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Kathleen Coulborn Faller Ph.D.

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CHILD MALTREATMENT AND ENDANGERMENT IN THE CONTEXT OF DIVORCE

*Kathleen Coulborn Faller, Ph.D.**

I. INTRODUCTION

The United States has the highest divorce rate in the world.¹ Almost half of United States marriages end in divorce, and 65% of those divorces involve minor children.² As a result divorce is a fact of life for more than a third of children in the United States.³ Despite its frequency, research and mental health practice both indicate that divorce has long-term detrimental impacts on children, often representing the single most traumatic experience of their childhoods.⁴

Moreover, divorcing families may have problems in addition to dissolution. Such families may also maltreat and/or endanger their children. Illustrative is a recent study of the California Family Court in which 80 % of divorcing families had problems such as child sexual abuse, child physical abuse, child neglect, substance abuse, domestic violence, and criminal activity, and most of the families had several of these problems.⁵ Similarly, Johnston and Campbell in their study of 140 couples with custody disputes found three-fourths of them had histories of partner aggression, using the Conflict Tactics Scale to measure violence. Violence was often associated with alcohol use, and one class of violent parents was psychotic or paranoid.⁶ Further, because of

* Professor, School of Social Work, University of Michigan. Dr. Faller received her Master's Degree in Social Work and her Ph.D. in Social Work from the University of Michigan. She has held numerous teaching appointments at the University of Michigan since 1977, and has written extensively in the areas of child sexual abuse, child abuse, and child maltreatment.

1. See Patricia H. Shiono & Linda Sandham Quinn, *Epidemiology of Divorce*, 4 FUTURE OF CHILDREN 15 (1994); Teresa Castro-Martin & Larry Bumpass, *Recent Trends in Marital Disruption*, 26 DEMOGRAPHY 33-38 (1989).

2. See National Center for Health Statistics, Centers for Disease Control, *Advance Report of Final Divorce Statistics, 1989 & 1990* (visited 1999) <http://www.cdc.gov/nchswww/products/pubs/pubd/mvsr/supp/44-43/mvs43_9s.htm>.

3. See Jerome H. Poliacoff et al., *Parental Alienation Syndrome*, Frye v. Gardner in the Family Courts, 25 COMMENTATOR 1 (1999).

4. See CARLA B. GARRITY & MITCHELL A. BARIS, CAUGHT IN THE MIDDLE (1994); Jossey Bass & Mavis Hethrington, *An Overview of the Virginia Longitudinal Study of Divorce and Remarriage with a Focus on Early Adolescence*, 7 J. FAM. PSYCHOL. 37 (1993); Judith Wallerstein, *Long-term Effects of Divorce on Children: A Review*, 30 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 349 (1991).

5. See Charlene E. Depner et al., *Building a Uniform Statistical Reporting System: A Snapshot of California Family Court Services*, 30 FAM. & CONCILIATION CTS. REV. 185 (1991).

6. See Janet R. Johnston & Linda E. G. Campbell, *A Clinical Typology of*

concerns about the veracity of allegations of sexual abuse associated with divorce, the National Center on Child Abuse and Neglect (DHHS) provided funding for the Association of Family and Conciliation Courts Research Unit to study this phenomenon. Although the actual incidence of such allegations was quite low, occurring in less than 2% of the 9,000 custody disputes in the study, half of the allegations were deemed likely.⁷ Other researchers have found higher proportions of allegations of sexual abuse in divorce to be valid, between about two-thirds to three-fourths.⁸

Nonetheless, the usual response of domestic relations courts to allegations of child endangerment and maltreatment in the context of divorce is to view them with skepticism, and, as a consequence, not to consider them in deciding custody and visitation.⁹ There are at least four possible reasons for this reaction. One derives from the fact that prior to the 1970s, divorces were not granted without grounds.¹⁰ As a result, couples could not obtain a divorce without alleging misbehavior by one or both individuals. The requirement of fault is believed to have led to tall tales. Thus, domestic relations court judges and their staff have historically experienced fabrication on the part of divorcing couples. Second, added to this legacy is concern that parents may make up allegations of bad behavior against one another in order to gain advantage in custody or property decisions. A third and related reason is the belief that parents' lawyers encourage them to dredge up and perhaps exaggerate faults in their-soon-to-be ex-partners. Finally, the primary role of the domestic relations court is not to investigate wrongdoing on the part of divorcing parents. Its role is to divide families and

Interparental Violence in Disputed-Custody Divorces, 63 AM. J. ORTHOPSYCHIATRY 190 (1993); See also JANET R. JOHNSTON & VIVIENNE ROSEBY, IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICTED AND VIOLENT DIVORCE (1997).

7. See Nancy Thoennes & Patricia Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/visitation Disputes*, 14 CHILD ABUSE & NEGLECT 151 (1990).

8. See Arthur H. Green, *True and False Allegations of Sexual Abuse in Child Custody Disputes*, 25 J. AM. ACAD. CHILD PSYCHIATRY 449 (1986); David P. H. Jones & Anne Seig, *Child Sexual Abuse Allegations in Custody or Visitation Cases: A Report of 20 Cases*, in SEXUAL ABUSE ALLEGATIONS IN CUSTODY AND VISITATION CASES 22 (E. Bruce Nicholson & Josephine Bulkley eds., 1988); Jan E. Paradise et al., *Substantiation of Sexual Abuse Charges When Parents Dispute Custody or Visitation*, 81 PEDIATRICS 835 (1988); Kathleen Coulborn Faller & Ellen DeVoe, *Allegations of Sexual Abuse in Divorce*, 4 J. CHILD SEXUAL ABUSE 1 (1995).

