diagnostic Report for your immediate review.

In our conversation on Monday, February 23, 2009, you suggested that if I felt that you aren't "getting it" I should let you know. With respect, Dr. Doyne, I believe you aren't "getting it." We have spent many hours and *thousands* of dollars addressing [redacted]'s complaints regarding timing of drop offs, late drop-offs, location of drop offs, sick days, school pick-ups, vacation schedules, missed San Diego (but not Los Angeles) birthday parties, and an endless stream of similar complaints.

I've shared my own very serious concerns about [redacted]'s domestic violence, alcohol abuse, alienation, hysteria, and antisocial aggression. Instead of pressing these issues with you aggressively I've attempted to de-escalate conflict by making concessions at every opportunity, working with you and her toward solutions (in contrast with [redacted]'s strategy of erecting endless hurdles), and facilitating cooperative, independent, fair, and child-promoting solutions.

Yet we've not even begun to address the *far, far more serious* issues of [redacted]'s *documented* and *repeated* domestic violence, murder threats, physical abuse of [redacted], stalking, verbal abuse, alienation, and alcohol abuse evidenced in your binder and discussed herein. You have advised that we should expect to spend

[redacted]

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thousands of dollars more to address just the issues raised by [redacted] in the case. Further, we continue to share custody on a schedule *heavily skewed toward someone who is an* ***admitted*** *physical and verbal abuser, stalker, alienator, alcohol abuser, and perjerous litigation aggressor.*

The issues I am raising are of course complex issues, and as a professional negotiator myself, I understand the difficulty you face in working toward a cooperative resolution in a high conflict environment. Thank you for your attention and diligence in helping us attempt to resolve our disagreements. However, I am becoming deeply concerned that mediation will not be a cost-effective remedy to the very serious concerns I have about [redacted]'s psychopathology and [redacted]s well-being in her care.

At your suggestion, I share those concerns with you again.

This communication should be considered an offer in compromise protected under California Evidence Code Section 1152 and is submitted confidentially to you and [redacted]'s counsel.

I. Proposed Schedule:

My proposed compromise assumes [redacted] immediately enters and successfully completes the therapeutic measures I am requesting herein at section II below. These measures are appropriate to address her *ongoing pattern* of domestic violence, abuse, alienation, stalking, and harassment, including the following:

1. [redacted]s *Documented* Domestic Violence:

Extensive details of [redacted]s history of domestic violence have been provided in your binder. I also enclose the San Diego County Sherriff's report in which [redacted] *admits* to attacking me, and the Scripps Encinitas Emergency Room report diagnosing me with a nasal bone contusion caused by her attack.

In summary, in June, 2007, shortly after our separation, [redacted] returned to my home in a drunken rage and attacked me—within earshot of [redacted]'s room. Her attack caused extensive bruising on my shoulders, back, face, crotch, and foot, and a nasal bone contusion that required treatment at the Scripps Encinitas Emergency Room (detailed at tab 12 in your binder). See [redacted] also threw approximately ten glasses, plates, and a coffee pot at me. (see enclosed San Diego County Sherriff's Report). [redacted] fled from my home after I called 911, recklessly fleeing police with the trunk lid open and the car alarm blaring. She apparently fled to a Motel 6.

[redacted]

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Sherriff's deputies arrived, documented my injuries and the crime scene and advised me there was probable cause to arrest [redacted]. I declined to do so in hopes of de-escalating conflict.

Deputies contacted [redacted] the following morning. She admitted that she attacked me but claimed it was in "retaliation" for my suggestion that we have an "open relationship." [redacted] did not tell the Deputies [redacted]

Contrary to her story to police, [redacted] Another of [redacted]'s many lies.

I alone cared for [redacted] after her attack and for most of the next week.

2. [redacted]'s Abduction and Hiding of Croix:

Because of her severe psychological distress, after [redacted] abandoned our home I allowed visitation only after she promised to refrain from emotional outbursts when in his presence and agreed to a 50/50 custody schedule. [redacted] agreed, but days thereafter in July, 2007, rented an apartment, *abducted* [redacted] from his school on a day I was to pick him up, took [redacted] to her apartment while he was cared for by two teenage babysitters, and *refused to tell me where he was.* I was forced to file a motion to learn his whereabouts ***days later*** and obtain visitation. The pleadings, emails, and other documentation corroborating [redacted]'s abduction and hiding are included in your binder.

As a health care professional, you're aware of the significant risk of a perpetrator of domestic violence and child abduction and hiding in a custody analysis. ***Abduction is abuse***. ***Half*** of all spouse abusers also abuse their children. In at least half of all states (unfortunately not including California), a perpetrator of child abduction or domestic violence *cannot be awarded custody of a child.* If this case were pending in any of those states, [redacted] *would not be entitled to any custody of* [redacted] *at all.* Moreover, to my knowledge [redacted] has *refused* all attempts to treat her domestic violence issues therapeutically, ***making her an even more dangerous perpetrator***.

[redacted]'s refusal to address her ***admitted pattern of domestic violence, abduction, and abuse*** should cause great concern, and should be addressed immediately.

[redacted]

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3. [redacted]'s child abuse and threats to spank [redacted] while intoxicated:

Your binder includes details of [redacted]'s rough treatment and abuse of [redacted], and I am very concerned that this abuse continues.

(a) [redacted]'s history of abuse:

During the last two years of our marriage [redacted] would treat [redacted] roughly while angry and/or intoxicated. These incidents are detailed in your binder. On at least four occasions I witnessed [redacted] grabbing [redacted]'s wrist, arms and/or torso so roughly he would cry and/or complain to her. When I noticed her rough treatment I would intervene and suggest that I take over bedtime duties or join her in putting [redacted] to bed to assure she would not cause him additional harm. These incidents are detailed in your binder.

(b) Recent evidence of abuse by [redacted] or her parents:

Most recently, on Friday, December 26, 2008, [redacted] dropped [redacted] off at 7:30 p.m. Upon arriving at my home, [redacted] removed his jacket and began playing with his Christmas toys. Within minutes I noticed that [redacted]'s left and right wrists appeared to have minor bruising all the way around both of his wrists—as if someone had held his wrists far, far too tightly.

I asked [redacted] what caused the bruising. [redacted] gave a very strange explanation—he stated that he received the injuries while "hiking Mount Kilamanjaro" with Ms. [redacted]'s mother and father ("Grammie" and "Papa") who were visiting from [redacted]. He explained that he fell, scraping his wrists on a "crocodile tooth."

I was obviously concerned about the injuries as well as the strange explanation. I examined the injuries. [redacted] stated that he was not in any pain. I asked if [redacted] had been to see the doctor. [redacted] stated "yes" and that he received a "really big shot." [redacted] requested that band-aids be put on the injuries. [redacted] enjoys putting band-aids on even the smallest injuries and, though it did not appear that [redacted] needed band-aids for the scraping/bruising, I put one ceremonious band-aid on each wrist. I also photographed the injuries and videotaped [redacted]'s "Mount Kilamanjaro" and "crocodile tooth" explanation.

I photographed the injuries and videotaped his strange explanation. Obviously there are no alligators in San Elijo Lagoon. [redacted] has often expressed fear of [redacted]'s mother, screaming hysterically when he has to return to her. [redacted] has shared with me that her mother and father were strict disciplinarians and often physically and verbally abusive to her and he brothers during childhood. As a result, [redacted]'s injuries consistent with child abuse while in their care cause me great concern.

[redacted]

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After putting [redacted] to bed, I called [redacted] at approximately 9:00 p.m. (an hour and a half after [redacted] dropped [redacted] off). [redacted] did not answer, so I sent an email (enclosed) requesting information about [redacted]'s injuries. [redacted] did not reply until the next day, and claimed to be unaware of his injuries, which is surprising given their clearly observable nature.

[redacted] has yet to provide any explanation for the injuries to [redacted]s wrists.

Because the injuries appeared minor and [redacted] did not complain of pain, I treated him with Neosporin, band-aids, Tylenol, and observation. By Sunday 12/28 the injuries were significantly better and [redacted] did not complain of pain.

(c) [redacted]s threats to spank [redacted] while intoxicated:

[redacted] has threatened to spank [redacted] while intoxicated. In September, 2007 (after our separation), I traveled to [redacted] to manage my Mother's estate. I spoke with [redacted] on the phone every evening. On or about September 12, 2007, [redacted] was on the phone, obviously intoxicated, and became angry at [redacted]. She told him to stop what he was doing or she would spank him.

I was stunned—while a couple we had agreed *never* to use physical discipline with [redacted]—we both believe it is abusive and [redacted] does not need such harsh discipline. I was shocked and told [redacted] that she should not spank [redacted]—I was especially concerned since she was intoxicated. She became angry and hung up the phone, telling me that what she did with [redacted] was none of my business. This incident is detailed in your binder.

Though I have provided you with extensive evidence demonstrating these very serious concerns, these issues have not been addressed.

4. [redacted]'s *Two* Murder Threats:

[redacted]'s *two* murder threats have been detailed in your binder.

In summary, after our separation, on or about June 26, 2007 during a relatively calm discussion which I tried to avoid, Lynn erupted in anger and threatened to murder me, stating that she would take my Walther PPK .38 caliber pistol and murder me "in your bed" and would also murder any woman I brought into my home *after* our separation. I was so concerned that I immediately removed all ammunition from the house and moved the weapons to another location so that she could not find them.

Moreover, [redacted]'s murder threat is corroborated: She ***confessed this threat*** to Sherriff's Deputies after I called police to my home, as referenced in the enclosed Report. Reference the admission that [redacted] "threatened to harm [redacted]—this

The STUART Law Firm
4139 Via Marina Ste 1309
Marina del Rey, CA 90292

was not just "harm"—it was ***very specific murder threat*** and an ***admission*** to police.

Again, as a health care professional you're aware that specific, detailed murder threats are ***alarming red flags*** indicative of ***very serious psychopathology***. Yet this very serious threat ***remains undressed***, which should cause ***very real serious concerns for [redacted]'s safety and well-being.***

While [redacted] and I were together after separation in [redacted] attending to my Mother's burial in August, 2007, [redacted] ***again*** erupted in anger in a calm conversation about reconciliation and threatened to murder me, stating that *if she wouldn't get caught she would kill me.*

[redacted] has exploded in anger and made ***repeated and detailed threats to commit First Degree Murder*** in calm situations— ***and admitted it to Police.*** I endured her violence, threats, and abuse for years before the marriage ended. How much will [redacted] have to endure before she is required to enter treatment?

5. Violence and abuse in [redacted]'s presence:

Details of [redacted]'s *repeated* physical, verbal, and emotional outbursts in [redacted]'s presence are included in your binder.

In summary, after our separation and until she abducted [redacted] from School [redacted]—almost daily—confronted me in angry, screaming rages in front of [redacted]. Until recently when she agreed to a "just the facts" communication at exchanges she *regularly* insulted me, mocked me, stalked me, or laughed at me in front of [redacted]

What's worse, [redacted] clearly understands that this behavior is damaging to [redacted] and ***promised*** to stop making these comments in his presence, and yet *continues to criticize and attack me during exchanges.* Below are just the most recent examples of her recent alienating behavior *after* she promised to refrain from insults during exchanges:

Please note that [redacted] admits to or doesn't deny these outbursts—instead only claiming that I can't provide corroborating witnesses.

I can, and have identified to you and [redacted] the corroborating witnesses. If you have any doubts about the information or declarations already submitted I will provide you with declarations and/or depose the relevant witnesses. However, in order to avoid unnecessary costs I would urge you to address these allegations with [redacted] to understand which she believes to be inaccurate so that I may obtain the evidence which will prove her, again, to be lying to you.

[redacted]

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If you do not request corroboration I will assume you acknowledge the veracity of the declarations I have submitted.

(a) [redacted] continues to lie and criticize me, my friends, my friends' children in [redacted]'s presence:

I have detailed in your binder [redacted]'s many, many criticisms of me in [redacted]'s presence during exchanges. This behavior continues.

On February 1, 2009 I returned [redacted] to [redacted]'s residence at 7:30 p.m. per the agreed custody schedule. As we approached her home [redacted] noticed the car of [redacted], [redacted]'s housekeeper and babysitter, parked in [redacted]'s driveway. [redacted] works Saturday and Sunday nights until 11:00 p.m., and had employed [redacted] to watch [redacted] that evening.

My understanding is that [redacted] works Saturdays and Sundays from 2:00 p.m. until 11:00 p.m., Monday, Tuesday, and Wednesday, nights from 10:00 a.m. until about 8:00 p.m. I have custody of [redacted] every weekend (when [redacted] works), and [redacted] attends school from 9:00 a.m. until 2:43 p.m. every weekday.

Because of her work schedule [redacted] leaves [redacted] with friends or babysitters for *over twenty hours per week* (Sunday from about 8:00 p.m. until after he is asleep; Monday through Wednesday from the time he leaves school at 2:43 p.m. until her arrival at 8:30 p.m. [redacted]'s bedtime is 9:00 p.m.). [redacted] sees [redacted] for only in the mornings before school (from 7:30 a.m. until 9:05 a.m.) and late evenings on Monday-Wednesday. [redacted] has told you that she could alter her work schedule to spend more time with [redacted] but has declined to do so to promote her career.

[redacted] does not like [redacted] and has on many occasions *protested hysterically* when I returned him to [redacted]'s home when [redacted] was present. This is very unusual behavior as [redacted] has *never* protested spending time with other babysitters-and in fact looks forward to it. His fear of [redacted] causes me great concern that he is being abused or mistreated in her care, and I have attempted to address this with [redacted]. She refuses to discuss the matter and insists on employing [redacted], who is, coincidentally, a witness in her favor.

When [redacted] noticed [redacted]'s car in the driveway he became *extremely* upset—literally *shrieking* protest to spending time with [redacted]. I attempted to calm [redacted] until [redacted] arrived.

When [redacted] arrived we attempted to make the exchange, but [redacted] continued shrieking, resisting going into [redacted] home. [redacted] asked what was causing him to resist. I told her [redacted] saw [redacted] car and reminded her that [redacted] often became upset when he had to return to [redacted].

[redacted] became angry and stated, *in [redacted]'s presence*, "He does this every single time I drop him off to you!"

[redacted]

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This is another of [redacted]'s many, many lies *in* [redacted]'s *presence.*

In nearly two years and after over one hundred deliveries to me, [redacted] has become upset only *twice* when [redacted] returned him to me. The first time was instigated by [redacted]'s insistence on airing a dispute regarding a birthday party in front of [redacted], and the second when, according to [redacted] he awoke from a nap grumpy. Both of these incidents are documented in the avalanche of declarations [redacted] has chosen to file and the counter-declarations I've been required to file in response.

Moreover, [redacted] has become upset literally *dozens* of times when I have delivered [redacted] to [redacted]'s babysitter, [redacted] or Mother [redacted]. Many of these stressful incidents are detailed in the binder I have provided you.

We were able to calm [redacted] only after promising that he would not have to spend the night with [redacted]—[redacted] arranged for [redacted] to spend the evening with a friend instead.

(b) [redacted] tells [redacted] that his father "drunk-drives" and that he is "bad:"

On Monday, January 26—before [redacted]'s and my joint session with you—I picked [redacted] up from his school. On the way to your office, [redacted] noticed that I had a Starbucks coffee cup in the cup-holder in my car. He pointed to the cup and said "Dad, you 'drunk-drive'." I was at first confused by this statement and asked him what he meant. He stated "Mom says you drunk-drive and that you're bad."

I asked [redacted] why he thought that I "drunk drive" and he explained that his mother told him that I "drunk drive" and that drinking while driving is bad. I told him that I had coffee in my cup and asked him if he thought that drinking coffee was "drunk driving." He said "yes" and repeated "Mom says you drunk-drive and that you're bad."

This is not the comment of a five year old—[redacted] has clearly been "coached" by his mother to accuse his father of drinking and driving. The coincidence of [redacted]'s comments and our mutual joint sessions is obvious—[redacted] is indoctrinating [redacted] with negative and inaccurate opinions in an obvious attempt to 'coach' [redacted] to support her alcohol campaign. Her actions are ***ongoing***, **damaging to [redacted], manipulative, and dishonest.**

(c) [redacted] ***continues*** to involve [redacted] in divorce property dispute issues, lies to [redacted] and tells [redacted] I am a liar:

In December, 2007, police pulled [redacted] over for a moving violation and impounded the X-5 vehicle she was driving because she failed to pay registration and insurance on the vehicle for *over six months* (apparently SDPD calls this a "scofflaw violation"). She was also operating the vehicle while the passenger

[redacted]

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window (in front of [redacted]'s seat) was inoperable in the open position during winter rain, with an inoperable drivers seat belt, and in a smelly, filthy mess.

Because the car was registered in my name, I was required to expend *over five thousand dollars* to pay the late registration, her three unpaid parking tickets, the moving violation towing fees, impound fees, insurance, and repair the vehicle. [redacted] had had been driving the vehicle in this condition of disrepair with [redacted] inside. I was also required to travel to San Diego three times to conduct the above. Her decision to drive the car for *months* without registration and without working windows or seat belts is a *reckless disregard of the law and for* [redacted]'s *safety.*

On January 9, 2009, immediately after picking [redacted] up from [redacted]'s home in San Diego [redacted] stated in a confrontational tone "Mom says you stole the X-5." I asked [redacted] what he meant and he stated "Mom says you gave her the X-5 to her and took it away." In divorce proceedings [redacted] is claiming that our community property BMW X-5 was a gift to her in 2002 despite the fact that the car is registered in my name alone, was purchased with community funds, and was never a separate property gift.

I told [redacted] that his mother and I were having a disagreement about the X-5, but (as I always tell him) that we both loved him very much. Each time we got into the X-5 that weekend he wanted to talk about why I "stole" the X-5. I gently told him that I did not "steal" the X-5 and shifted the conversation to a better topic. He often continued asking detailed questions clearly indicating his mother had filled him in on "her side" of the dispute. To avoid the "theft" topic I no longer drive with [redacted] in the X-5, which is a significant burden as the vehicle is my "family-friendly" SUV.

The very next weekend, on January 16, 2008, [redacted] *accused me of lying* about the X-5. He began by again accusing me of stealing the vehicle and I attempted to change the topic, he stated "Mom says you don't always tell the truth" and repeated [redacted]'s allegations that "Mom says you stole the X-5." I again stated that his mother and I had a disagreement, but that we loved him very much, and attempted to shift the conversation to a better topic.

The alienation continues. On February 17, 2009, within minutes after [redacted] delivered [redacted] he stated "Mom says you can have the X-5—we won't need that stinky fish car anyway!" He said "now we have [redacted]'s car" ([redacted] is [redacted]'s boyfriend). I had no idea what he meant by "stinky fish car" and asked what he meant. He responded loudly, stating "We just threw those stinky fish into the back of the X-5." I changed the topic again.

Clearly [redacted] *continues to involve* [redacted] *in a property dispute, continues to encourage* [redacted] *to believe I am a liar, and continues to competitively denigrate the vehicle I transport him in.* This is a pattern and practice that [redacted] has

[redacted]

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engaged in for *over a year*. Your binder includes a detailed list of [redacted] ***unabated*** 18 month alienation campaign. [redacted] has exhibited a ***pattern and history*** criticizing me, my car (statements she comparing her [redacted] to my BMW) my female friends, *the children* of my female friends, my home, and more to [redacted] or in his presence. Despite my many requests to stop damaging [redacted], *she* ***continues to be unable to control her pattern of verbal abuse, psychological manipulation and the resulting harm to*** [redacted].

You're no doubt aware of how damaging parental alienation can be. You've cautioned that embroiling [redacted] in these proceedings will cause him to "spend years in therapy." Yet [redacted] ***continues to "coach"*** [redacted] ***in these disputes***.

Further, [redacted] is also ***violating*** instructions of Family Court Services to refrain from discussing divorce issues and ***continues*** to renege on her agreement to refrain from disparaging me to [redacted].

[redacted]s alienation and hyper-aggression ***continues unabated***.

6. Unaddressed Stalking Behavior:

[redacted] has repeatedly stalked me and several of my friends. See tab 5 in your binder. Her stalking began in July, 2007 when she broke into my home several times, arrived at my home numerous times uninvited and after I had instructed her to stay away, left threatening notes on a female friend's vehicle, sent a female friend three emails threatening her and revealing to her private details of my life, and broke into my email account and sent out over a dozen emails in my name to female friends of mine—just to touch on the highlights. My attorney was forced to send [redacted] three letters insisting that she stop her various stalking tactics.

Yet her terror continues as recently as October, 2008. See Petitioner's fifth and six supplemental declarations submitted in support of her motion to impose supervised visitation, and my respective responses thereto, which have been submitted to you through counsel. Strangely, [redacted] *confesses* to most of the details of these incidents, apparently failing to recognize that her behavior in trailing me, aggressive driving, and "camping out" at my home constitutes stalking. Her *repeated inability* to see how this behavior is inappropriate should be a resounding alarm indicating the depth of her psychopathology.

Though her stalking behavior has recently ceased since [redacted] agreed to simplify exchanges, her *numerous* incidents of stalking and threats to stalk are a significant indicator of serious psychopathology that ***has yet to be addressed***.

[redacted]

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7. [redacted]'s unaddressed alcohol abuse:

On many occasions in 2006 and 2007 when we argued [redacted] would "anger drink"—pouring one or more glasses of wine and then "down" them during or after an argument. She would often drink before taking [redacted] to bed and treat him roughly thereafter, as described above. This behavior is described in detail in your binder

8. Malicious and Reckless litigation behavior:

I have addressed this letter to you personally, copying [redacted] and her counsel, to avoid embarrassing [redacted] by filing a declaration in Court. From the outset of the litigation I have avoided attacking, criticizing, and accusing [redacted] in the public forum of divorce court out of respect for her privacy and concern for [redacted]'s relationship with his mother. [redacted] is a public figure and should avoid publicizing details of her divorce.

Unfortunately [redacted] and her attorneys (who proudly mount a two foot long plastic hammerhead shark on the wall of their office waiting room) have pursued exactly the opposite strategy—adopting the most unethical, hyper-aggressive tactics. [redacted] has filed *dozens* of public declarations to attack me at every opportunity, subpoenaed my employer, threatened motions against my employer and insisted that it produce *voluminous* private communications, emails, and confidential client records.

[redacted]'s voracious desire to "win at all costs" has become a malignancy on [redacted]'s future, costing us together over $300,000 in costs and fees to date, and is spiraling toward *twice that amount. Over $300,000* in costs and fees for a man and woman together presently earning far less than $150,000 per year. This of course does not include the *thousands* of hours of our own time and emotional resources which have been drained by [redacted] and her attorneys' hyper-aggressive and unscrupulous tactics.

Her irresponsible litigation management ***alone*** is significant proof that [redacted] suffers from very serious anger issues that impair her ability to responsibly parent [redacted]. [redacted] *needs help* understanding how her inability to control her anger, manipulativeness, and extreme aggression is *destroying* her son's future, her own future, and mine.

Hopefully Dr. Doyne you will recognize that the difference in *how* [redacted] *has litigated* speaks volumes about *how* [redacted] *will parent* our child—with anger, aggression, hostility, competitiveness, and uncooperativeness. I urge you to recommend a custody arrangement that encourages cooperation, understanding, compassion, and an intense focus on [redacted]'s future. That arrangement is 100%

[redacted]

(http://3.bp.blogspot.com/-UlLjGvwM1mM/UbJH64keEkI/AAAAAAAAAHw/DtwgqmHflnQ/s1600/REDACTED+Doyne+L

custody to father, with mother to have reasonable visitation upon successful progress toward the therapeutic measures requested in section II below.

9. Numerous unaddressed complaints:

You have requested that we identify all of our concerns. I have provided you detailed declarations in your binder and again reference the following:

(a) the hundreds of pages of pleadings and declarations and facts recited therein in your binders;

(b) the hundreds of pages of hearing transcripts in which [redacted]'s counsel has been cautioned to stop talking, asked to sit down, restrained by the Bailiff, reprimanded for inappropriately voluminous filings, rebuked by the judge for overly aggressive positions, and been ***defeated in over ten motions***;

(c) the hours of consultation and mediation we've had with you covering these and other topics;

(d) the facts I have provided or discussed with you regarding the following:

- [redacted] is ***regularly*** late to drop-offs;
- [redacted] recently claimed [redacted] is sick for two weeks in a row when he clearly was not;
- [redacted] ***regularly*** refused to abide by the Court's order regarding vacation schedules; claiming a "week" can be split into three weekends;
- [redacted] ***regularly*** refuses to deliver [redacted] when agreed or by Court order;
- [redacted] ***regularly*** refuses to cooperate informally;
- [redacted] ***regularly*** refuses to accept phone calls from me to contact [redacted]
- [redacted] ***regularly*** refuses to return my phone calls to [redacted];
- [redacted] ***regularly*** fails or refuses to identify [redacted]'s babysitters or their phone numbers so that I may contact him through them;
- [redacted] has ***consistently refused*** to deliver [redacted] to my home per Court Order while ***insisting*** that I deliver [redacted] to hers;
- [redacted] ***regularly*** sends ***excessive and unnecessary*** emails, text messages, and voicemails, when I am caring for [redacted] or driving;
- Until recently [redacted] often attempted to contact me on the telephone with angry and abusive messages;
- Until recently [redacted] has cursed at me many, many times both before and after separation in [redacted]'s presence; and

[redacted]

(http://1.bp.blogspot.com/-nB5te0Ibung/UbJH9Ol7GeI/AAAAAAAAAH4/UPcflpHBgXc/s1600/REDACTED+Doyne+letter+

- [redacted] is ***regularly*** hostile, abusive, and aggressive in and out of [redacted] presence.

I have explained to you that, unlike [redacted], I don't call your every time [redacted] commits one of these transgressions. Please understand that the fact that I don't call you doesn't mean that [redacted]'s transgressions, abuse, and manipulation don't occur **regularly**.

II. Proposed Therapeutic Measures

[redacted] has a history of emotional volatility (she has unusually large swings of anger, guilt, and sorrow), aggression, (witness her history of documented physical violence, pattern of volatile verbal abuse, admitted murder threats, and hyper-aggressive attorney selection), and confrontation (she is an extremely aggressive [redacted] has been jailed for contempt of Court, has a recent history of two aggressive confrontations with San Diego Police Department, and has filed over a dozen motions driving a high conflict divorce). The many incidents described above and in the many declarations in your binder demonstrate that Lynn's psychopathology ***continues unabated.***

Given [redacted]'s ***unaddressed*** abuse, anger, alienation, stalking, and domestic violence issues, ***she remains a very serious threat to [redacted]s safety and welfare.*** At the very least, [redacted] needs:

(a) Counseling in a batterer's program providing education and treatment for her physical abuse and verbal abuse in [redacted]'s presence;

(b) Education and treatment for her alcohol abuse;

(c) Education and treatment for her stalking behavior;

(d) Education and treatment for the harmful effects of her alienation; and

(e) Any other education, counseling, or treatment you deem appropriate.

I and my attorney have suggested that [redacted] voluntarily enter therapy to address these issues, but she has refused. [redacted]'s own attorney recommended that she seek anger management counseling. She again refused. Clearly, without treatment [redacted] ***will continue to inflict harmful and aggressive behavior on*** [redacted] escalate conflict, deflect responsibility for her own behavior, and resist all efforts to address her behavior.

[redacted]

(http://3.bp.blogspot.com/-2gcUe0Pnxvg/UbJH_RQuE5I/AAAAAAAAAIA/yGNavbG4I_w/s1600

III. Conclusion

Given [redacted]'s refusal to address her issues, it would be irresponsible of me not to seek 100% physical custody of [redacted], which I am requesting in this mediation and will seek at trial if [redacted] continues to refuse treatment.

Dr. Doyne, you have been charged to make probably the most important determination in three people's lives. Parents who love their children cherish the gift of caring, nourishing, guiding, supporting, and enjoying their child's presence and love. There is no doubt that [redacted] and I both love [redacted] immensely—he is a loving, bright, happy child with a great future.

But that future is presently in jeopardy. [redacted]'s development and success depends on [redacted]'s willingness to address her serious psychopathology, put aside petty differences, and work much harder to be a *cooperative co-parent.*

A final note about the current parenting schedule. You have indicated a desire to begin with the existing parenting schedule—I suspect because you attribute some credibility or comfort to the "status quo." However, even a cursory examination of the "status quo" in this case demonstrates that it is *wrongly* and *artificially* skewed heavily toward [redacted] because of her "coup d'etat" in *abducting* [redacted] from school without notice while he was in my sole custody, failing to advise anyone of her actions, hiding him, and playing the "alcohol" card to defend her abduction.

I respectfully submit that granting any credence to the "status quo" in the current schedule is *endorsing and encouraging the worst behavior in divorce proceedings*—dishonesty, hyper-aggression, greed, and child-endangering instability. If you've ever heard anyone complain about divorce proceedings, before you is an opportunity (hopefully one of many) to make that system more fair, honest, and child-focused. Starting fresh with a schedule that encourages honest, stable, and cooperative parenting will discourage harmful behavior, and ***foster a much more positive parenting environment for*** [redacted]

A fair schedule will greatly facilitate an out-of-court settlement and preservation of the parties' and Court resources (and thereby [redacted]'s future). An unbalanced schedule, or a schedule that does not address [redacted]'s ***many untreated issues*** will cause protracted litigation, numerous additional depositions, and unnecessary waste of the parties' and Court resources.

Thank you for your time and considerate attention.

Regards,

[redacted]

[redacted]

(http://2.bp.blogspot.com/-KMYgHs0MjTI/UbJIBdv5DKI/AAAAAAAAAII/BID_BAB-kFg/s1600/REDACTED+Doyne+letter+re+Custody+Schedule_Redacted_Page_14.jpg)

Re: Fw: Re: The bruising and scarring on Croix's wrists - Search Results - Yahoo! Mail 2/24/09 10:16 PM

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Re: Fw: Re: The bruising and scarring on [redacted]'s wrists
Wednesday, December 31, 2008 9:21 AM

[redacted]

I consider this an urgent matter - please send the photos right away.

--- On Tue, 12/30/08, [redacted] wrote:

From: [redacted]
Subject: Re: Fw: Re: The bruising and scarring on [redacted]'s wrists
To: [redacted]
Date: Tuesday, December 30, 2008, 8:32 AM

Your hysteria continues. [redacted] showed me the marks on his wrists noticed the marks on his wrists merely an hour or two after you dropped him off. They appeared to be scabbed and bruised, meaning they were at least a day old. I hadn't noticed them before he showed me. I'll send the photos when we return home.

Re: [redacted] I simply repeated the story [redacted] gave to me; he, your parents were hiking "Mount Kilamanjaro" and [redacted] was there when [redacted] fell, scraping his wrists on a crocodile tooth.

I told you he hung up the Iphone with his cheek, which is why I put him on speakerphone so he can hold it away from his face. You've never asked to be taken off speakerphone but if you prefer that the choice is yours, but keep in mind that he'll probably continue to hit delete with his cheek.

I disagree that it is unreasonable to ask you both to end your conversation when we have appointments to meet, or if it's getting near bedtime after you've spoken for a while. If you want to speak again later when we have more time, fine, which you have done several times when he didn't want to speak with you.

Finally, your endless stream of mischaracterizations, accusations, and outright lies is such a waste of everyone's time and energy. Please stop or I will block your emails again.

--- On Tue, 12/30/08, [redacted] wrote:

> From: [redacted]

http://us.mc304.mail.yahoo.com/mc/showletter?_ylc=X3oDMTUyM0FlN...NHQxED3azadY&search=1&extraargs=%26.rand%3D1977799371%26da%3D0 Page 1 of 4

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> Subject: Re: Fw: Re: The bruising and scarring on [redacted]'s wrists
> To: [redacted]
> Date: Tuesday, December 30, 2008, 7:43 AM
> There is no doubt that I would have noticed anything
> remotely close to what you described. Any injuries that
> occured happened in your care. Please send the photos right
> away. Your story doesn't add up at all and keeps
> changing - you said my brother was there when the alleged
> injuries occured but unknown to you at the time that he
> didnt make the trip. You are clearly up to something here.
> The game playing at [redacted] expense must stop.
>
> Once again You don't hesititate to lie - [redacted] clearly
> wanted to speak with me and didn't want to get off the
> phone.
>
> Your repeated refusal to take me off speaker phone makes
> having a conversation with him extremely difficult and your
> telling him you have things to do and telling him to get off
> the phone when he is on with me makes it difficult as well.
>
> --- On Sun, 12/28/08, [redacted]
> [redacted] wrote:
>
> From: [redacted]
> Subject: Re: Fw: Re: The bruising and scarring on
> [redacted]s wrists
> To: [redacted]
> Date: Sunday, December 28, 2008, 4:45 AM
>
> I'm surprised you didn't notice the marks--he
> pointed them out to me
> Friday evening soon after we arrived home. I've
> photographed them. His
> "Kilimanjaro" story involved your parents--any
> info from them? Any
> clues on what the crocodile tooth is? Odd story but I
> thought it might be
> familiar to you.
>
> [redacted] himself hung up the phone twice--it's easy to do
> on an iPhone if your
> face touches the phone on the "end call" button.
> He does it all the
> time.
>
> At any rate, as you know we called you back later in the
> day so you could speak
> with him even though he didn't want to talk to you.
>
>
> --- On Sat, 12/27/08, [redacted]
> wrote:
>
> > From: [redacted]
> > Subject: Re: Fw: Re: The bruising and scarring on
> [redacted]s wrists
> > To: [redacted]
> [redacted]
> > Date: Saturday, December 27, 2008, 12:08 PM
> > [redacted] had no injuries when I turned him over to your
> care.
> > This is very distrubing! It is also very disturbing
> that the
> > phone kept going dead with [redacted] when he was crying
> and
> > talking to me about things you were doing to him that
> he was
> > upset about. He made it very clear he wanted to talk
> with me
> > and wanted to be with me, but someone kept hanging up
> the
> > phone. Very distrubing.

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> > > --- On Sat, 12/27/08, [redacted] wrote:
> > > From: [redacted]
> > > Subject: Re: Fw: Re: The bruising and scarring on [redacted]s wrists
> > > To: [redacted]
> > > Date: Saturday, December 27, 2008, 11:30 AM
> > > I'm surprised you weren't aware--they're pretty
> > > obvious. He said he
> > > received them while hiking "Mount Kilimanjaro"
> > > and that he scrapped an
> > > "alligator tooth." Can you please let me know
> > > what happened?
> > > --- On Sat, 12/27/08, [redacted] wrote:
> > > From: [redacted]
> > > Subject: Fw: Re: The bruising and scarring on [redacted]s wrists
> > > To: [redacted]
> > > Date: Saturday, December 27, 2008, 11:08 AM
> > > You are not returning my phone calls which is making
> > > me even
> > > more concerned about Croix's well being. Please
> > > call me
> > > right away so that I can speak with him to make sure
> > > he is
> > > ok.
> > > --- On Sat, 12/27/08, [redacted] wrote:
> > > From: [redacted]
> > > Subject: Re: The bruising and scarring on [redacted]s
> > > wrists
> > > To: [redacted]
> > > Date: Saturday, December 27, 2008, 9:52 AM
> > > You need to call me right now and tell me what
> > > happened to
> > > him. This better not be some sort of demented joke.
> > > --- On Fri, 12/26/08, [redacted] wrote:
> > > From: [redacted]
> > > Subject: The bruising and scarring on Croix's wrists
> > > To: [redacted]
> > > Date: Friday, December 26, 2008, 9:15 PM

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Re: Fw: Re: The bruising and scarring on Croix's wrists – Search Results – Yahoo! Mail 2/24/09 10:16 PM

> > > I'm very concerned about the bruising and
> scarring
> > on
> > > [redacted]s left and
> > > right wrists. Please advise me ASAP what caused
> this.
> > > He
> > > says he went to the
> > > hospital and received a 'really big
> shot.'
> > > Please
> > > advise details of
> > > where he went, who he saw, and provide copies of
> all
> > > records.
> > >
> > > Thank you.

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From → Uncategorized

One Comment

1. **lexevia permalink**
   Reblogged this on Croix Stuart's Dad's Blog and commented:

   Updated from Blogger–Repost please!

   Reply
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Some Context/Advice on a Controversial Topic

May 24, 2013
Live and learn. I've seen a lot of controversy over some of the players in the San Diego divorce industry–particularly regarding Stephen Doyne. I thought rather than post on the several sites with short comments allowed there, I'd use this as a way to express some more considered observations.

It's an important topic–these custody evaluators make fortunes tying up the lives of families and children for years. They're unregulated in a hihgly controversial area for which there are no real professional standards and all related professional boards (American Psychological Association, etc.) won't have anything to do with them. In short, they're bastard children of the the sciences they affiliate.
And for good reason–there's no science behind what they do. Problem is, most parents are simply not sophisticated enough (or are too angry, freightened, greedy, etc.) to realize it's a scam until it's too late. If this is you, sorry–you probably are getting what you deserve, but at least now there's a place we can share ideas more constructively in hopes that more unsuspecting parents don't fall into this trap.
So, please feel free to post your detailed reviews/comments of Dr. Stephen Doyne and any other child custody evaluator–but please be sure to make suggestions to parents going through the process–how can they benefit from the experience of those of us who've been through it? What advice can you leave for others?
That being said-here's my contribution (in lieu of many posts on other sites):
Lot of bad reviews for this guy all over the net, and a lot of controversy about why. I've been in the middle of several discussions about the guy and have picked up a few useful observations that might help you sort out what's true, what's false, and why he's so controversial.
Several factors at work, most of which center on disconnects between what people expect him to be (for whatever reason—I'll talk about this later) and what he really is. In other words, most people don't understand what he does, why he does it, and how.
First, most people agree he's a nice guy—at least at first. He's elderly—comes across as a kind uncle. He's intelligent. Plenty of training and degrees. If he wanted to do more traditional clinical therapy (which is NOT what he does—take note), he'd probably be pretty good as a "motivator"—in other words "Let's talk about your problems, I see somesolutions, now let's work on improving you." He's NOT a "client-centered" therapist—one who more "passively" let's the client work around his/her own problems with "gentle" prodding like "so, you want to kill your mother. Hmm, that's interesting. So why do you feel that way?" in hopes that the client will eventually come to realize he's a homicidal maniac and ask for help on his own.
But he's not a good "therapist": Doyne's more of a "coach": "So, you want to kill you mother. That's kind of a bad idea. Let's not do that for now. Now, if you keep coming back I have a plan we can work on together to get you on the right track." In other words, he's a typical "guy"—"I see your problem. I have the solution. Trust me and I'll get you through it even though it's going to hurt."

Fair enough—sounds rational in this context I agree. However, in divorce setting, "Finding the problem" is far more tricky, and even dangerous. Fact is, by the time people get to his office they've already been through hell and are as likely to just kill the other person as put in the effort to solve the many problems Doyne can "find" and "help you fix." In that context, he's role as "judge and jury" for problem identification and solution is likely to result in exactly the dynamic he creates—hostility and accusation in hopes of (in his own words) "winning" custody by damning the "opponent" spouse.
So his m.o. (and I've heard from dozens of parents and even he'll admit it if you ask) is to "fix" the chief complainer by "fixing" the target; In other words—"give in to him/her, shape up a little, and she'll let you stick around." In most cases, this means empowering the person who identifies the most problems with the other spouse. Side with the complainer and the complaints go away. Everyone's happy. Right?
We all know where this story leads. Enable mole hills and you end up with mountains. Now, for Doyne, this makes financial sense: Problems mean money. And, remember, he's not only good at (being paid to) find problems, but he's also "right there with you" to help the "problem child" through all those problems he never knew he had. For years ($$$) and years ($$$$$) and years ($$$$$$$$) to come. Who could ask for a better friend than that?
Whether Doyne truly believes his "clients" actually have problems or not is irrelevant to a profitable practice—as long as both clients are convinced (or deluded, or coerced) into believing they do (or at least one does and the other is too frightened to bail out). Does he care? Probably, so long as he's paid to sit around and you're stupid enough to keep paying him to listen (when probably everybody else is sick of hearing your opinions about how everyone but you—but particularly your ex—is responsible for your unhappiness).
Now, it some contexts this can be the solution: "Yes, I have anger issues. Yes I want to see the kids. Yes I'll pay you to make that happen and work with you." That guy may find it worth while to spend a fortune with Doyne, and if he's already in a corner with the court custody process, he may have little choice if he wants to see his kids again. In other words, he's been beaten into submission to a solution he didn't want, doesn't need, and costs a fortune. Indentured servitude—Only mamma (or daddy) knows what's best for you.
Problem is, most people don't know this going in—or at least the unsuspecting likely target isn't warned ahead of time. If you, like many, enter the process with the understanding that Doyne's going to help make the transition out of the relationship easier, you're wrong. If both parties just need coordination to arrange custody schedules, flipping a coin is a better problem solver. Doyne's role, as he sees it, is to "save" one or more parents from the "risk" of losing custody (which he controls) by "recommending" tight controls, schedules, and tons of "homework" (including his vast network of related "services") for "problem" parents. In other words, he starts with the assumption that one or both are problems and need lots of work. His job is to find problems (real or otherwise), prepare complicated (and expensive) "self-help" solutions, tie one or both parents to the program with threats of custody swings, and sit back and send bills to watch 'em sweat. Unless you're already stellar parents (in which case you wouldn't be here) you're likely to end up as fodder for a very expensive, harmful system. If either of you are fault-finding, negative, exaggerator/liars, or manipulative, Doyne's going to retire early on your child's college fund.
In short, Doyne (and the attorneys that use him) sells an enormously expensive, entirely unnecessary, and often disastrously harmful "menu" of stuff that's almost always bad for you. Most parents don't realize this until they're stuck in it and it's too late to get out (he'll jerk custody if you bail). Best solution is to avoid any of these "evaluators" and work with more positive approaches such as

uptoparents (google it) and individual (not Doyne or marital—it's too hostile) therapy or with a religious adviser for any issues you have, and trust me—you have issues, but joint therapy during divorce is potentially disastrous).
Remember: "Man/Woman" problems have been around at least since the human fall from grace—you're not the first to find that mate of yours to be a pain. The way out is simple: "To err is human, to forgive, divine."
Good luck parents. Don't blame, give love, and get out as fast as you can!

From → Uncategorized

Leave a Comment

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 5

Carpe Dicta

8 have him in circles

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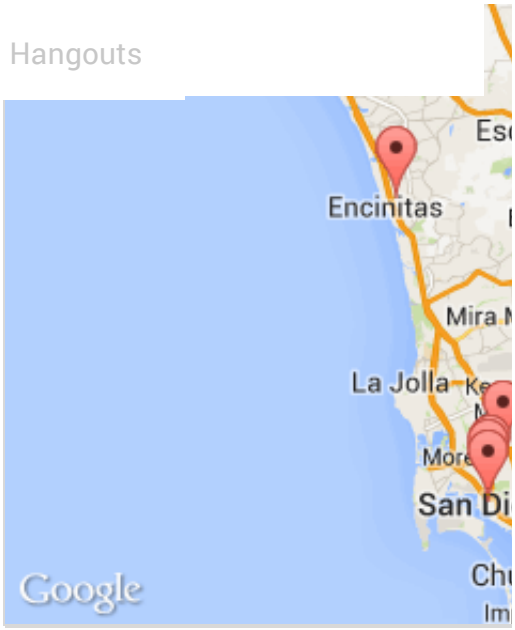
Marilyn Bierer is another of the most disliked divorce lawyers in San Diego. They say "divorce can be tough" and it's true, especially when one or the other is malicious. Ergo "messy divorce" (ergo, divorce lawyers driving Mercedes while both you and your ex wait in line at the bankruptcy attorney's office). However in Bierer's case even her clients give her bad reviews. She's been accused of being "rude to her clients, blows up in court, embarrasses everyone"

One observer actually appreciated Bierer's attitude--because it hurt his ex-wife--Bierer's client:

"My ex hired her--she recommended a few "dirty tricks" right off the bat to gain advantage--it worked until the judge unwound the



issues and slammed Bierer with huge sanctions, loss of custody, and a lashing. She went nuts--the courtroom bailiff had to restrain her, my ex melted into tears, major drama. Fired Bierer and hired someone equally bad but even more expensive. End of the say she got soaked for over $300,000 in fees and no money in settlement. Pretty much ruined her life."

We detected reivew fraud with Bierer--many of the "5 star" reviews on lawyerratingz are easy to detect as posted by Bierer herself.

There are many low-conflict alternatives--look into collaborative or cooperative law. One client advises "Save yourself some money and quickly pass on this one."Old school" rubes of the seventies era women's revolution divorce to the death warriors like Bierer are dinosaurs." It's a good observation. There are alternatives to warfare that most people aren't aware of, or unfortunately are too blinded by emotion to reach out for. It's criminal for divorce attorneys, but they can easily take advantage of either their client or their client's family and ex if one or both are blinded by rage. There's good reading on this topic online at the Facebook page of "taken into custody" and "angiemedia". A free website we often recommend is uptoparents.

If you want blood, you're playing a very high stakes game, and there are more competent lawyers at this price level. Your "attack" lawyers won't tell you about their many failures, but we've uncovered them and they are catastrophic. If you want an efficient, cooperative divorce, you're in the wrong section of the telephone book with Bierer.

Good Luck San Diego!
•••

Public - a month ago

Ashworth Blanchet Christenson: Kalemkiarian Sharon

2250 3rd Ave, San Diego, CA 92101

Law Office of Lori Cla

2728 5th Ave, San Diego, CA 92103

Amateurs--literally. Vivano's firm lacks
We don't believe any of them have the
specialist certification. Several Carpe
her in action as clients or opponents, a
unimpressed on either side. Inattentiv
situations. Perhaps a good negotiator
but lacks muscle for litigation. Style o
Attitude without intelligence. Poorly pl
attention. One of our male members fo
downright hostile. Perhaps women will
•••

Public - a month ago

Love and Alvarez Psy (Lori Love, Ph.D.)

535 Encinitas Blvd #110, Encinitas, Calif

Love is another of the many despised
Diego. She works closely with the wor
Doyne, but has been reported to have
Her attention to collaborative and coo
perceived as more parent friendly, and
antipathy of Doyne and others. Overall
and welcome feedback from other par

Carpe Dicta

Public - a month ago

One of the few professional firms in the generally amateur San Diego divorce market. Blanchet is a stalwart and very experienced professional. She's also very expensive and likely to churn or let a flailing dissolution run amok while on the clock. Perhaps her many years have led her into a rut of "another one bites the dust" family law. "Much heat but little light" for this industry, and Blanchet, though classier than most, still illuminates dimly. It's not hard to stand out as the least dishonest thief in the bunch, and since you have few choices, she's probably less likely to screw up your life than most. Set a budget and tell her you know about the lawsuits against her to keep her honest.

Good luck.

•••

Public - a month ago

Office of the City Attorney

1200 3rd Ave #1620, San Diego, CA 92101

San Diego City Attorney Jan Goldsmith has the honor of overseeing the most aggressive misdemeanor prosecution shop in America. Express your self in sidewalk chalk? Go to jail. Picket a bank? That's stalking--go to jail. Express yourself as Mayor? Shame on you Bob--who put YOU in charge around here? Wait--never mind. Criticize your wife? Go to jail. Leak confidential city business to the press? 'atta boy! Beat up your husband? Nice work! Free speech? Don't need it here in America's finest city--just trust us. Pension crisis? What crisis--we have plenty of hotel, property, and use taxes to build America's angriest fattest--er--finest government!

Goldsmith's "limp fist" rule makes even his ferrets appear competent. Perhaps the voters of San Diego should take a hint from Mayor Filner and apply their own line item personnel cuts to the City Attorney's budget--starting at the top.

•••

Public - a month ago

TAGS

Cole Stuart, family court, lisa schall, lynn stuart, michael groch, stephen doyne

New Attorney, Evaluator, Mediator, Judge review site on Google+

July 14, 2013
w (www.carpedicta.com)ww.carpedicta.com

Parents–join our partner Carpe Dicta at their new website **http://www.carpedicta.com (http://www.carpedicta.com)**, devoted to posting, commenting, and discussing family court problem children. They've already posted summaries of online reviews, contact information, election info., and helpful tips in dealing with personalities involved. You can learn about Dr. Stephen Doyne, Judge Michael Groch, Judge Lorna Alksne, Sharon Blanchet, Lori Clark-Viviano, Dr. Lori Love, Jeffrey Fritz, Marilyn Bierer, and Jan Goldsmith. Coming soon are even more of the despised names from the San Diego divorce industry. If this means you–you're in luck! But we hope you've been good because you're about to become famous. Forever.

From → Custody Mediators/Evaluators, Divorce, Parenting

One Comment

1. **Cole Stuart permalink**
   Reblogged this on Just Hetero.

   Reply
   Edit

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 21

October 2, 2012

Mr. Brad Batson
Commission on Judicial Performance
455 Golden Gate Ave., Ste. 21440
San Francisco, CA 94102-3660

Re: Stuart Complaint re: Schall, Alksue et al.

Mr. Batson:

Thank you for your letter on October 4 and the enclosure of your letter dated February 10, 2012. I had not previously received the February notice.

I understand there are restrictions on what the Commission may disclose apart from the notice, but if you could provide any further detailed such as a general description of what "corrective action" was taken, when, or any other details, I would be grateful.

Thank you also for enclosing the annual report. It is helpful. Again, if other public information regarding the Commission's charter or other business is available, would you be so kind as to drop a copy in the mail? The documents identified in Appendix I (Constitution Article VI, Sections 8, 18 *et seq.*) come to mind. Thank your again.

Regarding the documents I requested, your comments remind me of the volume I previously sent, most of which are not necessary. I would be most interested in documents generated in the Commission's investigation which you or I have not already exchanged. However, under the circumstances, our correspondence (without voluminous enclosures) would also be useful.

I hope that makes sense. If so, I am happy to forward a check for any copying expenses if you would provide an estimate in advance or an invoice with delivery.

As for delivery, simply send a copy to David Pierce – we will handle dissemination from here.

Thank you again for your courtesies. Do not hesitate to reply with questions.

Sincerely

/S/

Colbern Stuart

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Exhibits to Complaint

Exhibit 24

Colbern C. Stuart, III

By *Lexevia*
Created *10/16/2009 - 00:40*

CEO, Managing Partner
Intellectual Property
Los Angeles
1.877.LEXEVIA
D: 310.746.6112
F: 424.228.5272
Cole.Stuart@lexevia.com [2]

[1]

Favorite Quote:

“And whosoever digeth a pit, shall fall in it. And whosever digeth a pith, shall bury in it. If you are a big tree, we are a small axe. Ready to cut you down, very sharp, to cut you down." ~ *Bob Marley*

Before Lexevia: Shareholder, Heller, Ehrman; Partner, Katten Muchin, Roseman

Mr. Stuart is the founder and CEO of Lexevia. He focuses his practice on Intellectual Property, with a depth of experience in patent and trademark infringement litigation, theft of trade secrets and unfair business practice litigation, consumer class action litigation, licensing disputes and strategic business consulting. He regularly works with technology and software companies and advises clients regarding Internet and new media matters, consumer and child protection regulation, privacy, digital copyright and e-mail "spam" regulation.

Mr. Stuart has worked at the United States Attorneys office for the Disrtict of Columbia prosecuting felony crimes, including homicide, sexual assault, drug trafficking, grand theft, and related crimes. He attended a year abroad at Oxford University in Oxford, England and has undertaken assignments in Germany, Switzerland, Italy, China, and India. He travels extensively in his work for his many international clients.

He has been a Partner and Associate at several large international firms, including Paul Hastings; Katten, Muchin, Rosenman; Brobeck, Phleger,&Harrison; and Heller Ehrman. Mr. Stuart has also been a feature actor in several award-winning short films, cast as a news anchor, a corporate CEO, a mean boss, a father, an MMA fight promoter, and, not surprisingly, a lawyer.

Mr. Stuart founded Lexevia in 2008 to create an evolved law firm. Lexevia is a platform for the most talented attorneys to practice law outside of a traditional big firm environment.

Lexevia uses the latest research, networking, and communication technologies to provide the same high level of service as we did at large firms, but far, far more efficiently. The savings in overhead, inefficiency, and waste are passed along directly to Lexevia clients.

Lexevia - an evolution in law.

Engagements include:

M.G.M. et al. v. Grokster et. al. [3] Representation of peer-to-peer technology company in groundbreaking copyright litigation establishing new grounds for contributory copyright liability for software manufacturers.

Microsoft v. Lindows.com, Inc. [4] Successful representation of a software company in the first challenge against Microsoft Corporation to its claim to the WINDOWS trademark. Mr. Stuart and his team of litigators established that the WINDOWS mark was "generic" and therefore unenforceable. Microsoft paid Mr. Stuart's client $20 million to settle the lawsuit.

Oakley v. Sunglass Hut, Inc. [5] Representation of Luxotica, SPA, the world's largest sunglass manufacturer, in a massive patent infringement litigation case involving advanced optics technology. Mr. Stuart's case resolved after a favorable ruling before the Court of Appeals for the Federal Circuit.

Mr. Stuart regularly represents high-tech companies in a wide variety of matters, including intellectual property, corporate counseling, transactions, marketing strategies, and financing.

In the News

Did Microsoft just sneakily patent an open-source tool? [6]

Raging through the tech blogs Thursday was a Groklaw report that Microsoft seemingly has sneakily patented an open-source technology called "sudo."

Microsoft tries blocking Word ban; gives appeal notice [7]

Microsoft on Tuesday filed an emergency motion to delay a Texas judge's ban on selling one of its flagship products, Word, and gave official notice that it will appeal his ruling that the software giant infringed a patent held by a small Canadian company.

Should Microsoft worry about judge's ban on Word? [8]

Microsoft may have a doozy of a case on its hands after a Texas judge ruled earlier this week that it can no longer sell Word, in the ubiquitous program's current form, in the United States.

Practice Areas

Intellectual Property
Corporate Counseling
Corporate Transactions
Licensing
Civil Litigation
Antitrust

Education and Honors

J.D., Cum Laude, California Western School of Law, 1995

Executive Editor, California Western Law Review

George M. Gafford Trial Team-National Semifinals

Brian D. Malloy Scholarship

B.A. Southern Methodist University, 1990

President, Pi Kappa Alpha Fraternity

Admitted in:

California
Nevada
Arizona

Court Admissions:

United States Court of Appeals Ninth Circuit
United States District Court
Central District of California
Northern District of California
Southern District of California

Memberships

State Bar of California, State Bar of Arizona, State Bar of Nevada, Los Angeles County Bar Association, Los Angeles County Intellectual Property Lawyers Association, San Diego County Bar Association, San Diego Intellectual Property Lawyer's Association, Orange County Intellectual Property Lawyers Association, Inns of Court

Publications:

"Discovery and Privilege", Chapter 6, *Patent Litigation*, Practicing Law Institute, Laurence Pretty, ed. 2003, 2004, 2005, 2006

"MGM v. Grokster: Multimillion-Dollar Questions That the Supreme Court Did Not Answer" *Intellectual Property&Technology Law Journal*

"IP Gains Importance in the Valuation of Company Assets" *Intellectual Property Today*, May, 2004

"Don't Fear the Reaper: An Insurer's Liability for a Punitive Damages Award Against its Insured," November, 2000

"Mean, Stupid Defendants Jarring Our Constitutional Sensibilities: Due Process Limits on Punitive Damages After TXO Production v. Alliance Resources," 30 Cal. W. L. Rev. 313 *California Western Law Review* 1994

"The Ghost In the Machine--Business Method Patents" 2004 *California State Bar Intellectual Property Summit*

Links:
[1] http://lexevia.com/node/10
[2] mailto:Cole.Stuart@lexevia.com
[3] http://w2.eff.org/IP/P2P/MGM_v_Grokster/04-480.pdf
[4] http://en.wikipedia.org /wiki/Microsoft_vs._Lindows
[5] http://www.ll.georgetown.edu/federal/judicial/fed/opinions/02opinions/02-1132.html
[6] http://blog.seattlepi.com/microsoft/archives/184980.asp
[7] http://blog.seattlepi.com/microsoft/archives/176793.asp
[8] http://blog.seattlepi.com/microsoft/archives/176441.asp

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Exhibit 26

SAN DIEGO COUNTY BAR ASSOCIATION

THE CERTIFIED FAMILY LAW SPECIALISTS COMMITTEE of the
SAN DIEGO COUNTY BAR ASSOCIATION presents:

SPRING SEMINAR 2010

Litigants Behaving Badly: Do Court Ordered Services Work?

Thursday, April 15, 2010
6:00 PM – 9:00 PM

San Diego County Bar Association
1333 Seventh Avenue, San Diego, CA 92101

Featuring: Hon. William McAdam; Laury Baldwin, CLS-F; Larry Corrigan, M.S.W.; Stephen Doyne, Ph.D.; Meredith Levin, CLS-F; Lori Love, Ph.D.; Robert Simon, Ph.D.; Janis Stocks, CLS-F

Chair: Carole Baldwin, CLS-F

Join our judicial officers, attorneys and other mental health professionals as they discuss why courts order various counseling type programs, the effectiveness of these programs, how to measure the success of these programs and how attorneys can advise their clients.

Panelists will address the following court ordered programs:

- Counseling
- Psycho-Sexual Evaluations
- Parenting Classes
- Substance Abuse Treatment
- Anger Management

→ This seminar qualifies for 3.0 general MCLE credits. Specialization credits in Family Law also apply. ←

Spring Seminar 2010 – Thursday, April 15, 2010 – 6:00 PM – 9:00 PM – SDCBA Bar Center

Complete this form in its entirety (only one registrant per form). Payment is required at the time of registration. Send checks to: SDCBA – CLE (address above). Early registrations must be received by **April 8, 2010**.

___ **$ 105.00** SDCBA Members ($125 after April 8th)
___ **$ 125.00** Non-SDCBA Members ($145 after April 8th)
___ **$ 85.00** Attorneys practicing less than 3 years ($105 after April 8th)
___ **$ 75.00** Family Law Facilitator/DCSS Attorney/Student/Paralegal employed by Bar member ($95 after April 8th)

NAME_____ **BAR #**_____

ADDRESS_____

CITY/STATE/ZIP_____

TELEPHONE_____ **E-MAIL**_____

CHECK #_____ **(Payable to the SDCBA)**

Credit card registrations must be completed online: http://www.sdcba.org/springseminar.

Early registrations are due by April 8, 2010. This seminar will not be videotaped or audio taped. Late registrants and walk-ins will incur the higher payment rate. Walk-ins will be accommodated as space allows. Registrations will be held until 15 minutes after published seminar start time. "San Diego County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California." **No refunds available within 72 hours of the seminar.**

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

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Exhibit 27

EVALUATORS Behaving Badly!

If YOU Don't Follow The LAW Why Would WE?

CALIFORNIA COALITION FAMILIES & CHILDREN

JUDGES Behaving Badly!

If YOU Don't Follow The LAW Why Would WE?

CALIFORNIA COALITION FAMILIES & CHILDREN

Retire DOYNE OR Adjourn YOUR Career!

CALIFORNIA COALITION FAMILIES & CHILDREN

FAMILY COURTS HURT *Families & Children In Crisis*

CALIFORNIA COALITION

CFC

FAMILIES & CHILDREN

Evaluators & Attorneys HURT Families & Children

CALIFORNIA COALITION

CFC

FAMILIES & CHILDREN

FAMILY LAW IS CHILD TRAFFICKING

CALIFORNIA COALITION FAMILIES & CHILDREN

DOYNE

LIES on his CV,

LIES to his Clients,

LIES to the IRS, &

LIES TO YOU!

CALIFORNIA COALITION

CFC

FAMILIES & CHILDREN

FAMILY COURT

Greed Destroys

The Future of

Families &

Children

CALIFORNIA COALITION

FAMILIES & CHILDREN

FAMILY LAW BEHAVING BADLY

Greed Destroys Families & Children

CALIFORNIA COALITION

FAMILIES & CHILDREN

2 Dead Children,

6 Dead Parents,

1 Brain-Dead

Court

CALIFORNIA COALITION

FAMILIES & CHILDREN

FCS IS CHILD TRAFFICKING

CALIFORNIA COALITION FAMILIES & CHILDREN

Dr. Doyne is Dr. DONE

CALIFORNIA COALITION

You're Welcome

Ashworth-Blanchet Recommend Doyne; Probation and Sued for Malpractice.

Who's Next?

CALIFORNIA COALITION

FAMILIES & CHILDREN

Save Yourself From Malpractice At

WWW.UPTOPARENTS.ORG

CALIFORNIA COALITION FAMILIES & CHILDREN

You're Welcome

Lori Love

Sued for Fraud

& Overbilling

Who's Next?

CALIFORNIA COALITION

FAMILIES & CHILDREN

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

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Exhibit 28

CALIFORNIA COALITION

FAMILIES & CHILDREN

Education
Compassion
Action

San Diego Family Courts and Professionals are trained and paid to resolve family disputes efficiently. They rarely do. Why?

Courts, attorneys, and service providers are ineffective in assisting families in transition. In fact, they *encourage* conflict and expense that harms litigants, their children, and your community.

Reducing conflict may seem impossible. But with a few *readily available and free alternatives*, you can make a difference. Here's the truth you won't hear from tonight's panel by the litigants whom you failed to invite.

If the only tool you have is a hammer, every problem looks like a nail.
~Abraham Maslow

You were hired to assist litigants in efficiently transitioning through a family dissolution.

Litigants come to you hurt, angry, and fearful about an uncertain future for the most important things in their lives: their children, family, and financial security. Unmanaged, that uncertainty and fear leads to conflict.

Your duty to your client and community is to end conflict, end fear, and let them move on.

Yet Family Courts presently offer few tools to calm emotions, while providing abundant tools to make them even more destructive. Courts and evaluators sit in passive judgment, yet rarely render guidance. Evaluators are *scientifically incapable* of identifying the "better" parent—yet earn millions from desperate parents by pretending they can. Attorneys rarely end conflict, but regularly use courts to *encourage* litigation, *absorb* resources, and *harm their clients, children, and community.*

California Coalition
For Families and Children
www.ccfconline.net

You Can Help

Readily-Available, Free Alternatives to Conflict That You Can Implement Today

1. **Change Your Attitude:** You don't work in a sterile Court of Appeals. You work in people's lives. Divorce hurts. Families in transition need healing and support—not sharp advocacy, endless services, and harsh judgment. Give compassion in their crisis.

2. **Change Your Procedures:** Easy OSCs and unpredictable outcomes *encourage* litigation, *drive* costs, *increase* conflict, and *facilitate abuse*. Give restraint and predictability.

3. **Change Your Resources:** Books in a waiting room are useless. Free, easy resources like www.uptoparents.org focus parents on working together in promoting their child's best interests independently Give education and direction to establish long-term peace.

4. **Change Peoples' Lives:** Years after divorce, *both* parents will say "it's a cesspool benefiting attorneys, evaluators, and courts, but *immeasurably harmed me and my children*." In other words, *you're not doing your job.* At the end of your career, will you be able to say "I helped to prevent that harm and to achieve peace and prosperity for my community, clients, and their families?"

We will. Join us.

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Exhibit 30

FAMILY LAW
BEHAVING
BADLY
Greed Destroys
Families &
Children
CALIFORNIA COALITION
CFC
FAMILIES & CHILDREN
EVALUATORS
Behaving
Badly!
If YOU Don't
Follow The LAW
Why Would WE?
CFC
Five Star Parking
P
EVALUATORS
Behaving Badly!
If OU Don't
Foll w The LAW
Why Would WE?
CFC
Ashworth-Blanchet
Recommend Doyne
Probation and Sued
for Malpractice.
Who's Next?
DOYNE
LIES to the CC
LIES to the Court
LIES to the DCFS
LIES to YOU!
Parking Rates

Evaluators & Attorneys HURT Families & Children

FAMILY COURTS HURT Families & Children In Crisis

Dr. Doyne is Dr. DONE

You're Welcome

FAMILY LAW IS CHILD TRAFFICKING

GYM NOW OPEN

FAMILY COURT
Greed Destroys
The Future of
Families &
Children

2 Dead Children,
6 Dead Parents,
1 Brain-Dead
Court

Retire DOYNE
OR Adjourn
YOUR Career!

DOYNE
LIES on his CV,
LIES to his Clients,
LIES to the IRS, &
LIES TO YOU!

CRAMP
WHEELS
TO CURB
SET BRAKES

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Exhibit 35

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA *vs.* DEFENDANT:	
CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE **(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 273.5(i), and 646.9(k))** ☐ **ORDER UNDER PENAL CODE, § 136.2** ☐ **MODIFICATION** ☐ **PROBATION CONDITION ORDER (Pen. Code, § 1203.097)** **ORDER UNDER:** ☐ **PENAL CODE, § 273.5(i)** ☐ **PENAL CODE, § 646.9(k)**	CASE NUMBER: CLETS ENTRY BY:

This Order May Take Precedence Over Other Conflicting Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED *(complete name):* _____

Sex: ☐ M ☐ F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

☐ The defendant is a peace officer with _____ Department: _____

1. This proceeding was heard on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____ by judicial officer *(name):* _____
2. This order expires on (*date):* _____ If no date is listed, this order expires three years from the date of issuance.
3. ☐ Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON: _____
5. ☐ For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
7. **must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. ☐ The court finds good cause not to make the order in item 9.
10. ☐ must have no personal, electronic, telephonic, or written contact with the protected persons named above.
11. ☐ must have no contact with the protected persons named above through a third party, except an attorney of record.
12. ☐ must not come within _____ yards of the protected persons and animals named above.
13. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No. _____, issued on *(date):* _____, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
14. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
15. ☐ must not take, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in paragraph 5.
16. ☐ The protected persons may record any prohibited communications made by the restrained person.
17. Other orders including stay-away orders from specific locations:

Date: _____

_____
JUDICIAL OFFICER Department/Division:

WARNINGS AND NOTICES

1. Except as provided in this paragraph, this order takes precedence over any conflicting protective order, visitation order, or any other court order if the protected person is a victim of domestic violence under Penal Code section 13700. However, this order does not take precedence if (1) there is a more restrictive *Emergency Protective Order* (form EPO-001) restraining and protecting the same parties as in this order, or (2) if box 13 or 14 has been checked on page 1 of this order. (Pen. Code, § 136.2(e)(2).)

2. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).

3. **NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a $1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)**

4. **ENFORCING THIS ORDER IN CALIFORNIA**
   - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
   - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

5. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.

6. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
   - These orders are effective as of the date they were signed by a judicial officer.
   - These orders expire as explained in item 2 on the reverse.
   - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
   - Orders under Penal Code section 1203.097 are probationary orders and the court has jurisdiction as long as the defendant is on probation. (Pen. Code, § 1203.097(a)(2).)
   - Orders under Penal Code sections 273.5 and 646.9 are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, §§ 273.5(i) and 646.9(k).)
   - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.

7. **CHILD CUSTODY AND VISITATION**
   - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
   - Unless box 14 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
   - If box 13 or 14 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

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Exhibit 37

I

Whores of the Court

Psychologists as De Facto
Triers of Fact in Our Justice System

> In February 1992, [Eileen Lipsker] came to the Fairmont Hotel ballroom in San Francisco to explain the process of her memory return and her testimony at the trial to the American College of Psychiatrists. Afterward, the psychiatrists, including some of the most distinguished members of the profession in this country, crowded around Eileen. They believed her, they told her. They admired her. They felt intense compassion for her ordeal. At first, Eileen's big light-brown eyes looked doubtful. But along came another psychiatrist, and another, and yet another. With each one of their congratulations, Eileen brightened a bit. And soon she was glowing like the moon.
>
> Lenore Terr, Unchained Memories, 1994

THE PSYCHOLOGY-BASED COURT CASE

One afternoon in early 1989, Eileen Franklin Lipsker, a young American mother, gazed deeply into her daughter's dark eyes and fell directly into a nightmare twenty years past. The merest accident of expression in her daughter's eyes brought Eileen face-to-face with another child, long dead, brutally murdered in California in 1969. With the vision of the dead child's face as the key, a whole vault of terrible memories of that long ago death became unlocked in Eileen Franklin's mind and she began to remember, slowly at first, but then

faster and faster, what her mind had fought so hard to keep hidden from view—that as a child herself she had witnessed the murder of her little friend, Susan Nason, at the hands of Eileen's own father, George Franklin. When these long-repressed memories were fully recovered and Eileen knew what she had, she also knew what she had to do. She brought before the legal authorities in California her memory of that terrible trauma from so long ago.

On November 28, 1989, the police arrested George Franklin and charged him with the murder of nine-year-old Susan Nason twenty years before.

There was not much direct evidence in this case. Susan's body had been found eight weeks after the murder in a rather remote wooded area. The material details of the case were widely published in the media—that Susan's head had been crushed by a rock, that she had worn a silver ring on her finger, that she was found lying not far from an old mattress—but at the time of the crime, no circumstantial evidence tied any particular individual to the crime and no eyewitnesses came forward.

Twenty years later there was still not much evidence other than Eileen's recovered memories. She said her father committed the murder; he said he did not. No one else saw anything. Eileen claimed that the trauma of witnessing the horrifying murder of her little friend had been so great that she repressed the memory for all those years and then, quite inexplicably, recovered it twenty years later.

Given the lack of physical evidence and the heavy reliance on psychological claims in this case, it is not surprising that in Franklin's trial for murder the bulk of the "evidence" presented was the opinion of experts—psychiatrists and psychologists—concerning the repression and recovery of memory, and the consequent reliability of Eileen's accusations against her father. Dr. Lenore Terr, a California psychiatrist, was the prosecution's principal witness in explaining to the court the obscure psychological phenomena the jury had to consider in weighing the case against George Franklin.

The prosecution's case rested on certain psychopolitical assumptions that have become popular in some segments of the mental health community. It is assumed that children who experience terrible trauma, like witnessing murder or experiencing sex abuse, often suffer, like some Vietnam vets, from post traumatic stress syndrome. It is also said

that one of the most common features of this stress disorder is the loss of the memory of the precipitating traumatic event—what psychiatrists call "repression" of the traumatic memories—because the mind seeks unconsciously to protect the person from having to reexperience the trauma in memory. Lastly, it is assumed that repressed memories can be recovered in the proper conditions, usually in the context of therapy, but perhaps through an accidental triggering as in Eileen's case.

These psychological assumptions and countless others like them—lacking any scientific basis but embraced unquestionably by their adherents—over the last twenty-five years have crept insidiously into our legal system, into legislative bodies and courtrooms all over the country.

In George Franklin's case, the judge and jury accepted as scientific fact Dr. Terr's testimony regarding trauma theory, repression, and recovered memories; they took as truth the startlingly assured statements of this psychological expert about historical facts and mental mix-ups, and her confident explanations of the way the mind works. On November 30, 1990, based on the word of his estranged daughter and the testimony of this expert psychological witness, George Franklin was convicted of murder and sentenced to life in prison.

Dr. Terr writes that when Elaine Tipton, the prosecutor, asked several jurors after the trial what led to their decision, "She told me that a number of them said my testimony had convinced them. I learned something from that: sometimes hypotheticals are just as compelling as specifics" (Terr 1994, p. 58).

Did George Franklin murder Susan Nason? Was Eileen really so scared by the awful event she witnessed that she immediately lost all memory of it, continuing to pal around happily with her father as before, riding around the state unconcernedly in the same vehicle where she supposedly witnessed the assault on her little friend? Can a memory really be blown out like a candle in an instant, only to be relit by accident twenty years down the line? When Dr. Terr lectured the courtroom in California on the mysterious operations of the mind that would permit just such a sequence of events to transpire, should the court have accepted what she said as reliable truth?

All over America today, psychological professionals like Lenore Terr are climbing confidently into the witness box to lecture judges

and juries on just such matters: how the mind works, how memory works, what a trauma is, what effects trauma has on memory, which memories are trustworthy and which are not.

With nothing else to go on in most of these trials other than the word of the psychoexperts so confidently testifying, it is crucial that we know the answer to these questions: Do all these hundreds of very expensive experts really know what they are talking about? Can the rest of us trust them? Can we rely on what they tell us to be the last word in scientific knowledge about the workings of the mind?

Alas, no. Psychology's takeover of our legal system represents not an advance into new but clearly charted areas of science but a terrifying retreat into mysticism and romanticism, a massive suspension of disbelief propelled by powerful propaganda.

Thanks to the willingness of judges and juries to believe psychobabble with scientific foundations equal to horoscope charts, babble puffed about by psychological professionals with impressive credentials, what we've got now are thousands of self-styled soul doctors run amok in our courts, drunk with power, bedazzled by spectacular fees for the no-heavy-lifting job of shooting off their mouths about any psychological topic that sneaks a toe into a courtroom.

The demand is great, the supply is huge, and the science behind it all is nonexistent. But the reality does not matter.

