



Interviewing Children in the Context of Domestic Violence

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**INTERVIEWING CHILDREN WITHIN THE CONTEXT
OF
DOMESTIC VIOLENCE
Frank Alabiso, Ph.D.**

I. Preparing For The Interview

- Safety First.
- Assessing the child's understanding of the purpose of the interviews.
- Explanation of the role of the Attorney For The Child.
- Understanding developmental and psychological factor affecting the child's ability to report accurately.

II. General Guidelines For Interviewing Children:

Methods

- Direct Interview techniques: The Three Incident Method.
- Indirect Interview method: The use of Projective Techniques.
- Integration of Data from multiple sources: school, pediatrician, police, CPS.

III. Interviewing For The Psychological Dynamics

Associated With Fear

- Assessing for the effectsPotency: Severity, Dangerousness, Risk of Lethality.
- Patterns of Adjustment: Identification with the Aggressor, The Provocative Child, The Avoidant Child.
- Assessing For Tactics used by the perpetrator of Domestic Violence.

IV. Disordered Attachment

- Damage to the Child's capacity for Basic Trust.
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V. The Critical Role of Protective Factors

- Interviewing for Protective Factors: child's willingness to seek help, capacity of adult victim to protect, prior experiences with helping adults, access to community resources.

VI. Substituted Judgment

- Determining Imminent Danger: Potency, the child's pattern of adjustment, protective factors.
- Determining the child's capacity for considered judgment: cognitive development, effects of fear based thinking, the degree to which the child's perceptions have been manipulated.

VII. Discussion

- The integration of knowledge, experience and intuition.

The Court's Role in Supporting and Protecting Children Exposed to Domestic Violence

Mark and Sue are fairly typical of the hundreds of self-represented litigants that appear yearly on the family law domestic violence calendar. A month before the court date, Mark had come home drunk and was enraged because, when he tried to call Sue, the line was busy. He entered their apartment screaming accusations of infidelity. When Sue denied having a boyfriend, Mark slapped her across the face, causing her to trip over a chair and fall to the floor. Sitting motionless and terrified at the kitchen table were their two children, ages 3 and 5. When Mark stormed off to the bedroom, Sue grabbed the crying children and ran to a neighbor's apartment, where she called the police. The police came, arrested Mark, and interviewed Sue and the traumatized children. Sue got an emergency protective order and a referral to an agency that would help her get a restraining order. By the time she got her temporary restraining order, Mark was out of jail and staying with his mother. Mark's mother called Sue, berated her for getting Mark arrested, and demanded that the children come to her house to see their father. Sue informed her mother-in-law that this was not the first time Mark had hit her. Sue also asked that Mark give her some money for groceries. Mark's mother told Sue she could get some money when she brought the children over to visit.

Before they appeared in front of the judge, Mark and Sue each met separately with a family court mediator. Sue talked about how controlling and violent Mark could be and complained about how aggressive the children were when they returned from visits with their father. Sue told the mediator it would be okay for the children to see their dad, and she knew she wouldn't get any money unless she allowed visits. When Mark talked to the mediator, he accused Sue of overreacting and trying to poison the children against him. Mark wanted joint physical and legal custody. Because no agreement was reached, the case went before the judge for a decision on the restraining order and temporary custody. Neither Sue nor the judge knew that the criminal court had issued a stay-away order that included the children.

Portions of this hypothetical will be familiar to anyone who has encountered domestic violence cases. The initial reaction is to evaluate the situation from the perspective of the parents—the batterer and the victim. But what about the children? What trauma have they experienced? How do we address the physical and psychological safety of these children? Should the court system do more to

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The effects on children of witnessing domestic violence has been the subject of a growing and increasingly sophisticated scientific literature. This article summarizes that literature as well as literature describing the impact of violence on parenting behavior and factors that have been found to influence children's safety with offending parents. It describes barriers to the application of the literature, including traditional attitudes that conflict with the growing available knowledge about the impact of violence on children, inefficient communication between departments of the court, laws and policies that sometimes conflict with the needs of children, and conflicting values about judicial activism. Finally, the article recommends specific ways that courts can work together to serve children and families, and policies that protect children's interests. ■

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understand and protect the best interest of children who witness domestic violence in the home?

Every day, in cases involving domestic violence, family law judges and commissioners make decisions that shape the lives of parents and children, often with only the conflicting testimony of the parties, unsupported by independent evidence, to guide them. Many cases involve children who have witnessed violence between the adults in their lives, and there is ample evidence that witnessing family violence can have a powerful negative impact on a child, both psychologically and behaviorally. The family court thus has an opportunity to assume a legitimate role in breaking the cycle of violence with every family that comes before it. This article proposes that it is crucial for courts to advance this effort, despite the inherent difficulty of these cases, by intervening to protect children in families experiencing violence in the home.

To offer courts concrete assistance in meeting the challenges posed by these families, the article briefly reviews some key literature on the impact of witnessing domestic violence on children's development, on the risk and resilience factors that mediate and moderate the effects of witnessing violence, on the impact of violence on parenting behaviors, and on factors that influence children's safety with offending parents. Next the article reviews relevant law on domestic violence and describes some of the challenges that courts face in these cases. Finally, it concludes with recommendations informed by law and literature that can help courts structure procedures and programs that both comply with the law and protect children.

WHAT DO WE KNOW ABOUT CHILDHOOD EXPOSURE TO DOMESTIC VIOLENCE?

In recent years the scientific literature on the impact of exposure to violence on children's development has become more sophisticated, and there are now excellent sources that describe developmental threats and resilience factors common to children from

violent homes.¹ Studies have found that witnessing domestic violence has an impact on children's lives, whether it is the only major stressor they suffer² or it compounds the effects of child abuse³ or community violence.⁴ Although the possible consequences of exposure to violence are complex, there are some general principles upon which courts and other systems that work with families can rely. The next sections discuss those principles under the following headings:

- What kinds of problems do children experience?
- Which children are the most vulnerable?
- What are the mechanisms by which violence affects children?
- What do we know about domestic violence and parenting?

When a family with domestic violence issues comes before the court, knowledge of these principles can guide a judge's thinking about whether referrals for evaluation are needed, what the referral questions should be, and what orders will best strike the balance between protecting the children's right to have relationships with both parents and guaranteeing the safety of the children and the nonoffending parent.

WHAT KINDS OF PROBLEMS DO CHILDREN EXPERIENCE?

Studies generally describe children's problems in terms of behavior problems or diagnostic categories. Many studies discuss so-called externalizing behavior problems in children who witness domestic violence. In fact these aggressive, destructive behaviors, which may include bullying, destruction of property, or assault, are probably the most frequently reported problems among children of battered women.⁵ Child witnesses also suffer from internalizing problems (anxiety, withdrawn behaviors, depression, low self-esteem).⁶

The most common psychiatric diagnosis that has been studied in children of battered women is post-

traumatic stress disorder (PTSD). To be diagnosed with PTSD, the child must have experienced an event that was threatening to the life or bodily integrity of the child or someone else, and the event must have inspired feelings of fear, helplessness, and horror.⁷ After the event, the child must develop symptoms of three different kinds: (1) reexperience of the trauma (e.g., nightmares, intrusive thoughts of the trauma), (2) emotional numbing and avoidance (e.g., avoiding reminders of the trauma, amnesia for important parts of the trauma, being unable to experience some emotions), and (3) hyperarousal (e.g., difficulty with sleeping, inability to concentrate, feelings of irritability, exaggerated startle response).⁸ Children with symptoms in all three groups meet diagnostic criteria for PTSD.⁹ Studies assessing children living in domestic violence shelters for posttraumatic stress disorder have found incidence rates ranging from 13 percent¹⁰ to more than 50 percent.¹¹

The kinds of problems that child witnesses to domestic violence suffer differ sometimes depending on the developmental stage of the child. Babies and very young children can be expected to express their distress behaviorally: they may develop interruptions in sleeping or eating, cry more, or lose developmental skills such as toileting or language. They may also develop fear of separation or other new fears.¹²

Preschool-age children who witness domestic violence have been shown to perform less well on tests of verbal intelligence than comparison children who have not been exposed¹³ and to be less empathic and less able to make accurate social inferences than children from nonviolent homes.¹⁴ These children misread the intentions of others. They may, for example, interpret a gesture intended as an invitation to play as threatening and respond with aggression. In their play with peers, preschoolers exposed to domestic violence are more likely to express negative feelings, to play aggressively, to withdraw from others, and to insult or name-call than nonexposed children.¹⁵

School-age children who witness domestic violence have more academic difficulties than their peers from nonviolent homes¹⁶ and are also compromised in their ability to judge right from wrong.¹⁷ Adoles-

cent boys exposed to father-to-mother violence are more likely than nonexposed peers to run away, to report suicidal behavior, and to be aggressive with their mothers.¹⁸ In addition, their academic and social functioning is compromised compared to peers who have not witnessed domestic violence.¹⁹

Not all child witnesses suffer these consequences. Two studies assessed behavior problems in children living in battered women's shelters. They relied on self-report from children (who were at least 6 years of age in one study and 8 years of age in the other) and on reports from their mothers and found that 26 to 31 percent of the shelter residents were doing well. Their externalizing and internalizing behaviors were within normal limits for children their age, and they had high levels of self-esteem.²⁰ How is it possible to predict which children will suffer the dramatic consequences described above and which children will emerge relatively unscathed from the experience of witnessing domestic violence? This is the question that the next section will discuss.²¹

WHICH CHILDREN ARE THE MOST VULNERABLE?