9. See MARY ANN MASON, *THE CUSTODY WARS: WHY CHILDREN ARE LOSING THE LEGAL BATTLE AND WHAT WE CAN DO ABOUT IT* (1999).

10. See *id.*

settle property and custody disputes, and hopefully thereby to calm the situation down. If the domestic relations court were to take seriously and explore thoroughly an allegation of parental sexual abuse or drunken endangering of a child, this would enflame rather than assuage parental conflict.

The reactions of skepticism are not limited to judges and court staff. They may also be found among mental health and other professionals who encounter allegations of parental misbehavior in divorce. A psychiatrist, Richard Gardner, has constructed an entire theory, which he calls the Parental Alienation Syndrome, the basic tenet of which is that the vast majority of allegations of sexual abuse and other parental misbehavior in divorce are false, and has written about this in several books.¹¹ Among other arguments he uses to support their lack of credibility is that the allegations are the product of *folie a deux*¹² between the accusing parent, who is the mother 90% of the time, and the child.¹³ Many mental health experts conducting custody evaluations take Dr. Gardner's theories at face value, even though there is no empirical evidence to support them.¹⁴ Thus, they assume allegations, especially those of sexual abuse, are false. Similarly, professionals mandated to investigate child maltreatment, child protection workers and law enforcement officers, may respond to cases involving separated, divorcing, and divorced spouses with a preconception that they are "grudge reports". Illustrative is a study by McGraw and Smith, who re-examined 18 allegations of sexual abuse in divorce reported to child protective services, 16 of which had been denied, and found only three appeared to be false.¹⁵

11. See Richard Gardner, *Differentiating Between Bona Fide and Fabricated Allegations of Sexual Abuse of Children*, 5 J. AM. ACAD. MATRIMONY L. 1 (1989); RICHARD GARDNER, PROTOCOLS FOR THE SEX-ABUSE EVALUATION (1995); RICHARD GARDNER, THE PARENTAL ALIENATION SYNDROME AND THE DIFFERENTIATION BETWEEN FABRICATED AND GENUINE CHILD SEXUAL ABUSE (1987); RICHARD GARDNER, THE PARENTAL ALIENATION SYNDROME (1992); RICHARD GARDNER, TRUE AND FALSE ALLEGATIONS OF CHILD SEX ABUSE (1992).

12. *Folie a deux* is a psychiatric condition in which a dominant individual (*i.e.*, the mother) has a delusion (*i.e.*, that the father has sexually abused the child), and the submissive individual (*i.e.*, the child) comes to share that delusion.

13. See RICHARD GARDNER, PROTOCOLS FOR THE SEX-ABUSE EVALUATION (1995); RICHARD GARDNER, THE PARENTAL ALIENATION SYNDROME (1992); RICHARD GARDNER, TRUE AND FALSE ALLEGATIONS OF CHILD SEX ABUSE (1992).

14. See Kathleen Coulborn Faller, *The Parental Alienation Syndrome, What Is It and What Data Support It?*, 3 CHILD MALTREATMENT 100 (1998); Poliacoff, *supra* note 3.

15. See J. Melbourne McGraw & Holly Smith, *Child Sexual Abuse Allegations Amidst Divorce and Custody Proceedings: Refining the Validation Process*, 2 JOURNAL OF CHILD SEXUAL ABUSE 49 (1992).

I will argue that available research indicates correlations between divorce and other problems that may be harmful to children.¹⁶ Thus, allegations of child maltreatment and endangerment, regardless of the context in which they occur, should be taken seriously and investigated thoroughly.

At the same time, professionals need to adhere to clear definitions and not overreach. In some instances, divergent parenting styles or behaviors and beliefs that have no effect on children are inappropriately defined as child maltreatment and endangerment. It is also important to assess whether child maltreatment and endangerment are chronic or transitory, in the latter instance arising from the emotional or situational circumstances of divorce.

In this article I will propose definitions for child maltreatment and endangerment and then will describe procedures for evaluating such concerns when they occur in the context of divorce.

II. DEFINITIONS

In order to for child maltreatment and endangerment to be considered in decisions of custody and visitation, it must satisfy three conditions.

1. There must be an identifiable parental behavior.
2. There must be harm or potential harm to the child.
3. There must be documentation of the parental behavior and potential or actual harm to the child.

Table 1¹⁷ defines a spectrum of parental behaviors, possible harms to children, and potential strategies for documentation. The list in Table 1 is non-exhaustive, as to all three components, in that it only includes the most common parental behaviors, harms or potential harms, and sources of documentation.

