

Parenting Arrangements After Domestic Violence

Safety as a Priority in Judging Children's Best Interest

In recent years, all states have recognized domestic violence as an important factor in determining child custody and visitation plans.¹ Although states vary in their emphasis—in some states there is a rebuttable presumption against custody for perpetrators, in others domestic violence is a primary factor to consider—their concern has been the same: to ensure that the safety of children and their primary caretakers after separation is foremost when courts determine the best interest of children. While this principle of safety has been widely accepted, implementing system change has been more challenging. There are significant gaps in training and resource development, resulting in an uneven application of assessment and intervention approaches. Compounding the complexity of this problem, the majority of litigants in family court are representing themselves, thereby leaving judges to assess explosive family issues in their rawest emotional form.

The purpose of this article is to discuss some of the controversies surrounding parent-child access and outline practical guidelines within a clinical and legal context. It begins with an overview of the relevance of domestic violence in custody and access disputes, then provides a framework for differential assessment and interventions that are based on a thorough understanding of the dynamics of violence in a particular relationship. Finally, it identifies factors that should be associated with terminating access, supervising access, or supervising exchanges, which are the most common remedies in these circumstances. Each of the considerations and remedies are discussed with respect to the clinical and research literature, followed by judicial considerations from Judge Wong.

RELEVANCE OF DOMESTIC VIOLENCE IN CUSTODY AND VISITATION

Only within the last decade have legal and mental health professionals started to acknowledge that domestic violence may be relevant to the determination of child custody and visitation. Previously domestic violence was generally seen as an adult issue not relevant to the adjustment of children. Many courts accepted, and continue to do so today, the notion that a man could

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An emerging focus in the field of domestic violence is the role of the family court and its court-related services in determining parental contact following allegations of domestic violence. This article outlines some of the controversies that arise in postseparation parenting plans for couples where one parent has a history of perpetrating domestic violence against the other. The challenge for the court is to assess individual parents in the context of children's best interest. There is consensus that exposure to both parental conflict and violence may adversely affect children's adjustment.

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Courts and community services have a mandate to limit and redress this potential harm by limiting the opportunities for children's exposure to it. Strategies to meet this mandate include minimized contact between the abusive parent and the principal caregiver and possibly limiting the parenting role of the abuser. The appropriateness of applying these strategies is predicated on a systematic approach and consensus among service providers in community agencies and the justice system on definitions of conflict and violence. The article emphasizes the need for comprehensive assessment and differentiated intervention strategies for these families. Specifically, it discusses indicators and cautions for the application of cessation of access, supervised visitation, and supervised exchange as interventions.

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be a violent spouse but still be a good father. Several groups challenged this notion and encouraged major legislative reform to recognize domestic violence as a critical factor to consider in these cases.² Similar legislative changes (and the accompanying challenges) have emerged in Canada, Australia, and New Zealand.³ Major initiatives have taken place, such as the U.S. Department of Justice's Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Supervised Visitation Program),⁴ which provides funding and technical assistance to communities for supervised visitation and exchanges in cases of domestic violence, and the new custody evaluation guidelines for judges on how to interpret and act on evaluations in cases involving domestic violence.⁵ The rationale for these changes reflects current knowledge about domestic violence and family separation:

- **Abuse does not end with separation.** Research has shown that physical abuse, stalking, and harassment continue at significant rates postseparation and may even become more severe.⁶ Promoting contact between children and a violent ex-spouse may create an opportunity for renewed domestic violence through visitation and exchanges of children.⁷
- **There is a significant overlap between domestic violence and child maltreatment.** The presence of domestic violence is a red flag for the co-existence of child maltreatment. In a review of studies investigating this overlap, results suggested that between 30 and 60 percent of children whose mothers had experienced abuse were themselves likely to be abused.⁸
- **Batterers are poor role models.** Children's socialization with respect to relationships and conflict resolution is negatively affected by exposure to a perpetrator of domestic violence. For example, when children witness one parent inflicting abuse upon the other or using threats of violence to maintain control within a relationship, their own expectations about relationships may come to parallel these observations.⁹ The potential of violence in a batterer's subsequent intimate relationships represents a threat that children's exposure to poor modeling will continue.
- **Victims of domestic violence may be undermined in their parenting role.** Perpetrators of domestic violence may undermine their (ex-) partners' parenting in ways both obvious and insidious.¹⁰ For example, batterers may blame the children's mother for the dissolution of the family or explicitly instruct the children not to listen to her directions.¹¹ Intervention with these fathers requires that this facet of their parenting be addressed; fathers need to both recognize the ways in which they undermine their children's mother and commit to stopping these behaviors.¹²
- **Perpetrators may use perpetual litigation as a form of ongoing control and harassment.** The family court can inadvertently become a tool for batterers to continue their abusive behavior.¹³ Litigation exacts a high emotional

