

# CUSTODY DISPUTES INVOLVING ALLEGATIONS OF DOMESTIC VIOLENCE: TOWARD A DIFFERENTIATED APPROACH TO PARENTING PLANS

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Premised on the understanding that domestic violence is a broad concept that encompasses a wide range of behaviors from isolated events to a pattern of emotional, physical, and sexual abuse that controls the victim, this article addresses the need for a differentiated approach to developing parenting plans after separation when domestic violence is alleged. A method of assessing risk by screening for the *potency*, *pattern*, and *primary perpetrator* of the violence is proposed as a foundation for generating hypotheses about the type of and potential for future violence as well as parental functioning. This kind of differential screening for risk in cases where domestic violence is alleged provides preliminary guidance in identifying parenting arrangements that are appropriate for the specific child and family and, if confirmed by a more in-depth assessment, may be the basis for a long-term plan. A series of parenting plans are proposed, with criteria and guidelines for usage depending upon this differential screening, ranging from highly restricted access arrangements (no contact with perpetrators of family violence and supervised access or monitored exchange) to relatively unrestricted ones (parallel parenting) and even co-parenting. Implications for practice are considered within the context of available resources.

**Keywords:** *custody disputes; allegations of domestic violence; parenting plans*

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## INTRODUCTION

Highly conflicted, separated spouses disputing custody put their children at high risk and take up a disproportionately large amount of professional and court time, posing special challenges to all who work in the family justice system. Typified by the parents' high levels of hostility, distrust, fear, and blaming of one another, these cases become especially difficult when there are allegations of domestic violence or child abuse. Inevitably questions arise that reflect ongoing debates in the field: Do these allegations have a factual basis of spousal or child abuse involving violent, negligent, substance-abusing, and criminal behavior? If so, is sufficient evidence available to sustain these findings in a court of law, and if not, what to do? What access should violent parents have, if any, to their children?

Where the violence is severe, ongoing, and clearly committed by one party, the answers to these questions are fairly evident, albeit often difficult to implement. But what if abuse appears to be jointly inflicted, less serious in nature, or a relatively isolated event? During the past decade, a growing body of social science research has addressed the wide range of violent and abusive behavior in families, documenting its severity, frequency, and injurious outcomes and arguing about who perpetrates it and for what apparent purpose (for a review, see Kelly & Johnson, 2008). There is an emerging consensus that the following types of spousal violence<sup>1</sup> are relevant to family law cases, with the first two receiving more research attention than the others (Dalton, Carbon, & Olesen, 2003; Johnson,

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1995, 2005; Johnston & Campbell, 1993; Pence & Dasgupta, 2006; Statistics Canada, 2001; Ver Steegh, 2005):

- *Abusive-controlling violent relationships (ACV)*, also called *battering or intimate terrorism* (or *coercive controlling violence*; see Kelly & Johnson, 2008): This is an ongoing pattern of use of threat, force, emotional abuse, and other coercive means to unilaterally dominate one partner and induce fear, submission, and compliance in the other. In studies of shelter and criminal court samples, men are the offenders and women are victims in most cases of this type.
- *Conflict-instigated violence (CIV)*, also called *situational or common couple violence* (or *situational couple violence*; see Kelly & Johnson, 2008): In these cases, violence is perpetrated by both partners, who have limited skills in resolving conflict. These cases involve bilateral assertion of power by the man and woman, without a regular primary instigator, and are identified more often in community samples.
- *Violent resistance (VR)*: This occurs when a partner uses violence to defend in response to abuse by a partner. Women have been identified most clearly as this type in shelter samples and in studies of victims who have killed their batterers. In some cases, this may in law constitute self-defense, but in other cases it may be an overreaction.
- *Separation-instigated violence (SIV)*: This is isolated acts of violence perpetrated by either a man or a woman reacting to stress during separation, divorce, and its aftermath in a relationship that has not otherwise been characterized by violence or coercive control.

Other types of spousal violence identified in the literature merit further research attention, especially women's violence. It has been argued that most females who are violent belong to two of the aforementioned types (VR or CIV). Debates are ongoing as to the numbers who are primary instigators and, if so, whether they are distinctively different from male batterers (ACV; Dutton, 2005; Loseke & Kurz, 2005; Straus, 2005). Intimate partner violence is also prevalent in same-sex relationships and is an area for further research.

#### **HOW IS DOMESTIC VIOLENCE RELEVANT TO POSTSEPARATION PARENTING ARRANGEMENTS?**

Research on parent-child relationships and parenting styles in families where domestic violence occurs is sparse, mainly limited to clinical observations; most of the literature does not differentiate between types of violence. Despite this, if we take into account the context of different studies, we can glean some insights—and make reasonable hypotheses—about typical parenting issues relevant to the different types of violence identified within those particular settings.<sup>2</sup> These insights provide the rationale for legal and programmatic changes that include a differentiated approach to domestic violence as a relevant factor in determining the appropriate postseparation parenting arrangement and are as follows:

- *Spousal abuse does not necessarily end with separation of the parties.* While in a majority of cases the incidence and risk of violence diminishes once the parties are separated, in a small proportion of cases, especially abusive battering relationships

(ACV), the intensity and lethality of domestic violence escalates after the victim leaves the relationship (Hotton, 2001; Statistics Canada, 2001). Furthermore, promoting parent–child contact where ex-spouses are prone to become physically violent when in conflict (CIV) may create opportunities for renewed domestic violence over visitation issues and exchanges of children (Jaffe, Lemon, & Poisson, 2003; Sheeran & Hampton, 1999). In the worst cases (ACV), terrorizing control of an ex-spouse is achieved by refusing to return the child after visits, abducting the child, or threatening to do so (Greif & Hegar, 1993; Johnston & Girdner, 2001).

- *In extreme cases, domestic violence following separation is lethal, especially in the case of the more abusive relationships (ACV).* Domestic violence and homicides are inextricably linked. National statistics from the United States and Canada clearly suggest that women are three to four times more likely than men to be the victims in intimate partner homicides. Moreover, this threat escalates at the time of separation for both genders (Fox & Zawitz, 1999; Statistics Canada, 2001; Websdale, 2003). In the most tragic of these cases, children are witnesses to the homicide/suicide or victims of abduction/murder themselves (Jaffe & Juodis, 2006).
- *Perpetrators of domestic violence are more likely to be deficient if not abusive as parents.* There is a wide range of capacity to parent among high-conflict and violent families, ranging from frankly abusive, to poor or marginal, to adequate or even good-enough parenting. However, common features are lack of warmth, coercive tactics, and rejection of their children (Anderson & Cramer-Benjamin, 1999; Azar, 2002; Straus, 1983). This pattern is especially true for those exhibiting abuse and coercive control of their spouse (ACV), probably also true for couples who resort to physical force to resolve conflict (CIV), and less likely or time limited if the violence was an isolated event (SIV). A review of research, largely based on women in shelters, suggests that children whose mothers had been assaulted by their male partners are more likely to be directly abused (Appel & Holden, 1998; Edleson, 1999). Where there is a pattern of abuse (ACV), erratic role reversals, swings from permissive to rigid, authoritarian parenting, and periodic abandonment are also common. Children of such primary abusers are subjected to emotional abuse such as name calling, cruel put-downs, and distortion of their reality by telling false and frightening stories. At times they are made the favorite at the expense of siblings who are isolated or outrightly rejected. At other times they may be encouraged in morally corrupt and criminal behavior (Bancroft & Silverman, 2002; Johnston & Campbell, 1993). Boundary violations between adult abusers (ACV) and children are more likely, especially where substance abuse is also involved, with a greater incidence of child sexual abuse being reported (Wilson, 2001).
- *Individuals who have a pattern of abuse of their partners (ACV) and those who commonly resolve conflicts using physical force (CIV) are poor role models for children.* Poor role modeling occurs even after the parental separation, whether or not parents mistreat their children directly, because when children witness one parent assaulting the other, their sibling, or other family member, and using threats of violence to maintain control, their own expectations about relationships tend to emulate these observations. Moreover, often very frightened by these scenes, young children tend to identify more intensely with the violent parent (i.e., “I will become powerful and mean like my dad and everyone will be scared of me”). To the extent that there is potential for the abusive parent to be violent in subsequent intimate relationships,

children's exposure to poor modeling will continue (Bancroft & Silverman, 2002; Johnston & Campbell, 1993).