With regard to parental behaviors, society considers sexual abuse harmful regardless of whether there are any manifest effects in the child. In contrast, physical abuse, neglect, and emotional maltreatment are extreme ends of continua of acceptable parental behavior. For example,

16. See FLORENCE BIENEFELD, *CHILD CUSTODY MEDIATION* (1983); Depner, *supra* note 5; MASON, *supra* note 9.

17. See Appendix I.

corporal punishment, failure to provide optimally for children because of limited resources, and scolding children are parental behaviors that would not generally be considered harmful. A particular type of emotional maltreatment that is found in some divorces is one or both parents using the child as a pawn in their battle. A parent may attempt to get the child to take his/her side, may vilify the other parent, may use child custody or visitation as leverage in a property settlement, or may use the child as a spy.¹⁸

In part, the endangerment behaviors are harmful because they may result in physical, sexual, or emotional abuse or neglect of the child.¹⁹ However, because endangerment behaviors do not necessarily result in harm to the child, it is important to demonstrate in an individual case that they do. For example, a parent may have a major psychiatric illness, such as manic-depression, but consistently take his/her medication and behave as a model parent.²⁰ In contrast, a manic depressive parent who does not take medication may spend all the family's money, resulting in physical neglect, or may associate with unsavory individuals, who exploit the parent and children.

In many instances, documentation of the relationship between parental behavior and harm to the child is complicated because the child's symptoms can derive from a range of causes, or the child has multiple symptoms, which cannot be linked to discrete parental behaviors. In addition, although some parental behaviors can be linked to specific harms, the behavior may also have more generic effects. For example, children who are used as pawns in divorce may specifically

18. See GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, COMMITTEE OF THE FAMILY, DIVORCE CHILD CUSTODY, AND THE FAMILY: NEW TRENDS IN CHILD CUSTODY DETERMINATIONS 64 (1980); JOHNSTON & ROSEBY, *supra* note 6; MASON, *supra* note 9. Using a child as a pawn encompasses more behaviors than parental alienation. Parental alienation does occur in divorce, but should be differentiated from Gardner's "Parental Alienation Syndrome."

19. See Roger Bland & Helene Orn, *Family Violence and Psychiatric Disorder*, 31 CANADIAN J. PSYCHIATRY. 129-37 (1986); Jacquelyn C. Campbell & Linda A. Lewandowski, *Mental and Physical Health Effects of Intimate Partner Violence on Women and Children*, in *Anger, Aggression and Violence*, 20 PSYCHIATRIC CLINICS N. AM. 353 (1997); Mark Chaffin et al., *Onset of Physical Abuse and Neglect: Psychiatric, Substance Abuse, and Social Risk Factors from Prospective Community Data*, 20 CHILD ABUSE & NEGLECT 191 (1996); RICHARD RIES, ASSESSMENT AND TREATMENT OF PATIENTS WITH COEXISTING MENTAL ILLNESS AND ALCOHOL AND OTHER DRUG ABUSE (1994); CHING-TUNG WANG & DEBORAH DARO, CURRENT TRENDS IN CHILD ABUSE REPORTING AND FATALITIES: THE RESULTS OF THE 1997 ANNUAL FIFTY STATE SURVEY (1998).

20. See COMMITTEE OF THE FAMILY, DIVORCE CHILD CUSTODY, AND THE FAMILY, *supra* note 18, at 93; Carol Mowbray et al., *Motherhood for Women with Serious Mental Illness: Pregnancy, Childbirth, and the Postpartum Period*, 65 AM. J. ORTHOPSYCHIATRY 21 (1995).

suffer from divided loyalties, but they may also feel anxious and act out. Similarly, a range of possible parental acts could be responsible for the child's condition. For instance, a boy may become aggressive as a consequence of being physically abused, sexually abused, or observing domestic violence. Finally, it is necessary to differentiate the impact of parents' acts from the effects of divorce.

As the column suggesting sources of documentation indicates, gathering information about parental behavior and harm to children may be undertaken using a variety of strategies. Sometimes this information is based upon direct observation. For example, an evaluator observes the parent physically or psychologically abuse the child in the waiting room. Sometimes this knowledge comes from parental admission. For instance, the father reports he accidentally slapped his daughter in the face when she attempted to protect her mother from his slaps. In other situations, evaluators gather the information from past records, for example hospital or criminal records, child protective services or police reports. The child, professionals involved with the child, and other interested parties may also supply documentation. The child is the one person who consistently has first hand knowledge. Evaluators may rely upon information from non-professionals who were present during the event, or in whom the child confided. However, because these individuals may have aligned with one parent or the other, professionals with relationships with the child, may be more reliable sources of documentation. Finally, there will be situations in which research on the impact of that parental behavior, or theoretical understanding of the impact can provide support. For example, in a situation where a young child is inviting adults to engage in intercourse, the evaluator can be confident, based on research, that the child has been sexually abused.²¹ Although mere knowledge of the child's behavior does not tell the evaluator who the offender is.

21. See William N. Friedrich, *Sexual Victimization and Sexual Behavior in Children: A Review of Recent Literature*, 17 CHILD ABUSE AND NEGLECT 59 (1993); William N. Friedrich et al., *Child Sexual Behavior: An Update with the CSBI-3*, 1 APSAC ADVISOR 17-20 (1995); William Friedrich et al., *Normative Sexual Behaviors: CSBI-3* (1996) (paper presented at Trauma and Memory: An International Research Conference) (paper on file with author); William N. Friedrich et al., *Normative Sexual Behavior in Children*, 88 PEDIATRICS 456 (1991).

III. EVALUATION OF CHILD CUSTODY/VISITATION CASES INVOLVING ALLEGATIONS OF CHILD MALTREATMENT AND ENDANGERMENT

When there are custody disputes and allegations of child maltreatment or endangerment, accusations of parental behavior problems must be addressed before decisions can be made about custody and/or visitation. It is not appropriate to overlook these accusations and proceed with a traditional custody evaluation. I have been involved in divorce cases in which evaluators have opined that it makes no difference whether or not an allegation of child abuse is true or false. In part, they express that opinion because it is difficult to determine the likelihood of these allegations. Despite the challenge entailed in assessing these allegations, doing so is vital for making decisions in children's best interest.

