

## **FAMILY VIOLENCE: *DECISION-MAKING IN CHILD CUSTODY CASES***

This packet is designed to provide up-to-date articles and information to judges, custody evaluators, attorneys, advocates, and mental health professionals on decision-making in contested child custody cases involving family violence. The views expressed in the various articles reflect the opinions of the authors and are not necessarily the official policy or position of the National Council of Juvenile and Family Court Judges (NCJFCJ), unless clearly indicated. This packet has been prepared by the staff of the Resource Center on Domestic Violence: Child Protection and Custody, operated by the Family Violence Department of the NCJFCJ. If you would like further information, contact an information specialist at NCJFCJ, P.O. Box 8970, Reno, Nevada, 89507, (800) 52-PEACE or (800) 527-3223.

Packet contents include:

- 1) Lundy Bancroft, *The Parenting of Men Who Batter*, 39 CT. REV., Summer 2002, at 44.

This article discusses the parenting characteristics commonly observed in perpetrators of domestic violence and the implications these characteristics have for children's emotional and physical well-being, their relationships with their mothers and siblings, and the development of children's belief systems. It recommends examining all of these issues in making determinations regarding custody and visitation in cases involving histories of domestic violence.

- 2) Carol S. Bruch, *Parental Alienation Syndrome and Alienated Children – Getting it Wrong in Child Custody Cases*, 14 CHILD & FAM. L.Q. 381 (2002).

This article discusses the court's use of theories and research from the social sciences in child custody proceedings involving domestic violence. It examines mental health and legal responses when children resist visits with non-custodial parents by focusing on developments in child custody law stemming from "Parental Alienation Syndrome (PAS)" which has been widely used by mental health and legal professionals despite its lack of scientific foundations. It highlights theoretical and practical problems with PAS, more recent theories concerning alienated children, and concludes with recommendations for attorneys and judges who must evaluate PAS and similar theories from the social sciences.

- 3) Jacquelyn C. Campbell, *Danger Assessment* (2004), available online at <http://www.dangerassessment.com>.

This tool identifies several risk factors which have been associated with increased risk of homicides of women and men in violent relationships. While this tool cannot predict what will happen in a particular case, it raises the awareness of the danger of homicide in

situations of abuse and allows for assessment of how the risk factors may apply to a particular case.

4) Clare Dalton, Judge Susan Carbon & Nancy Olesen, *High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions*, 54 JUV. & FAM. CT. J., Fall 2003, at 11.

This article discusses the challenges judges face in distinguishing between a divorce with high conflict and a domestic violence case with ongoing abuse. It examines the legal, philosophical, and historical understandings of the high conflict family and its potential impact on children. It provides practical guidelines for distinguishing between a divorce with high conflict and a domestic violence case with ongoing abuse and subsequently crafting appropriate and safe child custody awards.

5) Jill Davies, *An Approach to Legal Advocacy with Individual Battered Women* (Greater Hartford Legal Aid, Inc. 2003) (1995).

This article is for non-lawyer advocates working with individual battered women. It provides an overview of advocacy in the legal system, including issues facing battered women and issues facing advocates for battered women. It also describes a basic approach to legal advocacy called "woman-defined legal advocacy," which builds a partnership between the battered woman and the advocate to ensure that together they can create the most effective safety plan and to ensure that the legal system options are used to further the battered woman's safety plan.

6) Loretta Frederick, *Effective Interventions in Domestic Violence Cases: Context is Everything* (Battered Women's Justice Project 2001).

Not all violence is the same. This article highlights the need to understand the context in which domestic violence occurs so that interventions are effective in holding perpetrators accountable and protecting battered women. It sets forth factors for the intervening system to examine, including the perpetrator's intent, the meaning of the violence to the battered woman, the effect of the violence on the battered woman, the context within which any act of violence occurred, the particulars of the violent incident, and how much violence, coercion, or intimidation accompanied the incident. It examines different contextual forms of violence including patterns of violence, intimidation, and control, isolated acts of violence, generally violent individuals, violence as a result of an impairment caused by mental illness or incapacity, and violence as a response to violence or a threat of violence.

