

ASSESSING CREDIBILITY IN ALLEGATIONS OF MARITAL VIOLENCE IN THE HIGH- CONFLICT CHILD CUSTODY CASE

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Forensic psychology has not systematically examined the problem of evaluating the credibility of allegations of marital violence within the context of a child custody case. The importance of this issue stems from the negative effect of family violence on children, the implications for parenting effectiveness, and consideration of the feasibility of joint custody. When marital violence has not been previously disclosed or objectively documented by prosecution, there is a need to examine the credibility of the allegations because of the strategic incentive for both sides to distort historical events. A six-factor model is presented to assist the child custody evaluator and judicial decision maker in this task. A risk assessment approach to marital violence in the custody evaluation context is presented. The need to examine the empirical basis of marital violence allegations in custody litigation should not discourage victims from raising the issue and does not diminish the seriousness of family maltreatment as a social problem.

THE PROBLEM

There may be a strategic advantage in contested child custody cases for one party to be viewed as the victim of marital violence and for the other partner to claim to be falsely accused of being a perpetrator or that at least the relationship was characterized by reciprocal violence. Because a high percentage of both men and women in contested custody cases report being abused in the marriage (Newmark, Harrell, & Salem, 1994) and at nearly equal rates (Straus, 1979), it is to be expected that issues of marital violence will frequently be raised in the context of child custody evaluations. The risk exists that these claims may be exaggerated or fabricated, either in the assertion or denial of violent acts and especially in cases where both parents may have been violent. Some practitioners assert that false allegation of domestic violence is a growing problem (Stahl, 1994), but there is no research to suggest that it is common for a parent to falsely assert a claim of marital violence (Jaffe & Geffner, 1998). Because verbal reports in a forensic context are subject to frequent distortion, there is a need for child custody evaluators to have a systematic and rational method to ascertain the credibility of the allegations

when they do arise. Forensic clinical methodology has not yet addressed this issue.

There may be situations in which violence is alleged to have occurred in a marriage, but there are no data to corroborate the violence. If the evaluator finds the alleged victim's description compelling and the denial not very believable, he or she must acknowledge the limits of the interpretation, even when abuse is suspected. Professional guidelines for conducting child custody evaluations are clear on this issue (American Psychological Association, 1994; Committee on Ethical Guidelines for Forensic Psychologists, 1991). Melton, Petrila, Poythress, and Slobogin (1997) issue the following caution on child custody evaluations: "There is probably no forensic question on which overreaching by mental health professionals has been so common and egregious" (p. 484). There is no reason this warning should not apply to the issue of marital violence. The clinical procedural rule is that the evaluator needs to be true to the sufficiency of the data on this issue as he or she would with any relevant issue in the child custody case.

Research shows that the overall prevalence rate of marital violence is approximately 12%, has been stable over time, and supports the empirical generalization that both sexes initiate violent acts, even serious ones, with equal frequency (Gelles & Strauss, 1988). In higher risk populations, such as recently released psychiatric patients, marital violence rates are higher; in one study, the rates were 42% for men and 49% for women (Lidz, Mulvey, & Gardner, 1993). These data do not diminish the reality that harm potential for the female victim is higher, with men causing more serious physical harm, or that much of female violence may be in self-defense (Holden, Geffner, & Jouriles, 1998).

The base rate data on marital violence and the nature of violence prediction create several implications for the child custody evaluator. First, it would be expected that marital violence would be a frequent issue in contested custody cases, as practitioners have suggested (Johnston & Roseby, 1997). Second, a pattern of interactive marital violence would not be uncommon, as opposed to the dichotomous stereotype of the man as the sole initiator of violence in the relationship. The work of practitioner-clinical theorists suggests that the stereotype of the dominating male batterer is too simplistic and that there is a typology of observed marital violence scenarios (Johnston & Campbell, 1988, 1993; Gould, 1998). Third, the subtype of interactive marital violence may be a complex one to unravel in the individual case. Research suggests that clinical judgment may add only a modest amount of predictive utility to harm-doing potential because of the tendency of clinicians to underestimate the rate of female-initiated violence (Lidz et al., 1993). Fourth, if the evaluator feels confident that the data support a conclusion that marital vio-

lence occurred, opinions and recommendations need to inform the court on the frequency and severity of the violence, the subtype or pattern of violence, and how the violence potential may affect parenting and the children in the future.