The recommendations for evaluation in this article will diverge in some respects from an traditional custody evaluation, in which there are minimal concerns about parental behavior problems. In an article of this length, the evaluation process cannot be discussed in detail. Rather, I will highlight and illustrate strategies and techniques that assist evaluators in gathering information about parental behavior and harm to children.

The following topics will be discussed: (1) using a team approach, (2) seeing the child as a central source of information, (3) reviewing past records, (4) interviewing professionals currently or previously involved with the family, (5) interviewing persons who are important in the child's life, (6) conducting a thorough evaluation of both parents, and (7) the inadvisability of employing parent-child interactions.

A. Use a Team Approach

Although use of a single evaluator is more efficient, use of a team has a number of advantages that outweigh efficiency. First, a team decreases the danger of individual bias and enhances the pursuit of a range of explanations for concerns about child maltreatment or endangerment. Evaluators are often unaware of their biases, which can derive from gender, class, professional training, past professional experience, and personal history.²² Second, using a team distributes the

22. See HELENE JACKSON & RICHARD NUTTALL, CHILDHOOD ABUSE: EFFECTS ON CLINICIANS' PERSONAL AND PROFESSIONAL LIVES (1997); BARRY BRICKLIN, THE CUSTODY EVALUATION HANDBOOK: RESEARCH-BASED SOLUTIONS AND APPLICATIONS (1995); PHILIP MICHAEL STAHL, CONDUCTING CHILD CUSTODY EVALUATIONS: A COMPREHENSIVE GUIDE

work among several people, allowing for more thorough exploration of information and its sources. Evaluations of this sort require extensive data gathering. If a single professional is responsible, working on a single case can totally consume the evaluator's time or alternatively the evaluation may, of necessity, extend over several months. Third, the use of a team avoids placing responsibility for conclusions about the parental problems and recommendations about custody/visitation on a single evaluator. Having these responsibilities can be very onerous and result in burnout.

I have found having professionals from more than one discipline is advantageous. It is useful to have a lawyer and a physician on the team, although they may not have direct client contact. Although social workers, psychologists, and psychiatrists are all mental health professionals, they have different training, possess somewhat different areas of expertise, and can address different issues in a single case. For example, psychologists have specific expertise in psychological testing, and psychiatrists have extensive knowledge in mental illness and the effects of psychotropic medications. At the same time, psychologists and psychiatrists may not be as attune to environmental issues as social workers, nor as aware of services available to families.

Team composition should reflect expertise in the spectrum of child maltreatment and endangerment. Professionals with knowledge of physical injury, child sexual abuse, substance abuse, mental illness, and domestic violence should serve as team members or consultants. Evaluators should know how to screen for child maltreatment and endangerment, but may need to make referrals for more in depth assessments of these and other problems.

I recommend one evaluator whose role is to interview and assess the child. When there are several children, the same evaluator need not see all children. However, if there are different evaluators for different children, he/she should not be the parents' evaluator. Another evaluator should have responsibility for interviewing both parents. In our Clinic, the roles of interviewer and psychological tester are separate ones. Thus, the parents have contact with at least two evaluators.

It is also useful to have professionals with various levels of skill on the team. Pairing skilled, experienced team members with trainees or less skilled professionals can serve several purposes. It can be a mechanism for training. Work can be distributed so that tasks requiring

less skill, for example summarizing relevant information from case records and phoning collateral contacts, can be done by less skilled team members. Less skilled members may draft reports that are then reviewed and revised by senior team members.

It is also very useful to have professionals of both genders on the team. Some family members may be more comfortable or forthcoming with a male or female evaluator. Having both male and female perspectives when forming conclusions and making recommendations can add balance. It is important to assure the opinions of female and male team members are given equal weight.

B. Consider the Child Central to the Evaluation Process

One of the ironies of child custody evaluations is that often the child has a small or no voice in the process.²³ Some evaluators focus their efforts on the functioning of the parents. Others use the parent's interaction with the child as the method of determining who is the most appropriate parent.

Although, as already noted, the child is the one person who consistently has first hand knowledge about possible child maltreatment or endangerment, often with these approaches to custody evaluation, the child is never asked. Children are not questioned because evaluators think children's responses are untrustworthy. Evaluators are concerned children may have been programmed, by one parent or the other, or by someone else. They are also worried children will provide "social desirability" responses. That is, the child will try to provide the answer he/she thinks the evaluator wants to hear, or a young child will fabricate a response when he/she does not understand the question or doesn't know the answer. Alternatively, they think questioning children will put undue pressure on them in an already pressured situation.

Although there is no way to guarantee children's information will be accurate, there are strategies evaluators can use that can increase their confidence in findings from children. Evaluators faced with the choice between allowing a child to be mistreated and placing some pressure on a child by asking about parental behavior, should chose the latter.

To minimize pressure and enhance candidness, it may be useful to have the child brought to the evaluation by someone other than a parent and hopefully someone who is not an advocate for either parent. This

23. See GARRITY & BARIS, *supra* note 4; JOHNSTON & ROSEBY, *supra* note 6; MASON, *supra* note 9.

might be the child's therapist, teacher, guardian ad litem, or a child protection worker.

