

A Framework for Addressing Allegations of Domestic Violence in Child Custody Disputes

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The dominant philosophy in family court emphasizes cooperative solutions between separating parents who are encouraged to put their conflicts behind them. For the majority of separating families, this collaborative approach will best serve their children. However, cases involving domestic violence require a paradigm shift, with a greater focus on making a parenting plan that protects victims and children, and less emphasis on speedy, cooperative outcomes. This paper presents a framework for addressing domestic violence through a tiered assessment strategy and an accompanying intervention framework depicted by off-ramps from a freeway (as an analogy in this case to the substantial momentum towards collaborative settlements). These off-ramps for domestic violence and high-conflict cases do not suggest a one-size-fits-all solution within these categories; rather, they mark a departure point from which a wide range of solutions may be considered. Policy and practice implications of this paradigm shift are highlighted.

KEYWORDS *children exposed to domestic violence, domestic violence, parenting plans, separation and domestic violence*

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Over the past 20 years, the criminal justice system has come to recognize that domestic violence is not a private family matter, but rather a criminal offence. Police officers now routinely charge individuals for domestic assaults when they have reasonable grounds to do so, without requiring victims to press charges. Prosecutors increasingly have special training and procedures to prosecute these cases. Across North America, there are specialized services connected to the criminal courts that include victim and witness support programs and access to community services for abuse victims, perpetrators, and children exposed to violence. In contrast, victims may experience a less responsive system when they enter the family court to deal with disputes over child custody and visitation. The family courts' priority is to resolve conflicts and encourage parents to put the past behind. Consistent with this philosophy, the majority of separating parents are appropriately supported to move past their differences and focus on the best interests of their children as co-parents. However, this approach is contraindicated for abuse victims where remembering the past may inform their safety planning and attempts to limit contact with the perpetrator. In our view, domestic violence demands a different approach.

Growing support for co-parenting and awareness of domestic violence and its effects on children may be on a collision course, when it is time for family courts and court-related professionals such as judges, family lawyers, mediators, and custody evaluators to assist parents in settling their differences about post-separation parenting arrangements. Although the majority of separating parents may be able to work out a co-parenting (joint custody) plan, parents with a history of domestic violence may need different resolutions. These resolutions may involve limited, supervised, or no contact with children, depending on safety concerns for children as well as the non-offending parent. Some advocates of co-parenting are concerned that many of the parents who raise concerns about domestic violence are making false or exaggerated claims of abuse to further their agenda to not share their children with their ex-spouses. There are legitimate issues related to false allegations and proof of claims, but it should be appreciated that denial and minimization of abuse by genuine abusers are significantly more common than false or exaggerated claims of spousal abuse by alleged victims (Jaffe, Lemon, & Poisson, 2003). The need for proper assessment and investigation into all claims is essential to ensure that appropriate parenting arrangements are matched to each family system.

The search for ideal co-parenting arrangements after separation and the search for child and parent safety and accountability after domestic violence represent two solitudes. The purpose of this paper is to bridge the gap between these two solitudes. A model of how to consider findings of domestic violence in child custody and visitation disputes is presented. Using the analogy of adding off-ramps to a freeway, we describe the need for thoughtful, coordinated responses in domestic violence and high-conflict

cases that differ from the more widely available collaborative parenting solutions. At the same time, the off-ramps represent a beginning, not an end, in that domestic violence cases vary widely and demand differentiated responses. The issue of domestic violence in custody cases is extremely complex and cannot be solved by overly simplistic one-size-fits-all solutions. The critical role of court-related resources, training, and collaboration among professionals in the field is addressed.

RELEVANCE OF DOMESTIC VIOLENCE IN CHILD CUSTODY AND VISITATION DETERMINATIONS

A finding of child maltreatment has long been recognized as a critical factor in determining post-separation parenting arrangements and possible child protection intervention. In contrast, only recently have legal and mental health professionals acknowledged that domestic violence is also relevant to the determination of child custody and visitation. Previously domestic violence was seen as an adult issue not relevant to the best interests of children. Many researchers and professional groups have challenged the common belief that an individual could be an abusive spouse but a good parent, and encouraged legislative reform to recognize domestic violence as a critical factor to consider in these cases (e.g., American Psychological Association, 1998; Bala et al., 1998; National Council of Juvenile and Family Court Judges, 1994).