With the passage of well-intentioned and broad-reaching social welfare and safety net legislation over the last decade buttressing Americans' willingness to buy into any claim made by a certified psychological professional—not just claims about trauma and memory—our legal system today generates a virtually unlimited demand for psychoexpert services while the psychoexperts display an equally unlimited willingness to service those demands.

Lenore Terr sound-alikes are echoing around the country in hundreds of courtrooms in various types of trials both criminal and civil. Thousands of psychological "experts" confidently—and expensively—inform judges and juries, patients, plaintiffs and defendants not only about how memory works—as in the Franklin trial—but how the mind itself works, how the personality is formed, what aspects of character and behavior can be changed and how to go about it, as well as what wrong was done, when and how it was done, who did it, how much responsibility a party bears, and whether and

when said party can be rehabilitated. In the civil realm, psychoexperts determine for the courts the nature and extent of psychic injury, disability, and discrimination; the presence or absence of abuse; and the relative fitness of parents.

The result is what has all too clearly become the rape of the American justice system.

A Mental Devil Made Him Do It

> The man who stabbed the daughter of state Sen. Arthur Dorman 16 times in February did not know right from wrong at the time, making him guilty of the crime but not criminally responsible, a Howard County circuit judge ruled yesterday.
>
> Gary C. Moncarz was found guilty of murdering Barbara Susan Dorman, his girlfriend of about a year, but Judge Dennis M. Sweeney ruled that Moncarz suffers from a severe mental illness that prevented him from understanding his actions.
>
> Moncarz, 42, a former accountant, was remanded to the custody of the state Department of Health and Mental Hygiene until he is deemed no longer a danger to society or to himself.
>
> State's Attorney Marna McLendon said psychiatrists will determine when Moncarz can be released but that he likely will spend a long time in an institution. (Francke, Baltimore Sun, August 27, 1996)

In criminal trials, we have competing teams of psychoexperts analyzing the accused, first to tell the judge whether the defendant is competent to assist in his or her own defense; then, if the defendant is found competent, the defense hires another raft of experts to testify that competent or no, the defendant is mentally disordered in some way and so should be found not guilty by reason of insanity, or, if not completely insane, his or her criminal responsibility should be considered less due to some diminished mental capacity or state of mind.

"He cannot understand the charges against him. She couldn't tell right from wrong. He couldn't distinguish fantasy from reality.

She couldn't control her actions. He is the victim of an irresistible impulse. He was traumatized by the war. She was in a flashback. He suffers from an incapacitating mental disorder. She has a psychological disease. It's not his fault because he wasn't taking his medication."

A mental devil made him do it.

> Che Rashawn Pope reportedly said five words before he pulled the trigger of the gun he was pointing at 17-year-old Sadrac Barlatier in Mattapan Square.
>
> "This is your time, man."
>
> Pope, 18, has been charged with first-degree murder in the October 11, 1995, shooting. His defense attorney is considering arguing that Pope . . . killed because he is afflicted with "urban psychosis" from living in an environment made "toxic" by exposure to gangs, poverty, fatherless families, drug use, teen-age pregnancy and violence. (Ellement, *Boston* Globe, October 14, 1996)

In old mystery stories, motives were assumed to be simple and the detective always asked first, "Who benefits from this crime?" That was yesterday. Today the psychiatrist asks, "Who traumatized this perpetrator?"

Psychological explanations invoked to get people out of impossible situations are much like the deus ex machina solution to irresolvable plots in ancient plays. When all the characters are inextricably knotted up with no hope of resolution in sight, suddenly the god descends from the heavens and takes everything in hand. And, like deus ex machina and all other good dramatic devices, psychological resolution tales require considerable suspension of disbelief to operate effectively.

What we want today is not retribution but the understanding that is the heart of a compelling narrative. We want a good story, preferably a classic tale if not an epic drama. We are no longer willing to judge the conduct of others as good or bad, because we no longer believe that the individual is actually responsible for his or her own conduct.

Lately, in Massachusetts, we had the tragic and senseless murder of a brilliant young student at Harvard by her female roommate, who then committed suicide. The press was full of psychological experts

speculating that this appalling action was caused by cultural isolation disorder or school stress disorder or rejected friendship disorder. Not one expert suggested that the fault lay with the murderer herself. Why not? Have we lost all belief in personal responsibility for good and bad?

Modern psychology, permeating our culture and our legal system, has convinced the larger society that responsibility for behavior belongs to the background and context in which it occurs, not to the individual performing the action. We believe that people act—when they act badly—for reasons that are essentially written in their history and outside their control.

Rehabbing Rapist Killers

This is also the reason that so many Americans are so ambivalent about punishment for crime. We vastly prefer the idea of rehabilitation over punishment, especially for criminals who can make even the remotest claim to victim status. Thus we have, despite any evidence of effectiveness, judge after judge sentencing criminals of every dangerous description and degree to so-called treatment programs.

When O. J. Simpson pled "no contest" some years back to the charge of beating his wife, he was sentenced to psychotherapy. Cellular psychotherapy. He did it by telephone.

In 1975, Officer Matthew Quintiliano, a policeman in Connecticut, was sentenced to therapy after he killed his first wife. He was cured by the wonders of modern psychotherapy in three months and was freed. He married again and subsequently killed his second wife.

Why do we, the public, go along with psychotherapy as a sentence? Because it goes right along with the idea that no one is really responsible for his or her own actions. We are all victims of outside malevolent forces. Criminals are not bad; they are damaged. Since society caused the damage or allowed it to happen, society should repair it. Rehabilitation has long been a component of the criminal justice system, so rehabilitative psychotherapy fits well as a natural extension of that idea.

Does it work? Can psychotherapy really rehabilitate wife beaters and murderers and rapists and drunks and druggies? Our current method of measuring effectiveness is to ask psychotherapists if psychotherapy works. Mostly they say yes.

They are wrong. Even for what is probably the most important question—"Will this guy kill or rape again?"—the forensic clinician is correct in his or her predictions no more than one third of the time.

Constructing the Psychological Child

The demonstrated incompetence of forensic clinicians at seeing into the souls even of their own patients has not stopped the legal system from granting them terrifying power, not only in criminal domains but also in any and all cases involving children as defendant, victim, witness, or subject of some adult dispute.

When a fifteen-year-old, 220-pound "child" in Massachusetts is accused of stabbing the neighbor lady ninety-six times, unto death, it is the court-ordered psychological evaluator who counsels the judge whether the young man should be tried as a child who can be rehabilitated or as a man subject to a man's punishment for a man's crime.

When ten- and eleven-year-old boys drop a five-year-old child to his death from the roof of a fourteen-story building, it is child specialists who peer with mental telescopes into their histories and into their futures and tell the judge what caused this terrible behavior and what can be done to fix the boys so it will not happen in the future. The courts accept this counsel from the highly paid professionals because they think they have no choice. Our courts accept at face value the claims of all these entrepreneurial experts that they understand what goes wrong with children and they understand how to fix them.

They don't.

Psychological professionals also claim to have special skills that allow them to detect unerringly what is in the best interests of a child. They tell our courts who will be the better parent, who is too crazy to have custody of a child, whether moving from one place to another will disturb the child's mental health, and whether the child was abused by one parent or another.

Are mental health professionals any more knowledgeable than you or I about whether a child has been abused in the home? About whether the child is better off removed from the home? About whether the child will grow up better under Mother's custody or under Father's? Of course not. How could they be? There are no special secret tests for any of the factors that child clinicians claim are so crucial to their so-called professional opinions.

It is essential for the future health of American children and their families that all these professionals be forced to lay their cards on the table so that everyone, parents—prosecutors, and judges alike—can see what an empty deck they are dealing from. The system is a farce and it perpetrates awful injustices.

My Mind Has Fallen and It Can't Get Up

Like family law, the entire arena of civil litigation also has experienced a huge increase in the testimonial activities of the forensic clinician. The modern proliferation of mental disorders has provided a veritable bonanza for entrepreneurial psychologists, not to mention their associated attorneys, not only in traditional injury and liability tort cases but also in disability and discrimination claims.

How does it work? Simple. Hire a psychoexpert to come into court and testify that you are damaged invisibly—mentally, emotionally, psychologically—that you suffer from one of the hundreds of psychological disorders "recognized" today. Then you have two ways to go. In a straight injury claim, your expert can testify that your psychic injury was caused by the trauma you experienced at the hands of your neighbor, your employer, or an unfeeling institution. In a disability claim, the expert must testify that your employer or a public accommodation discriminated against you by refusing to recognize or make reasonable accommodation to your disability. In both cases, you require much money to repair the injustice.

A typical case is that of the employee fired from a radio station in Washington state for offensive on-the-job behavior, who recently was awarded $900,000 by a jury for a discriminatory firing and for the psychic injury done to her by the discrimination. Her poor job performance, according to professional opinion, was produced by a mental disability and therefore occurred entirely outside the realm of personal responsibility.

Psychological disabilities, not incidentally, can be diagnosed only by trained professionals whose word cannot be credibly disputed by anyone other than another trained professional. No mere layperson can hope to match or, God forbid, criticize the diagnostic skills of the clinical psychological professional.

The cost of the needed treatment, the psychotherapy, is always included in the requested compensation in civil injury trials. Thus

you have therapists testifying that yes, it is absolutely crucial that this plaintiff receive plenty of expensive psychotherapy for her disorder. Having therapists testify about the need for psychotherapy is about as smart as answering an insulation ad that promises Free Analysis of Your Home's Heating Efficiency.

They Say This Is Science

In criminal trials like that of George Franklin, in which the psychoexpert Dr. Terr created a completely novel and entirely hypothetical model of the operations of mind and memory, and sold it to the jury as science—science!—and in the innumerable civil trials over just about everything, we now have countless psychoexperts shamelessly regaling the courts with their personal opinions about the workings of the mind and behavior, which they have wrapped in the trappings of science through nothing more than a liberal sprinkling of jargon and some fancy-sounding titles and credentials.

That the courts accept expertise on the experts' own valuation of it reflects desperation as much as acceptance. Our courts—we, the people—need help to understand past behavior, to control present actions, and to predict who's going to do what kinds of awful things in the future.

Common sense tells us some things. We believe that the older guys get, the less likely they are to rape anyone. We believe that if guys knock around one woman they will knock around another one, and if he hits you once he will hit you again. We believe that most men who beat up on their children in a real nasty way do so much more than once. We know that most killers don't kill more than once in a lifetime—which makes rehabilitation of murderers a kind of funny concept—and we know that the older a guy is, the less likely he is to be violent. (He is also more likely to drive slowly and to wear a hat.)

We also know that all these little factoids gained from our own experience, newspapers, movies, and television are unreliable, the best-we-can-do, unscientific beliefs that don't give us absolute security or predictive accuracy. What's to say that this particular seventy-five-year-old man won't knock your head in with a baseball bat and rape you? Who's to know if this other guy wasn't so horrified by his hitting his wife once that he'd kill himself before doing it again?

We want more certainty than that provided by rules of thumb, and we want more safety than that provided by our own limited experience. Thus modern Americans will embrace almost any psycholegal theory or claim that highly paid and highly arrogant experts spin on the witness stand. We and our judges are blinded by jargon, fancy-sounding credentials, and fancy degrees.

Does it drive all of us crazy to live with the myriad uncertainties that arise because the field of psychology is in its infancy and simply unable to answer—sometimes unable even to address—so many of the questions in our justice system for which definitive answers are desperately needed? Perhaps so. But relying on pseudo-experts who are simply not up to the job the courts demand of them will not further the cause of justice in this country. It will just make the whole system and the whole society sicker.

For all forensic psychologists who work one side of the courtroom or the other, the job is lucrative. However, the idea that much of professional psychology's move into the courtroom has been motivated by simple economic interest is not really all that alarming. Money is a motive we can all understand. As a society, we are used to people willing to do anything to chase a buck, and we understand them.

But we also must wake up to the fact that the present and growing dominance of psychology in the courtroom poses a graver danger to society than simple monetary corruption. Much of the present marriage of psychology and the law has been cemented by a virtually impregnable arrogance and institutionalized in both law and legal practice, and that is a scary thought indeed. Both the public and the practitioners themselves have been seduced into believing the pseudo-experts' bunkum, have managed to get that bunkum written into law, and have effected a wide acceptance of a crucial judicial role for the bunkum artists as well.

TWO ROADS DIVERGED—EXPERIMENTAL AND CLINICAL PSYCHOLOGY

The public and its legal system do not know that the psychology that holds such sway in their legislative chambers and courtrooms lacks any scientific foundation because most of the men and women who make up the scientific and academic discipline of psychology have kept their mouths shut about what's going on. The experimental sci-

entists have clung to the mistaken belief that the practice of psychology in the public domain is the territory of the clinical practitioners. The scientists felt that if they didn't step on the clinicians' territory, the clinicians wouldn't step on theirs.

Who are the scientists and who are the clinicians among the different varieties of psychologists? The scientists, the experimentalists, are researchers who study perception, language, learning, cognition, and memory, mainly. The clinical types are the practitioners who focus on personality as well as on so-called abnormal behavior. Another way of saying this is that the experimentalists don't see patients; the clinicians do. (That's why they are called "clinicians"; they go to clinics to see patients.) Also, the clinicians don't do experiments; the experimentalists do, sometimes in laboratories and sometimes in the real world. Of course, these divisions aren't clean. There are people who study personality for example, who do real experiments; there are learning theorists who see patients; and so on. But in general, the two divisions hold well enough.

The split into clinician/practitioner versus scientist/experimentalist also holds across the various psychological subdivisions of academic clinical psychology, professional psychology, psychiatry, counseling, and psychiatric social work and nursing. In each subdivision, the majority of the practitioners are clinicians untrained and inexperienced in scientific research; the minority were actually trained in or actively engage in science.

For social workers and for psychiatrists and psychiatric nurses in medical educational settings, the situation is even worse than for conventionally trained Ph.D. psychologists. In these fields, there is not even the rhetorical expectation that the future practitioner will be broadly educated in psychological theory and research.

(In this book, I will use common terms for psychological practitioners working within the realm of the justice or legal system—psychiatrists, psychologists, social workers, or other—whatever the particular education and training, unless that background is relevant to understanding or evaluation of some point.)

THE BIG LIE

Experimental psychologists know that the education commonly possessed by licensed mental health care providers, whatever their back-

ground and training, is woefully inadequate to the job demands. They know too that with the present state of psychological knowledge, there are severe limitations on what any education could provide to the most diligent student. No education on earth today can be held to give an adequate account of how the mind works, how personality and character are formed, or what can be changed and how.

Psychology is a science in its infancy. With the best will in the world, it could not today meet the demands and expectations placed on it even by patients in need, much less by the legislative and judicial systems of the country. The entire psychological community knows all of this, at least the scientists do, and most of them ignore it.

The psychology establishment has permitted the tenets and practices of clinical psychology to be incorporated into our laws and our courtrooms, knowing full well that they are untested, untestable, profoundly unscientific, and not even generally held to be factually true. We have allowed the courts and the public to confuse the methodology and findings of scientific, experimental psychologists with the practice and interpretations of clinicians. We have allowed so-called clinical psychological experts we know to be utterly unequal to the task to presume to take over the roles of judge and jury as finders of fact in American courtrooms.

We know forensic psychology's massive infiltration of the judicial system has been wrong. But, because of the takeover, the prestige and the power experienced today by members of the psychological community—experimentalist and clinician alike—are unprecedented in history. Who can blame the ever-reaching branches of psychology for succumbing to temptation?

THEY MUST KNOW WHAT THEY ARE DOING

There has been another critical factor driving what must seem to the public like almost criminal negligence on the part of the profession of psychology: Many experimentalists would argue that because numerous troubled people seem to find in therapy the help they need, it is not just permissible but perhaps even desirable to ignore its complete lack of scientific foundation. This has been a grave error, with wide-ranging consequences for the field of psychology and the public alike.

"Hey, he cured me. He must know what he's doing, so I'm sure he can cure other people." It seems reasonable, doesn't it? I was

better off after my time with a psychiatrist, so I assumed that the psychiatrist must have made me better. It follows that he must have known about what was wrong with me psychologically, what caused it and how to fix it, doesn't it?

No. The effectiveness of a therapeutic approach in treating a disorder is logically unrelated to the validity of the therapist's theory of causation of the disorder.

How can that be? Let us see.

2
Psychopathological Science

Clinical Research

> The most insidious thing about bad science is that it can afflict even some of the more intelligent, methodical, and honest members of the scientific community. The reason is that it appeals to a broad element in human nature, not just to vices but to some virtues as well.
>
> Peter Huber, *Galileo's* Revenge, 1993

LEAPING BEYOND THE DATA

> I'm in bed with Ann. We're making love. She teases me, and I get my feelings hurt. I don't know why, but I hate her for teasing me. So we stop making love, and we each turn away from the other and go to sleep. Now I'm sleeping. I began to dream. In the dream I'm in bed with Ann, just like I really am, and we're making love, and she begins to laugh at me, to make fun of me. And suddenly I realize she isn't really Ann, she is my mother, in disguise somehow. And I'm in bed fucking my mother! And she's laughing, saying, "I finally got you. I finally got you!" And I'm so ashamed, so embarrassed, I just start hitting her to make her stop. (Barber 1986, pp. 56–57)

This dream was related by a young man, John, who had been arrested one night for beating up his girlfriend, Ann, although he claimed to have no memory of the event. Even though Ann did not

press charges, John decided to seek help from a psychotherapist.

The therapist, Dr. Barber, chose dream analysis and hypnosis as therapy techniques. His weekly instruction to John was, "Some night this week, and I don't know which night will really be best . . . but some night this week, you will have a dream. This dream will be interesting to you, and will tell you something you need to know about your life right now. As soon as the dream ends you will awaken, and you will remember the dream vividly as you write it down so you don't have to memorize it. And you can bring in your notes about the dream next time." The therapist directed John to have amnesia each week about all of this dream instruction business.

Finally, after numerous sessions in which John would relate his dreams under hypnosis, he came in with that supposedly highly revealing dream about having sex with his mother and his girlfriend that "explained" why he beat up Ann.

> In the days that followed that dreamwork, John began to remember bizarre and painfully confusing incidences of sexual seduction by his mother. . . . His view of his own sexuality, and of his terrible need for both control over and distance from women, was also undoubtedly rooted in these early experiences.. . .Memories of the actual torture of being locked in the dark closet [one of his punishments for not satisfying his mother] made clear how John had developed his dissociative capacities. (Barber 1986, p. 57)

"Dissociative capacities" is the phrase John's doctor uses to describe John's ability to beat up women and remember nothing about it afterward.

So, after a short time, John was completely cured, terminated therapy, and became engaged to be married—to a girl we hope is luckier than Ann.

Quite an impressive little story, isn't it? Is it true? Who could possibly know?

WITCH DOCTOR FALLACY

Consider this example: In a mythical tribe, a person who behaves in a way that leads him to be labeled mentally ill is tied to a stake, burned,

and beaten. During this procedure, the witch doctor dances around the stake rattling his gourds until the patient's behavior improves. The witch doctor believes that the patient is possessed by a spirit and the purpose of the treatment is to scare the spirit the hell out of the body. If the symptoms of many people who receive such treatment quickly disappear, and given this kind of treatment one can imagine that it is highly likely that they will, then one could conclude that the witch doctor's treatment is effective in curing mental illness.

If we assume that the positive outcome—disappearing symptoms—supports the witch doctor's theory of psychopathology, then we are in the rather difficult position of having to accept a theory of demonic possession as the cause of mental illness, the common primitive explanation of bizarre behavior. We must conclude that the witch doctor knew what was wrong with his patient, knew what caused it and how to fix it.

Most modern Americans would not accept that conclusion. The witch doctor may believe he has cured his patient; the patient may believe he was cured by the witch doctor. But the rest of us know that there are many possible reasons for the improvement in behavior, despite the beliefs of both doctor and patient, and we are not about to conclude that the witch doctor has any special knowledge of mental illness at all.

We can see that the effectiveness of therapy is logically unrelated to the validity of the therapist's theory of mental illness when we are presented with the witch doctor scenario, but in the case of modern psychotherapy we often forget it.

In the case of cancer, we don't usually make this logical error. Although there are now successful treatments for some cancers, and significant advances in understanding the origins of cancer, very few patients will assert that their oncologist knows all that could be known about cancer.

Why the difference? Why do we go the witch doctor route with psychotherapy but not with cancer therapy? Part of the answer is that in most types of mental illness there is no independent, corroborating measure of mental illness except for what the patient says and does. This is not true of cancer patients. The patient can feel great, go to work, and still have cancerous tumors that can be observed in a number of ways. Whatever he or she may say, the patient has cancer

and the doctor knows it. The harder it is to verify independently the disease process in medicine, the more likely it is that medicine will fall into the same witch doctor trap as psychotherapy.

We have no direct, objective indicator of mental health. We can't measure the mind. And because mental functioning cannot be measured directly and objectively, psychotherapists are boxed into the corner of believing the patient, and the public falls into the trap of believing our witch doctors. The clinician has no way to verify independently what the patient says, and the public has no way to verify independently the clinicians' assertions about mental life.

All of us, patients, clinicians, and public alike, are willing to accept the occasional success in therapy as evidence that therapists are experts in causation of mental disorders and in general psychological functioning. Our belief is quite understandable.

That the general public confuses psychology's hit-or-miss success in making people feel better as evidence of a comprehensive understanding of general psychological functioning is not a new observation, although it is much overlooked these days. And the fundamental inadequacy of psychology as a science is not a new issue.

What is new is the extraordinary depth and extent of the acceptance, as a science, of the principles and practices of clinical psychology by the older institutions of our society—by courts and police, by judges and juries, legislators and policy makers. Our legal system has been told that clinical psychology is a scientific discipline, that its theories and methodology are those of a mature science, and our legal system has believed it. Given the deplorable state of the "science" of clinical psychology, that is truly unbelievable.

THE IDEAL OF SCIENCE

Science is an ideal. Some people would say that it is so much an unreachable ideal that it is a fiction. That is not true. That so many fail so often in so many ways does not change the nature of their endeavor.

What is it that the people engaged in science are trying to do?

They are trying to acquire knowledge about what things exist and how they work. What distinguishes scientists from other seekers after knowledge is their belief in and practice of a specific methodology for seeking truth.

Scientific methodology is essentially controlled observation of

how some aspect of the world changes when some other factor is added or removed, increased or diminished in quantity. Scientists make predictions about what lawful changes will take place under what circumstances. The accumulation of these tested laws of change—of cause and effect—makes up the knowledge base that is the body of scientific theory. Through the testing of predictions—hypotheses, in scientific jargon—under carefully controlled conditions, the theoretical body of scientific knowledge is built step by step.

Control in the experimental testing of predictions is essential because it is impossible to know what you are seeing if too many things are going on at once. The goal of science in the experimental testing of predictions is to reduce the number of things "going on" to a controlled and observable level so that the results obtained can be reliably attributed to a particular cause, not to any of a number of uncontrolled and unknown factors.

But what makes science so powerful is a second trait that it has. Science exists independently of the scientist. While any individual scientist may claim to see something or to think that he or she is seeing a certain pattern, such a finding is not considered valid until anyone—skeptic, friend, or foe—can achieve the same results in an independent experiment of his or her own. The findings discovered through observation in one laboratory must be replicable in another laboratory. Data measured and gathered by one instrument must be the same as data gathered by another similar instrument. And thus the objectivity comes not from an individual practitioner but from a system that demands consistent and repeatable results.

Objectivity and replicability depend too on reliable instrumentation. Data attributed to the scratch on the lens of a lab scope are not the findings of science. Objectivity and replicability depend as well on commonly held assumptions, consistently defined terms, and clearly defined phenomena. When researchers cannot even agree on what they are trying to observe and measure, it is impossible to engage in the systematic testing of hypotheses and the logical buildup of coherent theory.

Science depends on its practitioners to play by the rules and to be absolutely honest about both their successes and their failures.

What distinguishes a scientist from any other seeker after truth is exactly this. The scientist can be and often is wrong. A real scien-

tific theory tells you, in effect, "If the theory is right, then this particular thing ought to happen under these certain conditions. If it doesn't happen, then the theory is wrong." If a theory cannot be proven wrong in its predictions, then it is not science.

This is not to say that every scientist faced with incontrovertible evidence that his or her beloved theory is wrong will trash the old without a qualm and embrace the new. Some philosophers of science even claim that a field changes only when old scientists die off and younger ones come forward to view the evidence with less biased eyes.

In clinical psychology, however, the imperviousness to factual challenge is not just the don't-bother-me-with-facts mulishness of a few stubborn graybeards, it is a legacy handed down from generation to generation.

CLASSICAL CLINICAL JUNK SCIENCE

Clinical psychology is classic junk science.

In his 1993 book *Galileo's* Revenge: Junk Science in *the* Courtroom, Peter Huber defines the term so:

> Junk science is the mirror image of real science, with much of the same form but none of the same substance.. . . It is a hodgepodge of biased data, spurious inference, and logical legerdemain, patched together by researchers whose enthusiasm for discovery and diagnosis far outstrips their skill. It is a catalog of every conceivable kind of error: data dredging, wishful thinking, truculent dogmatism, and, now and again, outright fraud. (pp. 2–3)

There are a great many ways to do science badly, and the junk science that makes up the bulk of the body of "knowledge" of clinical psychology manages to exemplify every one of them. The myriad failures of psychology as a science are not at all surprising, considering the roots of modern clinical practice. It is impossible to understand the essence of clinical junk science without a cursory understanding of clinical "science" as practiced by the principal founding father, the great man himself, Sigmund Freud.

What "scientific instruments" did Freud use to gather the data to build his theory of the healthy and unhealthy development of per-

sonality, with its psychosexual stages, Oedipus complex, castration anxiety, penis envy, Id, Ego, Superego, defense mechanisms, and the unconscious mind? Well, he analyzed his patients' dreams, he listened to their little slips of the tongue, and he asked them to freely associate to various words he gave them. That's it. The patient talked. Freud listened. A theory was born. And it grew, and it grew, and it grew.

The "instrument" for gathering data and building theory used by Freud and his cohorts and followers and by nearly all clinicians today was and is "clinical intuition."

Coitus Interruptus

Freud gives a nice example of using intuition to develop his version of scientific truth when he explains how he discovered in a patient of his the connection between depression, sinus pain, constipation, and coitus interruptus.

This patient had quite a few children. He was troubled intermittently with anxiety, various aches and pains, and, well, constrictions, in his sinuses and bowels and lower back. The pattern of their coming and going was a mystery. Suddenly the symptoms ceased altogether. Finally Freud discovered that when the patient's wife was pregnant, she permitted him to ejaculate in the customary way, but when she was between pregnancies and unenthusiastic about commencing another, she insisted on coitus interruptus. This, according to Freud's brilliant reasoning, caused the patient's system to back up physiologically and psychologically, inducing the various blockages here and there. The prescription for his cure, then, was obvious, if somewhat inconvenient for his wife. (Freud was surprisingly literal in his metaphors, prescribing both cocaine and nose surgery for other blocked customers.)

It is beyond foolish to ask whether "research" of this order can properly be characterized as objective, replicable, or generalizable. The ordinary standards of scientific methodology don't even come into play. Likewise, it is futile to ask whether Freud's intuitions were falsifiable. Freud's intuitions were freely supplanted when new intuitions seemed to him to be more plausible. And there is no reason whatsoever to expect any other "researcher" employing the intuitive interpretive methodology to have the same intuitions as Freud. "Objective intuition" is an oxymoron. Likewise, whatever "generaliz-

ability" and "replicability" there may be for such work resided entirely within Freud's own head.

Freud's collected works, occupying some two linear feet of library shelf space, provide hundreds of examples of his clinical intuition at work building the pseudo-science of clinical psychology. They provide no examples of the objective testing of falsifiable hypotheses under carefully controlled conditions of observation producing replicable, generalizable results. None. In Freud's work, there is not one scintilla of what any respectable scientist would call science.

As the twig is bent, so grows the tree.

CLINICAL JUNK SCIENCE TODAY

Have things changed in clinical psychology? Are the instruments modern clinicians use any better than those of Freud?

No, they are not, and nothing has really changed.

Like Freud before them, in place of data gathered or theory built by any instrument even remotely scientific, today's clinical practitioners offer the courts and legislatures—not to mention their patients and students—their clinical intuitions about how the mind is formed and how it functions, about psychological injury or guilt, about repression and recovery of memory, about trauma and the unconscious, dangerousness, parental fitness, child welfare, competency, rehabilitation, or any psychological thing under the sun.

The Miss Marple Approach

In common parlance intuition means the kind of knowledge gained from experience with people that is very hard to put into explicit words: "I've seen a lot of clients like that, and after a while, you just get kind of a feel for it."

Intuition is real. Of course it is. It's exactly the kind of knowledge a good cop is using when she feels suspicious of the way two guys are standing together on a street corner. It's the knowledge an experienced teacher uses when he "smells" a plagiarized term paper. It's what Agatha Christie's Miss Marple relies on when she says that weedy little fellow reminds her of old Tom's son down at the garage, who always made his repairs just a little weaker than they should be.

We all use intuitions like these in our daily lives. But we do not permit police officers to arrest people for looking vaguely suspicious;

universities do not permit professors to flunk students unless the plagiarism can be proved; and even Agatha Christie supplemented Miss Marple's unfailingly correct intuitions with a bit of material evidence. We should require at least as much restraint in the exercise of clinical intuition by psychological practitioners when they hand the court a professional report, or mount the stand to testify. Perversely, we require less.

How Did Dr. Terr Know How Eileen's Mind Worked? Consider, for example, the source of evidence Dr. Lenore Terr used when she testified about the functioning of Eileen Franklin's mind at her father's trial for murder.

Did Dr. Terr undertake controlled observation of Eileen's mind? Well, be fair, how could she? She did what all clinicians do. Eileen Franklin Lipsker told Dr. Terr a story and Dr. Terr created a wonderful theoretical interpretation of Eileen's account of her claimed experiences.

Did Dr. Terr have any way of judging whether what Eileen told her was true? Of course not. How could she? Dr. Terr got the "information" about what and when Eileen forgot and what and when Eileen remembered from Eileen herself. That's where clinicians always get the evidence for their "theories," except, of course, when they analyze dead people.

What about logical consistency within the story itself? There isn't any. Dr. Terr said that Eileen had repressed the terrible traumatic experiences of her childhood, but in fact Eileen claimed to remember many events in her abusive childhood, including numerous things about her violent drunken father, who beat his wife and children. And yet she forgot the murder.

What about the physical facts of the case? Many people took the apparent eyewitness-type detail as evidence of Eileen's general veracity, while defense attorneys tried to argue that all the details about the crime that Eileen claimed to have recovered with her unrepressed memory had been published in the popular press at the time of the murder and were available to anyone, eyewitness or no. However, the accuracy of the physical details reported by Eileen is irrelevant to establishing the validity of the psychological claims about repression and recovery of memory.

Eileen Franklin Lipsker may have seen her father commit murder or she may have seen someone else commit the murder or

she may simply have heard about it, read about it, dreamed and fantasized about it. I don't know. But neither does Dr. Lenore Terr.

The psychoexpert presenting a creative interpretation of a claimant's story is authenticating that story, corroborating it, vouching for the veracity of the story without a scintilla of data gathered from anywhere but the claimant. What's the point? To tell the court that the claimant is a truthful person? How would any psychological expert know that? Clinicians are not lie detectors. They are no better than any judge or jury at distinguishing truth from falsehood. Besides, lie detection is not supposed to be the function of an expert psychological witness in court. The psychoexpert adds nothing to the claimant's testimony except a fraudulent veneer of authenticity that is utterly misleading and entirely out of place in any courtroom.

Grandmother Riding a Broom Consider the case of Richard and Cheryl Althaus of Pittsburgh, whose sixteen-year-old daughter one day accused them of sexual abuse. Dr. Judith Cohen of the Western Psychiatric Institute and Clinic at the University of Pittsburgh diagnosed the girl with post traumatic stress disorder brought on by sexual abuse. How could Dr. Cohen possibly know that the allegation of past abuse was true with such certainty as to warrant a diagnosis of PTSD? Retrospective clairvoyance?

> Miss Althaus also claimed that her grandmother flew about on a broom, that she had been tortured with a medieval thumbscrew device, that she had borne three children who were killed and that she had been raped in view of diners in a crowded restaurant. (Associated Press, New *York* Times, December 16, 1994)

In her defense of her diagnosis, Dr. Cohen "argued that her job had been to treat Miss Althaus, not investigate the patient's accusations" (Associated Press, *New York* Times, December 16, 1994).

No investigation. No corroboration. No physical evidence that any of these highly unlikely events transpired. No questioning, even about the multiple pregnancies and murdered infants? No curiosity, even about granny on the broom or the thumbscrews or maybe which restaurant had the floor show? This is really nuts. The good news is that a jury recognized that it was nuts.

> A jury awarded more than $272,000 today to a couple and their teenage daughter who had joined in a suit charging a psychiatrist with failure to evaluate the girl's accusations of parental sex abuse. The parents, Richard and Cheryl Althaus, had been arrested and charged with sex abuse before their daughter, Nicole, recanted. They won $213,899 in their malpractice lawsuit again the psychiatrist, Dr. Judith Cohen, and the Western Psychiatric Institute and Clinic at the University of Pittsburgh. . . . When the verdict was read today, Mrs. Althaus closed her eyes, sighed and held her husband's hand across their daughter's lap. Miss Althaus, smiling, said afterward, "I'm going back to college." (Associated Press, New *York Times,* December 16, 1994)

This refusal to seek corroboration of the patient's claims is clinical junk science in its most common form.

You cannot validate a clinician's intuitions with more intuitions, and you cannot validate what a patient says with what a patient says. However consistent or plausible the story is does not touch on the matter of truth, on accuracy and reliability.

Selective Amnesia and the Solar Phallus Man

Peter Huber, writing on the similarity between the layperson's willingness to believe in prophetic dreams and the pseudo-scientist's discovery only of data that confirms his or her theory, says: "Selective amnesia, a pick-and-choose economy with the truth, has a remarkable power to make the dreams that do occasionally come true seem important. In a similar manner, great catalogs of data that don't track the hoped-for results can be explained away before they are ever recorded in the laboratory notebook" (1993, p. 28).

A truly hilarious example of pick-and-choose research occurs in a current dispute over the theoretical work of Carl Jung, who is, along with Freud, one of the founders of psychoanalysis. He developed and popularized the theory of the collective unconscious. According to this theory, we all have buried deep down in the mind common myths and "archetypal" images, a sort of race memory of the human species.

> One basis for Jung's theory . . . is a case known as Solar Phallus Man. This man, a patient at the Burgholzli Mental Hospital in Zurich, where Jung was a physician until 1909, claimed to have seen a vision of the sun with a phallus. The image, Jung contended, came from the ancient Hellenic mystery cult of Mithras, a pagan god associated with sun worship.
>
> Over the years, Jung used the case as a proof of the theory, arguing that the man could not have known about Mithras and so must have derived the image from deep within the collective unconscious. (D. Smith, *New York Times,* June 3, 1995)

But a modern Jung scholar, Richard Noll, claims that the patient was simply familiar with popular books of the time on the subject and that Jung knew this and lied to the psychological community when he hid this fact from his followers.

This is a notable dispute because it so closely echoes the controversy over alien abduction fantasies raging around Cambridge, Massachusetts, these days. Abduction proponents argue that the alleged abductees tell remarkably similar stories and have somehow been insulated from the popular sci-fi culture that saturates America. QED, they were all abducted by Martians.

How can anyone, in good faith, take such "data," subject them to the interpretation of clinical intuition, and treat them as "evidence" to support a "theory"?

Flashbacks, Trauma, and Vietnam Veteran Killers The most extraordinary aspect of clinical research when considered from a scientific point of view is its imperviousness to the complete absence of material evidence considered indispensable in any other endeavor that claims to be a science. One such courtroom favorite is the flashback. Vietnam veterans who hear the radio station traffic helicopter overhead suddenly see themselves back in combat, crouch down, and take cover. Seized by a flashback, these suffering vets load up rifles and blow away the wife and kiddies under the misperception that the family is the enemy.

The public likes flashbacks because they have such dramatic power and fit in so well with currently popular theories of memory. However, is there actually any evidence at all that flashbacks exist? No. The existence of authentic flashbacks presupposes that memory

works like a video recorder, storing perfect, unalterable records of life's experiences in the mind. When a flashback occurs, the patient puts the video machine on rewind and then hits the play button. Zoom. Back again to the enemy-infested jungles of 'Nam. Sounds perfectly plausible, doesn't it?

Well, no. In fact, everything we know about memory suggests that flashbacks are impossible. We have no video recorder between our ears. There is no evidence that the "tapes" of life's events, whether traumatic or otherwise, are stored in little vacuum packs in the brain, waiting in pristine condition to be replayed as needed. Memory is selective, destructive, reconstructive, alterable, distortable, dissolvable. No videotape. No film. Not even a handwritten diary. There may indeed be people whose hallucinations, fantasies, or nightmares carry a powerful sense of déjà vu, but a sense of familiarity carries no seal of authenticity.

Nevertheless, professional trauma experts can be found who will claim straight out that the nightmares often are exact replicas of the traumatic event. What an extraordinary assertion! Just trying to imagine the evidence necessary to make such an astounding claim quite stuns the mind. My video player must be jammed. How could anyone claim to know that your nightmare is an *exact replica* of your experience of twenty years ago?

Does the lack of evidence for the existence and operation of flashbacks stand in the way of clinicians specializing in trauma hiring themselves out to explain to the courts about the delusionary authenticity of flashbacks? Indeed not.

> A Louisiana court, using a M'Naghten modified insanity test, acquitted a former Marine of murder in State v. Heads. The accused had experienced extensive combat as a point man in long-range reconnaissance patrols in Vietnam. After returning home he suffered a flashback following a stressful marital breakup and killed his brother-in-law.... Heads, reportedly perceiving his brother-in-law as a Viet Cong, pulled a rifle from his car, shot the victim through the eye and then "stalked the ranch house as though it were a straw hooch." The defense convinced the jury that Head's combat flashback had destroyed his ability to distinguish right from wrong. (Davidson 1988, p. 425)

Evidence for such intuitively compelling psychological phenomena is not necessary. All that is needed is for a well-credentialed expert witness to climb onto the stand and present this gobbledygook with sufficient authority and a lot of scientific-sounding jargon, and who is going to demand some petty little thing like scientific proof of what is said? It is distressingly easy to confuse a compelling narrative with self-evident truth.

> Great novelists, for example, are wonderful at explaining human behavior, or at helping us seem to understand the underlying motivations and actions of individuals. . . . Although a reading of Hamlet may seem to reveal great insights into human nature, the play by itself does not constitute scientifically validated knowledge. (Ziskin, 1995, p. 85)

Tests, Tests, Tests

Intuition is the most frequently and widely used tool in clinical psychology, but it is not the only weapon in the forensic clinician's armamentarium. Clinicians who work for institutions of various types, like hospitals and universities, and those who testify in court or provide reports to the courts on various matters usually buttress their clinical intuitions with a slew of figures from what are known in the trade as assessment instruments.

The purpose of these tests is to blind judges and juries with science, but a quick look at the standard instruments used to gather data for court-ordered evaluations and in clinical research should give the most credulous pause.

MMPI *and the Inkblot Test* Essentially two types of nonintuitive instruments are used for assessing psychological functioning, so-called objective tests and projective ones.

Objective tests are pencil-and-paper tests in which the person being assessed answers any number of multiple-choice questions about various topics. The most widely used and the most generally respected of the so-called objective tests is the Minnesota Multiphasic Personality Inventory (MMPI), designed in the 1940s by Starke S. Hathaway and John C. McKinley. The test asks 550 true-or-false questions about people's attitudes about religion and sexual practices,

their perceptions of health, and their political ideas, as well as information on family, education, and occupation.

The basic idea underlying both objective and projective tests is that the answers on the tests give away people's most secret psychological pathologies when their answers mirror those of patients with known diagnoses. The logic is simple. Depressed people supposedly give answers A, B, and C to questions 1, 2, and 3. You give answers A, B, and C to questions 1, 2, and 3. Voila! You are a depressive. Perfectly straightforward.

Generally, the questions were specifically designed to lack what is called content validity, so as not to give away the nature of the mental illness being assessed. Hathaway and McKinley thought that a test of depression that asked a bunch of questions like "Do you feel low a lot of the time?" was a dead giveaway both about what was being tested and about what the expected answer was for that question. They wanted a test that could not be scoped out easily by those taking it.

This design was compromised somewhat by the inclusion of questions designed to reveal symptoms supposedly known to be exhibited by certain supposedly well-defined groups of mentally disturbed people, but the balance of the test items were not obviously indicative of some kind of pathology. Answers on the MMPI are said to reveal hypochondriasis, depression, hysteria, masculinity-femininity, paranoia, hypomania (excitability), psychopathic deviancy, psychasthenia (irrational fears and compulsive actions), schizophrenia, and social introversion (withdrawal). There is also a scale that is supposed to detect truly savvy test takers who are just faking it.

Projective tests—the second big category of so-called psychological assessment instruments—are usually pictures (sometimes words or sentences), either meaningful or not, that supposedly stimulate the test taker to tell the tester some sort of revelatory story about what he or she sees in the picture.

The most famous of the projective tests, the inkblot test, was developed in 1938 by Hermann Rorschach, inspired by earlier so-called tests of imagination. As Anne Anastasi explains in her classic Psychological *Testing,* "projective techniques are regarded by their exponents as especially effective in revealing covert, Intent, or unconscious aspects of personality Moreover, the more unstructured the

test, it is argued, the more sensitive it is to such covert material" (1970, p. 494).

There are ten Rorschach cards, five black-and-white and five colored. The client-patient-plaintiff-defendant is asked to go through the cards and discuss freely what he or she "sees" while the tester asks questions. The Rorschach, "unstructured" as it is, lacks any content validity at all.

What's wrong with using these putatively "scientific instruments" to measure enduring personality traits like paranoia or serious mental illnesses like schizophrenia?

Basically, they do not do the job. They cannot do the job. As instruments to measure the psyche, they are useless.

Just what, exactly, do we suppose that people labeled as suffering from a particular kind of mental illness have in common other than the category label? For the testing approach to work, the people who serve as the definitive representative groups for the making of the test must all truly have the same kind of mental illness, and that illness must manifest itself in uniform ways across all or nearly all of the patients.

Not even the fairly straightforward category of depression can make that claim—what most depressed people have in common is that they say they are depressed—so where does that leave the other hundreds of mental diagnoses used today?

There are no studies showing that, for example, one hundred people with, say, Diagnosis #10 give the same answers to the 550 questions on the MMPI or the same bird-butterfly-blood responses to the inkblot test. Not only would establishing so many consistent patterns of responses across all the mental diagnoses available have been an extraordinary amount of labor, it would never have worked out whatever the effort expended. Why not?

The logic does not hold water.

Even if we were to grant against all the evidence, just for the sake of discussion, that all or most of the persons categorized with a certain diagnostic label do actually show the same symptoms, does it follow logically that they also share views on religion, sexual practices, politics, and health as asked on the so-called objective MMPI? No. Of course not. And what sort of thinking or logic dictates that schizophrenics or depressives or obsessives or whoever all feel the same way

about the color red or the use of detail or "negative" space or whatever as required by Rorschach scoring systems?

Or, vice versa, that a great many people answer religious or political questions in common ways, or see one particular inkblot as looking like a butterfly, says nothing at all about their possible mental illness or lack of it, about their schizophrenia or depression, or their degree of compliance or contrariness or whatever. Why would it?

The logic underlying the use of psychological tests to diagnose people with unknown problems—that everyone with a certain type of mental illness resembles everyone else in the labeled group, right down to their feelings about the pope and the president, the color red, cannibals, and butterflies—is foolish on the face of it and empirically false.

In fact, the authors of the MMPI gave up the original attempt to use the test to diagnose various kinds of mental disorders almost before the ink was dry on the first edition.

Anastasi explains, "[W]e cannot assume that a high score on the Schizophrenia scale indicates the presence of schizophrenia. Other psychotic groups show high elevation on this scale and schizophrenics often score high on other scales. Moreover, such a score may occur in a *normal person*" (1970, pp. 445–46; italics added).

In a nutshell, that means that the most widely used instrument for testing personality in America has a theoretical foundation that is pathetically weak.

Was the MMPI, then, simply abandoned as hopelessly not up to the job? Oh, no. Of course not. Remember, clinicians are the people who think sinus problems are caused by sexual practices. The current routine is to take persons with similar profiles across the nine scales and then try to find something else in their lives that correlates with their MMPI profiles. By the end of 1995, there were over nine thousand such published studies. That means that for just about any profile a person displays in answers to the MMPI, the clinician can probably find some study somewhere that correlates the profile with something—low self-esteem, perhaps, or maybe cigarette smoking or eating disorders.

Are these profiles meaningful? Oh, no. They are not even reliable. In fact, the reliability of MMPI code types falls apart after two weeks. Two weeks! From one-third to one-half of subjects tested didn't

even have code types in the same diagnostic grouping on tests given two weeks apart. This is supposed to be a test of the enduring makeup of the personality? It is not completely unreasonable to suppose that adults might respond in much the same way from time to time on items questioning their religious or political beliefs, for example, but they don't. Numerous studies show that for normal college students, more than half show different profiles even when tested again only one to two weeks later. For psychiatric populations, the percentages who stay the same are even lower. After a year, the stability is laughable.

Undeterred by what others might see as crippling logical and empirical problems for both objective and projective tests, testing advocates slog ahead with revisions, elaborations, and embellishments of both objective and projective tests—especially the MMPI and the Rorschach—blinding the rest of us with a blizzard of code words and scoring systems.

The courtroom doubter—attorney or judge—bold enough to challenge the validity or reliability of these tests will in turn be challenged, "Well, what about the brand-new, state-of-the-art, high-tech, computerized scoring system, eh? Doesn't that answer your objections?"

The answer is "No, it doesn't." It can't and it won't until the tests acquire a theoretical foundation and empirical reliability and the diagnostic categories themselves achieve some degree of solidity to give a firm foundation for their measurement. Until that day arrives, the truly bewildering expenditure of intellectual effort to pump air into a dead horse will remain just that. It is sad and puzzling that so many excellent minds pass their time in just this exercise.

Neither clinical intuition nor any of the countless psychological tests currently in use and endlessly under development can possibly be held to be scientific instruments capable of providing precise and reliable data about the structures and functions of the mind, normal or abnormal, in general or for individual cases. It is laughable and downright fraudulent to pretend otherwise. It is inconceivable that any scientists would tout such "instruments" as the tools of their trade.

I Had a Case Like That So There Must Be Many Like That

Not only does clinical research routinely fail to control for innumerable extraneous factors outside the researcher's agenda, it nearly

always also fails to observe the most basic of conditions for ensuring that results can be generalized—choosing a sample that is truly representative of the people to whom the researchers want to generalize their findings. In the most common kind of clinical "research" the clinician "studies" only one individual, or sometimes a few, and then generalizes the "findings" to an indefinitely large number of other, unknown persons.

What is wrong with that?

Let us say that you had never before encountered the dog breed Bouvier. Let us say that the first Bouvier you encounter has blue eyes. Do you then conclude that Bouviers have blue eyes? Of course not. But in time you see another and another and another Bouvier, until you have seen ten such dogs and each and every one of them had blue eyes. Would you not then conclude that Bouviers generally have blue eyes? Of course you would. Who would not? But, at the same time, you know perfectly well that you might be wrong. It might be the case that 99 percent of Bouviers have brown eyes and you just happened to have encountered ten examples of that minority blue-eyed strain.

Because we are all aware that our personal experience is limited, even when we have seen a number of instances that support our hypothesis, we retain some doubt about our conclusion. In science, the attempt is made to reduce and quantify the doubt by sampling randomly from among all those Bouviers in the expectation that a random sample makes it more likely that the dogs seen will resemble those in the whole population of Bouviers more closely than would a sample based on nonrandom personal experience. In most clinical research, random sampling to reduce uncertainty and increase generalizability is not even an issue. Clinicians often generalize from single instances, from samples of one.

What a Single Instance Means Other than the fact that the accumulation of reliable scientific knowledge cannot proceed based on the ungeneralizable intuitions of individual practitioners about individual cases, what else is wrong with depending on case studies of actual patients?

Let us say that you are an American who has never known anyone Vietnamese. You know a fair amount about the Vietnamese because of our shared history, but you have never known, personally,

an authentic Vietnamese person. It happens that you hire one to do some computer programming for your business. So you get to know the guy a little. And you notice that he has some priorities, or values, that are different from yours. Different religious practices. (He's Catholic.) Different attitudes about sex. (He's chaste.) Different work habits. (He works like a crazy Vietnamese boat person grateful to be in America.) Different sense of family. (He sends most of the pittance you pay him back to Vietnam to support his mother and father.) And different life goals. (He wants to reunite his family and make them proud by succeeding in computer science.) So he's rather different from you.

What do you conclude from your relationship with this guy about Vietnamese people in general? "Nothing" is the conservative, scientifically correct answer, but that is bull. You conclude that it is very likely that most or at least many Vietnamese are like this guy you've hired. Why would you conclude that from just one guy? Well, why not? Why would you conclude that the guy you met is the wild card in the deck? You wouldn't.

We think people will be normally distributed. That if you grabbed a thousand guys off the street and measured their heights, say, most of the guys would fall in the middle and the farther you got away from that middle—like up to seven feet or down to five—then the fewer and fewer guys there are going to be. Most people are average; most people fall in the middle of whatever you are measuring. If I ask you what are the chances that the next man to show up at some party you're at is over seven feet tall, you're going to say it's damned unlikely unless you're hosting a Boston Celtics' party. We expect people to be average. When we meet the first person in our experience from some unknown bunch of people like the Vietnamese, we expect him to be average, to be typical. It's far and away the best guess, is it not?

It is far and away the best guess, but it is by no means a sure bet.

Tigers and Quicksand Is it sensible or foolish to generalize from a single experience? Say you meet your first tiger and it growls at you and charges, and you barely escape with your life by slamming the door of the cage shut just in time. How smart would you be to leave the cage door open and just stand there when you encounter your second tiger? Not smart. Not smart at all. If you survived the mauling

and having your arm bitten off, people would say to you, "Just how many tigers do you have to meet before you get the idea?" Because one should have been enough. You should have learned. How many times do you have to step in quicksand before you get the idea?

The same logic holds for the case study. If I meet one Catholic, chaste, hardworking, and so on Vietnamese fellow, then there are probably lots of Catholic, chaste, hardworking Vietnamese family men out there, right? Sounds good, doesn't it? It certainly works well enough for tigers and quicksand.

What's wrong with applying the same "logic" to people? First off, it doesn't matter if you're wrong about the quicksand or the tiger. A conservative approach to both cannot hurt you. Nor can it hurt anybody else. In fact, it might well protect you. When it comes to people, however, instant generalization has a big downside. Even if your prototypical Vietnamese was a good guy, generalizing from him to all Vietnamese leads only to witless stereotyping of millions of highly individualized people. And you're going to be real disappointed when the next Vietnamese computer programmer you hire steals your software ideas and skips town with a Protestant prostitute. When people ask you why you trusted this guy, are you going to say to them, "Well, I knew another Vietnamese man once and he was a great guy"? You can't say that; you would sound too stupid.

You know, we all know, that you cannot generalize from one individual to all individuals who are members of a group, because there is no way to guarantee that that individual is the most representative—the average—of the group. To make a reliable generalization to the whole group, one would need to study the behavior of many, randomly selected, and, one hopes, representative members of the group.

In every science, the ability to generalize your findings depends on the quality of your instruments, but it also is only as good as your sampling techniques. If we get a good sample, we can trust the generalization. Generalization is still dangerous, even with a good sample, especially when we try to apply it to a single unknown individual, but it is not so completely crazy as generalizing to millions from a *single* example.

For these reasons, no one with any scientific respectability would argue that the case study has any research usefulness at all

except to stimulate thought. Good ideas for research can be found in individual cases; research itself cannot. It is just inexplicable, then, that clinical psychology continues to publish hundreds of such cases each year in professional journals and to use them as teaching materials in class.

Double-Blind and Double-Sighted Even good science has its pitfalls. One of the most pernicious is the unconscious agenda. This is often called the Rosenthal Effect after Robert Rosenthal, who demonstrated its operation in some fairly important social science studies. Because the effect is so well-documented and so destructive of any claim to objectivity, researchers long ago devised a procedure for obviating those effects—a procedure routinely ignored by clinicians engaged in their pseudo-science.

The Rosenthal Effect is simply the effect of expectations of both researchers and subjects on the outcome of experiments. If the researchers who give sick patients little pink pills to make them better believe that the little pink pills *will* make them better, and if the patients believe that as well, better the patients will get. And this is true whether the little pink pills contain penicillin or white sugar. You get the effect you expect to get. Any properly designed experiment uses "placebos," little pink pills that really are sugar for half the patients, and real pills for the other half, and neither researcher nor patient knows who is getting what. That's called a double-blind experiment.

What you get in clinical psychological research is double-sighted experimentation. Both the clinician and the subject—often a patient—expect to see the same thing, and see it they do. Wonder of wonders. Aren't clinicians taught how to do research in graduate school?

Actually, many clinicians in academic departments and their graduate students often do make stabs at doing "research" beyond the case study. They grab a batch of college sophomores and give them three or four questionnaires and then look to see if there is any relationship between answers on one questionnaire and answers on another. For example, they might first ask students to fill out a questionnaire on family history with lots of questions about maltreatment, then ask the same students to fill out one on how they feel about themselves, and then another on how they feel about the relation-

ships in their lives. Researchers expect those students who report having rotten families and childhoods to also report feeling rotten about themselves and rotten about the personal relationships in their lives. Amazing. They do.

Any participant in one of these studies would have to be completely brain-dead to miss what the researchers are getting at with their questionnaires. They are suffering from face validity overload. The hypotheses in the so-called studies are transparent to both the participants and the researchers. This kind of double-sighted research is so common in academic departments, it is almost the prototype for today's clinical doctoral dissertation.

Strange too is the complete lack of any effort to make sure that all these questionnaires—there are thousands of them, with new ones being created every day—actually have anything to do with reality. They only ask people to "report" things as they see them. There is no cross-check to see if, for example, families reported to be abusive were truly abusive. The only subject matter for such "studies" is the question of whether students—or patients—are consistently negative or positive when asked about a number of related issues. This activity gets people Ph.D.s in clinical psychology but it sure as heck isn't science.

Shape Shifting in Clinical Junk Science

If we look at the most basic of issues in the definition of a science—common terms used in a consistent way—we find that even that most trivial of requirements is not met by clinical psychology. Definitions of concepts are so fluid, ever-changing with the whim of the speaker, and so utterly without any substantial basis that it is impossible to prove any claim, no matter how inconsistent with any other claim, to be wrong. As soon as any reasonable logical or evidentiary challenge is launched, the psychofact shape-shifts, assumes a new form, and heads off into unknown territory.

I Can Explain, It's a ***Different*** Kind d Gravity Dr. Lenore Terr, the psychological expert who was crucial to the conviction of George Franklin for the twenty-year-old murder of nine-year-old Susan Nason, gave us an illuminating example of definitional shape shifting as she prepared for the Franklin murder trial and provided a perfect illustration of why clinical methodology, theory, and claims should not be welcome in our courts.

Long before she ever met Eileen Franklin Lipsker, Dr. Terr had become famous through her interviews with the children who were kidnapped, school bus and all, in Chowchilla, California. These kidnapped children showed no evidence of repression following what seemed to have been a very traumatic situation—the children were kidnapped in their bus, driven into a pit, and buried underground with an air vent to keep them alive. As reported in Terr's book *Too Scared to Cry* (1990), the children had *not* been traumatized out of their wits during the misadventure, had *not* repressed their memories of the events, and even years after, they were quite capable of fairly clear and complete recall.

Now, this is not a great surprise. In fact, many people—even far too many young, vulnerable, defenseless children—remember their traumatic experiences all too well. Many of these people would welcome the opportunity to put out of their minds forever horrible memories of months or years of war, torture, or imprisonment, but cannot do so.

Yet here we have Eileen Franklin claiming that the death of her friend Susan was a memory so horrible that it remained hidden from her mind's eye for twenty years. How could that be? What made Eileen's trauma so special that it wiped out her memory?

Dr. Terr explains, "There were great differences in the wholeness of retained memory between the Chowchilla kidnap victims and Eileen Franklin Lipsker. The Chowchilla group consistently remembered everything. Yet Eileen started to repress on the very night of the day she witnessed her best friend's murder" (1994, p. 11).

How is Dr. Terr going to explain away this huge discrepancy? It would be like explaining why dropped apples sometimes rise up into the air instead of falling down to the ground. How could that happen?

Easy. It is a different kind of gravity.

> After I met her, I realized that Eileen was what I had defined as a Type *II* trauma victim—a repeatedly traumatized child. She had always remembered, for instance, that her father was an unpredictably violent alcoholic—this she had not forgotten. . . . Moreover, Mrs. Franklin was hospitalized a couple of times for mental illness. The illness memories too might have been frightening. All this would have added up to make

> Eileen a child well rehearsed in terror—a child prone to losing the memory of an ordeal.
>
> These experiences were probably frequent enough and awful enough, in fact, to have allowed Eileen to develop the knack for automatic repression. By the time she was eight years old, she had no doubt practiced "forgetting" so often she could repress when she really needed to. Children who go through a number of terrors protect themselves this way. They are able to muster massive defenses against remembering, because this is the only way they can get through a frightening childhood. (Terr 1994, pp. 11–12)

You might think that Dr. Terr is saying that it will be easier for you to remember a single instance of rape if you have experienced only one than it will be if that instance is just one among dozens. She is not. Dr. Terr means that somehow an automatic mechanism of unconscious forgetting is triggered when you are the victim of multiple instances of abuse and not when you are the victim of only one or a few episodes. She is saying too that the traumatic amnesia is highly selective, applying in Eileen's case not to episodes of violent and unpredictable paternal violence, or to displays of maternal mental illness, but only to Susan Nason's death and some other unspecified but no doubt repeated traumas more horrible than drunken assaults but less horrible than murder.

This creative view of the mind is interesting, but it does leave all people who have survived the Holocaust, or other long-term hideous experiences like war, slavery, torture, and imprisonment, and who remember it, in a rather odd position. Dr. Terr is suggesting either that such experiences were not horrible enough to be traumatic and thus cause amnesia through repression, or that somehow most of the millions of people who find themselves in such situations are just generally pretty resilient.

Whether George Franklin killed Susan Nason is not as important as the misleading psychobabble poured out to make sense of Eileen's story. To account for Eileen's denial of memory of her traumatic event, Dr. Terr had to create a convoluted story that turned her previously held views on memory and trauma inside out. Fluid definitions like that are clever but they do make cross-examination of psy-

choexperts impossible. Changing definitions case by case and expert by expert makes any claim about the effects of trauma consistent with every other claim. And if we ever encounter a case that doesn't quite fit, we can create Type III traumas, and Type IV, and so on. There is no logical, theoretical, or empirical impediment.

Dr. Terr took this nonsense into court. Dr. Terr got a man convicted of murder on the basis of her clinical intuition, buttressed and complemented by her selective perception of the interesting story her client told to her. It was no problem at all with a theory so insubstantial and research that is no more than the intuitive biases of its expositors.

An old chestnut of a graduate school joke says that the B.S. degree stands not for bachelor of science but for "bull shit," the M.S. for "more of the same," and the Ph.D. for "pile it higher and deeper." The endlessly metamorphosing concept of traumatic repression is an excellent example of this process.

What kind of a theory could possibly be assembled on such a quicksand foundation?

Diagnosing the Foundations of Clinical Psychology Describing clinical psychology as "soft science" is flattering the field; it is as soft as a grape. Consider just the shocking but indisputable fact that it is rare to find agreement across clinicians or clinics on the results of psychiatric evaluations, on the basic mental diagnosis itself so central to countless criminal defenses and claims of psychological injury.

In the United States, diagnoses are usually based on the Diagnostic and Statistical Manual of the American Psychiatric Association (APA). Generally, everyone—every psychiatrist, psychologist, clinical social worker, psychiatric nurse, psychotherapist, and counselor—is supposed to use this diagnostic manual.

The first Diagnostic and Statistical Manual came out in 1952, followed by a revision in 1968; the DSM-III appeared in 1980, and was followed by its own mini-revision, the DSM-IIIR in 1988. In 1994, we got the DSM-IV, some nine hundred pages long, covering 374 mental disorders.

The authors of the new DSM-IV claim that the sets of symptoms—what they call "criteria sets"—that are supposed to be used to determine a particular diagnosis were arrived at by consensus. That sounds like an impressive, almost scientific, level of agreement among

clinical practitioners until you see what these psychiatrists mean by consensus.

By consensus, they mean that the members of work groups assembled sets of symptoms for the various diagnoses by simply including all the symptoms championed by numerous different practitioners, turning the combined list into a Chinese menu multiple-choice test. Consequently, the manual directs that a particular disorder should be diagnosed if the patient shows one symptom from column A, two from column B, and one from column C. This inclusive approach certainly took care of any little niggling disagreements about which symptoms belong to which disorder, but it represents a pretty distorted view of the word "consensus." It's like saying that one hundred people agreed on what to have for dinner by the simple expedient of ordering everything on the menu. Consensus, my foot!

A new National Institute of Mental Health analysis of some 34,000 patients diagnosed with depression revealed that the majority do *not* suffer most of the "classic" physical symptoms of depression: unexplained fatigue, insomnia, poor appetite, restlessness, unusually fast heartbeat, constipation, or weight loss. Where patients do claim to experience a symptom such as "eat less than I used to," the only indication that that is true is the patient's say-so; there is no accompanying weight loss. Even among the most severely depressed patients, some 10 percent show no physical symptoms at all.

What this study shows is that clinicians reach their diagnoses for reasons of their own, just as they did before the publication of the new nine-hundred-page manual. Perhaps each diagnostician has his or her own favorite symptom of depression or schizophrenia or whatever—the tidy little symptom checklist is nothing more than a sham. The sham gives both the patient and the public alike the illusion that the mental disorder diagnosed is on another reality plane than the telltale behavior when indeed the disorder is often nothing more than a single "symptom" itself.

It is undeniably true that in the diagnosis of a medical condition such as cancer physicians will certainly disagree over which symptom has the strongest association with a particular diagnosis or which is most indicative of a certain prognosis, but that a test for breast cancer, for example, would be no more than a cobbling

together of a bunch of oncologists' varying opinions is unthinkable.

How did the authors of the diagnostic manual arrive at all those 374 different categories of mental disorders in the 1994 manual?

Consensus again. Disorders and symptoms went into the book if the various co-authors for the different sections of the manual agreed that they should. Sometimes that meant as many as sixteen people agreed, sometimes as few as five. The APA calls this "consensus." Whatever it is called, it has nothing to do with agreement among the tens of thousands of psychological practitioners out there in the field.

(That politics and passionate lobbying have since the first edition played a not insignificant role in determining which "mental disorder" gets into the book and which stays out is undeniable and has been the subject of several books, including Kirk and Kutchins's The Selling of DSM, 1992, and Paula Caplan's They Say You're Crazy, 1995.)

Given their farcical "empirical" procedures for arriving at new disorders with their associated symptom lists, where does the American Psychiatric Association get off claiming a scientific, research-based foundation for its diagnostic manual? This is nothing more than science by decree. They say it is science, so it is.

Clinical psychological practitioners simply do not mean by "science" what real scientists mean. And they never will without a drastic change in the foundations of their discipline.

We Can Explain Everything Science is evaluated as science not solely by its definitions and methodology—where clinical psychology fails spectacularly—but also by its explanatory adequacy—where it truly excels. Clinical psychologists, from Freud to the present, provide us with wonderfully plausible and comprehensive explanations of any and all aspects of human behavior. Of course, so do novelists.

We must be wary of any theory that explains too much. If virtually anything that could possibly occur can be "explained" by the theory as well as any other, even opposite, occurrence, then that explanation is not scientific because it is unchallengeable and irrefutable.

Pretend you are a male patient of mine. Assume that I assert that your classic seductive relationship with your mother, your alienation from your weak and distant father, and the symbolic structure of your dreams, along with the strongly feminine character of the literary career you have chosen, clearly tell me that you are homo-

sexual. You say, "I am not! I have a happy wife and seven children!" I reply, "So what? You are just defensively overcompensating for your homosexuality."

Anything a patient says, anything at all, can be found to have a coherent psychological interpretation despite an apparent surface contradiction between what is said and the interpretation. You cannot prove clinical psychological theory wrong in any respect. If you deny my clinical explanation, or if aspects of what you tell me are inconsistent with the explanation, then I have only to invoke mysterious psychological mechanisms to ride right over you.

How are you going to prove that I, your therapist, am wrong? You can't. Anything you say about your life and how you feel is perfectly consistent with my interpretation. Since, by definition, you have no access to your unconscious mind, who are you to dispute my claims about your unconscious? Good luck trying it.

Neither the patient nor anyone else, in or out of a courtroom, can falsify the claims a clinical professional makes about the working of the mind. Without observation of the phenomena of interest or their reliable indicia, testability is impossible. If testability is impossible, then falsifiability is moot.

THE STATE OF THE ART

The Unicorn Argument

Court cases, by their very nature, involve agendas. The goal of testimony—scientific and otherwise—is always to make some point for one side or another. That objectivity of all testimony—scientific and otherwise—takes a serious beating in court is not really very surprising.

What is truly astonishing, however, is when the absence of scientific evidence that harm did *not* occur is taken as evidence that harm did occur. For example, some of the attorneys for the silicone breast implant plaintiffs claimed injury by arguing that research has *not* proved there is *not* a connection. That's beautiful. Although not all that common in medical argument, it is an extremely popular tack in the claims made by clinical psychologists.

It is what I call the Unicorn Argument.

For example, I might say, "There's no such thing as unicorns." You say, "Of course there are unicorns. They are always kissing vir-

gins." "No," I say. "I have looked everywhere and cannot find a single unicorn." "You have not looked everywhere, and even if you did, the unicorns were one step ahead of you." Stymied, aren't I? You must be right. There are unicorns all over the place just beyond the edge of my vision.

The silicone lawsuits aside, it is very hard to find any reputable scientist who would make the Unicorn Argument even in the silent recesses of the heart. It is fundamentally counter to scientific reasoning. The scientist believes nothing unless it is proven to be true. "I will *not* believe in unicorns unless you can prove to me that unicorns exist." The unicornist believes everything unless it can be proven absolutely to be false. "I *will* believe in unicorns until you prove to me that there are none."

Clinical psychologists regularly lay claim to beliefs on the grounds that they have not been disproved. But it is not possible to prove that something does *not* exist simply because you failed to find it. There are many possible reasons for your failure, only one of which is the nonexistence of whatever it is you are looking for. There are many possible reasons that people in a study do not behave as expected other than the one the researchers hold to be true.

But true believers will die believing in unicorns. Actually, true believers will continue to believe even in the face of incontrovertible evidence against the belief. Everything, after all, is subject to interpretation and reinterpretation. With the right frame of mind, there is no such thing as incontrovertible evidence.

This outlook on life makes perfect sense in what are properly considered "matters of faith." It doesn't make sense in the training or practice of scientific professionals, psychological or otherwise, and it does not make sense in our courtrooms. You cannot allow Miss Marple on the witness stand to argue for the existence of unicorns. It does violence to logic and terrible damage to real people's lives.

Astronomy and Astrology

Almost since its inception, clinical psychology has been subjected to the same criticism: It's not a testable science; it's a secular religion disguised as a science. And, since the first utterance of this presumably crippling criticism, the defensive reply has been, "Oh, you academics are always saying that." It is time to drop the charge that clinical psy-

chology is nothing more than a secular religion. It has always fallen on deaf ears and it will continue to do so.

A more telling comparison likens clinical psychology to astrology and experimental psychology to astronomy. The names of the two fields are similar, but they have nothing more in common than an interest in the stars. They do not have common aims and their methodologies could not be more dissimilar. Moreover, astrological practitioners do not usually claim that either their general "theories" or the interpretations of an individual's astrological portrait are scientifically based.

Nevertheless, astrology, like clinical psychology, is a comprehensive and coherent system for the interpretation and prediction of human behavior. Also, like clinical psychology, astrology is taken very seriously by a large number of people—whose identities are often quite surprising—who claim that it illuminates and guides their lives.

Astrology is widely accepted as true by believers in astrology, just as much of clinical psychology can be said to be generally accepted by believers in clinical psychology.

It is entertaining but absurd to imagine our courtrooms filled with astrologers testifying that Leos would never commit murder when the sun is in Jupiter or that Capricorns make better parents for Virgos than do Geminis. Very few adherents of astrology would attempt to get astrological interpretations, in general terms or for specific individuals, accepted in court as expert testimony. (Or would they?)

Moreover, despite the millions of horoscope readers and customers of psychics, society will not let astrologers bring their articles of faith into our courtrooms as expert testimony. Society as a whole maintains that there is some important difference in the quality of beliefs of astrologers and astronomers and in the credibility of true believers and scientists, a distinction that is crucial for our justice system to maintain.

Yet we not only tolerate but welcome testimony from clinical psychologists that, like astrological interpretation, is built on nothing more than faith.

It is profoundly disturbing that clinical psychologists are themselves unable to maintain this critical distinction between fact and belief, between astronomy and astrology, as their testimony on the wit-

ness stands in courtroom after courtroom shows. How can educated people so blind themselves to the reality of their own belief system?

The Problem of Psychology

All professionals who identify themselves as psychologists share a common problem: They cannot study what they so desperately want to study, the structures and functions of the mind. They don't want to be philosophers who create elegant logical arguments about the nature of the mind, the nature of reality, and relations between the two. Oh, no. Philosophers get no respect these days. If you go to a party and say that you are interested in whether there will be a sound if a tree falls in the forest and there is no one around to hear it, your fellow party guests will walk away mumbling under their breath, "Get a job."

In today's America, psychologists must be *scientists.* But, alas, they are scientists with no direct access to their subject matter and not a hope in hell of ever getting one. What *experimental* psychologists do, most of them, is compromise. If they wish to study an inaccessible mental process like what little babies pay attention to out in the world, for example, they define "attention" in terms of something that they can actually measure, like the amount of time the babies spend looking at one thing or another.

That makes every research psychologist vulnerable to the same criticism: You aren't measuring what you say you are measuring. You can't measure what you want to measure and you are making great inferential leaps from what you are actually measuring—like babies' looking behavior—to what you wish to measure—like babies' attention. You want to make a description of some mental activity using the building blocks of physical activity; from these shabby clay bricks you are attempting to build a cathedral of glass.

It's a point well taken.

I think it is the general impossibility of arriving at a verifiable account of mental activity that leads so many clinical psychologists into cutting the tie to physical observation altogether. If we are always stuck making these great inferential leaps from the carefully controlled studies of physical behavior to the mental processes underlying those behaviors, if we have no way of guaranteeing that the leaps are in any way producing an approximate model of the mental activity of interest, then to hell with it.

HOW CLINICIANS DEFEND JUNK SCIENCE IN COURT

It is bewildering but true that despite the incessant claims that clinical psychology is a science with its findings soundly based on scientific methodology, clinicians challenged in court often revert to a flat-out denial of the status. Often, when challenged in court about the lack of scientific evidence for their claims, clinicians will reply that they are not scientists, they are artists, and that they are not interested in numbers or groups because they deal with individuals. They claim that science is irrelevant and unnecessary to their conclusions.

In addition, they launch ad hominem attacks on the scientific experts themselves. Dr. Lenore Terr in the Franklin case referred to experts on the scientific study of memory as "outsiders."

The ultimate courtroom put-down of the scientific researcher by a cross-examining attorney is, "You have never seen a patient, have you? So how would you know?"

Lenore Terr describes the use of this tactic in the Franklin murder trial:

> As Elaine [Tipton, the prosecutor] had anticipated, Elizabeth Loftus [an experimental psychologist from the University of Washington] eventually also appeared for the defense. She testified that her misinformation experiments served as proof that repressed memory can be changed in the process of intake, storage, or retrieval. But Elaine was ready for Dr. Loftus, and on cross-examination quickly received an acknowledgment from her that she was not a clinician and did not ordinarily use children in her research. (1994, p. 57)

That seeing patients almost constitutes prima facie evidence of the inability to give scientifically accurate and reliable testimony doesn't enter the minds of anyone in court. But it should. It must.

Miss Marple is testifying in our courts. Miss Marple is writing "psychological" reports for our judges. Miss Marple is telling our legislators how to write law to match up with Miss Marple's intuitions about how the mind works. This farcical state of affairs cannot continue. The larger society has already begun to believe the courts mad, and a society that does not believe in its system of justice is a doomed society.