7) Caitlin Glass, Tamara Kuennen & Sharon López, *Custody and Visitation: Considerations for Every Attorney Retained by a Survivor of Domestic Violence*, J. OF POVERTY LAW & POL'Y, Mar. – Apr. 2003, at 529.

This article discusses innovative strategies that afford battered women the relief and justice they seek in custody and visitation proceedings. It examines strategies such as:

representing effectively battered women, including, understanding domestic violence and the relevant custody and visitation laws; preparing the case, including custody work plans, litigation strategies, safety considerations, and court procedure; drafting pleadings, including consideration of address confidentiality, compliance with the PKPA, and inclusion of safe and effective custody and visitation provisions; implementing court orders, including ensuring battered women understand the order and safety planning with battered women and their children; and enforcing court orders, including partnering with the prosecuting attorney and law enforcement or initiating contempt proceedings.

8) Deborah M. Goelman, *Shelter From the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence after the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101 (2004).

This article discusses the relevant state and federal laws drafted to protect battered women and their children who flee across state or tribal lines and discusses how courts and family law attorneys may apply these jurisdictional statutes to protect battered women and their children who are involved in interstate custody cases. It examines the specific jurisdictional statutes involved in interstate custody cases and provides specific examples of statutory provisions that can be used to assist battered women and their children, including the UCCJA, UCCJEA, PKPA, VAWA, VAWA 2000, UIEDVPOA (Uniform Interstate Enforcement of Domestic Violence Protection Orders Act), and ICWA.

9) Peter G. Jaffe, Claire V. Crooks & Samantha E. Poisson, *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, 54 JUV. & FAM. CT. J., Fall 2003, at 57.

This article discusses the many misconceptions about the extent and impact of domestic violence on child custody proceedings. It identifies and juxtaposes several misconceptions with the reality of emerging knowledge in the domestic violence field. It also outlines the implications of these misconceptions on child custody proceedings involving domestic violence. It offers recommendations for enhancing professional education, resource development, and collaboration among courts and community service providers.

10) Deanna Jang, *Linguistic Accessibility and Cultural Competency Issues Affecting Battered Women of Color in Family Court*, SYNERGY (Nat'l Council of Juv. & Fam. Ct. Judges), Summer 1999, at 4.

This article discusses the inaccessibility of courts and the justice system for battered women of color. It explores the impact and intersection of racial, ethnic, and gender bias on battered women of color in family court. It recommends that both courts and advocates address these issues to increase confidence in the courts by and access to the courts for battered women of color.

11) Lavita Nadkarni & Barbara Zeek Shaw, *Making a Difference: Tools to Help Judges Support the Healing of Children Exposed to Domestic Violence*, 39 CT. REV., Summer 2002, at 24.

This article discusses ways for courts to consider the safety of battered women and children in the custody and visitation decision-making process. To identify and assess safety issues and to obtain a complete picture of the violence, it recommends that judges conduct a domestic violence inventory, a dangerousness assessment, and a review of collateral information. It includes a discussion of the risks domestic violence poses to children and the dynamics of domestic violence to help judges utilize the information received from the domestic violence inventory. This article also provides guidance to judges about how to assess parental responsibility (both the perpetrator's and the battered woman's), how to assess parental access, and how to craft appropriate orders that focus on safety, are specific, and hold the perpetrator accountable through ongoing monitoring. The article concludes with a discussion on judicial demeanor in the courtroom and its importance to both the battered woman and perpetrator.

12) Gail Pendleton, *Ensuring Fairness and Justice for Noncitizen Survivors of Domestic Violence*, 54 JUV. & FAM. CT. J., Fall 2003, at 69.

This article provides a comprehensive overview of issues facing the courts when noncitizens are petitioners, respondents, or both in domestic violence cases, including a discussion of findings that can be made for battered immigrant women. It focuses on the multiple barriers battered immigrant women face seeking legal protection from abuse. It examines these barriers which include lack of knowledge about the protections afforded battered immigrant women by the Violence Against Women Act and subsequent immigration laws, language access issues, and misinformation about the laws in the United States. It discusses how these barriers shift the burden to judges, attorneys, and advocates to ensure that battered immigrant women are not underserved.