- *Abusive ex-partners (ACV) are likely to undermine the victim's parenting role.* In a range of obvious and more insidious ways, abusive ex-partners are likely to attempt to alienate the children from the other parent's affection (by asserting blame for the dissolution of the family and telling negative stories), sabotage family plans (by continuing criticism or competitive bribes), and undermine parental authority (by explicitly instructing the children not to listen or obey; Bancroft & Silverman, 2002; Johnston, Walters, & Olesen, 2005). This facet of the abuser's parenting needs to be considered when deciding what access, if any, the perpetrator should have to the children, what interventions are needed to address these problems, and the prognosis for change with treatment (Scott & Crooks, 2004).
- *Abusive ex-spouses (ACV) may use family court litigation as a new forum to continue their coercive controlling behavior and to harass their former partner* (Jaffe et al., 2003). Litigation exacts a high emotional and financial price, especially for abused women already overwhelmed with the aftermath of a violent relationship. Some authors have suggested that some perpetrators have the persona and social skills to present themselves positively in court and convince assessors and judges to award them custody (Zorza, 1995). In some of these cases the perpetrators are self-represented, heightening the possibilities for abuse through intimidating or berating a former partner in cross-examination, unless an astute judge intervenes.
- *Diminished parenting capacities among victims of domestic violence often occurs.* Preoccupation with the demands of their abuser (ACV), a conflict-ridden marriage (CIV), or a traumatic separation (SIV) may render parents physically and emotionally exhausted, inconsistently available, overly dependent upon, or unable to protect their children from the abuser (Anderson, 2002; Lieberman & Van Horn, 1998). For the majority of victims, separation from the perpetrator of domestic violence may provide an opportunity for improvement in both general functioning and parenting capacities. However, those who have been victimized by prolonged abuse and control (ACV cases) are likely to suffer sustained difficulties—like anxiety, depression, substance abuse, and posttraumatic stress disorder—all of which can compromise their parenting for some time (Herman, 1997). Female victims may have been brainwashed by the abuser into accepting their own and their children's abusive treatment, and intimidated and embarrassed male victims tend not to protect the children from their abusive mother's rages (Johnston & Campbell, 1993). Poor self-esteem, lack of confidence in their parenting, and inability to control their children, especially their older sons, makes the female victim an obvious target of blame by the abusive ex-spouse and may raise the suspicions of family court professionals as to her fitness to parent. During the court process, these parents may present more negatively than they will in the future once the stress of the proceedings and life changes have attenuated (for a review, see Jaffe, Crooks, & Bala, 2005).
- *Victims' behavior under the stress of the abusive relationship (ACV) and during the aftermath of a stressful separation (SIV) should not inappropriately prejudice the residential or access decision.* In the face of a real threat of violence, victims who live in fear of their ex-partner are not paranoid, nor may it be appropriate for them to promote a relationship between their children and the other parent. In cases of ACV, parents' voiced concerns about their ex-partner's abusive predispositions and their own refusal to communicate or reluctance to agree to the child's liberal access

should not be seen as unwillingness to cooperate or as manifestations of parental alienation. Similarly, victims of abuse who leave the family home without the children should not be viewed as abandoning, neglectful, or irresponsible parents; in these cases, leaving alone may be the only way that they believe that they appease their volatile partner (Jaffe et al., 2003). Likewise, distraught individuals who have suffered a traumatic separation (SIV) may parent in a less child-centered manner than they would normally, although their compromised functioning is usually time limited (Johnston & Campbell, 1993).

- *Victims of abusive relationships may need time to reestablish their competence as parents and opportunity to learn how to nurture and appropriately protect themselves and their children.* Time, protection, and support allow an adequate opportunity for a distinction to be made between the majority of victims of spousal abuse who are able to reestablish effective parenting, and the small minority of cases where the victim's mental status will be chronic—a product of prior psychological problems and a history of repeated victimization in earlier relationships such that they cannot ever parent adequately.

### **DIMENSIONS OF VIOLENCE RELEVANT TO PARENTING PLANS**

Although domestic violence is a very important factor to consider when making parenting plans, capacities of perpetrators and victims to parent adequately are likely to vary greatly depending upon the nature of the violence. However, other than clinical descriptive criteria, instruments to reliably differentiate between types of violence and how they might relate to parenting have yet to be developed. What can be done under these constraints? We propose that three basic factors should be considered: the *potency*, *pattern*, and *primary perpetrator* of the violence (henceforth referred to as a PPP screening).

First, level of potency—the degree of severity, dangerousness, and potential risk of serious injury and lethality<sup>3</sup>—is the foremost dimension that needs to be assessed and monitored so that protective orders can be issued and other immediate safety measures taken and maintained. Prior incidents of severe abuse and injuries inflicted on victims are an important indicator of the capacity of an individual to explode or escalate to dangerous levels. In some cases, explosive or deadly violence can erupt with little or no history of abuse, but other warning signs are often evident (see Table 1, Part A for indicators of potency).

Second, the extent to which the violence is part of a *pattern* of coercive control and domination (rather than a relatively isolated incident) is a crucial indicator of the extent of stress and trauma suffered by the child and family and the potential for future violence (Stark, 2007). It also suggests what kind of protective, corrective, and rehabilitative measures to take (e.g., high-security supervision of visits, substance abuse or psychiatric treatment). A history of using physical violence and power assertion are obvious indicators of a pattern of abuse. However, overt acts are often mere tips of the iceberg in a deeply embedded pattern of coercive control that can be long hidden from public scrutiny. It is also important to consider the degree of submission induced in the victim, the control asserted by a partner's insistence on unilateral authority in multiple domains, and after separation the more subtle harassment and control exerted through manipulation of the children and/or continued litigation (Kropp et al., 1999; Palarea, Zona, Lane, & Langhinrichsen-Rohling, 1999). See Table 1, Part B for a list of indicators of the pattern of violence and coercive control. There may be circumstances where the level of violence is related to the perpetrator's

**Table 1**  
The PPP Screening

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**Part A: Potency of Violence (level of severity, dangerousness, or risk of lethality)**

1. Are there any threats or fantasies of homicide and/or suicide? If so, does the person have a specific plan to act on them?
2. Are weapons available (guns, knives, etc.), indicating the means are accessible?
3. How extreme was any prior violence? Were injuries caused, and if so, how serious?
4. Is the person highly focused upon/obsessed with the specific victim as a target of blame?
5. Is there a history of mental illness—especially thought disorder, paranoia, or severe personality disorder?
6. Is the person under the influence of drugs or alcohol, indicating diminished capacity to inhibit angry impulses? Is there a history of substance abuse?
7. Does the person express a high degree of depression, rage, or extreme emotional instability (indicating a propensity to act irrationally and unpredictably)?
8. Is the party recently separated or experiencing other stressful events like loss of job, eviction from home, loss of child custody, severe financial problems, etc.?<sup>4</sup>

**Part B: Pattern of Violence and Coercive Control**

1. Is there a history of physical violence including: Destruction of property? Threats (to hurt self or loved ones)? Assault or battery? Sexual coercion or rape?
2. Has there been disregard or contempt for authority (e.g., refusal to comply with court-ordered parenting plans, violation of protective orders, a criminal arrest record)?
3. How fearful and/or intimidated is the partner?
4. Is there a history of emotional abuse and attacks on self-esteem?
5. Does one party make all decisions (e.g., about social, work, and leisure activities; how money is spent; how children are disciplined and cared for; household routines and meals; personal deportment and attire, etc.)?
6. Has the partner been isolated/restricted from outside contacts (e.g., with employment, friends and family)?
7. Is there evidence of obsessive preoccupation with, sexual jealousy, and possessiveness of the partner?
8. After separation, have there been repeated unwanted attempts to contact the partner (e.g., stalking, hostage-taking, threats or attempts to abduct the partner or child)?
9. Have there been multiple petitions/litigation that appear to have the purpose of controlling and harassing?