Although results of the studies are not unanimous on this point, there is a great deal of evidence that children 5 years old and younger may be disproportionately exposed to domestic violence²² and that they may suffer more than older children as a consequence of witnessing it.²³ Indeed, one study indicates that children under 4 years of age have more symptoms of anger and aggression if they witness threats to their caregiver's well-being than they do from any other kind of trauma.²⁴

In addition to age, several factors predict resilience in children who witness violence. Some of these are contextual or relational, and others are internal to the child. First, it is generally the case that children do better if they are exposed to one or, at the most, two major risk factors. When children must cope with three or more negative factors (e.g., exposure to violence, parental substance abuse or mental illness, poverty, or racism), the risk for poor outcome is multiplied.²⁵ Therefore, children from families with

multiple problems are especially vulnerable and in need of protection from the courts. Their coping capacities are stretched to the limit, and their parents may be too burdened with their own life difficulties to fully appreciate their children's plight.

Children who are intelligent and who have easy temperaments generally fare better in the face of risk, as do children with a strong relationship with at least one parent or a strong relationship with another adult.²⁶ For children exposed to domestic violence it is critical, therefore, that at least one strong parent-child relationship be preserved and protected. As will be discussed in a later section, one predominant characteristic of batterers is a tendency to undermine the children's relationship with the other parent. Courts should do what they can to prevent this, and one important way they can do so is to make orders that support the strongest possible relationship between the children and the nonoffending parent.

Parental factors have also been linked to children's resilience. Parental competence, sound maternal mental health, low levels of hostility toward children, and low levels of psychological aggression in the household are all associated with children who have fewer problems.²⁷

WHAT ARE THE MECHANISMS BY WHICH VIOLENCE AFFECTS CHILDREN?

Four major theoretical models explain why exposure to domestic violence has such a profound impact on children's behavior and functioning. The first is physiological; the other three are psychological. It seems likely that all four interact with each other and that for any particular child affected by violence each of these theories may explain a bit of the puzzle.

Neurophysiological Responses: Trauma Affects the Developing Brain

Children's brains develop rapidly, especially in the first three years of life.²⁸ Because the brain develops at a pace that will never again be equaled, it may be especially vulnerable to assault from stress. Scientists now understand that certain hormones secreted by the body in times of extreme stress are toxic to brain

tissue.²⁹ In fact, one theorist believes that exposure to traumatic events during the first two years of life permanently changes the structure of the brain, enriching connections in parts of the brain that are devoted to dealing with emergency, depleting connections in parts of the brain that are devoted to planning and regulation of emotion, and destroying cells in areas of the brain central to memory formation and memory retrieval.³⁰ But a less deterministic view of the data is also possible. Many years of research confirm that traumatized individuals do better with time and treatment, suggesting that there are corrective experiences that can follow traumatic ones and help the brain "rewire" and reregulate.³¹ Nevertheless, well-designed studies have demonstrated that in both animals and humans high and continuing levels of stress dysregulate the stress hormone system and cause certain portions of the brain to atrophy³² and that these physical changes are associated with behavioral changes. Overly stressed animals have been found to be more clingy to their mothers, more aggressive with their peers, more prone to behave defensively in situations that others may not perceive as threatening, less likely to explore, and less able to concentrate and learn.³³ Traumatized children with stress hormone dysregulation have been found to have deficits in verbal memory and intelligence,³⁴ to have less positive relationships with their primary caregivers,³⁵ and to pay selective attention to negative stimulation.³⁶ It is entirely possible that the aggressive and destructive behaviors, and the cognitive and social deficits that are so frequently observed in child witnesses of domestic violence, are related to dysregulations in their central nervous systems that follow repeated exposure to frightening behavior. This seems even more likely if the children were very young when the exposure began. If this is the case, intervention may be needed to help the children reregulate their systems before their behavior and functioning can be expected to improve.

Example: Tony's mother was pregnant with him the first time Tony's father beat her. He continued to hit her after Tony's birth, and Tony was almost always nearby crying when his parents fought. When Tony came for treatment, he was 3 years old. He had been expelled

from two different preschools because of his aggression toward other children and toward the teachers. In therapy, Tony learned some ways to help himself feel relaxed and calm. He learned to take deep breaths and to turn his body into a “wet noodle” when he felt too excited. More important, his mother learned some ways to help him. She learned that rubbing his hands or shoulders could calm him down, and that having predictable routines helped him feel calmer in general. As Tony more frequently had experiences of going from an excited internal state to a calm one, he learned what it felt like to calm himself and he began to use what he had learned when he was at preschool. His aggression diminished, and he made two friends whom he enjoyed playing with.

Cognitive-Affective Models: Violence Changes the Way That Children Think and Feel

If children are exposed to violence between the people on whom they depend for protection, that experience will change the way they view the world.³⁷ Theoretical models that focus on children's thoughts and feelings propose that children are motivated by a wish for emotional security and that their security is threatened by hostile, poorly resolved conflict between their parents. The models propose that children, especially if they have been long exposed to anger, perceive adult anger as aggressive and threatening and cope with this threat by taking action to end the discord and restore a sense of security.³⁸ The action may or may not be useful. For example, children may show distress when faced with their parents' arguing and aggression; they may blame themselves for the argument; they may engage in a fantasy about how they can stop or prevent future fights; they may feel guilty for not having been able to stop past fights. The proponents of these models assert that it is the less-than-effective means of coping with their loss of emotional security and their appraisals of threat and danger that lead to children's aggressive, destructive, anxious, and depressed behaviors and to their other social and relational problems.

Behavioral Models: Children Learn What They See

Social learning theory teaches that behavior is learned by modeling or observational learning: both children and adults imitate behavior that they see, particularly if the actor is someone who is appealing to or has power over the observer, or if the behavior leads to outcomes that are desirable to the observer.³⁹ Parents, who provide children's initial schemas of relationship behavior, are likely to be particularly potent models. They are inherently attractive to their children, especially their young children, who want nothing more than to please and be like their parents. They have seemingly boundless authority over their children. When a parent models aggression, children are very likely to follow the example. Not only is the parent a powerful model, but children also see some outcomes of parental aggression as desirable. They may be simultaneously terrified of the physical harm that their violent parents cause and thrilled by and attracted to the amount of power and control their parents exert. During an incident of parental violence, when the child is feeling most weak and vulnerable, power and a sense of control over the situation are valuable outcomes.

Social learning theory also teaches us that when children are emotionally aroused—for example, experiencing anxiety in a novel situation—they are most likely to rely on information that they previously learned by modeling.⁴⁰ A child in a violent home learns by modeling that aggression is effective in controlling situations and making people do what he or she wants them to do. A child who is anxious in a new situation—for example, approaching a group of unfamiliar children or starting school—may use the aggressive behavior learned at home to gain a sense of mastery over anxiety.

Aggressive behavior is not the only behavior that children in violent homes learn through modeling. Children may also model submissive behaviors, particularly if they see that these may be a way to avoid getting hurt or to avoid feeling helpless. Neither aggression nor submission, however, are suitable in most situations children face, and overreliance on

these behavioral schemas can lead to the kind of dysfunction noted in many children exposed to domestic violence.

Disordered Attachments: Children Become Unable to Trust Relationships

According to attachment theory, one of every infant's primary developmental tasks is to establish a relationship with a caregiver.⁴¹ John Bowlby, author of seminal works explicating attachment theory, envisioned the attachment relationship as one essential to the survival of the individual and of the species and asserted that children are as strongly motivated to seek, and adult caregivers as strongly motivated to provide, this bond as they are to seek food. Under his theory, the attachment system is designed to protect younger, weaker members of a species in times of stress or threat. Bowlby asserted that children's drive for attachment is expected to be activated under conditions in which children feel (consciously or unconsciously) that their safety is threatened. He also believed that when child-rearing conditions or relationships are threatening, as they would be in a violent family, the attachment system is in a relatively constant state of activation, overwhelming other behavioral systems, such as the urge to explore.⁴² When children are inhibited in their exploration, their learning and their mastery over the environment are also limited, leading to the cognitive deficits that have been noted in children exposed to violence.

