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## Court Review: Volume 39, Issue 2 - Making a Difference: Tools to Help Judges Support the Healing of Children Exposed to Domestic Violence

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# Making a Difference: Tools to Help Judges Support the Healing of Children Exposed to Domestic Violence

Lavita Nadkarni and Barbara Zeek Shaw

**D**omestic violence has emerged from the privacy of one's own home, where only the victims were aware of the abuse, to more public domains, where one can witness the impact of such abuse on society through our court system. Judges, in both the civil and criminal arenas, exercise considerable power in instituting a wide range of possible dispositions in cases involving domestic violence. The Family Violence Prevention Fund's National Judicial Education Advisory Committee concluded that judges made the most significant decisions affecting the lives of victims, abusers, and their children.<sup>1</sup> Judges can also play a significant role in shaping society's response to the issue of domestic violence.

## DOMESTIC VIOLENCE PLACES CHILDREN AT RISK

Our children's futures are heavily impacted by domestic violence. One study reported that 43% of female victims of domestic violence live in households with children under the age of 12.<sup>2</sup> Other recent studies have estimated that between 3.3 million and 10 million children witness domestic violence each year. In addition, in a study of homicides related to domestic violence in Massachusetts between 1991-1995, researchers found that in more than one in eight domestic violence homicides, the abuser killed one or more children.<sup>3</sup>

Domestic violence, by definition, is damaging to the children who live with it. Yet, in the courtroom, one hears parents and professionals alike minimize its impact, saying that "the children didn't know it was going on," "they were never in the room," or "he may be a bad husband, but he loves his kids." The court stands able to correct these misperceptions.

As noted above, the impact of domestic violence on the children of the victims is far reaching and can affect many domains of their individual functioning: behavioral, psychological, cognitive, developmental, educational, and social. While it is beyond the scope of this article to illustrate the multitude of ways that domestic violence impacts children, several authors offer a review of this literature.<sup>4</sup> Research over the last decade has shown that children

in families where domestic violence is present show trauma-related symptoms similar to symptoms of children who have been the direct victims of physical and emotional abuse at home.<sup>5</sup> In addition to the direct impact domestic violence has on the child, it also inflicts damage by disrupting the victim parent's relationship to the child.<sup>6</sup>

## UNCOVERING THE EXTENT OF DOMESTIC VIOLENCE

The National Council of Juvenile and Family Court Judges defines domestic violence as a "pattern of assaultive and coercive behaviors often including physical, sexual, and psychological attacks, as well as economic coercion, used by one intimate partner against another."<sup>7</sup> Fortunately, judges in civil court proceedings can take into account *all* forms of coercion possibly present in a particular case, not only those defined as criminal behavior. The primary goal of these behaviors is to maintain the abuser's sense of control over his family, and specifically the spouse/partner.

Given the increase in domestic violence matters reaching judicial attention, it is critical that judges fully understand how their decisions can play a significant role in preventing domestic violence injuries and deaths.

## EVALUATION OF DOMESTIC VIOLENCE

In each family law case coming before the court with allegations of domestic violence, the court needs to make a determination of how to proceed in the investigation and evaluation of this issue.

Given the data showing widespread domestic violence,<sup>8</sup> the court may wish to operate on the assumption that, when an allegation of domestic violence has been made, it is likely that such is present. After investigation, the court should be able to articulate why the allegations have or have not been sustained. If domestic violence exists, the court should deal with that, both in the court order and in the enforcement and monitoring of that order. It is sometimes argued that domestic violence is not a sci-

## Footnotes

1. FAMILY VIOLENCE PREVENTION FUND, PROGRAMS ENHANCING JUSTICE: PROGRAM OVERVIEW, available at <http://endabuse.org/programs/justice> (last visited Feb. 7, 2003).
2. See Callie Marie Rennison & Sarah Welchans, *Intimate Partner Violence*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT (2000).
3. See LINDA LANGORD ET AL., HOMICIDES RELATED TO INTIMATE PARTNER VIOLENCE IN MASSACHUSETTS 1991-1995 (1999).
4. See GEORGE W. HOLDEN, ET AL., CHILDREN EXPOSED TO MARTIAL VIOLENCE: THEORY, RESEARCH & APPLIED ISSUES (1998). See also LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (2002).
5. Mary Kenning et al., *Research on the Effects of Witnessing Parental*

*Battering: Clinical and Legal Policy Implications*, in WOMEN BATTERING: POLICY RESPONSES at 137-161 (Michael Steinman, ed., 1991).