3
Three Kinds of Liars

History of the Forensic Psychology Industry

When there is no evidence of validity of psychiatric evaluation regarding a particular legal question, it should not be assumed that the evaluations can be made accurately. Rather, when evidence is lacking, the assumption should be that psychiatrists cannot make such evaluations accurately, especially in view of the general findings that validity of diagnosis is usually very low wherever it has been tested.

Jay Ziskin,
Coping with Psychiatric and Psychological Testimony, 1995

MENTAL AND EMOTIONAL DISTRESS

[Richie] Parker, 19, drew national attention after pleading guilty on January 13, 1995, to felony first-degree sexual abuse in a case in which he was charged with forcing a 14-year-old freshman girl to perform a sexual act on him in a stairwell of Manhattan Center High School. Parker received five years probation. . . . Parker is undergoing treatment and counseling for sexual abuse.

He settled an $11 million civil suit with the victim last June 15. . . . Parker's victim said she suffered "severe and serious physical and psychological injuries including sexual assault, fear of contracting AIDS, and Post-Traumatic Stress" as a result of the attack. (Reid, Orange County [Calif.] Register, March 26, 1996)

The tort business is a billion-dollar industry in America. By 1980, some five million lawsuits were being filed annually in the United States. Whether that number has increased, decreased, or stayed the same is a matter of some contention, but whatever the actual numbers it is clear that psychology has played a huge role in expanding both the variety of possible claims and the size of possible awards.

The American system of justice, of course, has long recognized intangible damage like mental and emotional distress in personal injury cases, and American juries have a long history of adding emotional damages onto the damages incurred to one's income by, for example, defamation of character or invasion of privacy. So in most standard tort cases today, claims for mental or emotional distress or psychic damage that causes loss of the enjoyment of life's activities are now routinely tacked onto claims of personal injury resulting from any of the innumerable accidents and incidents for which the blame can be laid at someone's door.

Psychology's contribution is to add several hundred new "injuries" that can mean either the loss of much of the enjoyment of life or even the loss of one's mental health.

Damages for the loss of enjoyment of normal life activities are called "hedonic" damages. According to Walter Olson in The Litigation Explosion, "total estimates of hedonic damages have ranged from $450,000 to $13,400,000 in 1989 dollars" (Olson 1991, p. 171). That is a lot of money just because you are not having any fun anymore, but it is nothing compared to what you will get if your mental health itself is directly damaged.

> An early California case involved a suit by a woman who was involved in a trolley car accident. As a result of that accident, the plaintiff alleged that she engaged in over 100 illicit sexual experiences. The California jury awarded her $50,000 for the mental distress associated with her trauma. (Gordon 1976a, p. 3)

Today, according to Jury Verdict Research, Inc., damage to your mental health is worth one hundred times what loss of ability to satisfy your hedonic desires pays.

In the United States, in the mid-1970s, there was just one million-dollar personal injury award per week, on the average. In 1990,

there were 735 million-dollar personal injury verdicts awarded, and 750 million-dollar verdicts were awarded in 1991. Nearly every one of those verdicts included a component for psychic injury, for damages for noneconomic injuries.

And just who do you think is going to make the claim for you that you do indeed suffer from a psychological injury worth $11 million in compensation? The professional forensic clinician, of course. Who else?

> In cases of personal injury, the psychologist can explain to the court and the jury the personality changes that the allegedly injured individual has undergone as a result of the injury, the problems the injury has created in his family life, and how such injury affects his vocational adjustment in the future. (Gordon 1976a, p. 3)

You might take the stand and claim that since you were struck by the falling ladder, you are unable to work or to sleep and you have shattering nightmares in which you relive the trauma of the injury and envision your three children naked, hungry, and shivering, begging on the street with bowls, but this is going to sound a whole lot more convincing if Dr. V.I.P. Harvard tells the court that in his professional opinion, you suffer from the serious disorder of post traumatic stress syndrome.

Many experts will go even further, particularly in claims of post traumatic stress disorder, and not only will diagnose you but will pinpoint for the judge or the jury the actual cause or agent of the trauma that you claim to have suffered—e.g., the dangerous falling ladder. Only another expensive psychoexpert could argue that your expert is wrong.

It is clear that what used to be the well-guarded province of the prosecutor or judge or jury—the determination of what wrong was done, who is responsible for that wrong, and what the compensation should be—are now all decisions that belong, in fact if not in law, in the realm of the professional psychologist. Professional psychologists have claimed a unique competence to assess such mental damages, and the public believes their claim.

How did we get to such a state of affairs? How did we come to

the point that we have literally handed over to a bunch of entrepreneurs the determination of injury, not only in standard tort cases but even in cases of discrimination and disability?

It was pretty much inevitable given the evolving history of psychology and the law in the criminal domain. That the tort psychological-injury market has become the exclusive realm of the trained psychological professional follows right along with the medicalizing of legal competence and insanity and the consequent cornering of that market by the psychologists.

A quick look at the Byzantine history of interactions between psychology and the law will make their present misalliance, if not acceptable, at least comprehensible.

EXPERTS, STEAM ENGINES, AND EXPERIMENTAL PSYCHOLOGY

> Gentlemen of the jury, there are three kinds of liars: the common liar, the damned liar, and the scientific expert. (Foster 1897, p. 169)

Experts on nonpsychological matters have long enjoyed access to the witness chair with their testimony subject to much wrangling about its admissibility and utility. The basic ideas that evolved over time were that expert testimony should be admitted whenever it will assist the judge or the jury, or when the matters before the court are beyond the experience or the understanding of the judge or jury. So an expert on steam engines, for example, could be called into court to explain to the jury the workings of such engines and the conditions under which they were likely to blow up. The jury, having been educated about steam engines, would then reach its own conclusion about the claimed negligence in the particular case before it.

For psychological expert witnesses, the experimentalists and the clinicians followed two very different paths to today's prominent role in our courtroom.

EXPERIMENTAL PSYCHOLOGY EYES THE WITNESS

Experimental psychology's ventures into the legal expert witness business began inauspiciously in 1908 with the publication of Hugo Mun-

sterburg's work *On the Witness Stand.* Professor Munsterburg, brought to Harvard from Germany by William James, the father of American experimental psychology, argued that law would benefit greatly if it embraced the findings and techniques of experimental psychology about such matters as attention, memory, and perception, particularly as they address questions of eyewitnesses' accuracy and reliability. Many outspoken and outraged lawyerly defenders of the status quo replied to Munsterburg with withering contempt, but the barn door was irrevocably cracked open.

Munsterburg had been a student in the laboratory of Wilhelm Wundt, who had founded the first experimental psychology laboratory in the world in Leipzig, Germany, in 1878. By the turn of the century, German psychological researchers had been actively engaged in studying real-world problems and applications in perception and memory for two decades.

Among the best known of the German researchers was William Stern, who conducted what he called "reality" experiments, simulations of real-life situations, to examine the reliability of eyewitnesses under more or less natural conditions.

The classic example involves the staging of a quarrel between two students in front of a class. One student draws a revolver on the other. The teacher stops the staged incident and then questions the class about the events that they just witnessed. Over and over again, the results are the same. The eyewitnesses to the incident are in serious error about every aspect of the witnessed event, including what words were spoken and the type of weapon used.

Munsterburg's book summarized and extended the European studies for the American public. It also attacked American lawyers for their close-minded response to psychological science. That was a political error.

> The time for such applied psychology is surely near. . . . The lawyer alone is obdurate. The lawyer and the judge and the juryman are sure that they do not need the experimental psychologist. . . . They go on thinking that their legal instinct and their common sense supplies them with all that is needed and somewhat more. (Munsterburg 1908, p. 21)

Perhaps it was the tone of Professor Munsterburg's book as much as its content that produced such a withering response from the American legal community. John Wigmore, who was later to publish the classic *Wigmore's* Code *of the* Rules *of* Evidence (1935) and The Science *of* Judicial Proof (1937), published a scathing satire of the book, pointing out both methodological errors and the inapplicability of much of the research to actual legal proceedings. In particular, he noted that despite errors in the testimony of witnesses, jurors hearing those witnesses nevertheless come to conclusions that are in accordance with the facts of the case. Reasoning that the outcome of the case is of far greater concern to the legal system than the perceptions or memories of witnesses, Wigmore dismissed Munsterburg's reported researches as irrelevant.

During the 1920s and 1930s a revival of interest in law and psychology occurred and a number of books appeared, nearly all by lawyers. The past focus on the perceptions and memories of witnesses was joined by an interest in the psychology of crime and the "criminal personality."

> All was quiet on the psychology-law front during the 1940's. There were scattered studies on the usual topics of witness testimony, evidence rules, and criminal behavior, and simulations of jury decision making were introduced. On the whole, this work did not add significantly to what had been done before, and provoked no response from the legal profession. (Loh 1981, p. 671)

BURGEONING OF EXPERIMENTAL PSYCHOLOGY IN COURT

A critical development in the modest expansion of the role of experimental psychology in the legal system took place in the 1950's through psychologists testifying in cases involving the impact of pretrial publicity, and civil rights.

Research psychologists had developed reliable techniques of conducting surveys with samples that began to approach being truly representative of the population relevant to the

> survey. Results of the surveys began to show up in trials where defense attorneys might use them to show that their clients could not get a fair trial in a particular locale because pretrial publicity in newspapers, news clips and magazines had so biased the potential juror pool against the defendant. (Woodward 1952, p. 447)
>
> In 1961 the Supreme Court put the seal of approval on the methodological competence of such research surveys and reversed a conviction because of pretrial publicity in Irvin v. Dowd, 336 U.S. 717 (1961). In the famous case of Sheppard v. Maxwell, 384 U.S. 333 (1966), the Supreme Court reversed Sheppard's murder conviction based at least in part upon the Court's acceptance of the reliability and methodological soundness of surveys of the effects of negative pretrial and mid-trial publicity. (Loh 1981, pp. 672–73)

A dozen years earlier, in 1954, a crucial case was decided with lasting implications for the parties to the case, for society as a whole, and for the future of the forthcoming marriage of law and psychology in the American justice system. Not quite a first date, this case was surely a turning point in the relationship. Since then there has been no going back.

This case was the landmark school desegregation case. Employing the "findings" of psychologists, part of the case was built on the foundation of the famous "Brandeis Brief." In 1908, Louis Brandeis (later to become a Supreme Court justice) had argued persuasively that conclusions of social scientists should be considered when evaluating the merits of limiting the workdays of females. His presentation laid the groundwork for the crucial *Brown* v. *Board of Education* case argued before the U.S. Supreme Court in 1954.

In that case, Kenneth Clark, an experimental psychologist from Harvard, assisted by thirty other psychoexperts, submitted an amicus brief to the Court, alleging that supposedly scientific evidence showed that a segregated school system had ill effects on the personalities and academic performance of black children. The Supreme Court cited as the modern authority for these findings Clark and other social scientists.

Legal scholars argue about the relative weight the Court gave to the scientists' "evidence," many claiming that, whatever the public perception, it was slight, but there is no doubt that the Pandora's Box of psychological expert testimony was now open and showering its contents across the land. This occurred despite what Wallace Loh, past dean of the law school at the University of Washington, described as yet another "swift and caustic" reaction from the legal community. Legal experts pointed out the methodological shortcomings and unjustified inferences of the work cited by the psychoexperts in the ***Brown*** case, and described the findings, quite rightly, as more common sense than science. They reacted about as enthusiastically as their turn-of-the-century counterparts had to Professor Munsterburg's efforts.

But the tide was turning in America against racial segregation, and the Court and the public alike moved with the tide. And the Court and the public alike wanted a scientific basis to justify what was, after all, a major change in American political opinion. Clark and company gave it to them.

It is interesting that in a recent column in the *New York Times* addressing the issue of ethnic dormitories at Cornell University, Clark cited no scientific evidence at all about the injurious effects of such living arrangements on the hapless students but merely quoted the Supreme Court in stating that "separate educational facilities are inherently unequal" (Clark, ***New*** *York Times,* April 1, 1995).

The response of the legal community to psychologist Clark's Brandeis-style brief was so negative that experimental psychology generally avoided excursions into the legal arena for more than a decade following the ***Brown*** decision. In the 1970s, the floodgates opened. Do-gooders from the sixties blossomed into professionals with a cause in the seventies, and experimental psychology was ready to aid the cause. Classic research on witness reliability was refined and replicated with more sophisticated methodology and with a renewed sense of its critical application to important social problems—like maintaining an equitable, color-blind justice system.

By the middle of the 1980s, experimental psychologists were testifying all over the country—wherever the judge would allow it—on the confusions and distortions of memory that result from various police interrogation techniques, and the serious difficulties witnesses encounter with cross-racial identification.

Notwithstanding Wigmore's historical criticism of their applicability, German-style "reality" studies had become by the 1980s the paradigm for research on eyewitness reliability in the United States. According to Wallace Loh in a March 1981 *Michigan Law Review* article, "they are repeated so often that the findings are no longer considered novel" (p. 661).

> In a modern version of the reality experiment, the videotape of a mugging was broadcast on the nightly news of a major television station in New York City. It was followed by the showing of a lineup of six suspects, and viewers were asked to call in with their identification of the mugger. Less that 15% of the 2000 respondents correctly identified the assailant, a rate no better than random selection. (Buckhout 1975, p. 7)

Experimental psychological research of this type was and is carefully conducted according to strict principles of sound scientific methodology. Testimony presenting the findings of such research does not involve the expression of the personal opinions or intuitions of the experimentalist. It is not even necessary to have as an expert witness the person who actually conducted the research because, like all sound scientific work, this research is easily replicated in any laboratory by any scientist and the findings are readily available in the published psychological literature.

The major argument over this type of testimony was whether it interfered with the judge's or jury's role as trier of fact in deciding whether a witness's identification of an alleged criminal was reliable. It is true that most of the research consists of demonstrating the effects of various factors that make memory *less* reliable, like stress, leading questioning, passage of time, violence, misleading photo IDs, and biased lineups, so most expert testimony on the topic does consist of casting doubt on the reliability of eyewitnesses. It would be highly unusual, however, for any experimental psychologist testifying about research on the perception, attention, and memory of witnesses to offer any decisive opinion about the accuracy of a particular individual's testimony.

The purpose of such expert witness testimony offered by experimental psychologists is, like that of the expert witness on steam

engines, to explain the scientific findings about the reliability, accuracy, and malleability of memory due to various factors and the conditions under which memory is likely to fail.

In addition to research on memory and factors affecting witness reliability, experimental psychologists presented research in court on issues like confusion allegedly caused in consumers by brand names or product packaging that is similar to that of competing products. Robert Gordon in "The Applications of Psychology to the Law," from a 1976 issue of *Law* and Psychology Review, reports that Coca-Cola sued Chero-Cola in 1921 for such alleged trademark infringement, the Spring Aire Mattress Company sued the Sleep Aire Mattress Company for the same reason, and Frito Lay Corn Chips sued Ajax Potato Chips for making bags that allegedly bore a strikingly similar appearance to its own product's bags. In all such cases, careful scientific studies are run with representative consumer samples and the findings are presented to the court and the jury.

Some research is conducted just for the sake of research—for the sake of acquiring knowledge about cross-racial identification, for example, or the effects of "weapon focus" on eyewitness testimony—and it gets introduced into trials because the information it provides happens to be helpful to the finders of fact. But some research is "special purpose" research conducted just for the litigation at hand. On confusability of specific products, it is the second kind of research that shows up in court.

With the exceptions of the researchers on mental confusion over similar commercial products, the small band of eyewitness testimony researchers, and their colleagues involved in the development and refinement of survey and other measurement instruments, few experimental psychologists ever ventured outside their laboratories and into the courtrooms.

For the clinicians, however, it was another story. They came directly into the American court system through the wide open door of legal insanity and mental state of the accused at the time of the crime and at the time of the trial.

DANIEL M'NAGHTEN AND THE FORENSIC CLINICIANS

In 1843, in England, Daniel M'Naghten, while attempting to assassinate the prime minister of England, accidentally shot and killed

the prime minister's secretary. M'Naghten suffered from delusions and thought that killing the prime minister would eliminate the source of his oppression. He successfully pleaded an insanity defense, claiming that he did not know right from wrong, a test that "had its origin in 16th century England, where judges enunciated a test of criminal responsibility which was premised upon the knowledge of good or evil" (Burke and Nixon 1994, p. 10).

Following this case, the insanity defense was reformulated, resulting in what is known today as the M'Naghten Rule, which focuses on the accused's understanding and knowledge, stating that an accused should not be held criminally responsible if he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.

The M'Naghten case was also quite important because, according to the American Psychological Association's Richard Rogers, it was one of the earliest cases that allowed expert testimony on the issue of insanity as a defense in a criminal trial (1987, p. 840).

Today, medical specialists in psychopathology flood into our courtrooms as legal criteria both for insanity as a defense and for mental incompetency to stand trial evolve and proliferate, increasing in subtlety and complexity.

Until the 1960s, in America, medical psychiatrists—not Ph.D. psychologists or any other kind of mental health professionals—had the exclusive right to provide expert "medical" testimony on the issue of insanity as a defense in a criminal trial, although judicial decisions in 1940 (People v. Hawthorne) and in 1954 (Hidden v. Mutual *Life* Insurance Company) had permitted clinical psychologists with sufficient education and experience to testify as experts on mental disorders and their causal connections to criminal or tortious conduct. This changed in 1962 with the appeal of the landmark case of *Jenkins* v. United States.

The trial court had ruled, "A psychologist is not competent to give a medical opinion as to mental disease or defect. Therefore, you will not consider any evidence to the effect that the defendant was suffering from a mental disease or a mental defect . . . according to the testimony given by the psychologist" (*Jenkins* v. United States, 1962, 307 F.2d 637, 638 n. 1).

The United States Court of Appeals for the D.C. Circuit reversed the lower court and remanded for a new trial. The court ruled that the evaluation of relevant competence was up to the trial judge and was not a straightforward matter of medical training.

Giving as examples electricians who could testify about the effect of electrical shock on the body or an optometrist knowledgeable about symptoms of eye disorders, they wrote:

> The kinds of witnesses whose opinions courts have received, even though they lacked medical training and would not be permitted by law to treat the conditions they described, are legion. *The principle to be distilled from the cases is plain: if experience or training enables a proffered expert witness to form an opinion which would aid the juy, in the absence of some countervailing consideration, his testimony will be received.* (Miller, Lower, and Bleechmore 1978, pp. 119–21)

That was in 1962. Today, every state permits clinical psychologists to join their psychiatric brethren as expert psychological witnesses on insanity and competence.

Mushrooming Psychological Experts in the Legal System

> The broadening of admissibility of expert psychological testimony occurred during a time of increased professionalization (e.g., state certification and licensure), rapid growth of mental health professions, and formulation of legal doctrines of insanity consistent with modern psychiatry. An extensive literature on the professional and legal aspects of the role of psychologists in court suddenly mushroomed. (Loh 1981, pp. 672–73)

Today we have just about anybody who sets up as a so-called therapist confidently mounting the witness stand as a psychological expert to pronounce diagnoses, prognoses, and needed courses of future therapy. Given the state of the art of mental diagnosis and treatment, the credentials of the "experts" do not, in fact, make any difference, but it is nevertheless astonishing to hear so great a cacophony of self-styled yet societally accepted experts all testifying

about how the mind works, what goes wrong with it, and how this relates to guilt and responsibility, competence and insanity, diagnosis and the effects of disorders on individuals, not to mention needed future therapy.

Professor Loh is right about the concomitant mushrooming of forensic psychology and the developing formulation of legal doctrines of insanity away from the idea of good and evil and toward the philosophy of modern psychiatry. The legal profession is still reeling from the 1980 publication of the ambitious third edition of the diagnostic manual of the American Psychiatric Association. Earlier versions of the manual were inconsistent, piddling little efforts at systematizing and regularizing the diagnoses of mental illness. The third edition—the DSM-111—was something else altogether with its hundreds of different diagnoses with fancy-sounding names, critical symptom lists, and up-to-the-minute timely relevance. It was to the DSM-III that we owe today's glittering *variety* of "diminishing" diagnoses—those mental conditions, temporary or chronic, that somehow magically diminish a person's responsibility for whatever heinous act he or she committed, decreasing the crime with which the person is charged or weighing in the defendant's favor when it comes to sentencing.

CORNERING THE CRAZY MARKET

Since determination of competence and the use of insanity defenses of one form or another are hardly new to the American legal system, there was nothing particularly remarkable about employing professionals in psychopathology to express their opinions of the psychological functioning of accused criminals. However, with the increasing and inexorable medicalizing of psychological problems, it seems inevitable that our courts will eventually take away altogether from the layperson the right and the duty to judge another person's competence or insanity in a criminal case.

Two recent court decisions have gone a long way toward handing the task completely over to the professionals who claim that they are so much better qualified than the rest of us to make these hard decisions. *Hunter* v. *Massachusetts* (1995) established the necessity of professional psychological examinations for the accused, and the more recent Supreme Court decision in *Cooper v. Oklahoma (1996)* estab-

lished the illegality of sending an accused person to trial if a psychiatrist says the accused is too nuts to assist in his or her own defense.

Given the farcical and highly contentious procedures of clinicians for reaching mental diagnoses, handing determinations of competence and insanity entirely over to their charge can bring nothing but a further distortion of common sense in our justice system.

The same psychologizing of the law with the subsequent distortion of both sense and justice has been occurring in the civil courts as well as in the criminal justice system.

Damages paid out in tort cases due to psychological injury have reached dizzying heights, and not only in the usual personal injury realm but in the modern arenas carved out by today's governmental social policy decisions.

SOCIAL BETTERMENT THROUGH FORENSIC PSYCHOLOGY

The United States has a decades-long history of providing both for the economically disadvantaged and for those who are unable to work due to accident or disability. It should come as no surprise that recent social legislation, as well as amendments of older acts, now include—like tort law—a whole raft of mental disorders that qualify as disabling and, as such, as subject to compensation and to protection from discrimination.

Two such pieces of social legislation—spiritual siblings in their psychological compass and passed within a year of each other—are the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990.

The consequence of such well-intentioned psychological state-of-the-art legislation has been to flood our courtrooms with mental health providers of every stripe and degree.

Civil Rights Act of 1991

In 1991, Congress passed the Civil Rights Act, amending Title VII of the Civil Rights Act of 1964, which had prohibited discrimination by employers of fifteen or more employees on the basis of race, color, religion, sex, and national origin. Sexual harassment was considered a form of sex discrimination. Under the original act, an employee could recover damages for back pay or future pay (or reinstatement in the

job), but not for emotional pain and distress. Because of the 1991 changes, wronged employees today can recover compensatory damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, in addition to wages due and/or reinstatement, any or all of which may be caused by discrimination or sexual harassment.

Simply, this means that Congress has agreed that racial and sexual discrimination or sexual harassment can cause mental anguish that can, by the tiniest stretch, be classified as a genuine mental disorder. Mental anguish can easily be certified as a disorder by a trained mental health professional and enhanced in degree for the purposes of trial by the addition of a formal, perhaps Latinate, label from the DSM.

Sexual harassment is interesting because it, like the psychological damage it causes, is often imperceptible to others, or exists only in the mind of the harassed. This does not mean that the mental effects of harassment are any less real than the bodily effects of physical assault, but it does raise, once again, the troubling question of whether it takes an expert psychologist to identify them.

> A Connecticut woman has sicced a [federal civil rights] lawsuit on a judge she says brings his skirt-chasing dog to a Danbury courthouse where the pooch harasses women with "offensive nuzzling." . . . "Kodak [the dog] acts like a high-testosterone male," said Nancy Burton, who said the out-of-control canine only hits on women wearing skirts. But the judge [said] that Kodak is a female. (Delfiner, New *York* Post, September 25, 1996)

Americans with Disabilities Act of 1990

The American with Disabilities Act was passed the year before the Civil Rights Act of 1991 and is, in its psychological provisions for determination of injury and compensation, much the same as its sister legislation. Congress, in passing the ADA, however well-meaning in intent, essentially passed another full-employment bill for psychological professionals.

The ADA prohibits discrimination in the workplace and in places of public accommodation against the disabled, be they physi-

cally disabled or mentally ill. Since, as we have seen, there are several hundred ways of being mentally ill, all requiring the skilled eye of the trained psychologist for diagnosis, it should be clear that employment opportunities for clinicians in discrimination litigation are vast. Not only can the clinician diagnose just about anyone with some kind of mental disorder, but he or she can also be called upon to testify that the discrimination suffered by the victim in the workplace has produced still more mental trauma likewise worthy of compensation.

GELT WITHOUT GUILT AND THE LAW OF LIMITLESS DEMAND

When the clinical employment opportunities provided by the ADA are added to those opened by the new Civil Rights Act, and all these new jobs are added on to the old Social Security Administration base of workers' disability and compensation claims, the job prospects are dizzying. Throw the Child Abuse Prevention and Treatment Act for the children into the pool, with its ever-increasing demand for more and more professional child psychological evaluators, and it becomes clear why the supply of mental health providers in this country has been growing exponentially to meet a constantly rising demand.

The concepts of government-legislated social betterment and a social safety net for the less fortunate have a long history in this country. Given the general psychologizing of the whole society, it was inevitable that mental betterment and mental health safety nets would eventually take their places alongside their older physical counterparts. It was inevitable too that mental health professionals would be produced in great numbers both to implement and to augment these strides forward toward social betterment.

Add the numbers of the forensic clinicians employed in the social welfare domains to those already laboring in the vineyards of competency and insanity, alongside those experimentalists venturing into the courtroom on occasion to assist the trier of fact in understanding the present state of scientific psychological knowledge about attention, perception, and memory, and we have a subset of mental health professionals that itself defines a whole new profession—the professional forensic clinician.

In an apparent violation of the fundamental law of economics, as

the supply of mental health providers grew, largely through expanded licensing of diverse professionals, the demand grew as well. The psychoexperts educated their nonpsychological fellows to recognize a need for psychological expertise where none before had ever existed. And more and more forensic psychology types were hatched out of our schools and licensed to meet that demand, and they, in turn, agitated for more of the same.

At the present time, it is not clear where the growth will end. There is still plenty of room for more well-intentioned legislation to improve the lot of the ordinary citizen. Perhaps in response to the high level of domestic violence in this country Congress will pass a version of the Child Abuse Prevention and Treatment Act for women, requiring that all suspected domestic abuse be reported and evaluated by trained psychological professionals. It is not such a crazy idea considering the present system of handling cases in which violent men pose a clear danger to the women in their lives and, often, the family members of those women.

In a recent case in New York City, an eighteen-year-old woman, Danielle DiMedici, allegedly was killed by her ex-boyfriend after numerous well-documented attacks and threats, including a kidnapping. The man allegedly had threatened a dozen family members in addition to Ms. DiMedici. The New *York* **Times** reported:

> It was far from clear whether any amount of official intervention could have deterred Mr. Parker, a convicted felon and drug dealer apparently obsessed with Ms. DiMedici, who was pregnant with his child. Officials from the [Brooklyn] District Attorney's office said yesterday that Ms. DiMedici and a dozen family members also threatened by Mr. Parker would probably have been moved out of the city by the end of this week. (Kennedy, New *York* Times, September 18, 1996)

A dozen people would have been moved out of the city to accommodate a man threatening to harm them? It is kind of hard to imagine that the entire family of the President of the United States, for example, would have been moved out of Washington, D.C., because some man threatened them with harm. Perhaps a Family Abuse Prevention Act for Adults is overdue. If one does come to pass,

it would certainly keep the psychological professionals fully employed well into the next century, especially if "psychological" abuse were included in such an act.

SOCIAL LIBERALISM AND WOMEN'S LIBERATION

The American liberal tradition has long held that the individual without the sheltering arm of the community is a frail creature helplessly buffeted by the cruel and capricious winds of fortune. Liberal thinkers believe that the citizen must be shielded not *from* the government but by the government, in the same way a benevolent father shields his child from danger and even risk. From this perspective, both decision-making power and accountability lie solely in the hands of the paternal government, since the childlike individual citizen is incapable of accepting the burden of either.

There are two types of liberals, those who see themselves as making up the shielding government and those who see themselves as needing government protection from responsibility for the conduct of their own lives. Liberals in the first group quite naturally see just about everybody else as belonging to the second, a large but necessarily stratified group. One's position in the hierarchy of the needy is of course determined by the degree of success experienced in life: the greater the success, the lower the position, on the "to each according to his needs" principle.

Thus, black Americans and Hispanics rank higher on the needy scale than do white Americans, while children rank higher than women, who, naturally, rank higher than men. (There are liberals who rank Asian Americans among the needy, but not many; it is too hard to reconcile their evident success with their numerous disadvantages.)

For decades, liberal thinkers have found allies for their position among economists and philosophers, but with Brown v. Board *of* Education in 1954 they got something more. They got science. Against all odds, clinical practitioners convinced much of the legal community that psychology was a science and that psychology's beliefs could be accepted and proffered in court as scientific findings.

The law is, of course, a principal tool of social policy implementation, addressing as it does fundamental issues of type and agency of injury and degrees of accountability for action. With ethics and economics, and now the *science* of psychology behind them, the liberal

agenda of partitioning out legal responsibility in accord with the hierarchy of perceived neediness was greatly advanced.

Traditional Freudian-style clinical psychology, however, would have been of no use to liberals. With its focus on the healthy development of the strong, independent, and principled male, there was no scientific apologia available in the theory to explain rankings on the hierarchy of need. It is impossible to imagine Freud arguing before the Supreme Court in favor of either black plaintiffs or white defendants on the issue of mental health and segregated schools.

No, a major change in the whole theory of personality development was required before the allegedly "scientific" clinical psychology would make a useful weapon in the liberals' arsenal. Oddly, and somewhat unexpectedly, that major change was a direct result of the infusion of a specific brand of feminism into clinical psychology in the 1970s.

Arrested Feminism

In both law and clinical psychology, the growth of the number of women in the ranks has been exponential over the last few decades in this country. From 1950 to 1967 approximately 3 to 5 percent of law students were women. In 1980 that number had risen to more than 30 percent. In 1995 it stood at over 50 percent.

For the psychologists the picture is similar. In 1980 about half the first-year doctoral students were women; by 1990 that number had risen to two thirds. In programs granting only master's-level degrees, the figure is 70 percent. For the academic year 1992–93, in master's programs, over 40 percent of the faculty are female, and in doctoral programs, it is a little over one third. In 1976, women received just over 31 percent of all Ph.D.s in clinical psychology. By 1990 they received over 58 percent. (Among academics the picture is quite the opposite, with males making up 70 percent of today's departmental faculty and women 30 percent.)

Today, the majority of the 75,000 American clinical psychologists and 45,000 psychiatrists are women. Most of these people have obtained their licenses in the last twenty-five years, in the years since the modern renaissance of the women's liberation movement. That the vast increase of the number of women in the mental health profession coincided with the boom years of the women's liberation movement has had significant consequences for the interface between psychology and the law.

Consider, for example, how Judith Herman, a Harvard psychiatrist well known in the fields of incest and recovered memory, explains the personal and professional history of writing her 1992 book *Trauma* and Recovery:

> This book owes its existence to the women's liberation movement. Its intellectual mainspring is a collective feminist project of reinventing the basic concepts of moral development and abnormal psychology, in both men and women. . . . The day-to-day practice that gave rise to this book began twenty years ago with the formation of the Women's Mental Health Collective. . . . The collective is still my intellectual home, a protected space within which women's ideas can be named and validated. (p. ix)

The underlying logic of women's liberation went like this: Sex is political and politics is about power. Power relationships are either equal or unequal. Power inequity is bad. In our society, men have more power than women, so all sexual relationships between men and women are unequal power relationships, with women on the weaker end. This is bad.

The program resting on this platform of reasoning had two basic stages: First, men and women must recognize the inequities through a careful process of consciousness raising, a process termed "navel gazing" by its rude disparagers. Second, men and women must strive to equalize power—the men through broadening opportunities for women and the women through ambition, action, education, and hard work.

No single characterization can possibly do justice to a group so large and diverse as the tens of thousands of clinicians practicing today, but let me hazard the generalization that a great many of the women clinicians, coming of age as they did during the flowering of women's liberation, are feminists, and so are a not insignificant number of the men. The feminists among them can be divided into two radically different groups.

The first group might be called the Fully Developed Feminists, the women (and simpatico males) who recognized the inequities in traditional roles and strove for years to equalize the power and the responsibilities. They studied for years for advanced degrees, labored

to establish professional practices, and today, along with millions of their "sisters," struggle to satisfy the competing demands of work, family, friends, and their own needs.

The second group consists of the Arrested Feminists. These are the clinicians who wholeheartedly embrace the idea of woman-as-exploited-and-dependent while utterly rejecting the plan for her liberation and independence. It is not that Arrested Feminist clinicians have a better plan; it's simply that the need for one escapes them.

Arrested Feminists don't like or trust men: either they have been hurt by them, or they believe most women have been hurt by them, and the excess of pity they feel for female victims of men has been both blinding and immobilizing. The situation is much like that of partners in a marriage trapped by the pain of old wounds, unable to leave the recounting of past grievances long enough to see any future together. Pain, rage, and compassion have led these clinicians to rewrite the traditional Freudian script of life into the dysfunctional family model we have today.

The Dysfunctional Family Model of Life and Society

In the traditional Freudian formulation of the psychodrama of life, the father was properly villainized for scaring the hell out of little boys, but he got off scot-free when it came to the psyche of little girls. The Arrested Feminist version features the eclipse of the bad mother's starring role and the rise of the old villain—the castrating father—in a horrifying new form, the Father Rapist.

Over the last dozen years or so, the father as rapist has come to play the leading role in the psychodrama of life on both the familial and societal levels, as scripted by modern feminist clinical psychology.

According to modern theory, psychological life begins with pathogenic interactions between the Father Rapist and his sexually—and otherwise—abused children. In the natural course of development, these abused children grow up to become Abuse Survivors and Battered Women who will be wives to the next generation of Father Rapists. Mother in this scenario is a long-suffering, saintly soul who is helpless to protect herself, shelter her children, or change her life in any way. Thus has current clinical theory transformed the roles of husband and wife and father, mother, and child into a truly hideous domestic scene held to be ubiquitous, if not universal, in America today.

Arrested Feminist clinicians and their attorney counterparts apply this same model of the family to society as a whole, seeing the physically and mentally disabled as well as the societally disadvantaged as metaphorical abused children of a sick society. This point of view has produced both compensatory legislation and a whole new genre of criminal defenses in the last decade based on the toxicity of urban life, television, and racism.

It should be clearly understood that dysfunctional family theory incorporates the philosophical assumptions of the women's liberation movement in a form so severely truncated that it amounts to a perversion of the movement's most fundamental goals. It is tragic that much of what arouses the ire of the self-styled anti-feminist, and fills the pages of the media, is this distorted, profoundly nonfeminist, picture of what women are and what they can be, but so it is.

THE AMERICAN PSYCHOLOGICAL TRADITION

It is very important to the understanding of the success of this distorted view of family and society to realize that the dominant therapeutic tradition in American psychology always has been, basically, navel gazing; it has never been one of urging clients to change direction, take charge, or effect life change through positive action.

Just as there are two kinds of liberals, those who see themselves as dispensing help to the needy and those who see themselves as in need, so too are there two kinds of arrested clinicians: those who see others rendered powerless by abuse and in need of a sympathetic witness to their pain, and those who see themselves as victimized and irrecoverably injured by men or by the white, male-dominated society.

Both do no one any favor by their views. The witness bearers expend their energy attempting to bind up the psychic wounds of their clients while absolving them of any responsibility at all for the conduct of their own lives, while their paralytic fix on abuse and powerlessness guarantees endless wound licking.

Clinicians who see themselves as having been personally exploited or abused, raped physically or metaphorically, are in grave danger of seeing both their clients and society through the prism of their own terrible experiences. A clinician who sees herself as an adult abused child is dangerous indeed. If she cannot get past her own anger, then she cannot move past the stage of focusing on exploita-

tion, oppression, and powerlessness. She will remain trapped in the impotent exercise of railing against fate, and she will inevitably trap her clients in the same flailing state.

Both types of clinicians, however, do very well financially with today's miscegenation between law and psychology—a relationship as inevitable as the confluence of two rivers running into the same valley.

VENALITY, PERJURY, AND BAMBOOZLING

There are approximately 850,000 lawyers in the United States, with about 40,000 new ones being hatched out of our law schools each year. The ratio of lawyers to the general population today is twice its historical average. Lawyers have to eat. Lawyers have to pay the mortgage, club dues, and greens fees. Psychologically hyped cases are a gift from heaven—or from the state and federal legislatures controlled by lawyers.

Psychologists have to eat too. Psychology, like law, has been a growth industry over the last three decades, with an exponential increase in numbers of Ph.D.s, and M.D.s in psychiatry, as well as in numbers of graduates in social work and counseling increasing tenfold since the mental health initiative launched by the federal government under President Kennedy's administration.

With less cynicism, I should note that various legal scholars like Wallace Loh and Laura Kalman point out the vital importance of the legal realist movement in this country from the 1920s to the 1960s in effecting diametrical changes—in a significant number of minds—in the conceptualization of the interactions between law and politics. That such changes would create a natural receptivity to the arguments of the socially concerned and proactive psychologists was inevitable. Legal history is considerably outside the scope of any expertise I might claim, but the interested reader is referred to the work by Kalman (1996) in the reference section.

Attorneys' and psychologists' common interest in forensic psychological issues and assessments has spawned a number of organizations devoted to the practice and development of the area at the nexus of law and psychology. The American Psychological Association has a special division of its membership open to both psychologists and lawyers, and both groups of practitioners have swelled the ranks of the American Psychology-Law Society, active since the mid-1970s.

In addition, a dozen new professional journals have found their way into productive print since the early 1980s. We have the *American Journal of Forensic Psychology; Law and Human Behavior; Law and Psychology Review;* and the guide for the up-to-date litigator, *Advances in Forensic Psychiatry and Psychology.*

The increase in the number of books devoted to the topic of law and psychology published over the last twenty years has been phenomenal, including everything from handbooks for testifying as a witness to guides for performing evaluations for the courts and perspectives on the international scene. The world is growing smaller. There is even a book on how to sue your parents if you recover memories of abuse while they are still alive.

Forensic psychologists and litigators belong to common chat groups on the World Wide Web, where forensic clinicians advise one another on techniques and procedures for assessment, report writing, and testimony, and where attorneys looking for a forensic clinical specialist in one area or another can advertise for help.

Bold forensic clinicians have their own home pages on the WWW, listing their areas of expertise, like child custody determinations or psychological distress in employment litigation.

Clinical evaluators, most of whom were trained over the last twenty-five years in programs steeped in the nouveau dysfunctional family model of life and society, determine in some 50 percent of juvenile cases whether the "youth" can be rehabilitated as a child or is beyond youthful redemption and must stand trial as an adult. Parental fitness was evaluated by court-appointed and parent-hired custody clinicians in about one quarter of the 125,000 disputed custody cases last year, with a cost in expert witnesses approaching $100 million.

In some 2 to 10 percent of those disputed custody cases, an allegation of child abuse was made and the determination of the reality of that claim dropped into the willing hands of the paid clinician. Estimating about ten thousand such cases annually, the added involvement of social workers and child protection workers would likely triple the usual per case expert psychological witness cost of $3,000. That means that the child evaluation specialists in these cases are raking in an additional $60 million a year.

Nationally, outside the arena of the divorce court, there were, in 1992, some 2.7 million reports of some form of child abuse in

this country, each and every one of which must be evaluated by a trained professional, usually a team. Even assuming that all the investigators are state workers with a considerably lower hourly wage than their counterparts in standard custody disputes, the time involved in home visits, interviews, consultations, and report writing must come to at least twenty hours per child. At a very conservative $20 an hour including benefits, that works out to $1.08 billion. And that is a ridiculously low figure because it doesn't even include such little matters as overhead and transport.

Thousands of treatment specialists with expertise in youth rehabilitation, alcohol and drug abuse, domestic violence, and even serial murder and rape also feed out of a trough that never empties as judge after judge, court after court attempts to solve the intractable problems of escalating crime and personal irresponsibility. There are at least two thousand rehabilitation treatment programs for "troubled" youth in this country, costing over $30,000 per youth, annually, to treat. With an average of about one hundred youths per year "treated" in such programs, that amounts to a staggering cost of some $6 billion. Of course, it may not seem so staggering if you are on the receiving end of it. Some two thirds of the costs of these programs are for staff.

In addition, thousands of well-paying job opportunities are created for clinical psychologists as reams of new legislation are passed that is designed to protect the weak, aid the handicapped, and level the playing field for all. It is estimated that some 500,000 personal injury, disability, and discrimination claims reached the trial level last year. With an average of three forensic psychological experts per trial, at $200 an hour for an average of about five hours each, the cost to plaintiffs and defendants of expert psychological witnesses in such trials is about $15 billion.

Today, self-styled forensic psychological experts testify on almost every conceivable criminal, judicial, civil, and legislative issue that touches on human behavior and mental functioning.

According to William Foster in the 1897 *Harvard Law Review,* Prof. John Odronaux declared in 1874 that:

> There is a growing tendency to look with distrust upon every form of skilled testimony. Fatal exhibitions of scientific inaccuracy and self-contradiction cannot but weaken public confi-

> dence in the value of all such evidence. If Science, for a consideration, can be induced to prove anything which a litigant needs in order to sustain his side of the issue, then Science is fairly open to the charge of venality and perjury, rendered the more base by the disguise of natural truth in which she robes herself. (Foster 1897–1898, p. 170)

It is the psychological community as a whole that has laid itself "fairly open to the charge of venality and perjury." The clinical psychologists are responsible because they are indeed rendered, as the Victorian scholar above remarked, "the more base by the disguise of natural truth in which" they robe themselves. The experimental psychologists are equally guilty by their sin of silence, by their failure to strip away from the clinical charlatans and greedy frauds of the field the trappings to which they truly have no claim.

It is very important in evaluating the basis of clinical psychology's claims to scientific expertise to have a clear understanding of what actually goes into their education and training. We will look at that in the next chapter.

4
Learning to Read Tea Leaves

Growing the Forensic Psychology Industry

> William Miller and Reid Hester . . . summarized all the studies in which alcoholics were randomly assigned to inpatient or outpatient treatment. Some of the inpatient programs involved prolonged stays in institutions devoted to radical changes in lifestyle, beliefs, and attitudes. Rut there were no differences in outcomes between inpatients and outpatients, nor did Miller and Hester find any relationship between the length of treatment and outcome. In fact, nothing worked better for alcoholics than a minimal treatment involving detoxification and one hour of counseling!
>
> Robyn Dawes, House of Cards, 1995

WHAT FORENSIC CLINICIANS ARE TRUSTED TO DO

> On July 19, 1996, David Lynn Cooper, a 33-year-old former mental patient, was arrested after Wheat Ridge police discovered the nude, mutilated body of his daughter Renee inside his home.
>
> The 10-year-old girl had been stabbed and sexually assaulted.
>
> Last week Cooper was charged with her murder, sexual assault and abuse of a corpse.

> Cooper had been released from the supervision of the Colorado Mental Health Institute at Pueblo just four months ago.
>
> He was ordered to the hospital by a Jefferson County district judge in 1992 after he was found not guilty by reason of insanity in a knife attack on his father. While there, Cooper told therapists that his father was also known as Jimmy Hoffa. Cooper was diagnosed with schizoaffective disorder, court records show.
>
> A judge released him from state hospital supervision in March on condition that he continue taking anti-depressant and anti-psychotic medications and remain an outpatient at the Jefferson County Center for Mental Health. He is now in jail under a suicide watch. (Cortez, Denver Post, August 1, 1996)

The people of these psychologized United States, and their judges and legislators, along with their fellow citizens in states all across this country, entrust the evaluation, diagnosis, and treatment of those judged "criminally insane" to psychological professionals who have bamboozled the justice system into believing that they are up to the task. Our whole society—with the occasional pocket of sane disbelief here and there—from the Supreme Court to the legislators, to judges and juries, to the public itself, all believe that bona fide psychological experts, credentialed by their training, their degrees, and their licenses, know better than the lay public how to evaluate competence to stand trial, how to judge intention and motivation in the commission of crime, how to determine what a rehabilitation program should be and who can benefit from it.

We trust the psychological professional to tell us how the court system should treat children as victims or witnesses; how to determine who should rear a child and who is unfit; how to determine if a child has suffered from abuse that leaves no physical trace; how to assess when anyone, child or adult, has suffered some psychic injury or is suffering from mental or emotional distress brought on by physical injury, discrimination, or harassment; when they have been so disabled by psychological injuries suffered on or off the job that they can no longer work and are in need of employer accommodation or government-provided support.

COURSES PSYCHOLOGY DOES NOT KNOW HOW TO TEACH

Police, attorneys, judges, juries, and lawmakers expect psychologists to tell them if one man will rape again, if another man is a danger to himself, if a child should be returned to her family, if an individual is too "crazy" to be held responsible for her actions, whether this person is lying, whether that one has real memories or false ones, whether that child was molested and who did it.

How would the psychologists know? There are no courses in graduate school that answer these questions. Call any graduate school in the country and it will be happy to send you a course catalog and you can see for yourself that there are no such offerings. They don't teach them over in the psychiatry department at the Harvard Medical School either, not that this lack keeps their resident experts off the witness stand. Go to the library and see how many books and research articles you can find for a class on "When Men Should Be Held Responsible for Murdering Their Wives." You are going to have a mighty short reading list for that class.

Well now, if important questions about wife murderers — or serial rapists or truth telling or the rehabilitation of children — are generally left unanswered in the formal, academic training of future clinicians, what do the students study? They take classes for two or three years and write doctoral dissertations, so they must be studying something.

THE BOULDER MODEL OF CLINICAL PSYCHOLOGICAL EDUCATION

The programs of study vary, of course, from psychiatry to psychology to social work, to the different types of counseling, and they vary by type of school or institute as well, so it is impossible to make a short and simple description that covers all of them, much as one might argue that the differences among them are trivial. So I will use what is supposed to be the best — American Psychological Association–approved Ph.D. programs in graduate departments of psychology in universities — to illustrate what is probably well above average in the formal training of the future clinical practitioner.

Many of the most respected graduate programs in clinical psychology follow what is known as the Boulder Model of the clinical psychologist as a "scientist-practitioner." This is especially true for schools

that claim to value the role of science in the education and practice of clinicians. The idea is that students will be taught not only to perform diagnostic assessment on patients and to implement courses of treatment for them but also to regard *scientific* research as an integrated part of their professional lives, not just as students but in their practice after graduation. What do students in a Boulder model program study?

Diagnostic Courses, or How to Tell What's Wrong

If you can't come up with a diagnosis, you can't send a bill. So it is obviously important that students be taught how to tell if someone is suffering from any of the hundreds of disorders cataloged by the American Psychiatric Association in its bible, the Diagnostic and Statistical Manual.

Of course, there is not sufficient time in three short years for detailed study of all the literature on the existence and treatment of the myriad of billable disorders and their dozens of symptoms. It would be impossible. Remember, there are some four hundred problems and disorders, each with a number of putatively distinguishing symptoms that can reveal themselves in tricky disguises. Students just can't memorize all this material, and in any case, clinicians believe that it is really not the sort of material one can learn from a book.

Any number of practitioners will assert that diagnosis is more an art than a science, and that, as such, it is best learned in the field at a master's knee. The success of this approach should be apparent to all upon contemplation of the conflicting diagnoses routinely offered by testifying psychoexperts at any criminal or civil trial involving a dispute over someone's mental state. After all, it is not surprising that different artists make different forms from the same raw clay. Different masters reveal different truths.

Therapy Courses, or How to Fix What's Wrong

In addition to courses on how to diagnose what's wrong with the patient, clinical graduate students take classes in how to fix these problems. Depending on the school, students can take various courses in marital and family therapy, child therapy and practice, group dynamics and therapy, and women and psychotherapy, and numerous classes on the developmental, behavioral, cognitive, systemic, and supportive approaches to therapy.

The variety is astonishing given the general ineffectiveness of all of them as treatment methods except behavioral therapy, which most schools don't offer.

Some students—the distinct minority—take the few science-based classes in psychopharmacology and neuropsychology offered in clinical curricula, classes designed to teach students how to tell if the patient needs drugs or is brain-damaged.

It is sad but true that graduate courses in psychopharmacology and neuropsychology, as well as courses in behaviorism—the most scientifically grounded of all the offerings in clinical programs—are taken by the smallest numbers of future practitioners. Because of this, it is in the areas of neuropsychology and psychopharmacology that psychiatrists may have the educational edge over the psychologists and other non-M.D. mental health practitioners. Psychiatrists are more likely than psychologists to have received training in the diagnosis of known brain disorders and in the efficacy of psychotropic drugs and to be up-to-date on advances in these fields. It is more likely, but it is by no means certain. Psychopharmacology is especially problematic because the whole area of treating mental problems with drugs changes so drastically from year to year, with new drugs being developed all the time and research studies constantly reshaping what is known about the older ones. Psychiatrists—whatever their initial training—will be no more informed than psychologists unless they also actively keep up in the field.

The ideal training of scientist-practitioners would require that students be exposed to all the varieties of therapy, learn all there is to know about their theoretical and research underpinnings, know the literature on their relative effectiveness, and, consequently, approach their own clinical practice with the same critical sense.

But in practice this is impossible. No one studies all the possible varieties of course offerings in clinical programs of study. Such a dedicated soul would never graduate. Besides, clinical graduate programs usually have a single philosophy or general approach that shapes the specific course of study they offer. One program might emphasize the Freudian approach while another is strongly committed to the systemic or familial approach to therapy. It would require a truly enormous graduate department to offer courses in all the existing varieties of therapeutic approaches—they proliferate like rabbits—and a pro-

found change in attitude to require that students be able to evaluate the relative effectiveness of all these different varieties. Clinicians do not approach their own practices in this objective light and they do not teach therapy this way either.

It is inevitable that the scientist-practitioner model runs into trouble as soon as we get into teaching therapy. Although an assumed reliance on science for their expertise is supposed to distinguish clinical practitioners from all the frauds and hacks, astrologers and motivational seminar experts, teacher-practitioners are in the business of handing on their ***own*** approaches to clinical practice, not somebody else's approach. It doesn't really make much sense to ask someone to teach a psychotherapeutic approach he or she sees as useless. No one would do it. It would be like asking for a strictly academic approach to the teaching of a religion. The objective, scholarly approach is fine for an intellectual classroom experience—say, for an undergraduate class in comparative religion—but nobody trains priests that way. Who would ask a Jesuit seminary to train Buddhist monks?

The goal of any graduate program in psychotherapy is to train students, from the best possible point of view according to the lights of the faculty, how to diagnose and help fix what's wrong with men, marriages, families, children, groups, and women. In America the approach is frequently some modern derivative of Freudian theory usually described not as "Freudian" but as "psychodynamic." Psychodynamic means "more or less Freudian because we believe in the importance of early experience and family relations and lots of sexual motives but we don't really know that much about Freud in a scholarly way."

Lest anyone believe that the Freudians are dying out or waning in influence, note that in the 1985 National Survey of Psychotherapists, 48 percent of psychologists reported that their principal orientation was "psychodynamic." The next highest finisher was "eclectic," with 25 percent. "Eclectic" means Freudian with a little something else sprinkled in. For psychiatrists—medical school graduates—the percentage of Freudians was 54 percent, with "eclectic" a distant second at 28 percent.

These numbers mean that almost three quarters of practicing psychologists and 82 percent of psychiatrists see themselves as more or less Freudian, and it is this legacy that they, as teachers and supervisors, will pass on to their students.

Moreover, given the appalling lack of scientific evidence for the effectiveness of any of the therapeutic approaches other than behavior modification, how could therapists be expected to teach courses in scientifically validated therapy? There ain't no such animal.

Politically Correct Courses

These days, graduate students also take courses on political correctness. In many departments, the basic required PC course is titled something along the lines of "Race, Class, and Gender" or "Psychology of Social Oppression." In Massachusetts, the latter is a required course for licensing. For reasons I don't want to explore, African Americans are usually the teachers for this class.

PC courses teach students the politically correct handling of patients and illnesses from minority America and from other cultures. They are also designed to indoctrinate students with the modern version of the psychodrama of life that clinicians use to characterize the relationships between white majority culture and minorities, between American culture and third-world culture, as well as relationships between men and women and between parent and child. They all have heavy political agendas.

Is the clinical position on all these issues only determined by political bent? Well, yes. It has to be. There is little or no research, little or no scientifically based knowledge to teach the students in classes such as these. The only possible content of such classes is political.

Of course, it may be argued that, to some extent, all professional education consists of a mix of indoctrination into the profession and education about its substance, but clinical psychology, lacking as it does any substantial knowledge base, has no choice but to rely on political indoctrination to make up the bulk of class material.

That these indoctrination classes are political does not mean they are uninteresting. I'd like to sit in on a "Women and Psychotherapy" class, for example.

I would like to, but I can't.

The Secret Stuff of Clinical Courses

Clinical courses on diagnosis and treatment are usually closed to anyone but clinical students. The content of the courses the clinical

students take are closely guarded secrets. They must be. Broad dissemination of the material covered in the courses and open admission for graduate students of all academic stripes would not only demystify the clinical courses but would subject them to the same degree of academic rigor—and respect for the standards of science—as any other graduate courses. Amalgams of rhetoric and religion, most clinical courses would dissipate in the thin air of reason.

What would become of the initiates if the rites of initiation were open to the public? A priesthood without mystery is a priesthood without authority. The authority of psychotherapists is absolutely essential if they are to maintain the enviable position of power in law, medicine, and education they occupy today. Who would let persons with no authority decide that a serial rapist is cured, that a murderer will kill no more, that a killer was forced into the act by childhood sexual abuse? What government or insurance company would let persons with no authority bill them for millions of hours of "therapy," for billions of dollars of treatment? Surely not my government or insurance company. If clinical psychology is to maintain the fiction that it knows what it is doing with respect to all these difficult issues, a mantle of secrecy over the content of their courses is essential.

Kneeling at the Distant Feet of the Master

Most professors who train clinicians would probably agree—although not perhaps for the same reasons—that you can't teach the subject solely in a classroom setting. So, beginning the second year, much of the future clinician's time is spent actually doing psychotherapy under supervision.

This is the guild model of learning. The student is an apprentice to the master. Each week the student sees a patient for individual therapy, or two or three (or nine or ten, depending on the program), and/or a therapy group, and then meets with the supervisor to discuss each case. The supervisor gives the apprentice the benefit of his or her years of experience in practice, helping with interpretation and making suggestions for therapy.

The guild approach to learning a craft has a long and honorable history. It is too bad that the clinicians' claim to have adopted this method of training is a fraud. A true apprentice works in the master's shop, observing the master, copying the master, being shown on the

job how to dovetail the joint or calibrate the instrument. In a psychotherapy apprenticeship there is darn little observation on either side. Indeed, it is seen as repugnant—perhaps even unethical—to "force" a client to be observed by the trainee's supervisor while revealing intimate secrets. Supervising the dovetailing of the joints of the soul apparently can be done at second hand.

The psychotherapy supervision experience no doubt gives rise to the extraordinary willingness of therapists to diagnose both people they have never seen and people they have seen only briefly.

Dr. Richard Restak, a well-known neurologist who has written eleven books, was quoted in the September 1996 issue of Esquire magazine as saying that President Bill Clinton displays all the symptoms of someone suffering from narcissistic personality disorder. "It's characterized by the Diagnostic and Statistical Manual of Mental Disorders as, among other things, a pervasive pattern of grandiosity, a need for admiration, a belief that he or she is special or unique, and a haughtiness or arrogance," says Restak. "If this doesn't describe Clinton, I don't know what does. . . . [Narcissistic personality disorder] is not something that you're real happy that someone of Clinton's power has" (Restak 1996, p. 34).

It must be at the feet of the master that clinical apprentices acquire the clairvoyance that makes the psychoanalysis of unknown people possible, along with the extraordinary confidence that so often accompanies it.

Hoist with Her Own Petard

Recently the *Boston* Herald reported on a rape trial in which the defense attorney got the alleged victim to admit that she had been raped before. Since the clinical psychological community in its present feminist manifestation insists that sexual abuse is a trauma, that means, necessarily, that all abuse victims are traumatized. Traumatized means that they are damaged psychologically. In other words, they are nuts.

A psychoexpert at the rape trial then testified that this unfortunate, previously raped woman may well have been experiencing flashbacks to the first rape during the act of intercourse under dispute in the present trial. The defendant wasn't really raping her; she just thought he was because of her flashbacks to an earlier rape. Pretty clever defense, don't you think? It worked too.

The expert did not even examine the woman because his clairvoyance made that unnecessary (Mulvihill, Boston Globe, June 30, 1994).

The Psychological Autopsy

The outer limits of unsubstantiated omniscience are truly reached, however, with the psychological autopsy. I mean the psychological diagnosis of dead people. Freud paved the way by analyzing historical figures like Leonardo da Vinci, who had no contemporaries alive to complain about whatever unflattering characterizations Freud may have reached. But his modern counterparts analyze the recently dead.

Insurance companies frequently write life insurance policies that pay off only if the death is not a suicide, or not a suicide within a certain number of years, or they pay double benefits if the insured individual dies from an accident rather than an illness. Many cases arise in which the insurance companies dispute the beneficiary's claim that a death was not a suicide. To prove that the death of the insured was a suicide—absent any note—the companies call forensic psychologists onto the stand to testify that old George was depressed, off his feed, sleeping poorly, and just in general exhibiting all the characteristics of your typical suicide.

Who needs evidence when you've got clairvoyance?

Substantive Content Areas of Psychology

The scientist-practitioner model of the clinician assumes that the practitioner is firmly grounded in the scientific foundations and current findings of modern scientific psychology, but in reality, clinical graduate students and medical students can go right through school to their professional degrees without ever encountering, much less mastering, the meager body of knowledge that makes up the findings of one hundred years of experimental psychology—the substantive content of psychology.

Clinicians can and do practice with virtually no education about normal people's perception, cognition, language, learning, social skills, or group behaviors. A psychotherapist specializing in children can be graduated with almost no knowledge at all of how normal children perceive the world around them, how normal kids think and speak, how normal children learn about friendship and how to behave in school.

With no grounding in knowledge of normal behavior, would-be experts on abnormal behavior are turned out and turned loosed on the world.

INDOCTRINATION AND EDUCATION

How can this be? If the American Psychological Association and many, many graduate programs are committed to turning out so-called scientist-practitioners with a solid, broad knowledge of psychology, what goes wrong?

What goes wrong is exactly what goes wrong in trying to be objective about approaches to therapy. Therapy cannot be taught as a science when it is taught by current practitioners to future practitioners, and wannabe healers have little incentive to be interested in anything other than how to accomplish that goal. You cannot expect young seminarians who are burning to ease the pain, heal the wound, lighten the load, and illuminate the way, both for the injured individual and the bewildered society, to take a course on the biological foundations of cognition.

Students with a genuine scientific bent, the ones who really want to try to understand how the mind works or how the brain works, or the interaction between brain and behavior, quite often take such classes. They also take classes on what we know about the nature of thought, and computer modeling, and the structure and functions of language, and the behavior of animals, and many other topics for which there is both a sound research base and a means of expanding that base. Yes, this also includes some zippier-sounding areas like the structure of groups, and the effects of stress on learning, or a neurophysiological model of "trauma." Science is not a matter of area; it is a question of attitude, of approach to study.

But, sadly, in psychology as in related fields, there is almost an upside-down relationship between the size of the research base and the immediate social welfare applications of the findings. Psychology can tell you a great deal about the picture perception of both pigeons and people, but not much about whether a child should be returned to his mother; a great deal about how to train a rat to walk around its cage carrying its tail in its mouth, but not much about whether this woman was actually sexually abused as a child; a great deal about the stages of language development in children, but little about how best

to educate the great numbers of children who are failing in our inner city schools.

Who can blame future clinicians for avoiding most of the research-based courses? These classes are incidental to the healing of most wounds, they are irrelevant to the saving of souls. It is no surprise that psychotherapy practitioners fail to learn the pathetically limited scientific body of knowledge that makes up the field of contemporary research psychology.

Moreover, most of their teacher-practitioners share their view. This is obvious when you look at the transparently flimsy requirements for demonstrating comprehensive knowledge of the field of psychology. Graduate students quite rightly conclude that the clinical establishment itself holds cheap such scientific knowledge as psychology does have.

STATISTICS AND RESEARCH COURSES

The same self-defeating, anti-real science message is conveyed to clinical students in the required courses on statistics and research design. Clinical students may be required to take these courses, but for the vast majority of them, these courses simply don't "take."

The situation is very much like that of teenagers and alcohol. We adults are quite understandably concerned about the abuse of alcohol by young people in high school and college. We are worried about their ability to study, the dangerous situations they get themselves into, the stupid and quite harmful things they do when drinking. So what do we do? We tell them not to drink at all. We tell them alcohol is bad, that it impairs judgment—not to mention motor skills and memory—that responsible young people do not drink alcohol. Then we go home and have a vodka martini while we put on dinner, drink a $20 bottle of wine that we buy by the case with the meal, and if the day has gone well, we reward ourselves with a small cognac. We drink beer at ballgames and knock back champagne at weddings. Apparently, adults believe that while drinking they are invisible to people under the age of twenty-one. Or else they believe—and expect young people to believe—that a magical transformation occurs on the twenty-first birthday whereby alcohol becomes a good thing—kind of like wine into water—and a child becomes a responsible adult. No wonder we have such success with youth abstinence programs.

It's the same with clinical research. Telling wannabe clinicians they are to be scientists, we push them into statistics and research design classes. At the same time, the "research" material they are assigned to read in class consists largely of the Miss Marple pseudo-research of case studies and questionnaires. Students read books and articles selling them viewpoints and approaches to diagnosis and treatment that are based on studies so shabbily designed that they could be used in a research class only as examples of what not to do. It's amazing the students don't go crazy. It is the classic "Do as I say, not as I do." It can't work. Students, like the rest of us, live their lives in monkey-see, monkey-do mode. They don't pay $15,000 a year to be taught by schizophrenic role models.

SCIENTIST-PRACTITIONERS

So where does that leave our Boulder Model of the scientist-practitioner? About where you would expect it. Down the tubes of impracticality. For this approach to work, both the teacher-practitioners themselves and the students would have to genuinely embrace the model. Both teachers and students would have to adopt the skeptical attitude of the scientist, not the believing frame of mind of the priest. They cannot do that. They see themselves as priests, and what does a priest want with statistics, research methodology, or cognitive biology?

Certainly there are some teachers and some students—even those who actively practice psychotherapy—who wholeheartedly embrace the role of scientist-researcher-clinician. This is particularly, but not exclusively, true of those whose interests lie in the more biological branches of psychology. These clinical psychologists often specialize in neuropsychology or psychopharmacology or epidemiology, or even in traditional behaviorism. As scientists, they know they can be wrong and often are. They do not share the mind-set of the do-gooder priest healers, nor do they partake of the willful ignorance so common among psychotherapists. The trouble is, we just don't have enough of these people.

In clinical fields, there must be ten priests for every scientist, or is it one hundred?

THE TRAINED CLINICIAN

Since the knowledge base is completely missing for nearly all the decision tasks undertaken by forensic clinicians, it should come as no

surprise that some 375 separate studies combined in a meta-analysis show that extensive training in psychotherapy, with years of postgraduate education and years of postdoctoral experience, has absolutely no effect whatsoever on one's effectiveness even as a basic therapist for garden-variety mental and emotional problems (Smith and Glass 1977, pp. 752–60).

The only transfer of knowledge from master to apprentice that realistically can take place in the psychotherapy guild is that of belief structure and attitude about the power of psychotherapy—indoctrination. Budding young therapists *must* come to believe in their expanding powers. Why else would they stay in the program?

Graduate and professional training programs in clinical psychology fail because the task they have set for themselves is impossible. Besieged by unmeetable demands from legal and institutional authorities, buffeted by political pressures, handicapped by the minute size of the actually verifiable body of scientific knowledge in psychology, and faced with the insurmountable problem of bestowing on what is fundamentally a religious sect the veneer of a scientific enterprise, with the best will in the world the programs could not turn out the kind of product the public demands. It just isn't doable. Nevertheless, it is undeniable that there are a great many well-meaning people involved in this hitless enterprise. If it weren't for the truly dreadful effect their endeavors have had on our legal system and on society as a whole, it might be possible to feel some sympathy for them.

Clinicians—M.D. psychiatrists and Ph.D. psychologists especially—have assumed a burden of explanation and of healing that is so far beyond not just their own abilities but the capabilities of human knowledge today that it is amazing they don't all die from an attack of hubris. But, as is clear from the ever-growing numbers of clinicians in ever-increasing variety, overweening pride is not fatal.

LICENSING

Starting in the early 1970s the various psychological factions struggled to expand state licensing for mental health providers beyond the sole reach of medical psychiatrists. Year by year, field by field, the imprimatur of licensing gradually embraced psychologists, counselors, psychiatric nurses, and then social workers in an ever-broad-

ening authentication of mental health workers, each certified by his or her state as an authoritative, bona fide source of mental health expertise.

The experimental psychologists generally watched this rage to get licensed—to get legitimized—by the state as a genuine, certified mental health provider without much interest.

Many of us ignored our ambivalence about the implicit claims to competence and efficacy involved in governmental prescription and limitation of psychological licensing and we obtained our own licenses to practice psychology and to present ourselves to the public as registered psychologists, counselors, and mental health practitioners. At the time I thought the licensing movement was nothing but an attempt to restrain trade and increase income for license holders, but the consequences for society were far broader than that.

Licensing created a group of practitioners, of bona fide experts, certified by the state as possessed of special knowledge and training, the fruits of which can legally be made available to the public for a fee. The state has agreed that we have something of value to sell. Now, not only the self-interested profession but the government itself is involved in the conspiracy to delude the public.

Of course, no one admits that. In fact, the professional organizations represent licensing as a measure to protect the vulnerable public, not to scam them further.

PROTECTING THE PUBLIC THROUGH CONTINUING EDUCATION

For example, as part of its ongoing, if almost completely ineffectual, effort to protect the public from the ignorant or out-of-date clinician, the American Psychological Association requires that every licensed therapist take twenty-five hours of APA-approved continuing education courses every other year.

What kinds of courses might those be?

Breathing Through Your Genitals

Two of my colleagues participated recently in a workshop on the psychology of sex, designed to keep them up-to-date and in synch with modern psychotherapeutic trends. The workshop leader wanted the participants to get in touch with their bodies, to bring all the dif-

ferent parts and functions of the body closer together. I have no idea what that means, but students were instructed to "Breathe deeply. Deeper, deeper. Breathe through your genitals!" I'm not sure how well my colleagues mastered this exercise because they both broke out in giggles at this point in the story, but I'm sure the experience was valuable.

Aqua Genesis

Below, Steve Moen, the defendant's attorney in a **1993** personal injury trial in Seattle, is asking Kate Casey, the plaintiff's therapist, to explain to him, on *the* witness stand, the meanings of various extracurricular "trainings" listed on her résumé.

Attorney: In addition to your background in substance abuse, Ms. Casey, you've had some additional trainings. I'd like you to explain some of these types of mental health trainings that are mentioned on your vitae and in your testimony also. What is Aqua Genesis?

Therapist: Aqua Genesis is a technique using water as the context in a hot tub to help people to, uh, recall prenatal and preverbal experiences. (Mateu *v. Hagen*, **1993)**

Here the judge, Dale Ramerman, asked Ms. Casey, "One was prenatal and what was the other"? She replied, "Preverbal experiences." Either not hearing or not understanding, he said, "Preverbal?" She explained kindly, "Preverbal. Before the age of nine months."

The attorney then picked up the questioning again and asked the clinician, "Is it your understanding that in the process of Aqua Genesis memories can be recovered from both the prenatal and the preverbal periods of one's life?" She replied, "Yes."

She said, "Yes." And we have proof that she is right.

The dialogue below is actual testimony from this same civil injury trial in which the plaintiff is explaining to the defense attorney how this therapist took her back in time so that she remembered what it was like to be in the womb.

The attorney asked her, "What can you tell me about prenatal work?" The patient/plaintiff told him, "My understanding of that is

they have you reenact some events. So prenatal would be maybe some experiences you had prenatally that were very difficult." The attorney said very politely, "Can you give me some specifics as to what your experience was in that?" The plaintiff replied, "I remember—the specific piece that I remember doing was remembering having a very tough time breathing. Feeling really suffocated, really tight." In an attempt at clarification, the attorney asked, "What did that have to do with the prenatal state?" She said, "That's what I experienced in the womb prenatally." Still pushing for clarification, the attorney asked gently, "Can you describe for me specifically, though, in the therapy context, the connection with your prenatal state and what you were doing in therapy? Can you just give us kind of a view of how that therapy worked? I'm asking you to describe what happened." The patient/plaintiff replied, "You reenact being in the womb. And I said I remember feeling I had a hard time breathing and a suffocating feeling."

The judge said then, "Let's take a five minute break or so" (Mateu v. *Hagen*, **1993).**

In the course of her "therapy," this patient, who became a plaintiff in a recovered memory suit, came to believe such foolishness because of her trust in the training and knowledge and authority of her therapists. That is unforgivable.

BIRTH TRAUMA AND BODY MEMORY

Attorney: You have some training with Dr. Emerson, William Emerson, on treating pre- and perinatal trauma. Can you describe that a bit?

Therapist: Hm-hmm. This particular work focuses on Birth Trauma and helping children, in particular, in this training to release some of that trauma that is stored in the Body Memory.

Attorney: What do you mean by Body Memory?

Therapist: I mean that anything that happens to us, particularly of a traumatic experience, becomes stored in the body. It's done through activating the adrenal glands. It's done through a particular tensing. It's done through the release of adrenal, so that our body, in essence, has a shock, has a reaction to the traumatic experience that becomes locked in our bodies in certain ways. (Mateu v. *Hagen*, **1993)**

Although on a first hearing this has a decidedly goofy sound, it can be proven to be true in a matter of moments. Like so. You can't consciously remember learning to walk or to talk, can you? No, of course not. But you can walk and talk, can't you? What about riding a bike? Isn't it true that you always remember how to ride a bike even if it's been years since you tried? How can that be? Simple. You have stored the learning in your Body Memory. QED. It is stored in the permanent part of your body, of course, not in the renewable parts like your skin or your hair. Or your muscles, or tissues, or cells or . . . What did she say? "It's done through the release of adrenal." Well, no doubt.

Attorney: Now, obviously, in the prenatal state the human being has no vocabulary or speech, right?
Therapist: It's my belief that they don't. [Cautious little doggy, isn't she?]
Attorney: And so if a prenatal memory is recovered, how is it expressed?
Therapist: It's usually expressed through the body, through a body position. If one is an adult or a baby it may be expressed through crying. (Mateu v. *Hagen*, 1993)

It might seem that prenatal memories have a rather restricted range for their expression but perhaps subtlety of interpretation is required. The reality of such memories is undeniable, right? After all, it is frequently reported that victims of violence curl up into the fetal position. Well, what else could that possibly mean? One rather intriguing question does arise. What, exactly, does a fetus have to be upset about? It's cold? It's hungry? Bored? What kind of traumas are encountered in the daily life of the fetus, anyway?

Both therapists and patients who become involved in these folie à deux techniques believe absolutely in whatever trendily plausible story is sold along with them. It never seems to occur to them that there are countless other possible explanations.

Transactional Analysis

The crucial importance of prebirth experiences is taken as an article of faith by many modern therapists, as is the vital role played in adult life by the inner child, the progeny of Eric Berne, the founder and promulgator of transactional analysis.

He explains it so:

> Each individual seems to have available a limited repertoire of . . . ego states, which are not roles but psychological realities. This repertoire can be sorted into the following categories: (1) ego states which resemble those of parental figures (2) ego states which are autonomously directed toward objective appraisal of reality and (3) those which represent archaic relics, still-active ego states which were fixated in early childhood. Technically these are called, respectively, exteropsychic, neopsychic, and archaeopsychic ego states. Colloquially their exhibitions are called Parent, Adult and Child. (Berne 1964, p. 23)

Technically, this is called psychobalderdash, but it is entertaining, and Berne's books are rather fun pop psychology tracts, especially the one entitled Games People Play. Bewildering and alarming is that transactional analysis, which has nothing but a rhetorical reality, is among the more substantial of the continuing education offerings in modern American psychology.

More bewildering, and certainly more amusing, is the fact that:

> Borrowing from pop-psychology classics of the 1960's and 70's like Games People Play and I'm OK–You're OK, the official [Texas] state gun-class curriculum requires that applicants for a gun permit know about the three "ego-states" said to exist within everyone: the parent, the child, and the adult. To minimize the risk of gunfire in any dispute . . . move the verbal encounter toward resolution incorporating as much win-win strategy as possible. . . . "'Adult to adult' is very de-escalating." (Verhovek, New *York* Times, November 8, 1995)

Ah, well, however touchingly simplistic the psychoexperts' injunction to act like an adult when you have a gun in your hand, it is rocket science compared to age regression.