**Part C: Primary Perpetrator Indicators: Who is the primary aggressor, if either?**

1. Who provides a more clear, specific and plausible account of the violent incident(s)? Who denies, minimizes, obfuscates, or rationalizes the incident? (The victim more likely does the former; the perpetrator the latter).
  2. What motives are used to explain why the incident(s) occurred? (Victims tend to use language that suggests they were trying to placate, protect, avoid, or stop the violence, whereas perpetrators describe their intent being to control or punish).
  3. What is the size and physical strength of each party relative to the amount of damage and injury resulting from the incident(s)? Does either party have special training or skill in combat? (Perpetrators who are better equipped are able to cause the greater damage).
  4. Are the types of any injuries or wounds suffered likely to be caused by aggressive acts (the perpetrator's) or defensive acts (the victim's)?
  5. If the incident(s) involved mutual combat, were the violent acts/injuries by one party far in excess of those of the other? (Violent resisters [VR] tend to assert only enough force to defend and protect; when primary perpetrators retaliate, they are more likely to escalate the use of force aiming to control and punish).
  6. Has either party had a prior protective order issued against them—whether in this or a former relationship (indicating who was determined to be the primary aggressor in the past)?
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history of mental illness or substance abuse and these factors will have to be considered in regards to both assessment and intervention strategies.

Third, whether there is a *primary perpetrator* of the violence (rather than it being mutually instigated or initiated by one or the other party on different occasions) will indicate whose access needs to be restricted and which parent, if either, is more likely to provide a nonviolent home, other things being equal (Nielson, 2004). Accounts of the violent incident(s) by the participants themselves should be assessed with caution, because victims may tend to

assume more blame, and abusers usually minimize or deny their conduct. Moreover, the motivation to conceal or admit violent behavior varies depending upon the aggressor's views of the consequences of doing so (i.e., he is unlikely to admit abusive behavior to a judge, but may do so in an appropriate therapeutic intervention). Nevertheless, it is helpful to obtain a detailed account of the violent incidents—within the context of the relationship—from each party separately. However, professionals need to be wary of differentiating the abuser from the victim based on who claims to be the victim; who is more charming, charismatic, and likeable; who appears more organized, reasonable, and sensible; and who feels more entitled and morally outraged. Sociopaths, narcissists, and chauvinists—who use violence for interpersonal control—can make a very smooth presentation whereas the victim can appear emotionally distraught and disorganized (Bancroft & Silverman, 2002; Herman, 1997). See Table 1, Part C for a list of indicators that help discriminate who might be the primary perpetrator.

In general, a PPP screening provides the legal or mental health professional with a *working hypothesis* as to the type of violence involved in any case. Furthermore, multiple indicators, especially those that are more potent, signal the more difficult and high-risk cases where full measures of protection are needed for the victim and child, and highly restricted access orders are warranted. For example, multiple indicators of potency and a clear pattern of using coercive-controlling tactics by a primary perpetrator indicate a probable high-risk abusive controlling relationship (ACV). Several indicators of moderate severity or potency and use of violent tactics to resolve conflict with neither party as the primary perpetrator suggest moderate-risk common couple violence (CIV). Levels of potency commensurate with the threat posed by a violent partner suggest a violent resistor (VR); and few indicators of potency with acts of violence only around the time of separation instigated by one or both parties suggest an isolated incident related to the separation (SIV). The latter types of case may require few, if any, restrictions on custody and access arrangements in the longer term.

Who can undertake this kind of preliminary assessment? We suggest that family court and related professionals—judges, attorneys, mediators, custody evaluators, and social workers—can do so provided they have access to relevant facts and appropriate training, even at an interim stage in the proceedings. Because the risk of misdiagnosis can have very serious consequences, attempts to reach a definite conclusion about the nature and effects of domestic violence in a case or make recommendations about a long-term plan of care should be undertaken by qualified mental health professionals with specialized domestic violence training who undertake a multilevel, multimethod assessment with both parents and their children.

### **CREDIBILITY OF ALLEGATIONS**

Multiple, serious conflicting allegations of child maltreatment, domestic violence, and parental abuse of drugs and alcohol are commonly raised in high-conflict custody-litigating postseparation families. Substantiation of claims can be difficult, which poses great challenges for professionals involved in making parenting plans. With regard to substantiation of those claims, published research is limited, and studies are mostly of small and nonrandomly drawn samples,<sup>5</sup> but findings from the few studies that exist indicate a significant proportion of domestic violence allegations (50–75%) and child abuse allegations (22–52%) in family law matters can be subsequently substantiated in some manner (Bala, Mitnick, Trocmé, & Houston, in press; Bala & Schuman, 1999; Brown, 2003; Johnston, Lee, Olesen, & Walters, 2005; Shaffer & Bala, 2003; Thoennes & Tjaden, 1990).

The practical dilemma that remains in making parenting plans in high-conflict separating families is: What reliable evidence can be gleaned from the mutual finger pointing and counterblaming of a “he-said/she-said” variety? To reconcile these conflicting stories, a naïve professional in the family court system may dismiss or minimize the claims of both spouses or erroneously conclude that the abuse is mutual when it is not. Alternatively, a women’s advocate may immediately harbor the suspicion that the male must be the perpetrator and lying about his allegations or denials (Neilson, 2004). There are a number of steps to avoiding premature or erroneous judgments.

Systematic inquiry from the following multiple sources can yield direct or circumstantial information that supports or refutes the parents’ respective claims (Austin, 2000). Each corroborating piece of information then needs to be weighed and aggregated by a neutral screener who has been trained to avoid common errors in human perception. First, objective verification of specific incidents can be provided by police and medical reports, self-admissions, or eye witness accounts. Second, corroboration of aspects of an allegation by neutral third parties—like neighbors, teachers, or babysitters—is important. Relatives may offer useful information, but their allegiance and potential bias must be considered. Conversely, the absence of denials of violence by credible others who are alleged to have observed the violence (older teenagers, adult children, and nonrelatives sharing the family home) may be a curious omission that needs to be explored. Third, the psychological status of the alleged abuser and victim may affect credibility assessment. For the alleged abuser, a diagnosis of a severe sociopathic or mental illness like bipolar disorder, major depression, panic disorder, schizophrenia, obsessive-compulsive disorder, or substance abuse problems may be relevant. For the alleged victim, the presence of reality testing problems, psychotic, paranoid, or histrionic personality disorders are pertinent.

The specific abuse complaints need to be examined in terms of their logical and emotional meaning for the complainant: Did the abuse involve deep shaming and humiliation? Was the victim made to feel responsible? Was the abuse normalized, that is, seen as justly deserved punishment or discipline? How an abusive incident is perceived needs to be understood in terms of the family and cultural context in which it is made. Particular behaviors may be deemed especially insulting and offensive in some minority ethnic families in ways that may not be understood by most others (e.g., slapping with shoes in an Islamic culture). Moreover, a victim might have multiple abusers (e.g., her spouse and mother-in-law in some Indian families); or the violence to which the children are exposed is between family members other than the parents (e.g., between father and mother’s new boyfriend or involving older siblings).

Last but not least, in assessing credibility, the timing of the disclosure and stage of the legal proceedings are potentially relevant, although often difficult to interpret. Although allegations made for the first time in the context of family litigation may appear to be self-serving, in order to buttress a claim for custody or restriction of access to the other parent, more often there are other valid reasons for a delay in disclosure. Some victims may hesitate to report violence in an attempt to reduce conflict, while others may not initially recognize what they have experienced as abuse until they have some distance and counseling. For example, a woman may not recognize that sexual abuse can even happen in the context of a marriage, but may later come to understand her experience as a violation of her rights. Unfortunately, in these cases, she might be subjected to an unjustifiable extent of suspicion by justice system professionals when she discloses sexual abuse for the first time after separation. Reports of abuse first made in the context of litigation should never be dismissed solely because of the timing of disclosure.



**Unfounded Allegations of Abuse.** Although existing research provides sobering estimates of the problem of domestic violence and child abuse, we cannot ignore the other side of the coin—that a notable proportion of allegations cannot be substantiated. There are several diverse sources of misunderstandings and suspicions of abuse in highly conflicted and violent families that need to be considered in making parenting plans.