6. See Jessica P. Greenwald O'Brien & Lavita I. Nadkarni, *Domestic Violence Under the Microscope: Implications for Custody and Visitation*, FAMILY ADVOCATE, 23(1), 34-39 (1999).
7. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE AND CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE 9 (1999).
8. See Callie Marie Rennison, *Intimate Partner Violence and Age of Victim, 1993-1999*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT (October 2001). See also THE COMMONWEALTH FUND, HEALTH CONCERNS ACROSS A WOMAN'S LIFESPAN: SURVEY OF WOMEN'S HEALTH (1998).

ence, and therefore holds no “givens” that can be relied upon in assessing its existence or absence in any particular case. Actually, a large numbers of studies document a number of typical perpetrator and victim behaviors, as well as the negative impact of domestic violence on children. These studies and expert information, along with information that the parties and third parties may possess, can be used to assess the probable existence of domestic violence in an individual case.

Courts can take advantage of tools already developed by programs and individuals across the country that work in the field of domestic violence intervention to more fully understand the dynamics of the relationship before them. Resources are available to help in identifying domestic violence, assessing the lethality of the perpetrator, helping the victim or survivor craft a workable safety plan, and measuring the impact of domestic violence on children.<sup>9</sup>

The success of an inquiry into a potential domestic violence case first depends upon the amount and quality of information one is able to acquire to evaluate. Based on our clinical experience, a more complete picture of the domestic violence is obtained by doing a domestic violence inventory, a lethality assessment, and reviewing collateral information.

### 1. Domestic violence inventory

A domestic violence inventory can summarize:

- (a) The length of relationship and timeline of violence.
- (b) The types and extent of power and control used over time: physical, sexual, psychological/emotional, or financial.<sup>10</sup>
- (c) The first, last, and worst abusive incident.

There are several reasons why a comprehensive detailing of this information is valuable. First, it gives the court an understanding of this family's experience over time. Second, there will be clues in the information gathered as to the ongoing dangerousness of the violent parent and whether the abusive behavior is escalating. Third, the nature and extent of the abuse experienced by the battered woman before the court may greatly impact her ability to tell the story of her abuse in a coherent and credible way, make decisions easily and with confidence, and “cooperate” with the court.

### 2. Lethality assessment

There are several reasons why the lethality assessment<sup>11</sup> should be completed by a knowledgeable domestic violence professional in the community. These domestic violence professionals have accumulated their expertise by seeking out workshops and training programs that focus on the unique nature of this societal problem. By specializing in this field, they know how to interview the parties to get the maximum information in the least intrusive way, and are better able to assess and understand the

meaning of the information they have gathered. They are less likely to be fooled by a manipulative and socially adept batterer, and more likely to be sensitive to some of the indicators of potential lethality. They also are aware that stalking behavior is a risk factor for increased danger to the battered woman and her children—and that it can show itself in many subtle forms (such as leaving flowers or notes) that may be misread by the untrained as “love,” concern for his children's well-being, sadness about the divorce, etc., rather than the ongoing threat that it is. Last, these professionals also are aware of another misunderstood behavior—the threat of suicide by the abuser—that may also indicate homicidal intent.

**It is not unusual that the divorce process . . . is the first time the victim/survivor feels safe enough to talk about the abuse.**

### 3. Collateral information

Domestic violence can, and often does, exist with no other adult witnesses or independent corroboration. It is not unusual that the divorce process, which often offers supportive community resources to the battered woman, is the first time the victim/survivor feels safe enough to talk about the abuse. The fact that she was never able to call the police or report the violence to a doctor or other professional may be an indicator of the extent of control the batterer exercised over her. It also may speak to the level of his dangerousness.