Attachment theory, as postulated by Bowlby, holds that it is essential to a child's healthy development that the child have an attachment to at least one caregiver whom the child can trust to provide protection at times of threat or insecurity. To witness this caregiver being attacked and wounded is a profound assault on the child's trust. In the moment of assault, when the child most needs to be close to and reassured by the caregiver, the caregiver is too hurt, frightened, and angry to provide for the child.⁴³ When violent assaults on the caregiver are ongoing, the co-occurrence of intense need and complete helplessness leads to a chronic state in which the child feels at a loss to make and maintain satisfy-

ing emotional relationships. When the perpetrator is also an attachment figure, as is the case when one parent assaults the other, the child's mental representations of who is safe and who is dangerous suffer an additional profound split between love and fear. Under these circumstances, children develop profound insecurities and disorganizations in their mental and emotional schemas of relationships. These kinds of insecurities have been strongly linked with conduct problems in childhood, of the kind seen in children exposed to domestic violence.⁴⁴

But it would be a distortion of attachment theory to use it to support the position that a victim of domestic violence is, by virtue of having been assaulted, somehow endangering children by failing to uphold the responsibility to protect them. From the children's point of view, their security is further shaken if they are removed from their important attachment figures. Children have their best chance to achieve good outcomes after exposure to violence if they can rely on the presence of a caregiver who can care for them, help them sort out their mixed and sometimes confusing feelings, and help restore a sense of calm. Courts have an important role to play in ensuring that relationships between victims of violence and their children are not further disrupted and in guiding families to the supportive services that they need.

WHAT DO WE KNOW ABOUT DOMESTIC VIOLENCE AND PARENTING?

Violence in the relationship between parents is not limited in its effects on the two adults but has a direct impact on their children as well. It is well established empirically that the quality of the relationship between parents is *directly* linked both to the quality of the parent-child relationship and to children's outcomes.⁴⁵ And in the context of family court, we must directly confront the reality that violence does not end when the parents separate. The period after the separation is often especially dangerous for both the adult victim and the children.⁴⁶ As perpetrator parents feel the other parent and the children slipping away from their control, they may escalate their

violence to regain a sense of control in the situation. It is also important to realize that abusive parents may attempt to use the family court as a way to continue to maintain power and control over the victim and the children, even after separation. For example, men who have been alleged to be violent with their partners are more likely to seek custody of their children than are nonviolent men.⁴⁷

It is critical to keep these general characteristics of domestic violence cases in mind as we examine the parenting behavior of nonoffending parents, the parenting behavior of offending parents, and the co-occurrence of domestic violence and violence against children. Most studies that examine the impact of domestic violence on parenting have studied families in which the mother was the nonoffending parent and the father was the offending parent. Therefore the following discussion assumes that dynamic except when a particular study makes a different assumption.

Parenting Characteristics of Battered Women

It is well established that battered women experience more parenting stress than do nonbattered women in comparison groups.⁴⁸ In spite of this increased stress, there is relatively little difference between the actual parenting behaviors of battered and nonbattered women when one considers studies that rely on observational data as well as self-report. In one study, battered women and their children were observed to be involved in conflict more often than were the comparison women and their children, and the battered women attended less frequently to their children's play. In spite of this diminished attention, the battered women and their children did turn to one another and attempt to maintain contact. They initiated interactions with one another more frequently than did the comparison mothers and their children.⁴⁹ Battered women do, however, see themselves differently from comparison women. In one study, battered women reported that they were less affectionate with their children than comparison women. This self-report was not borne out in the observational data, however, which revealed that the

women in the two groups were equally affectionate with their children.⁵⁰

One conception about battered women as parents is that they are more violent with their children than women who are not victimized by domestic violence. This commonly held belief has only minimal support in the literature. One study found that battered women are more aggressive with their children while they are in the violent relationship,⁵¹ but analysis of follow-up data with these women revealed that within six months of leaving the violent relationship their levels of aggression toward their children had returned to normal.⁵² Other studies have found no difference in the level of corporal punishment used by battered women and comparison women.⁵³ It appears that most battered women deal with the stress of violence to themselves without resorting to physical punishment or other acts of aggression against their children.

Women's violence against their partners is an area that deserves more attention. Indeed, the literature on the impact of domestic violence on children can be criticized because it generally does not take into account the impact of violence perpetrated by mothers. The few studies that do examine mothers' violence have one unanimous finding, however: where mothers have engaged in violent acts against the father, those violent acts are not associated with increased behavior problems in children. This is true whether the children's behavior problems are measured by self-report, parent report, or observation.⁵⁴

Parenting Characteristics of Violent Men

While mothers' aggression against fathers has not been associated with increased child behavior problems, fathers' aggression against mothers decidedly has. As is shown below, both research and clinical literature report the significant impact of fathers' aggression on their children, even when the aggression is not directed at the child, and that fathers who are aggressive toward their children's mothers parent differently from nonaggressive fathers.

In one study that asked battered women and a comparison group of women from the community

to report on the parenting behaviors of their husbands, the battered women reported that their husbands were more irritable with their children, spanked their children more, and were less affectionate with their children than did the comparison women. The battered women also reported that they altered their own parenting behaviors in the presence of their husbands in order to appease them or to control the children's behavior and keep the husband from becoming angry.⁵⁵ Two studies that rely on observation of father-child interactions found that fathers who were violent with their partners were also more physically and emotionally aggressive in interactions with their children, that they were more authoritarian, and that they displayed more negative emotion.⁵⁶ These parenting behaviors were more evident with boys than they were with girls. In response to their father's authoritarian style, the boys became more submissive in their behavior during the study tasks. Boys living with aggressive fathers made fewer suggestions and took a less active role in relating to their fathers than did boys whose fathers were not aggressive.

The clinical literature cites a number of ways in which the parenting behavior of violent men puts their children at risk. Men who are aggressive with their intimate partners frighten their children with their acts of violence; they risk undermining mother-child relationships; they are poor role models; their parenting behaviors may be alternately rigid/authoritarian and neglectful/irresponsible.⁵⁷ Beyond these behaviors, man-to-woman partner violence is associated with other increased risks for children: increased risk of abduction by the violent parent,⁵⁸ risk of psychological abuse and manipulation (especially postseparation in connection with visitation),⁵⁹ increased risk of sexual abuse or physical abuse,⁶⁰ and continuing risk of violence in the father's new relationship.⁶¹

With all the problems for children attendant to father-to-mother violence, it is fair to ask whether continued contact with a violent father is ever in the best interest of the child. But where contact can be physically and emotionally safe, it is important for children to have a continuing relationship with their fathers. In one study of preschool-age children from

homes with domestic violence, children who had little contact with their fathers after separation had more symptoms of anxiety and depression than children who saw their fathers frequently.⁶² The level of violence in the home was less predictive of children's anxiety and depression than the amount of contact they had with their fathers. From an attachment perspective, it is worth maintaining an existing father-child relationship even in the face of domestic violence if that can be done safely for the children and the mother.

Predicting Child Abuse From Domestic Violence

It is difficult to predict whether a parent who perpetrates partner violence will become violent with the children. Some authors suggest that instruments used to assess the level of danger for a woman can also be used to assess danger for her children.⁶³ These authors also point out that generally a battered woman is the best predictor of how dangerous a particular violent partner will be, suggesting that courts give added weight to concerns that battered women voice about their safety and the safety of their children.

Even in the absence of formal measures, however, there are some empirically based factors that can be used to predict, in families with domestic violence, whether a parent is likely to abuse a child. One study analyzed data from a representative sample of the national population and identified the following factors:⁶⁴

- Frequency of acts of violence against the spouse or partner was the strongest predictor of child physical abuse. For men, each additional act of violence against the partner increases the odds that he will physically abuse his children by 12 percent; for women, each act of physical violence toward her partner increases the likelihood that she will abuse her children by 4 percent.
- Male children are more likely to be physically abused.
- Men and women who sustained corporal punishment as adolescents are more likely to physically abuse their children.

Other studies using smaller, nonrepresentative samples have also found that boys are more often abused and that frequency and severity of marital violence are the strongest predictors of child abuse.⁶⁵

WHAT CAN COURTS DO TO BETTER SERVE CHILDREN EXPOSED TO DOMESTIC VIOLENCE?