Age Regression

As Ms. Casey explained in her testimony to Mr. Moen: "My belief is that within us we all carry different ages that we've been in the past.

And so in an age regression . . . they get in touch with that part of them that recalls being [a prior age]" (Mateu v. *Hagen*, **1993).**

Get in touch with your self at prior ages? What a great idea. Talk about the inner child! If Ms. Therapist is right, you've got a whole one-room schoolhouse in there! We might think of this—technically—as the Onion Theory of Development. Think of yourself, I mean yourselves, as formjng in sequence like the rings of a tree or the layers of an onion. When you want to be three years old again, you can, with the help of a trained therapist, just peel off the newer layers and pop out that rosy-cheeked three-year-old. Or you can work on uncovering the fresh-faced twenty-year-old who lurks within your many-layered orb.

Do you only carry one inner child per year? Or one every six months, or what? It would be helpful if these psychological theoreticians would spell out the details of their theories a little more clearly for the rest of us.

Dr. Margaret Bean-Bayog, the Harvard psychiatrist whose medical student patient killed himself after what was later seen as a scandalous course of treatment, was accused of using age regression to turn her patient into a child again and to make him believe that she was his mother. It is interesting that she pointed out in disgust that the field of psychology was entirely incapable of successfully employing the techniques that she had putatively used to destroy her patient's mental health. Whatever other mistakes she may have made, she was certainly right about that.

Despite the absence of any substantial, scientific content in these so-called continuing education courses, the number of such offerings available—certified by the American Psychological Association as appropriate for mental health practitioners—is huge and growing. It is a lucrative business.

Ericksonian hypnosis? Well, at the Massachusetts School of Professional Psychology, for **$895** you can learn Ericksonian hypnosis in four weekends plus three supervision sessions. And you get seventy continuing education credits! That will keep you up-to-date for three or four years.

Not interested in hypnosis? Well, how do you feel about the "Psychology of Investing," also offered at the Massachusetts School? For **$369** you can "explore the psychological meaning of investing in

our culture. Using Kohut's concept of selfobjects and Winnicott's ideas about potential space, we will understand investing as one cultural activity that occupies the potential space between individual and society." Yes, indeed. I wonder if my stockbroker knows that his job is filling the potential space between individual and society? I'm always telling him that his job is to make me rich.

Perhaps you are interested in "Trauma and the Rorschach." No? How about "Men and Traumatic Life Experience: The Impact of Gender Identity and Socialization on How Males Cope with Psychological Trauma"? I like that one. Guys have been getting kind of left out with the current spate of female victims. It's been a long time since the Vietnam War. (These courses are taught by faculty at the Boston-area Trauma Clinic.)

"Working Women Unhappy About Working"? "Mothers and Adult Daughters Hurting"? "Psychodynamic Psychotherapy with Gay Men and Lesbians"? The list goes on and on and on and on. (Why do these titles sound like shows on *Geraldo*?) It is an enormous business, all done in the name of protecting you, the public, from the dangers of rampant ignorance on the part of your psychotherapist. (Well, there may be some profit motive in all of these offerings, but surely money is not the primary goal.)

Learn While You Sleep

Now, the busy psychotherapist may not have time to go to these long workshops and weekends because of a very active caseload, so how can the continuing education requirement for the license be met? That is easy.

"The Institute for the Study of Human Knowledge [as opposed to Alien Knowledge?] has selected books and tapes on Cognitive Therapy, Building Pleasure into Daily Life, Practical Uses of Social Psychology, The Healing Effect of Confiding in Others, Trust and Optimism, Positive Illusions, The Cultural Differences Between Men and Women, The Evolution of Consciousness, Stress Management, and Women's Health." For as little as $8.50 a credit, the overworked psychotherapist can learn all he or she needs to know to keep an up-to-date license just by reading the book, listening to the tape, and sending in a test.

Entrepreneurial Psychotherapy

Many such course tapes are available for laypersons (or is that future patients?) as well as for practitioners. This happy circumstance can be thought of as a mental health community outreach program, I guess.

For example, Dr. Brian Ford of Bellevue, Washington, offers two series of what he calls trance-induction tapes, "Dealing with Life" and "Happy Childhood." As part of his trial testimony in the civil injury case above, he explained the "Happy Childhood" series so: "For instance, if I were to take you through a guided visualization and you were to imagine a scene, a positive scene, say with a parent, and you were to do that in a relaxed, even a hypnotic state, then after you went through that visualization, you would remember it. . . . So, in short you'd remember having had the experience on tape" (Mateu v. *Hagen*, 1993).

Dr. Ford explained this process during his testimony in a recovered memory civil trial, and followed up by saying that if people can be brought to relax and imagine a fantasized past, then they will come to remember that past as part of their own childhood, their "happy childhood."

This trance tape entrepreneur was until October 1996 a licensed psychologist in the state of Washington. That month he lost his license for twenty years for having an affair with a patient. He did not lose it for messing with people's memories with his "Happy Childhood" trance tapes. And why should he have? He is but one of many thousands of such entrepreneurs all over the country peddling their nonsense both inside our courtrooms and out.

Access Your Angel

The trainings and topics, the therapists and techniques covered in this chapter do not represent only the fringe of the mental health profession, or only the most exotic and irresponsible of clinical practitioners. Would that it were so, but it is not. Consider this workshop on "Spirituality, Creativity, and Healing," offered by the Boston Center for Adult Education:

> This workshop will explore the vital link between spirituality and creativity in the healing relationship from an alchemical [seeing illness and wellness as a process of transformation]

> perspective. Through a demonstration of a meditation-based video technique developed by [the teacher], participants will experience the central role that transpersonal vision has in accessing and empowering the client's inner healer. (Catalog, BCAE, 1995)

This workshop is taught by a Ph.D. psychotherapist who teaches in the graduate program in counseling psychology at Leslie College in Cambridge.

Or how about "Grof Holotropic Breathwork," taught by a certified master's degree psychotherapist in Massachusetts?

> "Holotropic Breathwork" is a powerful method of cooperating with the healer that exists within each of us. "Holotropic" is a word derived from Greek and means "moving forward toward wholeness." Using the breath and evocative music, this process allows unproductive patterns and emotions, frozen with past traumatic events, to surface. Focused bodywork may be used as an adjunct to help free the energy. Mandala drawing and group sharing complete the process. ($175.00). (Workshop and Course Catalog, *Interface*, 1995)

What about "Inner Bonding Therapy" or "Healing Your Aloneness: Finding Love and Wholesomeness Through Your Inner Child," each of which is taught by Los Angeles–based therapists? "NeuroLinguistic Programming," taught by a Cambridge, Massachusetts, Ph.D. who will also teach you Ericksonian hypnosis? "The Inner Child Workshop," taught by a Newton, Massachusetts, licensed social worker? No?

Well, then, here is one you can't resist, given how hot and timely the topic: "Past Life Regression Therapy," taught by an R.N., M.Ph. The catalog reads:

> Regression therapy has been increasingly accepted as an approach to helping people break through blocks which have not responded to more conventional therapies. Whether past lives are "real" or not, there is now a body of therapeutic experience which tells us that these regressions are useful for clearing

> out the debris of the past. . . . There will be one induction exercise using the rattle and drum, followed by a guided visualization into metaphysical time. *Please bring a pillow and blanket and wear comfortable clothing. ($75.00). (Interface;* italics added)

Did I have to shop around all over the country to find these far-out examples just to scare you? No. This last little batch of offerings is all from one source, an outfit in Cambridge, Massachusetts, called Interface, and the illustrations I have chosen are really quite conservative. I didn't put in the one taught by the lady who has a private practice in animal telepathy, and, believe me, there are a great many such offerings at Interface. But not to worry. Their course catalog is filled with M.D.s. Ph.D.s, M.A.s, R.N.s, Ed.D.s, M.Ed.s, M.S.W.s, and so many other strings of initials that only a truly paranoid student could feel anything but the greatest trust in the competence and authority of the teachers and the worth of the offerings.

You can access your angel through guided visualization and meditation or you can access the intrauterine you. You can relive the suffocation of the womb or fly back into the freedom of a former life. You can float back to age two in the hot tub or float a margin loan into potential investment space. You can create a happy childhood for yourself or for your "significant other." You can learn hypnosis—Ericksonian or otherwise—and never go on a diet again! You can do all these things and more with the help of mass distribution psychotherapy tools. Fortunate you!

People believe this stuff. Life is hard and unfair and frightening. People want to believe, they need to believe, in magic and in the possibility of effortless control over their lives and their miserable fates. This sort of nonsense, taught by lecturers with their perfectly correct but wildly misleading titles of "counselor," "psychologist," "psychiatrist," and "social worker," is not harmless. It is the inevitable, logical, and pernicious extension of clinical psychologists' continuing to grasp the fig leaf of science while engaging in an increasingly blatant appeal to humanlund's most primitive and desperate needs.

SO WHY NOT BREATHE THROUGH YOUR GENITALS?

Where's the harm? What's wrong with listening to inspirational lectures and tapes, and reading provocative books, and participating in

life-enhancing seminars and workshops? We need all the help we can get to manage our family lives and work lives and personal problems better.

What is wrong is that the psychological industry takes advantage of the public's desperate need for answers to impossible psychological questions and claims to be able to satisfy that need. It is a lie.

These snake oil salesmen pretend to a gullible public and to our courts to know things—to have been *trained* in things—they cannot possibly know anything about, and pretend to be able to provide help they cannot possibly provide. Worse, professional organizations stand behind these claims of psychological expertise, not only by permitting advertising but by providing continuing education credit for what is nothing more than complete nonsense. Worse, our state governments license practitioners to make claims of expertise based on this same nonsense.

It is crucial that we determine whether someone will kill again or if a child will be harmed in a particular setting, whether someone is guilty of a particular action, when someone is lying. Because these matters are so vital, our courts are *desperate* for certainty and they search for this certainty beyond their own limitations.

In the current system of American jurisprudence, psychologists are asked to make these decisions under the assumption that they—unlike their poor, benighted, nonpsychological brethren—are specially trained and skilled at making these decisions. They are not. They cannot be.

Claims about psychological expertise are being made on and off the witness stand, and psychological "services" are being offered to the public by entrepreneurs who represent themselves as certified and licensed and expertly knowledgeable in matters about which they cannot possibly qualify as true experts because no one on earth could.

Let us be very clear about the true state of the psychologist's art. Psychologists do not know any more about behavior than the average man or woman in the jury box or the judge's robes. Psychologists do not know what causes behavior and they are entirely incapable of pinpointing some hypothetical event in the past that has led to the present state of an individual. They do not know what got done, how it got done, or whodunit. And not only are they unable to predict future behavior any better than the man or woman on the street, they

are actually worse at it, blinded as they are by the illusion of their own expertise. Diagnostic categories are not validly established and diagnoses cannot be rendered reliably. Neither can therapy be reliably used to change the behavior of our citizens, juvenile or adult, violent or simply wayward.

Psychologists have no special ability to read into the soul—or mind or psyche—of another human with any more accuracy than the rest of us. Upon finishing graduate or medical school they are not given special soulographs or psychometers that let them plumb the depths of anyone's psychological being. There simply is no mental stethoscope, no matter how much our justice system wishes there were.

Clinicians are not trained to perform the myriad tasks the legal system asks them to perform because no body of knowledge exists to support such training. It is a sorry state of affairs, but it is the only state we've got.

5
Getting Away with Murder

Criminal Diagnostics

> Criminal defendants increasingly claim that their criminal behavior was caused by social toxins that excuse or mitigate their guilt. . . . These claims are not aberrational doctrinal proposals, but rather are sophisticated extensions of existing criminal doctrine commensurate with scientific advancements.
>
> Patricia Falk, "Novel Theories of Criminal Defense Based upon the Toxicity of the Social Environment," 1996

BATTERED WOMAN SYNDROME DEFENSE

> In 1978, a sophisticated insanity defense was used successfully to win the acquittal of a Michigan housewife, Francine Hughes, in the so-called "burning bed" case. The technical rationale for pleading temporary insanity was to make evidence of long-standing abuse admissible in court. The defense attorney, Ayron Greydanus, argued that the battering itself caused Hughes' insanity, not any frailty inherited with gender. (Stark 1995)

The battered woman syndrome defense is invoked increasingly these days in a number of trials for murder across the country in which a woman is charged with killing her man, or ex-man, under conditions that are less than a fair fight. She sets fire to his bed as he lies passed out, or shoots him as he sleeps, and she is charged with murder. In the past, the women in such cases were routinely

tried, convicted, and sent off to the slammer, juries being notoriously unsympathetic to the crime of burning people alive as they sleep.

Drawing on fashionable dysfunctional family theory and traditional legal theories of diminished culpability, Arrested Feminist clinicians, along with their attorney cohorts, crafted a novel defense for the women in these cases. According to their reasoning, these battered women had been so abused by their men that they had lost the ability to act rationally, lost the ability to premeditate their actions, lost the ability to foresee the consequences, and lost the ability to control their behavior. The abuse they received at the hands of their men had rendered them utterly impotent, utterly without responsibility for anything they might do, and utterly without responsibility for the killing of their batterers.

Lenore Walker, who almost graced our television sets as a defense witness in O. J. Simpson's criminal murder trial, claims to have successfully employed the BWS defense in over 150 murder trials, though forensic psychologist Charles Patrick Ewing and others have questioned the basis for these claims. Reviewing twenty-six cases in which expert testimony on BWS was admitted, Ewing reports that in seventeen, roughly two out of three, the battered woman defendant was convicted of murder, manslaughter, or reckless homicide (Stark 1995).

In one third of the cases in which the BWS defense was allowed to be presented, the woman was acquitted. The same study found that in 100 percent of the cases in which the evidence was excluded, the women were convicted.

The women mounting a battered woman syndrome defense for their crimes claimed that they had been driven mad as a consequence of longtime abuse at the hands of their men.

Yes, mad. The most poisonous, dangerous—deranged!—element of the battered woman syndrome defense is not the recognition that the ordinary rules of self-defense do not apply well to situations in which the two participants are of greatly differing physical stature. That would almost make some sense. We do, after all, have a number of laws that seem to rest on the assumption that if two 170-pound men are having a dispute wherein, for example, one fellow says to the other, "I'm going to kill you, you son of a bitch," and lunges forward, and the

second guy whams his fist into the first's esophagus and crushes his windpipe, killing him, then it is not murder but self-defense.

Now, for a number of reasons like size and acculturation, this scenario runs into difficulties when we try to apply it to a man and a woman in a dispute. Women's advocates might well have made the claim that the customary male response to repeated insults and threats is unavailable to most women since the probable outcome of attempting to punch a threatening, insulting male is a vicious beating or even death at the hands of the male. Since escape from the home into another life of economic strength and safety is generally an alternative that exists only in the minds of prosecutors, the battered woman in such a situation might well feel that knocking her assailant off as he sleeps or is passed out drunk is her only realistic way out of the situation. Given the number of women who try so hard to escape these men through the legitimate means of separation and restraining orders and who in the end are killed by them, she may well be right.

Is this inequality of strength and combat skill the basis of the battered woman syndrome defense? Of course not. We're dealing with a *mental illness syndrome* here. That a battered woman kills her man as he sleeps is not the sensible act of a person trapped in an impossible situation from which society will not rescue her, Oh, no. It is the crazy act of a mentally disordered woman driven mad by the conduct of her man. Arrested Feminist attorneys and the feminized psychology establishment have to see it that way. To see it as an act of power, of taking control, of actively, willfully killing the enemy, is completely out of keeping with seeing all women as the helpless victims of men. They'd rather see them as crazy than as taking charge as well as they can given realistic constraints. That is nuts.

Let's get the syndrome out of this defense and name it for what it is: women taking the law into their own hands when the law refuses to protect them from their men. Whatever juries might make of that, at least they won't be blinded by the dust of a pseudo-syndrome.

The Societal Family

The modern view that today's dysfunctional family is a microcosm of modern society as a whole is more than a metaphor for today's clinicians, it is a fundamental truth about the roles people play in life and the reasons they play them.

Under this view, the white males who constitute the establishment power structure in the country today are seen as the only members of society who have sufficient power to assume the general burden of accountability. Thus, white men as a group are responsible for the pain felt not only by women and children but by the disadvantaged as well.

Minorities outside the white power structure—principally blacks and Hispanics but also gay people, immigrants, drunks and druggies, the disabled, and ... well, everyone who somehow qualifies as a member of the great disadvantaged class—are seen as morally equivalent to adult abused children. As such, they are not, cannot, and should not be held responsible for the shape of their lives or for changing that shape by taking any action. Broken in childhood and manipulated by outside forces they cannot resist, they cannot be held accountable for their behavior no matter how heinous the crime or how innocent their victims. This makes it impossible to conceptualize members of the "disadvantaged" as the masters of their own fates, as the captains of their own souls. As adult abused children, they could not be.

This grotesque characterization of the societal family, like the equally grotesque characterization of the nuclear family on which it is based, throws the weight of scientific psychological authority behind traditional liberal characterizations of society's problems and greatly strengthens liberal clout, especially in the legal system.

The characterization of disadvantaged and minority groups as infantilized victims of powerful white males automatically generates a million excuses for every possible minority failure or crime. This instantaneous dispensation from any responsibility for any wrongful act at all extends itself in a drowning wave of compassion even over the faces of the cruelest and most callous of murderers, including, for example, the youths who viciously beat and raped and murdered Kimberley Rae Harbour in Boston, and their New York counterparts who beat and raped and attempted to kill the jogger in Central Park several years ago.

Toxic Shock Syndromes

> Felicia Morgan, a Milwaukee teenager, ... shot and lulled another teenager when the latter refused to surrender posses-

> sion of a leather coat. Morgan used urban psychosis to support an insanity defense. Robin Shellow, Morgan's attorney, argued that her client's "traumatic childhood in a violent inner-city home and neighborhood created in her the urban counterpart of the post-traumatic stress disorders that affected some Vietnam veterans.
>
> [Dr.] Charles Ewing asserted that Morgan's condition was brought about by severe physical and mental abuse from her mother. [Dr.] James Garbarino testified about the deleterious effects of being the victim of and/or witness to violence on a daily basis.
>
> Morgan was convicted and sentenced to life in prison for armed homicide, armed robbery, and other charges. [But] the judge ruled that Morgan would be eligible for parole in the minimum time — thirteen years and four months, rather than the sixty years requested by the prosecution. (Falk 1996, p. 738)

> [T]hirty-year-old Turhan Taylor . . . grew up in a violent family in a tough neighborhood in Milwaukee. He had been abused as a child, sexually assaulted as a youth, and gang-raped in prison. During a flashback to the gang-rape, Taylor stabbed a sexual partner to death. In addition to *urban* psychosis, Taylor also claimed that he had rape-trauma syndrome. After the judge ruled that evidence of Taylor's PTSD was admissible at the guilt phase of the trial, the prosecutor reduced the charge and Taylor pleaded guilty to reckless homicide. (Falk 1996, p. 739–40)

Urban psychosis? What is that? Like battered woman syndrome, it is simply a natural extension of our old friend, post traumatic stress disorder. Just as we have women being driven mad by the traumas of rape and battering, so too are inner-city residents driven mad by "urban psychosis" — "the daily reality of violence in our nation's home, neighborhoods, and communities."

Dr. Patricia Falk, an assistant professor of law at Cleveland-Marshall College of Law, also claims that people can be driven nuts by having their minds "poisoned" by "television intoxication" — "the

incessant barrage of graphic depictions of violence presented in the media," and by "black rage[v]—[due to] the persistence, if not resurgence, of racism despite the guarantee of legal equality."

I, for one, was happy to discover in the course of reading Professor Falk's review of cases that judges, juries, and courts at every level have been quite unresponsive to the argument that violent perpetrators are not responsible for their acts because they watched violent television, violent movies, or violent pornography.

The defenses of urban psychosis and black rage, however, have fared a little better in the courts, at least in terms of providing evidence of mitigating circumstances leading to a lesser charge or a reduced sentence. There is even a variation of urban psychosis available called urban survival syndrome, in which defendants claim that living in a violent, urban environment induces in them a mind-set of heightened fear and danger that in turn causes them to be violent.

> Prosecutors plan to retry a teen-ager whose lawyers won a mistrial yesterday after arguing that "urban survival syndrome" had forced him to gun down two other teen-agers with whom he had been feuding. . . . [Daimion] Osby's lawyers acknowledged that he had killed the men but said the two had threatened him with a shotgun the week before. The defense strategy centered on the claim that because Osby was raised in a poor, violent neighborhood, he suffered from "urban survival syndrome" and believed he had no alternative but to kill the men. (Compiled from dispatches, *Newsday*, April 21, 1994)

In his second trial, Osby was found guilty of two counts of capital murder on November 10, 1994 (AP, New *York Times,* November 13, 1994).

Perhaps the best known of the cases in which some version of the black rage defense has been invoked is that of Colin Ferguson, the 1994 mass murderer on the Long Island Rail Road who chose exclusively white, Asian, or "Uncle Tom" black victims (defined by Mr. Ferguson). He killed six and wounded nineteen passengers on the commuter train. He was convicted and sentenced to more than two hundred years in prison.

His defense attorney, William Kunstler, the noted liberal-radical lawyer, said:

> Ferguson's rage was a catalyst for violence resulting from a preexisting mental illness, most likely schizophrenia. It was a mental condition no different from the battered-wife syndrome, post-traumatic stress disorder; or the child-abuse-accommodation syndrome in that, in conjunction with mental illness, it gave rise to terrible acts of violence. Ferguson, from a wealthy Jamaican family, had attended private school, enjoyed many luxuries, and was never able to adjust to the white racism that he found when he came to this country. He never developed the defense mechanism that American-born blacks are forced to learn. (Falk 1996, p. 752)

This is not science. This is racism. The demand for accountability is not racism; the lack of such a demand for blacks certainly is.

Still, one cannot help but applaud the creative equal opportunity extension of PTSD to these uniquely minority exculpatory complaints.

As Patricia Falk above explains, it was the American Psychiatric Association that gave us, about fifteen years ago, what is today's most flexible and generally applicable mitigating defense, post traumatic stress syndrome.

POSTAL WORKER PTSD MURDER DEFENSE

> I saw flashes, flashes like incoming round hits, like fire crackers, hearing machine guns, I heard machine guns, I heard rifle fire, I heard more explosions and I couldn't move. I was happy because I knew I was going to die. (State v. Felde, 1982)

This is testimony from Wayne Felde, a Vietnam veteran accused of killing a police officer in Louisiana in 1982. It is a perfect example of what has become the classic PTSD-made-me-do-it defense — in all of its modern guises — against criminal charges.

Louisiana's first criminal defense based on PTSD, Mr. Felde's defense did not prevail. The jury found him guilty of first-degree

murder and he was executed seven years later, in 1989, by the state of Louisiana.

But as Michael Davidson, in a 1988 *William and Mary Law Review* article on the history of PTSD, wrote, "Vietnam veterans have used PTSD successfully as an insanity defense against charges of murder, attempted murder, kidnapping, and drug smuggling. PTSD has also been used to mitigate sentences in convictions for crimes such as drug dealing, manslaughter, assault with intent to commit murder, and even tax fraud" (p. 423).

PTSD provides a compelling defense for both the public and the media because it has such a straightforward appeal to psychocultural mythology disguised as common sense. PTSD became popular during the minor epidemic of postal workers coming to work berserk, toting submachine guns they used to mow down their fellow workers. Because the Postal Service has an affirmative action program for veterans, most of these fellows were Vietnam-era vets. (Not all of them had been to Vietnam, but that's getting picky.)

Now, almost all of us can sympathize with the urge to blow at least some of our fellow workers to lungdom come, but we don't do it. It is not normal to blast away at people no matter how angry you are about the other fellow's promotion. So when someone comes to work spraying a submachine gun all over, we conclude that he is sick indeed.

How might a Vietnam-era vet have gotten sick? Well, from that sick war. For some people, the Vietnam war was sick because so many people did not support the actions of our government or of the men who were sent there to fight and to die. For others, the war was sick because of the apparent absence of clear-cut issues of good and evil.

It is not hard to accept that living through such a hell could poison the mind. It is not hard to believe that the terrible experiences of that war could so sear the mind that the soldier never wholly returns home, and although he may seem to function well, he is never truly okay. Along comes the straw that breaks the camel's back, and he snaps. He feels he is in hell again and he responds as he was trained to respond to hell. He blows enemies away with a gun.

That makes a great deal of intuitive sense in today's America, particularly when the defense is claimed by veterans of a war about which so many Americans feel conflicted. (Recently in Boston, the

lawyer for a Mafia hit man who had served in Korea briefly floated the PTSD excuse for his client.)

> In its first five years of use [1980 to 1985], the PTSD defense has helped at least 250 Vietnam veterans get shorter sentences, treatment instead of jail, or acquittals. (Davidson 1988, p. 423)

That statistic should give all of us pause since some experts estimate that as many as 800,000 Vietnam combat veterans suffer from moderate to severe symptoms of PTSD. (Estimates vary from about 15 percent to 70 percent.)

Psychologists come along and validate our psychocultural beliefs about the fragility of personality and its vulnerability to stress, and tell us pseudo-science stories about the almost magical manipulation of memory by trauma. It was psychologists who came up with PTSD; it used to be called combat fatigue, and before that shell shock, and we now have an authoritative, scientific diagnosis to support what seems to us to be only common sense.

Modern feminist clinicians like psychiatrist Judith Herman of Harvard have adopted the notion that rape and combat are pretty much the same thing, so now the noncombatant who has experienced sexual assault, abuse, or battering can also claim to suffer from PTSD. It's an equal opportunity disorder.

For defense attorneys who would like an up-to-date guide on how to use post traumatic stress disorder as a defense at trial, and for prosecutors who would like to blow them out of the water, I strongly recommend the article by Roger Pitman, Landy Sparr, Linda Saunders, and Alex McFarlane, "Legal Issues in PTSD" in the 1996 book *Traumatic Stress,* edited by Bessel van der Kolk and others. It is also quite handy as a guide for using PTSD in disability suits.

DEFENSIVE DIAGNOSTICS, OR HE HAS A DISORDER SO HE'S NOT RESPONSIBLE

For better or worse, the American legal system incorporates the concept of diminished culpability in various forms. Passion, alcohol, insanity, and mental retardation in one guise or another all enter into the equation of personal responsibility for adults. "I was too angry/too drunk/too crazy/too stupid to bear the full weight of

responsibility for my actions" are claims with a long tradition of acceptance in our legal system.

There have been a number of formulations of the insanity defense used in this country over the years, with applicability varying according to state law. Courts variously use one of three tests, the M'Naghten Rule, the irresistible impulse test, or some version of the American Law Institute (ALI) Model code definition of insanity.

The venerable M'Naghten Rule requires that at the time of committing the act, the defendant was operating under a mental illness that caused a defect of reason so that the defendant did not know the nature and quality of the act or did not know that what he or she was doing was wrong. Essentially, the defendant did not know right from wrong—the defendant suffered from a cognitive impairment.

The irresistible impulse test requires that as a result of mental disease or defect, the defendant lacked the capacity to control his or her actions or conform conduct to law—the defendant suffered from a "volitional" impairment. That is, the defendant may have known the conduct was wrong but could not stop himself or herself from doing it anyway.

The ALI test combines the two. In 1988 twenty-six states used some version of the ALI standard, twenty-two used the M'Naghten rule, and two, Idaho and Montana, had eliminated the defense of not guilty by reason of insanity altogether. Today, Utah too lacks this defense.

There is one final wrinkle in the disordered mind defense department: In some states it is also possible for a defendant to argue that he or she suffers not from insanity but from some mental state that diminishes either guilt or the ability to form the guilty intention to commit a crime.

> David Willard Phipps, Jr., a Gulf War veteran, was convicted of first-degree murder and sentenced to life imprisonment for killing his wife's lover, Michael Presson. Phipps did not deny killing Presson and did not plead insanity. Instead, he claimed that he was unable to formulate the *mens rea* for first-degree murder because he was suffering from depression and post-traumatic stress disorder. (Tennessee v. Phipps, 1994)

Judge Julian Guinn of Tennessee apparently thought this claim did not hold water and instructed the jury, "The defendant contends that he was suffering from mental conditions known as post-traumatic stress disorder and major depression at the time of the commission of the criminal offense giving rise to this case. I charge you that post-traumatic stress disorder and major depression are not defenses to a criminal charge." This judge also added that expert testimony is "beset with pitfalls and uncertainties" (*Tennessee* v. *Phipps*, 1994).

He was reversed on appeal for being unduly wary of expert psychological opinion and for failing to appreciate the other varieties of diminished accountability one could suffer given certain conditions—like our old friend PTSD. Too bad. Judge Guinn was the sanest person in that courtroom.

It is frequently reported that the insanity defense is used less than once in every one hundred criminal cases. Only 4 to 5 percent of these cases result in a verdict of innocent by reason of insanity. Defense, Myths and Realities, a report prepared by the National Commission on the Insanity Defense in 1983, stated that the insanity plea was rarely used and that acquittals were very rare. In Virginia, for example, less than 1 percent of the felony cases plead an insanity defense, according to a 1988 William and Mary Law Review article, and acquittals numbered no more than fifteen per year.

These statistics might make it seem that insanity defenses are rarely used and are even more rarely successful. Not true. It depends on what you mean by "insanity defense" and what you mean by "success." The statistics are true when we look only at straight cases of NGRI, Not Guilty by Reason of Insanity. When we start adding in cases in which a theory of defense based on some version of diminished mental ability induced the prosecutor to bring a lesser charge as well as cases in which the alleged mental condition reduced the amount of time served, the picture is quite different.

A June 1995 Minnesota Law Review article by John Henderson covering diminished capacity as a reason to reduce the sentences of criminals convicted in federal courts found that, in 1989, approximately 1.1 percent of those reductions were for diminished capacity (p. 1475). That is not so many; it is in line with the number usually quoted. In 1992, however, leaving aside reductions through plea bargaining, diminished capacity sentence reductions were almost 8 percent of the

total. If the trend has continued—and with the proliferation of new, incapacitating diagnoses spewed out by the APA with its new manual, how could it not?—then the likely number of diminished capacity sentence reductions at the federal level alone by 1998 should be close to 25 percent of the total of reductions for cause in sentence to be served.

This number covers only federal cases in which defendants were already convicted and their sentences were reduced subsequently. It does not include charges or sentence reductions that occurred through plea bargaining.

The overwhelming majority of felony cases—85 to 95 percent—in this country do not come to trial. They are settled through plea bargaining.

Adding in state cases resulting not in acquittals—the defendant is not guilty because the defendant is insane, drunk, blinded by passion, etc.—but in convictions on a reduced charge—manslaughter, for example, instead of murder—plus convictions in which a lesser sentence is imposed, then the total number of felony cases in the United States in which some form of psychological defense claiming reduction in capacity to understand the crime or control criminal actions could account for between one third and one half of all felony convictions by 1998.

Why not simply abolish the insanity defense? Well, nothing is ever simple. The evaluation of intention is an intrinsic component of the evaluation of criminal responsibility in the United States, so, even in states that have abolished insanity as a straight defense, evidence of a mental illness or defect can cast doubt on the ability of the accused to have the required culpable state of mind for conviction.

In Montana, abolition of insanity as a substantive defense seems to have merely shifted disposition of cases involving impaired defendants, resulting in greater numbers of accused being diverted, pretrial, into civil commitment for treatment or release following findings that these defendants were incompetent to stand trial.

And in Utah:

> [T]wo years after Utah statutorily abolished the special defense of insanity, the clinical director of forensic psychiatry at Utah State Hospital, Peter Heinbecker, reviewed the state's experience. During the roughly ten years when the ALI standard was

> operative in Utah (1973–1983), only seven defendants were found NGRI [not guilty by reason of insanity]. In the two years following abolition of the special defense, however, another seven defendants were exculpated under the *mens rea* law. In other words, abolition of the more generous standard of exculpation was followed by a five-fold increase in the annual rate of successful mental state defense. (Applebaum 1994, pp. 182–83)

Whether the legal system's acceptance of psychological defenses based on diminished cognitive or volitional capacity is a good thing or bad is a matter of legal philosophy beyond the scope of this book. What's critical here is the role that modern psychology has played in offering its services as a sort of medical absolution, a clinical dispensation from responsibility.

At every point in the long process of bringing criminals to justice in America today, psychological experts have the opportunity to offer a diagnosis of mental disorder to mitigate the awfulness of the offense.

Not Competent to Stand Trial

At the very beginning of a potential court case, before the issue of insanity as a defense even arises, the accused is examined to determine competency to stand trial. Competency generally means that the accused is capable of assisting in his or her own defense. Leona Helmsley's husband, Harry Helmsley, for example, suffered from advanced Alzheimer's disease and was judged not competent to assist in his own defense in the tax avoidance case in which his wife was convicted.

Competency to stand trial is determined by a court-appointed forensic psychologist. In most cases these evaluators work for the state or for a private company contracted to the state to provide forensic services. In Massachusetts, the seven forensic evaluators who work out of Bridgewater State Hospital evaluate about one thousand cases a year. Since Massachusetts has about twice the average state population, a fair estimate of the number of such evaluations is about 27,000 nationally per year, at least in recent years. In Massachusetts, the state-employed evaluators earn an average of $80,000 a year in salary and benefits. (In the spring of 1996 the whole group of seven state evaluators quit briefly in a dispute over salary and workload.)

The essential point of psychological competency evaluation is

this: If the defendant does not pass #1, he or she will not get to #2. If the forensic clinician does not determine that the defendant can assist in his or her own defense, then that defendant will not stand trial for the crime of which the defendant is accused.

If the judge chooses to bypass or ignore the recommendations of competency evaluators, the trial verdict is in grave danger of being overturned.

On January 26, 1994, the Massachusetts Supreme Judicial Court found the absence of a disabling diagnosis reason to overturn the murder conviction of Alfred J. Hunter, who was charged with shooting his wife on May 9, 1989, then stealing a plane to buzz Boston while firing an assault rifle.

> An inmate who shared a van ride with Hunter from Salem District Court to Bridgewater State hospital testified that Hunter said he was angry with his wife for taking him to court and making him sleep in his car. The same man also said that Hunter told him he was not under the influence of drugs or alcohol at the time of the killing. A second man, who shared a holding cell with Hunter at Salem District Court on May 10, 1989, said Hunter told him he shot his wife once in each breast, once in the head and once in the crotch because she had "cheated on him, and kicked him out of the house." (Nealon, Boston Globe, January 27, 1994)

The court ruled that the trial judge erred because he did not hold hearings to allow a court psychiatrist to testify that the accused was mentally incompetent when he confessed his crime to his jail-house cronies.

Why did the Supreme Judicial Court believe the psychiatrist was a better judge of character than the judge himself?

This court's decision incidentally provides a piece of pretty good advice for prospective murderers: During or after the murder, do something so gruesome or so bizarre that you get yourself shipped off to the criminal funny farm for evaluation. This gives you a shot at a diagnosis of some form of diminished responsibility. If you do get convicted despite the best efforts of your psychological experts to slap a mentally ill label on your actions, then the disabling diagnosis can

be called into play at the time of sentencing or on appeal. If they don't ship you off for evaluation and you are convicted of your crime, then you've got a shot at an appeal because of their omission.

Richard Rosenthal of Framingham, Massachusetts, who in September 1995 choked his wife, broke both of her arms, beat her to death with a rock, and then cut out her heart and lungs and impaled them on a garden stake, provides an excellent example of this maneuver. His behavior certainly seems crazy, does it not?

Rosenthal was sent to the state hospital after his arrest, but what if he had not been evaluated for competency to stand trial, what if he had been treated like any other accused murderer and sent to jail if he couldn't make bail? Then, like Mr. Hunter, who also killed his wife, Mr. Rosenthal, if convicted, would have had an excellent shot at an appeal based on the lack of a competency examination.

Decisions like that of the Massachusetts Supreme Judicial Court overturning Hunter's conviction on such grounds remove all judgmental discretion from the judge—and, of course, ultimately from the jury—and hand it directly to the professional psychologist, whom the Supreme Judicial Court clearly believes is a reliably superior judge of an individual's competence to stand trial.

Where did the court get that idea?

Why aren't grand juries granted the power to assess competence just as they are granted the power to decide whether to indict an individual for a crime? If they can weigh the evidence of guilt, why are they presumed to be incapable of weighing the evidence for and against competence?

Grand juries are presumed to be incapable of making this difficult evaluation because the psychological establishment has convinced laypersons that they are too ignorant to render valid decisions about the psychological competence of their fellows. The psychology establishment has convinced the lawmakers—if not all the judges and prosecutors—that matters psychological are best left in the hands of the professional psychologists. When they are not, a miscarriage of justice has occurred.

Most important, in the spring of 1996, the forensic psychology establishment carried the day with the Supreme Court and convinced the highest court in the land that only the trained psychological professional, and not the poor benighted judge, had the necessary skills,

intelligence, and perception to determine the mental ability of the accused to stand trial. If a judge overrules the professionals, an appeals court will overrule the judge.

SUPREME BAMBOOZLING

In 1989, Byron Cooper brutally killed an eighty-six-year-old man in the course of a burglary. An Oklahoma jury found him guilty of first-degree murder and recommended punishment by death. The trial court imposed the death penalty and the Oklahoma Court of Criminal Appeals affirmed the conviction and the sentence.

The case went to the United States Supreme Court. The following is taken from the Supreme Court's summary and judgment in that case.

Mr. Cooper's competence to stand trial was assessed on five different occasions before and during his trial for murder. The first time, a pretrial judge relied on the opinion of a clinical psychologist employed by the state and found the defendant incompetent to stand trial. He committed him to a mental hospital for treatment. After three months in the hospital the defendant was apparently cured of his incompetence and was released from the hospital. Now the trial judge heard testimony from two state-employed psychologists who disagreed with each other about the defendant's ability to participate in his defense. The judge agreed with the psychologist who said the defendant was competent, and ordered Mr. Cooper to stand trial for murder.

One week before the trial was to begin, the lead defense attorney raised the question of competence yet again, explaining to the court that Cooper "was behaving oddly and refusing to communicate with him. Defense counsel opined that it would be a serious matter 'if he's not faking.'" The judge listened but decided again that the defendant was competent.

Then, on the first day of the trial, the defendant's bizarre behavior prompted the court to conduct yet another competency hearing, this time with testimony from several lay witnesses, a third psychologist, and the defendant himself. Bizarre behavior means that the defendant refused to wear street clothes for the trial because they would burn him, communed with a spirit who gave him counsel, feared that his attorney was trying to kill him, and remained throughout much of the hearing crouched in the fetal position, talking to himself.

The psychological expert "concluded that petitioner was presently incompetent and unable to communicate effectively with counsel, but that he could probably achieve competence within six weeks if treated aggressively. While stating that he did not dispute the psychologist's diagnosis, the trial judge ruled against the petitioner," expressing his uncertainty in the following terms:

"Well, I think I've used the expression . . . in the past that normal is like us. Anybody that's not like us is not normal, so I don't think normal is a proper definition that we are to use with incompetence. My shirtsleeve opinion of Mr. Cooper is that he's not normal. Now, to say he's not competent is something else. . . . But you know, all things considered, I suppose it's possible for a client to be in such a predicament that he can't help his defense and still not be incompetent. I suppose that's a possibility, too.

"I think it's going to take smarter people than me to make a decision here. I'm going to say that I don't believe he has carried the burden by clear and convincing evidence of his incompetency and I'm going to say we're going to go to trial."

At the end of the trial, the defense attorney moved again for a renewed analysis of his client's competence, to no avail. (Summarized from Cooper v. Oklahoma, No. 95–5207, Supreme Court of the United States, 1996.)

The case went to the U.S. Supreme Court in 1996. What did the Supreme Court justices decide? They sent Mr. Cooper back to the psychologists—to the professional judges of competence and sanity—for yet another competency hearing. The first four must have persuaded the justices of the utility of such a move. They noted, "The Oklahoma Court of Criminal Appeals correctly observed that the 'inexactness and uncertainty' that characterize competency proceedings may make it difficult to determine whether a defendant is incompetent or malingering," but they were not much dismayed by that prospect, having, as they apparently did, considerable faith in the skills of trained psychologists to diagnose not only mental illness but legal insanity and incompetence.

The Court said, "We presume . . . that it is unusual for even the most artful malingerer to feign incompetence successfully for a period of time while under professional care."

Why in heaven's name do they presume that when the evidence

so clearly contradicts it? Faced with the clear inability of Mr. Cooper's numerous licensed, certified, state-employed professional forensic evaluators to agree on the matter, why would the justices send this defendant to yet another? Or back to the same for another evaluation? Are forensic psychological decisions supposed to mirror the four out of seven games for the World Series?

The need to believe in the competence and special skills of the forensic psychologist is evident, the will to believe distressingly obvious, and the lack of any foundation for the belief is equally and far more distressingly clear.

The Supreme Court justices are willing participants in their own bamboozling and in the bamboozling of the American people.

In well over 100 cases since 1844, the Supreme Court has ruled that psychological evaluations are essential to the pursuit of justice. They ruled that they are a critical factor in resolution of questions of competence in 48 cases; insanity in 51 cases (some overlapping with the competence cases); determination of mental and emotional injury, disability, and psychological trauma in 19 cases; deciding questions of custody and fitness in 15 cases; treatment in 42 cases; determining the possibility of rehabilitation of youthful offenders (most of whom had been sentenced to death) in 15 cases; and various other matters psychological.

The need to believe that the determination of competence—and of sanity—can be made scientifically, certainly, absolutely, clearly, that the determination can be and will be made on the basis of some evidence of far greater weight and reliability than the opinions of judges, breathes through every paragraph of the justices' decision.

The Best Defense Is a Good Diagnosis

Once the court-appointed forensic clinician has determined that the accused is competent to stand trial, more psychoexperts are called in by the defense to diagnose the defendant with various disorders and disabilities that diminish his or her personal accountability to the point that criminal guilt is greatly lessened and often even completely dissipated, while other experts are called by the prosecution to rebut these claims.

At trial, Richard Rosenthal, the Massachusetts man who murdered his wife in such a vicious and "bizarre" manner, had several psychiatrists testify for him that he had just about every delusion ever suggested in

the casebook for the DSM. Perhaps he read it before meeting with his experts. Might as well cover all the bases. (Actually, since Rosenthal did not cooperate with his competency evaluators—funny concept that, is it not?—and was subsequently convicted of first-degree murder, perhaps his appeal on incompetency grounds will prevail.)

Of course, this whole business of putting on opposing experts is by no means cheap.

> [For Rosenthal's trial, t]he state hired Dr. Park Dietz of Newport Beach, Calif., one of the nation's leading prosecution psychiatrists, reportedly at $350 an hour plus first-class accommodations, food, expenses and airfare.
>
> Prosecutor Martin Murphy would only reveal that Dietz conducted 15 hours of interviews, but didn't say how much time he spent on reports the state never introduced.
>
> The state will also get a bill for at least 160 hours of work by Dr. Alison Fife, a psychiatrist who charges up to $250 hourly.
>
> But they faced a defendant with deep pockets, a high-profile case and the almost unheard-of fact that Rosenthal had cut out his wife's heart and lungs. . . . The defense sunk tens of thousands of dollars—they would not reveal numbers—into Chatham psychiatrist Dr. Marc Whaley, Belmont psychiatrist Dr. Larry Strasburger and Dr. James Butcher, a national expert on a personality test called the Minnesota Multiphasic Personality Inventory (Talbot, *Boston* Herald, November 8, 1996)

Hey, if you have to ask how much it costs to be found crazy, you can't afford it.

Making Up Their Minds

> SEATTLE. A Montana woman believed to have a rare psychological disorder has been charged with allegedly injecting bacteria into her 4-year-old son, who had to have his gall bladder removed and nearly died, prosecutors said yesterday. Police who arrested Nashelle Wood, 24, at Children's Hospital in Seattle found a needle and syringe contaminated with the potentially fatal E. coli bacteria in her pocket. Prosecutors said they believe

> the mother has Munchausen's Syndrome by Proxy, a rare condition in which a parent exposes a child to medical danger as a way to get attention. (Orlando Sentinel, February 15, 1995)

Actually, Munchausen's Syndrome by Proxy is an interesting defense diagnosis because it is usually made by prosecutors, or by physicians bringing the charge to prosecutors. One doctor at Children's Hospital in Seattle, Jacqueline Farwell, has diagnosed four separate cases. It is odd. One would think that such a diagnosis would obviate the possibility of any prosecution. If the parent harmed the child because she was crazy with a "syndrome," then she needs help. If she harmed the child but had no syndrome, then she should be prosecuted. Strange too is the fact that harming the child is not prima facie evidence of illness yet the means of effecting the harm is, so Susan Smith is guilty of murder but Ms. Wood above is guilty of Munchausen's Syndrome. Strange.

How do psychoexperts hired by the defense (or prosecution, of course) determine that the accused is or is not sane enough to be found guilty of the crime of which he or she is accused, or that the responsibility of the accused for the crime is vastly diminished by mental illness? How do evaluators conclude that a defendant was suffering from an incapacitating disorder weeks or months before evaluator and defendant have ever met?

On December 30, 1994, John Salvi, carrying two guns, walked into the PreTerm clinic in Brookline, Massachusetts, and shot the receptionist to death. He returned to the street, got in his car, and then drove down Beacon Street to the Planned Parenthood clinic, where he again shot a young female clerk to death. In the course of committing these two murders, Salvi wounded two other people.

> Park Dietz, a psychiatrist in Newport Beach, California, who as a witness for the prosecution helped convict Jeffrey L. Dahmer, the Milwaukee serial killer, said he believed that the key question for a jury is not whether a defendant is sick but whether he knew what he was doing was wrong.
>
> To reach a verdict, Dr. Dietz suggested, the best evidence for a jury is the defendant's behavior immediately surrounding the crime. If a suspect called 911 after killing someone and said he had just rid the world of demons, he is probably ill,

> Dr. Dietz said. If the killer changed clothes and washed off the blood, he probably knew what he did was wrong. (Butterfield, New *York* Times, March 4, 1996)

Not so, says Dr. Phillip Resnick, testifying for the defense:

> Dr. Resnick testified that Mr. Salvi knew the legal consequences of his actions and tried to prevent his capture. But, Dr. Resnick insisted, Mr. Salvi's delusions governed his mind so completely that he was unable to understand the "moral wrongfulness" of his acts and . . . was legally insane. (Butterfield, New *York* Times, March 4, 1996)

What is the point of asking a highly paid psychological expert whether trying to escape indicates awareness of the need to escape? This accomplishes nothing but the subversion of the legal system by fraudulent claims of psychoexpertise.

What the jury must consider basically is what made Salvi act as he did. Was it a crazy delusion that if true would have made the killing justifiable, so he should be found not guilty by reason of insanity? Was it a belief that although shared by many would still not give a private citizen a license to kill, so Salvi should be found guilty of murder? Or was it some other motive entirely unrelated to the whole issue of abortion, like attention getting or thrill seeking, so again he should be found guilty of murder? These are very hard questions to decide. But there is nothing that a so-called psychological expert can do or say about the state of the defendant's mind that would assist the jury to reach a more just decision. Nothing. These "experts" do not and cannot know these things any better than you or I or the average layperson in the jury box.

The jurors in John Salvi's trial did not buy the defense psychologist's argument that Salvi's guilt was absolved or even diminished by his alleged delusions; they reached the conclusion that he was guilty of first-degree murder. But why were they subjected to the time and money-wasting farce of listening to "experts" testify about matters about which they cannot possibly know anything different from what the jurors know?

Why do the professional organizations like APA tolerate this farce? Why don't they blow them all away for malpractice?

Why do judges allow these hired experts—defense and prosecution—to pour personal opinions into the ears of jurors with those personal opinions rhetorically disguised as expert, scientific opinions when they are no such thing?

Why do lawmakers, judges, and prosecutors tolerate this farce?

We know why the defense does it—because sometimes it works. What is the excuse for the rest of the officers of the court?

Some diagnosticians take only a few minutes to reach a diagnosis, others take numerous sessions with the client. Seldom will the clinician ask other people what's been going on with old Charlie lately, although he certainly must take into account the unfortunate fact that Charlie was arrested for shoving a stranger onto the subway tracks in front of an oncoming train. Occasionally family members and friends come in for consultation. Usually, however, there is very little relationship between behavior corroborated or directly observed by the forensic evaluator and the diagnosis he or she reaches.

Brief Psychotic Disorder

Consider a hypothetical case in which the insanity defense rests on the mental diagnosis of brief psychotic disorder. This defense, which has gone under various names in the different versions of the diagnostic manual, is very useful for those defendants who have no history at all of mental illness to call upon.

Brief psychotic disorder is characterized by any one, only one, of the following symptoms—delusions, hallucinations, disorganized speech, or grossly disorganized or catatonic behavior—and the symptom has to last more than one day and not more than a month "with eventual full return to *premorbid* level of functioning" (Diagnostic and Statistical Manual of the American Psychiatric Association, 1994, p. 302).

First, the evaluator interviews the accused:

"Last Thursday, when I killed her, Doc, I heard voices all day long. Something in my head kept saying she was a devil who would eat my liver if I didn't kill her first. When I woke up Friday in jail the voices were gone. And so was Mary."

And the evidence to back up this claim that the defendant/client suffered from delusions or hallucinations last Thursday? Well, there

is none except from the accused's own mouth, but who can dispute it?

Are there objective diagnostic tests to see if the accused is telling the truth? Well, no. Do the psychoexperts actually have any objective basis at all for distinguishing false claims of delusions from true delusionary claims, so to speak? No, of course not. How could they? There is no such thing as a secret delusionary litmus paper given out in graduate school.

The most impressive thing about this particular diagnosis—brief psychotic disorder—however, is the retrospective clairvoyance the evaluator must possess in order to reach it.

After all, this is a twenty-four-hour disorder that would quite naturally—if you will pardon the expression—have come and gone long before the psychoexpert could even have laid eyes on the defendant. How is the clinician supposed to be able to diagnose what the patient's condition was at the time of the crime last week or last month or last year? Apparently courtroom diagnosticians all possess the highly specialized skill of retrospective clairvoyance.

Do clinicians actually do this? Do judges and juries actually listen to expert psychological testimony that defendants suffer from fleeting, in-the-past, incapacitating mental illnesses that, however brief, nevertheless should absolve the accused of guilt for the crime?

Oh, yes.

Eric Smith and Explosiveness Disorder

In the murder trial of Eric Smith, a teenager from western New York who bludgeoned a four-year-old boy to death and violently sodomized him with a stick, the defense, through its psychoexpert, claimed that Eric suffered from intermittent explosive disorder.

> Testimony by a defense psychiatrist portrayed him as an immature 13-year-old at the time of the crime, with a low-average I.Q., and severe problems of self-esteem.... In relating the impulses that led him to kill a small boy on a chance encounter, Eric described the moment to the psychiatrist as "a mad switch" that vented anger building within himself and directed it on a child who was "smaller and practically helpless." (Nordheimer, New *York* ***Times,*** November 8, 1994)

The good news is that the jury didn't buy the story, but what is this pseudo-witness doing in a courtroom testifying about criminal responsibility?

The psychiatrist concluded from Eric's mad switch story that Eric suffered from an incapacitating explosive disorder—mad switchitis—that washed away the guilt for the murder of an innocent child. Retrospective clairvoyance allows this expert to know with certainty that this disorder was incapacitating Eric at the time of his crime even before the expert had ever met Eric. Apparently this clinician's intuition functions as a time machine to allow him to see into the past. (He could not possibly have believed that the mad switch tale alone was sufficient to make a reliable and accurate diagnosis of a mental illness so serious as to excuse this crime.)

Seemingly it would take tremendous nerve to get up on the witness stand and testify as to the mental condition of a defendant at a time weeks or months before the clinical exam, but there seem to be a good many clinical practitioners with more than enough nerve. Moreover, retrospective diagnostic clairvoyance is not confined just to forensic evaluations in murder cases. It is all over the courts.

Bipolar Embezzler

In a Boston trial in which a prominent cardiologist was accused of embezzling a fair amount of money from both colleagues and hospital, a defense psychoexpert testified confidently as to the cardiologist's state of mind at the time the money went missing:

> Dr. John Maltsberger [testified] that Nadal-Ginard was subject to so-called bipolar mood disorder, which caused mood swings that made him arrogant and energetic at some times and deeply depressed and self-doubting at others. The mood disorder made it impossible for Nadal-Ginard to appreciate whether his actions were criminal, Maltsberger said. (Langner, *Boston* Globe, May 17, 1995)

How would Dr. Maltsberger know what Dr. Nadal-Ginard was thinking the year before? He wouldn't, but I do think it was a bold attempt to defend the indefensible. It didn't fly, but on the grounds of chutzpah alone, it deserves points.

How do I know? The patient told me so.

In a recent case in Arizona, the defendant claimed that his failure to pay income tax resulted from the disorder of pathological gambling. He claimed that one of the associated features of this disorder was "distortions in thinking," which kept him from realistically appraising the extent of his winnings and losses. The federal judge took these. claims very seriously, carefully weighing which parts of the mental illness defense met federal criteria for admissibility and which did not, relying very heavily on the particular edition of the DSM in use at the time of the crime to decide which symptoms were legit and which were not. I cannot help but wonder if that judge has any idea at all of the procedures for deciding which symptoms will be included and which excluded from the diagnostic bible. I also cannot withhold my admiration for a defense based truly on nothing but chutzpah. It will be interesting to see if it flies. After all, pathological gambling is a disorder in the current DSM, so the guy is sick, is he not, if he can find an expert to testify that he is. That should not be hard.

What is diagnosis of this order doing in court? What is it doing in our courts every day? Why are psychoexperts of every persuasion welcomed into our courts to make a pitch to judge and jury that somebody should be granted a dispensation from the rules of decent society and absolved from guilt for any little unpleasant action like cheating on income taxes or murdering a spouse because the person was suffering from "organic personality disorder," "pathological gambling disorder," or an "involuntary dependence on alcohol"?

The highly paid professional conducts brief interviews, puts a mental disorder stamp on the defendant's forehead, and responsibility for murder goes poof? The psychoexpert has no basis for making such a diagnosis. He or she has no special ability to see into the client's soul at the present time and certainly lacks the clairvoyance necessary to determine the particulars of the defendant's past history.

Perhaps one of the most astounding examples of the modern clinicians' belief in total clinical clairvoyance—not to mention nonverbal telepathy—appears in cases in which the forensic psychologist is asked to perform a psychological evaluation of an animal to check out the beastie's mental health—its past mental health, that is, at the time of the "crime."

A large dog will be undergoing court-ordered psychiatric examination after it bit and disfigured a 2-year-old girl.

Justice David B. Saxe of State Supreme Court in Manhattan ordered the exam on Friday to determine whether the dog, a 7-year-old Akita owned by her grandmother, had vicious tendencies before its attack on the toddler, Sarah Engstrand, in her aunt's home in Huntington Bay, L.I., on September 5, 1994.

Guy Gabizon, a lawyer for Wende A. Doniger, Sarah's mother, said that to collect damages in dog bite cases in New York, a plaintiff must show that the dog is "vicious." (*New York Times,* September 29, 1996)

STARING THEM RIGHT IN THE EYES

Conversely, clinicians are quite obviously unable to see what is right before their eyes. Making evaluations of clients after the crimes have been committed, forensic clinicians clairvoyantly gaze into the past through the crystal ball of clinical intuition; for patients right in front of their faces, however, clinicians are too blind to see imminent homicide, suicide, or family abandonment.

Brian Gaboriault, the Fairhaven, Massachusetts, man who stabbed to death his infant son and the boy's mother, had seen his therapist just one or two days before the killings. Presumably the therapist was unaware of any danger to the young man's family or he would have issued a warning to the authorities or to the murdered woman herself.

Sinedu Tadesse, the Harvard junior who stabbed her roommate dozens and dozens of times as she lay sleeping, killing her, and who then hanged herself, had been seeing a therapist at the Harvard Student Services for two years. Again, imminent homicide and suicide seemed to have escaped the therapist's notice.

It is depressingly clear that the patient's behavior—his or her "symptoms"—provide no clue to the therapist of the present state of mind or intentions of the patient. Yet, on the witness stand, hired evaluators claim their observations of clients are reliable indicators of past states of mind and motivations. Our courts buy this foolish claim over and over again.

Malingering or Pretending to Be Nuts

Forensic psychoexperts, whether they work for the court or for the defendant, claim they can determine through their interviews and their tests—and, of course, their much-vaunted clinical intuition—who is or is not competent to stand trial and who is or is not insane. With their supposedly finely honed skills and instruments, they can weed out the sick from the sane, the guilty from the psychologically not-so-guilty, and the fakes from the true sufferers.

Given the alarmingly shaky foundations of their enterprise, it would be logically impossible for them actually to be able to do so. People have said this for years. It falls on deaf ears. So what happens when you actually test it out? Can clinical evaluators even tell the truly sick from those who are faking it? A diagnostic mix-up here and there is only to be expected, but surely the trained professionals can at least pick up on the malingers. Or can they?

The famous 1973 study by David Rosenhan on being sane in insane places is a perfect illustration of the old adage, "There are none so blind as those who will not see." Rosenhan and eight accomplices (all sane) gained admission to psychiatric hospitals in five states on both coasts by complaining that they heard voices. Immediately after admission, all the pseudo-patients stopped faking their auditory hallucinations, responded honestly to staff members' questions about significant life events, and attempted to interact normally in all respects with the staff. All this conspicuous normalcy made no impression whatsoever on the staff. All but one of the "patients" were diagnosed as schizophrenic and not a one was detected as a fake.

In a second experiment, the team alerted hospital staff to the possibility of falke patients showing up, but even a forewarned staff was incompetent at distinguishing the sane from the insane. Staff did indeed judge 10 to 20 percent of the new admissions to be faking, but, alas, none of them were members of the experimental team.

Other than the usual clinical intuition aided by selective amnesia and the confirmatory bias, what other evaluative tools does the forensic diagnostician employ in assessing competence to stand trial or responsibility for criminal acts?

PSYCHOLOGICAL ASSESSMENT INSTRUMENTS

Ordinary clinicians, when not required to explain or justify their conclusions in courtrooms, usually reach their diagnoses using precisely the interview techniques described earlier. But forensic psychologists, or any clinician who is called to the witness stand, speedily resort to another technique to buttress those vulnerable opinions: testing.

Laypersons believe that forensic psychological evaluators have tests to detect any number of mental disorders, dysfunctions, and disabilities, as well as tests to tell who is faking it. And, indeed, courtroom psychologists employ a dizzying array of tests designed to bolster their conclusions and blind the opposition.

The most frequently used personality tests are the MMPI and the Rorschach. As we have already seen, these tests are useless even for arriving at conventional diagnoses of mental illness. What possible utility can they have for determining the competency or sanity of an individual in a criminal case? None whatsoever.

If you ask a forensic evaluator why he or she employs tests of such shoddy validity and ephemeral reliability, the evaluator will tell you that some set of scales or other, some "profile" or "code" correlates in some study somewhere with some aspect of behavior of individuals who have been diagnosed with mental illness. With some nine thousand such correlational studies, that is bound to be true. It is also vacuous nonsense.

There are no valid or reliable psychological tests for determining legal competency to stand trial. There are no psychological tests for determining legal insanity.

Individual evaluators use whatever strikes their fancy and rely on their clinical intuition for interpretation of the results.

There are no special tests, no secret skills, no "expert" clinical method for determining either competence or insanity. There is nothing but the standard diagnostic techniques, and they cannot even do the job for which they were designed.

WE DIDN'T SAY THEY WERE LEGALLY INSANE

Putting aside for the moment the issue of validity and reliability, does a particular diagnosis like brief psychotic disorder or PTSD mean that the accused is truly "unable to assist in his own defense" or, at

the time of the crime, was "unable to appreciate the wrongfulness of his acts," or "unable to conform his behavior to the law," or any of the various state-by-state formulations of diminished accountability for crime due to some mental impairment? No, in reality it does not, but oftentimes in the courtroom it does.

> A judge ruled today that a man accused of stabbing and beating four nuns, killing two of them, is not criminally responsible because of mental illness.
>
> Justice Donald Alexander of Superior Court committed the man, Mark Bechard, 38, to the custody of state mental health officials indefinitely. He will not face further criminal penalty for attacking the nuns at their Waterville convent in January. Whether he ever goes free depends on his mental condition.
>
> "The facts of this case are this, that Mark Bechard is severely ill, he came into this world biologically cursed," Mr. Bechard's lawyer, Michaela Murphy, said during closing arguments in the nonjury trial.
>
> . . . [The prosecutor, Assistant Attorney General Eric] Wright, said the assault had more to do with Mr. Bechard's history of violence than with his mental illness.
>
> "The truth is this defendant goes off when he doesn't get his way and that's what happened here." (New *York* Times, October 17, 1996)

Put as balclly as possible, having a screw loose does not mean that you cannot choose to do right. Hearing voices does not mean that you cannot choose to disobey their instructions. No mental illness required Joan of Arc to go to war in order to put Charles VII of France on the throne, no matter how compelling she found the apparently divine command to do so.

Consider the case of the young woman in New York who last year slashed a woman's face on the subway. She had a history of mental illness. Was she compelled to slash a stranger's face? She got rid of the knife and waited to be arrested. She knew if she was not holding the knife she would not get hurt, and she knew that with her history she would not be punished for cutting the woman's face. What did she have to lose? Nothing.

A diagnosis of mental illness does not imply anything definite about the level of functioning or degree of impairment of a particular individual in a particular situation.

In fact, the American Psychiatric Association is at pains in its new manual to point out the lack of any relationship.

> In determining whether an individual meets a specified legal standard (e.g., for competence, criminal responsibility, or disability), additional information is usually required beyond that contained in the DSM-IV diagnosis. . . . It is precisely because impairments, abilities, and disabilities vary widely within each diagnostic category that assignment of a particular diagnosis does not imply a specific level of impairment or disability.
>
> Moreover, the fact that an individual's presentation meets the criteria for a DSM-IV diagnosis does not carry any necessary implication regarding the individual's degree of control over the behaviors that may be associated with the disorder. Even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is [or was] unable to control his or her behavior at a particular time. (Diagnostic and Statistical Manual of the American Psychiatric Association, 1994, p. xxiii)

Do all these disclaimers slow down the defensive diagnostician? No, indeed not. Despite lip service to the possibility that a mentally ill individual might be able to exert control over his or her actions, the American Psychiatric Association, through the offices of its ever-expanding diagnostic manual, has medicalized not only the concept of diminished accountability but all criminal conduct as well.

The Criminal Mind and the Sick Brain

Mental diagnoses are described by the American Psychiatric Association as a subset of medical diagnoses. That is, mental disorders are supposed to be simply another category of all the physical disorders that plague humankind. The authors of the newest version of the manual actually apologize for using the term "mental disorder," explaining that "mental disorder unfortunately implies a distinction

between mental clisorders and physical disorders" (Diagnostic and Statistical Manual of the American Psychiatric Association, 1994, p. xxi).

Now, clearly, the implied biological source of mental disorders is not the foot or even the heart; it's the brain. That means that for each of the almost four hundred different mental disorders recognized by the American Psychiatric Association, the association is claiming that there must be a different kind of organic brain dysfunction.

The unhappy truth, however, is that medicine in fact does not have the faintest idea of the biological mechanisms postulated to be the causes of the overwhelming majority of the disorders it has classified in the mental diagnostic manual.

Nevertheless, the APA's assumption of a biologically determined cause for every mental disorder in their nine-hundred-page diagnostic manual has led clinical practitioners in a stunning logical non sequitur to attribute all bad behavior to brain damage, and, indeed, to dismiss the whole idea of personal responsibility for behavior.

Whatever the cause of the mental disorder—abuse, alcohol, trauma, imminent menses, badly wired brain synapses, or degeneration of the brain cells—the perpetrator of the crime is a disabled, sick person who should not be held accountable for actions as he or she would be if well. How can we send victims of pyromania or pathological gambling, for example, to prison for behavior stemming from a condition beyond their control? How can we throw people with serious, medically bona fide mental disorders into prison for conditions and behaviors they can't control?

Because even some members of the psychological community are aware that proliferating diagnoses of mental disorders inevitably proliferate defenses against criminal charges as well, there was considerable controversy surrounding the inclusion of certain diagnostic categories in the last two revisions of the official diagnostic manual. One of the proposed disorders was paraphilic rapism, a condition in which the "sufferer" is said to experience intense sexual arousal while fantasizing about rape. This is a disorder that would lead one, quite naturally, to commit rape. Can you blame the poor guy? He's sick.

Intense political pressure quashed this diagnosis but I think that's unfair. It's right in keeping with the belief that there are no bad people, only sick and injured ones.

The inclusion of PMS, premenstrual syndrome, excited considerable controversy before the DSM-IV was finalized because including it in the manual would both stigmatize hundreds of thousands of women as raving lunatics three days a month and simultaneously provide them with a diminished accountability excuse for crimes committed during these times. Feminist practitioners led the assault against including this diagnostic category in the revised manual, but society as a whole has just as great an interest in the exercise of common sense in defensive diagnosis as do feminist psychologists. (PMS wound up in Appendix B in the new manual under "insufficient information to warrant inclusion," in the hope that further study will clarify the issue.)

LIBERAL INSANITY

Liberals who have swallowed the claims of mental health professionals about everything from the reliability of diagnosis to the effectiveness of treatment find themselves these days in an interesting dilemma.

Occasionally, persons who have been treated for mental illness in the past commit crimes that catch the public's attention. In Massachusetts two years ago, one inmate at a new neighborhood halfway house attacked a staff member while another attacked one of the neighbors. In Maine recently a past patient stabbed to death two elderly nuns in a cloistered convent; in New York City a fifteen-year-old patient was accused lately of shoving a young woman to her death on the subway tracks during a robbery attempt; in Massachusetts a mental patient who murdered his parents was seeking release in the spring of 1996 after two decades of treatment, having been found not guilty of parental murder by reason of insanity.

All cases like this create serious difficulties for the politically correct. After all, if the mentally ill are just like folks with arthritis, then they are no more dangerous to their neighbors than are the arthritic. Yet, at the same time, when the officially designated mentally ill commit horrible crimes, liberals say that it is not the mentally ill persons' fault; it is the fault of their illnesses.

Even the New *York Times* recognizes that that is a no-win characterization, so it has come up with a brilliant way out of the dilemma: Crimes committed by the mentally ill are the fault of the

mental health professionals who failed to properly medicate the patient.

Consider the case of Jaheem Grayton, the fifteen-year-old New Yorker accused of killing while stealing. Jaheem had a long history of violence and theft, with incidents including the slashing of a schoolmate and the substantial abuse of drugs and alcohol. Following a suicide threat in the autumn before the robbery killing, Jaheem was committed for a month to a hospital and given medication for his problems along with an outpatient treatment appointment following his release. He didn't make that appointment, or any others, and he stopped taking the medication. Eight weeks later he stood accused once again of violence and theft, this time resulting in the death of his victim.

What does the Times write about Jaheem? "Who was most responsible for insuring that Mr. Grayton, a troubled youth under treatment for mental illness, took his prescribed medication—the hospital that treated him for a month and then discharged him, the clinic that was to provide follow-up treatment but did not, or his family?" (New *York* Times, February 29, 1996).

What about Mr. Grayton himself? Even according to liberal logic, Mr. Grayton must have been in his "right mind" and responsible for his own actions while on the medications that treated his mental illness, was he not? If so, then he was responsible for the continued taking of his medication. If not, if he was just as irresponsible medicated as unmedicated, then it makes no sense at all to blame either the medications or the medics for his commission of this crime.

Still, this is an interesting point of view and one that takes us even farther down the twisted path hacked out by the conflicting claims that the mentally ill cannot be held responsible for their crimes and the mentally ill are no more likely than the rest of us to commit horrible crimes.

Of course, the conflicting claims are never made at the same time, nor are they made for the same purpose. The innocuousness of the mentally ill generally surfaces during housing controversies. The innocence of the mentally ill, regardless of their particular actions, usually arises as the legal system attempts to attribute responsibility for those actions. Then we get the accountability psychocircus that arouses the wrath of even the most somnolent of the gulled public.

The Laying of Blame

Alan Dershowitz has railed against what he calls the abuse excuse in criminal trials like those of Lorena Bobbitt for mutilation and the Menendez brothers for parental murder, in which defendants claim that due to prior injury by their victims they were unable to control their actions, but Dershowitz has hold of the wrong string in the psycholegal tangle. Abuse excuse claimants seek to put the blame for the injury they have caused onto the shoulders of the one who originally injured them, but it is not necessary to displace the blame. Thanks to the American Psychiatric Association, it is enough to disavow it. "I am mentally ill so I cannot be held responsible for my actions."

All this defense requires are really compelling and persuasive psychoexperts willing to work as hired guns. With the weight of enough credentials behind them and aided by a plausible-sounding story sprinkled with medical jargon and Latin terms, it is pretty hard for the layperson just to dismiss the experts' medically authenticated testimony. After all, these "experts" are certified as such by their professional organizations, by the state, and by the courts themselves. Most alarming is the willingness of our higher courts to accept the claims of the forensic experts over the judgments of the trial court judges. It cannot be long before the decisions of juries to refuse insanity pleas will likewise be reversed on appeal because they had not weighed the expert opinion sufficiently.

Experts indeed! Where do these well-paid, fraudulently trained but extensively credentialed, psychological professionals get off representing to the courts and to society as a whole that they can do a better job than you or I, than the average judge or juror, at deciding who is too crazy to stand trial and who is too crazy to bear all the guilt for his crime?

Shouldn't such misrepresentation itself be a crime?

6
Music Therapy for Wife Killers

Rehabbing Convicts

> The proof of our success is in our high referral rates from the courts and the probation officers. And we are very near national accreditation from the Association for the Treatment of Sex Offenders. We do good work here. . . . It's a simple fact. If we weren't successful, we wouldn't be in business.
>
> Shari P. Geller, Fatal Convictions, 1996

THE TEMPORARY DIET-PILL CRAZINESS OF OFFICER QUINTILIANO

Former Stratford, Connecticut, police officer Matthew Quintiliano "was in his Stratford Police uniform on May 23, 1975, when he shot and killed his first wife, Mary Ann, with 10 bullets outside Bridgeport Hospital, just days after she filed for divorce. In 1978, he was found innocent after pleading temporary insanity, his defense attorneys successfully arguing that he suffered from amphetamine psychosis from overusing diet pills.

"Quintiliano was held in Fairfield Hills Hospital, a state psychiatric unit in Newtown, for three months, but was released in 1979 and soon after married Sally Coppola Lawlor." On February 16, 1983, one week after Sally had said

> she would file for divorce, he shot and killed her, using a police service revolver that belonged to his son by his first wife. He was released from prison in December **1993.** (Weizel, Boston Globe, December 10, **1993)**

That's pretty impressive. First the psychological experts get him off for murder on the grounds of temporary craziness caused by taking diet pills, then they cure him and judge him fit to reenter society, and marriage, in just three months.

We have already seen how clinical practitioners hired by clever defense attorneys arrive at their exculpatory diagnoses, but the Quintiliano case is a real stunner.

How could anyone come up with a diagnosis of amphetamine psychosis, of diet-pill craziness, and get this wife killer off? It would be easy.

Was Officer Quintiliano cured by his three-month course of psychotherapy in Fairfield Hills Hospital? The answer to that kind of depends on your criteria. Since temporary amphetamine psychosis is, by definition, "temporary," Mr. Quintiliano must have been cured, again by definition, as soon as the "temporary" period passed. Also, since temporary amphetamine psychosis was his official diagnosis, once "cured" of that, there would have been little reason to keep him. So he was out in three months.

Of course, your criteria for judging a wife killer "cured" may be somewhat different. In fact, a not-so-unreasonable person might expect that Mr. Quintiliano would be required to stay in the hospital until his doctors could pretty much guarantee to society—or at least to future brides—that Mr. Quintiliano would not kill anyone else in the future. By that criterion, he obviously was not cured.

Now, his doctors might argue that they never tried to cure the wife killer of wife-luller disorder because he had no such diagnosis. But let us say that Quintiliano had actually been sent off to get his proclivity for killing women who no longer want him cured. Could psychotherapy have fixed up that little problem for him?

This is an extremely important question because every day our courts are sending men off to treatment for having stalked, attacked, beaten, raped, and killed women—often the women in their lives. Twenty-seven states now authorize courts to order domestic abusers

into psychological treatment. Over the last twenty years the number of batterers arrested has increased by 70 percent, according to a report by Janell Schmidt and Lawrence Sherman in the *American Behavioral Scientist* in *1993*, but still, most batterers, even when arrested, do not serve time in prison. We seem to have an unspoken assumption that men who kill strangers are bad, but men who kill female friends, lovers, and wives are just mad.