LEGAL CONTEXT AND WORKING HYPOTHESES

Some states specifically address the implications of marital violence for child custody decisions. Colorado employs a statutory presumption against awarding joint legal custody to a party who has been a perpetrator of spousal violence (*Colorado Revised Statutes*, 1999), and a national judicial organization proposes this presumption for joint or sole custody (National Council of Juvenile and Family Court Judges, 1994). This presumption is based on the plausible hypothesis that a relationship with a history of marital violence will likely act as a hindrance to the type of co-parenting expected in a joint custody arrangement and that this is likely to be the case even when the form of violence was initiated by both partners (Clingempeel & Reppucci, 1982; Johnston, 1995). The literature suggests that a perpetrator of marital violence is likely to be a less effective parent because exposing children to domestic violence is a form of emotional abuse (Jaffe & Geffner, 1998). A history of marital violence predicts a poor prognosis for parenting cooperation (Johnston & Roseby, 1997), and the likelihood of interparental conflict has consistently been shown to interfere with child adjustment to divorce (Felner, Terre, & Rowlison, 1988).

MARITAL VIOLENCE AS A RISK FACTOR IN CHILD CUSTODY DETERMINATION

The presence of marital violence can be treated as a risk factor in predicting potential harm to children in the custody determination. The harm potential can be direct, with estimates of considerable overlap between acts of spousal violence and child abuse (Jaffe & Geffner, 1998), or indirect due to the exposure of children to conflict or violence (Johnston & Roseby, 1997). Depending on the type and pattern of abuse, the trier of fact may want to weigh this factor heavily.

Marital violence has many dimensions. Sonkin, Martin, and Walker (1985) differentiate four types of marital violence: physical, sexual, property, and psychological. They state,

Physical violence is defined as the use of physical force to intimidate, control, or force another person to do something against his will. This may include grabbing, pushing, holding, slapping, choking, punching, sitting or standing on, kicking, hitting with objects, and assaults with knives or firearms. (p. 37)

Johnston and Campbell (1993) use subtypes to describe the interactive pattern involved in marital violence.

There is growing empirical research data to show that violence committed against a spouse can generalize into harm or potential harm to the children and therefore is relevant to decision making about custody and parenting time (Holden et al., 1998; Johnston, 1995; Newmark et al., 1994). Children who witness domestic violence are at risk for a wide range of emotional and behavioral problems (Holden et al., 1998; Johnston & Campbell, 1988). Parenting time arrangements that might facilitate conflict between parents and expose the children to this conflict need to be avoided, if possible, because of the deleterious effect on children's emotional adjustment to the divorce (Emery, 1982; Heatherington, Cox, & Cox, 1986; Wallerstein & Kelly, 1980).

It has been noted that male batterers can be competent parents (Sonkin et al., 1985), but it is assumed that violent or aggressive interspousal behavior may sometimes generalize to negative parenting behaviors, for example, poor impulse control, anger control deficits, less ability to nurture and be a positive role model, and the potential for physical harm to the child (Domestic Violence Visitation Task Force, 1994). Jaffe and Geffner (1998) propose that proof of marital violence is strong evidence of ineffective parenting because the children often are witnesses to marital violence.

ASSESSMENT OF CREDIBILITY IN ALLEGATIONS

There is little guidance for the child custody evaluator on how to handle allegations of marital violence. This problem becomes more complex when the abuse has not been objectively documented. It can be an extremely onerous task to gather reliable data on what is true and what is exaggerated. When a false allegation of domestic violence occurs, it can produce a judicial decision favoring the other parent (*Sisk v. Sisk*, 1997). A recent and highly respected volume on forensic evaluations of all types does not address the issue of marital violence in child custody evaluations (Melton et al., 1997), but child custody researchers (Johnston, 1995) and practitioners (Hedrick, 1998) stress the importance of considering marital violence in custody deci-

sions. This article outlines an approach on how to integrate the issue of alleged marital violence into the child custody evaluation. It addresses issues of reliability and validity in the measurement of this particular risk factor in the child custody evaluation.

