Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations

By Rita Smith and Pamela Coukos

Every day, battered women and their children enter the judicial system in the United States, seeking an escape from the nightmare of domestic violence and sexual abuse. Often the first occasion for legal intervention comes when an abused spouse seeks emergency safety through a civil protective order. Another common way that family violence enters our nation’s courtrooms is through criminal prosecution for acts of domestic violence and child abuse. Over the past two decades, legal reform movements in every state have exposed systemic problems that prevent fair and effective responses to domestic violence, child abuse, and sexual assault. Changes in law, and more importantly, innovations in practice are beginning to help the millions of women and children who need legal protection from these crimes. The third way family violence often interacts with the legal system is — through divorce, custody, child support, and visitation proceedings.

Unfortunately, justice for battered women in family court remains elusive.

LOSS OF CUSTODY TO ABUSERS

Reforms leading to more meaningful emergency protective measures and an improved criminal justice response do not address what frequently happens after a battered woman gets a restraining order or reaches a point where she feels able to leave an abusive partner. In many cases, she takes that step because witnessing domestic violence is affecting her children. She also may have discovered that her partner is actually physically and/or sexually abusing the children. To protect herself and her children, she files for divorce if the abuser is her

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husband, and initiates custody proceedings if they have children in common. If they have preexisting legal determinations respecting custody or visitation, she seeks to modify these arrangements. Shockingly, these common sense protective actions too often lead to the nonabusive, “protective” parent being put on trial. She then may face a loss of custody to the abusive parent, a loss of visitation, or in extreme cases, the termination of parental rights.

This article attempts to explain the counter-intuitive phenomenon of protective parents losing custody to batterers and abusers. It also highlights theways abusive partners use custody as a weapon to intimidate battered women, and how batterers frequently initiate or prolong litigation to perpetuate abuse. Through the use of spurious and discredited psychological “syndromes,” an abusive parent may successfully portray the protective parent as mentally unstable and undeserving of custody. The prevalent belief that many parents fabricate domestic violence and child abuse allegations during divorce and custody disputes makes it easier for batterers to win custody. As explained below, however, there is no evidence to support the belief that there is a widespread pattern of false allegations.

Many judges face the difficult and unenviable task of determining custody and visitation between contending parents, cases that by themselves raise a host of issues. These cases are even more challenging when they involve allegations of domestic violence and/or child sexual abuse. The stakes are much higher given that an erroneous decision could place a child at risk of harm. Judges understandably seek the tools that can help them evaluate whether the allegations are true, in order to make a decision that protects the child and is fair to the parents. However, judges should be wary of much of the psychological evidence offered to assist a court in evaluating abuse allegations, which may be used to cover up abuse and wrongly characterize the reporting parent with a pathological diagnosis. Indeed, respected authorities such as the American Psychological Association (APA) have discredited many of these approaches. One example of this type of unsupported psychological labeling can be found in an article recently appearing in this publication, written by Ira Daniel Turkat, entitled “Management of Visitation Interference”, which is discussed later in this article.”

Only by understanding the dynamics of domestic violence, and by stringently examining any psychological evidence offered to minimize or negate the effects of abuse, can a court feel confident that its decision is both fair and safe.

DOMESTIC VIOLENCE AND CHILD CUSTODY

The Dynamics of Domestic Violence. According to the Department of Justice, at least one million women are beaten, raped, or murdered by intimate partners every year. Other estimates put the number closer to four million. Domestic violence is more than just the physical acts of violence themselves, but includes a range of controlling and coercive, emotionally abusive behavior, threats, and intimidation. A batterer may carry on a relentless campaign to destroy his partner’s self-esteem. An abuser may sabotage a woman’s efforts to obtain and keep a job. Strategies include stealing her clothes before a job interview, stalking her at work, making constant phone calls to her workplace, causing her to be late for work, and inflicting visible injuries to make her feel unable to go out. A batterer may keep a woman trapped in an abusive relationship by cutting her off from outside support and placing her in fear of serious injury or death. An abuser will frequently threaten to harm or kill a woman or her children if she leaves.