And as madmen, as men suffering from mental disorders, surely they can be helped by psychotherapy. Right?

WHY THERAPY SHOULD WORK

Does psychotherapy work? Well, sure. Of course it does, at least for the average noncriminal types who freely choose it. It *must* work.

Why must it work? Look at the general conditions under which your average slightly messed-up person chooses to enter therapy. Now, what is going to happen to that person? What will happen to you?

When you go into therapy, one of three things can happen: you get better; you get worse; there's no change. Let us suppose that by chance alone, all other things being equal, each of these outcomes will happen about one third of the time. Thus, therapy has to work about a third of the time by chance alone.

What can change these odds? Several factors, actually. First of all, there's the simple effect of expectation on what happens. You expect to get better. After all, you followed Ann Landers's oft-repeated advice to get counseling, and Ann wouldn't mislead you, would she? Of course you expect to get better as a result of the counseling. Also, you are highly motivated to get better. You've been thinking about it for two years and now you've decided you've had all you can take. You are going to get therapy and you are going to get better.

Besides, you are paying $100 per session. Now, unless you really have several screws loose, you are not going to be paying that kind of money expecting to get ripped off. You are only a little bit nuts, not that nuts. Additionally, your insurance company paid for the first $500 in therapy and it certainly wouldn't do that if therapy was not a tried-and-true method of making people better, would it? After all, insurance companies don't pay for experimental procedures or inef-

fective methods like astrology readings or peach pit treatments. They pay for the real thing.

In addition, unless your therapist is a complete fraud, he or she also expects you to get better. Why else would anyone spend forty hours a week listening to people talk about how distant their fathers were and how cold their mothers? Therapists have to believe that what they are doing is worthwhile and will help their patients get better.

So by how much do all these additional points improve the chance odds of getting better? Let's give a 5 percent increase in the probability that you will get better for each of these factors. Your expectation of getting better adds 5 percent to the chance probability of 33 percent, your powerful motivation adds another 5 percent, your payment of significant dollars adds another 5 percent, the insurance company's confidence adds another 5 percent, and your therapist's expectations add in still another 5 percent. That get us up to a 58 percent chance that you will get better as a result of having gone into therapy.

What else might change the odds? Well, you are now spending several hours a week on yourself, not on your family or your job. You are thinking about yourself and clearly finding the experience sufficiently valuable that you take time to do it. That's a big change from your prior neglect of self. Also, for the first time in your life since childhood, someone else is taking time to devote serious attention to you and your problems and feelings. Clearly, your problems and feelings must be interesting and important or why would that person sit there hour after hour listening to them so intently? Moreover, this person frequently acts as if he or she genuinely likes you. It has been a long time since you met someone new who seems so pleased to see you each time you meet. Also, this person is a person of authority with graduate or medical degrees and a license from the state to do whatever he or she is doing.

All of this is pretty remarkable. Not only are you valuing yourself for the first time, but so is someone else. That ought to add 10 percent to your chances of getting better. Feeling liked, cared about, and wanted, as well as important, is another big plus, worth another 5 percent. And being valued and liked by a person of considerable authority and importance is worth another 5 percent. Where are we

now? At about a 78 percent chance that you, the patient, will get better as a result of having gone into therapy, regardless of what that therapy is. So far, we haven't even considered what goes on in all those therapy sessions. It doesn't matter; you should get better anyway for all these other reasons.

So it is at least possible that clinical practitioners can help people who want to feel better or understand more about their lives feel better and understand more even if it is for a number of reasons that have very little to do with formal training and knowledge.

But I say this once again because it is critical: The fact that an individual can be helped tells us *nothing* about the validity of the psychological theories of the helper. The actual causal events producing his or her behavior are unknowable.

Perhaps familiarity with the treatment used by the faculty of the famous Boston Trauma Clinic to treat PTSD will plant the necessary seed of doubt in even the most gullible past or prospective patient. This procedure, by the way, is held by *consensus* of all the faculty to be absolutely the most effective in treating PTSD, according to Dr. Bessel van der Kolk, on staff at the clinic, in a colloquium given at Boston University in October 1996.

To cure PTSD, the therapist has the patient concentrate on the past traumatic event—this only works if he or she can remember it, of course—while staring at the doctor's fingers as the doctor wags them slowly back and forth, back and forth, in front of the patient's eyes. The patient follows the wagging with his or her eyes. Dr. van der Kolk suggested that each session last ninety minutes and that after only three sessions, the patient would be cured! Now, isn't that amazing? This therapy technique is called EMDR, for Eye Movement Desensitization and Reprocessing. (I can think of another name for it.)

It certainly goes to show that understanding how the mind works has nothing whatsoever to do with "curing" modern "mental disorders." I wonder if EMDR would work as well if the psychiatrists of the Trauma Clinic wagged gourds and rattles in front of the patients' eyes. Hard to imagine why not.

The lack of connection between the effectiveness of a therapy technique and the validity of the therapist's psychological theories will not be evident to happy patients, or even to most judges, because

of the almost universal vulnerability to the witch doctor fallacy. We all know or have heard of people who claim to have benefited from psychotherapy, and you and the person you know—and the person the judge knows or the judge—both attribute the benefits to the knowledge and skills of the therapist. It is almost impossible not to fall prey to the witch doctor fallacy, although the people at the Trauma Clinic seem to be doing their best to help us.

Nevertheless, we should add in the effects of the fallacy to the overall effectiveness of psychotherapy for a full estimate of efficacy independent of therapy itself. If we throw in another 2 percent for the effect of this fallacy, just to round things up, about 80 percent of the people who go into therapy ought to get better no matter what kind of "therapy" they choose.

Real Life and Therapy

There is another reason that you should get better in the course of therapy that also has nothing whatsoever to do with what goes on in your sessions with your psychotherapist. What most people seek help for in therapy are real-life problems—problems with spouses, children, or jobs. These quite ordinary real-life problems are not diseases of the individual like breast cancer just because clinical practitioners, in their zeal to medicalize everything, label them so. So psychotherapy also works because the diseases it purports to treat are not actually diseases; they are just the vicissitudes of ordinary life.

Unhappiness is a problem; it is not a disease. Low self-esteem also is not a disease. Eating too much is not a disease, and neither is eating too little. And, despite a huge lobby to the contrary, drinking too much alcohol is not a disease either. As we have seen, the psychological establishment has defined virtually all less-than-desirable behaviors, from hatred of first grade to serial rape, as psychological diseases, and represents itself as uniquely able to provide the necessary "therapies" for them.

In the normal course of events, with or without psychotherapy, most real-life problems resolve themselves one way or another. These mundane problems are "treatable" because most life situations change over time, solving old problems and creating new ones, and when the situation does not change, people get used to it. Yes, people do adapt to the commonly occurring miseries of ordinary life and even to the most

extraordinary situations. To live is to adapt. It is the fundamental definition of a living system. Psychotherapists have defined human beings as unadapted to the human environment, and as unadaptable without their help. That's an offensive and utterly unsubstantiated assertion.

Horrible Life Experiences and Therapy

Even horrible life experiences are just that, horrible experiences. They are not precipitating conditions for insanity. Life is full of dreadful experiences. Our babies die from leukemia, our teenagers get crushed to death on telephone poles, our spouses die or leave us. Our mothers drink, our fathers beat us, and our kids deal drugs. We lose our jobs and are betrayed by friends. We break our backs at twenty, get breast cancer at thirty-six, and lose a finger to a rotary saw at forty-five. We go blind and inexorably deaf. Our houses burn down, or are swept away in floods or by the sea. We get robbed, we get mugged, we get shot at.

Are we all, then, crazy? Do we all need psychotherapy to make it through life? What kind of idyllic life must people possess to make it through without going crazy? No sickness, no death, no hunger, no loss? What sort of witless 1950s Norman Rockwell romanticism informs this distorted view of life?

Life is a complex series of highly varied events to be dealt with; it is not a condition to be cured by psychotherapy.

Life situations that make people unhappy change, and then people feel better. Many miserable situations do not change much for the better, but people get used to them; they adapt. And people themselves, like situations, change over time. Most people who are depressed or anxious will, with time, be less depressed and anxious. With more time, they will be depressed or anxious again. Stasis for living beings is inconceivable. When we have been hurt, we heal. With time, we change. It takes time to feel better, but it happens, and it happens without the offices of any therapist.

Given all these powerful factors pushing people who enter therapy to feel better, how could it fail to work almost every time?

THE FAILURES OF THERAPY

That is a good question and it has to be asked because the failure rate of psychotherapy is astonishingly high. In fact, for a long time, since

the middle 1950s, research studies have shown no effect *at all* of therapy for your average patient. Some people got better; some didn't. People were as likely to get better with the simple passage of time as under the guidance of a therapist.

It is amazing that the business of therapy blossomed and grew at such a rapid rate in the last few decades despite the lack of any evidence of treatment effectiveness, but, of course, people are reluctant to admit they have been had, and the propaganda that therapy works has been extensive and powerful.

In their 1992 Consumer's Guide to Psychotherapy, Jack Engler, Ph.D., and Daniel Goleman, Ph.D., write that despite all those years of evidence to the contrary, a modern "meta-analysis" supposedly shows that psychotherapy does work after all. Really?

What does this meta-analysis supposedly show? It shows that if you combine the results of the hundreds of studies on whether therapy works, ignoring completely what the different patients suffered from, what kinds of therapy thry had, and what kinds of measures were used to indicate that the therapy worked, then, overall, there is indeed some evidence of a net positive effect of psychotherapy.

That is like saying if you gathered up every single study of whether physical medicine worked regardless of disease, doctor, or treatment, you might find that, overall, medical treatment had *some* effect on helping people get better.

Well, that's just dandy, isn't it? What is the public supposed to conclude from that? Because some medical treatments had some effect on some diseases sometimes, all medical treatments for each and every disease are effective? We should believe that physicians can fix anything, and our insurance companies should pay for any and all treatments for each and every disease?

Newspapers these days are full of demands that all medical providers—insurance companies, HMOs, and such—be required to pay for psychotherapeutic treatments exactly as they would pay for treatments for the flu or breast cancer, despite the shocking lack of evidence that psychotherapy does anyone any good at all, except the psychotherapist who is getting paid.

It seems extremely unlikely that any medical professional other than a psychiatrist would have the chutzpah to demand payment for

services so clearly *not* rendered, but psychotherapists and their lobbyists cite the "meta-analysis" repeatedly in their demands for more money from all of us.

Clinical psychologist and researcher Neil Jacobson, in a recent **(1995)** issue of a family therapy journal, presents another telling and disturbing fact. He points out that in those studies that supposedly *do* show an effect of therapy, the effect is solely statistical, with very little of what he calls clinical meaning. To illustrate his point, he gives the case of a weight-loss technique that produces a statistically significant weight loss of **10** pounds on the average for each patient, but, alas, since the average patient in the study weighed **300** pounds, this statistically significant weight loss of only 3.3 percent for the average patient was not *clinically* significant for the morbidly obese. The 300-pound, morbidly obese subjects were still morbidly obese at **270** pounds. Psychotherapy is supposed to make a *real* difference to patients, not just a minor statistical effect, or it is extremely misleading to patients and the public at large to publish it.

Further, he notes that the claims of effectiveness when looked at carefully are really quite small. In one extensive multimillion-dollar study of depression treatments, comparing psychotherapy with drug therapy, the percentage of patients who stopped being depressed and stayed that way for a year and a half ranged from **19** to **32** percent for the drug and psychotherapy groups, and was 20 percent for what is called the placebo group. The placebo group patients talked about hockey or gardening with the therapists instead of anything specifically designed to improve their mental health.

Jacobson's study showed two things: First, talking about hockey is just as effective in curing depression as talking about your mean mother who didn't want you; and, second, 70 *to* 80 *percent of the patients in the study stayed depressed* whether they talked about hockey, badmouthed their mothers, or took an antidepressant drug.

He reports similar small effects in a series of studies on conduct disorders in adolescents, marriage counseling for couples, and anxiety disorders:

> We have found the recovered patient [one who shows few or no signs or symptoms of the initial complaint and believes himself or herself to be "cured"] to be the exception rather

> than the rule for every type of disorder examined and every type of therapy we have looked at—psychodynamic, behavioral, cognitive and family therapy. When one considers even more intractable problems, such as addictive behaviors, schizophrenia and personality disorders, the clinical significance data are even more bleak. The only exception we have found . . . to these modest recovery rates is the cognitive behavioral treatment of panic disorder. (Jacobson 1995, p. 44)

For almost every mental problem studied, psychotherapy makes about 20 to 25 percent of adults feel better, but so does placebo pseudo-therapy—talking about sports or gardening—so therapy as therapy can't really be said to work at all for adults, and for children there is no evidence that it works even as well as talking about sports.

The real reason that psychotherapy doesn't work even as well as one might expect from placebo effects alone is that it is ***not*** generally designed to do so. That seems unlikely only as long as you don't look too closely at what actually happens in the course of therapy, as long as you don't look at what has ***always*** gone on.

How Therapy Is Not Designed to Change Behavior

In Freud's time, all psychological problems came from sex—too much or too little, excessive masturbation, coitus interruptus, incest real or imagined, and unfulfilled erotic fantasies. Today, all our problems come from low self-esteem engendered by an inadequate home life. To cure his patients' conditions, Freud developed the "talking cure." Patients talked about supposedly illuminating dreams and revealed themselves further through free association and Freudian slips. In various forms, this is still the dominant approach today.

> MEADVILLE, PA (AP). An Amish man who beat his wife to death and cut out her intestines was convicted of a lesser charge of involuntary manslaughter Saturday. Edward Gingerich, who was charged with murder, admitted to killing his wife, Katie, on March 18, 1993, in Rockdale Township, about 100 miles north of Pittsburgh. He beat her, kicked her in the head with heavy work boots and then used a kitchen knife to remove her organs, according to trial testimony. Gingerich's

> lawyer said his client thought he was possessed by the devil because he had headaches, and that he was too mentally ill to know what he was doing. The jury found Gingerich "guilty but mentally ill" of manslaughter. A judge will decide whether to send Gingerich to a mental hospital or to prison for up to four years. (*Napa Valley* Register, March 27, 1994)

How would a therapist go about curing Mr. Gingerich, and how would one know when success was in hand? Deciding if and when therapy has "worked" depends on what one means by "worked."

From the outcome point of view, therapeutic techniques fall into four broad categories that can be usefully distinguished as insight seeking, emotional validation—both modern implementations of Freudian psychodynamic theory—behavior modification, and plain foolishness.

Insight Seekers

Let us say your therapist is an insight specialist. What is he or she after? Insights, of course, but what's an insight and who is supposed to have them, you or your therapist?

An insight occurs when you suddenly realize that your mother didn't really want any more babies after Harry, your much older brother, was born, that she resented having to work full-time until she was almost sixty years old, and never having any money to spend on herself, or any time for herself and her husband.

Why should the sudden realization that your mother wished you had never been born make a difference in your life? No reason. There is zero evidence that therapeutic "insights" have any effect on the patient's life at all. Why would they? You grew up the way you grew up; you live the life that you live. Suddenly seeing your mother through a different lens won't change any of that. Insight theory is nothing more than romanticized wishful thinking. Having an insight about your mother's feelings from thirty years ago is not the same as discovering that your spouse is having an affair today. The latter is an "insight" that might well have a significant effect on the course of your life.

By the way, where is the evidence that any particular "insight" is correct? How do you know that your mother really didn't want any

more babies after Harry was born? Why do clinicians give such weight to these so-called insights, to their own interpretations of the patient's revelations?

Simple. Because they make sense. **Ah,** the lure of the coherent narrative.

Given a cultural backdrop of pervasive Freudianism, it only takes acceptance of a few basic assumptions for the patient to accept the therapist's story as true, to accept the insights as valid: To wit: The mother-child relationship defines all love relationships in the future, and if mother was hostile but in denial she constantly gave the poor child mixed messages about love and acceptance, which resulted in an emotional insecurity that makes the adult child a demanding and conflicted lover today, with an unhappy marriage entirely due to the mother's initial ambivalence.

Is that sad story really the only possible narrative to account for the emotional ups and downs of the patient's life? Of course not, but apparently only an overly critical person would object that there are probably any number of relationships, experiences, attitudes, expectations, and patterns of behavior that go into determining the quality of a marriage or parenthood; that no one has the ability to re-create the complexity of the mother's many feelings and the way they changed over time and expressed themselves in innumerable actions and omissions; and that it is quite possible to write dozens of stories to fit the few known "facts" of the case.

Any story that "makes sense" to therapist and client is considered not only good enough, but necessarily *true*.

Dr. Lenore Terr gives a fascinating and highly disturbing account of the process of Eileen Franklin discovering "true" insights about her father, George:

> A few months after she remembered Susan Nason's murder, Eileen began to see herself around the age of seven or eight being raped by a black man with a green-tipped Afro haircut. . . . *After* telling this *story* to [the *prosecutor's]* investigators, Eileen realized that her mental representation of the rapist had come from a Jimi Hendrix poster on the rapist's wall. . . . [Soon] the man who actually raped her came to mind. It was her own godfather. His white face gradually imposed itself

> onto the memory. This man . . . had arranged with George to rape George's daughter. It was a sick gift from a father to a friend.
>
> I *felt satisfied that we understood* how Eileen's mental shift from her black Jimi Hendrix rapist to her white godfather had occurred. (Terr 1994, pp. 41–42; italics added)

It is nice that Dr. Terr felt satisfied by Eileen's creative turn, but didn't she think it a little odd that Eileen changed her story only after the prosecutor's investigators expressed doubt about it?

Every therapist has encountered any number of "insights" that are all too soon replaced by newer ones. Why are they allowed to testify otherwise in court? Therapists know that so-called insights can be both wrong and dangerously misleading. They know that memories can be false. But they need to hold on to belief in the validity of insights to make sense of the whole therapeutic process in which they are engaged.

They also need to believe in insight if therapy is ever to be terminated, since illuminating insights are supposed to provide the key that leads to psychodynamic resolution and the end of distressing symptoms. (Freud, oddly, both disclaimed the process yet followed the practice.) That some people remain years in therapy with the same therapist might lead one to believe that there is a certain deficiency in insight theory or else a certain insight deficiency in the particular relationship, but it's not necessarily so.

More likely, these long-term clients, like Woody Allen, have therapists who are into emotional support rather than insights.

Emotional Validation and Esteem

Emotional validation is huggy therapy; it is supposed to build up the patient's self-esteem, and make him or her less anxious or depressed or whatever.

Huggy therapists say things like "I hear you saying that it hurts your feelings when your daughter says she hates you and you are a bad mother" and "How does it make you feel to have spent ten years at a job you despise?"

Huggy therapists put you in touch with your feelings and validates them once you are in touch. In plain English, that means you

express feelings in therapy that you didn't express much before and the therapist tells you it is okay to feel the way you feel.

So what's wrong with talking with a warm and sympathetic listener about your problems? Nothing at all. It's a perfectly sensible thing to do. This support service is a necessary social function that used to be provided by our wise old grandmothers, our experienced Uncle George, or the family minister—people who had seen a great deal of life and had given it a great deal of careful thought. In today's highly mobile and less traditionally religious society, it is quite appropriate that these services be provided by "professionals"—people whose job it is to listen, to give warm support, to provide perspective on problems, to help people feel better.

But what effect is this so-called emotional validation supposed to have on your life? The therapist, after all, is just a paid, professional emotion validator. How is his or her validation supposed to transfer into your real life outside the therapist's office? Your daughter still hates you and your boss still thinks you're a slacker. Who cares if your therapist is sympathetic? Not your daughter or your boss, that's for sure. There's no evidence that warmth from a therapist changes the patient's life for the better.

Why would it? Huggy therapists have promulgated the utterly unsubstantiated notion that talking about your feelings, "unbottling the rage" or "letting the anger out," will effect real change in a person's life. The idea seems to be that encouraging adults to throw tantrums will make them better people. That approach is about as effective with grown-ups as it is with kids. It springs from nothing other than the psychocultural belief that restraint and responsibility are bad, the free expressiveness of the innocent and primitive child is good. At least wise Uncle George and the family minister insisted on imposing some sense of perspective when they were being emotionally supportive. The current psychotherapeutic enshrining of emotional expression does no such thing, and flies in the face of common sense about behavior and well-being. Feeling good in the therapist's office is nice, but what does it have to do with feeling good about the management of life's normal checks, opportunities, and challenges? Nothing.

Emotional validation therapy stands on the same insubstantial ground of wishful thinking as insight therapy. Insight therapy and emotional validation cannot work because they are not really

designed around any other goal than simply talking to the patient and making up stories with the patient—and, all too often, the therapist—as the star. They are certainly not designed to change the behavior of the patient that is contributing to his or her unhappiness.

For all that talking can be a pleasant, if expensive, way to pass the time, what is important is what you do, how you change your life to make it better, how you change the way you live your life to make you feel better. Changes in how you feel about your daughter or your boss come from actually making changes in the way you interact with those people; they do not come from talking about the daughter or the boss in the therapist's office.

Behavior Modification

For clinical practitioners to claim that therapy works, they should be able to show that not only do their patients feel better, they *act* better too. They lose weight, drink spring water instead of wine, make more time to spend with their children, perform small acts of kindness to please their spouses, double their productivity at work, and begin to trust the boss and co-workers. Dysfunctional, unhappy-making behaviors should decrease, and functional, happy-making ones increase. Do they? No, in general, they don't.

For dysfunctional behaviors to change, both therapist and patient must focus on changing them. Most therapists never dream of directly attempting to change dysfunctional behavior, but there are some therapists, the ugly stepchildren of the therapy world, for whom behavioral change is the sole goal of therapy. These behaviorists, as they call themselves reasonably enough, can be fairly effective, especially with some behaviors that are highly undesirable to the patient, for example, phobias. No one wants to be scared witless by harmless situations. Patients with phobias are usually highly motivated to get rid of the distressing behavior, and inch by inch they change the way they act and react in the phobic situation.

Behavior modification essentially involves making a new behavior more desirable for the client than the old behavior. For instance, you can train a puppy to hold its bladder until it gets outside, but the training requires that the master turn bladder evacuation inside the house into an unpleasant experience while simultaneously making evacuation outside pleasant.

This same procedure was undertaken in the film *A Clockwork Orange.* The patient was a young man who got his kicks terrorizing and raping women. His government therapists modified this behavior by making any actions or reactions in that direction extremely unpleasant, while rewarding their opposites. It worked well enough, in the film, but it required that the government agents — therapists — control the whole world of the patient.

Behavior therapy can change behavior; there is no question about that at all. But there is also little question that its effectiveness is a function of the amount of control over the situation the therapist has. When behaviorists train animals, the usual approach is to starve the animals down to 80 percent of normal body weight so that they will work for food rewards. A hungry animal will work quite hard to get food; a satiated animal will do nothing at all. It is just not feasible to starve down the entire behavioral therapy client population to 80 percent of their normal body weight.

Viewed strictly in terms of behavioral change for the betterment of the individual and for society, the outcome picture for modern psychotherapy is rather bleak. Insight therapy and emotional validation therapy can't change behavior because they are not designed to do so. Behavioral modification, which is so designed, cannot change behavior because the controls on the individual necessary to effect change are not consistent with the ideals of our modern society. That leaves only the last category of therapy techniques — plain foolishness.

Plain Foolishness

This testimony and cross-examination, from a 1993 civil trial for past psychic injury, provides a flawless example of this approach.

Attorney: Can you help me understand some of the terms that you use in describing some of your therapy work? What are Bio-energetics?

Therapist: Bio-energetics is a form of therapy that deals directly with breaking down "Body Armor" through doing various physical activities.

Attorney: **And** what kind of physical activities do you employ in your therapy group or individual therapy?

Therapist: It's primarily in Group Therapy and Anger Work in which a person might use a tennis racquet to hit pillows. They

might use a Rage Restraint in which people restrain a person so that they're safe and able to use the full force of their body to release energy.

Attorney: How do you use, if you use, Psychodrama in your therapy?

Therapist: Through reenacting different life experiences that people have. Either to re-create, to reenact, the same experience so that people can get in touch with their feelings about that. Or, sometimes to reenact it in a way so that they have the experience of a different outcome.

Attorney: Do you do Trance Work?

Therapist: Yes. Through either a Visualization or Guided Imagery. Usually if I'm doing Trance Work it's around people developing a relaxation or Guided Imagery in terms of constructing their own inner place of solitude or—primarily, I use it for relaxation.

Attorney: Can you give me an example of Guided Imagery?

Therapist: Um-hmm, sure. There's one that's rather famous about allowing yourself to relax and to create a pink bubble or balloon for you to climb into, and to experience the sensation of floating. Be able to experience that as a relaxation. In particular teach people how to use that so that if they're in a stressful situation they can use that to help themselves relax. (Mateu *v. Hagen*, 1993)

This is just a small sample of the modern techniques used by countless therapists to help their clients regain their mental health, just a taste of the many "treatments" paid for by our various insurance plans.

What's wrong with them? What is wrong with bio-energetics, with breaking down body armor, anger work, hitting pillows with tennis racquets, and rage restraints, with using the full force of the body to release energy, with psychodrama, corrective parenting techniques, age regression, trance work, visualization, guided imagery, and pink bubbles?

Is there any evidence at all—objective, scientific, impersonal, disinterested evidence—that falling into trances, fantasizing about pink bubbles, and beating pillows with tennis racquets while screaming out hatred improves mental health or quality of life, or changes behavior? There is not.

Pushing this foolishness onto the gullible public as respected, valid, effective therapeutic techniques destroys the ability of the whole society even to begin to ask whether psychotherapy does work or whether it ever could. In the face of clear unreason on the part of the therapist, where does that leave the question of reasonable evaluation?

The testimony above was given *on the witness stand,* as the therapist was explaining supposedly scientifically sound and reliable techniques for accessing the hidden psyches of her patients. Why, in the name of sanity, do the judges sit there and listen politely to such stuff? When this is the so-called therapy that leads a patient to make a legal claim for compensation for psychological injury—and it so often is—how can that claim be anything but suspect? When this is the so-called therapy that is offered our judicial system by the suppliers of rehabilitative services for convicted criminals, how can the public be anything but outraged?

Given this as state-of-the-art, court-ordered, taxpayer-paid, rehabilitative psychotherapy in America today, society would be better off tying wife beaters, sex offenders, and substance abusers to trees with gourds shaken in their faces. At least the trees and gourds wouldn't cost the country so much.

Plain foolishness cannot work with patients because it is just that, plain foolishness.

REHABBING CRIMINALS

So can psychotherapy work for the average slightly messed-up person who chooses to enter therapy for help with his or her problems? Sadly, the answer is usually not. One cannot then help but wonder just how well it works to "fix" the criminally insane.

All over the country, those judged not guilty of their crimes by reason of some definition of mental mess-up are sent to hospitals where they receive therapy for wife beating or disemboweling, child molesting and other assorted allegedly mentally caused behavior problems. When they are better, they are released back into the general populace.

There is an even larger number—actually, a vast number—of criminals who are sentenced to some form of psychological treatment or are forced into rehabilitation therapy as a condition either of avoiding prosecution or of parole.

That is a lot of clients. Rehabbing criminals is a *very* big business. We—the public, that is—pay for it. Does it work?

Why Therapy Can't Change Criminal Behavior

How could it?

If psychotherapy works no better than talking about hockey with the average, unjailed population of the mentally distressed, how could it possibly be thought to be more effective with the jailed population of matricides, drunks, druggies, sex offenders, and wife and child murderers? (Well, certainly therapy works for matricides. Nobody does that twice.) How could it be said to help unwilling wife beaters coerced into "treatment" as a condition of probation or parole?

What is the goal of sentencing criminals to therapy? It should be behavior change, right? What else? Criminals behave in ways that seriously inconvenience the rest of the members of society. We want them to stop. American society and our legal system want to use psychotherapy treatment programs to rehabilitate criminals, both adults and "troubled youth." We want to change their behavior and make them less inconvenient, more productive members of society.

But can rehabilitative psychotherapy accomplish this? No. We've already seen that insight and emotional validation therapy are unable to produce behavior change in anyone. They have nothing to do with changing behaviors. How about beating on pillows with tennis racquets or fantasizing about pink balloons? Will that cure the rapist, the child molester, or the car thief? Get real, as the kids say. Okay.

What about behavior therapy? We ordinary people want to change the behavior of criminals without the expense of keeping them in prison. Can we do it with behavior therapy? No, not unless we could control their environment as thoroughly as that of a laboratory animal. This degree of control would evaporate when we released them.

> On February 23, 1988, Jesse Timmendequas concluded a six-year prison term for molesting and trying to strangle a 7-year-old girl. He walked out of the Adult Diagnostic and Treatment Center in Avenel, [New Jersey,] the state's thera-

> peutic prison for sex offenders, a free man, unsupervised and anonymous.
>
> Last week, the 33-year-old laborer—a reluctant participant in therapy at Avenel . . . was charged in the rape and strangulation murder of another 7-ear-old, Megan Kanka, his neighbor in Hamilton Township. (Patterson, Star-Ledger [Newark], August 7, 1994)

Some advocates for criminals argue that the incarcerated or the potentially incarcerated have a higher motivation to change than their unjailed counterparts, but there is no evidence that that is true. That many of them certainly have a strong motivation to get out of jail is not quite the same thing. But it makes no difference in any case.

It must not be forgotten too that part of the modem therapist agenda is the view that criminals are *victims*, that it is their family and society that are to blame for their crimes, not the criminals themselves. Since it is quite likely that the criminal agrees with this view, what progress should society expect to follow from the happy meeting of the therapist and criminal minds? A real change in attitude?

In 1978, Michael Kelley was found not guilty by reason of insanity of the rape and murder of two young women in Massachusetts. He was sent to Bridgewater State Hospital—the state hospital for the criminally insane featured in the 1960s Fred Wiseman documentary film *Titicut* Follies, which was banned in Massachusetts for more than twenty years after its release. In 1993, forensic clinicians who evaluated Kelley determined that he had recovered from his mental illness and was no longer a danger to others. Kelley was released into the general prison population and four months later was paroled. A little more than one month after his release into the community, not quite six months after his doctors judged him cured, Kelley lured two young women, under the pretense of conducting job interviews, to an isolated location where he raped and killed them. Soon arrested, he was sent to Bridgewater yet again for another psychiatric evaluation. Eventually Kelley pleaded guilty to these crimes and was sentenced to spend the rest of his life in prison.

> A psychologist who helped run the state's Treatment Center for the Sexually Dangerous at Bridgewater said last night he

> was "shocked and saddened" to hear that two of the institution's former inmates, whose release he recommended in evaluations he made as a private practitioner after leaving the center, have again been charged with committing violent crimes.
>
> "It's a horrible situation, of course," said Theoharis Seghorn. "It's certainly a painful experience for any professional who conducts an evaluation of an individual who is released and goes out and commits another crime."
>
> Seghorn was referring to Michael Kelley and Ralph O. Houghton, who are among 28 inmates released from the Bridgewater center since 1990, many over the objections of the state Department of Mental Health.
>
> Six of the inmates have been charged with crimes since their release. Only Kelley, charged with two murders, and Houghton, charged with raping a retarded man, are accused of violent or sexual offenses. (Benning, ***Boston Globe,*** June 21, 1992)

Charges against Houghton were later dropped for insufficient evidence.

The people of the Commonwealth of Massachusetts trusted the forensic clinicians who testified that Mr. Kelley was mentally ill. They trusted the clinicians who treated Mr. Kelley's illness. Lastly, and most foolishly, they trusted the clinical psychologists who declared Mr. Kelley rehabilitated and ready to return to society.

> Seghorn was head of clinical psychology at the Bridgewater treatment center and was administrative assistant there for nearly 10 years before leaving to set up private practice in 1986. Seghorn said yesterday that professionals like himself are hired to conduct independent evaluations and are paid a standard fee for their time.
>
> Plymouth District Attorney William O'Malley yesterday questioned whether Seghorn should have testified on behalf of two inmates he had overseen. . . . O'Malley questioned Seghorn's "expertise" in predicting whether inmates such as Kelley . . . are "cured."
>
> "The two cases in question are both cases where he formed

> an opinion where they were termed not sexually dangerous," O'Malley said. "I wonder how 'expert' that is. Certainly the safety of the community shouldn't depend on such predictions." (Benning, Boston Globe, June 21, 1992)

Nearly every state in the union today provides psychological treatment programs for sex offenders, both violent and nonviolent, and for men who beat up their domestic partners and their children, sometimes with sexual violence added in and sometimes not. These treatment programs are generally paid for by the unwitting, taxpaying public.

> The overwhelming majority of apprehended sex offenders are not incarcerated or institutionalized at all. For those who are convicted, probation with mandated treatment (and perhaps some jail time) is the most common disposition. In response to the increasing demand for sex offender treatment, there has been a proliferation of both public and private outpatient programs. (Furby, Weinrott, and Blackshaw 1989, pp. 3–4)

How well do all these proliferating programs work, Michael Kelley aside?

Effectiveness of Sex Offender Treatment Programs

> At [New Jersey's] sex offender prison, 70 to 80 percent of the inmates are pedophiles; their average stay is between five and six years. . . . At Avenel, a team of 16 therapists treats inmates. Their presence drives the average maintenance cost per inmate up to $31,000 a year compared to about $25,000 at other state prisons. A staff member explains, "Every Avenel inmate gets a basic treatment plan upon admission. . . . Some people think that individual therapy might be more effective, but group therapy is the preferred method of treatment. . . . We also have ancillary groups that teach victim empathy, anger management, and relapse prevention."
>
> Today, Avenel officials do not have recent recidivism studies to support their program. "We don't really have a

> standard recidivism study. Resources just don't permit us to do what we'd really like to do." (Patterson, Star-Ledger [Newark], August 7, 1994)

Does anyone know how well the various states' efforts to teach their sex offenders victim empathy, anger management, and relapse prevention work?

The classic study of the effectiveness of sex offender treatment programs is that conducted by Lisa Furby, Mark Weinrott, and Lyn Blackshaw, published in 1989 in Psychological Bulletin. The authors collected and reviewed the results of forty-two studies of male sex offenders who had been convicted of a sex crime under the prevailing law or who had admitted to a treatment center that they engaged in criminal sexual behavior. They included only men for whom the recidivism data was on record in the criminal justice system, and for whom follow-up data were available.

These forty-two studies covered a wide variety of crimes, and various lengths of follow-up periods, and any number of "treatment" techniques, with recidivism rates varying wildly from 4 to 50 percent for untreated offenders and from about 4 to 60 percent for treated offenders. What did the authors find when they pooled and combed all those data?

Nothing. Right. Nothing.

"We can at least say with confidence that there is no evidence that treatment effectively reduces sex offense recidivism" (Furby, Blackshaw, and Weinrott 1989, p. 25).

Well, that should have been the end of that, right? That was back in 1989. It was not the end. Treatment programs proliferated still more. There is just too much money involved, too many careers, livelihoods, and reputations to just shut down the whole scam. Sex offender therapy must be shown to work.

So yet another analysis of their effectiveness was undertaken. This one was by Gordon Nagayama Hall, and it was published in 1995 in the Journal of Consulting and Clinical Psychology. What did Professor Hall discover? Looking just at more recent studies, twelve of them from 1988 to 1994, with a range of participants from 16 in the smallest study to 299 in the largest, Hall found that 27 percent of untreated sex offenders committed additional offenses compared with

only 19 percent of the offenders who had received treatment. That 8 percent improvement supposedly due to treatment is an overall average. Four of the twelve studies—that is, one third—showed results in the opposite direction. That is, untreated offenders were *less* likely to commit new offenses than treated offenders. Hmmm.

Also, when one looks a bit more closely at what constitutes "treatment," the picture takes a slight shift. Ninety-nine of the "treated" sex offenders were *castrated.* Only three of those guys reoffended. If the castrated men are removed from the "treated" group, then the difference in recidivism rates shrinks: It is 27 percent for untreated offenders and 22 percent for psychologically treated ones.

That is only a 5 percent difference overall. Moreover, the types of treatment programs and the types of crimes committed by both treated and untreated groups are so varied that it is impossible to generalize thsse findings to anything.

Given this enormous variability, it is also dishonest to present a 5 percent treatment effect as so robust as to warrant millions of dollars spent in ever more proliferating programs. Furby, Weinrott, and Blackshaw sounded the warning call. It is past time it was heeded, and useless treatment programs abandoned for the entrepreneurial scams they are.

According to Nathaniel Pallone, a Rutgers University professor and expert on the rehabilitation of criminal sexual offenders:

> We know what works, but certain constraints have been placed on states by the Supreme Court. The most effective means is surgical castration. The second is aversive behavior therapy. The third is "bioimpedence," or chemical castration. So, I think the world would be a safer place if you, as a sex offender, went every week to your parole officer, and every two weeks to your doctor for an injection. It wouldn't make you a good boy, but there would not be another victim. (Quoted in Patterson, *Star-Ledger* [Newark], August 7, 1994)

A reasonable person looking only at available data might conclude that psychotherapeutic treatment programs for sex offenders are a waste of taxpayers' dollars, but such a view is by no means universally held. Turning a blind eye to the facts, willing victims of the

psychologists' lobby continue to call for ever more — daring, innovative, promising — treatment approaches.

The quote that opened this chapter is by a character in a work of fiction — the director of a for-profit sex offender clinic in the novel Fatal Convictions — but there could be no more realistic an expression of the true facts about the "proven" effectiveness of sex offender treatment programs in our country today.

How do we know it works? Because we say it does.

An editorial in the Boston Globe on June 26, 1992, following the tragic murder of the two young women by Michael Kelley after he had been "cured" at Bridgewater, opined:

> Kelley's release was a terrible mistake, but it would be equally wrong to impose harsh punishments on sexually violent criminals without offering them treatment. With improved treatment programs, state government has a much better chance of preventing such crimes and protecting its residents once these offenders leave prison.

Improved treatment programs? This is not wishful thinking; it is willful blindness.

In another editorial written four years later, after the vicious knife-point rape of an eleven-year-old boy by a repeat offender, the Globe wrote, "Far too many crimes are committed by ex-convicts released from prison after too little time and too little treatment. When convicted rapists rape again, the criminal justice system, along with the actual perpetrators, is guilty" (May 25, 1996).

Too little treatment? And they never learn.

Effectiveness of Domestic Violence Treatment Programs

How well does court-ordered, taxpayer-paid psychotherapy work with wife beaters?

The 1993 Survey on Women's Health, commissioned by the Commonwealth Fund and conducted by Louis Harris and Associates, estimated that 1.1 million women had been kicked, bitten, or hit with a fist or some other object and 2.9 million women had been pushed, grabbed, shoved, or slapped in that year alone. Now, the overwhelming majority of these instances do not result in arrests. Even in

states like Connecticut, where arrest is mandated once police are called in, 80 percent of the domestic violence cases involve a plea of nolo contendere or are dismissed in court. It is many of these no-contest boys who wind up in the ever-growing number of treatment programs for wife batterers, for perpetrators of what is always, these days, called domestic assault, no matter where or with whom the man and woman involved live.

We have a staggeringly large number of treatment programs designed to help the domestic abuser get over his problems — experts estimate that there are some fifteen hundred such programs in place now around the country — so that the people he abuses can get over theirs. How well do they work?

In September 1995, Officer Curtis Wilson from Barnstable County on Cape Cod shot and killed ids wife and then himself with his service revolver. Officer Wilson had been arrested previously for threatening to kill his wife and had been suspended from the force. After he and his wife reconciled, Wilson entered a psychological treatment program for battcrers. And the police returned his gun to him.

> Brockton police declined to comment yesterday. Brockton Mayor Winthrop Farwell Jr. said Curtis Wilson had been forced to surrender his service weapon in 1993 after he handcuffed his wife and put a loaded gun to her head. Farwell, who spoke with reporters on Saturday, said that Curtis Wilson, who began active duty in 1986, completed individual and group counseling and received a nine-month suspension and an administrative job before returning to active duty. (O'Brien, *Boston* Globe, September 25, 1995)

Apparently the batterers' treatment program didn't work very well for Officer Wilson.

In an angry column for the *Boston* Globe, Eileen McNamara wrote:

> What is harder to comprehend is the combination of arrogance and ignorance that prompted two mental health professionals to stake a woman's life on their assurances that Brockton patrolman Curtis Wilson was no longer dangerous.

> He was not exactly a guy who had demonstrated an impulse toward rehabilitation. He beat and threatened Cheryl Wilson for years, handcuffing her and knocking her unconscious after putting his gun to her head during one attack in 1993.
>
> For all the benefits of heightened public sensitivity toward domestic violence, that very attention has spawned a cottage industry of therapists who think they know how to cure men who terrorize the women they claim to love.
>
> An admirable goal, that. But where is the science on which it's based? Where is the empirical research; where are the outcome studies? Is domestic abuse a psychiatric disorder? A behavioral problem? A neurological glitch? Is it different from street violence? Is it about anger? Or about power? Both?
>
> The truth is that we don't know very much about why men beat and kill women. We don't know how to make them stop. And we have not spent the time or the money to find out. (McNamara, Boston Globe, September 30, 1995)

Our ignorance about such matters does not, however, affect our confidence in the batterers' treatment programs. No, indeed. Just a short time after Curtis Wilson killed his wife and himself, the Boston Globe reported that the same town mayor had hired yet another woman beater as a cop. After the uproar, the new recruit was sent off to the local domestic violence treatment center — Emerge — for evaluation.

Mayor Winthrop Farwell said, "We need an evaluation and review of his past relationship — what went wrong and why did it go wrong. It will do two things: assure the public that we do take domestic violence seriously in Brockton and especially seriously when we're talking about a police officer" (Anand, Boston Globe, October 8, 1995).

Nothing like faith.

How well do such domestic violence programs work in general? (Leaving aside the case of the violence control counselor in Hawaii who became enraged and beat one of his clients to death.) Well, there the picture is much murkier than it is in evaluating the effectiveness of sex offender treatment.

Emerge, the principal court-ordered treatment program for batterers in Massachusetts, and the longest running in the country—it has been in service since 1977, "the first program for abusive men in the nation"—does not keep statistics on whether the program works. Or, if it keeps them, it does not provide them to interested inquirers. Most programs queried about their rates of success either cite confidentiality or a lack of resources to explain their inability to provide statistics on success and failure.

John Keegan was one of two Massachusetts men who allegedly raped a woman, Kristen Crowley, whom they happened to encounter one night, June 2, 1996, in a convenience store after a long evening of drinking in a nearby strip club. After allegedly raping her, Keegan and his buddy, Timothy Dykens, allegedly smashed her head in with a thirty-pound rock, killing her. Keegan, just the previous year, as a condition of probation for attacking his girlfriend, had been sent to a domestic violence treatment program at the Gavin House in South Boston. Apparently he flunked. Like Emerge, the Gavin House provides no statistics on the effectiveness of its treatment programs for men who threaten and beat up women.

Where we do have statistics, the picture is not encouraging. Research shows that there is no reliable effect of treatment programs on incidence of men's violence toward women.

Melanie Shepard, in a 1992 study, found that 40 percent of one hundred men aged nineteen to fifty-eight were identified as recidivists after treatment because they were either convicted of domestic assault, the subjects of an order for protection, or police suspects for domestic assault.

According to Richard Tolman and Larry Bennett (1990), men who batter drop out prematurely from treatment programs at very high rates; the average is 40 percent dropouts. For men who do complete programs, follow-up statistics over periods of from six months to one year show recidivism rates, according to the men's reports or police reports, from a low of 15 percent to a high of 47 percent. Is that good? Well, again according to self-report of the men, an average of 37 percent of men who do ***not*** complete programs also abuse their women again. It doesn't seem like much of a difference.

Also, we can't measure "success" of batterer therapy only by the absence of a re-arrest or by the reports of the batterers themselves.

They are quite likely to say, "Oh, yeah, great program. Helped me a lot." With these measures there cannot be any way of knowing whether the men actually stop beating the women in their lives any more than one could tell if sex offenders who have not been arrested have actually stopped committing criminal sexual acts.

According to Evan Stark in a 1995 article, "Most domestic violence offenders have a long history of assaultive behavior (against their partners at a minimum) and are unrepentant" (p. 979). Underreporting has got to be the rule unless one believes that every sex offense and every violent act against a woman results in an arrest. And no one believes that. No one believes that any more than 10 percent of such acts ever reach the attention of the police.

When the women victims themselves are asked about the results of treatment programs, the results are quite different from what we get with men's self-reports and re-arrest statistics. A 1989 study showed that after a careful test of a twenty-four-week program, 23 percent of the men who completed the program were not violent toward their partners versus 22 percent of the noncompleters. No difference. Thirty-six percent of the completers made violent threats toward their partners versus 30 percent of the noncompleters. Worse. And 26 percent of the completers were directly violent (shoved, bit, slapped, etc.) versus 27 percent of the noncompleters. Again, no difference. Lastly, 15 percent of the men who completed the program were severely violent (burned, punched unconscious, threatened with weapon, etc.) in the first six months after program completion versus 22 percent of men who did not complete the program. Great.

In short, there was no effect of the treatment program in the most carefully run of all the empirical studies. The bottom line is that simple arrest is just as effective as treatment, especially for men who are employed, and neither may be effective at all unless you keep the perpetrator locked up. Treatment programs teach batterers to be more careful about getting arrested again. Period.

As Zvi Eisikovits and Jeffrey Edleson put it in their 1989 review, "Several major problems appear in research on all levels of intervention. First, most of the studies . . . have been conducted by the very people who have designed the intervention and thus should be regarded as self-evaluations at best" (p. 407).

These are classic double-sighled studies. We already know that when we ask therapists if therapy works, they usually say yes.

The absence of evidence that domestic violence treatment programs work has not slowed down the willingness of courts to sentence such offenders to treatment, however. This is doubly ironic when you consider that a significant number of the men sentenced to psychological treatment for their criminal acts are both physically and sexually violent toward women.

PREDICTING DANGEROUSNESS

Michael Kelley, who was treated and released at Bridgewater in Massachusetts, suffered from both of these disabling conditions. For him the combination problem was obviously intractable, given the startling speed with which he repeated his appalling crimes as soon as he was released from the hospital. How could Kelley's doctors have failed to know that he was still danrerous? It is their job, is it not?

> Forensic experts frequently appraise the potential for violent behavior. Their opinions may influence decisions involving criminal sentencing or involuntary commitment. Studies on the prediction of violence are consistent: clinicians are wrong at least twice as often as they are correct. (Faust and Ziskin 1988, p. 241)

Will this man be violent in the future, Doctor X? Is he dangerous?

Absolutely not. He has been in the hospital setting for five years without any trouble. He has met and interacted with numerous people in different roles and has not displayed any acting out behavior. Note how he shyly looks away when confronted by others. He is a fine candidate for release.

What do you think, Doctor Y? Is he dangerous?

As a snake. He has bided his time in the hospital for five years, watching and waiting for just this opportunity. A clever and manipulative fellow, he can make almost anyone believe that he is a changed man, a peaceful man. See how he slyly drops his eyes when you look at him. Throw away the key.

Ridiculous? It is not nearly as ridiculous as what actually happens when psychiatrists and clinical psychologists are asked to predict

which hospital patients will be violent in community settings after release. They are worse than chance. Worse than chance! They are wrong two thirds of the time! How can that be?

John Monahan, in his 1981 book Predicting *Violent* Behavior, reviewed and summarized all the available research on the ability of psychiatrists and psychologists to predict violent behavior. One of the first was a large study by Kozol et al. (1972) of 592 male offenders at the Massachusetts Center for the Diagnosis and Treatment of Dangerous Persons (Bridgewater). Most of the men had committed violent sex crimes. Over the first "five-year follow-up period following release, 8 percent of the 386 men predicted not to be dangerous became recidivists by committing a serious assaultive act, and 34.7 percent of the 49 predicted to be dangerous committed such an act during the ten-year period studied" (Monahan 1981, pp. 72–73).

That 8 percent means that only 31 men out of 386 committed another violent sex crime after being judged no longer violent or dangerous by the professional state-employed forensic evaluators. That sounds pretty good unless you are one of the victims of these violent predators. How safe would you feel crossing the street if you knew that eight out of one hundred times you would be hit by a truck?

As Monahan points out, 65 percent of the men identified as dangerous did not, in fact, commit a dangerous act, at least in the ten years they were followed. That means the forensic evaluators were wrong in *two* out of *every* three predictions of discovered violence. (Again, no one knows how many acts of undiscovered violence were committed.)

A 1977 study run at the Patuxent Institution in Maryland showed that 31 percent of the inmates recommended for release committed another violent act in the three years following release, compared with 41 percent of the men who were judged to be still violent. That means these forensic evaluators were wrong some two thirds of the time for violent offenders judged to be either dangerous or not dangerous.

These data are not isolated findings. They have been replicated in very large studies in New York and Pennsylvania. In a review article published in the American *Journal of Psychiatry* in 1984, Monahan concluded that the bottom line was, "Clinical predictions of violent behavior among institutionalized mentally disordered people are accurate at best about one-third of the time" (p. 11).

Terrence Campbell, in a 1994 article in the *Michigan Bar Journal*, writes, "The accuracy with which clinical judgment predicts future events is often little better than random chance. The accumulated research literature indicates that errors in predicting dangerousness range from 54% to 94%, averaging about 85%" (1994b, p. 68).

Why not just flip pennies or draw cards? Why not put on a blindfold and choose without being able to identify the patients? It could hardly hurt an accuracy rate that hovers at less than one out of three times correct.

In 1995 the city of Boston paid out $1 million in a wrongful death settlement to the widow of an elderly man who suffered a fatal heart attack during a police drug raid mistakenly targeted at his apartment rather than at the neighbors upstairs. Shouldn't the families of victims of state-certified-mentally-healthy-ex-criminalslikewise be empowered to sue for wrongful death at the hands of a negligent state? The family of one of Kelley's victims is reportedly suing the Commonwealth of Massachusetts.

Sylvia McFarland of Tacoma, Washington, is also trying to make the state accountable. Ms. McFarland's "teen-age daughter [allegedly] was stabbed 56 times by a man psychiatrists had called a sexual psychopath who was likely to harm women if he was free. Now, McFarland has filed a wrongful death lawsuit accusing state correction officials of gross negligence in releasing Johnny Robert Eggers, failing to supervise him and then failing to warn the community." The state is claiming that the parole board is covered by judicial immunity (Seattle *Post Intelligencer*, August 9, 1996).

There is no psychological cure for the desire to beat up women, to rape and murder them. The very idea that psychotherapy today could even pretend to such an ability is ludicrous. Yet liberal news editorials call endlessly for ever more "treatment" for these offenders. This shows either extraordinary faith or willful blindness.

It is not just potential victims of crazed killers who are hurt by the fraudulent presumption that forensic psychologists can predict dangerousness accurately. It is also the "dangerous" criminals themselves. People convicted of violent crimes are sentenced to death when psychological professionals tell the jury and the judge that the defendant is a continuing danger to the community.

In the 1983 case of *Barefoot* v. *Estelle*, the Supreme Court of the

United States ruled on the habeas corpus petition of Thomas Barefoot challenging the reliability of psychiatric predictions of dangerousness.

The Court turned him down and let his death penalty stand.

Justice Harry Blackmun, writing for the dissenting minority, provided the following evaluation of the psychiatric testimony at the trial court level.

> Last, the prosecution called Drs. Holbrook and Grigson, whose testimony extended over more than half the hearing. Neither had examined Barefoot. . . . Dr. Holbrook . . . informed the jury that it was "within [his] capacity as a doctor of psychiatry to predict the future dangerousness of an individual within a reasonable medical certainty," and that he could give "an expert medical opinion that would be within reasonable psychiatric certainty as to whether or not that individual would be dangerous to the degree that there would be a probability that that person would commit criminal acts of violence in the future that would constitute a continuing threat to society."
>
> Doctor Grigson . . . testified that with enough information he would be able to "give a medical opinion within reasonable psychiatric certainty as to the psychological or psychiatric makeup of an individual," and that this skill was "particular to the field of psychiatry and not to the average layman."
>
> . . . Finally, Dr. Grigson testified that . . . there was a *"one hundred percent and absolute" chance* that Barefoot would commit future acts of criminal violence that would constitute a continuing threat to society.
>
> The defense counsel questioned the psychiatrists about studies showing wildly unreliable predictions of dangerousness by psychiatrists. Dr. Holbrook said that he disagreed with their conclusions. Dr. Grigson said he was not familiar with most of these studies, and anyway their conclusions were accepted by only a "small minority group" of psychiatrists, not by the American Psychiatric Association.

Because of the testimony of these two overconfident psychiatrists, Thomas Barefoot was sentenced to death.

In this case, the APA tiled an amicus curiae brief informing the Supreme Court that the unreliabiliry of psychiatric predictions of long-term future dangerousness was an established fact within the profession, that two out of three predictions of violence made by psychiatrists are wrong—usually in the overprediction direction, and that a layperson with access to relevant statistics can do at least as well as a psychiatrist and possibly better, and that the most that can be said about any individual is that a history of past violence increases the probability that future violence will occur.

The majority of the Court was not impressed by these facts, stating essentially, Hey, the APA didn't say they were wrong ***all*** of the time, only ***most*** of the time.

Nor was the Court concerned that the psychiatrists presented their conclusions about Barefoot—sight unseen—to the jury as ***medical science***. Justice Blackmun was outraged and wrote:

> Scientific evidence impresses lay jurors. They tend to assume it is more accurate and objective than lay **testimony. A juror who** thinks of scientific evidence visualizes instruments capable of amazingly precise measurement, of findings arrived at by dispassionate scientific tests. In short, in the mind of the typical lay juror, a scientific witness has a special aura of credibility.
>
> One can only wonder how juries are to separate valid from invalid expert opinions when the "experts" themselves are so obviously unable to do so. . . . There can be no question that psychiatric predictions of future violence will have an undue effect on the ultimate verdict.
>
> Even judges tend to accept psychiatrists' recommendations about a defendant's dangerousness with little regard for cross-examination or other testimony.

Thomas Barefoot may not have been a very nice man. There are certainly a good many people who would argue as well that he deserved to die. But no one, absolutely no one, should be misled into believing that the decision about whether a man should live or die should be based on the "scientific" opinion of mental health professionals about his future dangerousness. Such testimony is an out-and-out fraud and should not be allowed in our courts.

BUSINESS OF HELPING PEOPLE

It is possible that at least some of the innumerable psychological professionals involved in providing rehabilitative therapy and predicting dangerousness in the criminal justice system—and quoted in every news organ across the land—are simply ignorant about their ineffectiveness and inaccuracies. Perhaps they are simply unaware of the research that shows they are so bad at what they claim to be able to do. I don't think so, at least not entirely. I think that you will hear vague citations of meta-analysis studies, assertions that the researchers doing the studies don't know what to measure, or vague claims that new research is showing some effect of some treatment programs, and, of course, that their own clinical experience shows otherwise. Forensic clinicians don't think that such research applies to them, only to other, less competent, practitioners.

Again, don't forget too that we are talking about the livelihood of tens of thousands of mental health professionals.

What would happen if psychology admitted that despite all the rhetoric and millions of dollars expended on the development of treatment programs, the profession is unable to help sex offenders, wife batterers, or any other criminals change their behaviors?

There would be a lot of people out of work. With so much at stake, it is too much to expect the truth.

It is also true that psychologists are afraid to tell the truth about the uselessness of psychotherapy because they fear that someone out there might commit suicide who would somehow have been helped by therapy if only he or she had not been told it was a waste of time. In the mistaken belief that however ineffective therapy may be, at least it doesn't hurt anybody, the field of psychology keeps silent about its ineffectiveness even in crucial legal applications like court-ordered sex offender and domestic violence programs.

Remember too that scientific evidence about therapeutic efficacy does not really constitute evidence in the eyes of most clinical practitioners. Most clinicians feel that science is unable to match the clinical intuitions of the experienced practitioner, and most of them believe that what they spend their lives doing is not entirely futile. Therapists, most of them, believe in therapy.

John Monahan, addressing other professional clinicians, wrote, "We should decline to launder for the legal system the social and

demographic factors that anticipate future crime and decline to let judges fob off on us the moral balancing of competing claims for the offender's freedom and the predicted victims' safety. . . . [The] buck should stop at the judge's bench, not at the witness box" (1984, p. 14).

What the rest of us have to do is take Professor Monahan's words to heart and implement them without waiting for professional psychologists to shoot themselves in the economic foot. They are not about to do that.

The outraged public must do it for them.

7
Construction of the Psychological Child

The Child and the Law

> I looked at the kids for a moment. They were not something new. They were something very old, without family, or culture; prehistoric, deracinated, vicious, with no more sense of another's pain than a snake would have when it swallowed a rat. I'd seen atavistic kids like this before: homegrown black kids so brutalized by life that they had no feelings except anger. It was what made them so hard. They weren't even bad. Good and bad were meaningless to them.
>
> Robert B. Parker, Walking ***Shadow,*** 1994

JUVENILES, JUSTICE, AND PSYCHOLOGICAL KNOWLEDGE ABOUT CHILDREN

On October 13, 1994, in a crime that shocked the country because of its callousness and the youth of the perpetrators, two boys—one ten and the other eleven—dangled a five-year-old boy, Eric Morse, for five minutes off the roof of a fourteen-story building in Chicago before dropping him to his death. The older boys tortured and killed the younger one because he would not steal candy for them.

What is the appropriate course of action for society to take with respect to such children?

Long before modern clinical psychology entered the picture, the American legal system distinguished between children and adults

in assessing responsibility for criminal acts. When children are accused of crimes it is thought necessary to assess their maturational competence to stand trial and to determine the appropriate legal consequences of the crimes for children of different maturational levels.

It is generally believed that children below a certain age do not have either the necessary thought processes or the knowledge to appreciate their criminal actions, and that children under a particular age can have their criminal behavioral tendencies eradicated by psychological treatment. The assumption is that most children, unlike most adults, can be rehabilitated; they can be taught to be better people, to return to society as full, productive, noncriminal citizens.

For children, the legal issue of the possibility of psychological rehabilitation arises not only in the context of sentence, but also in the initial determination of competence to stand trial. Under common law, a child under the age of seven is conclusively presumed incapable of knowing the wrongfulness of crimes. From ages seven to fourteen, there is a presumption of incapacity that can be rebutted by clear proof that the child appreciated the quality and nature of the acts. Again under common law, a child over the age of fourteen is treated as an adult. Common law has, until rather lately, applied in most states, subject to statutory age changes from state to state. In most cases juvenile defendants under the age of eighteen are processed under juvenile delinquency statutes that are set up to implement the rehabilitation of the juvenile. Juvenile court, however, can waive jurisdiction, and authorize the trial of a child under eighteen as an adult.

If a forensic evaluator thinks that a young offender can be rehabilitated by psychological treatment, then the child is tried not as an adult but as a juvenile. This often means, depending on the state, that he or she will be out of custody at age twenty-one after serving time in a youth facility, which is essentially a locked hospital.

Where this determination is not a matter of statute, courts turn to psychologists to judge whether a particular child understands his or her crime—if that child is competent—and/or if that child can be rehabilitated by psychological counseling.

Can psychologists tell the court whether the ten- and eleven-

year-old boys from Chicago who deliberately dropped the five-year-old child to his death from the roof of a fourteen-story apartment house are capable of understanding that their action was wrong?

According to Don Terry, in a story in the *New York Times* of January 30, 1996, the younger killer had an IQ of 60 and the older one 76. Mr. Terry, in reporting these scores on the front page of his paper, is apparently suggesting that the boys were either too stupid or too immature mentally to understand the nature of their crime. Is that really what intelligence test scores of 60 and 76 reveal about these children? Or about anyone else with such scores?

MATURATIONAL COMPETENCE

How do psychologists tell if a child has the necessary competence to understand the nature of his or her criminal actions? How do psychologists determine, for example, whether a six-year-old child who attempted to kill a newborn baby actually understands the concept of the permanence of death? Do psychologists have any special knowledge unavailable to courts and the public on the mental abilities and general knowledge of children of different ages? Yes, they do, but not as much as they say they do.

Intelligence Tests

When forensic psychologists are asked to evaluate the maturational competence of a child defendant, they often give the child an IQ test. IQ tests do perform fairly well at predicting academic performance in school. Since these tests are at bottom general knowledge tests—with age norms—the psychologist is simply determining whether the child has more or less general knowledge than other kids of the same age. And of the same racial background. Different ethnic groups have different IQ norms for how well children of different ages perform, on the average, on the tests, so any such evaluation must be interpreted relative to the child's own ethnic group.

Does giving the ten- and eleven-year-old children from Chicago such standardized intelligence tests tell the courts anything about whether they are capable of appreciating the wrongfulness of their act?

No. It does not. It showed that both boys perform on the IQ test at a significantly lower level than their age and race peers, but it

tells us nothing about their understanding of their crime.

To make that judgment, any psychological professional would have to do what any nonpsychologist would have to do—talk to the boys extensively, in their own idiom and age-appropriate language; talk to their teachers; and then wing it.

It is hard to imagine what people expect in this line from psychological tests. Do they expect a test of whether the boys knew that holding a child off a roof fourteen stories up and then dropping him would kill him? They knew that. Even the terrorized five-year-old knew that as he screamed and struggled. Whether it was wrong to do such a thing? They knew that. They did not invite the little boy's mother along. Whether they had the emotional maturity to control their actions? What does that mean? Murdering a child at the age of ten is not the same thing as throwing a tantrum at two, although I am sure some child psychologists can be found to say that it is.

A California case in April 1996 involved a violent act by a six-year-old boy that provoked analysis seemingly from half the clinicians in the country. The boy pulled a four-week-old baby from his crib and beat him nearly to death with his fists and a stick. The baby now suffers severe brain damage. The prosecutor, Harold Jewett of Contra Costa County's juvenile division, was quoted in the *New York Times* that April as saying, "The minor knew what he did was wrong, and he did it anyway" and should thus carry responsibility for his crime" (Goldberg, *New York Times,* April 26, 1996).

The young assailant was initially charged with attempted murder, but the charges were first reduced and then the prosecution was suspended after three psychiatrists evaluated the boy. They diagnosed him with various cognitive disabilities, including attention deficit disorder, that would make it impossible for him to contribute to his own defense or understand the trial proceedings. He has been "sentenced" to live in a group home under strict supervision and with intensive counseling from a psychiatrist and child specialists.

These same psychologists will no doubt tell you that even in cases in which a child was mature enough to understand his or her action and its consequences, and controlled enough to perform that action deliberately, the child can still be turned around if only the child receives enough psychological counseling.

RUINED LIVES AND REHABILITATION

> Charles Huffine, a child and adolescent psychiatrist for the past 20 years, says that before sentencing, child criminals should undergo some evaluation by judges and mental health professionals, to winnow the untreatable from those who do respond to therapy.
>
> "I have a certain sympathy for the societal belief that there are some violent offenses that are so heinous, so horrific, they ruin a child's life. I am in favor of consequences for bad acts . . . But to throw some of these kids in a garbage heap of humanity without an assessment is wrong. Kids can get into a lot of dumb things that don't necessarily predict adult pathology" (Rachel Zimmerman, Seattle Post *Intelligencer*, February 6, 1996).

When Dr. Huffine says some violent acts are so bad that they ruin a child's life, he is not referring to the dead child here. He is referring to the killers.

So what do psychologists do when they are asked to make a determination of amenability to rehabilitation in the case of a child? They do the same thing the rest of us would do. They look at the child's family history and make a prediction informed by demographics. For example, children of intact families have a statistically lower prevalence of criminal conduct than do children of single-parent families, so a child from an intact home gets points toward higher probability of rehabilitation.

They also look at a child's past conduct as a predictor of probable future conduct, because everyone knows that what one has done before is the best predictor of what one will do in the future (e.g., he got good grades for the last six years, so it is likely that he will get good grades in the next six years). Nothing is a perfect predictor, but these factoids are how we—all of us, psychologists included—make our best bets.

Psychologists, like the rest of us, also look at the nature of the particular crime the child committed, and the more horrific the crime, the more pessimistic they feel, the more so as the child's age increases. This assessment is rather problematic—as are all pretrial evaluations that weigh the significance of the crime—because the child before ma1

has not yet been convicted of any crime, yet the nature of the crime and the criminal intent strongly affect the psychological evaluation.

The 200-Pound Child and the Neighbor Lady

Edward O'Brien is the fifteen-year-old in Massachusetts accused of murdering a neighbor by stabbing her some ninety-six times. His court-ordered psychological evaluator, Dr. Richard Barnum, no joke intended, described O'Brien as an undeveloped teenager (he meant emotionally, since the accused was six feet four inches tall and weighed well over 200 pounds) who was a good candidate for rehabilitation.

This conclusion was based on O'Brien's school history—extremely poor—on anecdotes from teachers and family friends, and on the doctor's interviews with the boy, who refused to discuss the crime with this psychological evaluator.

A teacher and a coach said he was a nice boy. So what? Every kid in the country accused of a hideous crime seems to have innumerable neighbors who say things like "He seemed like such a nice boy," "He was always so nice to my Stevie," and "He was just about to turn his life around by graduating from high school and getting a good job." Right.

What do foolish anecdotes have to do with whether Edward O'Brien will be a danger to the public or whether he will respond to psychotherapeutic treatment? Nothing. Will he stab another neighbor to death? Or, next time, a stranger? Just going with the odds, the answer is no. Most murderers kill only once, so if O'Brien is like most, he's finished with murder. But most murders make somewhat more sense than this vicious, relentless slaughter of a helpless woman by this six-foot-four-inch, 200-pound teenager. Who can understand that? Most ordinary people shake their heads at something like that and say, "There must be something goofy going on in his head."

That's what Dr. Barnum said too. He actually hedged his bet on the question of future dangerousness. The newspaper article describing Barnum's testimony says, "The report states that if it is proved O'Brien had a 'consuming preoccupation' with [the victim] that led to a vicious attack, it's reasonable to conclude that 'this sort of preoccupation might be expected to recur'" (O'Brien, Boston Globe, December 29, 1995). That means if something goofy in his head led to the attack, then it's reasonable to conclude that something goofy might happen again. Brilliant.

Presumption of innocence aside, what special professional expertise allowed the doctor to reach this careful conclusion? What special knowledge did he possess that you and I do not have? How many psychological studies do you think there are of adolescents who stab their neighbors some ninety times?

There are none, of course. This is the kind of crime that just does not happen very often, thank God. Anyone, you or I or the court's psychologist or highly paid defense experts, would be relying on exactly the same level and amount of information and intuition in concluding whether this young killer could be straightened out and set on the right path. Your guess is as good as mine. Your guess is as good as that of the official psychological evaluator.

We have already seen that psychological evaluators cannot predict who will do what in the future, not even who will be violent and who will not, so whom do these well-paid professional evaluators of a youth's amenability to rehabilitation think they are kidding?

Two of the doctors at O'Brien's pretrial hearing testified that whether Edward provided investigators with clear, accurate, and consistent accounts of his actions should be taken as an indicator of his probable responsiveness to psychotherapy. Their thinking apparently is that it is easier to turn a truthful boy from the path of multiple murder than a lying defensive one.

This isn't science. It is a farce. Child clinicians do not make their evaluations and recommendations based on sound psychological science. They make them out of the liberal philosophy that views both children and criminals as victims of their families and of society, and the child criminal doubly so.

Court-ordered psychological evaluations of children generally find that nearly all of the child criminals are not sufficiently mature to stand trial as adults, and, second, and not surprisingly, that nearly all of these children are amenable to psychological treatment as well. (Whenever psychologists are asked whether psychological counseling is a good and needful thing, they say yes. Naturally.) With such a cultural philosophy, what else would they find?

Psychologists cannot make "expert" determinations of whether a child can be rehabilitated, of whether a child will be responsive to psychotherapy, any more than they can make "expert" judgments about children's capacity to understand the crimes of which they are accused.

If society feels that such determinations are necessary and useful to its ends, then laypeople must bite the bullet and make those determinations themselves without the spurious assistance of pseudo-expertise.

The Ineffectiveness of Psychotherapy with Children

The ten- and eleven-year-old boys in Chicago who dropped the five-year-old boy off the roof to his death because he would not steal for them were sentenced to juvenile detention until the age of twenty-one.

With their attorneys and advocates insisting on intensive psychological counseling for the boys instead of punishment, the Department of Corrections officials assured everyone that psychiatric treatment will be available to these "troubled" children, and the judge in the case demanded that she receive a detailed treatment plan within two months.

Why? What is the point?

Psychotherapeutic treatment cannot ameliorate even the quite mundane problems of ordinary children who seek help on their own or because of their schools or parents. What possible chance does it have to "cure" a disregard for life so callous that it resulted in the murder of a small and helpless younger child?

It sounds good to say, "Oh, my gracious, those kids need help. We have got to get them some help. Get them into counseling." But it is all romanticized, politicized nonsense. There is no therapy that cures juvenile murder disorder. For children there is no evidence that therapy works even as well as talking about sports.

In a 1992 review of child therapy both in clinical trials and in professional settings, John Weisz, Bahr Weiss, and colleagues found that in naturalistic therapy settings, *child psychotherapy has not been shown to have any effect at all* either from the point of view of simple statistical significance or actual clinical effects on the mental health of children. That means that we actually have *no* evidence, not even weak evidence, that child therapy, recommended by every advice columnist in America and required by our judges and courts across the land, works at all.

"What Works" in Juvenile Treatment Programs

> Krys Lloyd is an art and poetry therapist at a Department of Youth Services secure treatment facility in Westborough,

> [Massachusetts,] a home for violent adolescent offenders. She teaches young rapists to glimpse their own frightened souls in the heart of a rhymed stanza. She gives tough, seemingly impenetrable gang members permission to paint their own fears. No one judges. No one accuses. But everyone learns. (Smith, Boston Globe, May 24, 1996)

There are dozens—thousands—of treatment programs for juvenile offenders. Anyone involved in the juvenile justice system, when asked about the effectiveness of these programs, will tell you that, sure, some of them are not very effective, but that is not true of all of them. Just recently, in October 1994, the Department of Justice published a big report, a guide to "what works." How could they do that if there is no evidence that rehab programs for young criminals work? Good question.

Anyone who seeks objective information on the effectiveness of all those compassionate, taxpayer-funded, child rehabilitation programs would do well to contact the Department of Justice to request a copy of that report, What Works: Promising Interventions in Juvenile Justice.

The naive might believe that a report on juvenile offender treatment programs entitled What Works might actually be an evaluative study of the outcomes in terms of recidivism, future schooling, and later employment of the youths served by these rehabilitation programs. It is not.

No objective or statistical evaluative analysis whatsoever went into the report. As the principal investigator, Imogene Montgomery, put it:

> Limited in our efforts to conduct an extensive evaluation of each program, we designed a research methodology that first identified essential components of effective programs. . . . We then asked 3,000 experienced judges, court administrators, and chief probation officers to nominate and rate programs they had recently used. We then sent surveys to the administrators of the nominated programs. The results of our efforts comprises *What* Works, a program directory that contains 425 nationally nominated programs. (Montgomery, Torbet, Malloy, Adamcik, Toner, and Andrews 1994, p. ix)

It is clear that it is not just clinical psychologists who don't understand science.

What is the likelihood that program administrators who received a survey from the Office of Juvenile Justice and Delinquency Prevention asking them to evaluate the programs that provide them with a living would send back the questionnaire saying their programs were a waste of time and taxpayers' money? Zero.

Program administrators, when asked to evaluate their own programs, repeatedly reported that the programs were working quite well for an important number of troubled youths. They communicated these findings to the Deparunent of Justice, which put them in its report on *What* Works in the kid rehab business.

Many program administrators failed to provide the Justice Department with the requested information on costs, but calculating from the data that were made available, for programs based on psychological counseling (individual, group, or family counseling) of the offenders, the average stay is about ten months, and the average cost per day is about $115 per child. That works out to about $34,000 per child to rehabilitate the child through psychological counseling. This despite the fact that psychotherapy has never been shown to work with children.

Thirty-four thousand dollars per child across ten months times the thousands and thousands of youths remanded to these programs is far too much money to throw away through this hall-of-mirrors exercise in intellectual dishonesty.

Judges believe in the value of these programs because they sentence children to them, and no judges in their right minds would do that if they had not been given reason to believe in their value by the people who administer and evaluate them.

Probation officers likewise rely on the psychological professionals who make their livings in the youth rehabilitation business. And those psychological professionals will be the last to disparage either the effectiveness of the treatment programs or their own skill at evaluating and effecting the rehabilitation of youth offenders.

We continue to believe that this kind of treatment works, and our related desire to treat children as less responsible for their actions than adults leads to other problems as well.