The credibility of participants in a forensic psychological evaluation is frequently an issue because of the presence of potential secondary gain or self-interest factors. Credibility of witnesses is most clearly an issue in criminal cases (Melton et al., 1997), but issues of malingering, exaggeration, and defensiveness are also always potential issues in civil litigation. The most thorough volume on these issues in psychological evaluations does not address this problem in the context of child custody cases (Rogers, 1988).

When the occurrence of marital violence has been established through legal fact finding, then the child custody evaluation investigator (CCEI) can rely on this evidentiary data to conclude certain traits or predispositions toward aggression by one or both parents. The CCEI will want to know the specifics of the domestic violence, such as if there is a pattern of abuse, if alcohol or drugs were involved, if treatment has been received, the prognosis for improved self-control, and the degree of harm caused and type of abuse involved (Domestic Violence Visitation Task Force, 1994). These factors are relevant to the task of predicting future parenting behaviors and likelihood of the children being exposed to interparental conflict in this family system.

When marital violence is alleged in the context of a child custody disagreement and there has not been legal fact finding, then it is difficult for the CCEI to determine the authenticity of the alleged behavior. In this case of previously undisclosed abuse, there is an issue of the credibility of the allegation because of its potentially self-serving effect. The evaluator needs to look for other sources of data to corroborate or disconfirm the allegations.

A useful analogy on how to handle this issue is complaints of child abuse, especially sexual abuse, that arise in the context of contested custody cases (Thoennes, 1988). Practitioners have suggested approaches on how to integrate the issue into clinical evaluations (Gould, 1998; Stahl, 1994; Thoennes, 1988), although there is disagreement on the frequency of the problem (cf. Jaffe & Geffner, 1998; Stahl, 1994).

Similar to the situation of child abuse allegations, when there has not been objective documentation of the behavior, it is useful for the CCEI to have rational skepticism about the legitimacy of marital violence allegations that arise within the custody case context. This does not mean that the investigator should hold a pessimistic bias in considering the issue. To the contrary, it is known that marital violence may go unreported in a substantial percentage of marriages (Newmark et al., 1994). Battered wife syndrome and the cycle of

violence are convincingly documented (Walker, 1979, 1984).¹ It is suggested that the investigator also needs to accept the reality that there are reasons for the alleged victim of marital violence to fabricate or exaggerate events to bolster his or her case. It is also to be expected that the alleged perpetrator may minimize or deny violent acts that have not been documented.

Another complicating issue in the allegation of marital violence is that the types of abuse alleged may be emotional or sexual, which generally are not going to be the subject of a formal legal complaint. A pattern of emotional abuse in the marriage may carry over to the postdivorce parental relationship and affect the ability of the parents to work together in a joint custody arrangement. Emotional abuse allegations need to be evaluated, but there is a problem in gathering verifiable data. There are not going to be objective data on the issue, as there can be with physical abuse. There are definitional problems. Differentiating emotional abuse from reciprocal disrespect and a high degree of verbal conflict in a failed marriage is also problematic for the clinician. Practitioners have indicated that the foundation of emotional abuse is often psychological control over the other spouse (Sonkin et al., 1985). Because of the implications for shared decision making and parenting time arrangements, it is important to determine if abuse has occurred, but it is doubtful that emotional abuse will fall within the statutory definition of spousal abuse.

NECESSARY INFORMATION FOR ASSESSMENT OF CREDIBILITY

Some clinicians suggest that if the domestic violence allegations have not been substantiated through legal processes, then the CCEI should not consider the issue at all in the evaluation (Martindale, 1997). I propose that due to underreporting of marital violence (Newmark et al., 1994) it is legitimate and necessary to assess the credibility of these complaints because of the potential harm to children if the allegations are true (Holden et al., 1998). If the data gathered by the evaluator do not support the allegations, then it is proposed that the allegations should not be considered as a relevant factor in making recommendations to the court.