There have been very significant legislative changes in the United States, Australia, and New Zealand to reflect domestic violence concerns in post-separation parenting (Jaffe & Crooks, 2004). Major program initiatives have been undertaken such as the U.S. Department of Justice's Safe Havens Project, which provides funding and technical assistance for supervised visitation in cases of domestic violence, and guidelines for judges in utilizing custody evaluations in cases that involve domestic violence (Dalton, Drozd, & Wong, 2004). The rationale for legislative and programmatic changes that recognize domestic violence as a relevant factor in determining the appropriate post-separation parenting arrangement includes the following:

- *Domestic violence often does not end with separation.* Research has shown that physical abuse, stalking, and harassment continue at significant rates post-separation, and in some cases they escalate. (Hotton, 2001; Liss & Stahly, 1993). Promoting contact between children and a violent ex-spouse may create an opportunity for renewed abuse of a former spouse through visitation and exchanges of children (Jaffe, Crooks, & Poisson, 2003; Sheeran & Hampton, 1999).
- *Overlap between domestic violence and child abuse.* Domestic violence is a red flag for the possible co-existence of child maltreatment, given that a

number of studies report that between 30% and 60% of children whose mothers had been assaulted by their male partners are themselves also abused by their fathers (Edleson, 1999a, 1999b, 1999c). Domestic violence, in itself, is harmful to child development and may leave children with significant emotional and behavioral problems (Cunningham & Baker, 2004).

- *Batterers are poor role models.* Children's socialization with respect to relationships and conflict-resolution is negatively affected by exposure to a perpetrator of domestic violence. For example, when children witness one parent assaulting the other or using threats of violence to maintain control within a relationship, their own expectations and attitudes about relationships may come to parallel these observations (Bancroft & Silverman, 2002).
- *Victims of domestic violence may be undermined in their parenting role.* Perpetrators of domestic violence may undermine their (ex)-partners' parenting in a range of ways (Jaffe & Crooks, 2005). For example, male perpetrators may blame the children's mother for the dissolution of the family, or even explicitly instruct the children not to listen to her directions (Bancroft & Silverman, 2002).
- *Perpetrators may use litigation as a form of ongoing control and harassment.* The family court litigation process can become a tool for abusers to continue their control and emotionally abusive behavior in a new forum (Jaffe, Crooks & Poisson, 2003). Some authors have suggested that some abusive spouses have the skills to present themselves positively in court and convince evaluators and judges to award them custody (Bowermaster & Johnson, 1998; Zorza, 1995).
- *In extreme cases domestic violence following separation is lethal.* Although in most cases domestic violence diminishes after separation, in a very concerning minority of cases violence escalates after separation. Research indicates that women are at a greater risk of homicide from estranged abusive partners after separation than while they remain in an intimate abusive relationship (Fox & Zawitz, 1999; Statistics Canada, 2001). A review of domestic fatality review committee reports from numerous jurisdictions indicates that some of these homicides occur during access exchanges, underscoring the possible link between visitation arrangements and lethal violence. In many of these circumstances, children are at risk for being witnesses or victims of domestic homicide (Jaffe & Juodis, 2006).
- *Domestic violence may negatively affect the victim's parenting capacity.* Victims of spousal violence may experience depression, low self-esteem, and substance use difficulties as a result of their abuse, all of which can compromise their parenting. For many of these parents, separation from the perpetrator may lead to improvement in both general functioning and parenting, especially if there is appropriate supportive intervention. During the court process, these parents may present more negatively than they will in the future, once the stress of the proceedings and life change has attenuated (see Jaffe & Crooks, 2005 for review).

In summary, domestic violence is an important area of inquiry in addressing post-separation parenting arrangements. A history of domestic violence demands a different analysis from that which is applied to most cases of parental separation, for which encouragement of a cooperative post-separation parenting arrangement is appropriate. In cases where there are domestic violence concerns, legal and mental health professionals need a paradigm shift to view the information and competing allegations in the determination of children's best interests. In the face of a real threat, a mother who lives in fear of her ex-partner is not paranoid, and it may not be appropriate for her to promote an on-going parental relationship between her former partner and their children. Although the majority of separating parents can make appropriate parenting arrangements in a non-adversarial fashion and without resorting to the court process, parents who have experienced domestic violence require greater resources and more support. When parents express concerns about their safety and their children's safety, these issues must be closely examined, and turning to the court system may be necessary.

The Need for a Paradigm Shift for Domestic Violence Cases

Trying to understand the dynamics that led to a marital breakdown is a highly complex undertaking. When children are involved and their future care is at stake, intense emotions may cloud parents' portrayal of their marriage to an independent third party. There are strong psychological tendencies to deny or minimize abuse as well as tendencies to influence one's perceptions of responsibility for the breakdown of the relationship.