THE MYTH OF COURTROOM TRAUMA

Todays news reports are filled with accounts of trials where the judge has befriended the young accuser, dropped judicial ropes in favor of less formal raiment, and allowed the child to testify with his or her psychotherapist seated up on the witness stand, holding hands with the alleged victim.

The particulars of any individual case aside, are setups like these fair trials? In a fair trial, the prosecutors would be trying to prove to the judge and the jury that the child was injured or kidnapped or whatever and that the defendant was the perpetrator. The court itself, and the judge of that court, is not supposed to take a position on guilt or innocence until the evidence is heard.

But what is happening in cases involving children accusing adults of terrible things? Why are psychotherapists seated up on the witness stand holding hands with the testifying children? Because child psychologists—who must know—say they should.

The child psychologists on whom the courts rely have numerous ideas for helping supposedly fragile children navigate the legal system. Several of the proposals are designed to spare children the supposed trauma of testifying in court face-to-face with the people they have accused. One proposal is that children should be allowed to testify on video, another that children should testify in the judge's chambers, or behind some kind of screen, or via closed-circuit television. It is frequently suggested that children not be called to testify at all, or if called to testify that they not be subject to cross-examination. In the flurry of proposals to protect children from alleged testimonial trauma, the memory of the child testimony in the Salem witch trials seems to have been lost to the mists of time.

In the interests of further protecting children from courtroom trauma, some judges have invented other novel trial procedures. In the Massachusetts trial of Fells Acre day care worker Gerald Amirault, Judge Elizabeth Dolan removed her judicial robes during the trial and, in her street clothes, sat down next to the children who were seated in front of the jury box flanked by their parents, who served as a screen between the children and the defendant.

The idea behind all these protective procedures is the underlying psychological assumption that children will be severely traumatized by open court testimony and cross-examination, that confronting

the accused face-to-face, and being challenged by a defense attorney, will subject the child to a trauma as great if not greater than that of the original experience.

Research and Reality

How do psychological experts know that testifying in court traumatizes children? They don't; they just think it does. Their clinical intuition tells them so. Is there good, solid research to support the belief that testifying in court damages children psychologically? No. Is there good, solid research to support the belief that testifying in court is worse for a ten-year-old than for a twenty-year-old? Is worse for a child than for an elder? That a ten-year-old child recounting molestation will be more "damaged" than a twenty-year-old woman recounting rape, more damaged than the frightened eighty-year-old terrorized and beaten in a home invasion? No, no, and no.

Let's be clear about this. Testifying in court about something horrible that somebody terrible did to you is a lousy, rotten experience. It is extremely likely that it will make your heart race and your blood pound and the sweat pour off you. You may well have horrible nightmares. You will drag your feet into the courtroom, avoid the eyes of the defendant, and feel diminished and cheapened by the tactics of the defense attorney. This is true whatever your age. There's no way around it.

It is perfectly reasonable that parents and prosecutors and courts—even psychologists—want to spare children the unpleasant experience of testifying in court. But in their quest to spare the children, they have further sabotaged the entire trial process.

Traumatizing Our Justice System

Protecting a child from the supposed trauma of confronting and accusing an alleged perpetrator in court presupposes the guilt of the accused; protecting the child from the defendant presumes that the defendant is guilty of the crimes before the trial is heard. The whole trial is a sham.

Are psychotherapists seated next to witnesses supposed to be invisible to juries? Are jurors supposed to be unaware of their supposedly protective role? Are they supposed to disregard as irrelevant to

guilt or innocence the supportive behavior of parents and judge? Is there a standard bench instruction to that effect? "The jury will disregard all of the extraordinary measures taken to protect this innocent child from that dangerous and guilty defendant"? Of course not.

An assessment of the guilt of the defendant is the reason for the trial, but the whole arrangement tells the jury that the defendant cannot be innocent. It tells the jury that the defendant hurt the child before and is likely to hurt the child all over again in the courtroom. Are jurors presented with such biased trial procedures even capable of considering the idea that the accusations may have come not from a basis in fact but from overzealous prosecutors or even from the supportive psychotherapist—an increasingly common occurrence these days? How could they be when the judge has made it clear that he or she believes that the truthful child must be protected from traumatic contact with the guilty defendant?

What does this do to the right of the defendant to a fair trial, to the presumption of innocence, and to the assumed impartiality of the judge? It completely obviates them. The trial is biased, the defendant is presumed to be guilty before the prosecution has even begun to make its case, and the judge has already reached a judgment before the trial even opens. All of this because psychologists convinced the courts on the basis of nothing more than myth that children are permanently damaged psychologically by testifying against accused abusers in court.

There is no reason to believe that appearing in court as a victim, a witness, or a subject of dispute will traumatize a child. There is considerable reason to believe that the extraordinary measure undertaken to protect children from this hypothetical trauma has severely traumatized our justice system. The myth of courtroom trauma for children does not exist on its own. It derives directly from the broader clinical myth, the myth of the fragile child.

MYTH OF THE FRAGILE CHILD

The myth of the fragile child derives from the core clinical belief that individuals are created, essentially, by the forces acting upon them—principally parents, but also the larger society—and that the process of formation is fraught with peril for the child. Almost anything can and does go wrong. The smallest mistake on the part of the caretaker

forever damns the child in some indefinable way. Clinicians hold that the fate of the child lies in the hands of the caretaker, but the grip of the parental hand on the child's collar of fate is about as sure as a grasp on water.

The overwhelming majority of clinical psychologists believe this myth to be true in the absence of any evidence that it is so, and, indeed, even in the face of evidence that the opposite is true. Research shows over and over again the resiliency and adaptability of children even in the face of horrific—if all too common—experiences like war, mutilation, starvation, loss of family, destruction of the home, and so on.

Even brain functioning in young children is quite adaptable. Children quite often recover from brain injuries that leave their elders impaired for life. We don't get less vulnerable to mental injury with increasing age, we get much more so. Resilience is a characteristic of youth.

So why do the child clinicians have such a different view of the vulnerability of children to psychological injury? Part of the answer may be that the children clinicians see every day are children who have been noticeably hurt by something in their lives, children who for one reason or another are having trouble functioning well at home or in school or in the larger community. A steady diet of hurt children might well make one feel that all children are fragile creatures who are easily hurt.

How did psychological experts get courts and lawmakers to believe the myth of the fragile child? That was easy. Judges, prosecutors, attorneys, juries, and parents—we all live in the same culture, and because we do, we all buy into these same psychocultural myths. We all buy into the belief that "children"—legally defined—are not responsible for their commission of criminal acts however vicious or violent, that legal children are indefinitely malleable and can easily be rehabilitated by the trained psychological professional, that "children" can and will be irreparably traumatized in court—that even testifying can shatter the glass of their psychological being, and that all children at bottom are essentially as fragile as glass.

We believe these myths, and the ramifications for our justice system have been extensive.

The worst myth that has been perpetuated through the

unremitting offices of the professional psychologist is that not only are forensic evaluators—in their various guises of social worker, child psychologist, and psychiatrist—specially trained to unerringly detect what is good or bad for the minds of children, but that they have as well the power to read those minds, to peer into the souls of children, and to see their certain pasts and their likely futures.

Preying on the understandable fears of parents and concerns of justifiably interested social policy makers, professional child evaluators have been not only greatly but uniquely empowered by our legislatures to "advise" our courts—with an iron hand—on the determination of any and all facts relating to children as victim or as witness.

MYTH OF THE WHOLE TRUTH AND NOTHING BUT THE TRUTH

This extraordinary empowerment of the self-styled child expert has had several serious consequences for our justice system. Police, prosecutors, and judges are left with very little choice but to accept the word of these experts about the psychological nature and functioning of any and all children, both generally and individually. Thus, we have Larry Hardoon, a lead prosecutor in one of the Massachusetts Fells Acre day care abuse cases, on national television, making the unaccountable claim that children do not, cannot, and will not make false allegations about anything even faintly sexual or, indeed, about any very important matters.

Why did he say that? Because the state-certified child psychology experts told him it was so. He wasn't making it up. He was relying on experts.

Are the experts right? Do children make false claims about vitally important matters? Can they? Will they?

Of course they will and they can and they do.

Believe the Child Experts

Consider some of the claims children made in a few of the more prominent day care abuse cases that came to trial over the last dozen years. Children in the McMartin Preschool case in California, under the tutelage of social worker Kee MacFarlane of Children's Institute International, accused various members of the McMartin-Buckey

family who worked at the school of killing animals; killing babies; molesting children in hot air balloons, on distant farms, in cemeteries, and in tunnels under the school. Some of the nonexistent tunnels supposedly led to cemeteries. In the Little Rascals day care case in Edenton, North Carolina, children accused center workers of throwing children into shark-infested waters, taking them on trips to outer space, and worshipping the devil. In the Massachusetts Fells Acres case, pediatric nurse Susan Kelley reported on "disclosures" from the children that they were attacked by a robot, forced to eat frogs, and were molested by clowns, lobsters, and sharp pointed sticks.

Prosecutors took these cases to court because they were told by child professionals that the allegations of the children were trustworthy. They were told that the children's statements had been systematically and reliably validated and their behavior carefully analyzed by the clinical intuitions of these selfsame experts who carefully interrogated the children using special psychological techniques known only to the trade.

Everyone who is involved even peripherally with cases involving allegations by children must read the 1995 book *Jeopardy* in the Courtroom: A *Scientific* Analysis of *Children's* Testimony by Stephen Ceci of Cornell and Maggie Bruck of McGill University. The authors do a painstaking job of reviewing all relevant research on the subject of children's testimony, including their own new research, and describe clearly the types of conditions and techniques that can lead children to make false accusations. Their position is objective and their tone nonpartisan, but their research findings are undeniable. It would seem impossible for any clinician having once read their research to again make the statement that children do not make false claims about a whole range of matters, including important matters like sex and death.

The June 1995 issue of the journal Psychology, Public *Policy* and the Law also contains more than a dozen not-to-be-missed articles on the suggestibility of child witnesses. These two offerings, plus a host of other related publications, leave no one any excuse for repeating the mythological nonsense that children are incapable of making any statements that are anything short of the truth, the whole truth, and nothing but the truth.

It is very strange. All parents know that children will make up stories about anything, yet when it comes to flamboyant ritual abuse allegations, parental awareness of reality is blanked by a red curtain of fear and anger and horror.

It is quite easy to understand why parents depend on the expert opinions of child psychologists to help them judge what did or did not happen to their children, just as it is quite easy to see why prosecutors, police, and judges rely on the word of these experts. It is even easy to understand why the media welcome flamboyant allegations involving youngsters—it sells. But why do so many *clinicians* believe absolutely in the unfailing veracity of children? And believe me, they do.

(It should go without saying—but in today's highly charged climate it does not—that there are countless children whose accusations of abuse are completely, tragically true, and unknown numbers of children who do not speak up because they do not know what to say, or they don't know who will help, or they do not think that they will be believed. It should also go without saying that belief in hot air balloon and cemetery tunnel molestation is prima facie evidence of a serious problem in an *adult's* mind).

Why did the psychoexperts who interviewed the children in these cases believe so many utterly outlandish and physically impossible allegations? Their wholehearted acceptance of the children's claims is entirely different from the metaphorical belief accorded by clinicians to their unhappy *adult* clients who claim—with no physical evidence whatsoever—that as teenagers they were repeatedly raped and forced to bear infants used as sacrifices in Satanic abuse rituals, that their brothers had testicles surgically removed for ritual use, that they regularly disinter and hack up corpses from graveyards, and so on. Adults who make such claims may be experiencing a "personal, subjective reality not shared by others," clinicians say, but the equally outlandish claims of the children are as real as real gets.

Clinicians believe the claims of children because they believe that children *cannot* lie about vitally important matters like sex or death or mutilation. Moreover, they believe that they cannot be led to make false allegations about such crucial matters either.

Is that true? Can children be led to make false claims about

something as intensely personal as, for example, an injury to the self? Sure they can.

> In a . . . series of studies, Dr. Ceci and Dr. Bruck and their colleagues asked several classrooms of preschoolers to remember things they really had experienced, such as an accident requiring a doctor's visit and stitches. They were also told to think of events that had never happened, like getting a hand caught in a mousetrap and having the trap removed at the hospital.
>
> Once a week an interviewer asked children individually about both events. When a child said that an imaginary scenario like the mousetrap accident had happened to her, she was asked about details, such as what she was wearing when she went to the hospital and who went with her. . . . [B]y the seventh week, about half were claiming they'd been hurt by mousetraps. Not only that, but some of the stories were as detailed, coherent, and emotional as true recollections.
>
> These experiments show that suggestive questioning about events that never happened can contaminate young children's memories with fantasies. In the real world beyond the psychology lab, Doctors [Stephen] Ceci and Maggie Bruck suspect that the same thing happened to children in the day care scandals.
>
> In [another] one of their experiments several preschoolers got a routine checkup from a doctor who avoided touching their genital areas. All the children were then asked to show how they'd been examined by the doctor, and they were given dolls with sexual parts to help them explain. In response, many said they had been touched sexually. Some hit the dolls' penises, vaginas, and anuses, or stuck spoons into the orifices; they said the doctor had done the same to them. When challenged, one continued to vehemently insist that the doctor had touched her abusively. Playing with the anatomically detailed doll had apparently altered her memory. (Nathan, *Redbook*, April 1996, p. 14)

In another study they call "Misled Preschoolers," Ceci and his colleagues looked at the effects of both negative stereotyping and sug-

gestive questioning on children's reports of events. They found that three- to four-year-old children were quite accurate in reporting what did and did not happen during a particular event at their preschool—the visit of a strange adult named Sam Stone—when completely neutral techniques were used by adults to query the children.

But when the young ones were subjected to both repeated, negative, stereotyping and to suggestive questioning, 72 percent of the three- to four-year-olds reported that they had seen "Sam Stone" commit clumsy acts he did not in fact commit.

When challenged, most, but by no means all, of the children in these groups backed off from the false allegations (Children Today, Ceci and de Bruyn, 1993).

Getting a hand caught in a mousetrap, being abused by a pediatrician, seeing a strange adult damage a book and a toy—these are claims not that dissimilar from those being made by children in their testimony in our courts every day.

These researchers explain that although there are no reliable figures on the number of children who end up participating in family court or criminal justice proceedings, an extrapolation from some recent New York State data to the entire nation suggests that this number could be in the vicinity of 100,000.

> If one adds to this 100,000 figure the large number of non-abuse cases that result in children participating in court proceedings [e.g., as witnesses to domestic violence, road accidents, playground injuries], then their participation in the legal system rises considerably. Thus, it has become common to see young children providing testimony in a range of cases, from custody disputes to felonious murders. (Ceci and de Bruyn 1993, p. 5)

It is very important that we understand the limits of children's testimony, particularly their vulnerabilities when they are subjected to adults with an agenda.

Human Lie Detectors

Are clinicians human lie detectors? Do clinicians believe the claims of children because they have a special capacity to tell when children are

telling the truth and when they are not? My undergraduates say that experienced clinicians would know if children were lying. Are they right?

To find out just how good clinicians are at detecting the truth, Ceci and his colleagues showed the "Sam Stone" story videotapes of children, fabricating or telling the truth about various things, to more than one thousand psychological experts, and asked them to pick out which was which. How did they do? Was there an impressive display of unerring human lie detection, making any future machine obsolete before it even sees the light of day? Au contraire.

Ceci and de Bruyn explain:

> Some researchers have opined that the presence of perceptual details is indicative of true memories, as opposed to confabulated reports. In this study, however, perceptual details were no assurance that the report was accurate. In fact, it was surprising to see the number of false perceptual details children in the stereotype and suggestion condition provided to embellish the non-events [e.g., claiming that Sam Stone took the teddy bear into a bathroom and soaked it in hot water before smearing it with a crayon].
>
> So strikingly believable were their reports that we presented videotapes of these interviews to researchers and clinicians who work in the area of children's testimonial competence to see if they could discriminate erroneous reports from accurate ones.
>
> We did this at two recent conferences [the American Psychology-Law Society Biennial Meeting, San Diego, March 15, 1992; and a NATO Advanced Study Institute, Italy, May 19, 1992]. The results were the same at both conferences: The majority of the audience got it wrong—very wrong.
>
> The audience was shown the videotapes of the children giving free narratives during the final interview. They were instructed to watch the tapes carefully and decide which of the children was the most accurate, next most accurate, etc., and to rate their confidence in the accuracy of each of the child's statements. They were not told whether the children saw Sam Stone do things, but were asked to decide for them-

selves which of the things that were alleged by the children actually transpired during Sam Stone's visit. Since so many of the children claimed that Sam ripped the book and/or soiled the bear, most of the audience assumed that these events must have transpired, otherwise they found it hard to imagine how so many children could make the same incorrect claim.

Experts who do research on children's testimonial competence, provide therapy to children suspected of having been abused, and conduct law enforcement interviews of child victims, all failed to detect which children were accurate and which were not, despite being confident in their opinions. The children's reports would fool anyone who thinks that it is easy to detect a young child's false report, contrary to claims from some quarters. The reason is that, unlike the typical study in which a child is presented a single erroneous suggestion, these children received persistent and intense suggestions that built on a prior set of expectations (i.e., stereotype).

We believe that this ingredient is more similar to what transpires in some actual cases; it is common for child witnesses to be interviewed many times prior to being given a formal, videotaped interview with anatomical dolls, or to testifying in court. This is the first research to examine over long periods of time the effect of persistent, erroneous suggestions that are consonant with children's expectations.

Thus, the procedures we employed occur, albeit in altered form, in actual therapy sessions and law enforcement/CPS [child protection services] interviews. We patterned our experimental manipulations after materials that we have collected over the past decade from court transcripts and therapeutic interviews. (Ceci and de Bruyn 1993, pp. 5–6; italics added)

The experienced psychological experts were worse than chance at detecting when the children were lying. *Worse than chance!* How could anyone be worse than chance? Only by believing that children tell the truth, no matter what they say.

Belief may be the default value that makes our society function, but it is a serious roadblock in the pursuit of scientific impartiality, not to mention a little short on reality testing. Our parents lie to us,

our children lie to us. Our teachers lie and our students lie, and so do our patients. We believe them all. Most of us are reluctant to admit we can be suckered, but we know in our heart of hearts that it is so. Clinicians believe in their heart of hearts that it is *not* so, that no one can sucker the trained psychotherapist. They are wrong.

What do clinicians do when they are confronted by a child's allegations so bizarre that no clinician—except perhaps the space invader specialist from Harvard—and no parent who was not also completely delusional, could possibly believe them to be true? To the rest of us, patently false allegations would suggest that the child was not telling the truth, the whole truth, and nothing but it. Not to the clinician.

Psychological Trauma Tales

Psychologists rush in to explain that fantastic, unbelievable stories are the way children deal with trauma. Their psychological trauma tales are as inventive and as insubstantial as those of the imaginative children. They strongly resemble in their ad hoc logic the creative inventions of defense experts called upon to defend the indefensible—like the Larchmont murder of the two innocent, helpless strangers.

Clinicians offer scenarios like these: The child will invent a clown or a robot to distance himself from the immediacy of the traumatic event. The child will embed his or her terror within the context of a less frightening, more familiar fantasy like a trip to outer space or Halloween-inspired cemetery stories. Floating in a hot air balloon is just a metaphor for dissociation. For a child, penetration with knives and sticks is just a psychological metaphor. And so on, and so on.

Is there any evidence that these creative fictions of the clinician are true? None at all. But the lack of evidence is not noticed by the clinician. The surface plausibility, given cultural psychological assumptions, makes for a good and convincing story. Nothing more is needed.

How can any court let a clinician sit up on the witness stand, spin these yarns, and claim to be able to read children's minds infallibly?

"Penises Are Gwoss"

The right mind-set can create criminally damaging evidence from the most innocuous of children's conversation.

"Penises are gwoss."

That was out of the mouth of the five-year-old daughter of friends. Now where might that have come from? There are four males in her house, so there are several possibilities. Maybe I prompted it. I brought home so-called anatomically correct dolls to see how she would react to them. She immediately said, "That's a boy and that's a girl." "How do you know?" I asked. She reached down and grabbed the male organ and said, "Because he has a penis. Boys have penises." "How do you know?" "Because my daddy has a penis. I've seen my daddy's." Was that true? And is the sight of a penis sufficient to prompt the comment that penises are gross?

Several days before the comment was made, both the little girl and I had been subjected to an eye-level view of my dog's penis. Remy—the dog—had been sitting at the top of the stairs on which the child and I sat, partway down, putting on our boots before going outside. The dog sat, utterly unconcerned, quite unaware, as his penis moved rhythmically in and out of its sheath as he breathed. One might say that it was kind of gross.

Was it the dog that prompted my neighbor child's remark? Or the absurdly appended Raggedy Andy dolls? Who knows? Maybe other children in her preschool told her penises are gross. Maybe her eight-year-old sister told her. Maybe "gross" was her word of the week. Who can say? Not you. Not I. Not any "child psychologist."

However, put this little conversation in the mind of child psychologists with agendas—financial, emotional, or political—and you have real trouble. They can take such utterly innocuous stuff and destroy families, reputations, and lives.

Parents and prosecutors have little choice but to believe that the professional child expert knows what he or she is doing, that the expert must indeed have trustworthy instruments and highly trained skills for determining reliable statements and evidence of crimes witnessed and suffered by children. They do not.

Some of these professionals delude themselves into thinking that they have a special gift for the task they have undertaken. Since so many clinicians believe absolutely in their infallible powers of clinical intuition, they must believe as well in their intuitions about children. Some of them too must deliberately stifle the doubts about their infallibility that must inevitably crop up even in the most credulous and self-deluded mind. Sometimes too it seems that if people

greatly fear a particular outcome—like letting a child abuser go free—they will do anything to stop it.

Sometimes my students say, "Well, something must have happened there, so they must be guilty of something even if it is not sex in cemeteries or hot air balloons." Andrew Vachss, an attorney in New York who represents children, wrote in the November 3, 1996, issue of Parade that getting convicted is no big deal for an innocent adult because the conviction can always be reversed. He did not himself volunteer to spend ten years in prison for the cause, but he had no objections to others doing so as an acceptable level of damage collateral to successful prosecutions of the truly guilty.

Seeking a greater good than justice is following a dangerous path.

And a Little Child Shall Be Led

Stephen Ceci and Maggie Bruck's research shows clearly that many of the questioning techniques of parents, psychologists, and professional investigators can lead directly if not inevitably to false accusations. In their book, they demonstrate that the beliefs and biases of interviewers can strongly influence both the behavior of the interviewers and the eventual statements of the children and that repeated questions can cause a child to change what has been said (e.g., Why is this man still asking the same question? I guess my answer must be wrong). They show too that describing a suspect in stereotypically negative terms (clumsy Sam Stone) or claiming that other children made allegations can increase the instance of abuse claims, that the status or authority of the person doing the interviewing might bias the content of what the child says.

Lastly, but very importantly since it is a common technique used by clinical psychologists to "refresh" memory, the instruction to children to think hard about or visualize an alleged event can bring that event to life in the child's mind whether it actually occurred or not.

Ceci and Bruck believe that even quite young children can offer valuable and reliable testimony if they are very carefully questioned by adults who are both well informed of the dangers involved in interviewing children and conscientious about avoiding them.

It seems undeniable that their work makes it clear that videotaping the procedures of investigative professionals is essential both

to protect the child—being involved in a criminal investigation is no picnic for a child—and to avoid miscarriages of justice when children's allegations are the basis of prosecution.

Moreover, it is a frightening fact that interrogations of children can result not only in mistaken charges against adults but even in having children confess to crimes they did not commit. In Boston, at the end of 1996, a fire destroyed an empty factory and spread to the adjoining neighborhood, leaving one hundred people temporarily homeless. A nine-year-old boy was charged with arson on the basis of his "confession" following police interrogation.

> According to police, the 9-year-old approached officers at the fire Tuesday night and told them he had seen three men carrying gasoline into the mill.
>
> When he was taken to police headquarters for questioning, he allegedly made "incriminating statements," and was charged with one count of second-degree arson in Providence Family court.
>
> But last night, [police] said that the investigation into the cause of the blaze had produced a witness who led police to two 14-year-olds. (Lyons, *Boston* Globe, October 27, 1996)

Most professional child evaluators do not think that videotaping interrogation procedures is necessary to guard against the intrusion of the evaluator's agenda into the child's story. Why would they? They have their clinical intuitions to guide their procedures in the pursuit of truth. After all, they very seldom tape their therapy sessions either.

TRAGIC RELIANCE ON PSEUDO-EXPERTS

American society is taking needed and long overdue steps to safeguard children both by opening our eyes to the reality of child abuse and by institutionalizing steps to prevent it. The reliability and veracity of children as eyewitnesses to crimes both against themselves and against others is also getting a long overdue reevaluation.

Where we have gone tragically astray both in our efforts to protect our children and in our efforts to engage them more fully as effective witnesses in the criminal justice system is in trusting self-styled experts—with their supposedly infallible intuitions—to take

over the responsibility of eliciting statements from children and of "clinically" validating them for truth and falsehood in all particulars.

In court, these child psychologists offer as corroboration of children's testimony their professional endorsement of the claims, based on nothing more than the unquestionable validity of their intuitions. It is the psychologists who make unsubstantiated assertions about the vulnerability of children, the innocence of children, their veracity, and their invulnerability to suggestion or coercion. It is the psychologists who are responsible for the suspension of rationality by our law enforcement agencies in cases involving children as victims or witnesses. It is the psychologists who have told law enforcement, prosecutors, and courts, who have told our entire judicial system, "Trust us. We know what we are talking about when it comes to the minds of children and you do not."

They do not know what they are talking about.

Nevertheless, bombarded by an endless barrage of statements and theories about the psychological nature of children, made with absolute certainty and backed with every kind of professional seal of approval, parents, teachers, and the entire family court system have had little choice but to hand the affairs of this fragile, complex creature—the Psychological Child—over to the tender ministrations of its creator—the child mental health professional. Sometimes it seems that we not only tolerate the promulgation of this mythology as science but beg for it and institutionalize it at every possible opportunity. (Are attorneys all married to psychologists?)

When we admit into our courts as experts those whose main claim to professional expertise is their admittedly anti-scientific intuition guided by a psychopolitical mythology with intellectual foundations akin to tea leaf reading, the concept of expert opinion becomes a farce indeed.

> Child advocates and sexual abuse specialists said yesterday that a 10-year-old [New Hampshire boy] who commits such acts [as the rape of children] may be reacting to overexposure to pornography and adult sexual acts or the early onset of puberty. (Ferdinand, *Boston* Globe, August 23, 1996)

The early onset of puberty? For heaven's sake!

> They added that most young perpetrators are reliving childhood trauma. "Kids don't learn these things unless they have been perpetrated upon them," said Frances Belcher, executive director of the New Hampshire Children's Trust Fund. (Ferdinand, Boston Globe, August 23, 1996)

Interesting, is it not, then, that most abused children are female, but most abusers are male? A farce indeed.

Turning to clinical psychologists to make judgment calls that society deems necessary about children's understanding of crimes and the likelihood of rehabilitation does nothing but obscure the extreme difficulty of making those judgments; it does not make the judgments easier, more valid, or more reliable. It just makes them more comfortable for those who hand them off. We are all more comfortable if we can believe that these tough decisions are made on the basis of something other than personal opinion. They are not. We've just substituted the clinicians' personal beliefs for our own.

In Andrew Vachss's Parade article, "If We Really Want to Protect the Children," he suggests that we hand over all the fact finding about matters of child abuse to specially trained—and presumably infallible—child evaluation experts to an even greater extent than we do now.

> We need an objective "one-stop shop" system to avoid the confusion that results from subjecting a child to a series of interviews. All cases would be referred to a multidisciplinary resource center which has no vested interest in the outcome and which has the sole job of finding the facts. No party to the case—be it prosecution, defense, a parent in a custody battle or otherwise—would be permitted to control the investigation. A full and complete record should be made available to all once it is finished.

God help us. Vachss has a touching faith in the neutral stance and extraordinary fact-finding skills of forensic psychologists, although he shows no respect at all for the rights and responsibilities of parents. He thinks that growing the professional child protection industry to a size and power even greater than now will somehow not

only further the cause of justice in America but protect our children from harm. He could not be more wrong. We have done enough damage by abdicating our responsibilities as fact finders in these terribly difficult matters—designating fatally flawed and inadequate pseudo-specialists to do the job for us. Magnifying the error is sure as heck not going to erase it.

Miscarriages of justice do matter, both to individuals and to society.

In our fervor to save the children, we are simply damning our society from another direction. Unexamined mythology, unwarranted prejudice, and unanalyzed opinion of clinical psychology are burrowing like termites into the foundations of the justice system of our country, and they will topple it if left unchecked.

8
In the Best Interests of the Child

Parental Rights and Psychoexperts

> In considering psychological factors affecting the best interests of the child, the psychologist focuses on the parenting capacity of the prospective custodians in conjunction with the psychological and developmental needs of each involved child.
>
> American Psychological Association Guidelines for Child Custody Evaluations in Divorce Proceedings, American Psychologist, 1994

CUSTODY WARS AND THE EXPERT WITNESS

In a 1990 custody case in New York State the mother lost custody of her five-year-old son after a psychiatrist, hired by the father, told the judge that the mother incessantly demeaned the father, even in front of the child.

> The mother's expert witness, also a psychiatrist, recommended that the parties be given joint custody. Although he alternately suggested that the mother be granted sole custody, he conceded that if such an award were made and the mother continued her barrage of negative comments about the father in the child's presence, the child could become extremely disturbed. He further conceded that if the mother were awarded custody, she might interfere with the father's visitation of the child. (Gage *v.* Gage, 1990)

What is going on here? Nothing special. It is par for the course in modem custody fights. Every year, more than a million children under the age of eighteen are affected by family dissolution. It is extremely hard to determine the total number of these cases in which child custody is disputed because many cases—even those involving court-appointed or parent-hired expert child evaluators—-do not go to trial. Nationally, it is certainly well into the hundreds of thousands.

Psychological professionals are hired by the warring mother and father or appointed by the court—often both—to evaluate the worth of both claims and claimants, absolutely and relatively. In a national sample of judges who hear custody cases that come to trial after the failure of bargaining between the divorcing spouses, 25 percent of the judges said that the testimony or report of a mental health professional is presented as evidence in a majority of contested custody cases in their courts.

Since there are usually two experts hired, one per parent, and quite often another appointed by the court, sometimes as a guardian ad *litem*, the costs of all this psychological expertise mount up pretty quickly. Let us assume that those one million children of divorce are the products of 500,000 divorces a year, and assume further that custody is disputed in about one quarter of those divorces, some 125,000 a year, and that psychoexperts are used in about one quarter of those contested cases (31,250 divorces). With three experts per divorce, each charging about $200 an hour and spending about five hours each per case to interview the parties and write up the report, then we get a dollar figure of $3,000 for psychoexperts in each case. We arrive at a total national cost of using psychological experts in custody disputes of around $93.75 million annually. That is not a bad piece of change if you are in the expert business, although it probably seems rather appalling if you are one of the divorcing spouses.

The results of psychoexperts' contributions to resolution of custody disputes are often quite a shock to the parties involved. Many previously unaware people are brought to a stunned realization of the awesome power accorded the professional psychological decision maker in our legal system. Accustomed not only to making their own decisions about what is in the best interests of their children, but to the respect society accords parents faced with those daily decisions as well, parents in disputed custody proceedings are

often affronted and outraged to find themselves the target of a stranger's evaluation for parental fitness. Bewildered and incredulous, they find that statements they make about their children, about their own lives, and about the lives of their ex-spouses will be weighed by a professional psychological evaluator frequently held by the courts to have a special lock on the truth.

In a transfer of custody case that would remove a girl from the home of her mother with whom she had always lived to the home of her father one thousand miles away from the mother, the Wisconsin Court of Appeals considered testimony from a psychologist who had not actually even met with the mother or the child, but testified that, hypothetically speaking:

> anxieties would normally be expected on the part of the child who has maintained a close association with the noncustodial parent on being suddenly deprived of that association. . . . According to Dr. [Linda] Marinaccio, if contact is not maintained with the noncustodial parent, the child often tries to form a new family and may substitute a stepparent, pretending that the noncustodial parent does not exist. (Pamperin v. Pamperin, 1983)

The family court took custody away from the mother, who lived with her new husband in Tennessee, and gave it to the father, who lived with his new wife in Wisconsin, the site of the original family home.

The mother appealed, contending that the psychologist's opinions were nothing but responses to hypothetical questions and did not take into account the actual persons involved. Moreover, she said that an expert's answers to hypothetical questions provided an insufficient basis to change custody.

As the court of appeals put it so succinctly, "We disagree."

The appeals court ruled that the trial judge was quite right to give custody to the father since the mother had shirked her duty of having her parental fitness weighed by a professional psychologist. They also had no objection to the psychologist offering "hypothetical" opinions about the mother she had never met. After all, they seemed to say, whose fault was it that they had not met?

Judges use psychological testimony and reports in custody cases much as the King of England used the Archbishop of Canterbury back in the old days when even the king sometimes thought the archbishop had the ear of heaven.

Sometimes parents conspire unwittingly in the unwarranted empowerment of the psychologists.

> In March 1991, the father commenced this proceeding for sole custody. . . . After a hearing which took place on various dates over a period of at least five months, and which primarily involved the testimony of a psychologist who had been treating [the daughter] for almost a year [a four-year-old child!], the parties stipulated that they would be bound by the report and recommendations of a mutually agreed-upon, court-appointed therapist. The therapist conducted extensive interviews with the parties, their spouses, and [their daughter], and ultimately recommended that the father should have primary custody of the child. The Family Court subsequently issued an order awarding primary custody to the father.
>
> On appeal, the mother contends that the Family Court improperly delegated its custody decision to the court-appointed expert. (*Hennelly v. Viger*, 1992)

The appeals court agreed that the lower court could not "abdicate its duty to determine custody by relying solely on the report of a court-appointed expert," and sent the case back down to get a fuller explanation of the grounds for the custody decision.

That decision by the appeals court to ask for more information might suggest that at least the higher courts are cautious about the usurpation of judicial power by the psychoexperts, but this prudent weighing of psychological testimony is by no means a uniform happening.

In Lobo v. Muttee, a 1993 case in New York, the state appeals court acknowledged that it "would be seriously remiss if we allowed a custody determination [to grant sole custody to the mother] to stand without . . . complete forensic evaluations of the parties and the child. . . . "

In Johnson v. Johnson from 1994, the same court slapped down the decision of a family court to award custody of two daughters to the father, in part because the lower court ignored "a thorough and carefully reasoned 22-page report, [by] the [court-appointed] psychologist conclud[ing] that the mother would be a more fit custodian for the younger daughter [because the] mother allowed the daughter to freely express and develop her emotional and intellectual capacities, whereas the father was more didactic and demanded compliance, even if indirectly."

It was quite clear that in the opinion of the appeals court, it is the psychologist, not the trial judge, who is the best judge of each "parent's ability to provide for the child's emotional and intellectual needs" (*Johnson* v. Johnson, 1994).

In the decision of Young v. Young, the New York Appeals Court was positively indignant when the lower court ignored the opinion of the psychoexpert. It wrote:

> It is evident that the court completely disregarded Dr. Reubins' recommendation; and, without any discernible reason or basis in the record to support such a determination, its conclusion is nothing short of arbitrary. . . . Dr. Reubins performed the only complete evaluation of the parties and children as the court-appointed forensic expert. His opinion was strong, firm, competent, weighty, and unbiased. (Young *v.* Young, 1995; italics added)

Today, the courts seem not only to accept psychological expert testimony on complex family issues but to demand it to effect what they see as reasonable resolution to problems with no single correct solution. Today, a psychological professional—even one who has never met you or the children who are the subject of the dispute—may in fact hold the fate of children's residence and familial well-being in his or her hands.

In actual fact, of course, it is the king—the judge—who ultimately empowers the archbishop. And a scattershot review of custody cases at the appeals level reveals an interesting pattern of endorsement and rejection of forensic psychology by the courts. It seems as if the court embraces the opinion of psychological experts when that opinion

bolsters its own criterion du jour and rejects it when it does not.

But the buck does not stop with the initial trial judge. In our legal system the king must bend the knee to a still higher king—another judge or set of judges with different criteria—in a chain of authoritative review that in family law cases usually stops at the state appeals level. Since one of the measures of judicial competence is the number of times the judge gets reversed on appeal, it is no surprise that judges do their best to make sure their decisions have a sound and substantial basis. It is in seeking such a basis that they allow psychoexperts to overrun their courts with the madness of their pseudo-expertise.

Aware of the large and growing number of psychologists taking on the role of critical adviser to courts in custody cases, the American Psychological Association has issued to its members a set of guidelines outlining the duties and responsibilities of the ideal custody evaluator.

Knowledge, Skills, and Abilities Required to Be the Better Parent

In as bold and upfront a manner as can be, the APA tells its members that their primary duty—in the best interests of the child—is to evaluate each parents' "capacity for parenting," including an assessment of all the "knowledge" the person has to be a good parent, all the parenting "skills" he or she has, and all the parenting "abilities" each parent has to do the parent job.

That seems to me to be a rather daunting job. What, exactly, is the requisite list of "knowledge" one must have to be a good parent? Does knowledge mean knowing how to cook and do the laundry? Or is it about knowing how to play softball, or hopscotch? Is it knowing how to do algebra or search the Internet for source material for term papers?

What are these parenting "skills" that the psychological evaluator is looking for? Is it the skill of changing diapers or teaching potty training? Is it the skill of inducing the child to do homework? To share with siblings and friends? To patiently finish a task? Does the better parent play a mean game of soccer or squash?

How does one distinguish all this knowledge and all these skills from the parenting "abilities" one also must possess to pass the evaluator's muster? What abilities? The patience of a saint? The ability to

shape the young through behavior modification? The freedom from work to coach the soccer team? The financial resources to pay for college?

Whose list is this? Who could make—who would presume to make—a definitive list of necessary or even desirable parenting knowledge, skills, and abilities? For one family, it is crucial that the parent have a strong sense of religious faith and practice to hand down to the children. For others, it a strong sense of ethnic identity. For others, an active political conscience and the willingness to work for change in the world. For some parents, a life without a significant portion devoted to sports and physical fitness seems a life only half lived. For others, a life not strongly intertwined with matters intellectual is similarly a life half lived. One family believes that a child should learn a trade and get on with life right out of high school. Another believes that every child who is to have a decent chance must spend four years at a college or university.

Try asking half a dozen friends—both with and without children—to list the top ten things every boy or girl should know how to do by age eighteen. Ask them to list the ten most important aspects of life. How much agreement do you think you will get? It depends on how randomly you sample, of course, but achieving consensus would be a miracle.

It should be absolutely clear to everyone that whatever the claims of highly paid professionals with impressive credentials and fancy-sounding titles, there is not, there cannot be, and there never will be any sound scientific research on the specific types of knowledge, skills, and abilities that one must have to be the psychologically "superior" parent, to be the parent who should have custody of the children of a marriage.

Remember, we do not ask the psychologist to tell us which parent knows that children must be taught to wash between their toes. We are asking him or her for a *psychological* evaluation. If we want evaluations of old-fashioned, hands-on, child care skills, we should ask our grandmothers.

Superior Values of the Better Parent

The American Psychological Association also instructs custody evaluators to assess the relative merits of the *values* of the disputing parents.

Evaluating relative parenting abilities was hard enough, but how are the child "experts" going to go about determining who has the better values? How does this business of identifying the parent with the "superior" values actually work out in practice? Jay Ziskin, in Coping with Psychiatric and Psychological Testimony, describes a case of an application for a change of custody of a child from the mother to the father after the father's recent remarriage.

> Biases may arise out of identification with or shared value systems with one litigant as contrasted to another litigant. In this case, there appeared to be shared value systems between the psychologist and the father, as indicated by the fact that both have earned Ph.D.'s, both are very much achievement oriented, as indicated by their accomplishments, and as indicated by the similarity of their choices as to areas of residence (Eastern, metropolitan) in contrast to the mother's choice of area of residence (Western, small city). (Ziskin 1995, pp. 624–25)

Biases about superior values may also arise out of the psychologist's personal views of motorcycle riding, of hiring a babysitter while a parent attends school, of drinking beer while watching television, of parents' working for twelve hours a day—or of not working outside the home at all—or what he or she feels about the importance of traditional values in terms of roles, morals, sexual behavior, education, and religion.

It is no step at all to turn those personal value judgments into professional opinions to support the case of a parent making claims along these lines:

> Plaintiff claims that his son . . . is suffering emotionally from lack of supervision, guidance and attention from his mother, which has fostered a feeling of lost love and affection. . . . [H]is former wife's work load and professional responsibilities . . . dictate that she be away from [the child] for unconscionably long periods of time, thereby prohibiting her from taking an active parenting role. [I do have the time, however, as does my new wife . . .]. (*David W.* v. Julia *W.*, Supreme Court of New York, 1990)

Of course, these appeals do not always prevail. This one did not. But the wife here was a psychiatrist and shot back with two of her own experts.

When hired psychological experts pretend that their evaluation of respective parental values is a scientific endeavor rather than a strictly personal echoing of their own values hierarchy, they will see every aspect of the custody evaluation through lenses ground by that delusion. Having decided which parent they most respect or admire, they then find evidence everywhere to support that bias and distort every piece of the report to make the preferred parent look better to the judge.

In a critique on one expert witness's testimony in a change of custody case, Jay Ziskin, in Coping with Psychiatric and Psychological *Testimony*, wrote:

> Several features of the psychologist's report point to bias in favor of the father. . . . Throughout the report when using the proper names of the litigants, the psychologist refers to the father as "Mr." but refers to the mother by her first name, indicating a considerable difference in the status he accorded to each. . . . He saw the father first . . . but then saw the father a second time before seeing the mother at all, thus obtaining a great deal of negative information about the mother before ever having seen her. He spent a total of five hours with the father and less than two hours with the mother . . . while his report shows considerable information concerning business successes accomplished by the father, there is nothing in his report or notes to indicate that he obtained similar information concerning the lesser, but still considerable, business successes of the mother. (Ziskin 1995, pp. 624–25)

There is more in this vein, a number of seemingly small things. Taken individually they mean little, together they weigh the report overwhelmingly in favor of the father.

This evaluator was top-of-the-line, a diplomate of the American Board of Professional Psychology and the American Board of Forensic Psychology in addition to having an impressive array of other credentials.

Wittmann, in a 1985 article on child custody determinations written for the Journal of Psychiatry and the Law, wrote, "Mental health professionals . . . are often questioned regarding matters about which there is little consensus within our disciplines. Our field is famous for supporting conclusions during testimony simply on the basis of 'accumulated clinical experience,' a phrase which may mean nothing more than accumulated personal bias" (p. 77).

Where there is no solid foundation for an expert's opinion for the determination of custody and visitation, it is inevitable that bias fills the void. One must, after all, write something on the evaluation for which one is being so handsomely paid.

Blind Justice

With regard to the neutrality of the evaluator, the custody guidelines for the American Psychological Association state, "The psychologist should be impartial regardless of whether he or she is retained by the court or by a party to the proceedings."

Well, that is a good thought, but let us think it through a moment. Let us say that as a practicing clinical psychologist, I wish to make a significant portion of my income hiring myself out to do child and family evaluations in disputed custody suits. Let us say further that I have the idealism of a first-year graduate student and so I maintain an absolutely rigid and translucent neutrality as I perform my evaluations for my first clients. Let us say further that by chance alone I find the client who hired me to be the superior parent in exactly half the cases, and in half, alas, he or she is judged by me to be inferior. Let us say, lastly, that my colleague testifying for the other sides invariably finds that there is sufficient reason to believe that the parents who hired him have the superior claim, evidenced, apparently, by their vastly superior intellect and good judgment in hiring said colleague.

After half the attorneys who hired me lose their cases because of my highly judgmental and prejudicial reports and testimony, whom do you think will be hired for the next disputed custody case? Me? The loose cannon who can be counted on to shoot his own client in the foot half the time? Or the other psychologist, who smoothly makes a compelling and plausible argument that the client who hired him is the superior parent for any number of reasons related to

knowledge, skills, abilities, values, and mental health, as that highly skilled psychological professional has perceived them?

I think I am going to have to go into another line of work pretty quickly if I want to continue to be able to feed the cat and make the car payments.

Identifying the Crazy Parent

The AFA also suggests that it can be quite important to determine whether one of the parents is crazy, but that not too much weight should be placed on this component of the evaluation.

"Psychopathology may be relevant to such an assessment [in custody evaluations], insofar as it has impact on the child or the ability to parent, but it is not the primary focus."

That is too bad. About the only thing psychologists claim to learn how to do in graduate school is diagnose people, and that is supposed to be hardly relevant at all to the custody evaluations. Oh, well. That doesn't keep mental health assessments from figuring largely in many divorce actions whatever the AFA guidelines may say.

> The mental health of a mother is always a consideration in custody battles—even when it was never a consideration in the marriage or in any other aspect of her life. A woman faces a nightmare in the judicial system when mental health experts, who are actually hired by the father or are biased and acting as surrogates for the father, go on a mission to destroy the woman's character before the judge. (Winner 1996, p. 61)

In her book Mothers on Trial, Phyllis Chesler wrote that in child custody disputes "Fathers' lawyers always routinely and falsely accused mothers of 'sexual promiscuity' or 'mental illness'" (p. 199). Certainly a number of courts are quite responsive to such charges whether they come from the court-appointed experts or from experts hired by the father.

New York's appeals court, in Landau v. Landau, accepted the opinions of two court psychoexperts that the mother was too crazy to have custody or even overnight or extended visitation.

> After performing comprehensive evaluations of the parties, a court-appointed psychiatrist and a court-appointed psychologist both concluded that the father was the more appropriate custodial parent. The mother was found to suffer from, among other things, severe depression, persecutorial [sic] delusions, extreme emotional lability [openness to change], exceedingly poor judgment, and distortion of reality, all of which impaired her parenting skills. (Landau v. Landau, 1995)

The court also required the mother to undergo psychotherapy as a condition of any expanded or overnight visitation. "Absent therapeutic intervention, further visitation would not be in the child's best interest." Perhaps the court felt that losing her child would make the mother feel even more depressed and persecuted. (What, exactly, is a therapist supposed to do about that?) It is to be hoped that her therapist turned out to be someone other than the court-appointed evaluator who found her so lacking in the first place. Then she could at least be taught how to get through a psychological evaluation without a diagnosis of mental illness.

Is it really that easy to diagnose someone with a mental disease? Well, sure. With 374 diagnoses to choose from, the psychologist has considerable latitude in finding a diagnosis that fits some behavior of the parent who did not hire him or of the parent with whom she is not simpatico. (It is important to remember that even the best of the evaluators are not saints.) It is easy because, as we have seen, there is little or no relation between actual symptoms or behaviors and most of the diagnoses available to the evaluator, and, for many, many diagnoses the set and range of possible "symptoms" that will fit the necessary criteria are enormously flexible.

Why do wrangling spouses attack each other with psychoexperts? Because it works.

It is all very well for liberals to say that the mentally ill are just like you and me and should not be discriminated against, but if it comes down to it in court, no judge is going to grant custody of a minor child to a crazy person over a sane one just to make some politically correct point. It would be irresponsible. And certainly not in the best interests of the child, right?

Why do courts tolerate attack psychologists in custody suits? Because invoking the opinions of "experts" both diffuses the respon-

sibility of deciding the impossible and buffers the judge from reversal on appeal. In addition, judges either buy into the validity of the testimony of the experts they so freely appoint, or use them at will to accomplish their ends. In what must be one of the most quoted of New York custody cases, *Nir* v. *Nir* from 1991, the appellate division of the state trial court wrote:

> This vigorously contested custody dispute was the subject of 13 days of trial testimony which included detailed and extensive testimony from several mental health professionals consulted by the parties both prior to and after the commencement of the instant action, as well as from a psychiatrist who conducted the court-ordered forensic evaluation of the parties and their child.
>
> Although the court-appointed psychiatrist found the wife to be the most "critically attuned parent to the needs" of the child, the expert testimony also revealed that she suffered from a personality disorder characterized by paranoid features. [It is interesting that so many women in divorce proceedings are found to be suffering from paranoia. Just because you're paranoid doesn't mean they're not out to get you.]
>
> While we are mindful that the Supreme Court also expressed concern over the husband's lack of "hands on" parenting experience, when this deficiency is balanced against the evidence concerning the wife's psychological disorder, and her pattern of distorting the truth, it cannot be gainsaid that the Supreme Court's decision [to grant sole custody to the father] is supported by a sound and substantial basis in the record. (Nir v. Nir, 1991)

That most psychological diagnoses of these hired and appointed experts are fictions that exist only in the minds of the people who make their livings coming up with them cuts no ice with the court.

CUSTODY WARS AND THE ISSUE OF ABUSE

In the Landau case, the New York appeals court found in the psychologist's report still further evidence of the mother's unfitness for the custodial role in addition to her diagnosed depression and "persecutorial" delusions. She accused the father of abusing his children.

Reporting Abuse

The court wrote that the mother's "unfounded allegations that the father had sexually abused the child, and physically abused her, are further evidence of her unfitness to act as the custodial parent." They cited *Nir* v. *Nir* for this part of their opinion (Landau v. Landau, 1995).

The issue of physical and sexual abuse is a legal snakepit for both accused and accuser and, unbelievably, even for those who make no such allegations at all. If the mother does make a claim that the father abused either her or the children, and the court does not find those allegations to be substantiated, then the allegations per se are taken as evidence that she is an unfit parent. Accusations of abuse that cannot be soundly corroborated can function quite easily as prima facie evidence of mental illness, making the mother an unfit parent by virtue of her "delusions" and her "unreasonable" bias toward the father of the children.

In *Young* v. Young, the appeals court wrote:

> Although the father had, during the early stages of the divorce action, stipulated to the mother having custody of the children, he moved . . . for a change of custody to him, with the mother to be given only supervised visitation, based upon what he claimed to be the mother's "bizarre and dangerous behavior" which was "calculated to destroy the children's relationship with [him]."
>
> We now turn to the underlying basis for [the psychiatrist's] recommendations for a change of custody; namely, the mother's constant interference with the father's visitation with the children. While the mother's interference took on many forms . . . its most pernicious form was the numerous false allegations of sexual abuse made by the mother against the father. . . .
>
> As Dr. Reubins indicated in his report, "She sees only before her the obligation to protect her children from her fear with no appreciation that the totality of allegations she has raised have been unfounded.
>
> "These repeated uncorroborated and unfounded allegations of sexual abuse brought by the mother against the father cast serious doubt upon her fitness to be the custodial

> parent." . . . The mother's conduct in this instant case was so egregious as to warrant a change of custody to the father. (Young v. Young, 1995)

Many courts and many judges understandably have little tolerance for false accusations of abuse, but the complexity of unsubstantiated abuse claims put parents in an intolerable dilemma. It is simply impossible to substantiate many cases of abuse, particularly where the abuse has left no clear physical sign, but that does not mean that abuse has not occurred. What is a concerned parent supposed to do when he or she is faced with the problem of suspected abuse that lacks physical corroboration?

Very few parents will take the route followed by Elizabeth Morgan, who sent her daughter to her grandparents in New Zealand while she herself went to jail for two years for refusing to concede that her daughter was in no danger from her father.

Making unsubstantiated allegations could lead to the loss of the suspicious parent's custody as well as visitation, but that cannot mean that it is reasonable to simply ignore abuse because it cannot easily be corroborated. Moreover, it is illegal to do so.

Failing to Protect Your Child

If the mother fails to bring an abusing husband or father to the attention of the authorities, then she is equally liable to lose custody of her children for failing to provide them with a safe environment. If the mother was herself abused by the man in question, then the courts may decide that she is an unfit parent for her failure to protect the children.

According to a review by Elizabeth Schneider:

> [T]hirty-five of the forty-eight states criminalizing child abuse include omissions as well as commissions in their definitions of the statutory offense, and eight states expressly define the crime of failure to protect.
>
> Most of the statutes frame the crime in terms of criminal child endangerment. . . . [I]n Maine, endangering the welfare of a child includes knowingly endangering "the child's health, safety or mental welfare by violating a duty of care or protection," and in Montana, a person may be found guilty of child

> endangerment for "violating a duty of care, protection or support." (Schneider 1992, p. 537; italics added)

Failure-to-protect laws, well-meaning though they may be, exacerbate the already complex issue of abuse allegations surfacing during custody disputes, putting parents between a rock and a hard place. Failure to act to stop suspected abuse puts the child at risk. But failure to substantiate charges of abuse leaves the parent at risk not only of losing custody but also of termination of all parental rights or even of going to jail.

It is precisely this impossible situation that throws already highly stressed and vulnerable parents to the mercy of self-styled psychoexperts who will either validate the charges or come to a determination that they are "unsubstantiated."

How do they validate charges of abuse that leaves no physical evidence? Through their clinical intuition, of course, applied to the "behavioral evidence." Judges go for this.

In a 1994 case decision, a judge in a family court of New York wrote, "It must be noted that behavioral evidence, albeit not tangible, is no less real than physical evidence. It is subject to the same criteria for admission as physical evidence" (Eli v. Eli, 1993).

Of course, this is only true if the "behavioral evidence" is evaluated by a certified psychological analyst of some kind like, say, a social worker.

> In the instant proceeding, the Family Court held . . . that the validation testimony of a social worker, Yael Layish, constituted sufficient corroboration of the aforenoted allegations of abuse. We agree with this ruling and disagree with our dissenting colleague's view that Ms. Layish was incompetent to serve as a validator. On the contrary, the credentials and competence of Ms. Layish are amply established in this record. (*Erika* K. v. *Steven K.*, 1991)

Many courts and many judges, as well as many parents, apparently believe that these behavioral analysts—these experts in child psychology—can indeed perform this impossible task with secret tools known only to the trade.

What secret tools? Well, first off, in addition to the ever-available clinical intuition, we've got those popular "anatomically correct" dolls—a stunning misnomer if ever there was one unless you think a Raggedy Ann–style doll with grotesquely caricatured genitals is anatomically correct.

In *Swift* v. *Swift*, the judges noted that at the family court level the judge had been treated to the "expert testimony of a certified social worker with the Broom County Family and Children's Society corroborating the child's hearsay statements by 'validation evidence,' i.e. a determination by means of various interview techniques, including the use of anatomically correct dolls" (Swzft v. Swzft, 1991).

Ms. Layish, the amply credentialed social worker in the *Erika* K. v. Steven *K.* case, likewise employed dolls with penises and vaginas in her validation evaluation. "In support of her conclusion that abuse had taken place, Ms. Layish relied heavily upon the children's demonstrations with the anatomically correct dolls. . . . [T]he children had been previously exposed to these dolls on at least two occasions."

Using the dolls, this social worker determined that a four-year-old child with an intact hymen had nevertheless been subjected to repeated acts of penile-vaginal intercourse. It is precisely this sort of incomprehensible "finding" that has led organizations like the American Academy of Child and Adolescent Psychiatry and the American Psychological Association to strongly counsel restraint in the use of such dolls and the interpretation of a child's play with these "toys."

Why don't they come straight out and tell people not to be damn fools? I have said it before, and I will say it again, there are no reliable, valid, mental or "behavioral" tests for suspected child abuse worth a damn. It is a shame. It makes the assessment of much suspected abuse pretty much impossible. But wishing that the situation was different does not change it. Pretending that it is different is a tragic farce.

The New York family court judge in the *K. v. K.* case, who was a big believer in "behavioral evidence," was a bit skeptical himself about some of the "tools" used by "validators" to judge abuse allegations. He dumped on the use of anatomically correct dolls, noting that "interpretation of doll play, even when made by experts . . . is of questionable value. Indeed, the State of California does not permit such evidence at all."

This judge wasn't very enthusiastic about the use of toy bears to evaluate abuse allegations either. "Ms. [Barbara] Pilcher, [a certified social worker], who has a psychoanalytical orientation, gave considerable weight to symbolism and the child's play with certain dolls, including a bear with a long nose, which nose she saw as a phallic symbol."

It is heartening that at least some of this foolishness meets with the occasional judicial rebuff. Sadly, though, even the most skeptical judge can be snowed by a pseudo-science blizzard. Consider the following from the judge's remarks in the Eli v. Eli case described above: "Of the three witnesses who gave expert testimony on sexual abuse issues, Dr. [April] Kuchuk had the most formal education, the most knowledge of the literature. . . . Her opinions in this case were based on experimental data in the sexual abuse area, of which she appeared to have encyclopedic knowledge. . . . [It is] Dr. Kuchuk's opinion that this child does not present classic signs of sexually abused children her age. . . . "

Unfortunately for the validity of this expert's opinion, there are no experimental data supporting the existence of "classic signs" of abuse for children *of different* ages, or, indeed, for children in general. That lack makes such "scientifically" couched opinions a shocking fraud, for parents, children, and courts alike. According to the authors of a major review of current research, "No one symptom characterized a majority of sexually abused children. Some symptoms were specific to certain ages, and approximately one-third of victims has no symptoms" (Kendall-Tackett, Williams, and Finkelhor 1993, p. 164). Whatever this expert may have told the court, she could not have been relying on scientifically reliable data to support her opinion.

We are better off with bear's noses and rag doll penises than we are with unwarranted assertions of scientific expertise where none exists. After all, just about anyone—outside of the truly devout Freudian—will find the phallic nose symbolism laughable, but who can laugh off claims of scientific proof? Perhaps these experts even believe their own claims.

HE WHO PAYS THE PIPER CALLS THE TUNE

How long does a psychological custody evaluation take? A review of New York State custody cases from 1990 through 1996 showed that some psychological evaluators saw the children and/or the parents for

as much as fifty hours; some never saw the subjects of their evaluations at all. Typically, the evaluative process last two or three hours. Then the expert has to write up the reports.

Courts seem to give more weight to the opinions of the evaluators who conducted the more extensive interviews. In one case, *Young v.* Young, cited above, the supreme court (the trial court) of New York weighed the competing evaluations of two psychiatrists so:

> In this case, after having spent *approximately 56 hours* meeting with and evaluating the parties and the children, Dr. Marc Reubins, the court-appointed psychiatrist, was of the opinion that it was "not in the best interest of the children to remain living in the house with their mother. . . . "
>
> [T]he opinion of the mother's expert, a Dr. Green . . . was concededly flawed. Dr. Green himself, who had interviewed the mother and children *for only a few hours* over a two-week period in February 1994, admitted that his qualification to make a custody recommendation was limited since he had not seen both parents and he had not seen the children interact in the presence of both parents. *Under these circumstances, little or no weight should have been accorded to his recommendation that custody be awarded to the mother.*

It clearly behooves the wary parent in a custody fight to make sure that his or her expert spends at least as many hours with any and all family members in all possible situations as the spouse's expert and the court-appointed one, if there is such.

This could get a little expensive. Costs do vary enormously from expert to expert and from place to place, of course (Manhattan, for example, is a very expensive place to have a disputed custody case), but if we figure a low of about $50 per hour and a high of $200, then hiring a well-credentialed expert of one's own for fifty-six hours would cost some $2,800 to $11,200. It seems a bit unfair since, clearly, the richer parent has a significant advantage here.

What Is in That Expensive Evaluation?

It is not clear, however, that the judges evince nearly as much interest in what, precisely, goes into the body of the evaluation—whether the psy-

choexpert simply chatted with parent and child, or whether he or she administered tests to buttress the subsequent opinion submitted to the court—as opposed to the time it took and the final recommendation.

What is in the report? The fruits of clinical intuition, of course, about which parent has the better values or which one is a little loony. What else would there be? Well, many evaluators do use a number of tests. There is the same problem with that as there is with any use of psychological tests to plumb the depths of the soul. They don't work. They can't work. (Psychological tests of reading ability and such things, by the way, are not too bad. It is when we get into soul-plumbing that the reach of testing far exceeds its grasp.)

Think about it. What would be the point of using the Minnesota Multiphasic Personality Inventory, for example? Is the evaluator going to match the child's little response profile code with one of the parents? Or decide which parent profile code correlates with more attractive parent-type attributes? That is absurd. How will the child's or the parents' responses on a personality test help determine the relative superiority of the parental knowledge, skills, abilities, and values of the mother and father? They won't. There are no tests to perform such a function.

Tests allegedly useful for determining which parent should have custody of a child are not worth a hill of beans—the very idea of such a test or battery of tests is absurd, so why do psychologists use them? Well, why not? They take time, cost money, beef up the report, and add a nice, if spurious, aura of authoritative substance to it. Besides, test results reassure our courts that something valid is taking place when an expert is hired.

Because of this assumption of test validity, it is crucial that any parent in one of these awful cases make sure that his or her attorney is armed with weapons powerful enough to bring down the missiles of tests that can be rained on the unwary parent—or attorney.

There are three such guns available, easily found in the reference section of most university libraries and good town libraries. The first is the massive *Tests* in Print, a regularly updated bibliographic encyclopedia of information on every published and commercially available test—some three thousand—in the areas of psychology and achievement. The second big gun is the book concisely entitled *Tests*, from Pro-Ed in Texas, that also lists the thousands of the most fre-

quently used tests in psychology, along with those in business and education.

Pro-Ed also publishes the critical volume for administering the coup de grfce to a test-heavy expert on the opposing side—a separate volume called *Test* Critiques that covers the administration, interpretation, and practical applications of the tests, along with *information* on their reliability and validity plus opinions of experts about their *usefulness* and limitations. Practical applications for this book in the courtroom abound.

Don't leave home with out these three. At least not if you are going to court.

SOLOMON'S SWORD

The APA has not taken a stand on whether forensic clinicians should present their scientifically empty opinions in custody cases to the court as the substantiated and definitive recommendations of an expert, saying, "[T]he profession has not reached consensus about whether psychologists ought to make recommendations about the final custody determination to the courts."

In actual practice, whenever a forensic clinician makes a recommendation about custody to the court, he or she is telling the judge who is the better parent for the child or who will be the "best match" for each child's needs.

Not all the practitioners who do custody evaluations are comfortable wielding Solomon's sword so boldly, Some are comfortable making recommendations only if they strongly feel that one parent is unfit, but not when both parents seem adequate. When confronted with a situation in which the two parents are equally fit, from a psychological assessment standpoint, to be custodial parents, then some psychologists state that it is not possible for the psychologist to have a *professional* opinion about which parent should have custody. These clinicians argue quite rightly that the evaluator's personal opinion should be irrelevant.

Custody evaluators on both sides of the recommendation issue would likely claim that it makes no difference whether they choose to decide between the parents because the court is free to disagree based on different information or on different weights of information.

Well, that is not so obvious.

In a recent Massachusetts custody case that reached national prominence, an appeals court threw out the custody determination made by probate and family court judge James Lawton that allowed each of two twelve-year-old twins to live with the parent of her choice. The judge in making that decision relied in large part on the wishes of the two girls. The appeals court felt that the judge did not give enough weight to *professional* recommendations that separating the twins would harm them emotionally. According to the Boston Globe, "The appeals court judge, Roderick Ireland, writing for the three-judge panel, said, '[A]ll of the evidence from a guardian ad *litem*, a school guidance counselor and a therapist for [one of the twins] clearly showed that the children needed each other to shield themselves from the turmoil that led to their parents' divorce and subsequent custody battle' " (Ellement, Boston Globe, July 19, 1996).

Maybe the girls themselves knew what they "needed" and maybe they did not. But it is as sure as the rising sun that those professional evaluators did not *know*. They had personal opinions about twins and the needs of children and the trauma of divorce, and they applied those general opinions to these individuals as if they were written in the stone of a thousand psychological studies. They are no such thing. That the supposedly objective recommendations offered to the court by forensic evaluators are no more than personal opinions arrived at through clinical intuition and the inevitable biases of the evaluator and then couched in a barrage of jargon and professional rhetoric does not mean that courts are free to disregard those opinions at will.

Weight given psychological testimony varies from judge to judge, from court to court, but whatever its true substantive value, it clearly behooves the parent who wishes to prevail in a custody suit to avail himself or herself of the most highly credentialed expert possible. And, as we have seen, one with plenty of time to spend on the evaluation.

By the way, it should be possible to further enhance your hired expert's credibility with the judge by matching him or her as closely as possible to the personal characteristics of the judge—gilding the portrait, of course, with those impressive credentials, thus combining the appeal of a peer with the weight of an authority—sort of like a judicial golfing buddy who looks like Marcus Welby.

There is another crucial issue here. Who is going to make all these custody decisions if professional child and family experts are not? Eliminating all those experts throws the business onto the shoulders of the parents to make the best claims they can, and onto the judges to call them as he or she sees them. That would be a better system than the one we have at present, at least in that the parent with more money would no longer be able simply to outspend the poorer in the parade of experts.

It would, however, leave parents stuck, without any hope of counterbalancing opinion, in the coil of the judge's own prejudices and biases. That is bad, but if we left it to the judges alone without any bolstering expert opinions, we would force them to lay bare their own prejudices for all to see. Perhaps that would force the law to become more explicit about what does and does not count in the parental superiority sweepstakes, but it is no wonder that judges do not want to find themselves all alone behind that eight ball.

It must be said too that in many cases of trying to determine what is in the best interests of the child, the judges—our judges, our courts—are simply desperate for advice on how to make right decisions because the very lives of children are at stake.

THE DEATH OF A CHILD

> The body of Michelle Walton was found on the second-floor landing of the Morton Street home of Anita and Charles Johnson, her foster parents, on Oct. 6, 1994. The Johnsons claimed the child was accidentally injured when 10 pieces of sheetrock collapsed on her. But Cambridge District Judge Arthur Sherman, who conducted a closed-door inquest last summer, has concluded [Michelle] was murdered. Sherman also found that [Michelle] was repeatedly sexually abused during her two-year stay in the Johnson home. Sherman's findings were unsealed yesterday. (Ellement and Grunwald, *Boston Globe*, October 11, 1995)

Michelle had been taken from her own home, where she had been neglected and mistreated, and placed in the care of a foster family. In their care, she died under the sheetrock. The foster family

said the child's death was accidental. The coroner said he could not determine the cause of death because the wounds on her body were so many and so varied. Whatever the cause—whoever the cause—a little girl is dead because neither her family nor her guardians were capable of taking the necessary actions to keep her alive. Her foster parents, the Johnsons, were never charged in this case. Neither was anyone else.

On November 27, 1995, in New York City, another little girl, Elisa Izquierdo, six years old, was found beaten to death by her mother. Everyone—teachers and neighbors—had noticed the child was limping and bruised and, eventually, no longer attending school. Five times child protective services personnel had been called in to help this child, to save her from what was indisputable abuse. Three times the department returned the child to her mother, deciding that it was in the best interests of the child to keep her in her home with the mother who was step by step killing her until at last she lay dead at the feet of the clinical social workers who had held her very life in their hands.

The fates of these two innocents are not that unusual. Some three hundred children each year in our country are killed by their parents or foster parents. Countless more are beaten, starved, exploited, and drugged in scenarios so ugly they could come, seemingly, only from the pen of the most sadistic of sensationalist writers.

THE BEST OF INTENTIONS

The problem of child abuse is not new, nor is our society's awareness of the desperate need of these children to be saved from the awful ministrations of their lawful caretakers. It was in response to their need that Congress passed the Child Abuse Prevention and Treatment Act in 1974, mandating that all adults in positions of responsibility with respect to a child are required to report to the proper authorities any known or suspected child abuse. No more could teachers, doctors, and nurses say that, yes, they knew there was a problem in that family, but it was really none of their business to do anything about it. For too long, out of a traditional, if somewhat myopic, respect for the privacy of the family and the rights of parents to rear and discipline their own children, state and federal government agencies had been most reluctant to venture behind the closed

doors of familial privacy even in cases in which the hurts of a child were impossible to ignore.

CAPTA, as the act is known, was a laudable and responsible attempt both to stop the carnage and to make clear that society did not accept the principle that parents have an unlimited right to abuse their children any way they wish, whatever their stated reason or excuse. The National Center on Child Abuse and Neglect collects and publishes national statistics on child abuse. According to the testimony of Senator Dan Coats before a Capitol Hill hearing, in 1963 there were 150,000 reported cases of abuse, in 1993 there were 2,898,000. Two thirds of these abuse and neglect allegations are unsubstantiated or determined to be unfounded, but that still leaves nearly a million children with documented abuse in a single year.

> Mental health professionals may be involved at all stages of legal inquiry in cases of child maltreatment. . . . If an evaluation is sought, it will probably be under a statute requiring a finding of harm as an element of abuse or neglect. In such a case, the clinician will usually be asked to determine whether a "mental injury" has resulted from maltreatment of the child. Thus, the evaluation will be focused on the child's mental status and, if significant disturbance is present, whether it was caused by trauma. (Melton, Petrila, Poythress, and Slobogin 1987, p. 320)

Revised in 1984, CAPTA today requires that any adult—whether in a position of responsibility with respect to the child or not—is required to report to child care authorities within thirty-six hours any known or suspected child abuse—physical, sexual, or emotional—and those authorities in turn are required to investigate the suspicion and, if it is confirmed, take steps to guarantee the safety of the child and to report the suspected abuse to the police.

Further—this is a critical provision of the law—any adult reporting such known or suspected abuse is *utterly* and *absolutely* ***immune*** to any sort of charge or prosecution, criminal or civil, for having reported the abuse to the authorities. This step was taken so that concerned observers who were justifiably suspicious but not certain that abuse had taken place would not be intimidated by the fear

of civil lawsuits to make their suspicions known to authorities who could protect the child who might be in danger.

That the need for a law such as CAPTA was great is undeniable. That the intentions of the lawmakers who drafted and passed the legislation were honorable also seems undeniable. But like so many well-intentioned attempts to heal society's hurts by legislating them out of existence, the law produced vast and unexpected ramifications and, in many cases, has caused as much hurt to as many children as the situation it was designed to correct.

THE ROAD TO HELL

In 1995, a veteran testified at a Senate subcommittee hearing on child protection:

> I am a retired chief petty officer in the United States Navy. I proudly gave twenty years of my life and my family's life to defend a way of life that I believed in and I repeatedly swore an oath to support and defend the Constitution of the United States, a document that I understood ensured the rights of the individual against the kind of institutional abuses, in the name of my government, that my family has endured.
>
> On May 9, 1989, my eight-year-old daughter was discovered to have been viciously sexually assaulted. This was discovered during a medical examination at a health care facility that my wife and I had taken Alicia to after she complained of pain. . . . Alicia informed the doctor and police detectives that someone had taken her out of her brother's window and had put her in a green car, drove to a secluded area and had hurt her, threatening to lull her if she cried out. Alicia gave a very detailed description of this individual. . . .
>
> Alicia was placed with a therapist [Kathleen Goodfriend] who immediately expressed her conviction that I was to blame and that Alicia was obviously covering up for me. [She convinced the court] that the only way to ensure Alicia's safety was to severely restrict her family's access to her as much as possible. . . .
>
> By early June of 1989, Joshua [my six-year-old son] had been added to the list of my victims by the social worker on

the case by submitting a charge to the court that "Joshua had been sexually molested and that he was in danger of being molested again." Joshua was never interviewed or examined by anyone.

In July of 1989, my wife and I were taken to trial on charges of sexual abuse and failure to protect for both Joshua and Alicia. . . . They told us a plea bargain had been offered. . . . My wife and I could plead no contest to a charge of neglect and after complying with several conditions. . . . Alicia would be returned home. They never intended to return Alicia to us. They blackmailed us into submitting a plea of no contest by promising to return our daughter. We did, and they then told us that Alicia's therapist had told the court that if they returned Alicia to us, I would kill her. Alicia was not returned, but the plea bargain stood. We lost our day in court. . . .

My wife went for 11½ months without seeing my daughter. I went from October 1989 till October 31, 1991 without any contact.

I was required to attend and "successfully" complete the following: 1. Individual therapy, twice a week, the object of which was for me to admit my guilt; 2. Group therapy in what was called a denier's group, with other men who had the misfortune to have been "accused" and found "guilty" of molesting [their] children. . . . The only acceptable graduation from this therapy is for you to admit your guilt; 3. Therapy with my wife in concert with other families who have been accused of similar crimes, twice a week. Again, the only acceptable conclusion to this group is to admit your guilt.

We discovered early in 1990 that the therapist and the foster mother had been telling Alicia that the only way she could come home was to tell them that I was the one who had hurt her. Alicia had complained to the social worker and asked for help, but her pleas fell on deaf ears. After 13 months of isolation and intimidation, in June of 1990, they succeeded in getting Alicia to say, "Daddy did it." . . .

I was at work at the air anti-submarine warfare headquarters on the 13th of December 1990 when they came for me. I

was handcuffed and led away. . . . At the court hearing in February of 1991 I remember the anger and frustration of having to sit in the court room, the absolute insanity of sitting there listening to my daughter tell a completely fabricated story of her assault. . . . This was the first time in 1½ years that I had seen my daughter or heard her voice.