A number of variables need to be measured to assess marital violence allegations. One systematic attempt, by the Domestic Violence Visitation Task Force (1994), to organize this information proposes several guidelines. This group proposes a nominal scale (e.g., categorical measurement) that describes the level of exposure of children to physical and emotional coer-

cion, specific contextual information on violent incidents and the perpetrator, and a typology of abusive behaviors. This heuristic guide refers to cases of documented abuse.

When the alleged abuse is not documented, then the CCEI needs to assess the credibility of the complaints. The investigator needs to search for data from multiple sources to corroborate the allegations via convergent validation (Stahl, 1994).

As with documented abuse, the investigator needs to record the elements of the alleged abuse: type of abuse, severity, frequency, time period when abuse took place, physical setting where it occurred, use of alcohol or drugs by the perpetrator and/or victim, situational factors such as provocation by victim, and if children were present.

Data necessary for convergent validation of abuse allegations consist of (a) medical records of physical injuries, (b) police complaints or reports and criminal conviction, and (c) witness reports and any independent observations of physical or emotional mistreatment. Sometimes the children will report on incidents, but they may be reluctant to report because of a loyalty conflict in their attachment to the parents or being aligned with a parent who is a perpetrator of abuse. Sometimes family members and friends attempt to provide corroboration, but bias is often clear, with the reporting party aligned with one parent in the custody dispute.

GUIDELINES AND CRITERIA: A SIX-FACTOR TEST

A six-factor test of credibility is proposed to evaluate the plausibility of the interspousal domestic violence allegations when there is not legal substantiation of marital violence.

1. Objective verification. The CCEI needs to look for potential objective data such as police complaints or medical records showing injury. Criminal convictions are not included here because that would constitute a case of documented abuse. The frequency and severity of the data need to be noted. A report of abuse to police does not confirm abuse, but these data suggest observations by neutral third parties that may lend credibility to the verbal reports of the complainant. Research on the reliability of eyewitness testimony (Lof-tus, 1979) needs to be considered.

2. Pattern of abuse complaints. The CCEI needs to search for convincing data in a pattern of abuse allegations prior to the start of the child custody

evaluation. Thus, the pattern of official complaints and unofficial reports to others are important in determining the credibility of the allegations. If there is no prior history of abuse complaints and reports surface only at the time of the custody dispute, then this casts doubt on the validity of the data. It certainly is the case that marital violence frequently erupts from the stresses of the marital separation and may be more likely at that time (Jaffe & Geffner, 1998), but the timing of the complaints should be considered (Stahl, 1994). If there is a long pattern of abuse complaints, even without prosecution, then credibility is high because the complaints surfaced before the custody dispute existed. There are documented cases of spousal abuse that remain secretly buried within the dynamics of an abusive relationship for many years, but abuse allegations remain less plausible when they do not predate the custody issues.

3. *Corroboration by credible others.* In the absence of prosecution and conviction of a spouse-perpetrator, abuse complaints need to be corroborated by a credible third party in order for them to be accorded plausibility. Relatives and friends often are biased and lack credibility, such as when a child is aligned with one parent over another. The evaluator needs to know what the collateral party has to gain by confirming an abuse allegation. The more neutral the third party appears, the higher the credibility. The apparent alignment of a collateral source with one of the parents determines the party's credibility (Austin, 2000).

4. *Absence of disconfirming verbal reports by credible third parties.* The evaluator needs to ask whether parties who had ample opportunity to observe the couple report conflict and abuse. One source of data may be older children in the family who do not seem to be aligned with one parent. As with confirmatory reports of abuse, it is important to assess the credibility of the disconfirming party. It is also important to determine if credible third parties report reciprocal abuse by both parties or if the alleged victim was reported to be physically or emotionally abusive to the alleged perpetrator. It is important to take a family system approach to assessing marital violence and to be open to the opposite hypothesis that the alleged victim may also have been a perpetrator.