and financial price for abused women already overwhelmed with the aftermath of a violent relationship. Some authors have suggested that many batterers have exceptional skills to present themselves positively in court and convince judges to award them custody.¹⁴

- **In extreme cases, domestic violence following separation is lethal.** Domestic violence and homicides are inextricably linked. National figures from the United States and Canada suggest that women are most at risk of homicide from estranged partners with a prior history of domestic violence.¹⁵ Thus, risk of homicide in domestic violence cases requires diligent investigation because of this growing literature linking domestic violence, separation, and homicide. Risk assessment tools have been developed to assist with this work.¹⁶ In these extreme cases, children may become involved as witnesses to homicides or become homicide victims themselves.¹⁷ Child abduction represents another traumatic outcome in these cases and represents a batterer's ultimate desire to regain control after the separation and to punish the former partner.

FRAMEWORK FOR DIFFERENTIAL ASSESSMENT AND INTERVENTION

The term *domestic violence* refers to violence in the context of an intimate relationship. Our discourse in this article is intended to focus on those relationships where there is a demonstrated *pattern* of abuse over the course of a relationship. These relationships may be heterosexual or same-sex relationships. Men or women may be perpetrators and victims, but for the purposes of our discussion we will highlight the issues most relevant to cases of male perpetrators and female victims. This emphasis is justified by the existing literature on violence that identifies male-perpetrated violence as that which is more likely to engender fear, serious harm, and concern about the safety of children.¹⁸

While domestic violence is relevant to child custody determinations in general, the range of relationships and histories that fall under the rubric "domestic violence" requires a range of interventions. Although historically the term *domestic violence* was reserved for a pattern of abuse and violence that included a significant power differential in the relationship, it is sometimes used more indiscriminately to refer to any episode of violence. Without minimizing the impact of any assault, a single incident of mutual pushing during an emotional period of separation is notably different from a longstanding pattern of terror, humiliation, and abuse. In this respect, a clinical assessment of domestic violence may yield very different results than a legal one. The civil and criminal justice system is by definition incident-based, which means that one incident can trigger a finding of domestic violence. Conversely, numerous subthreshold behaviors (in the legal sense) would not meet the legal standard but might clearly be part of a larger pattern of domestic violence. The role of clinical assessment is to evaluate the context of the behaviors—their intent, the impact on the victim, the degree to which the behaviors interfere with parenting and child well-being, and so forth. The context of isolated acts of violence is critical in a clinical determination of domestic violence.¹⁹

One source of confusion in the clinical assessment of domestic violence has come from the term *high conflict*, which has been used to describe the more intense and protracted disputes that require considerable court and community resources and that include domestic violence cases.²⁰ Compounding this confusion, the original and most popular measure of marital violence is called the "Conflict Tactics Scale," which involves a range of behavior from "insulted" to "used a knife or gun."²¹ In the average courtroom the terms *domestic violence*, *conflict*, and *abuse* may be used interchangeably, without any clear definition or understanding of the terms.

In recent years it has been argued that a clearer distinction needs to be made between high-conflict and domestic violence cases in terms of assessment and intervention strategies.²² In any event, the use of

these and related terms underscores a major controversy in the family court in which domestic violence advocates are concerned that domestic violence will be euphemized as conflict and others argue that any conflict may be interpreted as domestic violence. Even when domestic violence is identified, does the term *batterer* accurately describe the perpetrator or is the incident minor, historical, or isolated? Perpetrators and victims represent a heterogeneous mix of individuals and of relationships that differ with respect to intent, impact, frequency, and severity.²³ Although perpetrators of domestic violence are often indiscriminately labeled as batterers, we would argue that the term *batterer* should be reserved for individuals who demonstrate over time a pattern of abusive behaviors that are designed to control, dominate, humiliate, or terrorize their victims.