By the time some cases involving allegations of domestic violence come before the court, the battered woman may have received help from a number of professional support systems (such as an attorney, a counselor for herself, another for her children, a safe shelter for temporary housing) even though she may never have called any of these people while the batterer still had access to her. To the court, these already involved professionals may be seen as too immersed in the case to be objective. In actuality, these people may offer helpful insights into the case, especially if their information is assessed in conjunction with other information, and by someone with domestic violence intervention expertise.

### MAKING SENSE OF THE INFORMATION

Each of us who assesses a case involving domestic violence is impacted by the content of the information gathered, the demeanor of the parties, our own education and life experience, and the attitude toward the case shown by other professionals involved. It is crucial to examine each of those influences to ensure the parties and ourselves that we are approaching our decision making in a competent and objective manner.

9. See MICHAEL LINDSEY ET AL., CHANGE IS THE THIRD PATH: A WORKBOOK FOR ENDING ABUSIVE AND VIOLENT BEHAVIOR (1996).

10. In determining the types of coercion used in the relationship, it can be helpful to refer to the “Power and Control Wheel,” a tool developed by the Domestic Abuse Intervention Project in Duluth, Minnesota, which is used by professionals throughout the country to assess the coercive behaviors used by batterers to maintain control of their partners. Any investigator can begin to explore the pos-

sibility of domestic violence by asking questions based upon the various categories contained in this wheel. See *Domestic Abuse Intervention Project* available at <http://www.duluth-model.org/daip-main.htm>. See also Julie Kunce Field, *Visits in Cases Marked by Violence: Judicial Actions that Can Help Keep Children and Victims Safe*, COURT REVIEW, Fall 1998, at 23.

11. See BARBARA J. HART, ASSESSING WHETHER BATTERERS WILL KILL (1990) available at <http://www.mincava.umn.edu/Hart/lethali.htm>.

**We, as a society, have never been able to provide a battered woman with safety, so she chooses the only realistic alternative: survival.**

When evaluating information received as part of a domestic violence assessment, ask yourself:

- (a) Does the story emerging add up to a coherent whole?
  - (b) Does it make sense in the context of domestic violence?
  - (c) Is there any other way to corroborate parts of that whole?
  - (d) What has been the opinion of other professionals involved?
  - (e) If a panel of domestic violence experts looked at it, what might their opinion be?
- (f) Are there parts of the information that need clarification, or domestic violence interpretation?
- (g) What does not make sense?
- (h) Whose opinion do you value in helping make sense of the whole?

It is essential that these cases not be handled in isolation. Their complexity requires the expertise of many disciplines in order for the court to understand the dynamics well enough to craft an order that is truly helpful to the family involved.

### **Safety vs. survival: A battered woman's choice**

If you have a woman in your courtroom who is a survivor of abuse by her husband or partner, her presentation needs to be understood in the context in which it is occurring. Judith Lewis Herman, in her book *Trauma and Recovery*, likens the process that is imposed on battered women to that which prisoners of war experience.<sup>12</sup> In fact, batterers use the same coercive techniques that Amnesty International recognizes as tools employed by war captors to keep their victims' compliant and under their control: isolation, monopolization of perception, induced debility, threats, occasional indulgences, demonstrating "omnipotence," degradation, and enforcing trivial demands.<sup>13</sup>

A battered woman does not leave an abusive relationship for the same reasons we all stay in situations longer than we want: lack of perceived, acceptable alternatives; financial security; promises made; love or caring about others; commitment; expectations of others and self; and fear of failure. In addition, the victim may remain in an abusive relationship because of fear of losing her children or escalating violence. The documented fact that a battered woman is at most risk for homicide when or after she leaves the abusive relationship provides greater understanding that her focus is survival rather than safety.<sup>14</sup> We, as a society, have never been able to provide a battered woman with safety, so she chooses the only realistic alternative: survival. This focus on survival may require some choices or behavior on her part that seem counter-

intuitive to those of us on the outside. She may never call the police, or she might attack the police when they respond to a 911 call. She might insist the next day that the prosecutor "drop the charges" against her batterer, or refuse to testify against him or tell little of the truth on the stand. She may go back to him in order to survive. It is important to understand this use of counterintuitive behavior patterns by the victim. For the victim, she is most concerned about and focused on what the abuser will next do to "punish" her for the actions taken and not on whether she is acting in a consistent manner.