Our evaluation of the literature to determine its implications for court practices and judicial decision making with respect to child custody and placement reveals several guiding principles. If we are to serve the best interest of children exposed to domestic violence, intervention is required and it should be based on the research. Family court systems need to identify those families where there is partner abuse; parents need to be aware of the effects of the violence on their children; court orders, procedures, and referrals need to support and strengthen the nonoffending, custodial parent; children need to continue an existing relationship with the offending parent if it can be done in a safe and meaningful setting; and therapeutic services need to be available. The actual implementation of these proposed court practices requires judicial education, a review of service delivery systems, and court leadership. Most significant, it also requires a reexamination of some of the assumptions that form the basis of traditional child custody proceedings in light of what we now know about domestic violence.

ASSUMPTION: PARENTS WILL ALWAYS ACT IN THEIR CHILDREN'S BEST INTEREST

The law requires child custody and visitation decisions to be made based on the best interest of the child.⁶⁶ The only significant limitation to this basic standard is a relatively recent statute that sets forth a rebuttable presumption that a parent who has perpetrated domestic violence is not entitled to sole or joint custody of a child.⁶⁷ While it does not set forth a presumption regarding custodial preferences, another section of the California Family Code does

list a number of factors that the court should consider. These factors include “[t]he health, safety and welfare of the child,” any history of domestic violence or child abuse by a parent, contact between the child and each parent, and substance abuse.⁶⁸ If a court orders sole or joint custody to a parent with a history of perpetrating abuse, the court must state the reasons for the decision in writing or on the record,⁶⁹ unless the parties stipulate to custody or visitation orders.⁷⁰ Children are not parties to the proceedings, and the court receives its awareness of their needs primarily through the lens of a parent. In fact, courts assume that parents, even during times of great conflict and stress, will know what their children need and will agree to arrangements that promote the best interest of their children. Mediation is required in contested child custody and visitation cases⁷¹ for the purpose of assisting parents in reaching an agreement, ensuring continued contact with both parents, and avoiding continued conflict between the parents.⁷² In general, courts seek to avoid proceedings on custody and visitation issues because of the manner in which they escalate parental conflict and the devastating effects they have on children.⁷³

ASSUMPTION: PARENTS COME INTO COURT WITH EQUAL POWER

Another assumption that guides California's approach to child custody proceedings is that parents come into the judicial system with equal authority, power, and ability to advocate for themselves and their children. Included within this assumption is a belief that a parent who is a victim of domestic violence will inform the court of the situation and will be able to prove it.

ASSUMPTION: DOMESTIC VIOLENCE IS IRRELEVANT TO CUSTODY INQUIRIES

Judicial officers may be influenced by their own values regarding parenting and misconceptions about the dynamics of domestic violence. For example, the legislative scheme places a high value on frequent and consistent contact with both parents.⁷⁴ With

this comes an assumption that the parent most willing to provide liberal contact with the other parent is promoting the best interest of the children.⁷⁵ Common misconceptions include assumptions that domestic violence ends when the parents separate, that it is behavior between adults and not relevant to custody inquiries, and that mere exposure to domestic violence is not damaging to children.⁷⁶

ASSUMPTION: THE ROLE OF THE COURT IS TO RESOLVE CONFLICTS FRAMED BY THE PARTIES

The final assumption relevant to this inquiry concerns the role of the court. The assumption is that the judiciary exists solely to resolve conflicts presented by those unable to reach their own resolution. It is the responsibility of the litigants to frame the issues and present the evidence that will enable a judicial officer to make a wise and reasoned decision.

FALLACY OF ASSUMPTIONS IN CASES OF DOMESTIC VIOLENCE

There is nothing inherently wrong with the above assumptions except that, in the context of domestic violence, they fail to promote judicial decisions that serve the best interest of children. One reason is that the literature revealing the effects of domestic violence on children is relatively recent, and even mental health professionals are just beginning to appreciate the scope of the problem and implications for intervention and treatment.⁷⁷ And it is unrealistic to expect parents to understand the damage they perpetuate by exposing their children to violence within the family when professionals are just beginning to understand it. Nor do victims of domestic violence come to court with power and ability equal to that of the perpetrators. These assumptions do not reflect the dynamics of domestic violence. By its very nature, domestic violence is “[o]ne intimate partner’s attempt to control, dominate, and humiliate the other partner through a variety of means, including physical, sexual, psychological, financial, and spiritual abuse.”⁷⁸ So fear, degradation, shame, and economic dependence are substantial and common impediments to achieving

equal standing in the judicial process.⁷⁹ As a result, violence within the parental relationship will often be unreported or underreported.⁸⁰ Even where it is disclosed, a victim may be too traumatized to present an organized, persuasive case to a trier of fact. The victim is also more likely to be pressured into a visitation or custody settlement or minimize the extent of the violent behavior in order to secure some level of future safety and security.⁸¹ Finally, there are limits to what mediators and judicial officers can do, in isolation, to protect children exposed to domestic violence. There are, however, strategies that can be implemented to vastly improve the current system.

STRATEGIES TO IMPROVE COURT HANDLING OF DOMESTIC VIOLENCE CASES

Every judicial officer making custody and visitation decisions carries an enormous responsibility to, minimally, do the least amount of damage possible and, optimally, make decisions that truly serve the physical, emotional, and intellectual best interests of the child. This responsibility carries with it the need to evaluate one’s own biases, values, and assumptions about parenting. But there is little training for the enormity of this role and little encouragement and time for self-evaluation. We now have the opportunity to utilize the research on children exposed to domestic violence as a mechanism of self-reflection and program development that can enhance our decision making and service to children and families.

Education and Training

The greatest barrier to providing a judicial system that addresses the best interest of children who are exposed to domestic violence is a lack of information. It is critical that judicial officers, mediators, evaluators, family law facilitators, self-help center staff, and parents receive training with a focus on the dynamics of domestic violence, its effects on children, and interventions that promote future safety and ameliorate the damage of past exposure. While

the judicial system is designed to be reactive to the conflicts presented, a more thorough understanding of the dynamics and effects of domestic violence can empower us to become more creative and proactive in implementing constructive changes in court procedures and services.

Quite simply, there has been insufficient time for this new learning to have had a uniform impact on the education, understanding, and practice of professionals, even those specializing in family dynamics or the children of divorce. The integration of this new knowledge into the practices of mental health professionals is as incomplete, and as urgent, as its integration into the practices of family court practitioners and judges.⁸²

Success in these efforts requires judicial leadership and commitment by court staff to better serve these children and their families. Judicial officers can take the lead by obtaining relevant training for themselves and demanding that court staff and attorneys also receive training.

Identifying Relevant Family Groupings

Obviously, we cannot serve children exposed to domestic violence unless they are identified. The most prevalent means currently available in most courts is self-reporting by a parent. However, because domestic violence is significantly underreported, other procedures should be implemented. Efforts implemented in San Francisco have resulted in the identification of more than double the number of families that self-reported. These efforts included the following methods:

- Utilizing a confidential questionnaire, distributed during a mandatory parent orientation held prior to child custody mediation, that asked parents to indicate whether certain behaviors had occurred in the relationship (see Appendix A). When asked directly whether domestic violence had occurred in the relationship, many parents responded in the negative but submitted questionnaire responses indicating significant threats, controlling behaviors, slapping, and other violent acts. With this

knowledge, mediators were better able to structure the mediation to protect the victimized parent, educate the parents about the effects of the violence on their children, facilitate a custody and visitation plan that was child-focused, and make appropriate service referrals.

- Working in collaboration with community and public agencies to change police response to domestic violence incidents where children were present. This included changing police reporting procedures to include the names and ages of all children who were present in the residence where the violence occurred. This change in procedure provided a means by which information regarding the children could come to the attention of both the criminal and family law departments.
- Requesting those who provide assistance to self-represented litigants, both court-based and community providers, to include the names and ages of children on applications for temporary restraining orders. This procedure provided information to both the judicial officer and mediator that assisted in appropriate procedures, inquiry, court orders, and referrals.

Evaluating and Restructuring Court Procedures

There is no specific set of procedures appropriate for all courts to address children's issues in domestic violence cases. Courts vary enormously in the size and structure of their family law departments. Significant differences result depending on whether a county has a confidential mediation program or one where mediators provide specific information and recommendations to the judicial officer. What is important is an individualized evaluation of whether the procedures and programs within a given court address the needs of children exposed to domestic violence. To do this effectively, the court must also address the safety and needs of the nonoffending, custodial parent. The following questions are key in conducting such an evaluation:

- Is the court adequately identifying those families where children are being exposed to domestic violence?
- If the court offers parenting programs or parent orientation sessions, does the curriculum include information on the effects of domestic violence on children?
- Are judicial officers, mediators, evaluators, and other staff adequately trained in domestic violence issues, including its effect on children? Are they aware of resources available in the community such as supervised visitation, batterers' intervention, victim support, and child therapy programs?
- Are court calendars structured to minimize the number of required appearances and the potential for further conflict and violence? For example, are parents able to come to court at different times for orientation, mediation, child support orders, and custody/visitation hearings?
- Are courts able to identify other proceedings involving the same family? Is there a protocol or local rule of court enabling the criminal and family law courts to share information?