As we have argued elsewhere,²⁴ the difference between high conflict and domestic violence is a critical one. A clinical finding of domestic violence (versus high conflict) should be based on careful assessment and should lead to a differential outcome. Specifically, we have described the current approach to parenting plans (i.e., the focus on collaborative family law and shared parenting) as a superhighway that requires specific and well-marked off ramps for high conflict and domestic violence cases. In this article, we further operationalize this approach by identifying indications and contraindications for a specific range of remedies including cessation of access, supervised access, and supervised exchanges.

CONSIDERATIONS IN DETERMINING A DIFFERENTIAL RESPONSE

Once there is a clinical or judicial finding of domestic violence, numerous considerations should come into play in the choice of a specific remedy, including the

- safety of the children and principal caregiver;
- meaning and impact of the children's exposure to violence, the degree to which children have been drawn in as instruments of the abuse, and overlapping forms of maltreatment;

- identification of the extent to which the court process is being utilized to extend the power and control issues within the intimate relationship;
- availability of appropriate interventions for the principal caretaker and children; and
- ability of the court and court-related services to monitor safety and compliance with necessary reviews to hold parties accountable.

Each of these considerations is discussed briefly in the following section. They are discussed first from a clinical and research perspective, then with regard to judicial considerations in assessing the information that is before the court.

THE SAFETY OF THE CHILDREN AND PRINCIPAL CAREGIVER

Clinical and research literature. The many lessons learned from domestic violence death-review committees across the United States point to the importance of risk assessment awareness and tools.²⁵ These lessons underscore the critical period of separation and the warning signs of repeat violence and dangerousness, and the potential for lethal violence. For example, a history of domestic violence (particularly in combination with controlling behavior and/or access to weapons), stalking, threats to harm partner or self, and violation of previous court orders have all been identified as red flags in assessing dangerousness.²⁶ In these circumstances, the court must consider suspending the parent's contact with the children until a more thorough risk assessment and therapeutic interventions have been implemented. Provisions for ongoing risk management are also required.

Judicial considerations. The court's greatest initial challenge is to identify those cases in which domestic violence is an issue. It is far easier to identify cases of substantiated child abuse and cases where the parties are legally sparring with each other. However, the intended consequences of domestic violence (i.e., intimidation, silence, and fear), coupled with ill-

trained attorneys and the growing pro se population of litigants, increase the odds that the court simply will not know enough about the parties to be concerned about safety issues.

Courts must develop systems, procedures, and personnel able to provide at least rudimentary screening. For example, even the most resource-starved court must be able to search its own and related law enforcement databases for parties' previous contacts with the various systems. Some jurisdictions have successfully developed staff who actively assist the judge with relevant data gathering, sophisticated initial and ongoing risk assessments, and recommendations linking the principal caregiver and children's safety needs to available community resources.

CHILDREN'S EXPOSURE TO VIOLENCE AND OVERLAPPING FORMS OF MALTREATMENT

Clinical and research literature. Although exposure to domestic violence is harmful for most children,²⁷ there is considerable variability in the outcomes of individual children. A thorough clinical assessment identifies the impact of exposure to domestic violence. In addition to the more obvious potential effects (e.g., trauma symptoms, emotional and behavioral problems, difficulties at school), assessors should probe for more subtle impacts with respect to children's views of relationships, justification of violence, and victim blaming. The assessment should also include an evaluation of the extent to which children are being used as instruments of domestic violence and the potential for co-occurring forms of child maltreatment. While the finding of overt physical or sexual abuse quickly triggers the child protection system, the experience of the authors (Jaffe and Crooks) as custody evaluators has led them to probe carefully for a specific form of ongoing emotional abuse.

Specifically, in cases where the perpetrator of domestic violence feels unjustly blamed or victimized by the system, he may go to great lengths to rationalize his behavior to his children and to place blame on their mother. For example, a 6-year-old child might solemnly explain to the custody evalu-

ator, "Daddy says Mommy has got away with her crap for too long and that he is going to take her to court to teach her a lesson." This ongoing exposure to inappropriate topics of conversation and belittling of the other parent constitutes a form of ongoing emotional abuse that affects children's sense of emotional security.