### **Externalizing blame: The batterer's belief system**

If you have an accused batterer in your courtroom, it may help to be familiar with some of the characteristics common to most men who batter. According to Michael Lindsey, founder of AMEND in Denver, Colorado (Abusive Men Exploring New Directions), a batterer believes the following in relationship to his violence:

- I didn't do anything wrong.
- If I did, I won't get caught.
- If I do get caught, I can talk my way out of it.
- If I can't talk my way out of it, the consequences will be light.<sup>15</sup>

Batterers begin the story where it suits them, tell just enough of the truth to be believable, and can often lie more convincingly than their victim tells the truth.<sup>16</sup> Batterers externalize blame for most negatives in their lives, accuse their victims of "provoking" the violence, and justify their behavior as their right to be in charge of the family.<sup>17</sup> Many batterers convince their victims that no one, including the court, will ever believe them if they disclose the abuse.

### **ASSESSING PARENTING RESPONSIBILITY AND PARENTAL ACCESS**

In parenting responsibility and parental access determinations involving domestic violence, domestic violence considerations must be on center stage. If the court fails to appropriately take domestic violence into account when making parenting responsibility or parental access determinations, victim parents may continue to remain in violent homes for fear of losing contact with their children.

### **Legal presumptions: Best interests of the child**

Within the last decade, courts have begun to consider the presence of domestic violence as a factor in parenting responsibility or parental access determinations. According to the National Council of Family and Juvenile Court Judges, 44 states and the District of Columbia have statutes that contain express provisions that permit the courts to consider domestic violence in some way in making custody decisions.<sup>18</sup> There are three types of state statutes, either (1) requiring the court to consider domestic

12. JUDITH HERMAN, *TRAUMA & RECOVERY* (1997).

13. DIANA E.H. RUSSELL, *RAPE IN MARRIAGE* (1982).

14. See NEIL WEBSDALE, *UNDERSTANDING DOMESTIC VIOLENCE* (1999). See also AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY, *VIOLENCE AND THE FAMILY* (1996).

15. See Lindsey, et al., *supra* note 9.

16. See Bancroft & Silverman, *supra* note 4.

17. See DONALD DUTTON, *THE DOMESTIC ASSAULT OF WOMEN: PSYCHOLOGICAL & CRIMINAL JUSTICE PERSPECTIVES* (1995).

18. See National Council of Juvenile and Family Court Judges, *Family Violence in Child Custody Statutes: An Analysis of State Courts and Legal Practices*, 29 FAM. L.Q. 197, 225-227 (1995).

violence as a factor bearing on joint custody decisions; (2) requiring the court to justify the awarding of any form of custody to an abusive parent, presuming that domestic violence is not in the “best interests of the child”; or (3) requiring the court to refrain from awarding joint custody where there has been demonstrated abuse.<sup>19</sup>

### Legal presumptions: “Friendly parent” provision

States have traditionally favored ongoing contact between a parent and a child, and have tended to favor joint custody determinations. In domestic violence cases, such a determination, absent careful consideration of the domestic violence, poses grave emotional and physical safety risks for the children. In addition, courts will often favor the parent who is more willing to cooperate and share parenting time (*i.e.*, “friendly parent” provision). The issue of safety becomes one that is crucial for the courts to understand as the victim parent may wish to conceal her place of residence or place of employment. The victim parent may seek a restraining order or deny the abusive parent visitation out of a sense of fear for her or her children’s lives. Clare Dalton observes that a victim parent’s appropriate concern about the abusive parent’s fitness to parent will more negatively affect her chance to gain parental responsibility than his.<sup>20</sup> Concomitantly, the abuser parent’s willingness to share parental responsibility will positively affect his chances, even though his ongoing access to the victim parent allows him to continue to manipulate and intimidate her.