Evaluators should adopt a questioning style that gathers information from the child rather than presenting information to the child to be either confirmed or disconfirmed. Questions should be open-ended but focused.²⁴ The evaluator begins with the most open-ended question focused on a particular topic, and asks more close-ended questions about the topic as needed. For example, instead of asking "Do you like your mom?" The interviewer asks questions such as:

"Tell me all about your mom."

"What's your mom like?"

"What kinds of things do you do with you mom?"

"What do you like about your mom?"

"What don't you like about your mom?"

"What does you mom do when you misbehave?"

"What does she punish you for?"

"How many time a week do you get punished?"

"What do you think about how she punishes you?"

The evaluator should ask similar questions about all people who are important in the child's life. I suggest asking about people whose behavior is not a concern, for example siblings or grandparents, before asking about parents. It is especially important to ask a comparable series of questions about both parents. If the parents have new partners, questions should be asked about them as well.

Evaluators can ask about concerning behavior, but initially without identifying the actor. For example:

"Do people in your family drink alcohol (booze)?"

"What do they drink?"

"Do different people drink different kinds of alcohol?"

"Tell me what each one drinks."

"How much does your mom drink?"

"How much does your dad drink?"

"How does you mom act when she drinks?"

"How does our dad act when he drinks?"

"Can they take care of you when they are drinking?"

24. Appendix II provides examples of open-ended but focused questions about child maltreatment and endangerment.

Another strategy is to focus a child's attention on a topic, by asking a question that requires a yes/no response, but follow an affirmative response with open-ended questions. For example:

"Do you ever feel that you have to choose between your mom and dad?"

If the child's responds yes, "Tell me all about that."

"Is there anything else you can think of about that?"

"And then what happened?"

"Is there another time you can remember when you had to choose?"

"Tell me about that time?"

"What do you think about being caught in the middle between your mom and dad?"

Exploring the child's functioning and feelings less directly, for example through psychological testing, doll house or other play, and drawings is also useful. However, evaluators should not rely solely on themes and findings provided using these methods to conclude the child has been maltreated or endangered. The evaluator needs an explicit statement from the child to this effect or other supporting data.

C. Review Past Mental Health, Legal, and School Records

Evaluators should request all records that might shed light on the allegations of maltreatment and endangerment. Parents and sometimes their attorneys will want to restrict evaluators' access to this information. Useful responses are to explain to these individuals that the evaluator's report will reflect that access to material has been restricted, and that conclusions could change during testimony if the evaluator is made aware of heretofore unknown material.

Research indicates that when issues of child maltreatment and endangerment come up in divorce, the issues may have been raised previously and addressed.²⁵ Although evaluators should take a fresh look at allegations, they also need to be aware of past history. Often the history of the concerns, including how they were first disclosed can help evaluators understand the nature of the allegations, before they may have been contaminated by investigation. In addition, a review of records, for example criminal records or past court records, will allow evaluators to check the accounts of evaluation participants against the case history. Past records can also be helpful in determining whether the family's functioning during divorce is representative of their normal functioning. Parents and children may be very symptomatic and

25. See Faller & DeVoe, *supra* note 8; Thoennes & Tjaden, *supra* note 7.

dysfunctional during divorce, but have functioned much better in the past, suggesting current dysfunction is temporary.

D. Interview Professionals Currently or Previously Involved with the Family

In addition to reviewing records, evaluators should talk to professionals who are currently or were previously involved with the family. To do this evaluators need to obtain releases of information from the parents.

There are several reasons for speaking directly with these professionals. First, specific questions may arise from reviewing their records. Second, some professionals record only minimal or merely conclusory information and need to be asked to elaborate or explain. Third, the professional's records may not shed light on evaluators' questions. For example, records may be structured to satisfy requirements for insurance coverage. Therefore, evaluators may need to ask directly about issues related to maltreatment or endangerment. Finally, usually records are at least a few weeks old when the evaluator receives them, and relevant events may have taken place in the meantime.

E. Interview Persons who are Important in the Child's Life

Many professionals ask parents to provide them with references who can speak to their parenting abilities. While this practice assures that each parent has at least three people who will vouch for him/her, that is almost all that can be said for it. In rare instances, a parent will recommend a reference who provides negative information about him/her, which needs to be taken seriously.

A superior strategy is to gather information from individuals who are important in the child's life. These people can be the child's relatives, teacher, babysitter, scout leader, or therapist. With older children, with the child's permission, it may be appropriate to talk to the child's friends.

F. Conduct Thorough Parent Assessment

Parents should be both interviewed and administered a standard battery of psychological tests. Neither interview nor test data will guarantee that evaluators arrive at an accurate picture of the parent, but

using both approaches increases the likelihood of an accurate assessment.

Expect to spend two or more hours interviewing each parent. It is best to allow for two interviews and to stagger the parent interviews so that information and inconsistencies from each parent can be pursued with the other. Although evaluators should cover topics customarily covered in custody evaluations, they should focus on parental behaviors of concern, when issues of maltreatment or endangerment have been raised. Evaluators need not be reluctant or defensive about inquiry related to these issues. They can normalize this inquiry by stating that all parents are asked about such issues when they come for assessment.