Separated women are three times more likely than married women still living with their husbands, to be victimized by a batterer. Due to the historical failure of local law enforcement to intervene in domestic violence cases, a battered woman realistically may believe that reporting abuse, filing criminal charges, or obtaining a protective order will only fuel violent retaliation. Her family, his family, or even their church may pressure her to stay in the marriage, despite the violence.

This is not to say that battered women are passive victims; indeed, many women have developed important self-protection strategies when trapped by abuse, and may be using their best judgment about whether it is safer to stay with the abuser than to attempt to leave.

The authors wish to thank NCADV interns, Erica Nieszoda and Alissa Stein, and Dana Rayl West, the founder of Justice for Kids, for their invaluable contributions to this article.
The Dynamics of Domestic Violence in Custody Disputes. Despite a perception that the courts disproportionately favor mothers, one study has shown that fathers who fight for custody win sole or joint custody in 70 percent of these contests. An abusive partner will often threaten to take the children in order to keep the mother in the relationship. If she leaves, he may continue efforts to harass and control her by manipulating custody litigation. The APA put it best: “[w]hen a couple divorces, the legal system may become a symbolic battleground on which the male batterer continues his abuse. Custody and visitation may keep the battered woman in a relationship with the battering man; on the battleground, the children become the pawns.”

A batterer may use inconsistent child support payments to economically abuse his children and former spouse. Fathers who batter the mother are twice as likely to seek sole custody of their children than are nonviolent fathers, and are three times as likely to be arrears in child support. Additionally, an abusive parent is likely to disrupt court-ordered visitation schedules as a way to continue the abuse of his former partner. Finally, a batterer may manipulate the legal system with false psychological “syndrome” evidence to emotionally abuse his victim. By portraying their mother as “malicious,” the batterer may also harm the children.

The Effect of Domestic Violence on Children. Domestic violence harms children because of the psychological impact of witnessing or being aware of abuse, and because in many cases a person who be his spouse or partner also abuses the children in the household. Various studies indicate that approximately 3.3 to 10 million children annually witness their parents’ violence, and studies show that between fifty and seventy percent of abusers also abuse the children. The effects of domestic violence on children may include psychological and social trauma and somatic symptoms/responses caused by witnessing abuse, an increased likelihood of committing crimes outside the home, and an increased likelihood of being in a violent relationship, either as an abuser or as his/her victim.

Often the impact on the children is a strong factor in a woman’s determination to leave a batterer. The discovery that witnessing domestic violence is harming a child, that an abuser has begun to assault the children in the household, or fear that a child will grow up to become an abuser frequently fuels a decision to leave. Ironically, this decision may have serious consequences for the mother. Instead of support and assistance at this crucial time, she may be dragged into custody litigation with her batterer. Of course, if she stays, or fails to report abuse of the children, she risks being charged with abuse and neglect, and losing her children.

Legal Standards for Considering Domestic Violence in Custody Determinations. Because domestic violence has such a negative effect on children, the prevailing trend in family law is to disfavor granting custody to abusive parents, and to structure visitation to protect the battered spouse and the children. Almost all states properly consider a parent’s prior domestic violence or child abuse when deciding whether that parent should have sole or joint custody. Currently, over forty jurisdictions require consideration of domestic violence as at least a factor in custody cases when evaluating an arrangement that is in the “best interest of the child.” Some have adopted a presumption against a perpetrator of domestic or family violence having sole or joint custody. In 1990, the U.S. Congress unanimously passed a resolution calling on states to modify their laws and include a presumption against granting custody to batterers.

The Model Code promulgated by the National Center for Juvenile and Family Court Judges (NCJFCJ) recommends a rebuttable presumption against an abusive parent having sole or joint custody. As recommended by the NCJFCJ Model Code, in deciding visitation arrangements, some type of restrictions including supervised visitation may be appropriate in cases where the parent has committed acts of domestic violence and/or child abuse. Unsupervised visitation gives an abusive parent unencumbered access to the child, and an opportunity to inflict harm on both the child and the custodial parent. According to one study, 5 percent of abusive fathers threaten during visitation to kill the mother, 34 percent threaten to kidnap their children, and 25 percent threaten to hurt their children. For these reasons visitation exchange can be a dangerous situation for many battered women and for their children.