Judicial considerations. The "culture" of the legal field in domestic relations, child custody litigation, and family law still appears to subscribe to the *Leave It to Beaver* divorce—i.e., "Let's all get through this difficult time as decently as possible and everything will work out in the end." Despite the growing awareness that exposure to domestic violence harms children, the legal culture has not caught up to the fact that it itself may be furthering the harm to children. Although the vast majority of separating couples can work out their differences with very little court intervention, the domestic violence cases require a higher level of care and vigilance.

As with other needed legal conventions, such as maintaining civility in the courtroom and "no-continuance," judge-controlled case management, the responsibility falls on the court to model application of the growing body of knowledge and to demand consideration of that knowledge from practitioners. Sometimes judicial officers may find themselves in a position of knowing more about domestic violence than the litigants and their lawyers and may have to ask the difficult questions that nobody else in the court raises.

USE OF THE COURT PROCESS TO EXTEND POWER AND CONTROL

Clinical and research literature. In some cases of domestic violence, perpetrators actively employ the legal system as a means of maintaining ongoing control of their victims.²⁸ Indicators that this misuse is occurring include an investment in custody and/or access that is out of keeping with a parent's previous involvement in child rearing and an inability to focus on children's interests in the assessment process. Simultaneous misuse of the child protection

system is not uncommon in these cases; excessive reports to child protection authorities on minimal grounds for concern may indicate this tendency to use official systems for harassment purposes.

Judicial considerations. Misuse of court process is an extremely frustrating reality for judges to witness, particularly in cases of financial inequality. Judges need to balance heavy-handed techniques (such as declaring a party a “vexatious litigant” under relevant court rules) with the strong prevailing philosophy of public access to the courts and with the concern that parties must have continuing access when court orders affect children. If a litigant is able to manipulate various case types into existence (e.g., protective order, divorce, and child welfare cases), even the most coordinated of family courts are hard pressed to keep up. When these factors are coupled with a lack of judicial accessibility to screening and assessment for domestic violence and other forms of maltreatment, the judge’s quandary is complete.

As distasteful as the word *activism* may be to some judges, courts have a responsibility to work within the judicial system to develop procedures to assist their decision making in such situations where the system is vulnerable to abuse. Furthermore, they must also work outside of the judicial system to encourage community responses that increase pro bono and affordable legal services to help overcome the resource imbalance that often is present in domestic violence cases.

Courts need to develop a process, compatible with their own rules of court and court practice, that will strike a middle ground between a formal declaration of “vexatious litigant” and unfettered manipulation of the court by a party. The court’s adoption of criteria (such as those factors found in the section “The Safety of the Children and Principal Caregiver”), coupled with early screening, early assessment, and then periodic assessment thereafter, could identify cases earmarked for stricter control by the court. Such control could be accomplished by assigning the case to just one judge for all related matters and proceedings, judicial gatekeeping of certain fil-

ings, increased disposition of motions without court hearing, and judicious application of sanctions. This course of action is akin to application of differentiated case management techniques to control the course and conduct of litigation.

Courts must also assist workers in the areas of child protection and domestic violence to truly communicate with one another about how to ensure safety for the child and how to bring the “cultures” and practices of the two groups closer together. Without this bridge building, courts will continue to make less than adequate court orders.

AVAILABILITY OF APPROPRIATE INTERVENTIONS

Clinical and research literature. Good evaluations depend on appropriate and accessible resources in the community to make recommendations that are based in reality. In complex child custody disputes involving domestic violence, a host of services may be required to meet the needs of victims, perpetrators, and their children. If these services are not available or timely, intervention recommendations are meaningless. But if these services are unavailable, safety cannot be compromised. Thus, in cases where an assessor concludes that a certain level of service would facilitate more liberal access between the perpetrator and children but the services do not exist, we would encourage the assessor to err on the side of conservative recommendations to ensure safety.