5. *Psychological profile and past history of abusive behavior by the alleged perpetrator of marital violence.* A risk assessment approach to the prediction of domestic violence can be employed (Heilbrun & Heilbrun, 1995). Risk factors should be identified and a compelling case can be made that violence was likely if a number of risk factors are present. Confidence in

the prediction is improved when there are other sources of information that point to the likelihood that violence did occur. Research suggests that the presence of a major mental disorder (e.g., obsessive-compulsive disorder, bipolar disorder, schizophrenia, panic disorder, major depression with grief) and/or a substance abuse disorder are proven risk factors that help predict violence (Swanson, Holzer, Ganju, & Jono, 1990).

If it can be established that the alleged perpetrator has a history of physically assaultive behavior in other settings and relationships, then the current allegations by the spouse may be enhanced. If there is objective documentation of this behavior or if it is reported by credible third parties, then it can be considered as part of the profile. For example, the substantiation of physical child abuse by a social service agency, being fired from a job for physically assaultive or threatening behavior, or documentation of spousal abuse in a previous marriage can all be used to establish a pattern of violent behavior.

Psychological testing may be helpful in defining the likelihood of violence potential. Both the Minnesota Multiphasic Personality Inventory (Sonkin et al., 1985) and the Millon Clinical Multiaxial Inventory (Hamberger & Hastings, 1986)² have been used to identify violence risk potential among abusive spouses. Typically, testing would be used in combination with a clinical interview and history of aggressiveness to determine the person's mental status and violence risk potential. It should be emphasized that a reliable perpetrator test profile has not yet been identified (Otto & Collins, 1995).

Recent attempts to systematically identify risk factors associated with marital violence are found in the *Spousal Assault Risk Assessment Guide* (Kropp, Hart, Webster, & Eaves, 1994) and the American Psychological Association (1996) Task Force on Violence and the Family report, but these instruments and guidelines remain to be empirically tested. Without a pattern of abusive behavior, a major mental or substance abuse disorder, or a positive violence risk psychological test profile, it is difficult to conclude that the alleged perpetrator is the type of person who would be likely to commit marital violence.

6. *Psychological status of the alleged victimized spouse.* The alleged victim's psychological status is relevant in the credibility assessment process. There is not a research literature to draw upon for integrating this factor into the assessment process. Clinical theory suggests several psychological processes that may contribute to distortion or exaggeration of mistreatment by a spouse: reality-testing problems or psychosis, paranoid disorder, and histrionic personality disorder (Gould, 1998). Data that demonstrate the presence of a major mental illness and/or substance abuse would lend plausibility to

the hypothesis that the relationship may have been a case of interactive or reciprocal marital violence (Swanson et al., 1990). Evidence of cross-situational behavioral patterns of either portraying oneself as a victim or exaggerating can be considered to undermine the measured degree of credibility. A history of aggressiveness in intimate relationships or a psychological test profile suggesting anger and impulse control problems may suggest a volatile personality style that would contribute to a violent relationship.

DECISION RULES FOR CREDIBILITY AND RISK ASSESSMENT: APPLICATION OF THE MODEL

It is suggested that the six factors constitute a core database for the investigator to evaluate the plausibility of the abuse allegations in the context of the custody evaluation. They are proposed as a heuristic guide for the investigator to measure reliability and validity of the data. The factors point to consistency and convergence from multiple data sources as a guide for evaluating credibility. The investigator can use the presence or absence and degree of each of the factors to make decisions about whether to consider the allegations of abuse as relevant to the interpretive process. As with other applications of the general risk assessment model (Monahan & Steadman, 1994), it will be more useful to the court if recommendations are presented in probabilistic and conditional language. That is, instead of using a dichotomous statement to suggest that marital violence did or did not occur, it is more accurate and helpful to state the degree of confidence (i.e., probability) and under what circumstances the risk potential will affect parenting behavior (i.e., conditional). It will also be helpful to the court to describe the pattern of marital violence if it occurred (Johnston & Campbell, 1993).