Even in domestic violence cases, there is a range of methods for resolving disagreements that need not include the formal court system. For some abuse victims, the abuser leaves the jurisdiction and may move on to other relationships, showing no interest in maintaining an ongoing relationship with the victim or the children. In other cases, a domestic violence victim may flee for her safety, and the perpetrator takes no action to pursue her and their children. In one study of female domestic violence victims, some women avoided any engagement with the perpetrator over financial issues, ignoring their legal rights and entitlement to support in order to reduce the possibility of claims for custody or access to the children by the perpetrator. That is, living in poverty was seen as preferable to living with ongoing harassment and threats of violence that might result from court proceedings over financial issues (Jaffe, Lemon, & Poisson, 2003).

In the same way that there is variability among the paths families take post-separation, there is also great variability among the patterns and contexts of violence between adults in a relationship. A thoughtful analysis of the impact of domestic violence must consider a spectrum of abusive behavior and the various contexts in which domestic violence can occur. The different types of domestic violence may have different probabilities

of future dangerousness and require different social and legal interventions. For example, Frederick and Tilley (2001) contend that in order to intervene effectively in these matters, it is important to understand the intent of the offender, the significance of the violence to the victim, and the effect of the violence on the victim as well as to the children exposed to the violence. They give a number of examples of context that include battering, self-defense, and a genuinely isolated incident that is out of character for an individual.

Depending on the combination of frequency and nature of the violence as well as its context, different cases require the involvement of different systems (criminal justice, civil justice including family law and child protection aspects, health care, etc.). Understanding the differences among these types of violence provides an important foundation for assessing the appropriateness of a particular post-separation parenting arrangement. Examination of the various patterns of family violence also highlights gender differences that need to be underscored. A gendered analysis of family violence is a controversial topic that tends to divide both practitioners and researchers. There is no doubt that male-perpetrated violence against women is the type most often reported to police, results in more serious physical injury, is associated with fear and concern about children's well-being, and accounts for the vast majority of domestic homicides (Ontario Domestic Violence Death Review Committee, 2004; Statistics Canada, 2004; Tjaden & Thoennes, 2000).

At the same time, not all female perpetrated violence is in self-defense, and it is generally accepted that males are more hesitant to report victimization experiences to authorities. Furthermore, although male domestic violence victims constitute a minority of intimate partner homicide victims, these cases present the same challenges for female homicide victims with regard to early identification and prevention. Their victimization can have the same negative impact on children and extended family members. There is a paucity of research on violent relationships in which the female partner is the primary aggressor. A similar gap exists for understanding same-sex intimate partner violence. This violence is underreported due to the need to disclose both intimate violence and sexual orientation to authorities who may be perceived to be homophobic.

Given the range of patterns of violence and the range of post-separation pathways, the emerging picture is extremely complex. In some cases, there has been police and criminal justice system involvement, and there is ample evidence of a pattern of domestic violence and child abuse. With the growing awareness of domestic violence concerns, the criminal and family courts will consider limiting contact between the abuser and his children in cases where there is compelling evidence of an on-going pattern of serious abuse, though the protection of victims and their children can be very difficult to effect. Perhaps the cases that pose the most significant challenges to legal and

mental health professionals in the family court system are ones in which the parties present diametrically opposed versions of reality with respect to their relationship, post-separation events, and abuse issues, and there is no clear or consistent collateral information.

ASSESSING DOMESTIC VIOLENCE ALLEGATIONS

The ultimate decision about what happens to disputes before the family court rests with a judge who hears the evidence and determines the validity of the allegations of abuse and what arrangement is in the best interests of the children. To some extent, all family court court-related professionals, including custody evaluators, lawyers, judges, and mediators, are involved in a process—whether it is formal or informal—of gathering and weighing relevant information about the individual parents and children in a dispute. To understand the context for this process, it is important to understand the current climate in the family courts (Jaffe & Crooks, 2004). Family court judges generally want cases settled in a cost-efficient and timely manner by pre-court interventions, such as mediation and settlement conferences. Judges often encourage parents to cooperate with each other, suggesting that this is synonymous with the promotion of their children's best interests. Lawyers for parents (and for children in those jurisdictions that provide them) also generally tell parents that they will save money and better serve the interests of their children by settling their cases without the expense and emotional bitterness associated with litigation. Conventional wisdom and legislation in the divorce field suggests that the “friendly parent” (i.e., the parent who is best able to promote a relationship between the child[ren] and the other parent) is more appropriate for a custodial role. Unfortunately, the friendly parent concept can be misleading in cases where the lack of “friendliness,” that is, an unwillingness to promote a relationship with the other parent, is due to fears resulting from abusive and violent behavior (Dore, 2004).