For example, in a case where access should be supervised by professionals but no supervised-access center exists, then the recommendation should be a cessation of access until safety can be ensured. Too often we see the opposite, lack of appropriate services leading to more lenient decisions, such as the use of well-meaning but ill-equipped family or church members to fill the need for professional supervised access. In addition, custody evaluators should be encouraged to watch for opportunities to advocate for system reform. To assist in this advocacy role, evaluators may want to team up to compile a wish list for appropriate funding from state or private sources.

Judicial considerations. The notion of “safety first” can be a very divisive issue between persons working in the area of domestic violence and the courts, not unlike the issue of using court-ordered mediation in domestic violence cases. In both areas, court-ordered interventions are only as good as the options available to the judge. Judges strive to do their best given the acknowledged limitations noted elsewhere in this article. Decision making based on partial knowledge is a reality faced by courts every day, and judges are well aware that safety may be compromised. Courts and communities therefore must work together to establish and expand appropriate supervised visitation and safe exchange programs. Other avenues must be examined as well because these programs will not be able to provide services for all cases. Courts may need help envisioning how to determine or structure safe court orders that incorporate family members and other nonprofessionals. In addition to financial and other resource limitations, the facts of the case and/or the characteristics of a child or parent may dictate a less formal intervention. Considerations for this remedy are discussed in more detail later in this article.

Judges must also face how to administer “fairness” and “justice” in those cases where there are no community resources and the only perceived options are to (1) grant custody to a parent who has perpetrated domestic violence but who may continue to pose safety concerns to the other parent or (2) grant custody to a parent who has been rendered incapable of basic parenting by a number of factors that may or may not improve upon separation, including substance abuse and/or other issues that may have resulted from the domestic violence perpetrated by the abusive parent. This dilemma alone is sufficient to encourage appropriate judicial “activism” in the community.

ABILITY TO MONITOR SAFETY AND COMPLIANCE WITH NECESSARY COURT REVIEWS

Clinical and research literature. In our experience, clinical evaluations offer snapshots of families at a

point of crisis, with the best possible recommendations for indicated interventions. Ideally, these recommendations are built on a prognosis implying a prediction of the future dependent on family members' motivation and capacity to attend and gain from recommended interventions. The initial snapshot needs to be turned into a moving picture with ongoing snapshots that provide reliable and valid information. In criminal proceedings, judges can rely on probation officers to monitor adherence to court orders and assess ongoing risk. In child protection proceedings, mandated risk assessments at regular predetermined intervals facilitate this monitoring process. The lack of a similar process in family court translates into wishful thinking that no news is good news. In our experience, families who do not come back to court are as likely to have used up their emotional and financial resources without any sense of progress in addressing the issues that brought them to court in the first place as they are to be living in relative harmony according to the provisos of the parenting plan.

Judicial considerations. Court reviews in isolation may not be as useful as court reviews that are an integral part of a procedure that begins with careful screening and assessment and ends with a community responsively providing services to the child, the victim of the abuse, and the perpetrator of the abuse and holding the perpetrator accountable by ensuring compliance with court orders. There is much debate in judicial circles about how active judges should be in managing cases. Heavy dockets and funding reductions in court resources may discourage judges from adjourning a matter to another date and receiving a progress report about the parents' ability to follow through on treatment plans. However, lack of effective enforcement of court orders is a serious problem, especially in complex cases involving domestic violence in which it may not serve the children's best interest to wait until one of the parents applies for a review hearing based on new crises.

FACTORS ASSOCIATED WITH CHILD ACCESS: INDICATIONS FOR SPECIFIC REMEDIES

When domestic violence has been identified as a relevant factor in the determination of a parenting plan, the court is left with the decision of whether to invoke one of three basic remedies that provide additional structure and supervision. In extreme cases, where a parent is a danger to the child and/or her principal caretaker, there may be a cessation of all contact until safety can be assured. In less extreme cases, the contact between a child and the perpetrator of domestic violence may be supervised by specialized staff in a structured setting. Informal supervision arrangements can also be recommended in situations that meet particular criteria. An even less restrictive option is supervised exchanges where the victim is protected from direct contact with the perpetrator but the child-parent contact is unsupervised. In cases of a minor, isolated incident of violence, where the perpetrator has clearly accepted responsibility and there are no safety concerns, the court may not require one of the three aforementioned remedies and may consider the whole range of parenting plans available to the court. In the following section we discuss these three remedies from both a clinical and a judicial perspective.