MISUSE OF PSYCHOLOGICAL EVIDENCE

Although both common sense and the prevailing legal standard dictate careful consideration of evidence of domestic or family violence when determining custody, allegations of domestic violence and/or child sexual abuse made during a divorce or custody proceeding are not always taken seriously. These allegations often are wrongly perceived as false, because they are asserted in a contentious envi-
The tendency to wrongly blame reporting parents can be largely traced to an increasing diagnosis of insupportable “syndromes” such as “Parental Alienation Syndrome.”

There are very serious flaws in Turkat’s article. First, he never addresses domestic violence or child abuse, or how each might impact visitation. While focusing on the specter of “malicious mothers” who interfere with visitation, he never mentions the well-documented form of custodial interference — batters using visitation as an opportunity to harm the mother and children. Second, he relies upon questionable statistics to document the problem of visitation interference by so-called malicious mothers. Like Gardner, Turkat’s research apparently comes only from his own clinical observations. The statistics he cites from other sources may be no more reliable. For example, he cites as evidence a statistic on visitation interference from an advocacy group which, when contacted, admitted that there were no scientific studies to directly support the figure.

Others who have reviewed this type of syndrome evidence have sharply questioned its validity. The APA states that “no data” exist to support PAS. Professor John E. B. Myers, a leading expert on scientific and psychological testimony in court cases, includes PAS among those syndromes that “give a false sense of certainty,” and goes on to say that this syndrome is not a diagnostic tool and provides “no insight into the cause of . . . parental alienation.” Since it is non-diagnostic in nature, Myers suggests that PAS “should not be admissible to prove that a person’s symptoms result from a particular cause.”

The most disturbing aspect of theories like PAS and MMS is how they can be used as a cover for domestic violence and child abuse. Although Gardner repeatedly insists that PAS is never present when there is “real” abuse, he offers no useful guidance in differentiating these cases. Clearly, children who have witnessed one parent battering the other, or experienced abuse themselves, will have negative feelings about the abuser. PAS provides a convenient explanation for behaviors that legitimately might occur in abuse cases. As Gardner himself points out, “when bona fide abuse does exist, then the child’s responding hostility is warranted and the concept of the PAS is not applicable.”

Using unscientific “syndrome” evidence can have serious consequences, and according to the APA, in domestic violence cases, “[p]sychological evaluators not trained in domestic violence may contribute to this process by ignoring or minimizing the violence and by giving inappropriate pathological labels to women’s responses to chronic victimization.” The protective parent’s mental “impairment” can be used to portray her as a less fit parent, and justify granting custody to the batterer. She may have to attend ongoing mediation or marriage counseling with her abuser, endangering her further. In a worst case scenario, the diagnosis can result in the protective mother’s loss of the child to foster care and even the ultimate termination of her parental rights. This can result in placement of the child back into the custody of the abuser, endangering the child further.

Unscientific syndrome theories also feed on a serious misperception of the rate of false accusations. In its Report of the Presidential Task Force on Vio-
lence and the Family, the APA confirms that, “that false reporting of family violence occurs infrequently... reports of child sexual abuse do not increase during divorce and actually occur in only about 2 percent to 3 percent of the cases... even during custody disputes, fewer than 10 percent of cases involve reports of child sexual abuse.” If PAS were as common as Gardner reports — 90 percent of his caseload — then the reporting of abuse should be much more prevalent. Furthermore, the overall reported rates should be dramatically higher in cases where custody is an issue as compared with the general population of families. But studies examining this comparison do not find significantly higher rates of any abuse allegations raised during divorce or custody proceedings. Moreover, these studies find only a very small rate of fabricated allegations in this context. As the APA documents, “when objective investigations are conducted into child sexual abuse reports that surface during divorce or custody disputes, the charges are as likely to be confirmed as are reports made at other times.”