First, it is important to acknowledge that a proportion of these allegations may be valid disclosures that simply lack convincing data to substantiate them (Moloney et al., 2007). After all, most family violence occurs behind closed doors; is not reported to any authorities or professionals; is the subject of shame and denial by the victim and other family members; or is normalized, excused, and rationalized within some families and cultures (e.g., as is excessive child corporal punishment and coercive marital sex).

Second, both clinical observation and empirical studies indicate that only a small number of unfounded child abuse allegations are due to deliberate or malicious fabrication (Bala et al., in press; Brown, 2003). More commonly, the accusing parent has an honestly held (albeit erroneous) belief about the abuse. Suspicions of child abuse, especially for young children during visitation, may arise from distressed behavior of the child of ambiguous origin or relatively benign incidents that are misreported to parents who are no longer communicating with one another. Where parents harbor fear, distrust, and negative convictions about one another, the potential for such misunderstanding is greatly increased. Such distortions are too often reaffirmed by family, friends, and even professionals in a world now split in two, sometimes generating a form of tribal warfare within an adversarial legal system focused on finding fault (Johnston & Roseby, 1997).

There is virtually no research on the extent to which spousal abuse allegations are clearly false and maliciously fabricated, but this issue is becoming an increasing concern for the justice system. An unintended negative consequence of bringing social and statutory attention to the relevance of domestic violence in child custody determinations is the possibility of encouraging fabrication, or more commonly exaggeration and biased recall in reporting events, in order to support legal claims and to access services and social supports (White, 2007). On the other hand, it is critical to emphasize that the making of false allegations of spousal abuse is much less common than the problem of genuine victims who fail to report abuse, and the widespread false denials and minimization of abuse by perpetrators (Jaffe et al., 2003; Johnston, Lee, et al., 2005; Shaffer & Bala, 2003).

Finally, the psychological vulnerabilities of the parents may also play a role in unfounded allegations. Individuals (made vulnerable by their own histories of deprivation and trauma) are inordinately humiliated by the divorce—and what it implies about their deficiencies. These individuals may defend themselves by vigorously deflecting the blame onto the former partner, becoming convinced that the other parent is irrelevant, irresponsible, or even dangerous, in contrast to themselves who are truly perceived as the caretaker who is essential, responsible, and safe. Furthermore, many of these same individuals, panicked by feelings of loss and abandonment, try to use their children as substitutes for, bridges to, and weapons to punish their ex-partner for leaving. Children in turn can become distressed, cling to the needy parent, and may resist contact with the other, evoking allegations of parental alienation on one side and child abuse or children witnessing spousal abuse on the other.

In cases of most severe vulnerability, one partner experiences the other's rejection, custody demands, or accusations as such a devastating attack and profound loss in defense to which he or she develops paranoid ideas of betrayal, conspiracy, and exploitation by the ex-mate. Indeed, in this small minority of cases, the rage of the rejected partner could

result in abduction and/or murder of children and victim parent and/or suicide of the rejected partner. These kinds of situations remind us that highly conflicted divorcing families and domestic violence cases are not discrete populations, but rather share common dynamics that can precipitate further violence, sometimes with lethal consequences. It follows that parents with unfounded allegations should not be simply dismissed, but treated with the same differential concern in making parenting plans, lest they escalate to violence and subject their children to ongoing emotional abuse (Johnston & Roseby, 1997).

### **PRINCIPLES FOR MAKING PARENTING ARRANGEMENTS AND RESOLVING CONFLICTING PRIORITIES**

In most domestic violence cases there are multiple factors to consider. What is needed is a risk–benefit analysis of different kinds of parenting plans that are in the best interests of the particular child and family (Sturge & Glaser, 2000). What are some guiding principles for undertaking this kind of analysis? It is submitted that the goals of any plan should be prioritized in the following order:

1. Protect children directly from violent, abusive, and neglectful environments;
2. Provide for the safety and support the well-being of parents who are victims of abuse (with the assumption that they will then be better able to protect their child);
3. Respect and empower victim parents to make their own decisions and direct their own lives (thereby recognizing the state's limitations in the role of *loco parentis*);
4. Hold perpetrators accountable for their past and future actions (i.e., in the context of family proceedings, have them acknowledge the problem and take measures to correct abusive behavior); and
5. Allow and promote the least restrictive plan for parent–child access *that benefits the child*, along with parents' reciprocal rights.

Premised on the notion that the goal of protecting children must never be compromised, the strategy is to begin with the aim of achieving all five goals and to resolve conflicts by abandoning the lower priorities. This approach provides a pathway to just and consistent resolution of many common dilemmas. For example, in principle, if a parent denies engaging in his or her substantiated violence and does not comply with court-ordered treatment, Priority 5 should be dropped or modified by suspending or supervising access. Furthermore, the victim should be allowed to relocate upon request (forgoing Priorities 4 and 5). If the victim is subsequently abused by a new partner, these principles imply an alternative safer place to live can be offered along with a choice: Live with your violent mate or have the care and custody of your child (Priorities 3, 4, and 5 are dropped, and Priority 2 may have to be dropped as well). Note that Priority 5, as stated, implies that access may need to be suspended in some cases even though a violent parent has sought and benefited from corrective treatment (e.g., if a child, traumatized by the parent's past abusive tirades, continues to be highly distressed and resistant to supervised visits despite reasonable efforts to alleviate that distress).

It must be acknowledged that constraints on a parent–child relationship like supervised visits and related injunctions are highly intrusive interventions in the family. They not only

constitute an important threat to parents' civil liberties, but also establish an artificial and potentially difficult environment for both parent and child to relate freely and fully. For these reasons, intrusive constraints should not be imposed lightly and should require the accountability of all parties. Any court-imposed restrictions on a parent's regular and unsupervised access need to include: explicit goals with behavioral criteria that need to be met in order for the parent and child to graduate to a less restrictive option, a timely review of progress, and/or monitoring by the family court or its designated agent. Likewise, any removal of restrictions on a parent's access to his or her child should be contingent upon cessation of the threat of violence, as well as credible reports of successful progress or completion of treatment for the problem (of violence, substance abuse, or mental illness).

To what extent is it important to consider children's expressed wishes when making access arrangements that are feasible and safe? In general, it is important to be responsive to their need for age-appropriate input and, in particular, the requests and concerns of a child who is rejecting a violent parent need to be respected.<sup>6</sup> However, the spoken preferences of children who have been abused or witnessed violence can take many forms and should be interpreted with caution, optimally with the help of a child therapist. Some children can be intensely angry at an abusive parent but only feel safe enough to verbally resist or refuse visitation—even minimal contact within the safe confines of supervision—after the separation. In other cases, children who have witnessed or sustained abuse, out of fear, become aligned with the more powerful perpetrator and reject an innocent victim parent. More commonly, youngsters from abusive homes grieve the loss of a parent who does not visit them; they imagine that they have been abandoned, blame themselves for the parent's absence, and worry greatly about that parent's welfare. All of these possible motivations for the child's expressed preferences need to be teased out.

Usually in setting up the conditions under which access occurs, one can be responsive to many of the child's concerns (e.g., who should attend, what activities to expect, where the visits take place, and perhaps how long they will last). Furthermore, children need to be prepared for resuming unrestricted access, armed with coping skills and safety plans, together with an explanation of why it has become permissible to see their visiting parent on their own again. It may also be important for parents who have been violent to acknowledge their behavior directly to their child and to take steps to reassure him or her about their commitment to nonviolence and the measures they have taken to ensure future safety. However, much caution is needed to avoid subtle emotional manipulation and ensure a genuine commitment to change by the abuser such that these kinds of conversations may need to take place with the help of a counselor who is experienced with parent-child reunification.