CESSATION OF PARENT-CHILD CONTACT

Clinical and research literature. The most difficult recommendation for a clinician to make or a court to consider is termination of contact between a parent and a child. In child protection hearings, this is a more common consideration after a history of child abuse, risk to the child, and lack of demonstrated ability to benefit from previous interventions have been shown. In a custody dispute, it is rare to consider terminating parental contact. However, when a perpetrator of domestic violence is a clear and present danger to his ex-spouse and/or children or the impact of past trauma is so severe that a healthy parent-child relationship is unlikely to emerge, then termination of access must be considered. The lat-

ter is particularly difficult, as it may occur in cases where a perpetrator has taken full responsibility and benefited from intervention; nonetheless, in some cases the damage to relationships is beyond repair. Obvious cases include children who have witnessed homicide or life-threatening injuries or ex-spouses who are in witness protection programs. Less obvious cases include children who have overt posttraumatic symptomatology that is triggered by any cues associated with the perpetrator.

These less obvious cases are extremely difficult to assess, in part because there is little research to guide decision making. While it is impossible to conduct experimental research in which families are randomly assigned to conditions, some recent studies counter the prevailing notion of maintaining some form of access between a parent who is violent and the children. For example, a study on the effects of father visitation on preschool-aged children in families with a history of domestic violence found a complex pattern of results.²⁹ The impact of father visitation depended somewhat on the severity of the violence that the fathers had perpetrated. Furthermore, father visitation was associated with better child functioning in some domains but more impaired functioning in others. The results primarily indicated the need for much more evaluation of the impact of father visitation.

Another study, one not focusing specifically on domestic violence but on the variability in the impact of father presence, demonstrated the negative impact of violent fathers on children's development.³⁰ In this study using data from an epidemiological sample of 1,116 5-year-old twin pairs and their parents, results showed that the less time fathers lived with their children the more conduct problems their children had, but only if the fathers engaged in low levels of antisocial behavior. In contrast, when fathers engaged in high levels of antisocial behavior, the more time they lived with their children the more conduct problems their children had. Although much more research is necessary in this area, emerging evidence indicates the possible need to rethink the presumption of access in all cases.

Judicial considerations. Prohibiting contact between a parent and child, even temporarily, is viewed as a drastic judicial remedy. Withholding visitation altogether demands much self-awareness and reflection by a judge. In the usual case, where the evidence is poorly developed and presented or where the equities and facts are not compelling, courts would reasonably order some form of visitation between the child and the perpetrator of domestic violence. However, in those cases where present danger is reasonably foreseeable or severe past trauma has been reasonably established, courts still remain reluctant to prohibit contact between the perpetrating parent and child. Individual judges must face their reluctance. It may be that, relative to other types of cases, this area is still “new.” For instance, termination of parental rights in child welfare cases used to be a much rarer occurrence than it is today. Although it remains a highly difficult part of the job of being a judge, it has taken root in the judicial landscape as the number of juvenile dependency cases grows, along with the knowledge of harm suffered by children in flux for too long and a confidence that the court is doing the “right thing” in a fair number of these cases. As courts continue to develop expertise in the domestic violence area, jurisdictions can develop protocols and checklists of considerations to apply to the hard decision of prohibiting parent-child contact.

SUPERVISED ACCESS

Clinical and research literature. Consideration of supervised access is most relevant when there appears to be an attachment between the parent and child that is worth preserving but the clinician is uncertain about the child's physical and emotional safety. Emotional safety is compromised when a parent continues to undermine a child's sense of stability and security in their current circumstances. Supervision offers protection for a child while at the same time maintaining the relationship at an intensity and frequency that is developmentally appropriate. The visits can be complemented by school reports, exchange of holiday gifts, and updated medical

reports as appropriate. Often in these circumstances, perpetrators have modeled inappropriate behaviors, which become the important boundaries for the supervisor to monitor.