Domestic violence allegations raised in the context of parental separation are often met with skepticism and a concern that the allegation is being utilized to limit the involvement of the other parent, especially if there has *not* been significant police and criminal justice system involvement. The making of abuse allegations can be a double-edged sword for abuse victims. If the allegations are proven on the preponderance of evidence, the victim and her children may find a degree of safety, with recent legal reforms and improvements in community resources providing a greater degree of safety than in the past. However, if the allegations appear unfounded and are considered by the judge to have been made maliciously, the abuse victim may lose custody. In some of these cases, mothers are accused of willful alienation of the children against their father. Alienation

has even been labeled as a syndrome, although there is no research to support the reliability and validity of this as a syndrome or clinical diagnosis (e.g., Meier, 2009). While alienation of children from one parent as a result of the hostility of the other is a legitimate concern and may warrant court intervention, unfounded allegations of parental alienation are often put forward by abusive fathers; custody evaluators and courts must always consider whether a child's resistance to visitation is a result of a child's fears due to abuse or witnessing abuse of a parent (Fidler, Bala, Birnbaum, & Kavassalis, 2008).

Sometimes abuse allegations appear suspect because perpetrators of violence arrive in family court with new partners who describe them in positive terms, both as partners and as parents. The contrast between what the past and present partner report about the alleged perpetrator may lead observers to discount the allegations and attribute more credibility to the claims of the alleged abuser about the ex-partner's incompetence as a parent (Schuldberg & Guisinger, 2001). Clearly, given the high stakes of a finding of domestic violence, a careful assessment of abuse allegations is warranted as part of a family court decision-making process.

A psychologist or social worker who is assessing a case involving allegations of domestic violence should identify whether there are patterns of behavior as opposed to isolated incidents. Incidents of abuse that may, in isolation, seem less severe, may give rise to greater concerns if they fit within a larger pattern of abuse and domination. A multi-method, multi-informant approach is required. Figure 1 identifies the additional elements of assessment for cases where either party has made allegations of violence. The first layer of the pyramid identifies the principal elements of a court-ordered custody assessment in a typical case, including understanding the children's individual needs, parents' skills, the ability of the parents to cooperate, and the developmental considerations of any parenting plan. In a high-conflict case, these initial assessment domains are still pertinent; however, the second layer of the pyramid identifies additional concerns, such as the history of the parental conflict, children's coping strategies, and the identification of the less toxic parent. In high-conflict cases involving allegations of domestic violence, the assessment challenges are significantly increased, as it is also necessary to consider such issues as the risk of recurrence of violence and an understanding of the impact of violence on the children.

To competently complete this final stage of assessment, practitioners require an awareness of indicators of dangerousness and/or lethality. These risk factors have emerged from research and domestic violence death review committees, which have identified characteristics most closely associated with lethal violence (see Campbell, 1995; Campbell, Sharps, & Glass, 2001; Ellis & Stuckless, 2006; Hilton et al., 2004; Kropp, Hart, Webster, & Eaves, 1994, 2000). Commonly reported factors include separation within the