## **DIFFERENTIAL PARENTING ARRANGEMENTS**

In the following section we outline a range of parenting arrangements, with corresponding definitions, criteria for use, and special considerations of each, designed for postseparation and divorced families where there has been high conflict and violence. We have applied the family violence literature to these arrangements within the context of our experience as custody assessors, trainers, and researchers, but acknowledge there is only a limited scientific foundation to build on and that the proposed guidelines are preliminary. The range of parenting arrangements discussed in this section includes co-parenting, parallel parenting, supervised exchanges, supervised access, and no access, as depicted in Table 2, Sections A–E. The legal frameworks of joint and sole custody are also discussed.

**Table 2**  
Proposed Parenting Plans in High Conflict and Violent Separating and Divorced Families

<i>Section A: CO-PARENTING</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
Shared decision-making on major issues—education, health, etc.	Time share ranges with specific provisions stipulated in court order or by agreement of the parties	If requested by either party, permanent court order, such as restrictions on taking child out of area w/o consent, etc.	Parents sufficiently able to communicate, have measure of trust in & respect for one another; able to be child focused or able to resolve difficulties	Cases with DV in general
Common child care practices, consistent routines, discipline expected across homes	Explicit court access order includes holidays: explicit dates, times, places of exchange	Protocols for telephone access to child	<i>Re DV: Low ratings on potency, pattern, &amp; primary perpetrator of violence, e.g.,</i>	Chronic conflict, coercive interactions, inability to joint problem solve, no history or capacity to cooperate & communicate
Ongoing communication & joint problem solving by parents	Flexibility & compromise re schedule are encouraged, where possible	Comfortable place of exchange for both parents & child	<ul style="list-style-type: none"> <li>• Low levels of Separation-induced Violence [SIV] after crisis is passed &amp; trauma resolved</li> <li>• For other types of past violence, only with substantial history of successful parallel parenting &amp; cessation of abuse &amp; control</li> </ul>	Mentally ill & substance abusers in general
<i>May be called joint legal &amp; joint physical custody</i>	Court order provides back-up when no agreement is reached about any temporary changes negotiated by parents directly	Protocols for communicating emergency information	Some mentally ill & substance abusers with substantial proof of rehabilitation	

**Table 2**  
Continued

<i>Section B: PARALLEL PARENTING</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
<p>Divided decision-making responsibilities, different issues allotted to each parent</p> <p>Parenting plan provides for clear boundaries &amp; separation between parents</p> <p>Time-share schedule requires minimal communication, seeks to avoid direct parent-parent contact, <i>and</i> also provide stability &amp; continuity in child's life</p> <p><i>May be joint or sole legal &amp; physical custody (if joint, the time-share schedule should meet all the above criteria)</i></p>	<p><i>Unsupervised day &amp;/or overnight visits for VP</i></p> <p>Time sharing between parents may range, as specified by the court</p> <p>Natural transition times &amp; places minimize disruption of child's school, social, &amp; extra-curricular activities</p> <p>Explicit court order for access (times, dates, place of exchange, holidays, etc.)</p> <p>Expect adherence to details of court order (not flexibility &amp; compromise re changes)</p> <p>Consistent, safe child-care practices within separate homes are emphasized rather than common practices</p>	<p>Protocols in place to avoid conflict, threat of any violence, &amp; sabotage between parents</p> <p>Permanent restraining orders in place</p> <p>Restraints from taking child out of area w/o consent</p> <p>Neutral place of exchange—safe &amp; comfortable for child (e.g., neutral relative, visiting center, school, library)</p> <p>Structured telephone access to child</p> <p>Rules in place for communicating emergency information between parents</p> <p>Other necessary info communicated by email, etc. (never by child)</p> <p>Procedure in place for resolving any new issues, e.g., parenting coordinator</p>	<p>Each parent has a positive contribution to make in time spent with children, but direct parent-parent contact provokes acrimony</p> <p>Chronically conflicted non-violent couples (incl. repeated unfounded DV allegations)</p> <p><i>Re DV: Moderate-low ratings on potency, &amp; pattern, no primary perpetrator, e.g.,</i></p> <ul style="list-style-type: none"> <li>• Conflict-instigated violence [CIV]</li> <li>• Separation-induced violence [SIV] during &amp; post-crisis</li> <li>• Other types (incl. abusive relationships [ACV] with credible evidence of good progress &amp;/or, completion of treatment)</li> <li>• Victims traumatized by past violence of any type (incl. VR), but no longer a threat</li> </ul>	<p>Infants, &amp; very young children, &amp; special needs children who require consistent &amp; closely coordinated care across family homes</p> <p>Child experiences ongoing symptoms of trauma &amp; distress</p> <p>Findings that one parent poses a physical, sexual, or emotional threat of abuse to child</p> <p>Any on-going threat of violence to one parent by the other</p>

**Table 2**  
Continued

<i>Section C: SUPERVISED EXCHANGE</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
<p>Decision-making authority &amp; parenting time assigned solely to the parent more able to provide a non-violent home</p> <p>Time-share schedule requires minimal communication, seeks to avoid direct parent-parent contact, <i>and</i> also provide stability &amp; continuity in child's life</p> <p><i>Usually sole legal custody &amp; sole physical custody</i></p>	<p><i>Monitored exchange between parents</i></p> <p>Transfer of child by third party at neutral site to buffer child &amp; prevent ongoing conflict at transitions</p> <p>Exchange supervisor monitors behavior of all parties, enforces rules, &amp; helps communicate essential information</p> <p>Access usually limited to several hours or day visits, but may have overnights</p> <p>Explicit court order for access (times, dates, place of exchange, holidays, etc.)</p>	<p><i>Specific goals &amp; behavioral criteria that need to be met for VP to graduate to non-monitored exchange</i></p> <p>Explicit court orders in place detailing exchange arrangements (all times, dates, location, monitors)</p> <p>Safety provisions for victim parent &amp; child in place, e.g., escort to site, protective orders in place</p> <p>Permissible activities &amp; persons allowed / not allowed during visits (optional)</p> <p>Restraints from taking child out of area w/o consent</p> <p>Rules in place for behavioral etiquette at time of exchange, &amp; permission for any attendance at child activities</p>	<p><i>Re DV: Moderate ratings on potency, pattern, &amp; primary perpetrator of violence where risk or fear of renewed violence or conflict occurs only when parents meet, e.g.,</i></p> <ul style="list-style-type: none"> <li>• Conflict-instigated violence [CIV]</li> <li>• Violent Resistors [VR] &amp; other victims with residual trauma from past violence</li> <li>• Separation-instigated [SIV] during crisis period</li> <li>• Other types (incl. abusive relationships [ACV] with credible evidence of good progress &amp;/or, completion of treatment</li> </ul> <p><i>Chronically conflicted non-violent couples</i> (incl. repeated unfounded allegations)</p> <p>Problematic behavior or distress at transition by either parent &amp;/or child needs checking</p>	<p>Any current threat of violence and ongoing concerns about safety &amp; wellbeing of child with either parent alone</p> <p>Inadequate monitoring or non-neutral monitor</p>

**Table 2**  
Continued

<i>Section D: SUPERVISED ACCESS</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
<p>Decision-making authority &amp; parenting time assigned by court to the parent more able to provide non-violent home</p> <p><i>Sole legal custody &amp; sole physical custody</i></p>	<p><i>Supervised Visits for VP</i></p> <p>Supervised in a safe place with a neutral supervisor who agrees to terms of a detailed supervision order and is able to control the VP and willing to report violations to court</p> <p>Explicit court order for access (times, dates, place of exchange, supervisor, etc.)</p> <p>Duration of visits usually limited to a few hours</p>	<p><i>Specific goals &amp; behavioral criteria that need to be met to graduate to monitored exchange</i></p> <p>Safety provisions for victim parent &amp; child in place, e.g., escort to site, protective orders in place</p> <p>Support &amp; treatment services offered, but victims (<i>&amp; violent resistors</i>) empowered by respecting self-determination</p> <p>Court-ordered treatment/rehab for abuser</p>	<p><i>Re DV: High ratings on potency alone &amp; moderate-high ratings on potency, pattern, &amp; primary perpetrator of violence</i></p> <ul style="list-style-type: none"> <li>• Currently or recently violent (all types of violence)</li> <li>• Abusive relationships [ACV]</li> </ul> <p>Current substance abusers &amp; acutely mentally ill, if treatment in progress</p> <p>Temporarily for ambiguous cases during a DV assessment</p> <p>Parents with established risk of child physical, sexual abuse, abduction threat to child</p> <p>Child may have been traumatized by DV or abuse, but wants contact or stands to gain from parent's continuing involvement</p>	<p>Child's ongoing distress &amp; lack of any apparent benefit in contact</p> <p>Inadequate supervision available, i.e., lacks training, skills, not neutral for child or parents</p> <p>Child or visiting parent needs more intensive therapeutic intervention</p> <p>Visiting parent has met explicit conditions for less restrictive access</p> <p>Custodial parent remains distrustful &amp; wants supervision despite unfounded abuse allegations following full assessment</p>