When it became known to the juvenile authorities that DNA evidence was soon likely to clear me of the awful charges, they moved quickly. In August of 1991, we were summoned to juvenile court where the social worker, the therapist and the county counsel tried to have Alicia adopted away. . . . The blood sample reports . . . proved that it was not Alicia's biological father who had assaulted her and that whoever had assaulted her was sterile. . . . The county counsel then said that . . . it was immaterial to them who had actually perpetrated the rape. Alicia was being adopted out solely because we had pled no contest to a charge of neglect back in November of 1989.

With the intervention of the San Diego County Grand Jury . . . and the public support generated by a series of newspaper articles written by Jim Okerblom and John Wilkerson, Alicia was returned home. . . .

The price of this ludnapping into the compassionate world of child abuse prevention is difficult to calculate. My wife tried to commit suicide and was hospitalized for 9 months in a locked psychiatric ward. My children are afraid of policemen and others in authority. They have learned to fear those whom they should most be able to trust. . . . My son lost all of his friends and was told by their parents that he could not play with their children because his father raped his sister. Joshua was 6-years-old at the time. My parents spent their entire life savings trying to keep me out of jail. We spent 2½ years not knowing from one day to the next what they were going to take away next, just knowing and dreading the inevitable fact that more was coming. . . .

Above all, and, by God, most of all, I lost 2½ years of my daughter's life and my family's life, that we nor she will ever get back, and nothing that is ever said or done will ever make

> up for that. (Testimony of James B. Wade to the Senate Committee on Labor and Human Resources, Subcommittee on Children and Families, Hearing on Child Protection, May 25, 1995)

How could this happen? How could this innocent child be ripped from the bosom of her family, torn away from a security she must have needed desperately after the terrible injury done her by the rapist? How could an innocent man find himself accused and, indeed, to all intents and purposes, convicted of such a hideous crime against his own flesh and blood on the basis of nothing but the clinical intuition of the social worker assigned to protect his child?

"We Had to Destroy the Village to Save It"

How could what happened to the Wades happen?

> A 3-month-old girl suffocated in Spokane in February 1995 when her mother fell asleep with her on the couch and then rolled on top of her. "I guess I picked a bad night to get drunk," the mother reportedly told a friend. The crib was filled with debris and soiled diapers. (Wilson, Seattle Times, August 4, 1996)

It happened because of parents like this, because adults like this do such terrible harm to children that no state that is not itself corrupt can sit idly by and let such atrocities occur in the sacred name of parental rights. A decent society is responsible for the welfare of the future generation. Individuals cannot simply say of another's children, "They are not my problem."

Nor can society simply wait until the child is killed or permanently damaged to take action. CAPTA was deliberately designed to prevent the destruction of innocent children, not simply to jail their out-of-control parents after the damage was done. With prevention as a goal, it is neither necessary nor even desirable to wait until harm has been confirmed, until the perpetrator has been positively and certainly identified, to remove the child from harm's way. "It is better to be safe than sorry" is the motto of CAPTA, but, of course, the definition of what will be a sorry state is rather narrowly defined. What

CAPTA does to families is rather reminiscent of General William Westmoreland's famous—or infamous—remark about an incident in Vietnam: "We had to destroy the village to save it."

Prevention as the ultimate goal requires that everyone involved act not solely on the basis of knowledge but on the basis of suspicion alone.

Open Season on Powerless Families

Suspicion, under the law, is interpreted so broadly that even adults in a position to know better are required to take the flimsiest of allegations seriously. For example, if one member of a couple in the course of family counseling during divorce proceedings—an activity usually putatively undertaken to help keep people calm and ease the pain of family breakup—accuses the other of having been too harsh several years previously in disciplining the children, their family counselor is required by law to report the alleged long-past abuse to the child welfare services for immediate investigation.

Whatever the consequences for family counseling practice—and it does not bode well—the most immediate result of such reporting laws is a vast increase in the number of child abuse investigators required to check out all those reports. Just consider. The number of adults in real or nominal positions of responsibility for children—and thus required by law to report anything suspicious—is vast indeed. Most children have two or three teachers of one type or another, a school principal and nurse or guidance counselor, a family physician or therapist or counselor or some kind, priests or ministers, scout leaders, camp counselors, and day care workers, to name just a few of the more obvious adults who come into contact with children while in some position of authority over them. Each and every one of these people is required by law to report any suspicion of abuse of whatever kind immediately after they suspect it, even if the suspicion is based on nothing more than a spiteful and unsubstantiated allegation made by another adult.

Nearly three million reports of known or suspected abuse are received by state child welfare agencies each year. Each and every one of these three million must be investigated promptly, and not by insensitive cops or untrained citizens. Oh, no. Proper investigation requires the clinical sensitivity of the trained professional.

Wow! An indefinitely expanding, virtually unlimited, full employment bill for child welfare workers. What a boon for the industry. And industry it is. In response to the growing demand for trained professionals in child welfare and family psychological functioning to investigate these three million abuse allegations a year, child welfare bureaucracies have swelled their ranks until they burst their buildings at their seams overflowing into the space and budgets of all other state agencies.

It is open season on helpless families and the number of hunting licenses out there is truly astronomical.

The Rape of Parental Rights

How could this happen? It was inevitable, given the way the law was written.

The law took parental rights away from parents and effectively vested those rights in paid professionals who claim that their knowledge and their training makes them better parents than parents themselves, and better judges of the best interest of the child than parents, police, or the courts. Before their awesome authority—and their vast armamentarium of claimed knowledge—all the amateurs in the child welfare business must fall silent and bow the knee. The legislators bought their claim of unequaled expertise; the police and the courts have no choice but to buy it as well.

That the scientific basis of their claimed superior knowledge is as insubstantial as smoke hardly gives the paid child professionals pause. Why should it?

The mental health professionals who serve as forensic evaluators in child maltreatment cases have no way at all to determine whether a particular individual harmed a child or even whether a particular child was harmed on the basis of psychological or behavioral rather than physical evidence. There is no clear pattern of behavior exhibited by all battered and abused children. And there is no clear pattern of behavior to identify adults who harm children, despite pseudo-scientific efforts going so far as to create a "syndrome" supposedly typifying batterers.

> The review of the literature indicates that the scientific basis for the battering-parent syndrome is very weak. . . . Psycho-

> dynamic researchers have not succeeded in identifying a consistent pattern of traits common among abusers. Gelles found that at least two or more authorities agreed on only 4 of 19 traits reported in the literature. . . . When [this evidence] is used in combination with medical evidence as to the cause of physical injuries, it is likely to be highly prejudicial and misleading. (Melton, Petrila, Poythress, and Slobogin 1987, p. 315)

Quoting a 1972 review in *Psychological Bulletin* of battering parent studies by Spinetta and Rigler, the authors continue, "While the authors generally agree that there is a defect in the abusing parent's personality that allows aggressive impulses to be expressed too freely, disagreement comes in describing the source of the aggressive impulses" (Melton, Petrila, Poythress, and Slobogin 1987, p. 315).

There is a defect in parents who beat up their children that allows them to beat up their children? That is so vacuous it is hard not to laugh.

> A mental health professional may also be asked to give an opinion as to whether a child has been abused. However, it is hard to imagine careful psychological testimony that would be very helpful to the fact finder. Although child maltreatment is certainly not benign in its psychological effects, the behavioral signs are not distinguishable from those seen in other clinical populations. (Melton, Petrila, Poythress, and Slobogin 1987, p. 321)

Linda Meyer Williams, who, along with her colleagues, conducted the oft-quoted emergency room "amnesia" study (discussed in chapter 9), was also the co-author of another very interesting study published in 1993 in the *Psychological Bulletin* and noted briefly earlier. She and her colleagues reviewed some forty-five separate studies of child victims of sexual abuse in which all the children were eighteen years of age or younger. They were attempting to determine whether the child (eighteen is very old for such a study!) who has been abused is in any way distinguishable, at least to the eye of a trained expert,

from a child who has not been abused. They found that no particular symptom or cluster of symptoms or syndrome differentiated abused from unabused children, and that about one third of the abused children showed no symptoms at all (Kendall-Tackett, Williams, and Finkelhor, 1993).

These studies make it very difficult for any expert—whatever the impressive list of credentials—to claim that he or she can infallibly detect either an abuser or a victim of abuse.

Then what are these so-called professionals doing in court expressing their utterly unfounded opinions one way or the other about these matters? They have no knowledge, but they do have the power.

The law was written to place the power in the professional's hands; the entire legal system set up to deal with abuse of children is predicated on there being child professionals—psychologists of one type or another—on whom the rest of us can rely to determine the best interests of the child. Someone has to fill the bill and there are about 100,000 diplomas out there claiming that right to do so.

These people are supposedly trained, and they are certainly well paid, to tell the rest of us what is wrong with a particular child, if anything, who did it, and what should be done for the child. We want them to make these judgments. We beg them. The law demands it of them. Of course we get what we ask for.

Carol Lamb Hopkins was the deputy foreman of the San Diego County grand jury that reviewed the country's juvenile dependency system in 1995. She was also a member of the San Diego district attorney's ad hoc Committee on Child Abuse. In her testimony to the Senate subcommittee's hearings on children and families on May 25, 1995. she said:

> I could share anecdotal stories about the destruction of families, the insensitivity of social workers, the collusion of juvenile court judges, which might well cause you to decide that the damage done to children and families in the name of child protection far outweighs the good. . . .
>
> It is time to bring common sense to our justice system and to recognize that the protection of children is almost always synonymous with the protection of families. We cannot

> allow the protection of family to be the rhetorical claim of any one political agenda or segment of the system. I strongly believe the protection of the family is essential to the protection of our society and essential to the survival of a healthy democracy.

Abuse of Immunity

Both willful blindness and fairy tales have served as the basis for breaking up families, removing children from their homes, and placing them in foster homes where they are quite likely to be abused; and they have resulted in numerous criminal charges being brought against adults targeted by the tales.

Why aren't those professional validators a little worried about making allegations so bizarre that it would seem that no one in his or her right mind could possibly take them literally? If they are not worried about harming others, shouldn't they be a little worried about getting sued for irresponsibility? Well, no.

In an unsurprising extension of the immunity granted to those who report suspected child abuse, the courts have ruled that immunity also shields the activities of the authorities—the child care professionals—who are called in to investigate those reports. It is this extension of immunity that allows doctors and nurses, social workers and psychologists who induce children to make bizarre allegations to do so without any fear of retribution.

One might think that at least in cases in which the defendants were found not guilty that someone, somehow, would be held responsible for dragging both the helpless children and the innocent accused into court, but it is not so, not even when the allegations are of so extreme and nonsensical a character that if uttered by any but the certified child care professionals, they would land the utterers in a safe environment for evaluation themselves.

The abuse evaluator is immune as well from the charge of having irresponsibly violated all sense of ethics, decency, and even common sense.

> Ray Buckey and his mother, Peggy McMartin Buckey, were found not guilty Thursday of molesting children at the family-run McMartin Pre-School in Manhattan Beach, a ver-

> dict which brought to a close the longest and costliest criminal trial in history. An eight-man, four-woman jury—10 of the members parents themselves—acquitted the Buckeys of 52 counts of molestation after deliberating for nine weeks over evidence that had been presented over the course of more than two years.
>
> The acquittals concluded the longest criminal trial in history, a case that stemmed from a 2½-year-old's report to his mother six years ago that he had been sodomized at his school by a "Mr. Ray." The case ultimately cost taxpayers more than $15 million, altered scores of lives and careers, and provided a national focal point for the issue of child abuse. (Timnick and McGraw, *Los* Angeles Times, January 19, 1990)

When the McMartins of the famous day care abuse case were finally vindicated, they sued Kee MacFarlane, the child psychological specialist who interviewed the children, as well as the corporate entity for which she worked. The California court ruled that they could not sue Ms. MacFarlane—or Children's Institute International—for her role in the raising of bizarre allegations like hot air balloon molestation and tunneling trips to graveyards to dig up graves and hack up corpses because she was just doing her job under the shield of immunity. Immunity applied because her investigations arose directly out of the initial reports of abuse (*McMartin* v. *Children's* Institute International, *California*, 1989).

Extraordinary. If the initial cause is just, then any evil in its service is justified?

In the case of Wade, the naval officer above, the situation turned out a bit better in the end. In part this was because a very interesting series of events had been taking place during the family's ordeal but unknown to the Wades. It happened that a convicted sex offender was being tried for abducting and molesting children in the very neighborhood where the Wades lived with their daughter who was raped. The so-called therapist and abuse specialist never told these poor parents, although both professionals were aware of it all along.

When the facts came out, the Wade family sued their daughter's "therapist," Kathleen Goodfriend. The California Court of Appeal

found that for the family therapist Kathleen Goodfriend, her supposedly "therapeutic" activities extending over a two-and-a-half-year period after the initial report of the abuse "had nothing to do with the child abuse identified and reported at the outset by the hospital. [The] alleged coercion of Alicia continued over the next two and one-half years—long after any 'emergency' had passed, after Alicia was out of harm's way, and after the authorities were actively involved, investigating and prosecuting.

"To hold such conduct protected is to immunize virtually anyone coming in contact with an abused child. We do not believe such an interpretation is warranted by the reporting statute" (*James W. et al. v. Superior Court of San Diego Co., Kathleen Goodfriend et al., 1993).*

Following this decision, the Wade lawsuit was settled, for a total of $3.7 million. The county paid about $750,000 for its share of the damages.

In most cases the injured family is without recourse. "I was just doing my job." Doing it badly doesn't seem to have a negative impact on the pocketbook either. Kee MacFarlane, despite the overwhelming rejection of the bizarre allegations of nursery school children undertalung grave robbing and corpse mutilation that appeared over the course of her interviews with the children, still works as a clinical child psychologist and commands hefty fees as a speaker on her experiences.

None of this should come as a surprise to anyone. Abuse of immunity is inevitable. Where there is no accountability, there is no responsibility. It is as simple as that.

IT IS A TOUGH JOB

The abuses and excesses of so many child welfare specialists should not be allowed to obscure the indisputable fact that there are many decent, caring, hardworking professionals who do their absolute best with huge caseloads to help the children as well as they can be helped with the psychological tools available. It would be cruel and ungrateful and stupid to say otherwise.

The problem for them and for us is that the psychological tools just do not exist for them to do their jobs, and no one can or is willing to admit that. It is just too difficult to deal with the awful

reality that in the three million annual cases of alleged abuse, our already overworked police forces would be called on to investigate and make determinations essentially without any evidence at all of where, with whom, and by whom abuse has occurred. Who can blame the police and the prosecutors' offices—along with our courts—for wanting the assistance of professionals who know what they are doing?

It is just too bad that there are none available.

Both in custody cases involving allegations of grave risk to children in the home, and in cases arising where parents cannot agree on custody for reasons both profoundly serious and dismayingly foolish, our judges—our whole family legal system—desperately seeks guidance about where to find and where to place the best interests of the children involved. Agencies, parents, and judges alike turn to psychological professionals to help them find the truth or make their case.

Our common desperation seems to have produced the common delusion that experts actually exist who really can determine with the unerring instinct of a homing pigeon exactly where the best interests of a child lie, where a child should live, whether and how a child has been hurt, how a child should be protected, who will be the superior parent, and who is unfit to be a parent at all, who should have the right and the duty to care for a child, who should see the child only under restricted conditions, and who should be kept away from the child altogether.

Acceptance of their expertise has led us to trust professionals to make these decisions for the family court system. That means ultimately that we also grant them the power to make these decisions for our own families. The abstract need of society to protect its children becomes inevitably the rape of the rights of the real parents of individual children. Once again, the institutionalization of society's desire to "do good" results in terrible harm for those in the path of the do-gooders.

The marriage of law and psychology has reached the heights of disproportionate power for the psychologists not just in family courts but in all legal disputes in which a psychological matter is at issue. Judges buy the validity of the expertise of the confident psychological practitioner and no doubt welcome the opportunity to make their

own decisions on some foundation other than personal opinion and bias.

It is this understandable desire that has led to the recent explosion in our courts of cases alleging mental and emotional — psychic — injury, all requiring the expert testimony of the psychological witness.

9
Remembrance of Things Past

Psychic Injuries from Long Ago

> It is important to stress that, in considering the admissibility of repressed memory evidence, it is not the role of the court to rule on the credibility of this individual plaintiff's memories, but rather on the validity of the theory itself. For the foregoing reasons, the Court hereby denies the Defendant's Motion in Limine to Exclude Repressed Memory Evidence. For the law to reject a diagnostic category generally accepted by those who practice the art and science of psychiatry would be folly. Rules of law are not petrified in the past but flow with the current of expanding knowledge.
>
> Edward F. Harrington, United States District Judge,
> District of Massachusetts, Shahzade v. Gregory, May 8, 1996

THE JUDGE AND THE EXPERT WITNESS

In the spring of 1996, in Massachusetts, an elderly woman brought suit against her equally elderly male cousin from California for wrongs he allegedly had done her nearly half a century before.

Ann Shahzade, sixty-eight, claimed that from the time she was twelve years old until she was seventeen, her cousin George, five years older than she, had subjected her on a number of occasions to nonconsensual sexual touching.

Ann claimed also that she had been so traumatized by these events that she repressed all memory of them despite frequent con-

tacts with her cousin over the years, with frequent loans from George to Ann. In 1991, during a course of psychotherapy when, coincidentally, her cousin refused to lend her an additional $30,000, Ann said she regained her memories of the numerous incidents of fondling of fifty years ago; she subsequently sued her cousin for damages.

Her cousin, George, objected to Ann's suit, arguing that the touching was consensual and, moreover, that suing fifty years after the alleged tort vastly exceeded the statue of limitations for a personal injury suit. Further, George claimed that Ann's failure to bring suit earlier could not possibly be due to traumatic repression with memory loss because no such thing existed in science.

U.S. District Judge Edward Harrington, of the First Circuit, heard George's objection and issued a ruling in May 1996, declaring that, at least for the First Circuit, repression of memory due to trauma—along with its long-delayed recovery years after the traumatic events—had been firmly established in science. Thus, Ann's civil suit could go forward, fifty years old or not.

In reaching his decision, Judge Harrington relied strongly on the testimony of Dr. Bessel van der Kolk, the psychiatrist from Harvard University Medical School whose work on trauma and memory was briefly described earlier. Dr. van der Kolk told the judge that repression was a scientific fact. Judge Harrington wrote that an expert witness claiming that a theory is scientific "must testify as to whether that theory can be, or has been, tested or corroborated, and, if so, by whom and under what circumstances, whether this theory has been proven out . . . whether the theory of repressed memory is widely accepted in the field of psychology. Dr. van der Kolk's testimony satisfies these fundamental factors" *(Shahzade* v. Gregory, *1996).*

In an interesting application of modern technology, when the judge made his ruling accepting that the psychological evidence was truly scientific, the Harvard psychiatrist and trauma specialist had the ruling broadcast all over the Internet. The broadcast was no doubt in the interests of science rather than for the purpose of personal advertising.

"Scientific" Evidence Cited by the Expert

> Yesterday, the expert witness, Dr. Bessel van der Kolk, testified that the phenomenon of repressed memories among

> trauma victims, especially those suffering childhood sexual abuse, is widely accepted by scientists and doctors. (Rakowsky, Boston Globe, April 10, 1996)

In support of his assertions, Dr. van der Kolk told the judge that he relied on a study by Judith Herman, who teaches in the Department of Psychiatry at the Harvard Medical School, and Emily Schatzow, who is Dr. Herman's colleague at the Women's Mental Health Collective in Massachusetts, on incest victims who were said to "recover" their lost memories through group therapy.

Dr. van der Kolk swore to the judge that with this study Dr. Herman and Dr. Schatzow have provided the world with unshakable proof that traumatic repression of the memories of childhood sexual abuse is common. The judge believed him.

As Judge Harrington explains:

> One such study, which Dr. van der Kolk referred to as the Herman and Schatzow study, looked at victims of sexual abuse and found that only approximately one-third of the victims remembered all the details of the abuse. Another one-third of the victims had a partial memory of the abuse, while the final one-third of the victims remembered nothing relating to the abuse. Dr. van der Kolk stated that these figures represent "the sort of figures that every study comes in with, regardless of what the methodology is. . . . " (*Shahzade* v. Gregory, 1996)

Let's look at this study "proving" traumatic repression and recovery of memory.

The Miracle of Amnesia

> In group, Doris initially reported almost complete amnesia for her childhood. She spoke little until the sixth session, when she began to moan, whimper, and wring her hands. In a childlike voice she cried, "The door is opening! The door is opening!" She was instructed to tell her memories to go away and not to come back until she was ready to have them.

> This she did, first in a whisper, and then in a loud voice. Her anxiety then subsided to bearable levels.
>
> In the three weeks following this session, Doris was flooded with memories which included being raped by her father and being forced to service a group of her father's friends while he watched. The sexual abuse began at about the age of six and continued until the age of twelve, when she was impregnated by her father and taken to an underground abortionist. (Herman and Schatzow 1987, p. 9)

It should be noted here that "Doris" is not a real patient. She is just a made-up case used by Drs. Herman and Schatzow to illustrate the findings of their "study." Clinicians often do this, the burden of finding authentic illustrative cases apparently being too heavy.

For the real women who were part of the incest survivors therapy group run by these two therapists, 26 percent of the patients had no memories of sex abuse *at all.* Yet the therapists write that the women who can't remember being abused at all suffered the abuse at a younger average age (4.9 years versus 10.6 years) than the ones who did remember. How can they possibly know the age when the abuse supposedly occurred if the women don't remember anything about the abuse at all?

What are these women doing in an incest survivors group in the first place if they can't remember any incest? Ah, but after a while they can.

> Participation in group proved to be a powerful stimulus for recovery of memory in patients with severe amnesia. During group therapy, more than a quarter of the women experienced eruption into consciousness of memories that had been entirely repressed. (Herman and Schatzow 1987, p. 8)

Are their memories true accounts of what actually happened to these women as children? Well, who is to say that they are not? They seem true to the patient. They were accepted as true by the therapists. Why should the patients in such a circumstance doubt the authenticity of either their memories or the supposed process of "losing" and "recovering" them?

Since the majority of their patients—64 percent—"discovered" some new memories of child abuse in therapy, Herman and Schatzow classified the majority of their patients as having "some degree of amnesia" due, of course, to traumatic repression.

Amnesia due to repression?

Is this proof of repression—proof that the trauma of incest forced those memories out of the reach of consciousness? It is no such thing.

They are actually reporting only that many women who have no memories of incest—who nevertheless join an incest survivors therapy group on the recommendation of their therapists—do, in time, claim to have memories of incest.

This study is proof of nothing. We can have proof of repression and recovery of memory only if we have no other explanation for the absence of memory before the women joined the group and then the presence of memory some time after they had joined it.

Are there no other possible explanations? Sure there are.

What might be possible reasons for the failure to remember? Perhaps some of these women chose not to think about what happened to them; many victims of sexual abuse may choose to turn their minds from the unpleasant memories. Perhaps some of the women were so young at the time of the abuse that clear memories will forever be impossible for them.

And, perhaps, for some of the women who have no memory of abuse, the abuse just did not actually happen.

Can the researchers rule out the possibility that the memories were simply created by the patients and by the therapists who believed that patients in an incest therapy group should have memories of incest, who believed that in time they would have them—and have them they did? No.

Unless Herman and Schatzow can rule out all of these confounding factors, they cannot possibly conclude that amnesia due to traumatic repression is the only explanation for the lack of memory. Because these researchers chose essentially to control nothing in their "study," they can conclude, essentially, nothing.

Imagine, for example, that you find that money is missing from your purse that had been sitting on the kitchen counter next to the refrigerator where your son and a neighbor kid had been standing. You

cannot jump to the conclusion that the neighbor boy took the money from your wallet without first ruling out all other possibilities. That is not just good science; it is simple common sense.

How could Dr. van der Kolk tell Judge Harrington that this hopelessly confounded example of junk science constituted scientific proof for repression of memories of trauma? It seems impossible that anyone could do so.

Maybe judges should be required to read the psychoexpert's source material themselves instead of relying on some expert to summarize it for them. A lot gets lost in the translation.

Trauma in **the** ER

Dr. van der Kolk also told the judge that repression was scientifically proved in a study by the sociologist Linda Williams on women's reporting memories for child abuse incidents that occurred seventeen years earlier.

As Judge Harrington explains:

> A study conducted by Linda Meyer Williams, which Dr. van der Kolk referred to as "the best study on all of this," further validates the theory of repressed memories. As a graduate student in psychology at the University of Pennsylvania from 1973 to 1975, Ms. Williams did her doctoral dissertation on sexually abused children who had been treated at the Philadelphia Children's Hospital. She conducted extensive interviews with young women who had been sexually abused, and her dissertation detailed the experiences which they had undergone.
>
> Seventeen years later, as a research psychologist, Ms. Williams reinterviewed patients who had been the subject of her dissertation to see what impact the earlier sexual abuse had on their later life. She was able to locate about half of her original subjects, and after reinterviewing them, she found that thirty-eight percent of her patients no longer remembered the abuse.

(Ms. Williams is actually Dr. Williams and has a Ph.D. in sociology, not psychology.)

Note that Dr. van der Kolk told the judge that the Williams study was the best ever done on the repression of traumatic memory. Let us look at the best study ever done.

In a 1992 issue of The Advisor, a newsletter for an organization of professional child abuse experts, Linda Williams, a member of the organization's board, reported the results of interviews she and colleagues conducted with women seventeen years after they had been brought as young children to the emergency room of a city hospital for suspected sexual abuse.

Williams claimed that, "38% of the women were amnestic [sic] for the abuse or chose not to report the abuse to our interviewers 17 years later." Leaping to generalize her findings, she concludes, "These preliminary findings suggest that amnesia for sexual abuse in a community sample is not an uncommon event."

Amnesia? For unfathomable reasons, psychological amnesia is almost as popular with clinicians who specialize in sex abuse as it is with Hollywood writers. Williams is saying exactly what Herman and Schatzow said—that the trauma of the abuse was so great that the children probably repressed their memories of it.

Did Linda Williams really find that over a third of women who were abused as children had "amnesia" for the abuse seventeen years later? No, she didn't. She discovered that 38 percent either did not remember the incident or did not choose to tell her researchers about it. Dr. Williams never even asked the women directly whether they remembered the abuse. She did not hand them the hospital report and say, "See this? Now remember?" She has no idea what would have happened had she done so.

Is this proof of amnesia—proof that the trauma of childhood abuse forced those memories out of the reach of consciousness? As above, it is no such thing.

Williams's study, like that of Herman and Schatzow, is proof of nothing. Williams can argue that she has scientific proof of repression if and only if there is no other explanation for what happened with these women.

Are there no other possible reasons than amnesia to explain why 38 percent of the interviewed women failed to report an incident of child abuse from seventeen years before? Sure there are.

Her youngest subject was ten months old at the time of the

reported abuse. Ten months old! Just how much does anyone remember about being ten months old? Or one year? Or two? Or even three or four?

Also, for many of the children, the reported abuse consisted only of "touching and fondling." What's a child supposed to think about inappropriate touching and fondling? It is likely that such actions were uninterpretable and nontraumatic for the younger children.

It's important to consider too that there was no physical trauma in 34 percent of the cases, and in 38 percent no physical force was reported. For molestation that leaves no physical evidence, with young children one often has only the word of the mother or other caretaker that the abuse actually occurred. Maybe nothing happened. Maybe the mother was overly conscientious. Maybe she was angry at someone. Who knows?

In addition, the women in this study were from inner-city families who used the hospital emergency room as their primary health care provider, so there is nothing that would make a visit to the ER stand out for these children. Did Williams test to see how many of the other visits to the ER in the course of their childhood these women remembered? Did she find out what percentage of visits they forgot? And what kind of incidents they forgot? She did not. She didn't test how well or how much nonmolested adults remember about their trips for medical care as children either. She has no idea what kinds of injuries or sicknesses get forgotten over seventeen years.

There is nothing at all remarkable about the failure of 38 percent of Williams's subjects to relate an incident of reported sex abuse from seventeen years prior to the interviews. It would be completely unbelievable if 100 percent of them had remembered the incidents.

When something does *not* happen in a study, when women do *not* describe to interviewers a particular incident of reported abuse, the researcher *cannot* conclude that there is only one possible reason—amnesia!—for the absent finding. There are any number of possible reasons a particular finding does not show up in a particular study.

This study, along with that of Herman and Schatzow, belongs in the dustbin of junk science, not in supposedly authoritative legal briefs handed to our legislators and judges.

This study actually had nothing to do with repression at all. There were so many other reasons for the women's failure to report that single incident of abuse, no researcher could claim, with any degree of honesty, that repression was the sole possible reason, or even the most likely. It was no such thing.

Perhaps expert witnesses do not swear "to tell the truth, the whole truth, and nothing but the truth," but they should be required to do so if they do not. Dr. van der Kolk apparently forgot to tell the judge some additional crucial facts about Dr. Williams's study.

To quote from the 1979 book The *Aftermath* of Rape, written by Linda Meyer Williams with her colleagues Thomas McCahill and Arthur Fischman, the book that reported the original data:

> "Finally, child victims [under twelve] of rape [broadly, statutorily defined] exhibit the fewest *short-term* [one year] adjustment problems. In many cases, the nature of the event [or events] is merely confusing. Whereas the event is disturbing to the victim, it is perhaps no more disturbing than so many other aspects of a child's life. In the first year following the rape, the victim's family may deliberately maintain an "everything-is-normal" posture. These efforts, combined with the child's natural tendencies to forget and to replace bad feelings with good feelings, usually result in the appearance of few adjustment problems. . . . The changes that did appear were often difficult to attribute to the rape, as they may have reflected normal developmental growth and change. (Williams, McCahill, and Fischman 1979, pp. 44–45)

Why would Linda Meyer Williams have expected the "well-adjusted children" with their "natural tendencies to forget" to report a "merely confusing" event from seventeen years in the past to her interviewers in the 1990s?

Why would Dr. van der Kolk have neglected to share the earlier data on the lack of trauma in the child rape victims with the judge before whom he is testifying about trauma and memory? It is extremely hard to understand.

Dr. van der Kolk presented the Williams study to Judge Harrington as "the best" there is to prove "scientifically" the existence of

repression. He was right about that. It is the best there is, and the best is really, really bad.

Most bewildering in the shabby display of pseudo-evidence for the existence of repression paraded before the judge in *Shahzade* v. *Gregory* is the research conducted by the number one expert-for-the-plaintiff himself, Dr. Bessel van der Kolk. Dr. van der Kolk testified that he conducts research on trauma using what he thinks of as advanced, sophisticated, neuropsychological techniques.

Dr. van der Kolk asserts that we have a special video trauma memory that works according to different rules than ordinary memory. He claims that while ordinary memories of such events as, for example, your first day at college, will indeed be distorted, decomposed, selectively highlighted, and badly contaminated both by what transpired before and what occurred afterward, memories of traumatic events are etched indelibly and unalterably into the very synapses of the brain.

Is there any evidence that special video trauma memory is a fact? No. But Dr. van der Kolk claims to find that when patients are asked to remember horrifying events in their lives like the death of a child in a car accident, their PET scans look different than they do when the patients are asked to think about getting up, brushing their teeth, and going to work. A PET scan is a picture representing the amount of brain activity in different colors. Dr. van der Kolk hooks up volunteers to the PET scanner—the machine that measures brain activity and makes the picture—and asks them to remember something terrible. He takes a "picture." Then he asks them to think about brushing their teeth. He takes another picture. The pictures look different.

What can one conclude from that? Nothing.

How do the PET scans look when the patients think about an event that was unpleasant but not horrific, like having your car stolen? Who knows? How about a highly emotional event like a wedding day or an episode of adultery? Do they look more like traumas or teeth brushing? Nobody knows. What do the scans look like when the patients are asked to fantasize a horrifying event instead of remember one? Nobody knows.

It wouldn't make any difference if we did have answers to all these questions. Whether PET scans vary when subjects think or fantasize about various types of events cannot prove that anyone has a

trauma engram etched in his or her brain. How could it? And there is no logical connection between distinctive PET scans and Dr. van der Kolk's favorite pseudo-phenomenon, flashbacks. There is no necessary connection between distinctive PET scans and indelible memories.

For example, let us say that my PET scans always look different when I fantasize than they do when I remember real events. Would that necessarily mean that my memories of real events were exact and accurate? Of course not. There are innumerable reasons why the two classes of scans might differ.

Researchers who jump on "the special indelible character of trauma memory" bandwagon as the only possible explanation are simply bamboozling the public. This bamboozling is especially intimidating when it is sprinkled with a hefty dose of neuropsychology jargon. What is the poor layperson supposed to say? "I don't buy that PET scan stuff!" Of course not. Who would be so bold? That's why we have experts to explain these matters to the lay public. Nevertheless, fancy terms and expensive technology aside, no one ever has shown that memories of trauma have special etched-in-the-brain characteristics. Dr. van der Kolk's research certainly shows no such thing and he had no business telling the judge that it did.

Dr. van der Kolk was testifying about this research to prove that repression of memory due to trauma is a scientific fact. He seems to have forgotten for the purposes of his research the paradox that if his subjects are able to focus their minds on the memory of a "traumatic" event, then, by definition, that event was not repressed out of memory due to the trauma or they couldn't have been thinking of it during the experiment.

Of course, even if Dr. van der Kolk had avoided this crippling difficulty, his PET scan experiments cannot be said to have even the vestiges of control.

Who Needs Good Science?

Is there any scientific evidence that repression, in the sense that "researchers" like Herman and Schatzow, Williams, and van der Kolk mean it, actually exists? What they mean by repression is, "Something terrible happened to me and it was so awful that I *cannot* remember it, try as I will, and my failure to remember is not because I was too frightened to pay attention to what was happening,

and not because I was hit on the head, but only because my mind is trying to protect me from the pain of the awful memory."

People like this story. It has an inherent plausibility—at least to the ear of psychologized Americans. It makes sense. Well, not to me. Psychologically, I'm from Missouri. Show me. Where's the sound, scientific—carefully controlled and unconfounded by floating variables and researcher bias—proof that repression exists? There is none.

David Holmes, in a recent comprehensive review of all of the evidence on repression, found that:

> despite over sixty years [it is over seventy years now] of research involving numerous approaches by many thoughtful and clever investigators, at the present time *there is no controlled laboratory evidence supporting the concept of repression.* It is interesting to note that even most of the proponents of repression agree with that conclusion. However, they attempt to salvage the concept of repression by derogating the laboratory research, arguing that it is contrived, artificial, sterile, and irrelevant to the "dynamic processes" that occur in the "real world." (Holmes 1990, p. 96)

Our George Franklin murder trial expert, Dr. Lenore Terr, takes exactly this tack. Dr. Terr, in describing her trial testimony in *Unchained Memories,* wrote:

> I explained why clinical studies of people who have undergone traumatic events are the best way we currently have to understand how these events are perceived, stored, and recollected. It was important that the courtroom "finders of fact" see that there are great differences between the mistakes that a group of kidnapped children will make, or that a raped little girl will make, and the mistakes a college student in a psych lab, for instance, will make after watching a movie of a simulated automobile accident. (Terr 1994, p. 51)

Dr. Terr packed a lot into that piece of testimony. She was saying that having a horrible experience is different from having an experience that is not horrible. That is undeniably true on some level

if not all levels. She is saying also that adults are different from children. Also manifestly true in many but not in all respects.

Most important, she is saying that her interpretations and intuitions, and those of other clinicians, are a far better source of reliable and valid information about memory and trauma than are scientific studies of memory that do not involve actual trauma.

Now, that is a self-aggrandizing claim with no substantive scientific support whatsoever. That clinicians think they are great judges of how the mind works does not make them great judges of how the mind works. It just makes them clinicians.

In an outpouring of pride in the infallibility of her clinical intuition, Dr. Terr writes, "Psychological experiments on university students do not duplicate in any way the clinician's observation" (1994, p. 51).

That is actually a strange and rather pathetic statement. A reasonable person might expect that at least some of the clinician's observations ought to be scientifically verifiable. If a clinician's observations cannot be duplicated *in any way* by scientific psychological experiments—whatever the age or educational status of the subjects—then something is seriously wrong with the clinician's observations. It is hard to imagine why anyone in the medical professions would take such obvious pride in being beyond the touch of science.

Despite the disdain frequently expressed by clinicians for the inferior research efforts of their lesser scientific counterparts, we nevertheless have clinicians and trauma specialists like Williams, Herman, Schatzow, and van der Kolk all claiming that their scientific efforts to prove the existence of traumatic, "amnestic" repression have been wildly successful and downright definitive.

They should be joking, but they are not. Their work should be assigned in classes on research design to illustrate "What is wrong with this study?" It certainly should not be presented in court as science to a judge trying to make an honest and informed decision about the scientific status of some psychological concept.

It is especially frightening to realize that the professional organizations on which both the courts and the public rely are utterly unwilling to rein in these pseudo-experts when they testify. In fact, in *Shahzade* v. *Gregory*, the plaintiff even offered as supporting evidence a statement of the American Psychiatric Association that said, "Children and adolescents who have been abused cope with trauma by using a

variety of coping mechanisms. In some instances these coping mechanisms result in a lack of conscious awareness of the abuse for varying periods of time. Conscious thoughts and feelings stemming from the abuse may emerge at a later date."

The judge was so impressed by that statement that he wrote in his decision, "The American Psychiatric Association, which is the major professional association for psychiatrists in America, recognizes the theory of repressed memories and believes it is very common among people who have experienced severe trauma."

The American Psychiatric Association should be ashamed of itself for writing a statement on the aftereffects of abuse that is so vague and so open in its terminology that any practitioner with an agenda can wiggle a pet theory into its framework. Do some people "cope" with the memory of an awful event by not thinking about it? Sure. Well, call that repression. Do some people simply forget with time and go on with their lives? Sure. Well, call that repression too. Why not?

Well, why not is pretty darn clear. Judges and legislators all over the country are not going to rewrite the law on the statute of limitations for either criminal or civil actions based on the "scientific discovery" that people sometimes avoid thinking about awful events in the past and sometimes they forget about them. They are rewriting the law because the APA has told them that what is responsible for the absence of conscious memory of terrible events is nothing ordinary but rather the mysterious mental process of repression, whose existence has been so clearly demonstrated by the clinical techniques of Sigmund Freud and his modern descendants. Shame on them.

The American Psychiatric Association knows perfectly well that whatever the private ideological beliefs of its members about the unconscious repression of the memory of psychological trauma, there is no scientific evidence supporting the factual existence of this hypothetical mental phenomenon. It is grossly unethical for the APA or any of its members to mislead the legal community into thinking otherwise. Because they would like repression to be a fact does not make it so.

PSYCHIC INJURIES LOST AND FOUND

We have frequently been called a litigious society; Maureen Dowd has lately called us a therapeutic society: The courtroom spawn of a

marriage of these two is a dizzying image indeed. Thanks to liberal latitude in interpreting discrimination and injury under the Civil Rights Act, various Employment Discrimination Acts, the Americans with Disabilities Act, and the Child Abuse and Prevention Act, there are not nearly enough clinical practitioners to ferret out all the mental and emotional injuries committed in every imaginable public or regulated domain.

The newest (1994) *Diagnostic and Statistical Manual of Mental Disorders* provides the civil litigant with literally hundreds of possible disorders, each neatly laid out with the necessary symptoms. It is hard to imagine that anyone could live in today's society and not be diagnosed with at least one of these many disorders. After all, they include such exotic stuff as smoking cigarettes, having lousy sex, feeling rotten about your life or trapped in your job or marriage, and hating your body because you think you are too fat or too ugly. Anybody out there with low self-esteem?

If you are not Pollyanna-happy—and complain loudly about the fact that you are not—the odds are great that a psychoexpert can and will diagnose a mental problem for you.

Once society has accepted that the hundreds of ways people can be unhappy can all be labeled as specific mental disorders, then the diagnosis of those states of unhappiness, those disorders, becomes the special province of mental disorder experts. Using diagnostic criteria of the American Psychiatric Association, public health officials have determined that over 10 percent of working Americans suffer from alcohol disabilities. That doesn't just mean that they drink too much. Oh, no. It means they have a mental problem that makes them drink too much. The layperson has signed away the ability to say, "Oh, hell. If she drank less and spent more time thinking about somebody besides herself, she'd be okay." This insensitive lay analysis not only recommends a change in behavior as a cure for unhappy-making activity, it also places the blame for the situation on the sufferer. A strict no-no in the psychopolitics of modern America.

A layperson may look at the behaviors that characterize, for example, adjustment disorder, and say, "Oh, baloney. Disorder, shmorder. She's just having trouble breaking up with her boyfriend." But what does our typical layperson know? Has he had any clinical experience with patients suffering from adjustment disorder? No.

He's had a lot of experience with people breaking up with their boyfriends and girlfriends, but commonsense experience no longer counts in the courtroom.

Today we have psychological experts to characterize life's events and their aftermaths in terms of disorders and treatment. This wholesale pathologizing of every possible response to the less-than-perfect aspects of life has been a real boon to tort attorneys and their plaintiffs.

In all civil tort (injury, discrimination, disability) cases—he did me wrong and I demand compensation—it is necessary for the plaintiff to show some damage or injury to claim compensation for said damage or injury. You can't go into court and say, "He ran me over with his car and I feel just perfect both physically and mentally, but I want a million dollars anyway."

Now, determining physical injury is by no means a simple task in every instance—just consider the wrangling over breast implants and secondhand smoke—but it's an absolute breeze compared to demonstrating psychological injury. I can see that your hand is badly burned, for example, but how am I supposed to know if you really suffer from depression? You say you do, but, after all, you are suing for a million bucks in damages, so you have to claim you are suffering from something, and I can see your hands look fine.

Diagnoses of mental disorders play a crucial role in establishing injury in cases in which no injury is evident to the casual observer.

Let us say that your falling off the ladder produced no clearly broken bones or other specific physical hurt. To recover damage for injury, you must establish the presence of some injury. If no damage is noticeably present, it behooves both patient and psychoexpert to unearth some. A diagnosis of mental or emotional disorder does the trick quite well.

It is noteworthy too, not to say terrifying, that a great many of the psychoexperts leaping onto the witness stand, hired to testify in civil trials in which thousands, often millions, in damages are demanded in compensation for psychic injury, are willing not only to diagnose the claimant but to identify for judge and jury the actual cause of the disorder—whodunit—even when that cause lay in the distant past, decades before the hired gun ever met his or her employer.

Of course, we have had claims of psychological injury for a number of years, but the exponential growth in such claims over the last twenty-five years has been astounding.

This is matched by the corresponding growth of graduate and professional education in the various branches of psychology over those years. The total number of Ph.D.s in clinical psychology granted in the United States from 1920 to 1974 was 8,687. In the twenty years since, there have been some 23,000 clinical Ph.D.s awarded. Today, there are some 75,000 clinically trained psychologists in the United States. This exponential growth has been accompanied by a like expansion in the number of master's-level clinical social workers, especially since they achieved the goal of licensing in the early 1980s, as well as holders of master's degrees in the different varieties of counseling. Psychiatry alone has suffered something of a drop-off in popularity over the last two decades, although with nearly 40,000 psychiatrists and close to 1,000 registered psychoanalysts, their ranks can hardly be called thin.

All these highly qualified people need jobs.

Mental and emotional injuries provide almost limitless vistas of employment for the psychologically trained. It should come as no surprise that job opportunities and skilled workers arise hand in hand, especially in a line of work where the worker defines the job.

THE PSYCHOLOGISTS AND THE STATUTE OF LIMITATIONS

Nevertheless, what psychological expert testimony about repression and recovery of memory has done in the arena of civil redress for mental and emotional injury knows no precedent. Lenore Terr's testimony in 1990 in the twenty-years-late George Franklin trial for the murder of the child Susan Nason provided an entree for expert psychological testimony on the alleged phenomenon of repressed memory in civil cases.

In both the number of cases it has inspired and in the changes of law it prompted, the Franklin case has had unprecedented "psychological" impact on the American civil justice system. That is surprising, in a way, and ironic, because the Franklin case was, of course, a criminal trial, not a civil action, and the absolute length of the delay on Eileen's part in bringing forth her allegations against her father

was not the central issue, since there is no statute of limitations for murder in California.

Nevertheless, expert testimony on the status of repressed memory in the Franklin trial triggered an explosion of psycho-pseudo-science in the witness box and opened the floodgates to a new kind of civil case for hurts from decades past, and a new kind of delayed discovery law. In 1993 the California Court of Appeal ruled that Lenore Terr's testimony on trauma and repression was a useful thing to have had in the courtroom "to disabuse the jury of the identified misconception that a child witness to murder would not be able to forget the event only to recall it accurately twenty years later."

This opinion lays out clear acceptance of the psychoexpert's claim that as far as memory, forgetting, and the effects of terrible experiences go, the ordinary citizen is an ignorant boob. This court accepted the psychoexpert's claim that laypersons suffer from "misconceptions" about these matters and require "disabusing" through the good offices of the knowledgeable psychological professional who can infallibly ferret out the deepest buried secrets and the most elusive and complex mental processes.

Given what seems to therapists and patients to be the overwhelming intuitive evidence that traumatic repression exists and operates in just the way they have observed with their patients, many clinical practitioners supported a change in the statute of limitations for prosecuting past crimes and for bringing civil suits based on past injuries.

The move to extend the tolling of the statute of limitations indefinitely puts a great many people in a very dangerous situation. The legal system is supposed to protect the right of the defendant to mount a reasonable defense. That means if you are accused of a crime or accused of injuring someone, you must have the right to be tried in a time frame in which it is possible to obtain evidence and witnesses.

You also have the right to expect that the evidence brought forward will be something other than the highly dubious and utterly unscientific claims of personally invested "experts" in psychological "phenomena" that have absolutely no scientific basis in fact. You have this right as a defendant, and the people—judge, jury, and society as a whole—have a right to expect that defendants and plaintiffs will be found guilty or innocent or injured or competent or whatever on

some basis other than the will-o'-the-wisp that is a clinician's personal opinion based on clinical practice.

However, due process notwithstanding, in response to the testimony of such experts, legislatures in some two dozen states across the country have changed their laws because they were told, and they believed, that there is reliable, generally accepted, *scientific* evidence for the operation of involuntary, unconscious repression. Clinicians presented as a scientific certainty a phenomenon whose existence is to date wholly unsubstantiated.

It is also likely that the people in the state legislatures are scared to death to vote against it. In my state, Massachusetts, the measure passed without debate. The issue is tied very closely to the problem of child sexual abuse and no legislators in their right mind want to be seen voting in favor of child molesters.

Proponents of the change wanted the law applied to recovered repressed memory to mirror that applied to the "discovery" of damage in, for example, surgical cases in which the forgotten sponge only makes its ill effects felt long after the statute of limitations for surgical malpractice has passed. If you buy the clinicians' belief system, that's a perfectly reasonable position. If you want sound, scientific evidence to support a change in the law, then it's real crazy.

The crucial difference between genuine discovery cases—"My god, he left the sponge in there!"—and recovered memory of trauma cases is that in the former there is no doubt that the sponge is indeed present in the claimant's body because the poor old claimant had to hire another surgeon to remove the disgusting thing. There is no question about the identity of the physician who left it there (although given the surgical masks and the anesthesia there may be room for doubt, but the surgeon's name is on the bill, isn't it?), and there is no doubt that had the patient been aware of the mislaid sponge within the time period specified by the statute of limitations, he would have sued to recover damages. Unless he was a very saintly and understanding patient.

But with so-called recovered memory cases, there is often no objective or even supporting evidence that the alleged trauma occurred, no evidence of the identity of the alleged perpetrator, and no evidence whatsoever that the plaintiff was unaware of the traumatic event—or "countless" events—causing the alleged damage during the period specified by the statute of limitations.

The widespread changes in the statutes of limitations due to legislators' acceptance of the scientific validity of repression and recovered memory have been a fabulous boon to litigators. Before the courts accepted this interesting story as proven science, plaintiffs could bring suit only for psychic wrongs done them within a few years of the injury. Now the grave is the limit. As long as the accused still breathes, suit can be brought for wrongs done more than half a century ago. The only evidence required is the claims of the plaintiff and the clinical intuition of the hired psychoexpert gun.

By the middle of 1996, nearly seven hundred lawsuits involving claims of repressed memory were at the trial level. Nearly two hundred had reached appeals courts.

For the whole clinical psychological profession in whatever guise, the increase in power and prestige in the civil litigation arena has been dizzying. Just think of it. Judges genuflecting before your sagacious testimony, and changing the law to fit your word. Legislatures galvanized into rewriting out-of-date statutes of limitations so that citizens wronged by their fellows decades in the past can nevertheless seek retribution as long as they were injured badly enough to lose their memories in the interim. It is a compelling picture of a powerful profession flexing its muscles as never before.

The clinician has, almost by definition, cornered this market. Because diagnosing psychological injury supposedly requires skills born of years of training, it is clear that only the trained psychological professional can do the job. No wonder the social workers clamored so for licensed clinical status.

It is also no wonder that the last couple of decades have seen an exponential growth in the number of psychoexperts testifying in litigation of every description involving claims of psychological injury from past abuse, present harassment, and any conceivable form of discrimination The job opportunities are inexhaustible.

SO MANY DIAGNOSES, SO MANY CLAIMS

In a civil trial like that of *Shahzade* v. Gregory, a psychological expert is hired by the plaintiff to mount the witness stand and give forth testimony both about psychological science in general terms—like the experimental basis of repression, for example—and also about the specifics of the particular case before the court at the moment.

For example, in the *Shahzade* v. *Gregory* case, Ann Shahzade claimed to suffer from an eating disorder, sleeping problems, and problems with her relationships. (Hmmm. Who doesn't?)

So, in testifying before Judge Harrington on the supposedly scientific foundation for repressed memory, Ann's Harvard expert did not confine himself only to generalities. Oh, no. He also diagnosed the plaintiff as suffering from our old friend, post traumatic stress disorder.

Consider that the major symptom of PTSD is horrible, intrusive memories of the traumatic event invading your thoughts and your dreams—those flashbacks that defense experts for Viemam vets find so convenient. That is kind of hard to claim when you claim at the same time that you were entirely unable to remember the trauma at all for fifty years, isn't it? Of course, another little symptom you may have is the inability to recall an important aspect of the trauma. Maybe the clinician turned that symptom into the inability to remember anything at all even of years and years of horrible experiences. A second symptom cluster for PTSD has to do with avoiding thoughts of the trauma and people associated with it, but if you claim not to remember the trauma at all that whole bunch of possible symptoms is blown away. In this case, Ann certainly did not avoid her cousin; she regularly borrowed money from him over the years. The third category of symptoms you have to display—at least one—has to do with irritability and trouble falling or staying asleep. About ninety million Americans exhibit those symptoms, so the prospective plaintiff is pretty safe there.

What this means in actuality is that there are no symptoms reliably indicative of PTSD. The only important factor in reaching this diagnosis is the claim of the patients or plaintiffs that something horrible happened to them and it made them feel terrible. No psychiatrist, psychologist, counselor, or social worker can evaluate that claim any better than you or I. What is there to evaluate? Only whether the person is lying, and it is impossible for anyone to tell that.

Dr. Gerald Rosen, writing in the *Bulletin of the American Academy of Psychiatry and the Law* in 1996, observed that there is nothing new in the notion that some people feign illness for financial gain. He pointed out, however, that the establishment of post traumatic stress disorder as a distinct psychiatric condition has brought with it the expression of renewed concerns because the symptoms of PTSD are subjective, well-publicized, and easy to simulate.

> Recent findings demonstrate that attorneys can play an active role in furthering the presentation of false PTSD claims. Rosen (1995) reported on 20 survivors of a major marine disaster who all filed personal injury claims and presented with the hallmark symptoms of post traumatic stress disorder. The resulting and extraordinarily high incidence rate for diagnosed PTSD among these litigating survivors was explained, in part, by reports of attorney coaching and symptom sharing. Thus, several survivors disclosed that counsel had advised them that they didn't need to work and it might be worth their while to see a doctor every week. Two other survivors reported after settling their cases that attorneys had explained to crew members how people with PTSD had sleep problems, nightmares, and fears. This information was allegedly shared with others in the group. (Rosen 1996, p. 267)

A number of experts have expressed concern that attorneys might coach their clients in the furtherance of a claim, simply running down the list of PTSD symptoms in the DSM. Lees-Haley (1986) considered this potential for abuse and concluded: "If mental disorders were listed on the New York Exchange, PTSD would be a growth stock worth watching."

If you wish to sue, it is 100 percent guaranteed that a hired gun can be found to give you a diagnosis. With symptoms as vague and contradictory as those of dozens of the so-called mental disorders—with PTSD probably taking the prize—how can the expert miss?

Psychological Breast Lumps

Remember, in a psychological injury trial, a trial in which the plaintiff is claiming that he or she was mentally or emotionally injured by someone else, there is, by definition, no apparent physical evidence. We have only the word of the claimant, who says, "I am badly injured, he injured me, and I want compensation." The claimant is backed, of course, by the testimony of the hired expert psychological witness. (Of course, one may, and many people do, sue for both physical and psychological injury.)

In the example below, the supervising therapist hired by the plaintiff in a 1993 Seattle civil trial explains how he arrived at the diag-

nosis of post traumatic stress disorder that served as the basis of the alleged damage in the lawsuit for vast compensation—$3.4 million.

Attorney: What were the factors that you saw in your clinical experience in working with [the plaintiff] that led you to come to diagnosing her eventually as having Post-Traumatic Stress Disorder?

Therapist: Okay. The fact that what had appeared to be anxiety and depression, some Dissociation, that I initially saw as Adjustment, was more chronic. Secondly, that there had emerged in her therapy clear memories of very traumatic abuse and coercion of her, which is consistent with PTSD diagnosis. Thirdly, there was a disruption to her self image, her esteem of that image. And disruptions in her personal relationships, historically, and currently at that time.

So, for those reasons, among others, it seemed an obvious diagnosis to make. (Mutteu v. *Hagen*, 1993)

Was the diagnosis of post traumatic stress disorder caused by childhood trauma reached because of the symptoms exhibited by the patient and carefully observed by the seasoned practitioner? Oh, no, not at all. Because the patient in the course of therapy claimed to recover memories of trauma, the therapist simply diagnosed PTSD on the basis of alleged trauma alone. The diagnosis was made entirely independently of any symptoms. (It is for this reason that PTSD—and its associated symptoms—cannot be used in any correlational studies of trauma victims. If the patient had a trauma, then the patient has PTSD; if the patient has PTSD, then, by definition, the patient had a trauma.)

The list of signs and behaviors that the naive might consider necessary for the diagnosis are nothing next to the claim of historical trauma by the patient. If you can claim a trauma, then you can claim a post trauma mental problem.

Shouldn't there have been at least a psychological lump in the patient's metaphorical breast to justify the diagnosis? Apparently not. This clinician began to "spot" symptoms *after* he reached his diagnosis, not before.

What does a psychological breast lump look or feel like? How does the trained clinician spot an authentic psychological symptom?

Let me give you a distressingly clear example of the extremely tenuous relationship between "symptoms" spotted by the sharp clinician hired to come up with a litigatable diagnosis and what the patient actually says in session with the clinician. It is also a beautiful example of the creative clinical intellect at work, utterly unfettered by any constraints of reality.

The plaintiff claimed to suffer from PTSD caused by the childhood trauma of abuse suffered two decades prior to the trial. Remember that a frequent symptom of PTSD is that the traumatic event is persistently reexperienced.

This is actual courtroom testimony illustrating what the patient said that led her therapist to believe that she "persistently reexperienced the trauma" that allegedly caused her PTSD.

Therapist: In [the plaintiff's] case, she continued to choose men in relationships in which there was often sexual deviancy [oral sex]. When she got close in the relationship, she would have difficulty in being sexual. She seemed to have difficulty in making appropriate and healthy choices for herself regarding relationships. So that, in essence, with each relationship, it was a form of sexual abuse that she kept creating.

What I saw in [her] is that each time she got into a relationship it was inappropriate and in many ways it was abusive. That would be re-experiencing the original event. I don't believe that she deliberately, consciously, went out and picked someone that was going to be abusive towards her or would ask her to perform sexual acts that she wasn't comfortable with. But, I believe, that's what kept happening again and again.

Attorney: I see. Anything else?

Therapist: No. (Matteu v. *Hagen*, 1993)

Got that? Any woman who has had a number of unsatisfactory relationships with men is a victim of post traumatic stress disorder. Any sharp clinician could tell you that those lousy relationships are just the poor woman's way of reenacting the abusive relationship from her girlhood. Of course, this will be true even if the woman remembers nothing at all about the past abuse. The unconscious does not lie, does it? And what could lousy relationships be but a reflection of abuse in the past?

What we've got here is evidence for the presence of a symptom—reexperiencing the original event through nightmares, incessant thoughts, or flashbacks—so flimsy I would not have believed it if I had not heard it in court. Bricks out of straw indeed. Yet this trained professional testified that she spotted this symptom—rotten relationships with men—and determined her diagnosis in one impressive leap of illogic. Who can say she is wrong? Only another highly trained professional.

Corroboration

Only another expert can testify that your expert is wrong, and what can he or she say? That you are not sick? You cannot prove that a person is not sick; you cannot prove the nonexistence of something. Maybe the second expert is just not as sensitive as the first. Who can say? A third expert? There are no objective criteria for most mental diagnoses.

The psychiatric association did not develop its diagnostic categories or the associated symptom lists through any procedure remotely resembling standard scientific practice, and individual practitioners do not arrive at their specific diagnoses for particular patients through any scientific procedure either.

The actual basis for the clinician's diagnosis is what it always was, from Freud to the present, diagnostic manual or no manual: what the patient says about what he or she feels, thinks, and does; and the clinician's interpretation of what the patient says.

James McDonald and Francine Kulick have edited a book called Mental and Emotional Injuries in Employment Litigation—a handbook for expert psychological witnesses to use in preparing cases for psychological damage. This handy guide to prospering in court points out, with no sense of irony whatsoever, that:

> In psychiatry and clinical psychology, more than in any other medical discipline, a patient's subjective reporting may be a significant and confounding problem in the diagnostic process. . . . Without clarification, and taken at face value, a patient or litigant who claims to be "severely depressed" may be misunderstood as suffering from a clinically significant depression when the person is simply sad or angry. (1994)

Well, they've got that right.

The clinician relies on what the patient says—filtered, of course, through the focusing lens of the clinician's intuition, and corroboration of the product of this happy union is neither wanted nor needed. Well, actually, corroboration is badly needed, but the legal profession has been conned into believing that it is not.

In a chapter on torts, or civil wrongs, in his book *Everybody's Guide to the Law*, the late nationally famous attorney Melvin Belli writes:

> An early fear of the law was that psychological injuries could be easily faked. Because there were no sure means of verifying these injuries, the danger was that many sham claims would be successful. Today psychological and emotional injuries and other mental disorders can be diagnosed with a good deal of certainty, so the chances that a fraudulent claim for emotional distress will succeed are no greater than for any other type of injury. (Belli and Wilkinson 1986, p. 302)

Mr. Belli was badly led astray there, and so, all too often, are the rest of us. The gullible public is led to believe that clinicians testifying in civil cases truly reach their diagnostic conclusions after carefully gathering corroborating information for what the patient tells them, but, of course, in most instances, corroboration would be impossible. Who can corroborate whether someone sleeps well, has nightmares, feels anxious, or can't remember something?

In some cases, however, clinicians simply spurn the concept of corroboration as irrelevant to the process of healing. They also spurn reality testing as irrelevant to the process of criminal and civil trials, which is truly bewildering.

Dr. Lenore Terr, the star witness for the prosecution in the George Franklin murder trial, displays the classic breezy attitude toward corroborating evidence for a patient's claim. (Her entire acquaintance with Eileen Franklin before her father's trial extended for the whole of four hours.)

> Eileen told me that she became withdrawn at school after Susan Nason disappeared. She began pulling out the hair on one side of her head, creating a big, bleeding bald spot near

> the crown. Most likely, young Eileen unconsciously set out to duplicate the horrible wound she had seen on Susan Nason's head. This behavioral re-enactment provided internal confirmation for me of the truth of Eileen's memory. (1994, pp. 35–36; italics added)

It is beyond belief that a court was hoodwinked into believing that this nonsensical psychobabble represents in any way objective evidence or reliable proof that Eileen pulled out her hair to match up with Susan Nason's head wound.

That courtroom diagnosticians ignore even the wispiest constraints of reality in reaching their diagnoses is truly frightening.

Lenore Terr, like all clinicians, trusts her clinical intuition absolutely and is blithely indifferent to the operation of the confirmatory bias in the construction of an interpretative narrative to put on the witness stand. She was testifying in a murder case, a criminal trial, which makes this arrogance and indifference to science particularly difficult to swallow.

Faking It

In the *Shahzade* v. Gregory trial, Bessel van der Kolk told the judge that "there is no scientific basis to believe that Shahzade or other victims could fake such memories and fool psychiatric tests" (Rakowsky, *Boston* Globe, April 10, 1996).

What on earth can Dr. van der Kolk have meant by that?

Did he mean that patients can't fool doctors about whether claimed memories are real? Not true. Patients themselves can even be fooled.

Jean Piaget, the famous Swiss child psychologist, gives us an oft-quoted example of exactly this phenomenon. He relates that a vivid childhood memory of his was of an attempted kidnapping he suffered as a small child in the care of a nanny who saved him from the danger. Years afterward, in a fit of remorse, the nanny confessed to Piaget's parents that she had made up the whole story to cover some indiscretion of hers. Yet, for the young "kidnap" victim, the memory was as clear and as detailed as any memory of an actual event. Of course, the story was probably vividly related by the maid, and no doubt recounted a number of times by family members, so it was a

clear story in young Piaget's mind. How was he to know it was not true?

No one can tell the difference between a true memory and a mistaken one. There are no reliable differences in accuracy, in the number of details, or even in the confidence a person feels in the memory.

(For very readable books that deal directly with this issue as it applies to real-life situations, the reader is directed to any of several recent offerings by Elizabeth Loftus and her colleagues.)

Did Dr. van der Kolk mean that a patient couldn't fool a test for traumatic repression? Not true. There are no psychological tests for such things. What test could there possibly be? Unless someone pops up and says, "Wait a minute! She told me all about it in 1972," there is no possible way to gainsay the claim of a traumatic inability to remember. What secret psychological tests could Dr. van der Kolk have had in mind?

Is he claiming that no healthy person could fake responses to psychological tests well enough to fool a clinician into thinking he or she was sick? Not true. P. Lees-Haley and R. S. Dunn in 1994 found that college freshmen in the first quarter of an introductory psychology course were quite capable of picking out the appropriate symptoms for different diagnoses. Ninety-seven percent of these untrained youngsters picked out the "right" symptoms for depression, 97 percent for generalized anxiety disorder, and 86 percent for PTSD (Lees-Haley and Dunn 1994, pp. 252–56).

Moreover, a famous study by David Faust, Kathleen Hart, and Thomas Guilmette showed that the situation was just as bad even for the accurate detection of brain damage in children.

> Children were instructed to "fake bad" on comprehensive neuropsychological testing but were given minimal guidance on how to proceed. Of the 42 clinical neuropsychologists who reviewed cases, 93% diagnosed abnormality [in normal children!], 87% of these 93% attributed the results to cortical dysfunction, and no clinician detected malingering. The results are consistent with other studies that have examined the capacity of adolescents and adults to fake believable deficits on neuropsychological testing. (Faust, Hart, and Guilmette 1988, p. 578)

There is half a century of research showing that it is not only possible but quite easy to fake and fool both psychiatric tests and the psychiatrists who give them. There is also a decade of research showing that people can be fooled even by their own mistaken memories.

Is Dr. van der Kolk claiming that in an evaluation interview no client could fool a trained clinical psychiatrist into thinking she suffered from PTSD when she did not? That's a joke, right? To get a diagnosis of PTSD, all you have to do is tell your doctor that you have nightmares about some awful event in your past, or, alternatively, that you remember nothing at all about some awful event, and that you are cranky and have trouble sleeping. Bingo! PTSD.

Dr. van der Kolk must have been fooling the judge, or maybe he was just putting him on.

It is exactly this extraordinary flexibility in claiming and interpreting symptoms that makes customized diagnoses not only possible but inevitable. The good attorney Belli could not have been more wrong.

The system is foolproof. Opportunities for litigation for psychic injury—for mental and emotional distress—are wide open. Add in the unprecedented expansion of time to bring suit afforded the allegedly injured plaintiff by state and federal acceptance of repressed memory as an excuse to throw reasonable statutes of limitation out the window, and the opportunities become virtually limitless.

Any underemployed clinicians or attorneys would do well to hotfoot it to the nearest bookstore and purchase a copy of the DSM-IV as well as the handy how-to-sue book edited by McDonald and Kulick. The latter is an excellent source for information on laws that provide avenues for recovery of damages due to psychological injury and for frequently claimed injuries along with their diagnostic criteria.

WHAT DOES IT COST TO BRING A CIVIL SUIT?

The situation is made worse by the way the current legal system pays for itself. Most civil suits like *Shahzade* v. *Gregory* are brought under a contingency arrangement. So suing is itself a little bit expensive, but mostly for the attorney, not for the plaintiff. The attorney usually foots the bill for all those expensive expert witnesses at several hundred dollars an hour for court time plus preparation, travel, and lodging. Some-

times the plaintiff and the plaintiff's attorney will split these costs. In all cases, these matters are subject to negotiation.

If the plaintiff loses, then he or she must usually pay only court costs, which essentially amount to fees for photocopying documents and such.

This is nothing compared with what it will cost the defendant to fight the suit.

Yes, these suits for compensation for past injury do have defendants. After all, somebody has to foot the bill for your injury, and why should it be you?

RETROSPECTIVE CLAIRVOYANCE, OR I KNOW WHO CAUSED THE INJURY

In civil cases in which the plaintiff is seeking compensation for injury, the plaintiff must show not only some hurt or injury, but who or what is the cause of that injury.

That means that any plaintiff in a civil injury tort trial must hire a clinician who not only will diagnose the client with something psychologically injurious warranting compensation—preferably lots of it—but also will imprint a psychological kiss of authority on the pointing finger when the client claims to know who caused the injury.

Where is the evidence that the person accused is guilty of causing the injury? Enter the expert witness. When Dr. van der Kolk diagnosed Ann Shahzade with PTSD, he also testified that the disorder was brought on by the sexual traumas she suffered in adolescence at the hands of her teenage cousin fifty years before (Rakowsky, Boston Globe, April 10, 1996).

Now, that is a diagnostic feat! How did the expert know that? How would a clinician go about diagnosing a sixty-eight-year-old woman as suffering from PTSD brought on by a series of incidents more *than fifty* years in *her past*? No one could know that. It makes no difference.

Hired diagnosticians cheerfully mount the stand and tell court after court not only that this person is suffering from PTSD, or anxiety disorders, or dysthymic disorder, but also that it is obvious to the diagnostician who or what caused the mental or emotional injury and when it happened. They have to do that if the plaintiff who hired them is going to win the case.

For example, if you are going to sue your employer claiming that job-related stress or sexual harassment from your supervisor caused you grievous, incapacitating, expensive-to-treat psychological injury, then clearly you must show that your alleged problems do indeed stem from the job situation itself and not from some other cause like preexisting lifelong depression or the sad fact that your spouse has left you for a younger model.

So your expensive psychological expert witness must not only claim to discern for the mystified public the psychological injury invisible to the ordinary person in the jury box or to the judge—but clear in the mind's eye of the trained clinician—but must also unabashedly identify the cause and perpetrator of the injury no matter how distant in the past the source may lie.

Now, how could your recently hired, never-been-to-your-place-of-employment expert possibly know that your anxiety, sleeplessness, stress, or depression was due to sexual harassment by your supervisor last year and to no other cause? He cannot, unless you tell him.

If clinicians can't even diagnose disorders reliably, how are they supposed to be able to peer into the past and pick out the cause of this or that problem?

Let's look at the *Shahzade* v. *Gregory* case again. Let us, just for the sake of argument, grant for the moment that the plaintiff in *Shahzade* v. *Gregory* does indeed suffer from an eating disorder, sleeping problems, and problems with her relationships. Let us even grant that she herself feels quite confident about her memories of sexual abuse.

What has any of that to do with her clinician's ability to tag that remembered abuse as the source of her present problems? Nothing at all. Absolutely nothing at all. Can any clinical diagnostician really claim with confidence that nothing in the intervening fifty years of this person's life might not equally well be responsible for whatever unhappiness or distress she may exhibit? Of course not. It is logistically impossible to rule out the innumerable stresses and strains of fifty years of living with all the attendant heartbreak, frustrations, and disappointments. It is also impossible to claim with any confidence that it is not these disappointments and difficulties with life that disturb the sleep or the disposition of the claimant.

There is no test for causes, no secret trick taught only in graduate and medical schools for peering into the history of a human

being and pinpointing the cause of any behavior, disorder, good or bad habit, preference, or style. There is no evidence that people who are extremely neat were aggressively toilet trained or that those who cling too tightly to their loved ones were weaned too abruptly. Those are just interpretations that seem more or less plausible, depending on the depth of one's Freudian acculturation. The source material for the interpretations is what it always is, the stories the patient tells the clinician.

There is no symptom or set of symptoms displayed by an adult woman that are invariably caused by sexual harassment on the job. There is no set of symptoms that are linked invariably to long-past childhood sexual abuse. The "symptoms" shown by the overwhelming majority of female claimants in such cases—problems with food and men—are so common among women in our society that they cannot possibly be tied to any particular childhood event, traumatic or otherwise. It would be absurd to try.

This is especially important to remember given the recent rash of cases involving such allegations of abuse in both the near and the distant past.

It is crucial that the public know that clinical practitioners have no special ability to evaluate these claims.

THE SEARCH FOR JUSTICE

There are, no doubt, any number of people who were hurt in their childhood by adults. There are also, no doubt, any number of people who are not living, in the present, the lives they wish to live. Perhaps there are causal connections between these things, and perhaps there are not.

What we as a society have done to right these past wrongs, to render justice where there was none, and to compensate the injured is to accept wholesale an elaborate tissue of lies that we think allows us to trace the psychological connections from one time to another, and the causal psychological relations between an earlier event and a later condition.

We can do no such thing. The fanciest psychological expert in the world cannot do that. Psychology herself as a field cannot do that.

In our pursuit of justice, we have gone completely astray from the pursuit of truth.

IO

Four Hundred Ways to Avoid Responsibility

Disordered, Disabled, Dispensed

> There is probably never a physical injury without some measurable psychic trauma. . . . The past 30 years . . . have seen the exploitation of this truism in worker's compensation and personal injury litigation . . . resulting in a staggering number of physically fit, mentally competent individuals forever being relieved of responsibility for earning a living—on psychiatric grounds.
>
> Barton J. Blinder, Abuse of Psychiatric *Disability Determination*, 1979

TRADITIONAL FARCE RENEWED

Psychological farce on the part of both claimant and clinician is hardly unique to injury claims made under recent recovered memory legislation. Oh, no. The first intense flowering of this poisonous blossom took place in the fertile soil of what might be called traditional torts. Recall that by 1989 damages paid out to compensate people for the "loss of the full enjoyment of life" approached $14 million. Loss of "mental health," according to Jury Verdict Research, Inc., had reached one hundred times that amount by the 1990s.

> Teen-age airplane passenger Jarret Halker says he screamed in panic, banged on windows and punched seats after waking up

> on a commuter jet—semi-dark, empty and far from the terminal at Logan Airport last summer. . . . Halker . . . and his mother . . . are suing the company and its contract commuter carrier for $21 million over trauma the [thirteen-year-old] boy says he suffered as a result of the July 15 flight. (Boston Globe, July 31, 1995)

> Two residents of a Bronx condominium complex filed suit yesterday, charging they were injured when their newly installed toilets exploded. . . . One of them, 10-year-old Philip Garner, suffered "psychological injuries" when his toilet blew up November 20, said [attorney] O'Dwyer, who is seeking $2 million for the boy and $100,000 for his parents. (Mangan, Daily News, December 29, 1995)

> A schoolboy was forced to wear a woman's wig, bra and skirt as punishment for talking in class while his teacher looked on and laughed, according to a $22.5 million lawsuit. [The] punishment left seventh-grader Caleb Guerrier with psychological damage and other personal injuries, the lawsuit charges. (*Legal Intelligencer*, New York, May 25, 1995)

This is my favorite:

> A student who accidentally shot a classmate during a law-enforcement class now is suing the community college, Aurora police, and others for $1 million, claiming their alleged "reckless conduct" caused her emotional distress and mental injury. (Robey, Denver Post, August 18, 1994)

The tremendous growth of psychological injury compensation cases in standard torts led inevitably to a similar pattern of growth wherever the ground proved fertile. And nowhere in the American legal terrain has the ground proved more fertile or opportunities more plentiful than in the area of evolving social welfare law.