On the specific issue of other proceedings involving the same family, it is not unusual for families to have a variety of matters pending at the same time or in close proximity, such as a criminal domestic violence case, a child support matter, and a custody dispute. There may even be conflicting orders issued because judicial officers are not aware of a preexisting order. A criminal court may issue a stay-away order of which the judicial officer in family court has no knowledge. The family law judicial officer may issue an order allowing the defendant supervised visitation in violation of a previously issued stay-away order. California law expects judicial officers to have access to existing restraining orders.⁸³ However, most courts do not have computer systems that easily provide such information from within their own counties, much less access to orders from other counties. The California Rules of Court require

each county to develop a local rule of court to establish a protocol for the sharing of information between the criminal and family law divisions regarding domestic violence orders.⁸⁴ (See Appendix B for an example of a local rule.) Establishing such a protocol is especially important for children who have been witnesses to domestic violence. While the criminal justice system may have domestic violence advocates available to assist the nonoffending parent, they generally lack the expertise or awareness of resources to address the needs of the children. The family law division is better positioned to address those needs but cannot do so unless an appropriate protocol is developed for referrals from the criminal division and permission to modify stay-away orders.⁸⁵

Identifying Community Resources

A critical task in the process of improving service to children exposed to domestic violence is to identify services, both public and private, available within the community. Because information regarding the trauma suffered by children exposed to domestic violence, as well as successful interventions to ameliorate those effects, is relatively new, the available services must also be assessed for their expertise in working with these children and their families.⁸⁶ The identification and assessment of such services inform the court for the purpose of making appropriate referrals and court orders.⁸⁷ Some relevant inquiries include the following:

- Is a supervised visitation program available? If so, how closely monitored are the interactions between the offending parent and the child? Because it is common for offending parents to use the children in ongoing conflict and to disparage and blame the nonoffending parent, it is important for the judicial officer to understand the level of service provided before ordering supervised visits between a child and an offending parent.⁸⁸ This, of course, assumes that any visitation is safe and appropriate. Interventions, such as supervised or therapeutic visitation, can be effective but are

not always safe. For example, if there is sexual abuse in the family, an intervention to enhance the parent-child relationship should not be used because it may make the child more trusting of and vulnerable to a predator.⁸⁹ In cases involving family violence, a small number of perpetrators will be psychopathic and outside the reach of treatment.⁹⁰ Courts should heed the advice of service providers and not insist on interventions that involve the offending parent and the child in treatment together in these cases because to do so will increase the risk to the child.

- Are batterers' intervention programs available? If so, do they cover the effects of domestic violence on the children and cover parenting without violence? Do they provide regular reports to the court regarding a parent's participation? This information assists the court in understanding what to expect from such a program and may be helpful in determining when, if at all, supervised visitation can be implemented.
- Are parenting programs available? If so, does the curriculum include information on domestic violence, its impact on children, and strategies to assist children who have been exposed to such violence? Again, this information is valuable to a judicial officer in determining appropriate referrals or court orders.
- Is there an individual professional or organization available with the expertise to assess the needs of the family members? Obviously, not all domestic violence situations are the same, nor do all family members need the same interventions. The extent and duration of the violence, the offending parent's amenability to treatment, whether there has been child abuse, the resilience of the child, and the coping and parenting abilities of the nonoffending parent are some of the characteristics that should be considered in developing a visitation or treatment plan.⁹¹
- Are there victim advocacy and mental health programs available to work with the nonoffending

parent and child? As the literature indicates, a parent who has been a victim of domestic violence is likely to be experiencing a high level of fear and stress that impedes his or her ability to be attuned to the child's needs and respond appropriately to behaviors that indicate distress. Support for the nonoffending parent and assistance in developing parenting skills specifically directed at interacting with a traumatized child are essential to enabling the child to develop the emotional, behavioral, and cognitive resources necessary to healthy development and relationships.

Court and Community Collaborations

Our judicial system has gained considerable experience in developing collaborations with other agencies with the goal of achieving more lasting and positive outcomes for litigants and criminal defendants. Developing such collaborations to assist the courts in providing better service to child witnesses of domestic violence will result in improved judicial decisions and healthier children. People from public agencies, academia, advocacy groups, and community service organizations are extremely receptive to working with the judiciary on efforts to improve service delivery. As observed by FitzGerald et al., "[j]udges can set expectations, rally the community and others around the creation of needed services, and bring collaborations together..."⁹² Collaborative partners can be especially helpful in providing education programs for court staff and service providers, identifying and assessing currently available resources, identifying gaps in available services, and working together to develop new programs responsive to the needs of children from violent homes. For example, groups providing child and family therapy, supervised visitation, domestic violence advocacy, batterer intervention, parent education, and public health services can offer important perspectives on the effects of violence within the home and are likely to have great interest in working with the court on intervention strategies.

CONCLUSION

Much has been written about adult domestic violence victims and the need for the courts to be informed and responsive. As a result, legislation, court rules, mediation procedures, and judicial education have focused on the court's role in protecting and serving domestic violence victims. We now possess information that assists our understanding of the degree to which children who witness domestic violence are also victims. It provides us with the opportunity to engage the judiciary in services and procedures that address the best interest of the children whose future is dramatically affected by our decisions.

NOTES

1. CHILDREN EXPOSED TO DOMESTIC VIOLENCE: CURRENT ISSUES IN RESEARCH, INTERVENTION, PREVENTION, AND POLICY DEVELOPMENT (Robert A. Geffner et al. eds., Haworth Maltreatment & Trauma Press 2000); B.B. ROSSMAN ET AL., CHILDREN AND INTERPERSONAL VIOLENCE: THE IMPACT OF EXPOSURE (Brunner/Mazel 2000); PROTECTING CHILDREN FROM DOMESTIC VIOLENCE: STRATEGIES FOR COMMUNITY INTERVENTION (Peter G. Jaffe et al. eds., Guilford Press 2004).
2. See generally PETER G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN (Sage Publ'ns 1990).
3. Kathleen J. Sternberg et al., *Effects of Domestic Violence on Children's Behavior Problems and Depression*, 29 DEVELOPMENTAL PSYCHOL. 44 (1993).
4. See generally Joy D. Osofsky et al., *Chronic Community Violence: What Is Happening to Our Children*, in D. REISS ET AL., CHILDREN AND VIOLENCE (Guilford Press 1993).
5. Maura O'Keefe, *Linking Marital Violence, Mother-Child/Father-Child Aggression, and Child Behavior Problems*, 9 J. FAM. VIOLENCE 63 (1994); Kathy L. Ritchie & George W. Holden, *Parenting Stress in Low Income Battered and Community Women: Effects on Parenting Behavior*, 9 EARLY EDUC. & DEV. 97 (1998); B.B. Rossman, *Descartes' Error and Posttraumatic Stress Disorder: Cognition and Emotion in Children Exposed to Marital Violence*, in GEORGE W. HOLDEN ET AL., CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH, AND APPLIED ISSUES (Am. Psychological Ass'n 1998); Laura A. McCloskey et al., *The Effects of Systemic Family Violence on Children's Mental Health*, 66 CHILD DEV. 1239 (1995); John W. Fantuzzo et

al., *Domestic Violence and Children: Prevalence and Risk in Five Major U.S. Cities*, 36 J. ACAD. CHILD & ADOLESCENT PSYCHIATRY 116 (1997); John W. Fantuzzo & Wanda K. Mohr, *Prevalence and Effects of Child Exposure to Domestic Violence*, 9 FUTURE OF CHILD. 21 (1999); George W. Holden & Kathy L. Ritchie, *Linking Extreme Marital Discord, Child Rearing, and Child Behavior Problems: Evidence From Battered Women*, 62 CHILD DEV. 311 (1991).

6. Ernest N. Jouriles et al., *Physical Violence and Other Forms of Marital Aggression: Links With Children's Behavior Problems*, 10 J. FAM. PSYCHOL. 223 (1996); Gabriel Ybarra et al., *Domestic Violence's Specific Effects: A Comparison Between Exposed and Non-Exposed Mother-Child Dyads*, Poster, ANN. CONF. AM. PSYCHOL. SOC'Y (2001); McCloskey et al., *supra* note 5; O'Keefe, *supra* note 5.

7. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, TEXT REVISION (DSM-IV-TR) 424-29 (4th ed. 2000).

8. *Id.*

9. *Id.*

10. Sandra A. Graham-Bermann & Alytia A. Levendosky, *Traumatic Stress Systems in Children of Battered Women*, 9 J. INTERPERSONAL VIOLENCE 111 (1998).

11. Peter Lehmann, *The Development of Post-Traumatic Stress Disorder (PTSD) in a Sample of Child Witnesses to Mother Assault*, 12 J. FAM. VIOLENCE 241 (1997); Kym L. Kilpatrick et al., *Post-Traumatic Stress Disorder in Child Witnesses to Domestic Violence*, 67 AM. J. ORTHOPSYCHIATRY 639 (1997); Kym L. Kilpatrick & Leanne M. Williams, *Potential Mediators of Post-Traumatic Stress Disorder in Child Witnesses to Domestic Violence*, 22 CHILD ABUSE & NEGLECT 319 (1998).

12. Joy D. Osofsky, *The Impact of Violence on Children*, 9 FUTURE OF CHILD. 33 (1999); Betsy M. Groves & Barry Zuckerman, *Interventions With Parents and Caregivers of Children Who Are Exposed to Violence*, in CHILDREN IN A VIOLENT SOCIETY 183 (Joy D. Osofsky ed., Guilford Press 1997); Joy D. Osofsky & Michael S. Scheeringa, *Community and Domestic Violence Exposure: Effects on Development and Psychopathology*, in DEVELOPMENTAL PERSPECTIVES ON TRAUMA: THEORY, RESEARCH, AND INTERVENTION 155 (Dante Cicchetti & Sheree L. Toth eds., Univ. of Rochester Press 1997).

13. Ybarra et al., *supra* note 6.

14. Frances S. Hinchey & James R. Gavelek, *Empathic Responding in Children of Battered Mothers*, 6 CHILD ABUSE & NEGLECT 395 (1982).

15. Sandra A. Graham-Bermann & Alytia A. Levendosky, *The Social Functioning of Preschool-Age Children Whose Mothers Are Emotionally and Physically Abused*, 1 J. EMOTIONAL ABUSE 59 (1998).
16. Honore M. Hughes, *Psychological and Behavioral Correlates of Family Violence in Child Witnesses and Victims*, 58 AM. J. ORTHOPSYCHIATRY 525 (1988); Peter G. Jaffe et al., *Similarities in Behavioral and Social Adjustment Among Child Victims and Witnesses to Family Violence*, 56 AM. J. ORTHOPSYCHIATRY 142 (1986); JAFFE ET AL., *supra* note 2.
17. JANET R. JOHNSTON & VIVIENNE ROSEBY, IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICTED AND VIOLENT DIVORCE (Free Press 1997).
18. Bonnie E. Carlson, *Adolescent Observers of Marital Violence*, 5 J. FAM. VIOLENCE 285 (1990).
19. Tracy Kempton et al., *Dimensions of Interparental Conflict and Adolescent Functioning*, 4 J. FAM. VIOLENCE 297 (1989).
20. Honore M. Hughes & Douglas A. Luke, *Heterogeneity in Adjustment Among Children of Battered Women*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THE FUTURE OF RESEARCH, INTERVENTION & SOCIAL POLICY 185 (George W. Holden et al. eds., Am. Psychological Ass'n 1998); John H. Grych et al., *Patterns of Adjustment Among Children of Battered Women*, 68 J. CONSULTING & CLINICAL PSYCHOL. 84 (2000).
21. It is important to note that the studies cited in this section do not prove that domestic violence is the cause of children's behavior problems. They are correlational studies that show that domestic violence is associated with certain emotional and behavioral problems. The studies are consistent, however, in finding that children exposed to domestic violence have higher levels of difficulty than nonexposed children.
22. Fantuzzo et al., *supra* note 5.
23. Michael S. Scheeringa & Charles Zeanah, *Symptom Expression and Trauma Variables in Children Under 48 Months of Age*, 16 INFANT MENTAL HEALTH J. 259 (1995); ROSSMAN ET AL., *supra* note 1.
24. Scheeringa & Zeanah, *supra* note 23.
25. Michael Rutter, *Family Discord and Conduct Disorder: Cause, Consequence, or Correlate?*, 8 J. FAM. PSYCHOL. 170 (1994); Michael Rutter, *Resilience Concepts and Findings: Implications for Family Therapy*, 21 J. FAM. THERAPY 119 (1999).
26. Michael Rutter, *Resilience in the Face of Adversity: Protective Factors and Resistance to Psychiatric Disorder*, 147 BRIT. J. PSYCHIATRY 598 (1985); Michael Rutter, *Psychosocial Resilience and Protective Mechanisms*, 57 AM. J. ORTHOPSYCHIATRY 316 (1987).
27. Graham-Bermann & Levendosky, *supra* note 10; Hughes & Luke, *supra* note 20; JAFFE ET AL., *supra* note 16; Honore M. Hughes et al., *Resilience in Children Exposed to Domestic Violence*, in DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN: THE FUTURE OF RESEARCH, INTERVENTION & SOCIAL POLICY 67 (Honore M. Hughes et al. eds., Am. Psychological Ass'n 2001).
28. NAT'L RESEARCH COUNCIL & INST. OF MED., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT (Jack P. Shonkoff & Deborah A. Phillips eds., Nat'l Academy Press 2000).
29. Rachel Yehuda et al., *Hypothalamic-Pituitary-Adrenal Dysfunction in Posttraumatic Stress Disorder*, 30 BIOLOGICAL PSYCHIATRY 1031 (1991).
30. Bruce Perry & Ronnie Pollard, *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of Childhood Trauma*, 7 CHILD & ADOLESCENT PSYCHIATRIC CLINICS OF N. AM. 33 (1998); Bruce Perry et al., *Childhood Trauma, the Neurobiology of Adaptation, and 'Use-Dependent' Development of the Brain: How 'States' Become 'Traits'*, 16 J. INFANT MENTAL HEALTH 271 (1995).
31. THE NEUROBIOLOGICAL AND DEVELOPMENTAL BASIS FOR PSYCHOTHERAPEUTIC INTERVENTION (Michael Moskowitz et al. eds., Jason Aronson 1997).
32. Michael D. De Bellis et al., *Developmental Traumatology Part I: Biological Stress Systems*, 45 BIOLOGICAL PSYCHIATRY 1259 (May 15, 1999); Michael D. De Bellis et al., *Developmental Traumatology Part II: Brain Development*, 45 BIOLOGICAL PSYCHIATRY 1271 (May 15, 1999); Yehuda et al., *supra* note 29.
33. Yehuda et al., *supra* note 29.
34. J. Douglas Bremner et al., *Magnetic Resonance Imaging-Based Measurement of Hippocampal Volume in Posttraumatic Stress Disorder Related to Childhood Physical and Sexual Abuse—A Preliminary Report*, 41 BIOLOGICAL PSYCHIATRY 23 (1997); J. Douglas Bremner et al., *Deficits in Short-Term Memory in Posttraumatic Stress Disorder*, 150 AM. J. PSYCHIATRY 1015 (1993); Yutaka Ito et al., *Increased Prevalence of Electrophysiological Abnormalities in Children With Psychological, Physical, and Sexual Abuse*, 5 J. NEUROPSYCHIATRY & CLINICAL NEUROSCIENCES 401 (1993); Arthur H. Green et al., *Neurological Impairment*