**Table 2**  
Continued

<i>Section E: SUSPENDED CONTACT</i>	<i>Access arrangements</i>	<i>Other provisions</i>	<i>Appropriate for</i>	<i>Not appropriate for</i>
<p>Decision-making authority &amp; parenting time assigned by court to the parent more able to provide non-violent home</p> <p><i>Sole legal custody &amp; sole physical custody</i></p>	<p><i>All access or visiting rights with VP are suspended</i> as per specific court order</p> <p>May resume after court review for specified period of times, contingent on specific remedial behaviors being reliably demonstrated</p>	<p>Report critical incidents to child protection services</p> <p>Referral of case to child protection services if suspension is expected to be long term or permanent</p> <p>Specify goals &amp; behavioral criteria that need to be met to graduate to supervised access</p>	<p>No meaningful parent-child contact seems possible: no remorse or willingness to change by abusive parent [ACV]</p> <p>Persistent distress or refusal of child to supervised visits</p> <p>Parent's (VP) non-compliance with terms of supervised contact order</p> <p><i>Re DV: Very high ratings on potency, pattern, &amp; primary perpetrator, e.g., abusive VP's [ACV] with</i></p> <ul style="list-style-type: none"> <li>• Attempts or threats to abduct, seriously hurt, kill, or blatant use of child to hurt &amp; harass other parent</li> <li>• Conviction for serious assault or attempted homicide or homicide of family member</li> <li>• Child completely estranged from parent &amp;/or family due to trauma of past abuse by VP</li> </ul> <p>Some severe current substance abusers &amp; acutely mentally ill (no treatment)</p>	<p>Supervised visitation is not conveniently available</p> <p>Custodial parent's (CP) unjustified refusal to make child available for supervised visits or other non-compliance with terms of order</p>



## CO-PARENTING

Co-parenting refers to an arrangement in which parents cooperate closely postseparation in all significant aspects of raising their children. This arrangement approximates the preseparation ideal for the children, where both parents are actively involved in the lives of their children, share information, and problem solve the normal challenges of parenting as they arise. Within the broad definition of co-parenting, there may be a range of divisions of time spent in each parent's home and flexibility in scheduling, taking into account the distance between homes and the children's changing needs and stages of development, as well as changes in the parents' schedules. From a legal perspective, the term "joint custody" is the typical legal framework for a co-parenting arrangement. The terms "co-parenting," "shared parenting," and "joint custody" are often used interchangeably, especially as the word "custody" is being increasingly replaced with concepts like parenting time and contact. Joint custody does not require a particular time split (i.e., equal time with each parent), but rather is intended to establish a nonconflicted parental relationship that allows for ongoing joint decision making about significant issues and significant time spent in the home of each parent.

There may be a parent who will frustrate the possibility of co-parenting, in spite of the best efforts of the other parent and third parties, such as mediators. There is considerable debate about whether or not co-parenting should be imposed on an unwilling parent. These cases require special skills on the part of custody assessors, lawyers, and judges to properly assess the authenticity of the resistance to co-parenting. Understanding the underlying reasons for the resistance is important. For example, a parent who has felt bullied or victimized and experiences considerable anticipatory anxiety in dealings with the other parent may have a legitimate aversion to co-parenting. On the other hand, a parent who has never lived with the other parent may resent having to involve the other parent in his or her life as a result of co-parenting, but may be helped to develop an effective co-parenting relationship. Table 2, Section A provides criteria for its use and misuse in family violence.

## PARALLEL PARENTING

In contrast to the cooperative nature of a co-parenting arrangement, parallel parenting is an arrangement where each parent is involved in the children's lives, but the relationship is structured to minimize contact between the parents and protect the children from exposure to ongoing parental conflict, typically by having each parent make day-to-day decisions independently of each other when the children are in his or her care, and responsibility for major decisions (e.g., education) is assigned to one parent. There is limited flexibility in a parallel parenting arrangement, and the parents typically abide by a very structured and detailed schedule. Parallel parenting developed in recognition of high-conflict separations in which both parents appear sufficiently competent. Rather than encourage co-parenting, the goal of this plan is to disengage the parents from each other and their long-standing hostilities.

Parallel parenting will typically involve a child spending more time in the care of one parent, who will be the primary residential parent, though there can be roughly equal time in the care of each parent. The hope is that, over time, parental hostility may decline and parallel parenting may evolve toward some form of co-parenting, but this may take years and in some cases will never occur. Therapy for the parents to deal with their feelings of anger and hostility toward each other may help parallel parenting to evolve toward

co-parenting, but this is not always a realistic possibility. The legal framework for parallel parenting may be joint or sole legal and physical custody, depending on the philosophy of the court or parties establishing the arrangement and the resources available to counsel and monitor the family. The time-share arrangement, however, should not be one that divides the child's world into two spheres that do not relate to one another or unduly disrupts the child's continuity in schooling, social, and extracurricular activities. Criteria for appropriate use of parallel parenting and factors that contraindicate its use are outlined in Table 2, Section B.

### **SUPERVISED EXCHANGE**

Supervised or monitored exchange involves transferring children from one parent to the other under the supervision of a third party. The supervision can be informal, through the use of a responsible third party (e.g., by a family member, neighbor, or volunteer) who uses a specified venue for the exchange. The supervision can also be formalized through a supervised access center or use of a designated professional, such as a child care worker or a social worker. The underlying premise is that, by either staggering arrival and departure times or having third-party witnesses, the parents will be on their best behavior (or at least avoid direct confrontation) or will not come into physical contact. An important caveat is that using the police station for exchanges, while a popular arrangement for some professionals, is not a preferred solution. Although a police station may offer a parent a sense of security, it is not a child-centered environment and may cause undue anxiety in the child. Table 2, Section C outlines the details associated with monitored exchange.

For supervised exchange and the following two arrangements (i.e., supervised access and no contact), sole custody is definitely the framework for the parenting plans. By sole custody, the court is establishing that one parent is clearly in charge of all major decisions, while the noncustodial parent has more limited contact and access to important information about the children (e.g., school reports).

### **SUPERVISED VISITATION (ALSO KNOWN AS SUPERVISED ACCESS)**

Supervised visitation is a parenting arrangement designed to promote safe contact with a parent who is a risk due to a range of behavior from emotional or physical abuse to possible abduction of the child. It may also be appropriate where a child has fears of a parent, for example, because of having witnessed that parent perpetrate abuse or because of having been directly abused by that parent. Although supervised access is a long-accepted practice in the child protection field, it has emerged more recently in the parental separation context with parents who pose a risk to the children and/or the other parent. Similar to supervised exchanges, supervised access varies in structure, with supervisors ranging from extended family or volunteers to a specialized center with professional staff with expertise in these issues.

In most instances, supervised access in domestic violence cases should be viewed as a transition phase after which either supervision is dropped or access is terminated, depending on the change shown by perpetrators of violence and the child's adjustment. Related to this plan is the concept of supervised therapeutic access,<sup>7</sup> which involves a mental health professional who is attempting to heal a troubled parent-child relationship through counseling and support during the access visits. Although a genuine attempt at intervention is important, in some cases the complexity and intransigence of the conflict may be beyond even the

most skilled therapist and supervised access may be required as a longer-term solution. In other cases, long-standing limitations of a parent (e.g., due to chronic mental health problems) may necessitate ongoing supervised access. The Supervised Visitation Network in the United States has excellent standards and guidelines, as well as sample contracts available on their Web site (see also Sheeran & Hampton, 1999). The appropriate use and misuse of supervised visitation is briefly outlined in Table 2, Section D.