The application of the six-factor model is illustrated by the following clinical scenarios:

- *High credibility.* Objective police reports over several years confirming reports by neutral third parties, no disconfirming reports by credible third parties, aggressive profile of alleged perpetrator, and normal psychological profile of victim.
- *Low credibility.* No objective data in the form of police reports or medical records, report of abuse surfaced only after custody case started, no corroborating witnesses, disconfirming reports by credible third parties, nonaggressive profile of alleged perpetrator, alleged victim's psychological profile of paranoid disorder, and parental alienation of the children by the alleged victim.
- *Ambiguity on credibility issue.* One police report 10 years earlier without prosecution, corroborating reports only by biased third parties, report by neutral third party of reciprocal verbal abuse, nonaggressive but controlling personal-

ity style of alleged perpetrator, unremarkable personality profile of alleged victim, and plan by alleged victim to relocate out of state.

PREDICTION ERRORS AND LIMITS OF TRUTH FINDING

Truth finding. Mental health professionals, in the role of child custody evaluator, might believe their approach to forensic questions is better suited than the adversarial trial method to unraveling thorny issues such as marital violence. The clinician-scientist position should be more objective and suited to uncovering the truth on particular issues as opposed to the adversarial system of legal fact finding, which excels at determining just outcomes (Thibaut & Walker, 1975). There is no research that indicates this is the case.

As the evaluator wades through the murky waters of biased opinions on an issue such as marital violence, the best that one can realistically hope for is to use the degree of congruency in data from different sources to formulate confidence on where the truth lies. Agreement between one parent and unbiased collateral sources provides convergent validity to the position of that parent (Austin, 2000). The six-factor model serves as a guide for the evaluator who is attempting this measurement and validation process on the issue of marital violence.

When the evaluator has low confidence in formulating an opinion on the issue of marital violence, then the court is better suited to address this issue. The court may be better equipped to find the truth in circumstances of biased and conflicting reports. It is appropriate for the evaluator to make this recommendation to the court and to provide relevant data on the issue for the court to use. When the evaluator cannot formulate a clear opinion on the issue of marital violence, but the court rules on the issues based on evidence, the evaluator can then integrate the finding of the court into recommendations on parenting time and custody.

Prediction errors in risk assessment. In using any decision rules, it is inevitable that there will be missed true events in drawing conclusions about the credibility of marital violence. It may be the case that a spouse was emotionally controlled and physically abused for years, but this spouse did not make police reports, seek medical attention, or tell third parties, and she or he developed paranoia over the years. The clinical data are not sufficiently reliable to establish the credibility of his or her assertion of being a victim. This is a false negative. On the other hand, a reporting spouse may have been a mutual participant in a marriage with reciprocal emotional abuse and errone-

ously told others for years that she or he was physically abused, and the partner has a psychological profile of an aggressive and controlling person. In the absence of disconfirming data, this case may be a false positive on the issue of credibility of abuse. The base rate data on marital violence suggest that violence initiated by both parents should not be an uncommon finding in the high-conflict divorce. To miss this situation would be a misleading true positive if it was concluded that it was a case of one parent perpetrator and a false negative if it was concluded that there was not violence present in the marriage.

Consequences of prediction errors. The significance of identifying types of prediction errors comes from the importance of anticipating the consequences of each type of potential error. The evaluator can help the court understand these error effects. With marital violence, the potential harm to the child is related to the pattern and severity of violence in the family. In general, a false negative could be expected to have more serious consequences than a false positive. It is safer for the child to be placed in the custody of a parent who may be exaggerating a violence allegation than to be placed in the custody of a potentially abusive parent. If the evaluator is confident the child was exposed to marital violence with one perpetrator, then it is clear which type of error is more acceptable. If the accused parent has been an involved and effective parent and the evaluator holds low confidence that the parent was a perpetrator, then the court may view the false positive as potentially more harmful because the child may be denied access to the parenting resources of a very competent parent.