### Evaluative issues

In parenting responsibility or parental access determinations, the courts appear to be attempting to balance the competing rights and needs of the parents with the rights and needs of the children. This is a delicate balance when domestic violence is present.

Lundy Bancroft and Jay Silverman argue that the parental responsibility or parental access evaluation needs to be conducted by an evaluator familiar with the dynamics of domestic violence and of the parenting behaviors of abusers.<sup>21</sup> If that is not done, then the courts may be basing their judicial decisions on information garnered by someone who has not fully understood the dynamics of domestic violence or the impact it has on the children.

A thorough assessment should include: individual interviews with both parents; interviews with the children; an interactional session (if possible and safe) between the children and each parent; and collateral information (including, depending on the case, medical records, school records, police and criminal records, interviews with relatives and friends, interviews with domestic violence shelter workers/advocates, mental health counselors in the community and/or school, and other profes-

sionals involved with the family).

The assessment and any subsequent orders must address:

- (1) Safety.
- (2) Parental capacity.
- (3) Access, including supervised and unsupervised parental access.
- (4) Specific provisions and consequences for violations of the order.

### 1. Safety

A thorough assessment of safety and security issues is important in any matter involving domestic violence brought before the court. Safety should be a priority even when the issue of safety is inconsistent with the presumption that a child should have access to both parents.<sup>22</sup> Sadly, it is reality that the most dangerous time for any abused woman is when she is attempting to leave or has left the relationship.<sup>23</sup> During this period, the abusive parent can no longer deny the status of the relationship and must acknowledge his loss of control over his intimate partner.

It is an erroneous assumption held by many in the legal and psychological fields that emotional or physical violence ends with the dissolution of the relationship. Controlling and manipulative behaviors, present during the relationship, often continue and get played out in court during parenting responsibility or parental access determinations. Parental access often offers the abusive parent additional opportunities to escalate the violence, engage the legal system in his manipulation, and continue to disparage the victim parent.

### 2. Parental capacity

When considering the parental capacity of the abuser parent, the children’s emotional and physical safety is the guiding factor. To ensure the children’s safety,

- (a) The abuser parent must have the ability to understand the effect domestic violence has had on the children and assume responsibility for his actions.
- (b) An assessment of the abuser parent’s coping responses is deemed critical. Specifically, one would want to assess the level of depression, helplessness, impulse control, and frustration tolerance.
- (c) Other environmental and societal risk factors include the abuser parent’s employment status, substance and alcohol abuse, and history of domestic violence in his family of origin.<sup>24</sup>
- (d) Finally, one might want to assess the abuser parent’s motivation for seeking parenting responsibility or access. Concern

**Safety should be a priority even when the issue of safety is inconsistent with the presumption that a child should have access to both parents.**

19. See Leslie D. Johnson, *Caught in the Crossfire: Examining Legislative and Judicial Response to the Forgotten Victims of Domestic Violence*, 22 LAW & PSYCH. REV. 271-286 (1998).

20. See Clare Dalton, *When Paradigms Collide: Protecting Battered Parents and their Children in the Family Court System*, FAMILY & CONCILIATION CTS. REV., 37(3), 273-296 (1999).

21. See Bancroft & Silverman, *supra* note 4.

22. See Dalton, *supra* note 20.

23. See Websdale, *supra* note 14; see also American Psychological Association Presidential Task Force on Violence and the Family, *supra* note 14.

24. See Peter G. Jaffe & Robert Geffner, *Child Custody Disputes and Domestic Violence*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH & APPLIED ISSUES 371-408 (George W. Holden et al., eds. 1998).