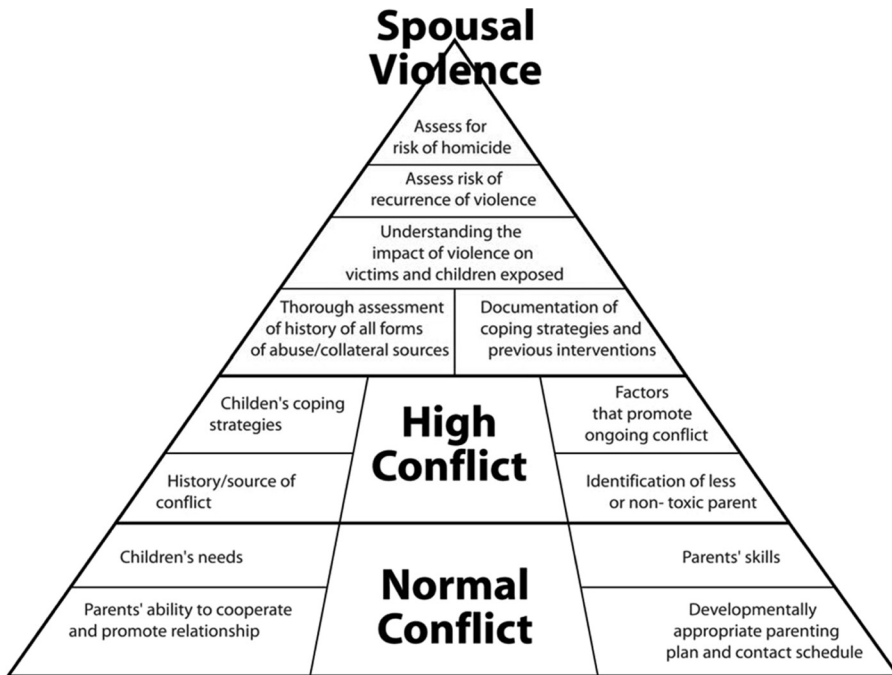


FIGURE 1 Differential assessment issues in child custody disputes.

context of a history of domestic violence, access to firearms, substance abuse, controlling and stalking behavior, threats of homicide or suicide, and violations of previous court orders.

In conducting an assessment where domestic violence has been alleged, collecting all of the information is a complex process. Every assessment should include individual interviews with both parents on more than one occasion. While perpetrators may present as very reasonable individuals on one or two occasions, interviewing them over time and beginning to challenge their perspective on the basis of other information that has been gathered may provide the evaluator with the opportunity to see past the veneer. Another important element in an assessment is the administration of a structured inventory instrument of abusive behavior that includes frequency and severity of physically, sexually, verbally, and psychologically abusive behavior experienced by each partner as well as injuries suffered (e.g., Abusive Behaviour Observation Checklist; Dutton, 1992). A follow-up interview to the abuse inventory is helpful for ascertaining the context of the abuse.

Given that the credibility of claims, counterclaims, and denials is an important element of custody and access assessments, obtaining collateral information is critical. Therefore, the evaluator should include interviews with members of informal and formal support networks of the parents as

well as review records of professionals who have worked with the parents or children (police, child protection, emergency room physicians, etc.) While independent documentation of allegations can assist an evaluator, it cannot be assumed that allegations of domestic violence are credible only if there is third party verification. Indeed, many domestic violence victims do not disclose the abuse to professionals or involve the police. It is important to review this documentation in cases where it does exist while remaining mindful that lack of such evidence does not imply fabrication. Further, reports or disclosures of abuse to other professionals and the conclusions of these professionals about the validity of the allegations may not be conclusive proof of abuse.

In high-conflict separations, it is very common for the former spouses to have different memories of events, and in some cases, one (or both) of the parties may exaggerate or distort historical incidents. The justice system remains vigilant for women who lie or exaggerate claims of abuse. There is no evidence that, in general, one gender is more reliable or honest in describing a failed relationship. Interestingly, a California-based study (Johnston, Lee, Olesen, & Walters, 2005) found that females alleging domestic violence were significantly more reliable in their descriptions of domestic violence than were their former partners in denying or minimizing their abusive conduct. However, considering all types of issues raised, the mothers and fathers were equally credible. A Canadian study (Shaffer & Bala, 2003) of family court cases found similar results of a relatively high reliability of reports of female victims of domestic violence. Of course, each case must be individually assessed, and the fact that the reports of alleged victims are, in general, more reliable than the denials of alleged abusers, does not establish the validity of the allegation in any individual case.

Without a careful domestic violence analysis, allegations of domestic violence may be misunderstood as the “he said/she said” perspectives on a relationship, found in high-conflict separations. Once domestic violence has been identified as an issue, it should provide a context for assessing other information, such as communication patterns between the partners. For example, a mother who avoids telephone contact with an abusive former partner might be seen to be neglecting her duties for information sharing about the children’s activities; however, within the context of domestic violence, this same behavior can be understood as an attempt to protect herself and her children from further harassment and abuse.

While the needs of the children are ultimately central to any custody and access assessment, in assessing families where domestic violence has been alleged, it is essential to keep this context in mind. An assessment should include interviews with the children to determine their understandings and observations of events and the impact on them of exposure to violence. Collateral sources for children should also be contacted (e.g., teachers, doctors, counselors) to gain an understanding of the children’s reaction to

the events they may have experienced. While the views and preferences of children are normally an important factor in a determination about custody or access, when domestic violence is alleged, the stated wishes of a child must be carefully scrutinized. If a child rejects one parent, is this the understandable estrangement from an abusive figure in the child's life or the reflection of alienating pressures from the other? Some children who are terrorized by an abusive home environment identify with the abuser and express a preference to live with a perpetrator even though this is contrary to their long-term emotional well-being. It must be appreciated that children will often have positive feelings for both parents, even if one has been an abusive spouse or parent. Even when contact is terminated by court order due to safety concerns, it may be appropriate for a relationship to be reestablished at some future time, especially if the abuser has taken steps to address his behaviors. An excellent reference for sorting through competing claims of alienation and abuse is the decision-making tree developed by Drozd and Olesen (2004) to guide clinicians through a series of evaluation areas and possible competing hypotheses.