Consider race discrimination. Congress outlawed it in 1964 and the American Psychiatric Association has since pathologized it—not for the racist, quite yet, but certainly for the victim.

> The Massachusetts Commission Against Discrimination yesterday ordered the town of Freetown to pay $250,000 to a black police sergeant for emotional distress he underwent after he was passed up for promotion almost nine years ago. The award is the largest ever ordered by the commission for emotional distress in a racial discrimination case. The officer, Detective Sgt. Alan L. Alves, who is of Cape Verdean ancestry, also was awarded $13,500 in back pay. (Hunger, *Boston Globe*, June 21, 1996)

So, over a nine-year period, the failure to be granted the promotion cost him $1,500 a year before taxes in salary, but it also "cost" him almost $28,000 a year in emotional distress? There seem to be no reasonable limits to calculating the incalculable.

Exactly the same pattern of payment occurs in sexual harassment and discrimination suits. The actual tangible damages—however wrongly inflicted—are often slight, but the alleged intangible damages like emotional and mental injuries are judged to be great indeed.

Still, however great the field of operation afforded the psychological injury evaluator by standard civil rights law touching on race and sex discrimination, nothing exceeds the expansion of opportunities created by the Americans with Disabilities Act. It cannot be denied that for the attorney and the clinical psychologist with active imaginations the growth of case possibilities in both scope and size of award has been, even by traditional tort standards, truly phenomenal.

ANTI-DISCRIMINATION LAW AND DISPENSATION FOR THE DISABLED

The Americans with Disabilities Act was signed into law by President George Bush in the summer of 1990. It represented both an expansion and an updating of the federal Rehabilitation Act of 1973 and of Title VII of the federal Civil Rights Act of 1964.

The intent of the law—if not its particulars and ramifications—was clear: Congress wished to end employment discrimination against the handicapped based not on genuine inability of workers to do the job but on negative attitudes of employers, and to open access for the handicapped in the arenas of public accommodations and

telecommunications. It seemed clear to Congress, and to many others in society, that many impediments to both job success and freedom of movement of the handicapped resulted not from their disability but from an unwillingness of both employers and various levels of government to consider their abilities as well as their disabilities, or to accommodate those disabilities to increase both job productivity and public access.

In short, the handicapped were being ripped off by municipal and state governments unwilling to spend money to accommodate the needs of disabled taxpayers and citizens, and by employers unwilling in the face of their prejudice to make even the most trifling of accommodations to workers with special needs for job performance. Surely all of society would benefit—monetarily as well as morally—if the obstacles to productive employment and civil services were removed from the paths of the handicapped.

Accordingly, the Americans with Disabilities Act—ADA—was written to prohibit discrimination in the realm of employment against persons who are disabled by a physical or mental handicap but who are nevertheless qualified to do the job with or without reasonable accommodation to their disability.

According to ADA, a person is judged to be "disabled" within the requirements of the law if he or she has a current physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of having such impairment, or is regarded as having such an impairment. Major life activities are all the normal things that people without impairment can do easily like walking, seeing, hearing, breathing, learning, and working. (The last two are rather tricky.) According to ADA, a mental *impairment* is a mental or psychological disorder like mental retardation, organic brain disorders, emotional or mental illnesses, and *specific learning* disabilities (Americans with Disabilities Act of 1990, Pub. L. No. 101–336, 104 Stat. 327, codified at Sec. 42 U.S.C. 12101–12213, Supp. III 1991).

Employers are liable to charges of discrimination if they refuse to hire an otherwise qualified individual to do a job because of a disability, or if they refuse to undertake reasonable accommodations to a disability in the workplace that would permit the disabled individual to engage in productive work.

The intent of the law was rational, perhaps even rather noble,

but like all social welfare legislation requiring assessment of mental state, its implementation was another do-gooders' Pandora's box.

It is true that in the past, the handicapped undeniably suffered from blanket discrimination that took no account of the actual nature of the handicap or what efforts, societal and individual, would be required to overcome it. That America as a society has chosen to make fuller use of the talents and abilities of more of its citizens and provide those citizens with access to more of the fruits of modern society is a good and sensible thing.

Abuse of all of these well-intentioned efforts, like abuse of the disability system, also makes perfect sense in that it is inevitable. If there is an opportunity to make a buck the easy way—without working for it—then certainly there will be those who will take advantage of that opportunity.

Let us say that a secretary goes into therapy and realizes that she really wants to end her ten-year marriage, becomes miserable and depressed, starts missing a lot of work, and is inefficient even when she does show up. She is fired, and sues under the ADA. How do you reasonably accommodate someone who is so depressed that she is always thinking about her problems at work? Is her depression enough to be qualified as a disability? What about a salesman who claims that he suffers from agoraphobia? Must he be taken out of the field and given a cold-call desk job? What about an engineer who suffers from so much generalized anxiety that she is incapable of submitting a finished design? The guy who suffers from delusions of grandeur and can't work on a team? Do all of these difficulties at work qualify as legally protected mental disabilities?

"Accommodate the disabled so that they can do the job" became "Accommodate the job to those who are essentially unwilling to do it." Engage in disruptive and abusive behavior during company meetings? That would get any healthy person fired. Claim that such behavior is due to a disabling mental disorder and you get $900,000. Yell obscenities at students, colleagues, clients, or customers? Grab and grope them? Get a diagnosis or get fired.

If you can get a diagnosis of mental illness attached to the foul language or sexual assault, then you are in line for a big payoff. Psychological injury has a huge multiplier effect on compensation both in cases in which the claim of discrimination is just and in cases in

which it is not. Consider traditional discrimination cases in which, for example, a black person unjustly passed over for promotion might have been awarded the promotion and the back pay that would have been due. Today, in addition, that person receives compensation of ten or twenty times the back wages because, according to the testimony of a mental injury diagnostician, the injured party also claims to be suffering from grievous mental or emotional distress caused by the discrimination.

Even an innocent employer is helpless to combat the claim that the allegedly injured party was emotionally damaged, but an employer actually guilty of disability or racial or other discrimination is pretty much dead in the water. Such an employer has to get attorneys and psychological experts to argue that prejudice and discriminatory salary and promotion practices—however unjust—do not harm people psychologically at all, or, if they do, it is not that bad, certainly not bad enough to be worth many times the wages due. That argument, however true it may be, does not have a chance in hell of prevailing in today's climate where a damaged psyche is held to be a greater loss than a missing arm.

What started out as an idea for reasonable accommodation to end mindless discrimination has become mindless accommodation to irrational and irresponsible behavior. The legal implementation of Congress's intention to make full use of the capabilities of all citizens became at the same time a golden opportunity for mental health providers to use their inventive powers to their full capacities.

This is not exactly a big surprise when you look at the psychological evaluators' track record with older, traditional social welfare programs.

THE POSTER GIRL OF THE ANTI-WELFARE MOVEMENT

Clarabel Rivera Ventura is the poster girl of the anti-welfare movement. Ms. Rivera is the twenty-seven-year-old Massachusetts mother of seven who was charged with scalding the hands of her four-year-old child and then failing to get him any medical treatment. She fled the country for some weeks but eventually returned to stand trial on charges of child abuse and neglect.

Ms. Ventura had sixteen siblings, one of whom is dead, and two of whom live in Puerto Rico. None of the others, residing in the

United States, works. The siblings on Aid to Families with Dependent Children are no surprise. The surprise is the five brothers and sisters who are *unable* to work because of "medical" disabilities.

> "It's happened different ways. It is complicated. Most of the boys are disabled and two of the girls are disabled. There's been a lot of problems," said [Clarabel's sister] Maribel. "You have to talk to each one." Explaining why she receives $470.00 a month in Social Security Disability Income (SSDI), Maribel said: "I have anxiety attacks. They come when I'm never expecting it." . . .Juan, who is a father of five children and divorced from his wife, was asked why he doesn't work. "I have a nervous condition. I fill out the medical reports and everything for disability. There is no way I could work," he said, explaining that he receives $302 a month in Emergency Aid to the Elderly, Disabled and Children, a form of state and federally financed disability pay. On another day last week, Juan was asked again why he didn't work. He showed a reporter his hands, which were shaking, and said, "Look at this. I'm having an attack right now." He called a doctor and told him that he had to see him immediately and soon left the house. Asked the same question, Benjamin said, "I have the bad nerves. I have a lot of problems." (Sennot, *Boston Globe,* February 20, 1994)

Considerable attention was focused on this family because, collectively, they cost the welfare system some $1 million a year, but little attention was paid to the grand scam of a welfare system that supports all fourteen nonworking sibling adults in a single family, plus their mother and all of their children, through cash grants, food stamps, subsidized housing, and miscellaneous other benefits. What resourceful people they must be!

The beneficiaries of such governmental support for the nonworking do come, of course, from many walks of life and suffer from a number of different ailments, but it is true that perhaps no case study better illustrates the potential for abuse of the support system by mental health practitioners, who experience no check whatsoever on their license to find a mental disability in nearly every member of the Rivera family.

THE SOCIAL SAFETY NET FOR THE OCCUPATIONALLY INCAPACITATED

For some sixty years the U.S. government, with the help of the country's psychological establishment, has provided base-level financial support to those of its citizens who, like the Ventura siblings, are unable to work due to mental incapacitation. (Likewise for physical incapacitation, of course.)

The two principal federal programs under the Social Security Administration (SSA) providing financial support to those judged mentally incapable of work are Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). These are the very programs that so benefit the nonworking members of the Ventura family. In the jargon of the trade, "occupational incompetency"—no kidding, that is what they call it—is the affliction of beneficiaries of these programs. In regular parlance, recipients suffer from a mental disorder (or physical, of course) that renders them essentially incapable of working. It is not that they do not wish to work, mind you. They are mentally incapable of it. (And not just on Monday morning.)

The requirements and benefits of the two programs are much the same; the main difference between them is that recipients of SSDI must have at least some history of work in their lives before they fell victim to their incapacitating mental illnesses.

Who certifies the prospective welfare recipient as mentally incompetent, occupationally speaking? The professional mental health evaluator, of course.

Technically, the true legal authority for determining the recipients of disability benefits resides, of course, in various levels of the Health and Human Services Administration, but in practice the real authority is in the hands of the psychological evaluator who checks off qualifying signs and symptoms, writes the report, and signs the form. It is the classic de facto/de jure distinction. The law says one thing but the real situation determines another.

In fact, Melton, Petrila, Poythress, and Slobogin's 1987 highly regarded handbook for psychologists and lawyers on performing mental health evaluations for the courts notes, "A *mental status examination is a prerequisite to a determination of a psychiatric disability.* Although the exact parameters of this requirement are not clear, the Social Security Administration has observed that the *absence* of such

an examination is the most common error in cases reversed on review." Also, "The clinical examination and report are *critical* to *determinations* of disability under the Social Security regulations; indeed, without appropriate clinical evidence, the *determination* cannot be made" (p. 266).

Demonstrating Occupational Incompetency

Actually, not all judges genuflect automatically and completely at the command of the professional mental health evaluator, but enough of them do to make the handwriting on the wall alarming indeed.

Consider the case of Jerry Dalton, who pursued his claims of disability over sixteen years, up to and including suing the secretary of Health and Human Services. Mr. Dalton fought long and hard to remain legally disabled, switching from early claims of disabling physical injuries sustained in a fall from a ladder to later claims of mental injuries and defects of unknown origin.

How did Mr. Dalton's vocational psychologist determine that Mr. Dalton was mentally unable to work anymore?

> Dalton underwent a psychological evaluation. [The social worker] administered a series of tests [Wechslar Adult Intelligence Scale, Bender Visual Motor Gestalt Test, Wide Range Achievement Reading Test, Mental Status Evaluation, Rorschach Inkblot Test, and the Clinical Interview] and concluded that he was of [low] average intelligence and had a passive-dependent personality disorder. . . .

What does that mean? Low average IQ means that this guy was not a rocket scientist, as they say. It certainly does not mean that he was incapable of working. If it did, half the current labor force would be on the dole. A passive-dependent personality disorder means that the patient lies around doing nothing—a condition that could no doubt be pretty easily induced by the absence of work in the claimant's life for so long (Dalton v. *Secretary of* Health and Human Services, 1990).

> At the request of Dalton's attorney, another psychological evaluation was conducted by Dr. David Goldsmith, a clinical psychologist . . . [who] concluded that "with his education level, medical history, employment record, and psychological

> status . . . he would be very unlikely to succeed at gainful employment." Dr. Goldsmith also concluded that Dalton would not be a suitable candidate for vocational rehabilitation. (Dalton v. Secretary of Health and Human Services, 1990)

What has Dr. Goldsmith added to our assessment? Well, he is essentially saying that in addition to being lazy and none-too-bright, the claimant is also short of educational and job skills, and his present habit of unemployment will be hard to break.

Well, the court of appeals was insensitive to the psychologists' sad case and, after sixteen years of living without working, Mr. Dalton lost his disability payments. One of the appeals court judges, however, strongly dissented from the majority's opinion. He thought Mr. Dalton's psychoexperts had made a convincing claim that all thought of work was beyond Mr. Dalton.

> I respectfully dissent from the majority opinion because I take a different view of Dalton's intellectual capabilities and psychological impairment . . . the results clearly show that Dalton's intelligence is significantly below average. . . . The vocational expert testified that a passive-dependent personality disorder of the severity noted in the evaluations . . . would prevent Dalton from [performing any jobs existing]. . . . The vocational expert was an experienced, licensed psychologist. Therefore, he was perfectly competent to testify as to the effect of Dalton's passive-dependent personality disorder on his ability to work. (District Judge Cohn, dissenting, Dalton v. *Secretary of* Health and Human Services, 1990)

In the determination that a person is occupationally incompetent by virtue of mental illness, it is not enough for the psychological evaluator simply to come up with one of the nearly innumerable allowable diagnoses. The psychologist must also conclude that the effects of the mental disorder are such as to render the claimant so disabled that he is incapable of work—any kind of work—and is thus eligible for compensation by the government.

Judging that an individual is pretty much broadly occupationally incompetent—occupationally challenged—requires that the psycho-

logical evaluator assess such matters as a person's ability to understand, carry out, and remember simple instructions; the exercise of judgment; the ability to respond appropriately to supervision, coworkers, and the usual work conditions; and the ability to deal with changes in a routine work setting.

Let us say that like Clarabel Rivera Ventura's siblings, you have a bad case of the nerves that you claim prevents you from working. When you go to the psychologist with this claim, it is a simple matter for him or her to reach a diagnosis of an anxiety disorder once you explain that you are very nervous, your hands shake, you can't sleep, you are startled by the least little thing, and so on. And it is a simple matter to test your ability to follow simple instructions. The evaluator could just give you a number of instructions and see how well you carry them out. You could get a score from 1 to 10, say. Is your judgment any good? Well, the evaluator could ask you a series of questions about "What is the thing to do if..." They've been doing this with intelligence tests for decades so if they stick to a standard set of questions, it is even possible to see how you stack up next to other people of your age and background.

But how is the evaluator supposed to judge how well you get on at work? The evaluator has never seen you at work. How is he or she supposed to determine how well you respond to your supervisors, coworkers, and your usual work conditions, or how you deal with changes in routine at work? By relying on what you say, of course. The evaluator could give you questions from various little checklists that psychologists have devised to tell how a worker functions at work, but checklists are really nothing more than ways of neatly organizing what the client tells the evaluator.

The best that the evaluator could do would be to request copies of your employment records, if you consent, and if they exist, and if your past employer is willing to provide them. Or the evaluator could ask you to talk about how badly you do at work. It is not at all likely that you are going to tell the evaluator how well you do. In fact, why bring up employment records at all if you can apply for SSI rather than SSDI?

And what is the evaluator supposed to do about judging your functionality in a work environment if you have never worked at all? If you have never even tried working, how do you know you cannot

do it, and how does the evaluator know that you cannot? It is ridiculous.

For those persons who are severely disabled, it takes no special skills to judge that work would be difficult or impossible for them. For the rest who are claiming that their nerves are too shattered or their intelligence too low or their personalities too passive for them to go to work, the evaluation is just a scam.

How did a job performance evaluation ever come to fall within the special province of the trained psychological professional? What special skills could a psychologist possibly be said to possess that would allow him or her to come up with an assessment of a claimants' work ability any more accurate than the information the claimant provides?

There are no such special psychological skills. And professional vocational psychologists are not especially good at it either.

The Seattle Times reported recently that in Tacoma, Washington, a man named Narith Por Kong was charged with coaching over fifty people how to fake mental illness to obtain public assistance benefits.

> An undercover informant using the code name "Kosal Chan" recorded conversations in which Kong repeatedly urged the Cambodian refugee to lie about his mental health, authorities said. The informant told Kong he was in good health and working at a Chinese restaurant, but Kong advised him to fabricate a story about having severe headaches and nightmares resulting from abuse under the Pol Pot regime, according to court documents. Kong came under federal scrutiny when a state claims worker noted that assistance applicants helped by him had markedly similar symptoms of mental distress. "He basically taught people to lie," Assistant U.S. Attorney Stephen Schroeder said. (Tizon, Seattle Times, March 18, 1994)

Well, now, that's a scandal indeed. How could it happen? Aren't those trained clinicians supposed to have the critical capacity to distinguish the truly disordered from the frauds? They are supposed to have it, but they do not. Their track record here is as bad as it has proven to be elsewhere.

Medicalizing Normal Responses

Psychological evaluators may lack special skills to assess the true character and authenticity of supposedly occupationally incapacitating mental dysfunctions, but they do have a hidden agenda. And that agenda includes the mandate to increase the number of diagnosable mentally disabling conditions, which in turn increases the number of billable hours for the mental health practitioner.

Consider the issue of granting workers' compensation for work-related phobias, like fear of flying, fear of strangers, and fear of heights that interfere with the continuance of work in past surroundings or conditions. Fears are not mental injuries. The mental health provider's role in all this, as it so often is, is to turn the ordinary and understandable responses and adaptations of individuals to unfortunate life events into mental disorders.

After all, many of us are mentally incapable of doing construction work forty stories in the air or mining two hundred feet below the surface of the earth. We would go screaming buggy from terror. But these little afflictions, phobias though they be, are not enough to qualify us as disabled for pretty much all work. They could be judged as disabling, however, in a classic workers' compensation case, with the added twist of phobia following upon a job trauma. Clinicians turn fears into phobias and phobias into disabilities.

In Bailey v. American General Insurance Company, a 1985 Louisiana case, the court allowed compensation for a claimant who, after watching his partner fall to his death from a scaffold eight stories above the ground, could not resume working on high scaffolds. Why does that reaction to the tragedy make Bailey a mentally ill person? Many of us are afraid to go that high without ever having seen anyone fall even ten feet. Do we all have occupationally incapacitating agoraphobia?

What about the *Guillot* v. Sentry Insurance Company, another 1985 Louisiana case, in which compensation was allowed for a claims adjuster who suffered a nervous breakdown upon being unexpectedly informed that he was fired? Does just any disorder in the DSM qualify as a "nervous breakdown," or must one be hospitalized to make a creditable claim? John J. Nicholson, from Massachusetts, where the state workers' compensation and disability services hit the scandal pages every other year, was granted workers' compensation

after claiming that he was disabled by stress when his boss berated him (Sciacca, Boston Herald, May 2, 1996).

These may be work-related reactions, but they are not mental illnesses.

One of the most controversial of the worker's compensation cases was that of a sixty-three-year-old white female employee who was mugged by a black male while making a work delivery in another part of town. Thrown to the ground, she broke a vertebra and was left in a state of shock.

> She has nightmares in which she relives the attack, and being near black males causes her to experience panic attacks. The attacks bring on sweating, panic and a rapid heartbeat. She is undergoing psychiatric treatment and has been diagnosed as having post-traumatic stress disorder and simple phobia. . . . Allegedly, her phobia prevented her from working without a guarantee that she would not come in contact with black males. Florida awarded her workers' compensation benefits for a work-related disability, and the award was affirmed per curiam by the Florida Court of Appeals. (Casey 1994, p. 381)

It is easy to characterize such reactions as mental illness. Remember that one of the possible symptoms of the ever flexible post traumatic stress disorder is avoidance of situations similar to the traumatic events, is it not? Well, it takes no great stretch to see an unwillingness to return to the work situation as a reasonable form of avoidance.

Of course, the medicalizing of normal reactions is just part and parcel of what Kirk and Kutchins, in their book The Selling of DSM (1992), have called the psychology establishment's commitment to medicalizing all of life. In so doing, they turn rational behaviors into illnesses.

Guerrilla Theater of the Absurd

With years of practice in the criminal domains of competency and insanity, mental health practitioners in civil suits involving disability, discrimination, and compensation have rushed in not only with bushels of diagnoses, making it impossible for the pitiable claimant to

hold a job, but with exculpatory diagnoses accounting for any and all kinds of lousy job performance. "It is not his fault, Your Honor; he was too manic to treat his co-workers politely; she was too phobic to make her sales calls; she was too stressed to come in on time; he was suffering from Tourette's when he cussed out the IRS."

What any rational person would regard as simply flat-out unacceptable behavior on the job or even on the school campus has become a "medical mental disorder" thanks to the psychological establishment's vast lobbying efforts to persuade the general public of the equivalence of physical and mental "dysfunctions."

Just as criminals are not responsible for their criminal behavior if they can persuade a forensic clinician—or hire one—to say that they suffer from a condition that somehow diminishes their capacity to bear the responsibility for their actions, so too are the "mentally disabled" relieved by the label of their disability of having to conform to the demands of civilized society on the job.

This perversion of common sense in the name of mental diagnosis does a great and tragic harm to those who are truly mentally handicapped—like the severely retarded—but who are quite capable of performing their jobs well with some accommodation to their disability. Like all scams, it creates an outrage in its victims that all too often spills over onto innocent bystanders. The abuse of mental diagnoses and the proliferation of absurd demands on employers made in the name of wiping out discrimination against the mentally disabled will make cynics and skeptics not only of the business establishment but of all of us who read of such absurdities in the news.

According to a July 16, 1995, report in the San *Diego Union*-Tribune by Brian Doherty of Reason magazine, the Coca-Cola Company was found liable for over $7 million in front and back pay and compensatory and punitive damages for firing a man who was under treatment for alcoholism—a DSM mental disorder. The $6 million in punitive damages granted by the jury far exceeded the legal limit of $300,000, but under the law juries cannot be informed of this limit.

The town of Mallard, Iowa, banned yard fires because a resident claimed that she was hypersensitive to smoke. She claimed that without the ban she would be segregated from the rest of the community because of her disability.

Reasonable accommodation has developed into politically correct

theater of the absurd. We see today decisions based on mental "medical" disabilities that truly defy all reason. Once you have the label of the legally disabled affixed to your forehead, you receive not only a number of benefits from the different offices of government but a number of special protections. Behavior that would never be tolerated in a "normal" person is protected behavior for the disabled individual.

Golden Opportunities for Psychological Evaluators

So how did Congress and its well-meaning minions go about determining what qualifies as a mental disability requiring reasonable accommodation in places of employment and public access? How did it determine what mental disabilities are so great that persons afflicted with them literally cannot work, that they suffer from "occupational incompetence"? How did Congress determine who would qualify as having one of these disabling mental conditions?

Really, in the only logical way possible. It relied on American mental health experts to tell it what constitutes and what defines mental illnesses. The only other alternatives were to rely on the World Health Organization's catalog of disorders, and that was not politically feasible, or to draw up a catalog itself, and that was not feasible at all. Congress did what any sensible Congress would do. It turned to our resident psychological experts. After all, what are experts for?

In turn, the members of the mental health establishment did the only thing they really could do. They handed the bureaucrats a list of disorders from the latest state-of-the-art diagnostic manual of the American Psychiatric Association. It should come as no surprise that the submitted listing of disorders was as long as possible, including rafts of organic disorders, schizophrenic, paranoid, and other psychotic disorders, mood disorders (affective), mental retardation, anxiety disorders, psychosomatic disorders (somatoform), personality disorders, and, those old favorites, substance addiction disorders (drunks and some druggies).

It is quite daunting to think what the list of acceptable disabling mental disorders will look like in 2010. It will no doubt make the Manhattan telephone directory look small if the past rate of diagnostic proliferation continues apace.

Republican unrest led Congress to amend the law in the spring of 1996 so that those "disabled" by alcohol and or drug abuse will no

longer be eligible for cash benefits, subsidized health care, or the "treatment" undergone by about one third of the toxically disabled. However, according to the *Boston* Globe:

> Experts say that because most addicts have other mental or physical impairments, a majority are likely to requalify for SSI. A report by the General Accounting Office estimates that up to 80% of those cut off the federal rolls will requalify because of some other disability. But unlike today those addicts will not be required to seek treatment because their benefit claims will be based on another cause. (Vaillancourt, *Boston* Globe, September 27, 1996)

This last fact is regarded by the Globe as the bad news. Before the end of 1996, over half of the previously substance impaired had requalified on other grounds. Advocates for the mentally ill were actively seeking out the remainder to help them requalify as well.

We have let clinicians tell us that they and they alone are capable of assessing the mental functioning of an individual—based on their keen analytic abilities and finely honed intuitions—so it is quite reasonable that they should also be in the position of telling the rest of society who needs special consideration due to disorders in that mental functioning.

To make matters worse, the clinicians' determinations of occupational incompetence generally are not challenged. Jerry Dalton's luck ran out in court but he really pushed it by shifting grounds for disability claims repeatedly over the years. Disability specialists rarely go to court. Why should they? Who can dispute their assessments? Only another state-certified, qualified psychoexpert. They do their work out of bureaucratic offices. Signing papers, filling out forms, substantiating claims with the stroke of a pen, diagnosing disabilities for money for welfare clients, insurance claims, workers' compensation cases, and discrimination suits.

Medicalizing Bad Behavior

The American psychological establishment, hand in hand with Congress through civil rights legislation, Social Security laws, and the Americans with Disabilities Act, has medicalized bad behavior and

absolved the bearer of the disability label of all responsibility for the bad behavior.

In our society, mental disability is dispensation. In attempting to level the playing field we've reconstructed the whole surface over a bed of quicksand. The psychologizing of American life in part through the wholesale proliferation and consequent ubiquitous diagnosing of mental "medical" disabilities has played a very large role in this.

Recently, a woman in a Washington State discrimination case was awarded $900,000 after she was fired from a job she had held for less than a year. Her employer, a radio station, claimed that she was aggressive and abrasive and insisted on dominating sales meetings. She claimed that her disruptive behavior resulted from a manic-depressive disorder about which she had informed her employer two months before she was fired. The court ruled that her firing constituted unlawful discrimination against a mentally disabled person (Houston, Seattle Post Intelligencer, August 22, 1995).

One of my favorite discrimination cases involves a Boston woman, about to be fired from her job for incompetence and repeated absences from work, who claimed that the stress of going to work had itself made it impossible for her to do her job. Through her mental health expert, she argued that firing her for failure to perform did not take into account that her job failure was stress-induced, and, indeed, that the firing itself had added to her stress. Her expert said her disability made her eligible for six weeks' leave with full pay. Her employer, no doubt to avoid the expense of litigation, capitulated to her demands and gave her the paid vacation before firing her. That is pure blackmail. After all, straight firing would have provided even more relief from the job-induced stress, wouldn't it?

Doesn't this sound like a claim so silly that any judge would throw it out just on the face of it?

However, the front runner in the "my bad behavior is not my fault I'm mentally ill" sweepstakes is probably the university professor from Boston, fired for a long record of sexually harassing colleagues and students, who sued the university for insensitivity to the psychological disorder that made him accost women—against his will, of course—whenever an unfortunate female happened to be, for example, riding on the same elevator as our sufferer. He claimed that he suffered from a depression that diminished his capacity to func-

tion, and that the medication he took for the depression diminished his capacity to keep his hands off female students and colleagues. You'd expect a large Eastern university to be more sensitive to his pain, now wouldn't you? It wasn't, and I hate to believe this guy ever had a chance of prevailing in court, but there was nothing wrong with the complainant's logic given the court's acceptance of limitless mental disabilities as sources of discrimination suits.

Remember that the American Psychiatric Association almost put the "uncontrollable" desire to rape in the last DSM as a mental disorder. Perhaps it will make it into the next edition.

In fact, U.S. Judge Magistrate Zachary Karol, in dismissing the professor's lawsuit in the summer of 1996, did not reject the disability claim itself but rather the applicability of the anti-discrimination law to the particular case.

> [Professor] Motzkin is incapable, with or without accommodation, of performing the essential functions of his job [teaching]. . . . Whether or not Motzkin did the things he is accused of doing, there is no place in a university community for someone who is as incapable of controlling his impulses as Motzkin insists he is. (Campagne, Massachusetts Lawyers Weekly, June 24, 1996)

The judge did not respond with "Hogwash!" to the claim that the professor just could not keep his hands to himself because of a mental disorder. Oh, no. He just ruled that the disorder made the professor incapable of teaching female students or of working with female colleagues. So he was fired for cause and there was no unlawful discrimination. There is nothing to stop another similar sufferer of lack of sexual control to claim that he is a great teacher despite his inability to keep his hands off his students. Which behavior is not his fault; he suffers from a mental disability.

Once I had a student who told me at the beginning of the term that she had a disability that caused her to fall rather frequently into short epileptic episodes during which she would lose touch with the classroom. She didn't ask me **to stop** lecturing while she spaced out; she asked me if she could tape the lectures to listen to later. Sure. It seemed like a reasonable request. Another time, I had another stu-

dent warn me that her Tourette's syndrome could cause her to disrupt a seminar with foul language if she felt stressed by the comments of others in the class. Tourette's syndrome, according to the DSM, is a tic disorder that starts in childhood and results in the afflicted being unable to control various movements and vocalizations, including, in some 10 percent of the cases, the uncontrollable "tic" of uttering obscenities. That's called coprolalia.

Recently, in Massachusetts, a student with Tourette's filed a discrimination suit against a graduate school of social work that would not accept her to study for a master's degree. The school claimed that it did not discriminate, that the decision was made on other grounds, but I find myself truly bewildered by the concept of a social worker with coprolalia. Even accepting the highly unlikely proposition that a brain disorder compels persons to scream obscenities against their will, what kind of sense does it make to have some social worker with uncontrollable foul language working with abused children, say, or with battered women? In pursuit of nondiscrimination against the legally defined mentally disabled, we subject the truly beaten to further assault. That is nuts.

There is a homeless woman who frequents Newbury Street in Boston—a tourist and shopping mecca of Irish import and stone gargoyle stores—screaming "piece of shit!" and "fucking bitch" to random passersby, while smiling slyly and delightedly. Another apparent case of Tourette's syndrome.

What all of these cases have in common is the claim of a mental disorder taken as a license to behave badly. All of these claimants acknowledge that their behavior makes them highly undesirable as employees, teachers, or students, but they accept no personal responsibility for that behavior or for controlling it. Backed by the American Psychiatric Association's bible of some four hundred disabling diagnoses and empowered by the sweeping scope of the Americans with Disabilities Act, scores of the employably challenged are filing lawsuits and claims with commissions against discrimination, seeking redress from unwilling and unwitting employers.

As Gebrge Will wrote in an April 1996 column:

> Compassionate government has recently rained new rights and entitlements so rapidly that you may have missed this

> beauty; you have a right to be colossally obnoxious on the job.
>
> If you are just slightly offensive, your right will not kick in. But if you are seriously insufferable to colleagues at work, you have a right not to be fired, and you are entitled to have your employer make reasonable accommodation to your "disability." That is how the Americans with Disabilities Act of 1990 is being construed. (Will, Boston Globe, April 5, 1996)

A society conditioned by the modern psychological view that the individual is an impotent pawn of society cannot turn a cold back on its mental unfortunates or a snubbing shoulder to its socially accepted archaeologists of all things psychological. Trapped in a pervasive psychocultural mythology, we can hardly put out a hand to stop the flow of claims of psychological unfairness that will clog our courts and harm the innocent immeasurably before the powers-that-be call a halt to this collective craziness. Compassion must be the most blinding of sentiments. Or perhaps pity, bolstered as it is with the rock of superiority.

Substance-induced disorders—and there are a lot of those in the DSM—are a nice case in point. The DSM classifies drunks as mentally ill, and Washington bureaucrats accepted this classification as legally disabled, so drinkers who have beaten their brains in with alcohol qualify for protection from discrimination as well as a number of benefits like public housing assistance. It happens that impoverished elderly people also qualify for public housing assistance. Thus we have feeble old folks living, terrified, side by side with "disabled" drunks.

Where were Congress's collective wits when it passed that chunk of legislation? "Oh, well, all those disadvantaged people who need the government's help are pretty much the same." Is that what they thought? Who in Washington decided that "mentally disabled by chronic alcohol abuse" meant the same thing as "good neighbor"? The road to hell is surely paved with the good intentions of legislators and bureaucrats who sure as hell do not live in the public housing at the end of the road. Is suffering from discrimination really a greater horror than living in terror for your life? Does the government really have a greater interest in outlawing discrimination against drunks than in preventing the terrorization of the elderly?

Dismantling these bizarre housing juxtapositions with the passage of new legislation that "reenables" the previously disabled drunks and druggies should prove interesting in the coming year.

The psychopolitical impediments to leaving any disorders out from under the protective umbrella of anti-discrimination law must have been quite formidable. Nevertheless, it is an interesting side observation that the anti-discrimination law passed by a Republican Congress does indeed exclude some of the more socially offensive disorders like heroin addiction and compulsive arson while the much older workers' compensation legislation does not.

Which ones did the bigots exclude? They left out the sexual disorders of transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity not due to physical impairment, and other sexual behavior disorders. Spoilsports. They also excluded from ADA's protection those so-called mentally ill individuals who suffer from compulsive gambling, kleptomania, and pyromania. That means that the employer does not have to hire, retain, or reasonably accommodate workers who feel irresistible compulsions to steal from the till or burn the plant down. That must be a comfort. Employers are also not required to hire or retain druggies. Great.

FULL EMPLOYMENT FOR MENTAL HEALTH PROFESSIONALS

Determining justly and reasonably and reliably who is truly too mentally incapacitated to work may be an impossible job. Certainly it is impossible to make such a determination with the scientific rigor pretended to by the mental health professional~who have cornered the market on the enterprise. There is no ophthalmoscope for the mind, but requiring trained mental health providers, psychiatrists, psychologists, and social workers—on the explicitly stated assumption that they and no others know how—to determine, scientifically, medically, reliably, who truly suffers from "occupational incompetency" perpetuates a society-crazing farce.

"He is just too anxious too work" says the doctor. "How do you know?" asks the judge. "He told me so." Adding in all the checklists and report forms in the world won't change the essential "diagnostic" situation.

Nevertheless, the experts in this field claim that a plaintiff's case

will be more convincing if it is supported by an expert witness's exposition of the plaintiff's clinically diagnosed mental disorder. The experts say that such an analysis can help the plaintiff establish both the existence and severity of emotional distress as well as the connection between that distress and the defendant's conduct that all allegedly caused or exacerbated the condition. (After McDonald and Kulick 1994).

As with all things flowing from the marriage of the legal and the psychological, psychological disabilities law in all its present manifestations creates yet further full-employment bills for mental health practitioners. Society buys their authority just as it buys the psychocultural mythology underlying the psychologizing and medicalizing of all of life. One cannot help but suspect that a wildly disproportionate number of legislators in this country must be lawyers married to psychologists.

Whatever the legal distinction between mental disability as defined by the Congress and mental disorder as defined by the DSM, when it comes down to deciding who has mental disorders that are actually disabling, the only authority we've really got in this country is the authority we have all conspired to grant to the American psychological establishment through its categorizations and definition of disorders in the Diagnostic and Statistical Manual, and its determination of who has those disorders and what they mean by clinical practitioners of every stripe. That this hand-off of de facto power is nothing more than a cash cow for mental health practitioners is never acknowledged.

Some people wish to eliminate altogether any ability of Congress to limit disability and discrimination claims, and to hand over all the power to professional mental health providers in law as well as in fact.

Recently John M. Casey, in the Puget Sound Law Review, suggested what most people would consider a perfectly logical course of action to deal with the question of exactly what mental disorders should be considered covered by the reach of the Americans with Disabilities Act.

> First, the EEOC [the people who enforce the ADA] could pass administrative rules to settle the question of which standards to use in determining whether an individual is mentally impaired.

> Rather than the courts relying on the DSM . . . in some cases and not in others, the EEOC should study the problem and then decide whether conditions listed in the DSM . . . will be accepted wholesale, or whether the agency will specify the particular conditions protected by the ADA. *Even if the EEOC were to do nothing more than mandate that all disorders specified in the DSM . . . [except those already excluded by the ADA] fit the definition of mental impairment under the Act, it would greatly improve the present state of the law.* (Casey 1994, p. 415)

No, it would not greatly improve the present state of the law. Mr. Casey was worried that under the present haphazard implementation of the law regarding protected mental disabilities, some behavioral and anxiety disorders like phobias might not be comprehensively protected, but his worry was badly misplaced. As was his faith in the American psychological establishment.

There is grave danger in accepting the premise that only self-interested mental health professionals can judge what mental behavior is a protected disability. Common sense goes out the window in the face of self-interest, as well as the almost limitless temptations provided by the money available to those in evaluative practice and by the sheer power that comes from knowing you are the only game in town.

Professionals with actual reality checks on their claims are confined to narrow vertical markets for their services. Psychological professionals, with virtually no checks on the validity and reliability of their claimed expertise, have an almost limitless reach into the recesses of all our lives.

Let's not hand them any more power over the conduct of our lives in the workplace.

DISPENSATION FROM EVERYTHING FOR EVERYONE

The modern psychologizing of America has led us to blame the system—family, background, neighborhood, schools, workplace, etc.—for every instance of failure in every realm. Psychologized Americans do believe that individuals often fail to perform appropriately or adequately, but they believe that they do so for reasons beyond their control. Even the able-bodied, able-minded worker is

seen through this lens as somehow not truly responsible for failures on the job.

The professionally compassionate clinician would no doubt claim that this practice does no harm. Wrong. It is damn expensive. It steals from the innocent. It makes a mockery not only of true disability but of sincere and valid attempts to combat the waste of discrimination.

In the spring of 1996, the *Boston* Herald ran an article reporting on the results of disputed firings of Boston city workers who had been loafing and otherwise performing below par at work (Sciacca, *Boston* Herald, May *2,* 1996). The arbitrator found for the workers, explaining that it was not one worker's fault that he was always late; it was his supervisor's for not nagging him to wear a watch. The arbitrator also accepted the claim of one fellow who had been sleeping in his car during work hours that he was listening to a stress management tape in order to deal more effectively with on-the-job stress. Quite.

Given such a response to the not-disabled-at-all except in terms of their work ethic, it should come as no surprise that the people who are seen as playing with less than a full deck are essentially seen as playing with no deck at all. The mass of excuses that fly out to excuse the inexcusable behavior of the nonhandicapped are magnified beyond measure for the mentally disabled because the rest of us are so unsure of our ground.

It is not socially acceptable—not politically correct—to challenge claims of mental illness. This poses a much greater danger to our society than the simple threat that society will run out of patience with a system built to engender scams. Mental health providers who fly in the face of common sense, making fools of practical people by claiming skills they do not have, medicalizing bad behavior, and medicalizing normal reactions, gut the spirit of all types of disabilities law and twist the spirit of the average citizen from accommodation to outrage. There is a serious danger that people who are made fools of will pull the plug on a support system that, if sensibly construed and implemented, would be a good thing.

A MODEST PROPOSAL

That society wants to compensate hardworking people who get so badly hurt that they can work no more is good and sensible. That a

civilized society recognizes that some of its members need a helping hand from their fellow citizens to get by also is a good and sensible thing. Reasonable efforts by government and the well-intentioned to stamp out mindless and unproductive discrimination, to compensate workers so disabled on the job that they can work no more, and to help those to whom life dealt such a bad hand that they cannot work at all make perfect sense. Anything else would be a shocking waste of human resources and represents a serious disrespect for the value and dignity of work.

But abuses of the disability compensation system and discrimination legislation are inevitable. Historical and current abuses of physical claims are notorious. That abuse of psychological claims would follow was inevitable. This was particularly so since these disabilities are invisible to the ordinary layperson's eye. Such abuse does not necessitate a call to end a social welfare system that compensates honest citizens for their lost or absent ability to work, although certainly it warrants a call for constant vigilance against fraud. And the principal source of fraud in the psychological disability realm is the psychological evaluator.

Let us save everyone a lot of time and money and let the disability claimant bypass the professional evaluator. Make the checklists and report forms as available to the general public as IRS tax forms. Let the claimant fill them out on his or her own—just like tax forms—or with a private, commercial mental health equivalent of H&R Block. Hand them in to the appropriate office just as they are handed in now, and let the SSA decision makers reach their decisions just as they do now. Heck. Put them on line and have them scored by computer and e-mailed to the relevant judge. It would save so much time and money and would drop the level of scam artistry at least a little.

Follow the same course for discrimination claims. Let the individual with a disability who claims that he or she can and will work but reasonable accommodation was not made show the jury directly the evidence for the justice of the claim. Let the claimant show the jury directly the job skills under dispute and what would be required for him or her to do the job. Let a jury of ordinary people decide what is reasonable and what is not.

Retain the safety net but take psychological farce and fake professionalism out of it.

Reliance on maternal government, like reliance on the maternal employer, leads to the elimination of independence from possible life scenarios for the majority of people. Ambition, action, education, and work—the entire arena of personal responsibility for one's life—become irrelevant to the evaluation of the worth of an individual's life, and irrelevant to the conduct of one's life.

The disavowal of personal responsibility is not widely accepted in the workplace, run as it is by powerful white males, but as soon as an employer-employee dispute involving responsibility gets into arbitration or before a commission on discrimination permeated with the truth-according-to-psychology, the picture shifts dramatically.

As a society, we have lost our faith in the dignity, worth, and power of the individual; we have lost our faith in America as a society of empowered individuals. This loss of faith derives directly from clinical psychology's modern view of the pathological American family, a view that is directly, perfectly mirrored in the structure and dynamics of the larger society.

Because we have lost our faith in the individual's power to act and make decisions responsibly, we have lost faith in ourselves. We must rely on experts to explain to us the complexities, possibilities, and limitations of human behavior.

Of course, our reliance on experts has been ably aided and abetted by sales ~itches — indeed, downright propaganda — about the inability of the ordinary citizen to make any sort of judgment for which a professional psychologist might possibly make a claim to get paid.

Psychological Solomons to fill the decision void are everywhere for hire.

11
Rest for the Wary

Deciding Without Experts

> These people who deal in psychology and psychiatry really are doctors of the soul. The way the root of that word comes is from the Greek "suka"; it means soul. And we're going to be looking at people's souls, in particular the plaintiff's soul and her memories in this case as we proceed.
>
> Jim Brown, attorney for the plaintiff, opening statement, Mateu v. *Hagen*, Seattle, June 6, 1993

THE FREEING OF GEORGE FRANKLIN

On April 4, 1996, Judge Lowell Jensen of the United States District Court for the Northern District of California granted George Franklin's petition for a writ of habeas corpus, overturning Franklin's first-degree murder conviction on the grounds that his constitutional rights had been violated by the prosecutors' conduct in portraying George's silence when asked by his daughter if he was guilty as proof of guilt, and by their withholding from the jury the evidence that all the details of Eileen's testimony had been readily available in the popular press.

Franklin remained in prison on $1 million bail until July 2, 1996, when the prosecutor determined that her only witness, Eileen, was unreliable, and declined to retry the case.

> Franklin beamed as deputies escorted him into the Redwood City courtroom. In clipped tones, lead prosecutor Elaine

> Tipton told Superior Court Judge Margaret Kemp, "We move to dismiss the charges without prosecution."
>
> "No objection," said [defense attorney Douglas] Horngrad.
>
> "The motion is granted," Kemp said, ending one of the Bay Area's most controversial cases ever.
>
> Speaking outside the courtroom, defense attorneys assailed the use of Eileen Franklin's recovered memory as the basis for Franklin's prosecution. In the future, said [Dennis] Riordan, prosecutors will be more skeptical of witnesses with recovered memories who recall events of 20 years past "better than I remember what I had for breakfast two hours ago."
>
> Ironically, it was a purported recovered memory that finally unraveled the case. After her father was sentenced to life in prison in 1990, Eileen Franklin told investigators that she clearly remembered two more murders her father committed, including the January 7, 1976, slaying of 18-year-old Veronica Cascio of Pacifica, where Eileen said she helped dispose of the body. (Wildermuth, San Francisco Chronicle, July 4, 1996)

> Franklin-Lipsker identified a picture of the teen-ager, whose body was found on a Pacifica golf course. She told prosecutors that she remembered witnessing her godfather, Stan Smith, rape Cascio and seeing her father murder her.
>
> But Franklin's defense attorneys uncovered evidence in May that Franklin was at a union meeting at the time of the murder. DNA tests of semen found on Cascio proved that neither Franklin nor Smith could have raped Cascio.
>
> The final blow to the prosecution came with Janice Franklin's [Eileen's sister] testimony about [both Eileen and Janice] being hypnotized before testifying against [their] father. In California, testimony influenced by hypnotic suggestions is inadmissible. (Mary Curtius, Los *Angeles* Times, July 3, 1996)

George Franklin spent over six years in prison because prosecutors and jurors bought a psychofantasy as science. They believed a storytelling psychoexpert was telling scientific truth. It is sad but true, however, that the science fiction basis of the prosecution's case was

not the grounds for overturning the conviction. The federal appeals court did not touch upon the issue of whether Dr. Lenore Terr's multiple-trauma fictions misrepresented the state of scientific knowledge in the field of psychology.

Did they?

ADMISSIBILITY OF EXPERT TESTIMONY AND CLINICAL REASONING

Do psychoexperts in our legal system meet the criteria required by law to act as expert witnesses? The answer to this question has a number of ramifications. Just consider this one. In fairness, shouldn't the indigent be supplied with expert psychologists just as they are supplied with attorneys so that they can mount successful psychological defenses? It may be only a short time before all defendants, indigent and not, will demand the same level of psychological defense as they do legal defense, and who can deny them once the courts have determined the indispensability of psychological testimony?

States vary, of course, in their case law and rules of evidence for determining the admissibility of expert testimony, but many states rely on one or some combination of three criteria: the Frye Rule, the 1993 U.S. Supreme Court decision in *Daubert* v. *Merrell* **DOW** Pharmaceuticals, or Rule 702 of the Federal Rules of Evidence.

The Frye Rule holds that scientific evidence is admissible only upon a showing that the scientific principle involved must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

The *Daubert* decision of the Supreme Court demanded more of expert testimony, holding that the scientific validity of the principles and methodology that underlie a proposed submission is an absolutely essential criterion for the admission of testimony that is purportedly expert.

More loosely, Rule 702 of the Federal Rules of Evidence, adopted by many states as their own principle governing expert witnesses, reads, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise."

Does the supposedly "expert" testimony of clinical psychological professionals today meet any or all of the current criteria for admissibility of expert testimony?

General Acceptance in the Field

The most frightening criterion is the Frye requirement that the experts' opinions must simply have gained general acceptance in *the field* to be admissible in court. In psychology, assessing whether something has gained general acceptance depends a great deal on whom you ask. If 95 percent of the clinical experts believe something, then do we say that whatever it is that they believe has gained general acceptance in the field of psychology as a whole? Of course not. What about all the experimentalists?

It is very hard to think of anything that rises to the level of general acceptance across the broad spectrum of psychology, clinical and experimental. Even if it were possible to identify such a belief, far more important than breadth of acceptance is why a particular belief is generally held to be true.

What if the foundation of the clinicians' belief is strictly personal, manifestly unobjective, and clearly nonscientific? Then, whatever the level of general acceptance, that belief does not belong in courtrooms masquerading as expert scientific testimony.

For example, what if all of the United States were intensely Catholic and every psychoexpert were deeply pious? Then each and every expert on the witness stand would believe in the power of prayer and the action of grace. That still would not make grace and prayer appropriate subjects for expert testimony. Likewise, general acceptance of clinical beliefs by clinicians does not make those beliefs any more appropriate.

When courts use the Frye standard for admission of expert testimony, it should be made clear whether the belief in question is itself scientific or an article of faith. Can it be tested or is it impossible to refute it by any means?

The *Daubert* decision addresses exactly these questions.

Scientific Validity of Theory and Methodology

In 1993, in *Daubert* v. *Merrell* Dow *Pharmaceuticals*, the U.S. Supreme Court held that:

> Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset ... whether the expert is proposing to testify to scientific knowledge that will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.
>
> Ordinarily, a key question to be answered in determining whether a theory or techniques is scientific knowledge that will assist the trier of fact will be whether it can be [and has been] tested. "'Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry.' 'The statements constituting a scientific explanation must be capable of empirical test.' 'The criterion of the scientific status of a theory is its falsifiability, or refutability, or testability.'"

That the fictional "facts" and endlessly inventive "theories" of clinical psychology are no more science than the artful constructs of astrology has been the subject matter of this whole book. It should go without saying that a field in which it is not possible to falsify even the smallest of predictions should not be permitted to exhibit even the smallest of pretensions to the mantle of science. It seems like overkill to pound in once again that intuition is not a scientific instrument and creativity—however admirable in many endeavors—is not the essential hallmark of scientific thinking.

Specialized Knowledge

Okay. So clinical beliefs are not generally held to be true by experimental psychologists as well as by clinicians, and, as we have seen chapter by chapter throughout this book, they are certainly not the products of scientific endeavor. But perhaps they satisfy the admission criteria for expert testimony of the Federal Rules of Evidence. Rule 702, adopted by many states as their own standard, says that if *scientific*, technical, or other specialized knowledge will assist the judge or the jury to understand the evidence or to determine a fact in issue,

then a witness who qualifies as an expert by virtue of his or her knowledge, skill, experience, training, or education may testify as such.

Perhaps clinical claims about the workings of the mind, so utterly devoid of scientific character, might somehow qualify as technical or specialized knowledge. What is technical knowledge? That's knowledge about how much gas a balloon can take before it blows up, or how much stress an aircraft component can bear before it breaks off. Technical knowledge has to do with how the world works and how it goes wrong.

The only technical knowledge remotely relevant to clinical psychology would be knowledge of how the mind works, how it is formed, and how it changes. We have already established that no one knows how the mind works, however widespread the witch doctor fallacy may be. Any clinician who claims on the witness stand to know how the mind works should be hospitalized for dangerous delusions of grandeur.

But what about specialized knowledge? That's a wonderfully vague term. Surely specialized knowledge must be available to the clinician. Indeed it is. A Freudian scholar, for example, might have detailed and specialized knowledge of all phases of the development of Freud's theory, much as a Catholic scholar would have detailed and specialized knowledge about all the essential doctrines of the Catholic faith. If the exposition of the specifics of one of those doctrines was somehow relevant to the deliberations of a court, then surely it would be appropriate to have the scholar testify about what does and does not make up the doctrines. Similarly, if Freud's writings were in dispute in a case, then Freudian experts would be called into court to clarify matters of historical accuracy, for example, for the court.

The use of a specialized knowledge of clinical psychology in this sense is perfectly appropriate. But our Freudian or other scholar, however learned he may be about the claims made by various thinkers and writers at different times about how the mind works, does not himself know how the mind works for human kind in general or for any individual in particular. He has only a scholarly knowledge of the claims of other thinkers. That knowledge can be interesting and useful, but it is not relevant to the determination of any of the pressing psychological issues before our courts like competency, insanity, rehabilitation, custody, fitness, or future dangerousness. How could it be?

and injury, custody, and fitness as a parent, is pervasive and adamantly held.

The most that the individual citizen can do when attacked by a psychoexpert is to hire one of his own and to arm both hired gun and attorney with a copy of Jay Ziskin's three-volume tome *Coping with Psychiatric and Psychological Testimony.*

Ziskin's book provides up-to-date—1995—evidence to attack any psychoexpert's credentials, theories, and the evidentiary bases of the expert's claims. It gives the attorney and the client step-by-step guidance on challenging psychological experts' scientific status, principles, interview procedures, and clinical evaluations, results and conclusions of all the main varieties of psychological tests, the validity of clinical training and experience, the relevance and utility of credentials and qualifications, and the ever-invoked clinical intuition.

Since Dr. Ziskin is an attorney as well as a psychologist, the book also provides guidance on cross-examination in criminal cases, personal injury cases, and child custody cases, with examples of tactics, depositions, and motions. The second volume of his work teaches attorneys and clients how to challenge testimony in some of the specific hot psychological topics and areas of vulnerability running through our courts today—child custody, eyewitness testimony, sexual abuse, post traumatic stress disorder, and diagnoses and prognoses of various mental disorders, along with guidance on the detection of malingering and the reliability of judgments like the assessment of dangerousness.

No attorney facing a forensic psychological clinician can afford not to have this bible of information attacking the scientific status of psychological testimony, now in its fifth printing. Forensic clinicians are afraid of Ziskin. They speak on the Internet of having been "ziskinized" in court when they are challenged on the witness stand by an attorney armed with the knowledge tools Ziskin provides.

Psychocultural Complicity

Certainly blame for the misrepresentation of clinical psychology as a scientific field that uses scientific methods to arrive at scientific results lies at the door of the clinicians themselves. They have their agendas—missionary, political, and financial—that lead them if not inevitably then compellingly to lay claim to a quality of expertise far beyond their ken.

Throw Them Out of Court!

The articles of faith offered as testimony by clinical psychologists in courtroom after courtroom—and in the legislative chambers across the country—do not even come close to meeting the current criteria for admissibility as expert testimony demanded by our courts.

The criteria for admissibility of experts will change; they will be amended and added to and displaced by criteria devolving from new law, new cases, new decisions. Will the claims of the clinicians meet these new criteria? Never.

Not unless clinical psychology abandons its fundamental methodology of creative writing and its complete acceptance of acts of faith for arriving at the truth. Not until clinical psychology accepts the limitations intrinsic to the discipline and recasts itself as a real science. Not unless or until the court chooses to abolish all distinctions among types of testimony.

When the law welcomes the astrologer into the courtroom as possessing the same status as the astronomer, when the court listens to the priest with the same critical judgment it applies to the testimony of the physicist, then and only then will the testimony of clinical psychologists about the formation and functioning of the human mind in general or in a particular individual make sense as expert testimony. When the concept of expertise is itself debased to nothing more than personal opinion, then the clinicians should take the stand along with the rest of the opinionated. Why not?

Until then, throw them out of the courts.

Throw them out of our legislatures too.

HOW CAN YOU PROTECT YOURSELF FROM PSYCHOEXPERT HIRED GUNS?

The California Court of Appeals' reversal of George Franklin's conviction is a ray of hope piercing the veil of obfuscating psychobabble presently shrouding our justice system, as are the refusals of various judges around the country to accept recovered memory psychononsense as science.

But the psychologizing of the American legal system is not a trend that is going to be reversed easily. The degree of acceptance of the moral and legal authority of the forensic psychological clinician to decide matters of guilt, innocence, rehabilitation, mental disability

But clinicians are not alone in enacting this farce. The general public likewise deserves a share of the blame for the interweaving of the tenets and tactics of modern clinical psychology into the very fabric of our justice system. Although a people with a proud tradition of respect for the reasoning and reasonableness of the "common man," we have declared ourselves impotent to enact our traditional legal system roles, and have embraced the theories and practices of a gaggle of highly paid experts. Why? Has human behavior suddenly become so complex that only trained experts can understand, explain, and judge it? Why has society been so reluctant to acknowledge the inherent failings of so-called psychological science, and why have we been so eager to welcome its practitioners into our courtrooms?

Part of the reason is that all of us, as a society, buy into psychoexperts' authority, we buy the accreditation of psychiatry at medical schools as if it were on the same standing as any other medical specialty, and we buy psychological research as if it possessed the same standing as any other scientific research.

The mental health propagandists have done their work and the public believes.

Our need to believe in psychological expertise arises largely from our vulnerability to the witch doctor fallacy and our need to believe in the effectiveness of psychological expertise in our personal lives. If we didn't believe in modern psychotherapy we'd be thrown back for advice and help on our priests, rabbis, ministers, and grandmothers—a distressingly premodern situation indeed.

Society's need to believe in psychological expertise is fueled further by the demands of our democratic legal system. We desperately need the knowledge we attribute to psychology. If we didn't accept psychological expertise as scientific, we'd be in the untenable position of asking Miss Marple to testify in court and give us the benefit of her brilliant intuitions.

Our psychoexperts relieve both Miss Marple and the ordinary citizen of the awesome responsibilities imposed on us by our legal system. It is hard to be faced with deciding who is guilty, innocent, competent, dangerous, fit, injured, or liable. Who wants to make decisions with such horrendous consequences for the lives of individuals when certainty is impossible? We can hand it off to the psychoexperts who claim to have knowledge and expertise to make these

horrible decisions on a much sounder basis than is available to the ordinary citizen. We can be comfortable while the psychoexperts do the work. Not only do they relieve each and every one of us of the burden of responsibility for the conduct of our own lives, they relieve us as well of the burden of exercising judgment in the courtroom.

Like the judge stuck with judging Byron Cooper's competence to stand trial, we are looking for someone "smarter" than we are to make these decisions. Too bad there isn't anyone.

More important than the great need we have to believe in psychological expertise to relieve us of both personal and legal burdens is the undeniable fact that many, many modern Americans also share the psychocultural beliefs of our clinicians about the formation and functioning of personality, about guilt and innocence, responsibility and accountability. Like the cat chasing its tail, the psychocultural beliefs of the society reinforce the influence of the clinicians, who in turn give us new creative fictions about the roles and responsibilities of individuals.

Justice's New Clothes

America is a country that prides itself on democratic decision making, on a belief in the intelligence and decency of the common people and their ability to conduct affairs of such great import as the creation of laws, their enforcement, and the judgment of violations of those laws.

Ordinary people serve in our state legislatures. Ordinary people become police officers and attorneys. Ordinary people give evidence and serve as jurors in trials. Even our judges in most cases are subject to the will of the people either because they are obliged to accept the decisions of juries or because they must stand for election.

Today tradition is no longer enough. America has undergone a zeitgeist shift, a fundamental change in our most basic values. Americans want a justice system now that is fair in terms that make sense in light of what we believe today to be true about individuals and the causes of their behavior. Moreover, ordinary people, as well as honorable members of the legal profession, desperately seek an authoritative basis for making cruel, wrenching, difficult, even impossible decisions about guilt and innocence, responsibility, competence, and dangerousness, about who shall be confined or punished, about who shall be helped and who shall be free.

We do not seek the ancient but harsh options of Solomon the stern father ("Cut the child in half!"), but rather the forgiving understanding of a kindly modern mother ("Those bad companions led you astray, poor baby"). We say, who are we to judge another individual's conduct? We only want to understand it. Modern Americans exhibit little concern for the consequences of an action, but considerable concern for its cause. No matter how heinous the crime, with the dead still uncounted and the wounded still bleeding, we ask, "Why did he do that?" We apparently believe that if we understand the motive, then the chaos created by crime is stilled, order is restored, and our lives remain under control. Because understanding brings us these blessings, to understand is to forgive, to understand all is to forgive all.

Our forgiveness is further compelled by our modern concept of motives. We no longer believe in evil; we scarcely acknowledge the existence of sin. We accept that individuals do harm, but we believe that they do so for reasons beyond their control. This modern, widespread denial of personal responsibility for conduct—what the radio talk show hosts call "victimism"—is both a product of psychology's infiltration of the American legal system and a fundamental cause of it.

Modern psychology—and its psychotherapeutic offspring—is wed to a systemic, liberal view of accountability. The central premise of American clinical psychology is that the individual at birth is an infinitely malleable lump of clay that can be, and is, shaped into any form at all by the hands of parents and family; that form is then fired into its durable personality and character structure by the immediate and larger society. (Not to push the metaphor too hard, but it also follows that the forces of society can break these fragile vessels.) If the child turns out badly, it's the parents' or society's fault.

The psychologizing of America is part and parcel of the liberalizing of America over the last thirty years. It is no step at all to go from blaming parents to blaming the system—background, neighborhood, income, class, sex, race, political and economic inequities—for every instance of failure in every realm. Psychologists, like liberals, blame the system for everything. (Of course, conservatives blame the liberals.)

The truth is that each and every one of us, liberal and conservative—as individuals; as citizens; as voters; as jurors, judges, and law-

makers—has contributed to a comprehensive undermining of the American legal system through the institutionalization in our justice system of the assumptions, principles, and prejudices of current American psychological practice.

We have allowed the tenets of psychology to be written into our law and its practitioners to be sworn as the ultimate experts on all issues in which law touches on questions of human responsibility for behavior because a coherent system of law cannot exist without a moral foundation. American intellectuals and legal experts of all stripes have discarded the religious foundations of their antecedents and have embraced in their place twentieth-century psychology's view of humankind and the moral condition. Stripped of any explicit religious trappings, psychology masquerades as an impartial, scientific foundation for the understanding of human behavior. As such it is welcome in our courtrooms and legislative chambers where frankly religious systems of belief are not.

The Modern Moral Script

Thanks to the persuasive influence of clinical psychology on modern American intellectual life, many, if not most, of the intellectual elite in this country embrace the basic tenets of Freudian theory, however disguised rhetorically in contemporary jargon. The beliefs are as firmly ingrained as those of our traditional religions, and as hard to question.

There are some obvious similarities between modern psychology's view of the human condition and the traditional Judeo-Christian religious view, and some not so obvious. The Tree of Knowledge of Good and Evil in the Garden of Eden is replaced by sex in all its dramatically staged complexity, the snake is repressed into the deepest part of the self, and the apple-eating woman part is picked up by the bad mother who first seduces the hapless child, then punishes him for her own transgressions. Traveling through the psychosexual stages leaves indelible marks on the psyche much like the stain of original sin, or sins. Trouble-free drive satisfaction might be likened to a return to the Garden of Eden, and redemption via the action of a Supreme Being has been transformed into awakening under the wise guidance of the psychotherapist.

The ideas of free will and moral choice have vanished from the landscape. There is no way that a helpless child can be held respon-

sible for what happens to him or her. In the post-Freudian world, by the time a child can make moral choices, by the time a child has a conscience or Superego, most of the damage that can be done to the psyche has already been incurred. Babies are morally neutral, fragile vessels, shaped and cracked and broken by forces completely beyond their control. Present-day psychologists, with no intellectual consistency but insistent vigor, extend the period of extreme fragility way past the Oedipal years, well into adolescence. In this system, sin and guilt are impossible in youth and illogical in adulthood.

Innocence is not simply lost; it is destroyed by cruel parents and bad environments. Drunken and abusive parents can brutalize a child, gangs can lead young people astray, and poverty creates its own deplorable set of values. It is bad parents and an unjust society that cause the innocent child to turn into a criminal. If we understand the cause, then we understand the crime. Whodunit has become an exercise in psychoanalysis.

An interesting inconsistency in modern psychodynamic theory is the assertion that however shaped, cracked, or broken, the mind of the child is infinitely malleable. In the proper hands, the crack can be filled, the shape can be re-cast, the disordered youth can be completely rehabilitated. Belief in rehabilitation is necessarily accompanied by a belief in the effectiveness of therapy. After all, it is through therapy that the initial damage to the psyche is identified, inappropriately fixated ideas are de-energized, and symptoms are dissipated. If lying, stealing, destroying, hurting, and lulling are seen as symptomatic expressions of psychological disorders, then they too should respond to therapeutic treatment. So should wife beating, child molesting, public cursing, drug abuse, chronic drunkenness, and any one of the other socially offensive mental disorders. Given such a view, sentencing offenders to therapy is perfectly reasonable.

Variations in modern psychological theory are endless, evolving, and increasingly ad hoc, but the overwhelming majority of what the conservative media call "the intellectual elite," as well as the psychological clinical practitioners in America, in and out of our courtrooms and legislative chambers, embrace at least some of these tenets in some form or other.

What is true of American intellectuals is also true of a great many ordinary Americans educated in our rigidly secular institutions

of higher learning. While requiring no course in ethics or the great religions of the world, we do require a great many of our students in both high school and college to take a general course in psychology before graduating into the world as educated persons. Since this has been going on for decades, it was inevitable that many of the tenets of psychology—particularly those addressing the causes of behavior—should have become part of the fabric of American moral life, of core cultural beliefs.

You'd be hard put to find an American who wasn't, at least a little bit, "psychologized," even if he or she denies it vehemently.

Read the sentences below. Do any of them sound familiar? Have you ever heard your hairdresser or your bartender or your classmate say anything similar? How about your teachers? Or novelists? Or movies? Or musicals? Recognize any of these themes?

"The mind has to protect itself by repressing the memories of terrible traumas."

"There are lots of troubled people like the woman in The Three Faces of Eve."

"*Homophobic guys are just repressed gays reacting against what they really are.*"

"Psychotherapy can put you in touch with your real unconscious feelings."

"Truth serums can reveal ideas and feelings you didn't even know you had."

"Hypnosis lets the real you out from under wraps. I'd never let anybody do it to me."

Just as most Americans are brought up in a society that accepts the Judeo-Christian ethic—and metaphysics—as the fundamental terrain on which we build the edifices of our legal and social structures, so too do we grow up in a society that has taken the psychodynamic script for the drama of life and the nature of man—and, certainly, woman and child—as its psychosocial starting point.

We accept the validity of the psychodynamic script because we feel it makes sense of our lives. We want to understand what makes

people behave as they do, and we want to lay blame for everything that goes wrong somewhere outside the individual. We are looking for a moral compass that is intellectually satisfying and scientifically valid.

DYSFUNCTIONAL FAMILY PSYCHOLOGY IN THE COURTS

Modern clinical psychology gives us what we want and need to reach moral decisions in both personal and public domains; it helps us, we believe, to better make laws and administer justice. The disavowal of personal responsibility intrinsic to dysfunctional family theory finds an apparently surprising but really quite natural home in the intricacies of traditional American legal reasoning.

Motivation is a central component in American moral reasoning. We have long accepted the ideas of provocation and mitigating circumstances. It's understandable to steal bread when you are hungry; it's not understandable to steal Porsches. It's okay to shoot the guy if you find him in bed with your wife; it's not okay to shoot the butcher because you didn't like the cut of meat. The consideration of motivation, of intention, and of state-of-mind are essential to evaluation of guilt in the American legal process.

Today, thanks to the "enlightenment" from modern clinical psychology, we go much, much farther down that path. Many educated Americans, along with their attorneys and lawmakers and judges, have bought—lock, stock, and barrel—the modern psychopolitical assumption that, due to dysfunctional families and a dysfunctional society, the individual is simply not responsible for his or her own behavior.

This has led us directly to the currently fashionable battered woman syndrome defense against murder and assault charges, the epidemic of child abuse allegations of every type reaching even into decades past—once you are injured, you stay injured until you work it out in therapy or in therapeutic courtroom actions—and the apparently infinite number and variety of excuses for behavior on the part of the disabled and the disadvantaged that would put anyone else completely beyond the pale.

We accept the psychological experts in the courtroom because they echo our populist beliefs. They put the scientific seal of authen-

ticity on generally held views about the nature of children and human development, about the causes of behavior and personal and societal responsibility. We hear what we expect to hear and we accept it as truth.

It is clear that each and every one of us has contributed to the takeover of the American legal and judicial system by psychology. Grateful patients, hubristic practitioners, unwilling jurors, conscientious attorneys, up-to-date judges, and concerned legislators have all participated in an unwitting conspiracy to hand over our formerly democratic legal system to a handful of necessarily self-interested hired guns. That our motives—and theirs—were sometimes the best hardly improves the situation.

There are no innocent bystanders. We have all been willing witnesses to the marriage of psychology and the law, we have all been willfully blind to the dreadful offspring they have spawned.

And their offspring are everywhere.

The system is a nightmare of misrepresentation and injustice, of fantasy and distortion. It must change.

DECIDING WITHOUT EXPERTS

Society has created its own monster here. Asking people, demanding of people, that they do what they cannot do forces them to believe that they can. Demanding that psychology give us answers it does not have inevitably forces it to cut loose from the short bonds of science and to fly into the freer realms of art. In the face of our demands the experts also blind themselves. They become what we have demanded that they be. Now it is time we demand that they stop.

If psychologists won't step down from the witness stand voluntarily, the courts must throw them off forthwith. True science itself suffers from so many limitations that the public does well to listen with skepticism when it enters our courtrooms and legislative chambers. Pseudo-science, fraudulent science, should be shown the door without a hearing and sent back to wherever its proper domain may be. The pervasive acceptance of clinical psychology's claims by our justice system must be undone piece by piece and step by step if we are to save our sanity.

We could start by having each "expert," court-employed or defendant-hired, attach exact probabilities to judgments of diagnosis,

competence, and responsibility, then force the expert to show scientifically why those judgments are more likely to be correct than judgments of laypersons. Do not permit one single use of so-called clinical intuition to buttress flimsy, unsubstantiated testimony. If this is supposed to be science, then restrict it to science.

That should go a long way toward getting Miss Marple off the witness stand.

The courts are not helpless. They can throw the experts off the payroll and off the witness stand. They can fire the forensic evaluators who work for the state. They can give the determination of competence over to grand juries and let trial juries decide on their own how much responsibility an accused individual should bear for a crime.

In our system, ordinary people should serve as finders of fact, ordinary people should reach decisions about what the laws of the land should be and who is guilty or innocent of breaking them, who has done wrong and to whom, who should be punished and who should pay, and how.

Ordinary people must take back these duties and rights from the hired guns; we must wrest the legal system back from the psychoexperts. Americans must reclaim their rights as citizens and resume the burdens imposed on them by our legal system.

It should be the people through their judges and juries who decide the degree, if any, of diminished responsibility, mental injury, or disability in both criminal and civil cases. It should be up to the people to judge the evidence for claims for all varieties of mental functioning and malfunctioning.

In criminal cases, let the defendant prove directly to the court his or her inability to form or execute a plan, or to appreciate the consequences of an action, or to control actions or whatever the particular law in the case requires without the farcical testimony of putatively clairvoyant clinicians.

In Massachusetts, Governor Weld enraged the liberal press when he pushed for the elimination of the "not guilty by reason of insanity" verdict and its replacement with the verdict "guilty but insane." The later would entail treatment in a mental hospital followed by imprisonment. Referring to the infamous San Francisco junk food insanity defense, the governor said in the spring of 1996,

"If they eat good Twinkies instead of bad Twinkies and they wake up sane some morning, then they go to prison instead of going back out on the street" (Boston Globe, March 9, 1996).

What is the point? Why send them to a hospital at all? If convicts are diabetics, we would not send them to a hospital for treatment of their diabetes. They would be imprisoned along with all their fellow nondiabetic convicts and given daily mediation for their diabetic condition. Why should the so-called mentally ill be treated any differently? There is no treatment for the "criminally insane" but drugs, and drugs they can get anywhere. It is a fiction that mental hospitals provide effective treatment above and beyond that provided by the drugs. A mental hospital supplies nothing effective but employment for the staff. Anti-psychotic drugs can be administered just as easily and far more cheaply in prisons than in mental hospitals, and there will be no discernible difference whatsoever in the cure rate.

We must stop pretending that psychology can do what it clearly cannot.

In civil trials, let the plaintiffs demonstrate the injury and its cause directly to the judge and jury without any intervening testimony about the unknowable truth of their claims by psychoexpert witnesses. Let welfare applicants demonstrate their inability to work without the misbegotten advocacy of clinical experts.

Insurance companies and managed health care organizations have to put a stop to reimbursement for crazy diagnoses and ineffective treatments, while patients, and parents and families of patients, must bring suit for malpractice. Prosecutors should look into bringing charges for fraud. If psychologists won't police themselves, society must do it for them.

Any change in the direction of recapturing power for the people would be swimming against a vast tide.

Psychological practitioners have powerful professional and financial reasons for claiming that both diagnosis and rehabilitative treatment are valid, reliable, and scientifically based. Insurance companies and health care administrators have sound administrative and record-keeping reasons for desiring clearly defined and numerically coded diagnostic categories. Various individuals and institutions have understandable humanitarian interests in providing equal access and a

social safety net for those for whom the playing field will never be level. Judges and jurors truly need expert opinion on the mental functioning—and malfunctioning—of individuals who enter into the legal system.

All these needs and desires are understandable, they are all more than rational, but they cannot be met by the sham of today's level of expertise in diagnosis any more than a baby's nutritional needs can be met by a pacifier.

Judges and juries, the people alone, must decide questions of insanity, competence, rehabilitation, custody, injury, and disability without the help of psychological experts and their fraudulent skills. A democratic society imposes exactly these burdens on the average man and woman and on our judges and legislators. It is time that we give up our attempts to hand off the weight onto the shoulders of professional decision makers. It is past time that we throw out the whores and take back our courts.