**[D]omestic violence has traumatic effects on the victim's emotional and physical functioning and disrupts the victim parent's relationship with the child, as it tends to undermine the victim parent's authority.**

should be heightened if there is a sense that the abuser parent wishes to continue to impose control on the victim parent/family through the court system; suggests by his words or actions a desire for parental access as a way of hurting and retaliating against the victim parent; wishes to prove that he is the better parent emotionally; or desires to lessen or avoid child support payments.

As noted earlier in this article, domestic violence has traumatic effects on the victim's emotional and physical

functioning and disrupts the victim parent's relationship with the child, as it tends to undermine the victim parent's authority. One effect of such violence is that it can seriously compromise the victim parent's capacity to effectively manage her children's behavior. An evaluation of the victim parent's coping responses and ability to manage stress, anger, and conflict is important in assessing her ability to provide her children with a sense of safety and security. It is crucial that the court regard not only the victim parent's current coping skills, which may be strained due to the pervasive violation to her self-esteem, but also her past ability to cope with situations.

To ensure the children's emotional safety, the victim parent must be able to separate the child's views (of the domestic violence) and needs from her own and be responsive to her child's needs. It seems difficult for courts to assess the victim parent's ability to protect her children because of the traditional lack of understanding of why a battered woman would stay in an abusive relationship, and the misreading of her efforts to protect her children by limiting their contact with the abuser parent when these efforts impact what the courts see as the abuser's parental rights. Therefore, it is important for the courts to evaluate the victim parent's decisions in the larger context of domestic violence. While the court is unable to see into the future, often a victim's coping abilities and functioning will soon recover once she feels safe and removed from the abusive relationship, including the abuser's use of the court system.

### 3. Access

In making a determination of access time, there are some guidelines that have been proposed depending on age of the child.<sup>25</sup> The issue for the courts when domestic violence is present becomes how much contact should the abusive parent have with the child and what form should that contact take. Should the con-

tact be supervised, who should supervise the contact, and who decides when the abusive parent's behavior is appropriate? Prior to the court making a determination on parental access, a thorough assessment, with focus on lethality issues, should be conducted. These might include addressing factors such as the presence of weapons, fantasies of or threats of suicide or homicide, stalking behaviors (e.g., surveillance, monitoring of telephone calls or the victim parent/children's whereabouts, and prior police involvement). Were these conditions to exist, the court should determine that the risk is too great to guarantee the emotional and physical safety of a child even in a supervised setting and suspend access.

Supervised visitation between an abusive parent and his children has been highly recommended when domestic violence has occurred,<sup>26</sup> and should be the norm until the abuser has completed a specialized batterer treatment program.<sup>27</sup> Family members are an extremely poor choice for acting as the supervisor for the contact between an abusive parent and his child as they may not believe the victim, may be intimidated by the abuser, and lack the necessary domestic violence training.

Unsupervised access can expose the child to further acts of violence, inconsistent or irresponsible parenting, continued undermining of the victim parent's authority, and ongoing manipulation. As a result, the child may feel unsafe during these unsupervised contacts with the abusive parent. According to Bancroft and Silverman, supervised access does not guarantee a child's emotional safety unless the supervision is vigilant and conducted by a professional familiar with the dynamics of domestic violence.<sup>28</sup>

Typically, when the courts order that supervised contact should take place between an abusive parent and his child, such is set for a defined period of weeks or months, rather than based on the abuser's behavior and the child's behavior. While it is important to consider the child's behavior toward the abusive parent within the context of a supervised setting, it is equally important to make note of the child's behavior during the transfers to the contact, the hours immediately after the contact, and even the following day. As mentioned above, the progression from supervised to unsupervised visitation should not take place until the abusive parent has successfully completed a recognized batterer treatment program.<sup>29</sup>

When considering the movement from supervised to unsupervised visitation, determinations should include finding that there has not been:

- (a) Direct abuse or irresponsible behavior toward children within the supervised context.
- (b) Direct or indirect physical and/or psychological cruelty toward the partner.
- (c) Expressed or subtle expression of willingness to hurt the children as an extension of hurting the victim parent.
- (d) Substance abuse.
- (e) Refusal to accept the end of the relationship.
- (f) Sexual assaults toward the victim or boundary violations toward the children.