STRATEGIES FOR INTERVENTION

Intervening in child-related disputes with histories of domestic violence is a complex undertaking. In dealing with abusive parents there may be a range of interventions over time that depend on access to appropriate services and documented changes in the abuser's behavior. Within the family court system, judges have to consider a range of options in dealing with a violent spouse. These options include no contact, supervised visitation, supervised exchanges, exchanges in a public place, unsupervised visitation, liberal and regular visitation, and joint custody/co-parenting. Many jurisdictions have dropped the term "custody" in favor of "parenting arrangement" and "residential parent." Independent of legal terminology, the court still has to decide a multitude of parameters for parenting arrangements, such as the length of a visit, advisability of overnight access, determination of suitable supervisors, and safe locations for exchanges.

Figure 2 depicts appropriate responses to parental separation by the analogy to a freeway leading to co-parenting. In this analogy, domestic violence cases need an off-ramp to avoid being carried along with the traffic. It is a schematic diagram portraying the broad picture. At the broad level, a history of domestic violence contraindicates co-parenting. Whereas the majority of families benefit from educational programs and mediation, in cases where there are domestic violence concerns, there is a need for specialized intervention, including supervised visitation, batterer's intervention, and support services for children. Dispute resolution processes that require victims and perpetrators to be together in mediation or settlement



FIGURE 2 Differential intervention strategies in child custody disputes.

conferences have the potential to endanger victims or intimidate them into accepting parenting arrangements, such as co-parenting, which may pose a risk to their safety or the safety of their children.

High-conflict cases involving couples without a history of domestic violence also require specialized intervention. Although the physical safety concerns are diminished, children's exposure to ongoing conflict is clearly harmful (Davies et al., 2002). Parallel parenting may be an option in high-conflict cases without domestic violence issues or a limited number of domestic violence cases where the abuse is minor, historical, and does not represent a pattern of behavior. Parallel parenting gives each parent specified times to care for the child and non-overlapping responsibilities for decision-making. Parallel parenting recognizes that each parent is capable of meeting the children's needs by themselves. Each parent is a beneficial influence for the child, but any expectation of collaboration between the parents is futile and potentially harmful for the children. Parallel parenting arrangements usually include specific guidelines to minimize contact and communication between the parents. It should be appreciated that some high-conflict couples can, with appropriate therapeutic intervention and the passage of time, be helped to achieve more amicable and cooperative parenting arrangements. Thus, for some families, parallel parenting may be a transition phase to bridge the troubled waters of a high-conflict separation, and for other families parallel parenting may be all that is possible on a long-term basis. Similarly, couples with a history of minor, isolated incidents of violence that were not part of a larger pattern of power and control might

also choose a more cooperative route once they have had the opportunity to disengage from the relationship.

It is critical to understand that this off-ramp idea is offered as a broad guideline and not intended to promote one specific parenting plan if there has been any degree of violence. In other words, the off-ramp cannot lead to one avenue because of the importance of context, as well as the heterogeneity of families that have experienced violence, as discussed earlier. Part of a more differentiated approach for appropriately addressing this diversity in families may include reserving the term “batterer” for those perpetrators who have demonstrated the most serious physical, emotional, sexual, and financial violence with respect to patterns, intentions, and impact. Usage of this term is not merely a matter of semantics. It is essential that we reserve our most intensive services for families who require them. In comparison, couples who experienced a few minor, isolated acts of violence, possibly perpetrated by both parties, without an accompanying pattern of fear or control by other party, may be able to work together to meet the needs of their children without significant interference from the formal court system. It is the context of the violence that is critical to understand. Distinguishing among these different patterns of couples where violence has occurred is not an easy task.