Turkat’s and Gardner’s theories appeal to an understandable desire to minimize the realities of domestic violence and sexual abuse of children. No one wants to think of a child in pain, especially if that pain is caused by a parent. However, the courts must recognize that by taking these syndromes seriously, they send a clear message to abused women and children: Do not come to us because we will not believe you.

EVIDENTIARY ADMISSIBILITY OF INSUPPORTABLE SYNDROME EVIDENCE

Since PAS and MMS are unproven concepts, they do not meet the standards for admissibility of scientific evidence. Courts should be vigilant in evaluating any psychological expert testimony that claims to be able to discern false from true allegations, or that can be used to explain away or cover up abuse. Judges should particularly worry about theories such as PAS and MMS, which raise serious concerns of gender bias. When measured against the two most common standards states use for the admissibility of scientific evidence, the Frye test and the standard applied by the Supreme Court in Daubert v. Merrell-Dow Pharmaceuticals, Inc. PAS and MMS should not be allowed into evidence.

The Frye test, first announced in United States v. Frye by the District of Columbia Circuit Court, applies to the admissibility of scientific evidence in almost twenty-five states. To be admissible, the scientific technique “must be sufficiently established to have gained general acceptance in the particular field in which it belongs.” Even scientifically valid techniques should not be admitted until their reliability has been proven and generally accepted. Commentators have praised this test for ensuring that a pool of experts is available to explain a theory’s significance once it becomes admissible, for promoting uniformity in legal decisions, and for keeping the reliability of the scientific technique from becoming a major issue of the trial.

PAS has not been established as scientifically valid. Gardner based his findings on an informal generalization of observations from his own psychiatric practice. This hardly qualifies as a representative sample or rigorous scientific technique. He does not publish his studies and has therefore never been peer reviewed; his books are self-published. Similarly was invented by Turkat based upon even less reliable evidence. He cites only himself as an authority on the subject, and apparently relies solely on anecdotal observations. Both have failed to achieve general acceptance in the psychological community. In fact, as the APA has explicitly stated, “there are no data to support the phenomenon called parental alienation syndrome.”

Turkat himself admits that “necessary scientific research on this syndrome [PAS] has yet to appear.” Since MMS has only recently been created, the APA has not specifically addressed this “syndrome.” It has, however, warned against applying such “inappropriate pathological labels.”

Even under the more liberal Daubert or “relevance” approach to scientific data, PAS and MMS fail to meet the standards for admissibility and should be rejected when offered into evidence. Under Daubert, “the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.” The court went on to say that general acceptance of the technique (or, in this case, syndrome) and whether the theory or technique has been tested are important factors in determining admissibility, and that “a known technique that has been able to attract only a minimal support within the community may properly be viewed with skepticism.”

The Seventh Circuit has noted that the Daubert analysis applies to “all kinds of expert testimony,” and “[i]n all cases... the district court must ensure that it is dealing with an expert, not just a hired gun.” Since PAS and MMS have not been tested rigorously or subjected to peer review, their reliability has not been established and they should not be used by courts in making custody determinations.

Many state courts, correctly applying these standards, have rejected evidence and expert testimony regarding PAS and similar theories that purport to identify the truth or falsity of allegations of abuse. In New Jersey v. J.C., the court held that “[t]here is simply no scientific foundation for an expert’s evaluation of the credibility of a witness or for the conclusion that a psychologist or other social scientist has some particular ability to ferret out truthful from deceitful testimony.”

(continued on page 54)
Similarly, a Florida appellate court in In re TMW noted that “the use of the word syndrome leads only to confusion... The best course is to avoid any mention of syndromes.” New York also refused to allow admission of testimony concerning PAS in New York v. Loomis and a Wisconsin appellate court rejected PAS as too controversial, stating that “there is limited research data, and there are uncertain risks.”