13) JAMES PTACEK, *Disorder in the Courts: Battering and Judicial Responses*, in *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 168 (Northeastern U. Press 1999).

This chapter discusses the conflicting messages battered women and perpetrators often receive from the court about the seriousness of battering. The chapter examines: how judicial responses, such as a supportive judicial demeanor and prioritizing battered women's safety, can empower battered women; how viewing battering as social entrapment – perpetrators attempting to control women and the social world around them, including their children and their ties to extended family, friends, and the larger community – may help battered women to “resist or escape violence;” how judicial actions in restraining order hearings may become part of the ongoing battering dynamic; and how judicial responses may be viewed as a form of emotional abuse paralleling perpetrators' tactics that reinforces battered women's entrapment.

14) MARIA D. RAMOS, ESQ., *Civil Cases Involving Domestic Violence*, in CULTURAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES: A NATIONAL JUDGES BENCHBOOK § 3.1 (Michael Runner, Esq. ed., Family Violence Prevention Fund 1999).

This chapter provides judges with tools to recognize different cultural backgrounds of perpetrators and battered women in order to uncover hidden domestic violence issues and be more effective decision-makers in custody cases involving domestic violence. It provides techniques judges can use to enhance their cultural sensitivity and avoid making cultural assumptions in order to increase accessibility to courts for perpetrators and battered women from different cultural backgrounds, to draft custody and visitation orders that increase the safety of battered women and their children, and to develop strategies to uncover hidden domestic violence issues.

15) Lynn Hecht Schafran, *Evaluating the Evaluators: Problems with Outside Neutrals*, 42 JUDGES J., Winter 2003, at 10.

This article discusses the trend of family courts using reports and recommendations from custody evaluators in making custody and visitation determinations in cases involving domestic violence. The article explores the problems that can arise for family courts that rely on recommendations from custody evaluators. It attributes these problems to recommendations that demonstrate a lack of knowledge about domestic violence and child custody and visitation laws among custody evaluators. The article recommends educating and training custody evaluators about: domestic violence and the relevant custody and visitation laws; screening for and recognizing domestic violence; and the impact of domestic violence on children.

16) Daniel W. Shuman, *The Role of Mental Health Experts in Custody Decisions: Science, Psychological Tests, and Clinical Judgment*, 36 FAM. L.Q. 135 (2002).

This article discusses the use of child custody evaluations and examines the role of experts in child custody litigation. Specifically, the article explores the relevance and reliability of psychological tests of personality used by experts conducting child custody evaluations in child custody litigation, the need to question the reliability and relevancy of such tests, and the practice of allowing expert testimony based on test results. The specific tests examined are: the Minnesota Multiphase Personality Inventory (MMPI) and the Millon Clinical Multiaxial Inventory (MCMI), neither of which were designed for custody evaluations; the Rorschach Inkblot Technique and the Thematic Apperception Test (TAT), which are used in the evaluation of parents, but not specifically designed for custody evaluations; and the Bricklin Perceptual Scales (BPS), Perception of Relationship Test (PORT), Parent Awareness Skills Survey (PASS), and the Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT), which were specifically designed for conducting custody evaluations.

17) Bobbie Steyer, *Structuring a Visitation Order for a Victim of Domestic Violence*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK 2D ED. 252 (Margaret B. Drew, Lisae C. Jordan, Donna J. Mathews, & Robin R. Runge eds., American Bar Association Commission on Domestic Violence 2004) (1996).

This article provides guidance to attorneys about how to draft a well-structured visitation order while considering the safety of battered women and their children throughout the process. The article outlines some of the issues for attorneys to consider, including: whether visitation is appropriate; whether supervised visitation is appropriate; where the visitation and/or exchange should occur; who should supervise the visitation and/or exchange; how the children will be transported to and from the visitation and/or exchange; whether the order clearly outlines times and days for the visitation and/or exchange; whether culturally appropriate holiday visitation is or needs to be included in the order; and whether there are built-in contingency plans for unexpected circumstances and built-in factors that automatically terminate visitation.

18) NCJFCJ, *Bibliography on Decision-Making in Child Custody Cases*.

This bibliography provides additional reading materials and resources on the issues explored in this packet.