To guide this process of differential arrangements for families, we have posited three dimensional constructs to consider. Briefly, these dimensions include (Fidler et al., 2008; Jaffe, Crooks, & Bala, 2005):

1. *Severity and context of violence*

As noted, there is a wide range of patterns of family violence, and understanding the context and pattern of the violence is more informative than merely focusing on the most serious or most recent incident of aggression. Specifically, there is a range with respect to the intent, impact, and associated characteristics of different forms of abuse. Where a family falls on a continuum of violence will have implications for choosing potential parenting plans. For example, a history of common couple aggression may not automatically preclude co-parenting or parallel parenting, but a history of abuse, battering, or terrorism/stalking would certainly contraindicate these interventions. Furthermore, the presence or absence of a child maltreatment history must also be factored into these considerations. In effect, the type and severity of violence and the safety of the victim must be assessed for both child and adult victims. This contextual assessment is a complicated undertaking, and we refer readers to Jaffe, Johnston, Crooks, and Bala (2008) for a more detailed analysis and guidelines.

2. *Resources for victims, children, and perpetrators*

There is often a large gap between the ideal plan that a family requires and the actual resources available in a community. For example, an ideal

plan may involve a perpetrator of domestic violence seeking assistance for substance abuse-related problems and then entering a batterer's intervention program. During this time, the children would receive counseling in a group program for children exposed to spousal violence, and the victimized parent may be in a support group to develop coping strategies for dealing with a history of violence. Access, if appropriate, would be dependent on successful entry into treatment by the perpetrator, the perpetrator's acknowledgement and responsibility-taking for the violence, and the use and availability of a supervised visitation center. In reality, many communities lack these essential resources or the capacity to coordinate them in a way to inform the visitation process. There is typically no case manager in custody cases, in contrast to a child protection worker or probation officer in other parts of the justice system. Importantly, lack of availability of resources in a particular community may warrant a more conservative access plan rather than prescribing a plan that has no basis in the reality of the community.

3. *Timing of Disclosure and Stage of Proceedings*

It is easier to make decisions where the court or court-related professionals have access to comprehensive assessments. Often the court is placed in a situation where there is a family crisis and serious allegations are raised. There may be conflicting allegations and a lack of legal representation or advocacy for the parents and children involved. Developing a parenting plan may require multiple decisions and interventions at different points of time from interim, emergency plans to more stable arrangements. We would argue that safety has to be an initial starting point in the face of credible allegations, and over time more information from collateral sources and community professionals will allow longer term planning and intervention to take place.

Depending on the analysis of a particular case in these three areas, appropriate interventions may range from no contact to a joint parenting plan. Interested readers are referred to our discussion paper for the Canadian Department of Justice, which includes detailed descriptions of indicators and contraindicators for different custody and visitation arrangements within domestic violence cases (Jaffe, Crooks, & Bala, 2005).

THE GAP BETWEEN THEORY AND PRACTICE

In this paper, we have presented two schemas for assessing and intervening in custody cases with allegations of domestic violence. The extent to which these schemas or any other guidelines are implemented depends on the capacity of the entire court system. There are conflicting claims about the

progress that has been achieved by legal and mental health professionals in understanding domestic violence and applying it to family court matters. There has certainly been an increase in the number of training programs available to assist various professionals in becoming more sensitive to the dynamics of domestic violence and more skilled in applying intervention strategies. Notably, the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund are leaders in developing education programs to enhance skills in these difficult cases. The debate focuses on the rate of change in actual practice among professionals. It is clear, until about a decade ago, most professionals working in the justice system did not adequately appreciate the effects of domestic violence on children who witnessed violence or lived in the homes where it occurred. Since that time, there has been more research and education about this issue. Nonetheless, the evidence for widespread systemic change remains inconclusive at best.

In the field of child custody evaluations, various studies present very different pictures of the extent to which practices have changed. Bow and Boxer (2003) surveyed custody evaluators across the United States and found the vast majority reported that they now recognize domestic violence as a critical factor in their work. These practitioners indicated that they considered utilizing specialized assessment resources and made differential custody and visitation recommendations when domestic violence was identified. In contrast, studies in the Louisville, Kentucky family courts (Horvath, Logan, & Walker, 2002) that analyzed actual court documents, rather than relying on self-report found that domestic violence, was often overlooked in court assessments. Analysis of custody assessment reports suggested that domestic violence was not a factor in recommendations, even when it was mentioned in a report. Furthermore, an analysis of family court records found that court settlement methods (e.g., mediation, adjudication) did not vary for families with and without domestic violence histories. Parents with a domestic violence history were as likely to be steered into mediation as those without, despite the inappropriateness of mediation in these cases. In addition, custody outcomes did not differ between families with and without this history (Logan, Walker, Jordan & Horvath, 2002).