25. See MITCHELL A. BARIS & CARLA B. GARRITY, CHILDREN OF DIVORCE: A DEVELOPMENTAL APPROACH TO RESIDENCE & VISITATION (1998).

26. See Jaffe & Geffner, *supra* note 24.

27. See American Psychological Association Presidential Task Force on Violence and the Family, *supra* note 14.

28. See Bancroft & Silverman, *supra* note 4.

29. See Field, *supra* note 10.

- (g) Threats to abduct or injure the children.
- (h) Refusal to accept responsibility for past abusiveness.

Ongoing monitoring of the child's emotional well-being should dictate whether changes need to be made to the unsupervised conditions, such that supervised parenting time may need to be reinstated more than once over the lifetime of the case

### **CRAFTING AN ORDER**

Before issuing an order, the court should have as thorough an understanding as is possible about the domestic violence specifics in a case, so that the order can, as clearly as possible, address the issues of containment of the violent parent and safety for the rest of the family.

An order is only as effective as it is specific and enforceable, particularly so in domestic violence cases, where abusers will try to exploit any inconsistency or vagueness to their own benefit, often creating ongoing chaos for their ex-spouse or partner, their children, and the court.

### **Recommendations for specificity in the order**

First and foremost, an order should take into account the safety needs of the victim parent and the children. When supervised access is a condition, the order must be specific, including:

- (a) The services to be provided.
- (b) Duration and frequency of contact.
- (c) Who may have contact with the children.
- (d) Who will pay for services.
- (e) Type and frequency of reporting back to the court about the progress of visitation.
- (f) Whether a protection order is in effect, and what the parameters of the order are in regard to the visits.

When unsupervised access is granted, the order should include sufficient information for the transfers, if considered safe, such as:

- (a) Specific dates.
- (b) Specific times.
- (c) Specific location or a neutral drop off or third party.
- (d) Building in consequences for noncompliance (e.g., for continued late return of the child).

In addition, regardless of the length of the unsupervised contact, it is recommended that the order include:

- (a) Prohibitions from speaking poorly about the victim parent in the children's presence.
- (b) Unrestricted telephone contact between the child and the victim parent.
- (c) Appropriate structure for safety, meals, and bedtimes.<sup>30</sup>

For both unsupervised and supervised conditions, restrictions on alcohol and or drugs are important for the emotional safety of the child. These restrictions should apply not only for the contact period itself, but also for 12 to 24 hours before contact with the child.

Finally, long-term intervention programs, such as those offer-

ing appropriate domestic violence counseling, encompassing anger management, skills building, and accountability, are seen as necessary agents of change when parenting responsibility and access determinations are being made. In addition, where appropriate, substance, alcohol abuse, and mental health counseling is recommended.

**Judicial demeanor can be as important to the process as is the fashioning of the remedy in each individual case.**

### **Recommendations for ongoing monitoring**

A batterer will take any opportunity to misinterpret or push the limits of the order, continue to harass his ex-partner(s), and create chaos for all involved. An abuser needs to be given swift and sure consequences every time he is in violation of the order. It should not be solely the responsibility of the survivor to try to hold him accountable. Her focus should be to build a new, stable life for her children, one in which they can all heal from the effects of the violence. If the court builds into the order a mechanism for review at a specified time, and a parenting coordinator who is responsible for helping to problem-solve between times, the burden is then placed on the batterer to change his behavior. Again, it is helpful to have assistance from the community. The court may want to consider:

- (a) Using a cross-disciplinary approach (involving professionals from law, social work, psychology, and domestic violence).
- (b) Assigning someone to provide a case management function.
- (c) Building in periodic court reviews to assess progress or lack thereof.
- (d) Ensuring immediate consequences for noncompliance, taking into account recommendations for those consequences from the cross-disciplinary team, particularly from the batterer treatment program professionals.