### **SUSPENDED CONTACT**

Contact between a child and parent may be suspended in the short term or long term for a host of reasons. When the decision to suspend contact is made based largely on a child's vehement refusal to see a parent, it is extremely challenging to disentangle the factors leading to this resistance. Differentiating between estrangement for valid reasons and pathological alienation can be a formidable challenge and should be done by a mental health evaluator with expertise in both child alienation and domestic violence. When there is a reasonable basis in fact for a child to be fearful of a parent due to exposure to domestic violence, it is inappropriate to label the nonoffending parent as engaging in alienation. When a parent has engaged in alienating behavior, appropriate attempts at therapeutic intervention should be implemented in an attempt to restore the damaged parent-child relationship.

There is in law a presumption that the best interests of the child will be promoted by a child having a relationship with both parents, thus requiring significant evidence of risk of harm to the child before terminating access (Shaffer & Bala, 2003). In cases where it is established that a parent presents an ongoing risk of violence to the child or parent, emotional abuse to the child, or abduction, however, no meaningful parent-child relationship is possible. In these cases, the court may be forced to suspend all access. These cases present a significant challenge for lawyers and mental health professionals to provide thorough and credible information to the court to obtain an order to at least temporarily end the parent-child relationship. Criteria for suspended access are shown in Table 2, Section E.

### **IMPLICATIONS FOR PRACTICE IN THE CONTEXT OF LIMITED RESOURCES**

There is often a large gap between the ideal plan that a family requires and the actual resources available in a community. There is also debate about the effectiveness of various programs to change behavior quite apart from a family member's willingness to attend (e.g., batterers' treatment; Gondolf, 2004).

In reality, many courts have to make do with limited resources, impeded by litigant poverty, waiting lists, and a lack of culturally appropriate service providers. Often multiple services need to be accessed, including services for batterers, victims, and children exposed to domestic violence, requiring coordinated service delivery and communication of information beyond the mandate, policy, confidentiality, and record-keeping practices of individual agencies involved. To compound these problems, it is often not clear that anybody is in charge of monitoring treatment compliance and progress.

Parenting plans that differentiate among patterns of domestic violence on the basis of safety and prognosis should allow for better triage—more careful matching of scarce resources appropriate to the needs of victims and children. The PPP screening that is proposed in this article is a systematic way of doing a preliminary differential assessment of what are often complex cases. It may have an added advantage to the extent that it helps

a wide range of professionals recognize cases that are beyond their expertise, requiring more specialized assessment by highly trained professionals.

The guidelines proposed in this article are designed to provide the general framework for family court orders for children, victims, and violent parents whose access to their children is restricted contingent upon their rehabilitation. If so, some next steps would involve developing model court orders for each type of parenting plan, with a menu of options specifying explicit behavioral goals and treatment contracts that could be adapted for use by busy judges and others drafting and monitoring court orders. These kinds of court orders require the support of corresponding treatment contracts for services within the community that fully inform families about the programs they are required to attend, including goals, procedures, limits of confidentiality, responsibility for payment, expectations for completion, and accountability to the court. Case management protocols and timelines also need to be developed to help coordinate between services and monitor progress over time.

In sum, differentiated parenting plans in the context of domestic violence that are more explicitly articulated, implemented, and monitored should benefit families who would receive services more appropriate to their needs. These plans could also help mental health and legal professionals—therapists, parenting counselors, custody evaluators, family attorneys, and judges—to better coordinate their roles and provide checks and balances to their interventions while ensuring accountability for violence, protecting civil rights of all parties, and monitoring cost-effectiveness of nonvoluntary, court-ordered interventions.

## NOTES

1. Here a cautionary note: The research findings are from samples obtained from different sources and of widely different sizes. Furthermore, the studies use varying methodologies and definitions (e.g., what constitutes violence and the criteria for substantiation of allegations). For these reasons, the findings summarized in this article provide only a partial and incomplete picture and may not hold true for the broader population, nor even for the special subpopulation of those-disputing custody within family court, especially with respect to gender differences in perpetrating the different types of violence.

2. Parenting and parent-child relationships have been examined in domestic violence agencies and women's shelters (e.g., Bancroft & Silverman, 2002) and in families litigating custody (Johnston & Campbell, 1993), and these observations and findings can be compared with those from empirical studies of general community samples (e.g., Straus, 1983).

3. Numerous instruments have been developed for this purpose, from early checklists like the CTS (Straus, 1979) to more recent comprehensive assessment kits like SARA (Kropp, Hart, Webster, & Eaves, 1999). The list of indicators in Table 1, Part A is one of many ways to screen for potency or severity of violence when making custody and access plans. For others, see Campbell (2005).

4. Whereas generally multiple positive indicators signal higher risk, some are more important than others, for example, #1, #2, and #3. Some at risk for lethal violence are difficult to detect because the person has highly secretive and organized paranoid delusions, for example, #1, #4, and #5, but not #6 or #7. While not critical predictors by themselves, #6, #7, and #8 can act as precipitants or aggravate a violence prone individual or situation.

5. See *supra* note 1.

6. These cases need to be treated differently from those of an alienated child in a nonviolent high-conflict divorcing family, albeit in practice, the latter are difficult to distinguish from those who are realistically estranged (Drozd & Olesen, 2004).

7. Therapeutic supervised access offers an opportunity for access between a parent and child to occur in a supervised setting with a therapist intervening, promoting healthy parenting, relationship building, and cooperation between the parties. Therapeutic supervised access is a specialized short-term intervention aimed at assisting parents toward nonsupervised access while meeting the needs of the children.

## REFERENCES

- Anderson, K. L. (2002). Perpetrator or victim? Relationships between intimate partner violence and well-being. *Journal of Marriage and Family, 64*, 851–863.
- Anderson, S. A., & Cramer-Benjamin, D. B. (1999). The impact of couple violence on parenting and children: An overview and clinical implications. *American Journal of Family Therapy, 27*, 1–19.
- Appel, A. E., & Holden, G. W. (1998). The co-occurrence of spouse and physical child abuse: A review and appraisal. *Journal of Family Psychology, 12*, 578–599.
- Austin, W. G. (2000). Assessing credibility in allegations of marital violence in the high-conflict child custody case. *Family and Conciliation Courts Review, 38*, 462–477.
- Azar, S. T. (2002). Parenting and child maltreatment. In M. H. Bornstein (Ed.), *Handbook of parenting: Social conditions and applied parenting* (Vol. 4, pp. 361–388). Hillsdale, NJ: Erlbaum.
- Bala, N., Mitnick, M., Trocmé, N., & Houston, C. (in press). Sexual abuse allegations and parental separation: Smokescreen or fire? *Journal of Family Studies*.
- Bala, N., & Schuman, J. (1999). Allegations of sexual abuse when parents have separated. *Canadian Family Law Quarterly, 17*, 191–241.
- Bancroft, L., & Silverman, J. G. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Newbury Park, CA: Sage.
- Bow, J. N., & Boxer, P. (2003). Assessing allegations of domestic violence in child custody evaluations. *Journal of Interpersonal Violence, 18*, 1394–1410.
- Brown, T. (2003). Fathers and child abuse allegations in the context of parental separation and divorce. *Family Court Review, 41*, 367–380.
- Campbell, J. C. (2005). Assessing dangerousness in domestic violence cases: History, challenges, and opportunities. *Criminology & Public Policy, 4*, 653–672.
- Dalton, C., Carbon, S., & Olesen, N. (2003). High conflict divorce, violence, and abuse: Implications for custody and visitation decisions. *Juvenile and Family Court Journal, 54*(4), 11–34.
- Droz, L. M., & Olesen, N. W. (2004). Is it abuse, alienation, and/or estrangement? A decision tree. *Journal of Child Custody, 1*(3), 65–106.
- Dutton, D. G. (2005). Domestic abuse assessment in child custody disputes: Beware the domestic violence research paradigm. *Journal of Child Custody, 2*(4), 23–42.
- Edleson, J. L. (1999). The overlap between child maltreatment and woman battering. *Violence Against Women, 5*, 134–154.
- Fox, J. A., & Zawitz, M. W. (1999). *Homicide trends in the United States*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. Retrieved February 25, 2008, from <http://www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm>
- Gondolf, E. W. (2004). Evaluating batterer counseling programs: A difficult task showing some effects and implications. *Aggression and Violent Behavior, 9*, 605–631.
- Greif, G. L., & Hegar, R. L. (1993). *When parents kidnap: The families behind the headlines*. New York: Free Press.
- Herman, J. (1997). *Trauma and recovery: The aftermath of violence—from domestic abuse to political terror*. New York: Basic Books.
- Hotton, T. (2001). Spousal violence after marital separation. *Juristat, 21*(7), 1–18.
- Jaffe, P. G., Crooks, C. V., & Bala, N. (2005). *Making appropriate parenting arrangements in family violence cases: Applying the literature to identify promising practices* (Family, Children and Youth Section Research Report No. 2005-FCY-3E). Ottawa, Ontario, Canada: Department of Justice Canada.
- Jaffe, P. G., & Juodis, M. (2006). Children as victims and witnesses of domestic homicide: Lessons learned from domestic violence death review committees. *Juvenile and Family Court Journal, 57*(3), 13–28.
- Jaffe, P. G., Lemon, N. K. D., & Poisson, S. E. (2003). *Child custody and domestic violence: A call for safety and accountability*. Thousand Oaks, CA: Sage.
- Johnson, C. H. (2006). Filicide and family law: A study of filicide-suicide following separation. *Family Court Review, 44*, 448–463.
- Johnson, M. P. (1995). Patriarchal terrorism and common couple violence: Two forms of violence against women. *Journal of Marriage and Family, 57*, 283–294.
- Johnson, M. P. (2005). Apples and oranges in child custody disputes: Intimate terrorism vs. situational couple violence. *Journal of Child Custody, 2*(4), 43–52.
- Johnston, J. R., & Campbell, L. E. G. (1993). Parent-child relationships in domestic violence families disputing custody. *Family and Conciliation Courts Review, 31*, 282–298.