“The presentation of questionable psychological syndrome evidence may have significant ramifications for justice.” That is why it is so important for judges, child protective service workers, and court-appointed officials to refuse to accept or rely on the untested, unproven, and unreliable PAS and MMS. No child should be placed in harm’s way simply because a professed “expert” has created yet another unproven theory.

CONCLUSION

The most well-intentioned judges may be completely unaware of how they view protective parents until they are presented with the empirical information about domestic violence and child abuse. Judicial education programs on these issues can make a difference. For example, one of the judges evaluating the comprehensive curriculum developed by the National Judicial Education Program (NJE) entitled Adjudicating Allegations of Child Sexual Abuse When Custody Is

In Dispute, admitted how the program had impacted his handling of a case, in which he resisted an initial inclination to be punitive toward the parent making the allegation. In addition to the NJE curriculum, the Family Violence Prevention Fund offers a curriculum entitled Domestic Violence and Children: Resolving Custody and Visitation Disputes. Judicial education commissions can further aid this process by making abuse related information available, and incorporating it into their education and training programs.

The ultimate determination of what custodial or visitation arrangements are appropriate for a case involving domestic violence and/or child abuse is a complex responsibility. Failure to protect battered women and abused children guarantees a host of related societal and legal problems. The judge’s role in custody disputes is to provide a fair forum, as well as to protect at risk children and adults from harm. By seeking unbiased and well-documented sources of information regarding domestic violence and child abuse, the rates of false allegations, and preventive measures to protect battered spouses and abused children, the courts fulfill their duty toward all parties.

NOTES

1. Although the term “custody” is frequently used throughout this article standing alone, similar abuses and dynamics have been observed in related proceedings to determine visitation or child support or to obtain a divorce. See Joan Zorza, Retaliatory Litigation in Florida Domestic Violence Law 22-1 to 22-3 (Susan Swihart ed., 1996).


6. Bachman and Salzman, supra note 3 at 4; see also Caroline Wolf Harlow, Female Victims of Violent Crime (consuming U.S. DEP. OF JUSTICE, BUREAU OF JUSTICE STATISTICS (1991)).


10. APA Report, supra note 8, at 40.


22. See generally Field, supra note 11.


TURKAT’S “RESEARCH,” “SYNDROMES” NEED OTHER CONTEXTS

The recent publication of Ira Daniel Turkat’s article entitled “Management of Visitation Interference” in the spring 1997 issue of the Judges’ Journal misinforms readers and undermines the serious issue of violence against women that is so often exacerbated by separation and divorce. Neither the so-called “parental alienation syndrome” nor the “divorce-related, malicious mother syndrome” to which Turkat refers, meet any respectable research standard and remain unsupported by clinical research and psychological peer review, a fact admitted by the author himself.

Whereas Turkat’s so-called “syndromes” remain pure conjecture among legal and psychological associations, noticeably absent from the article is the well-established data that a woman’s exposure to violence increases after separation from a batterer and that batterers use the visitation context as a means to continue their abuse of and psychological control over the victim. Moreover, studies also show that false allegations of child sexual abuse by women in contested divorce, custody, and visitation matters are rare.

Judges and lawyers will be more comprehensively guided and informed by the well-grounded and balanced information that the American Bar Association and others have developed concerning the difficult issues that arise in these contested contexts. Spurious “research” like that cited by Turkat does nothing more than perpetuate the tired, misogynistic myth of the “woman scorned” and undermine our efforts to ensure fair and equitable treatment of women in the court system.

For context and balanced guidance on the intersection of domestic violence and child sexual abuse in divorce, child custody, and visitation matters, judges and practitioners should look to two model judicial curricula: (1) Domestic Violence and Children: Resolving Custody and Visitation Disputes, created by the Family Violence Prevention Fund of San Francisco, and (2) Adjudicating Allegations of Child Sexual Abuse

When Custody Is in Dispute, created by the National Judicial Education Program, which is part of the NOW Legal Defense and Education Fund, and the American Bar Association Center on Children and the Law.

—Andrea B. Williams is a staff attorney with the NOW Legal Defense and Education Fund, based in New York City.