### **THE POWER OF JUDICIAL Demeanor IN THE COURTROOM**

Judicial demeanor can be as important to the process as is the fashioning of the remedy in each individual case. So believes a judge in a Massachusetts courtroom,<sup>31</sup> and we agree. The bearing of a judge during court proceedings can have a profound effect upon the power balance in the relationship of the parties. It can help or hinder the process of equalizing that power, which, solely in the hands of the batterer, has facilitated the domestic violence itself. A judge's confrontation and control of the batterer and support of the nonviolent parent helps to set the tone of the post-separation or post-divorce process, and can facilitate the beginning of the recovery of the children.

A 1999 study conducted by James Ptacek in three court systems in Massachusetts measured the impact of judicial demeanor on battered women seeking orders of protection. Judicial demeanor was defined as "the emotional presentation of authority in the courtroom, the quality to the courtroom atmosphere

30. See *id.*

31. See JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSE (1999).

that a judge produces with his/her emotional expressiveness or inexpressiveness.”<sup>32</sup> Following from a study by Maureen Mileski, who described four types of judicial interactions with people appearing in their courts (good-natured, bureaucratic, firm or formal, and harsh), Ptacek added a fifth for his study, condescending or patronizing authority.

Battered women, in rating the impact of judicial demeanor on their experiences, believed the “good-natured” judges were the only ones who responded appropriately to their desire for affirmation of their experiences, their need for safety, and their appeal for justice. Good-natured judicial demeanor was defined by the researchers as “courteous, welcoming, supportive,” where judges used their authority to make the women feel welcome, to express concern for their suffering, and to mobilize resources on their behalf. Surprisingly, battered women felt as unsupported by judges who were attempting to be “neutral” (bureaucratic, passive, or detached) as they did by judges who behaved in condescending and harsh manners toward them, believing all were unconcerned about their fears and, ultimately, their lives.

Judicial demeanor also has an impact on abusers. A judge’s response to inappropriate behavior on the part of the batterer tells him whether he will be able to continue his manipulation of the people in his environment, or that he will be held accountable. Treatment providers affirm the importance of swift and sure consequences for men who batter as an essential part of their rehabilitation process.

## CONCLUSION

Courts are asked to make decisions that profoundly affect the safety and security of our nation’s families. While previously domestic violence was seen as a private matter, it has entered the purview of our court system and is prevalent in contested divorce and parenting responsibility matters. As such, it is crucial that the legal system, as well as the mental health system, have sufficient awareness of the dynamics of domestic violence within a particular family and the impact that such has on the victim, abuser, and most importantly, the children. Domestic violence has a profound and damaging effect on children. This negative impact can be somewhat mediated by outside influences, such as the response of law enforcement officers and the courts in their handling of these situations. The societal impact on the child can be substantial. If a child or family is discouraged from separating from their abuser or a child is not believed or ignored after disclosing the domestic violence, feelings of shame, humiliation, and helplessness can grow.

Effective assessment of and intervention with domestic violence families is crucial for the safety and security of our nation’s children. The court can either assist or hinder the children’s and family’s recovery process. A judge’s demeanor in the courtroom and the orders set forth can lay the foundation for the family’s healing. To assist the court in crafting the most suitable orders for a particular family, especially where domestic violence is involved, a thorough evaluation of the abuser, his battering pattern, and the impact that such behavior has on the family is needed. It is crucial to be able to assess the abuser’s behavior in the context of a power-and-control dynamic and to be able to understand the often counterintuitive behavior of the victim. After carefully and systematically exploring and documenting the domestic violence, the court can begin to craft an order where safety and security concerns are the primary focus. For the court order to be effective, it must be specific, detailed, and enforceable.

Judith Herman observed that the psychic trauma produced by violence may take a lifetime to heal, and that “the response of the community has a powerful influence on the ultimate resolution of the trauma.”<sup>33</sup> The court may be one of the more powerful, and immediate, voices of that community.



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32. *Id.* at 111.

33. Herman, *supra* note 12, at 70.