- Johnston, J. R., & Girdner, L. K. (2001, January). Family abductors: Descriptive profiles and preventive interventions. *Juvenile Justice Bulletin* (No. NCJ 182788). Washington DC: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Johnston, J. R., Lee, S., Olesen, N. W., & Walters, M. G. (2005). Allegations and substantiations of abuse in custody-disputing families. *Family Court Review*, *43*, 283–294.
- Johnston, J. R., & Roseby, V. (1997). *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce* (pp. 193–220). New York: Free Press.
- Johnston, J. R., Walters, M. G., & Olesen, N. W. (2005). Is it alienating parenting, role reversal or child abuse? An empirical study of children's rejection of a parent in child custody disputes. *Journal of Emotional Abuse*, *5*, 191–218.
- Kelly, J. B., & Johnson, M. P. (2008). Differentiation among types of intimate partner violence: Research update and implications for interventions. *Family Court Review*, *46*, 476–499.
- Kropp, P. R., Hart, S. D., Webster, C. D., & Eaves, D. (1999). *Spousal assault risk assessment guide*. Toronto, Ontario, Canada: Multi-Health Systems Inc. and B.C. Institute Against Family Violence.
- Lieberman, A. F., & Van Horn, P. (1998). Attachment, trauma, and domestic violence: Implications for child custody. *Child & Adolescent Psychiatric Clinics of North America*, *7*, 423–443.
- Loseke, D. R., & Kurz, D. (2005). Men's violence toward women is the serious social problem. In D. R. Loseke, R. J. Gelles, & M. M. Cavanaugh (Eds.), *Current controversies on family violence* (2nd ed., pp. 79–96). Thousand Oaks, CA: Sage.
- McGill, J. C., Deutsch, R. M., & Zibbell, R. A. (1999). Visitation and domestic violence: A clinical model of family assessment and access planning. *Family and Conciliation Courts Review*, *37*, 315–334.
- Moloney, L., Smyth, B., Weston, R., Richardson, N., Qu, L., & Gray, M. (2007). *Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study* (Australian Institute of Family Studies Report No. 15). Melbourne, Australia: Australian Institute of Family Studies.
- Neilson, L. C. (2004). Assessing mutual partner-abuse claims in child custody and access cases. *Family Court Review*, *42*, 411–438.
- Palarea, R. E., Zona, M. A., Lane, J. C., & Langhinrichsen-Rohling, J. (1999). The dangerous nature of intimate relationship stalking: Threats, violence, and associated risk factors. *Behavioral Sciences and the Law*, *17*, 269–283.
- Pence, E., & Dasgupta, S. D. (2006). *Re-examining "battering": Are all acts of violence against intimate partners the same?* Unpublished manuscript, Praxis International, Inc.
- Scott, K. L., & Crooks, C. V. (2004). Effecting change in maltreating fathers: Critical principles for intervention planning. *Clinical Psychology: Science and Practice*, *11*, 95–111.
- Shaffer, M., & Bala, N. (2003). Wife abuse, child custody and access in Canada. In R. Geffner, R. S. Igelman, & J. Zellner (Eds.), *The effects of intimate partner violence on children* (pp. 253–276). Binghamton, NY: The Haworth Maltreatment & Trauma Press.
- Sheeran, M., & Hampton, S. (1999). Supervised visitation in cases of domestic violence. *Juvenile and Family Court Journal*, *50*(2), 13–26.
- Stark, E. (2007). *Coercive control: How men entrap women in personal life*. New York: Oxford University Press.
- Statistics Canada. (2001). *Family violence in Canada: A statistical profile 2001* (Catalogue No. 85-224-XIE). Ottawa, Ontario, Canada: Minister of Industry.
- Straus, M. A. (1979). Measuring intrafamily conflict and violence: The conflict tactics (CT) scales. *Journal of Marriage and Family*, *41*, 75–88.
- Straus, M. A. (1983). Ordinary violence, child abuse, and wife-beating: What do they have in common? In D. Finkelhor, R. J. Gelles, G. T. Hotaling, & M. A. Straus (Eds.), *The dark side of families: Current family violence research* (pp. 213–234). Thousand Oaks, CA: Sage.
- Straus, M. A. (2005). Women's violence toward men is a serious social problem. In D. R. Loseke, R. J. Gelles, & M. M. Cavanaugh (Eds.), *Current controversies on family violence* (2nd ed., pp. 55–77). New Brunswick, NJ: Transaction Publishers.
- Sturge, C., & Glaser, D. (2000, September). Contact and domestic violence—the experts' court report. *Family Law*, 615–629.
- Thoennes, N., & Tjaden, P. G. (1990). The extent, nature, and validity of sexual abuse allegations in custody/visitation disputes. *Child Abuse & Neglect*, *14*, 151–163.
- Ver Steegh, N. (2005). Differentiating types of domestic violence: Implications for child custody. *Louisiana Law Review*, *65*, 1379–1431.
- Wallerstein, J. S., & Kelly, J. B. (1980). *Surviving the breakup: How children and parents cope with divorce*. New York: Basic Books.

- Websdale, N. (2003). Reviewing domestic violence deaths. *National Institute of Justice Journal*, 250, 26–31.
- Websdale, N., Town, M., & Johnson, B. (1999). Domestic violence fatality reviews: From a culture of blame to a culture of safety. *Juvenile and Family Court Journal*, 50(2), 61–74.
- White, T. B. (2007, May 11). *Kramer v. Kramer; Regina v. Kramer—When family and criminal cases co-exist*. Presented at The Family Law Summit: A Multidisciplinary Perspective. Toronto, Ontario, Canada: Law Society of Upper Canada.
- Wilson, R. F. (2001). Children at risk: The sexual exploitation of female children after divorce. *Cornell Law Review*, 86, 251–327.
- Zorza, J. (1995). How abused women can use the law to help protect their children. In E. Peled, P. G. Jaffe, & J. L. Edleson (Eds.), *Ending the cycle of violence: Community responses to children of battered women* (pp. 147–169). Thousand Oaks, CA: Sage.

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