GENDER BIAS AND OTHER MISINFORMATION

The Women’s Law Project was shocked by assertions made by Ira Daniel Turkat in his recent article, “Management of Visitation Interference.” Anyone who has experience working with families struggling with custody agreements and conflicts knows that such conflicts are confusing, painful, and emotionally charged for everyone involved. Placing the blame for the pain inherent in such disputes on only one party—in this case, the custodial mother—is a mean-spirited attempt to simplify enormously complex problems. Suggesting that mothers are entirely to blame for custody conflicts and that vast numbers of them have psychiatric disorders is extremely dangerous as well as false.

Turkat’s unsubstantiated stereotypes serve only to further vex an already inordinate issue. He makes spurious claims about mothers in custody cases, assertions that rely on theories with no basis in fact. Further, Turkat’s article is riddled with gender bias, as evidenced by the label “malicious mother syndrome.” He makes no attempt to be gender neutral; the label alone suggests misogyny in its worst form.

Turkat’s article relies on musings postulated by Richard Gardner, a forensic psychiatrist and divorced father whom he cites repeatedly. Gardner himself has admitted his notions are simply hypotheses designed to spur research; he described them as “initial offerings” in a 1993 article in The National Law Journal. Yet Turkat offers Gardner’s notions as if they’ve been proven, even referring to Gardner’s assertion that 90 percent of custody battles “bring out some aspect” of “parental alienation syndrome,” and that mothers are the perpetrators in 90 percent of these cases. Gardner himself admitted to The National Law Journal that he fabricated these figures.

“Malicious mother syndrome” and “parental alienation syndrome” are notions, not facts; like “false memory syndrome,” they are ideas that have been given labels to make them sound official. None has been subject to empirical study, research, or peer review. None is supported by objective data, achieved through accepted research methods, yet Turkat presents them as established scientific findings, as if they have validity. In his article, Turkat presents the symptoms of “malicious mother syndrome” in a way that mimics the presentation of disorders in the Diagnostic and Statistical Manual-IV. This is misleading. Turkat’s hypothetical malaise does not appear in the DSM-IV, nor has it been subject to the rigors that would qualify its entry.

Ironically, the Women’s Law Project agrees with many of the suggestions Turkat makes for improving visitation by noncustodial parents with their children. His premise for making these suggestions is rooted in misogyny, however; its lack of scientific grounding is just as damaging as the hate it promotes. We are dismayed that such misogynistic pabulum, unbacked by research of any sort, could be published in an established journal for judges. We sincerely hope that future articles will undergo more careful review before publication.

—Carol E. Tracy is the executive director of the Women’s Law Project, located in Philadelphia, Pennsylvania.
LETTIERS & COMMENTS

LEGITIMIZING STRATEGIES FOR BATTERERS

Last summer, Dr. Ira Turkat was promoting his “malicious mother syndrome” (MMS) theory at the National Congress for Fathers and Children. One year later, it appears in the Spring issue of the Judges’ Journal. This is an extraordinary leap for a theory without an iota of scientific research to back it up. It has borrowed a dubious legitimacy from the word “syndrome” tacked onto it, and apparently comes from the same family that gave birth to “false memory syndrome” (FMS) and “parental alienation syndrome” (PAS). MMS and PAS are pseudo-syndromes concocted to create a defense against domestic violence and child abuse allegations when divorce or custody is at issue. FMS is used as a defense against allegations made by children and adults reporting sexual abuse. All three theories are linked by their common lack of scientific research and are not recognized in any medical, psychiatric, or psychological diagnostic manual.

Juxtaposing Dr. Turkat’s gender-biased article next to the ABA Commission on Domestic Violence’s Judicial Bench Card (see “A Cry for Help” on page 22) was surely an unintended irony, but it may serve to alert judges to the types of arguments they will be hearing when custody is at issue in the context of domestic violence or child abuse. Unfortunately, bogus theories like PAS and MMS appeal to judicial bias against hearing women’s reports of sexual abuse or battering in family court, even when the mothers already have custody. A child’s disclosure of sexual abuse or the woman’s evidence of domestic violence can be cleverly reframed by an opposing attorney to create the impression of a vindictive woman who is brainwashing her child and wreaking vengeance on her ex-husband. Cases in which judges reverse the original decision and grant sole custody or unsupervised visitation to batterers or sexual abusers are an increasingly well-known problem.