NOTES

- in Maltreated Children*, 5 CHILD ABUSE & NEGLECT 129 (1991); Ybarra et al., *supra* note 6.
35. Joan Kaufman et al., *The Corticotropin-Releasing Hormone Challenge in Depressed Abused, Depressed Nonabused, and Normal Control Children*, 42 BIOLOGICAL PSYCHIATRY 669 (1997).
36. Seth D. Pollack et al., *Cognitive Brain Event-Related Potentials and Emotion Processing in Maltreated Children*, 68 CHILD DEV. 773 (1997); W. Brian McPherson et al., *An Event-Related Brain Potential Investigation of PTSD and PTSD Symptoms in Abused Children*, 32 INTEGRATIVE PHYSIOLOGICAL & BEHAV. SCI. 31 (1997).
37. Alicia F. Lieberman & Patricia Van Horn, *Attachment, Trauma, and Domestic Violence: Implications for Child Custody*, 7 CHILD & ADOLESCENT PSYCHIATRIC CLINICS OF N. AM. 423 (1997).
38. E. Mark Cummings & Patrick T. Davies, *Emotional Security as a Regulatory Process in Normal Development and the Development of Psychopathology*, 8 DEV. & PSYCHOPATHOLOGY 123 (1996); Patrick T. Davies & E. Mark Cummings, *Exploring Children's Emotional Security as a Mediator of the Link Between Marital Relations and Child Adjustment*, 69 CHILD DEV. 124 (1998); John H. Grych & Frank D. Fincham, *Marital Conflict and Children's Adjustment: A Cognitive-Contextual Framework*, 108 PSYCHOL. BULL. 267 (1990); John H. Grych, *Children's Appraisals of Interparental Conflict: Situational and Contextual Influences*, 12 J. FAM. PSYCHOL. 437 (1998).
39. ALBERT BANDURA, *AGGRESSION: A SOCIAL LEARNING ANALYSIS* (Prentice Hall 1973).
40. N.R. Crick & Kenneth A. Dodge, *A Review and Reformulation of the Social Information-Processing Mechanisms in Children's Social Adjustment*, 115 PSYCHOL. BULL. 74 (1994).
41. JOHN BOWLBY, *ATTACHMENT AND LOSS, VOL. I: ATTACHMENT* (Basic Books 1982).
42. John Bowlby, *Violence in the Family as a Disorder of the Attachment and Caregiving Systems*, 44 AM. J. PSYCHOANALYSIS 9 (1984).
43. Lieberman & Van Horn, *supra* note 37; Joy D. Osofsky, *The Effects of Exposure to Violence on Young Children*, 50 AM. PSYCHOLOGIST 782 (1995).
44. Mark T. Greenberg et al., *The Role of Attachment in the Early Development of Disruptive Behavior Problems*, 5 DEV. & PSYCHOPATHOLOGY 191 (1993).
45. Osnat Erel & Bonnie Burman, *Interrelatedness of Marital Relations and Parent-Child Relations: A Meta-Analytic Review*, 118 PSYCHOL. BULL. 108 (1995).
46. Jennifer L. Hardesty & Jacquelyn C. Campbell, *Safety Planning for Abused Women and Their Children*, in PROTECTING CHILDREN FROM DOMESTIC VIOLENCE: STRATEGIES FOR COMMUNITY INTERVENTION 89 (Peter G. Jaffe et al. eds., Guilford Press 2004).
47. Joan Zorza, *How Abused Women Can Use the Law to Help Protect Their Children*, in ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN 147 (Einat Peled et al. eds., Sage Publ'ns 1995); Marsha B. Liss & Geraldine B. Stahly, *Domestic Violence and Child Custody*, in BATTERING AND FAMILY THERAPY 175 (Marsali Hansen & Michele Harway eds., Sage Publ'ns 1993).
48. Holden & Ritchie, *supra* note 5; Ritchie & Holden, *supra* note 5; Graham-Bermann & Levendosky, *supra* note 10.
49. Holden & Ritchie, *supra* note 5.
50. Ritchie & Holden, *supra* note 5.
51. Holden & Ritchie, *supra* note 5.
52. HOLDEN ET AL., *supra* note 5.
53. Ritchie & Holden, *supra* note 5; McCloskey et al., *supra* note 5.
54. Gayla Margolin et al., *Family Interaction Process: An Essential Tool for Exploring Abusive Relations*, in FAMILY ABUSE: A COMMUNICATION PERSPECTIVE 37 (D.D. Cahn & S.A. Lloyd eds., Sage Publ'ns 1997); Gayla Margolin & Richard S. John, *Children's Exposure to Marital Aggression: Direct and Mediated Effects*, in OUT OF DARKNESS: PERSPECTIVES ON FAMILY VIOLENCE (G.K. Kantor & J.L. Jasinski eds., Sage Publ'ns 1999); Kempton et al., *supra* note 19.
55. Holden & Ritchie, *supra* note 5.
56. Margolin et al., *supra* note 54; Margolin & John, *supra* note 54.
57. LUNDY BANCROFT & JAY C. SILVERMAN, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE* (Sage Publ'ns 2000); Lundy Bancroft & Jay C. Silverman, *Assessing Abusers' Risks to Children*, in PROTECTING CHILDREN FROM DOMESTIC VIOLENCE: STRATEGIES FOR COMMUNITY INTERVENTION 101 (Peter G. Jaffe et al. eds., Guilford Press 2004).

58. G. GREIF & R. HEGAR, *WHEN PARENTS KIDNAP* (Free Press 1993).
59. J. Erickson & A. Henderson, *Diverging Realities: Abused Women and Their Children*, in *EMPOWERING SURVIVORS OF ABUSE: HEALTH CARE FOR BATTERED WOMEN AND THEIR CHILDREN* 138 (Sage Publ'ns 1998).
60. C. MCGEE, *CHILDHOOD EXPERIENCES OF DOMESTIC VIOLENCE* (Jessica Kingsley Publishers 2000).
61. DONALD DUTTON, *THE DOMESTIC ASSAULT OF WOMEN: PSYCHOLOGICAL AND CRIMINAL JUSTICE PERSPECTIVES* (Univ. of British Columbia Press 1995); S. Woffordt et al., *Continuities in Family Violence*, 9 J. FAM. VIOLENCE 195 (1994).
62. Carla Stover et al., *The Effects of Father Visitation on Preschool Aged Witnesses of Domestic Violence*, 18 J. INTERPERSONAL VIOLENCE 1149 (2003).
63. Hardesty & Campbell, *supra* note 46.
64. S.M. Ross, *Risk of Physical Abuse to Children of Spouse Abusing Parent*, 20 CHILD ABUSE & NEGLECT 589 (1996).
65. Ernest N. Jouriles & William D. Norwood, *Physical Aggression Toward Boys and Girls in Families Characterized by the Battering of Women*, 9 J. FAM. PSYCHOL. 69 (1995); Ernest N. Jouriles & S.H. LeCompte, *Husbands' Aggression Toward Wives and Mothers' and Fathers' Aggression Toward Children: Moderating Effects of Child Gender*, 59 J. CONSULTING & CLINICAL PSYCHOL. 190 (1991); O'Keefe, *supra* note 5; Maura O'Keefe, *Predictors of Child Abuse in Maritally Violent Families*, 10 J. INTERPERSONAL VIOLENCE 3 (1995).
66. CAL. FAM. CODE § 3040 (West 1994 & Supp. 2005).
67. *See* CAL. FAM. CODE § 3044.
68. *See* CAL. FAM. CODE § 3011.
69. *See* CAL. FAM. CODE § 3011(e)(1).
70. *See* CAL. FAM. CODE § 3011(e)(2).
71. CAL. FAM. CODE § 3170 (West 1994 & Supp. 2005).
72. *See* CAL. FAM. CODE § 3161.
73. Janet R. Johnson et al., *The Long Shadow of Marital Conflict: A Family Process Model of Children's Adjustment Postdivorce*, 53 J. MARRIAGE & FAMILY 297 (1990).
74. CAL. FAM. CODE §§ 3020(b), 3161.
75. Andrea C. Farney & Roberta L. Valente, *Creating Justice Through Balance: Integrating Domestic Violence Law Into Family Court Practice*, 54 JUV. & FAM. CT. J. 35, 36–37 (Fall 2003).
76. Peter G. Jaffe et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, 54 JUV. & FAM. CT. J. 57 (Fall 2003).
77. Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions*, 54 JUV. & FAM. CT. J. 11, 17 (Fall 2003).
78. PETER G. JAFFE ET AL., *CHILD CUSTODY AND DOMESTIC VIOLENCE: A CALL FOR SAFETY AND ACCOUNTABILITY* 14 (Sage Publ'ns 2002).
79. *See* discussions in Dalton et al., *supra* note 77, at 15–22; Jaffe et al., *supra* note 76, at 59; and Farney & Valente, *supra* note 75, at 39.
80. Dalton et al., *supra* note 77, at 16; Farney & Valente, *supra* note 75, at 39.
81. *See* Farney & Valente, *supra* note 75, at 42.
82. Dalton et al., *supra* note 77, at 17.
83. CAL. FAM. CODE § 3031 (West 1994 & Supp. 2005).
84. CAL. R. CT. 5.500 (2005).
85. *See* Julia Weber, *Domestic Violence Courts: Components and Considerations*, 2 J. CENTER FOR FAM. CHILD. & CTS. 23 (2000), for a discussion on domestic violence courts.
86. For information on successful therapeutic interventions, *see* *PROTECTING CHILDREN FROM DOMESTIC VIOLENCE: STRATEGIES FOR COMMUNITY INTERVENTION* (Peter G. Jaffe et al. eds., Guilford Press 2004) [hereinafter *PROTECTING CHILDREN*]; *YOUNG CHILDREN AND TRAUMA: INTERVENTION AND TREATMENT* (Joy D. Osofsky ed., Guilford Press 2004) [hereinafter *YOUNG CHILDREN*].
87. Section 3190 of the California Family Code specifically authorizes court orders requiring parents and children to participate in counseling.
88. Maureen Sheeran & Scott Hampton, *Supervised Visitation in Cases of Domestic Violence*, 50 JUV. & FAM. CT. J. 13 (1999).
89. KAUFFMAN BEST PRACTICES PROJECT, *CLOSING THE QUALITY CHASM IN CHILD ABUSE TREATMENT: IDENTIFYING AND DISSEMINATING BEST PRACTICES* (Kauffman Found. 2004).
90. Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 PSYCHOL. BULL. 467 (1994).