Just as evaluators should ask children open-ended, but focused questions, they should do so with parents. Adults are less suggestible than children, but they are more vulnerable to impression management. In addition, interviewers are advised to pose lots of questions about areas of concern and ask parents to elaborate. For example, an evaluator should not be satisfied with a parent's statement that he/she is "just a social drinker." Questions, such as the following, should be asked:

"How old were you when you had your first drink?"

"Tell me all about that time."

"What is the most you ever drank?"

"Tell me all about that time."

"What are the reasons why you drink?"

"Do you ever drink by yourself?"

"Does it take more alcohol than it used to for you to feel it?"

"How much?"

"Do you act differently when you've had a drink than not?"

"How?"

"Was there ever a time you couldn't quite remember what happened when you had been drinking?"

"Tell me about that."

"Has anyone ever been concerned about your drinking?"

"Tell me about that."

"Have you ever tried to change your drinking habits?"

"How did that work out?"

"Has your drinking ever interfered with your parenting, work?"

"How?"

"Have you ever had treatment for your drinking?"

"Tell me about that."

Similar questioning needs to be undertaken related to each area of parental functioning about which evaluators have concerns.

When there are concerns about abuse or neglect, indirect inquiry can also be useful. For example, the evaluator asks the parent about child care responsibilities, rules in the household, chores the child is required to complete, and what happens if rules are not followed or chores completed. A series of questions should also be asked about discipline techniques. For example:

“What do you do when (child) misbehaves?”

“How often does (child) get punished?”

“What does (child) get punished for?”

“Does it work?”

“What other punishments do you use?”

“Was there ever a time when you had to use physical discipline?”

“Tell me about that.”

“Was there ever a time you hit (child)?”

“What did (child) do?”

“Where did you hit (child)?”

“What did you hit (child) with?”

“Did it leave a mark? How long did the mark last?”

“What’s the worst thing (child) ever did?”

“What did you do when (child) did that?”

“Tell me about the last time you had to discipline (child)?”

“What did (child) do that made him/her need punishment?”

“How did (child) react to the discipline?”

“What discipline methods does your partner use?”

“Do you and your partner ever disagree over discipline?”

“Tell me about that.”

To understand the parent’s relationship with the child, questions that are parallel to those asked of the child about the parent can be enlightening.

For example:

“Tell me about (child).”

“What is (child) like?”

“Can you describe (child)?”

“What do you like about (child)?”

“Are there any things you don’t like about (child)?”

“Are there things you and (child) do together?”

“What are they?”

“If you could change (child), how would you change him/her?”

“What do you like the most about (child)?”

“What do you like least about (child)?”

Although psychological tests specific for custody evaluations have been developed, they have not been normed.²⁶ Moreover, they do not address issues of child maltreatment and endangerment. I recommend a standard battery of tests, including some measure of intelligence, the MMPI-2, the Rorschach using Exner scoring, the TAT, Draw a Person, and the Early Memories Test. This combination of objective and projective tests can provide evaluators an assessment of overall functioning and may speak to concerns about maltreatment and endangering.

To generate an understanding of the parent, evaluators integrate the interview data, the test findings, and data from other sources.

G. Beware of Relying on Parent-Child Interactions

Many child custody evaluators believe that the essential information for deciding who is the best parent can be derived from observing the parent and child together. For both ethical and practical reasons, I caution against this practice when there is an outstanding issue of maltreatment or endangerment.

Ethical concerns derive from the potential impact on the child of putting him/her in the room with the accused parent. When the evaluator fosters such an encounter in cases of maltreatment or endangerment, this provides implicit support for the parental behavior. In addition, children, who have been and made disclosures of maltreatment or endangerment, may experience an interview with the suspected parent as a betrayal, especially if the parent is allowed to challenge the child's disclosures or the evaluator raises the child's disclosures in the parent-child interview.²⁷ If the child has not been forthcoming with the evaluator when there are behaviors to disclose, a parent-child interview likely will reinforce the child's reluctance to trust adults.

From a practical perspective, there is no empirically based evidence that evaluators or other clinicians can accurately differentiate an abusive from an appropriate parent-child relationship.²⁸ In addition, evaluators

26. See MARC ACKERMAN, *CLINICIAN'S GUIDE TO CUSTODY EVALUATIONS* (1995); BRICKLIN, *supra* note 21.

27. See Kathleen Coulborn Faller et al., *The Parent-Child Interview: Use in Evaluating Child Allegations of Sexual Abuse by the Parent*, 61 AM. J. ORTHOPSYCHIATRY 552 (1991).

28. See Gay Deitrich-MacLean & Tedra Walden, *Distinguishing Teaching Interactions of Physically Abusive from Nonabusive Parent-Child Dyads*, 12 CHILD ABUSE AND NEGLECT 469 (1988); Raymond Starr, *Clinical Judgment of Abuse-proneness Based upon Parent-Child Interactions*, 11 CHILD ABUSE AND NEGLECT 87 (1987).

should be mindful of the artificiality of the observational session and the effect of having a clinician present or nearby during this session.²⁹ Moreover, abusive behavior is a low frequency behavior and not likely to occur when parent and child are being observed.³⁰ Of course if it does, the finding is very compelling. Subtle behaviors that occur during parent-child sessions which some clinicians use as proxies for abusive behavior³¹ have not been empirically demonstrated to be indicative of abuse.

IV. CONCLUSION

In divorce, when child maltreatment or endangerment are suspected, these allegations must be addressed prior to issues of custody and visitation. Evaluators who overlook issues of child safety and child well-being do not act in children's best interest.