In our experience, appropriately qualified and trained supervisors and supervision centers cannot be replaced by well-intentioned and naïve informal supervisors, who tend to lack not only the requisite training and awareness of issues but also do not have access to critical background information that is before the court. Thus, while untrained supervisors may be able to guard against blatant physical or sexual assault, they are poorly equipped to recognize and intervene when the perpetrator insidiously oversteps boundaries. A key concern about supervised visitation is that it is a time-limited intervention that should lead to a cessation of the relationship or a gradual withdrawing of supervision conditions. Withdrawing of conditions should not be an automatic next step following successful supervised access. A gradual plan, with the onus on the perpetrator to show an adequate ability and commitment to protecting the child from emotional harm, is required. The difficulty arises when it is not clear who bears the responsibility for assessing the perpetrator's progress or compliance with conditions. For example, a custody evaluator can propose an 18-month plan for reducing supervision *if things go well*, but if it falls on the other parent to return the matter to the court for appropriate orders, the plan to progressively reduce supervision may unravel, even when it is not in the best interest of the children.

In some instances, the use of informal volunteers as supervisors (such as the paternal grandmother) can be helpful. They may be most appropriate in cases where the concerns are not so much about safety as the need for assistance with parenting. We see many cases where a father who has been minimally involved in the basic care of his children receives access visits, causing great anxiety for the custodial parent (who may be aware, for example, that the father has never changed a diaper or prepared a bottle). If the father is not a danger to the children or their mother but requires support and monitoring during visits, an

informal supervisor may be appropriate. In these cases, the informal supervisor can probably assist the father in learning child-care skills and provide corrective feedback if necessary. However, it is less likely that this same supervisor could detect and intervene in boundary violations, such as the father's harassing the children to report on their mother's actions.

Judicial considerations. In many cases, the service of a supervised visitation center is the only assurance of safety offered to the principal caregiver and children. And yet, while courts are relieved to have this option to include in the court order, there may not be enough collaboration and coordination between the court and the visitation center. Courts must be aware of the range of services as well as the reasonable limitations of the supervised visitation centers and programs in their communities. They must identify those court practices that hinder the work of the center or program. For example, are the courts neglecting to provide important information that is readily available in the court record?

In most cases, supervised visitation will be temporary, whether supervised by a professional program or by informal volunteers. The considerations for the timing of cessation and/or gradual transitioning of supervision are fairly straightforward—i.e., the perpetrator's compliance with the court orders and/or treatment plan, whether the perpetrator has shown observable and measurable improvements vis-à-vis domestic violence as well as parenting, whether safety concerns for both the children and the principal caregiver have realistically lessened. While the considerations are easily articulated, the courts' real problems are resources, case management, monitoring, and enforcement. The state is not a party in family law cases, unlike child welfare cases, and bears no responsibility to act. In cases with very little private resources, the court can draft an order that attempts to link the principal caregiver with public agencies and advocacy groups. Ideally, the court would set reviews. In cases with resources, the court can depend on the parties' bringing the case back to court when necessary. However, in all cases, as

with all court orders, a material change in circumstances should be required before protective terms and conditions are deleted or modified. Although courts generally favor agreements and stipulations, domestic violence cases require a judge's heightened review concerning issues of safety.

SUPERVISED EXCHANGES

Clinical and research literature. The least restrictive of the three remedies discussed in this article is supervised exchange. The principal goal in this intervention is to protect the victim from any ongoing harassment by the perpetrator. Even if perpetrators have changed their behavior, their very presence may trigger distress and anxiety for the other parent and children who are fearful to have their parents in the same doorway. This intervention is recommended for perpetrators who are not considered dangerous or likely to reoffend but still require an intermediate step before more flexible parenting plans can be put into effect. This strategy is also effective in high-conflict divorce cases where there is no domestic violence history but still a need to protect children from ongoing emotional harm brought upon by parental conflict. These exchanges can be built into existing children's routines—for example, one parent picks up the children from school on a Friday and drops them off at school on the following Monday morning. Another situation that can be greatly ameliorated by these structured, supervised exchanges is when the perpetrator of domestic violence is not posing a danger of physical harm but is exercising power and control by inconsistently showing up or being punctual for the exchanges or by habitually returning the children late.