Consistent with this posited gap between theory and practice, a California study (Hirst, 2002) found that mediators held joint sessions in nearly half of the cases in which an independent screening interview had identified allegations of domestic violence, in direct violation of state regulations for separate sessions in these cases. Furthermore, other research (Johnson & Saccuzzo, 2005) has indicated that mediators were more likely to affect settlements with batterers having custody than men who did not abuse their partners. There has been tremendous progress in the field, but there is a long road ahead to ensure that everyone is working with the most promising practices.

IMPLICATIONS

Several implications arise in attempting to redress this identified gap between theory and practice. First, there is a need for *legislation* to find the necessary balance between promoting co-parenting arrangements and recognizing domestic violence cases where more limited or no access to the perpetrator may be appropriate. Many jurisdictions have struggled with finding this balance (Bala et al., 1998; Jaffe & Crooks, 2004), and in some cases, the negative and unintended consequences of legislative reform were striking and highlight the importance of systemic readiness before the adoption of any new legislation (Jaffe, Crooks, & Wolfe, 2003). Although legislation alone is not sufficient to address these issues, it can serve as an important signal to lawyers, evaluators, judges, and parents.

A second concern stems from the need for *resource and policy development* to support a more sophisticated analysis and response to domestic violence cases. A special challenge for the justice system and community social services is the overlap between family proceedings between separated parents and child protection proceedings. Specific protocols are required to guide practitioners in managing cases with domestic violence allegations that fall into the area between public safety for children (i.e., triggering criminal or child protection process) and private family law matters. In addition, family courts often do not have access to the resources that they require to handle these more complex cases that go beyond the mandate of parent education and mediation services. These resources include timely access to specially trained child custody evaluators with expertise in domestic violence, supervised access centers, and treatment resources for individual family members (including perpetrators, victims, and children). Further, the different components of a full spectrum of services need to be well coordinated in order to monitor family members' progress and make revisions to parenting arrangements as needed. For example, the *Caring Dads* program is an innovative intervention with fathers that simultaneously addresses both domestic violence and child maltreatment, includes child protection and/or probation personnel in a case management approach, and extends support in the form of information and/or referrals for the children's mothers (Scott & Crooks, 2004, 2006, 2007).

Building systemic capacity requires *education and training* for the professionals who work in the family court system including judges and lawyers. Education programs have to be available to help court-related professionals recognize domestic violence in all its forms and have the skills to provide differential service responses to meet the level of need for a family. When domestic violence is recognized, there still needs to be a distinction made between minor, isolated acts versus acts that occur as part

of a pattern of abuse that engenders fear and harm for victims and children exposed to this behavior. If the most intensive domestic violence interventions are misapplied to families who may be better characterized as experiencing transitory high conflict, there is the potential to undermine parent-child relationships, harm parents' reputations, impede their problem-solving abilities, and waste scarce resources. Conversely, an abusive husband who engages community members and the court system in a dialogue about his wife making false allegations and being an unfit parent has to be identified early in the court process. Failure to identify these cases allows the batterer to manipulate the justice system as a tool to revictimize his ex-partner. In some jurisdictions (e.g., California), mandatory training in domestic violence is a prerequisite for being a court-appointed child custody evaluator.

Finally, there are significant *gaps in the existing research* that limit our ability to understand cases and identify best practices. Specifically, there is a lack of long-term follow-up studies to match children's adjustment with specific post-separation parenting arrangements in cases involving domestic violence. In addition, most research has been conducted with families in the formal judicial system, and less is known about the long-term experiences of those who choose not to engage this system. Research in the divorce area has been criticized for looking at the outcome of biased samples such as cooperative couples who benefit from joint custody. In addition, some research links outcomes to a single factor when the reality is more complex; for example, negative outcomes associated with parental relocation may overlook the risk factors of domestic violence and poverty that triggered the move. There has also been little attention to understanding the process of perpetrators changing their behavior and appropriately healing the relationship with children in a respectful and safe manner. When it comes to individual cases, it is often hard to predict whether terminating contact promotes child healing or, conversely, triggers idealization of the perpetrator and anger towards the victim parent. We know little about the restoration process of disrupted parent-child relationships, and the circumstances under which healing these relationships is possible.

Domestic violence is a critical factor to assess in child custody dispute resolution and subsequent parenting plans. Although there is legislative recognition of domestic violence, systemic change has been slow within the family court. Many practitioners continue to consider abuse allegations as an area of conflict to be resolved, rather than seeing it as a critical focus for assessment and intervention that requires specialized knowledge and expertise. In our view, a major paradigm shift is needed from mediation and co-parenting plans for all separating parents. Appropriate training and resources to meet the needs of abuse victims and their children remains a life and death issue in many family courts.

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