An evaluation should involve a careful review of all past records, evaluations of all children in the family, evaluations of parents and interviews with any new partners, contacts with professionals who are or have worked with the family, and contacts with professionals and non-professionals who have important roles in the child's life. Not all information is equal and some information should be afforded more weight than other information. However, it is especially important that children have a voice.

An effective mechanism for sharing information, making decisions, and arriving at recommendations is a meeting. This meeting usually requires three or four hours and should include the evaluators, their consultants, and other relevant professionals.

29. See BRICKLIN, *supra* note 22.

30. See Faller, *supra* note 27.

31. See CLARE HAYNES-SEMAN & DAVID BAUMGARTEN, CHILDREN SPEAK FOR THEMSELVES: USING THE KEMPE INTERACTIONAL ASSESSMENT TO EVALUATE ALLEGATIONS OF PARENT-CHILD SEXUAL ABUSE (1994).

APPENDIX I

PARENTAL BEHAVIOR	HARM OR POTENTIAL HARM TO CHILD	DOCUMENTATION
<i>Maltreatment</i>		
Physical Abuse		
Hit, slap, kick, beat up, hit with instrument, shake, burn, choke Immerse to drown or burn	Physical injury: bruise, cut, broken bone, burn, other mark Scars or other sequelae Psychological trauma Child behavior problems (aggression)	Observation of abuse Observation of child's condition Professional's report (e.g. physician) Child's report Statement of others Parent's admission
Neglect		
Failure to provide food, shelter, clothing, medical care, child care Lack of adequate supervision, exposing child to danger Allowing others to abuse the child	Hunger, FTT, small for age, illness, poorly clothed, dirty Actual or potential physical harm Psychological trauma Physical injury, sexual abuse	Observation of event Observation of child's condition Professional's report (e.g. CPS worker) Child's report Theory or research based upon professional opinion Statement of others Parent's admission
Sexual Abuse		
Non-contact activity: Exposure, voyeurism, sexual talk, allowing the child to watch pornography or sexual acts Fondling of private parts Penetration: Anal, vaginal, oral, with penis, finger object	Psychological trauma Child re-enactments Child advanced sexual knowledge Physical trauma	Child's report Observation of child's response to suspect Professional's report (e.g. psychologist) Theory or research based upon professional opinion Statement of others Parent's admission

PARENTAL BEHAVIOR	HARM OR POTENTIAL HARM TO CHILD	DOCUMENTATION
<i>Maltreatment continued</i>		
Emotional Maltreatment		
Spurning Terrorizing Vilifying Scapegoating Using child as pawn (e.g. in divorce) Role reversal Corruption Failure to set limits	Psychological trauma Anxiety, fears Low self-esteem Divided loyalties Feeling responsible, parental child Anti-social beliefs/behavior Lack of self control Physical harm	Observation of parental behavior & child's response (e.g. by evaluator) Professional's report (e.g. child's therapist) Child's report Professional observer's report Theory or research based upon professional opinion Statement of others Parent's admission
<i>Endangerment</i>		
Domestic Violence	Physical harm (caught in crossfire) Neglect of child Psychological trauma Sex role beliefs Parental absence (e.g. shelter, jail)	Victim's (<i>i.e.</i> , mother's) condition Victim's (<i>i.e.</i> , mother's) report Professional's report (e.g. child's therapist) Child's report Observer's report Assailant's report
<i>Substance Abuse</i>		
Substance Abuse	Physical neglect of child Physical abuse of child Psychological trauma Parental absence (e.g. hospitalized, jailed)	Professional's report (e.g. CPS, substance abuse specialist) Child's report Observer's report Substance user's report

PARENTAL BEHAVIOR	HARM OR POTENTIAL HARM TO CHILD	DOCUMENTATION
<i>Endangerment continued</i>		
Mental health problems	Physical neglect of child Physical abuse of child Psychological trauma Parental absence (hospitalized)	Professional's report (e.g. psychiatrist) Child's report Observer's report Mentally ill parent's report
Criminal Activity & Norm Violation	Child behavior problems Child anti-social behavior Parental absence (incarcerated)	Child's report Criminal record Parent's admission

APPENDIX II

QUESTIONS FOR CHILDREN ABOUT CHILD MALTREATMENT AND ENDANGERMENT*

Questions Regarding Child Maltreatment

1. **Care questions—possible neglect**
 - Who takes care of you?
 - How do they do it?
 - Who puts you to bed?
 - What time?
 - Who cooks?
 - What meals do you eat?
 - Are there any times when there's no food?
 - When ---- isn't there, who takes care of you?
 - Are there times you baby-sit for/take care of yourself?
 - Is there someone you can call?
 - How long are you alone?
 - Are there any younger kids you look out for?
 - Can you tell me about the last time you took care of yourself?
 - Who helps you get dressed?
 - Who sees you get to school?
2. **Environment questions—possible neglect**
 - Tell me what your house is like.
 - Is it cleaner, not as clean, or the same as your friend's home?
 - Where do you sleep?
 - Where do others sleep?
 - Do you have a bed?
 - Who cleans?
 - Where do the animals go to the bathroom?
 - Who does the laundry?
3. **People questions—possible maltreatment or endangerment**
 - Tell me about ----.
 - What is ---- like?
 - Are there things you and ---- do together?
 - Do you do things alone with ----?
 - Are there things you like about ----?
 - What?
 - Are there any things you don't like about ----?
 - What?
 - Are there any things ---- does to you that you don't like?
 - Does ---- ever hurt you in any way?
 - How?
4. **Discipline—possible physical abuse**
 - What happens when you (your brother) misbehaves?
 - Are there any other ways they treat you when you misbehave?
 - What ways do they punish at your (mom's, dad's) house?
 - When they spank, do they use a hand or something else?