For this reason, the American Bar Association and the NOW Legal Defense and Education Fund have collaborated on the judicial education curriculum entitled Adjudicating Allegations of Child Sexual Abuse When Custody Is in Dispute, funded by the State Justice Institute. Theories such as “parental alienation syndrome,” upon which Dr. Turkat seems to place a great deal of faith, are thoroughly explored and discredited. Judges hearing these types of cases must be knowledgeable about the dynamics of child sexual abuse and domestic violence, as well as the alleged abuser’s wish to exert control. These considerations are conspicuously absent from Dr. Turkat’s article, which does not acknowledge that there are many legitimate reasons why a mother seeking to protect herself or her children from harm would consider noncompliance with a court order. The ABA Judicial Bench Card on Domestic Violence and the judicial education curriculum mentioned above can serve as highly effective means of preventing the violation of court orders by ensuring that the woman does not have to decide whether to honor the court order or protect herself and/or her children by not complying.

Publishing theories that are unsupported by any research serves to legitimize strategies that are useful in the defense of batterers and abusers, but ultimately go against the best interest of the children involved in these cases as uninformed judges make decisions based on these syndromes such as MMS or PAS. I would heartily recommend that you publish an article on the ABA and NOW LDEF judicial education curriculum. It will be a step in the right direction.

—Sol Gothard, J.D., M.S.W., A.C.S.W., is a judge in the Fifth Circuit Court of Appeal in the State of Louisiana.

DR. TURKAT REPLIES:

Visitation interference is an intractable problem, estimated to affect millions of children. In the Spring 1997 issue of The Judges’ Journal, I offered innovative proposals to help those suffering from it.

Psychology’s advice to the judiciary ideally should come from scientific findings. Unfortunately, science-based knowledge is not always available. The history of scientific progress in other clinical fields, such as medicine, reveals many advances originated with initial descriptions and hypotheses generated by doctors in their offices. They described observations from their daily practices to begin the research process. The good hypothesis generates research that produces what we eventually accept as fact. Initial ideas fuel the scientific process. They help develop knowledge.

In areas where we know little, it is the clinician’s responsibility to start the research process with useful observations and hypotheses. I have published many articles and books on this. I have taught this to my students. I have done it by example.

Today, unjustified visitation interference has been relatively ignored in the scientific literature. Duty requires that we begin to address it.

A few readers have attacked my recent manuscript in The Judges’ Journal. Much of their attack is not scholarly; instead, it appears tied to the politics of emotionally charged issues. Given space limitations, I cannot respond to each point raised.

As a scientist, one tries to describe what he or she sees, independent of political considerations. Accordingly, when I published the article “Divorce Related Malicious Mother Syndrome” in the psychological literature in 1995, my goal was to initiate the research process on a neglected phenomenon. Unjustified visitation interference was a specific diagnostic requirement. Ten specific criteria were proposed to facilitate proper scientific and clinical communication. I pointed out the criteria represented a beginning proposal and that I fully expected subsequent research would modify what I described. At that time, I had only been exposed to females meeting the criteria. My concern was clinical science, not politics.

Much time elapsed between the time I wrote the article for The Judges’ Journal and the time it actually was published. After writing it, I was subsequently exposed to cases of males engaging in the criteria proposed. As such, I wrote an
article entitled “Divorce Related Malicious Parent Syndrome,” which has been under peer review for several months, modifying the diagnostic criteria and label to be gender neutral. Data dictated the change, not politics. Accordingly, my colleagues and I now refer to this phenomenon as “divorce related malicious parent syndrome” (“DRMPS,” which I will use throughout this response rather than the earlier characterization).

Let me now move on to the specific criticisms.