- NOTES 91. For additional information on such assessments, see Dalton et al., *supra* note 77, at 20–26; Jaffe et al., *supra* note 76, at 59; PROTECTING CHILDREN, *supra* note 86; YOUNG CHILDREN, *supra* note 86.
92. Richard FitzGerald et al., *Using Reasonable Efforts Determinations to Improve Systems and Case Practice in Cases Involving Family Violence and Child Maltreatment*, 54 JUV. & FAM. CT. J. 97, 102 (Fall 2003).

APPENDIX A

APPENDIX

CONFIDENTIAL SCREENING FORM FOR FAMILY COURT SERVICES

Please fill out this questionnaire. This information will remain confidential with Family Court Services. Thank you.

NAME: _____ DATE: _____

CHILDREN AND AGES: _____

Are you and the other parent residing together? _____ Date of separation if applicable: _____

- 1) Has the other parent ever been responsible for any incidents of violence against you? Have you ever experienced any of the following by the other parent? (Circle any letter that applies.)

a) Yelling/name calling	g) Choking, strangling, smothering
b) Threats	h) Threats to use a gun, knife or other weapon
c) Breaking, throwing things	i) Use of guns, knives or other weapons
d) Hurting pets	j) Forced sex
e) Pushing, shoving	k) Other: _____
f) Slapping, hitting, kicking, biting	
- 2) Have you ever received bruises or scrapes during these incidents? _____
- 3) Have you ever received other injuries from these incidents? _____
- 4) When was the most recent incident? _____
- 5) Have the children ever witnessed these incidents? _____
- 6) Were Child Protective Service Reports made? _____
- 7) Were the police called? _____ Were police reports made? _____
- 8) Were there arrests or convictions? _____
- 9) Were medical reports made? _____
- 10) Does the other parent possess weapons at this time? _____
- 11) Is there currently a restraining order against either parent? _____
Expiration date of the current order: _____
- 12) Has there ever been a restraining order against the other parent? _____
When? _____
- 13) Do you think that you have problems with drugs or alcohol? _____
Does the other parent have problems with drugs or alcohol? _____
- 14) Are you afraid of the other parent? _____
- 15) Do you have a plan to protect yourself and/or your children? _____

Pursuant to Family Code section 6303, the party protected by a restraining order has the right to have a support person with him or her during mediation.

Pursuant to Family Code section 3181, where there has been a history of domestic violence or where a protective order is in effect, at the request of the person alleging domestic violence in a written declaration under penalty of perjury, or at the request of the person protected by the order, the mediator shall meet with the parties separately and at separate times.

This local rule is adopted in compliance with rule 5.500 of the California Rules of Court, requiring a court communication protocol for domestic violence and child custody orders.

COURT COMMUNICATION PROTOCOL FOR DOMESTIC VIOLENCE AND CHILD CUSTODY ORDERS

Modifications of Criminal Protective Orders
Referrals from Criminal to Unified Family Court
Procedures in Juvenile and Probate Courts

I. Statement of Principles and Goals

- A. This protocol is adopted to reflect the joint goals of protecting all victims of domestic violence and promoting the best interests of children. Exposure to violence within the home and between parents can result in long term emotional and behavioral damage to minor children. Severing all contact between an offending parent and the children may exacerbate the harm and not be in the best interests of the children or family unit. The Unified Family Court has programs and services, such as supervised visitation and parenting education programs, that enable children to have visitation with an offending parent in a safe and constructive setting. At the discretion of the judge presiding over a domestic violence criminal case, a referral can be made to the Unified Family Court, giving the latter court the authority to modify a criminal protective order as to minor children.
- B. This protocol recognizes the statutory preference given to criminal protective orders. Such orders will not be modified by the Unified Family Court unless specifically authorized by the judge in the criminal proceeding.
- C. A plea or conviction of domestic violence in the Criminal Division triggers the presumption regarding physical and legal custody set forth in Family Code section 3044.
- D. Services and programs are available through the Unified Family Court to provide and facilitate safe parent-child contact and assist people in providing violence-free parenting to their children.
- E. Courts hearing cases involving child custody and visitation will take every action practicable to ensure that they are aware of the existence of any protective orders involving the parties to the action currently before them.

II. Procedure in Criminal Court

- A. When the Criminal Court does or has issued a protective order covering the minor children of the defendant:
 1. The Court may, at the judge's discretion:
 - a. Allow the protective order, as to the minor children, to be modified by the Unified Family Court;
 - b. MAIL a copy of its order to the Unified Family Court case manager. A copy of the order shall be given to the defendant and the victim by the Criminal Court;

- c. Advise the defendant and victim that the Unified Family Court may be able to provide services that will assist them in meeting the needs of their children in a safe and supportive way and advise the defendant and victim of the right to seek visitation through the Unified Family Court; and
 - d. Provide the defendant with the Judicial/Information letter, which shall inform the defendant that the protective order, with respect to the minor children, will not be modified unless he or she files a motion and participates in all programs required by the Unified Family Court. The Information letter will also advise defendant that the Unified Family Court will be informed of all court dates in the criminal department and any violations of the protective order or other probation conditions.
2. The District Attorney's Office will:
 - a. Provide the victim with the Information letter; and
 - b. Advise the victim of the right to seek a restraining order, child support and supervised visitation through the Unified Family Court.
 3. Upon receipt of the Unified Family Court orders, the Criminal Court shall either give the order to the appropriate department (if there is a future date) or place the order in the case file (if the case has been adjudicated).
- B. *At Other Hearings:* The Criminal Court will inform the Unified Family Court of any changes in court orders or violations of probation.

III. Procedure in Unified Family Court

- A. The Court will:
 1. Set all cases referred from the Criminal Court on the Domestic Violence Calendar;
 2. Include the criminal case number as a cross-reference on all orders that result in a modification of the criminal protective order;
 3. Specify the fact, on any Visitation Order, that the criminal protective order is being modified and have the order registered on the CLETS network; and
 4. Schedule periodic appearances for progress reports.
- B. Family Court Services will:
 1. Provide a parent orientation program specific to domestic violence issues;
 2. Provide mediation services to the parents in conformance with safe practices in domestic violence cases; and
 3. Provide a referral to a Parenting Without Violence education program that highlights the effects of domestic violence on children.
- C. The Unified Family Court case manager will:
 1. Track Unified Family Court hearings involving custody and visitation issues and cross-reference orders from both the Criminal Court and Unified Family Court;
 2. Send a copy of Unified Family Court orders to the Adult Probation Department and to the Criminal Court; and

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3. Assist both parents in accessing the following services when ordered by the Court:

- a. Parent Orientation
- b. Mediation
- c. Supervised Visitation
- d. Parent Education
- e. Child Trauma Project
- f. SafeStart
- g. Family Law Facilitator (when there are child support issues).

D. The Self-Help Center will:

1. Provide legal assistance to both defendant and/or victim, to properly place the matter on calendar; and
2. Include a copy of the protective order from the criminal proceedings in the motion with all requests to modify a criminal protective order.

IV. Procedure in Juvenile Dependency Court

A. The San Francisco Department of Human Services:

1. Will perform a search for criminal and civil court protective orders involving a prospective custodian when filing a dependency petition and recommending a minor's change of custody to that person; and
2. Must not place a minor with a prospective custodian who is restrained by a protective order, but must inform the Dependency Court of the existence and terms of the protective order.

V. Procedure in Juvenile Delinquency Court

A. The San Francisco Juvenile Probation Department:

1. Will perform a search for criminal and civil court protective orders involving a prospective custodian other than the minor's regular legal custodian before releasing a minor to that person; and
2. Must not release a minor to a prospective custodian who is restrained by a protective order, but must inform the Delinquency Court of the existence and terms of the protective order.

VI. Procedure in Probate Court

The Probate Court will cross-check petitions for probate guardianship for cases in juvenile and family court. The Probate Court will also search for criminal and civil protective orders involving the proposed guardian and other adults living in the proposed guardian's household.