*See also Kathleen C. Faller, *Focused Questions for Interviewing Children Suspected of Maltreatment and Other Traumatic Experiences*, 12 APSAC ADVISOR, 14-18.

What does that feel like?

How long does it hurt?

About how many times a week do you get whipped?

What for?

Does it ever leave a mark?

What does the mark look like?

Usually how long does it take before it goes away?

Do your parents ever disagree about how you get punished?

Did you ever have to go to the doctor because of a punishment?

5. Injuries or scars—possible physical abuse or neglect

If the interviewer notes the child has an injury or scar, especially more than one, injuries or scars on non-accidental injury sites, and on different parts of the child's body the interviewer should ask the child about it.

How did you get hurt?

If the explanation does not fit the injury,

Are you sure that's how it happened?

What did ---- do when you got hurt?

Did anyone take you to the doctor when you got hurt?

What did the doctor say?

What did the doctor do?

6. Body parts—possible sexual abuse

There are many ways to ask about possible sexual abuse. One is by asking focused questions about the private body parts. This is usually done by asking part of general body parts inventory using anatomical dolls or anatomical drawings?

a. Questions related to the penis, when abuse by a male

What do you call this part?

Using the child's name for the penis in further questioning:

Who has one?

What is it for?

Is it ever used for anything else besides peeing?

Did you ever see one?

Whose?

When?

What was he doing?

Did you ever see it any other time?

Did you ever have to do anything to one?

Did anyone ever do anything to you with one?

How did he do that?

b. Questions related to the vagina, when victim is a female

What do you call this part? (use child's term)

Who has one?

Do you have one?

Did anything ever happen to yours?

Did you ever get hurt there?

How?

Did anyone ever do anything to your (vagina)?

What did they do?

Who was it?

What did ---- use when ---- did it?

Was it on top of your clothing or underneath?

Was it on the outside of your (vagina) or inside?

Do you remember what it felt like?

7. **Emotional maltreatment questions**

Does anyone ever praise you?

Who?

What for?

How often?

Do you think you are treated the same as other kids in the family or different?

Worse or better?

How are you treated?

When you have problems, who can you talk to?

When you are really upset, what does your (mom, dad) do?

Does anyone ever yell at you or call you names?

Can you tell me about that?

Are there ever times when grown-ups tell you to break the law?

Can you tell me about that?

Do scary things ever happen at your house?

Can you tell me about them?

Does anyone ever threaten you?

Can you tell me about that?

Do you think grown-ups ever ask you to do things that are too hard?

Can you tell me about that?

Do you ever feel you have to choose between one parent or the other?

Questions Regarding Endangering Behaviors

1. **Family violence**

What do people do in your family when they disagree?

Do your mom and dad have disagreements?

Tell me about that.

Do they ever have fights?

What do they fight about?

How do they fight?

Do they just yell or do they ever hit?

Does anyone ever get hurt?

How many times have people gotten hurt?

Does anyone ever have to go to the doctor/hospital?

Do any kids ever get hurt when they are fighting?

Does anyone in your family have a gun or knife?

Who?

What can you tell me about (gun or knife)?

2. **Substance abuse**

Does anyone at your house ever drink alcohol?

Does anyone at your house ever drink beer?

Does anyone at your house ever drink whisky?

How many times a week does ---- drink?

How does ---- act when he/she drinks?

Does ---- ever fall down?

Tell me about that.

How does ---- take care of you when she's drinking?

Does she ever just fall asleep?

Then what happens?

Does ---- ever get mad?

Does ---- ever go to the bar?

How often?

Does ---- ever hurt anyone when they drink?

Does ---- ever drive a car when ---- has been drinking?

Did ---- ever have an accident?

Did ---- ever have to go to the hospital or to a counselor for drinking?

Are there any drugs at your house?

Do you know which ones?

Who uses them?

What happens when they use them?

Do you know how they get them?

Where does the money for them come from?

Do you know?

Did ---- ever get sick from drugs?

Then what happened?

Did ---- ever have to go to the hospital?

Do you know how old you were when ---- started using drugs?

Do you know how many times a day/week ---- has to have the drug?

3. **Prostitution**

Do you know those men that come to your house?

How do those men treat you mom?

What do you do when they are there?

Does ---- ever give your mom money?

Do you know what for?

What does your mom do when she goes out?

Does anyone baby-sit for you when she's out?

4. **Criminal activity**

Does --- ever get in trouble with the police?

What for?

Did the police ever come to your house?

What for?

Did ---- ever get arrested?

Did ---- ever have to go to jail?

Did ---- ever have to go to court?

Did anybody in your house ever steal anything?

What?

What happened next?

Does ---- ever get in fights?

When?

Where?

Who with?

5. **Mental illness**

Does anyone in you family act strange?

Does ---- ever act strange/crazy?

What does ---- do?

Can she take care of you when she's acting strange?

What do you do when ---- is like that?

Did ---- ever have to go to the hospital for that?

Does ---- take medicine to keep from acting strange?

Does ---- ever not take the medicine?

What happens then?