Risk reduction. The evaluator can assist the court in dealing with the inferential process of custody determination by suggesting interventions to reduce the risk of harm to the child after identifying a history of marital violence. Recommendations on parenting time arrangements are the central mechanism for safeguarding the child when there is a violent parent. The risk assessment literature classifies potential risk reduction factors into static and dynamic (Heilbrun & Heilbrun, 1995) to encourage the identification of more changeable factors to reduce risk of harm. In the case of marital violence, dynamic factors, or those that are more changeable, include situational stress due to marital separation. Static factors, or those that are less changeable, might include the perpetrator's personality or major mental disorder. In setting up a parenting time schedule, the court should be interested in the evaluator's opinion on how the risk due to marital violence can be managed. If the pattern of past violence is chronic and related to stable personality dysfunction or substance abuse that has been refractory to treatment, then a

highly structured and possibly supervised visitation arrangement may be appropriate. If the abuse surfaced for the first time as a result of the marital separation and has not recurred, then fewer safeguards may be needed.

SUMMARY

A six-factor model is presented as a guide for CCEIs to deal with the issue of credibility in previously undisclosed allegations of marital violence. In the high-conflict case, the dangers of exaggeration, fabrication, or denial of interspousal conflict are clear. The role demand on the evaluator is to strive for objectivity in collecting and examining data, and this requires that the abuse allegation be scrutinized, with an open mind, for credibility.

The controlling forensic clinical methodological and ethical principle for the child custody evaluator is to ensure that the conclusions for the court are consistent with the available data on the abuse issue. When objective collateral data on the allegations are lacking, it may not be possible for the evaluator to have much confidence in the issue. It is recommended that the court is then in a better position to ascertain the truth. The mental health professional, in the role of child custody expert, is a clinical practitioner with training in the scientific basis of knowledge and clinical technique in this area. To offer opinions on an issue when there is not very strict correspondence with the data is to violate the professional guidelines and the court's expectations of the practitioner-scientist expert. The court needs testimony consistent with standards of expert testimony (*Daubert v. Merrell Dow Pharmaceuticals*, 1993; *Frye v. U.S.*, 1923). It does not need expert speculation.

The evaluator can most efficiently assist the court by adopting a risk assessment approach on marital violence. The potential of prediction errors and accompanying consequences can be made explicit with the goal of facilitating judicial determinations that are likely to reduce the risk of harm by shielding the child from parental conflict. The court will inevitably consider social policy considerations in weighing which type of prediction error is more acceptable, and this may mean using interpretations that go beyond what is justified by the evaluator's clinical data. For example, the evaluator's empirically based estimate of the likelihood that spousal abuse occurred may be less than 20%, but the trier of fact may feel that this is a sufficient level of potential harm to the child, so it is considered a relevant factor in decision making.

NOTES

1. I was involved in a forensic consultation case that demonstrated that the effects of control by the abusive spouse may continue even after death. After the physically abusive husband died, the spouse was afraid to cooperate with an attempt to change the distribution of assets that were stipulated in a will because of fear of what the husband would do to her. This was a case of testamentary battered wife syndrome and demonstrates the pervasiveness of emotional abuse and mental control that can accompany physical abuse from a spouse.

2. The use of personality test inventories such as the Minnesota Multiphasic Personality Inventory-2 or the Millon Clinical Multiaxial Inventory has been recognized by courts as possessing sufficient scientific validity to be useful in forensic settings according to such standards as those of *Daubert v. Merrell Dow Pharmaceuticals* (1993). Pertinent cases include *Applied Innovations, Inc. v. Regents of the University of Minnesota* (1989), *People v. Stoll* (1989), and *Tipton v. Marion County Department of Public Welfare* (1994). A note of caution on the use of these tests in the child custody context needs to be kept in mind. There is no research literature that shows they are predictive of parenting behavior. They are reliable measures of psychopathology, which may be relevant to parenting. Research also has not identified one test profile that fits an abuser of children (Gould, 1998). Personality test results are just one piece of information to be used in the data set gathered for a child custody evaluation. A personality test is best used as a hypothesis-generating device (Gould, 1998), with its results to be checked against other data sources such as interviews, records, and other psychological tests.

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