Andrea Williams of the NOW Legal Defense and Education Fund states my article “undermines the serious issue of violence against women.” Nowhere do I say anything even remotely close to this. My article focused on unjustified visitation interference and its management—an intractable, neglected problem. Substantial literature already exists on the terrible problem of violence against women. I made no statement evaluating that global calamity.

Ms. Williams also ignored what I said in my article and then attacked me for what she ignored. For example, she argued that the syndromes I described are “unsupported by clinical research.” I specifically stated in my Judges’ Journal article on pages 18 and 19 that for parental alienation syndrome (PAS) and DRMPS, “there is an absence of necessary research.” Further, her assertion that the syndromes I described are “unsupported by clinical research” is a misrepresentation. Her statement implies that the research has already been done and has shown these syndromes do not exist. Not so. As I stated, “the necessary scientific research . . . has yet to appear.”

Ms. Williams also states that DRMPS has not been “peer reviewed.” She is wrong. The Judge’s Journal is peer reviewed, as are other journals that have published information on DRMPS. Several editorial referees reviewed my submission for publication suitability in the Judges’ Journal. Similarly, other journals that have published information on DRMPS—for example, Clinical Psychology Review and the Journal of Family Violence—are peer reviewed.

Finally, Ms. Williams argues that my clinical descriptions do not “meet any respectable research standard.” To the contrary, I defined DRMPS with specificity so that it could be easily investigated. Further, all 10 diagnostic criteria must be met—this reduces incorrect labeling. My specification far exceeded what one typically finds in initial clinical descriptions.

Carol Tracy of the Women’s Law Project makes the same errors as Ms. Williams. In addition, she states that I only blame the custodial mother. That’s false. She too ignores what I wrote. I repeatedly point out the gender neutrality of visitation interference. For example, on page 19, I state, “the expert interferring parent gets just what he or she is after” (italics added) and on pages 21 and 47, “the court may direct the violating parent to make his or her problem with visitation interference a public event” (italics added).

Ms. Tracy further accuses me of mimicking the DSM-IV in order to mislead. To the contrary, I specifically outlined the diagnostic criteria as a beginning step—ripe for investigation and likely to be modified as research data accumulate. Again, I also made it very clear in the article that “there is an absence of necessary research” (page 19).

Ms. Tracy demonstrates that science is really not the issue here. She attacks DRMPS because of insufficient research data. But, when it comes to the major thrust of my article—strategies for judges to better manage visitation interference—she states, “the Women’s Law Project agrees with many of the suggestions Turkat makes for improving visitation by noncustodial parents with their children.” At present, there is no greater scientific evidence to support these strategies than there is to support DRMPS. Ms. Tracy uses the name of science to attack what she doesn’t like and ignores the lack of scientific data for what she does like.

Finally, she accuses my work of “promoting hate.” I invite her to provide scientific evidence for this incredible assertion.

Judge Gothard states that I was “promoting” DRMPS last year and now objects that it is in the Journal. Since when does an invited address to a National Congress become promotion? The only thing I am advocating is that innocent children and parents not be subjected to the horrors seen in unjustified visitation interference. The way to accomplish this is through innovative ideas and research. Visitation interference reportedly affects millions of people, and the problem currently resists solution. Further, the first published account of DRMPS occurred in 1994 in Clinical Psychology Review, three years ago; the clinical description is not merely one year old, as Gothard implies. Finally, I could care less about calling something PAS, DRMPS, or whatever; my concern is the elimination of unjustly denying children access to their parents.

Gothard further speculates that I “concocted [DRMPS] to create a defense against domestic violence.” I did not. Visitation interference often occurs without violence or false accusation. The fact that some cases of visitation interference occur in association with violence does not mean that all cases do.

Finally, Gothard argues that my work will be used to defend batterers and abusers. It should never be used as such. Nowhere do I defend batterers and abusers; they should be punished. But don’t forget: unjustified visitation interference is also abuse.

—Ira Daniel Turkat is on the faculty of the University of Florida College of Medicine and is associate editor of the Journal of Psychopathology and Behavioral Assessment.