Judicial considerations. Courts have the greatest confidence in supervised exchanges that are administered by trusted supervised visitation centers. However, the dilemma of scarce resources and the problem of faulty or incomplete screening and assessment mean that courts will settle for other reasonable and not-so-reasonable solutions in both domestic violence and high-conflict cases. Supervised exchanges,

like supervised visitation, are viewed as time-limited interventions and the “end of the road” for court involvement. But it is imperative that the court give serious thought to setting up “feedback loops” to avoid the “no news is good news” trap. Although supervised visitation centers are not intended to perform evaluation, they are often a source of valuable information about parents’ ability to comply with court orders and to demonstrate some basic signs of responsible behavior. Together with other sources of information, information from the visitation center may help the judge develop a better appreciation of the parents’ ability to follow through on court recommendations.

CONCLUSION

Courts and court-related services are beginning to recognize domestic violence as a significant factor in the determination of child custody decisions. Although child abuse has long been recognized by the court as a detriment to children, domestic violence was previously seen as an adult issue and deemed irrelevant to children’s well-being. Since the initial publication of the Model Code on Domestic and Family Violence,³¹ subsequent endorsements of the U.S. Congress, the American Bar Association, and the American Psychological Association have led state legislators to revise extant child custody legislation.³² However, legislative change has only been the first step in changing awareness, training, resources, and everyday practice.

With practice developing in this area there is a clear hunger for appropriate assessment tools and intervention resources. As mentioned earlier, a number of encouraging developments support this awareness. One important development in the United States is the considerable expansion of supervised visitation and exchange services through the Supervised Visitation Program. Through this program the Office on Violence Against Women (OVW), U.S. Department of Justice, has poured millions of dollars into 63 communities throughout the country and into select territories to develop supervised visitation and safe

exchange services for victims of domestic violence, sexual assault, stalking, and child abuse. In addition to funding communities to provide services to families, OVW has funded Praxis International, Inc., and the National Council of Juvenile and Family Court Judges (NCJFCJ) to provide technical assistance to those communities. As a result of the Supervised Visitation Program, the United States is taking a closer look at how to address the needs of battered parents and their children in a visitation setting.

Additionally, the NCJFCJ has launched, in partnership with the Family Violence Prevention Fund, seminars for judges on enhancing judicial skills in domestic violence cases. Courses include curricula focused on improving judicial decision making in custody cases involving domestic violence. These and other similar initiatives build capacity in the judicial system and provide much needed tools and guidelines.

Increasingly, the field is demanding clear definitions of domestic violence and more prescriptive guidelines for how to manage parent-child access in cases with domestic violence. Unfortunately, the complexity of these cases precludes simple formulae to measure dangerousness and match to parenting plans. In this article we have tried to capture some of the challenges in the field, which demand better informed clinical practices and thoughtful decision making on the part of judges. The justice system needs to develop more effective models for assessing, intervening, and monitoring change in these intricate family systems. Rather than looking at court intervention as an isolated, discrete event, judges need to be more actively involved in reviewing their court orders and ensuring both safety for victims and accountability for perpetrators.

In our travels across the United States we have seen a desperate need for adequate resources to meaningfully implement the legislative change in domestic violence law. Beyond these resources, applied research needs to expand to offer feedback on the effectiveness of differential interventions. Furthermore, this outcome research should address the whole system rather than singling out components.³³

To draw a parallel to the effectiveness of batterer intervention in the criminal justice system, collaboration and integration of justice and community service systems is not merely a lofty goal but the only thing that really matters.³⁴ The same fundamental truth is likely to underlie our success or failure in dealing with domestic violence in the family court.

NOTES

1. 1–10 NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES [hereinafter NCJFCJ], FAMILY VIOLENCE: LEGISLATIVE UPDATE (1995–2004).
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3. Peter G. Jaffe & Claire V. Crooks, *Partner Violence and Child Custody Cases: A Cross-National Comparison of Legal Reforms and Issues*, 10 *Violence Against Women* 917 (2004).
4. Violence Against Women Act of 2000, § 1301, 42 U.S.C. § 10420 (2000) (creating the Safe Havens for Children Pilot Program). See also Office on Violence Against Women, U.S. Dep't of Justice, at www.usdoj.gov/ovw/safehaven_desc.htm.
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8. Jeffrey L. Edleson, *The Overlap Between Child Maltreatment and Women Battering*, 5 *VIOLENCE AGAINST WOMEN* 134 (1999).
9. LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 2 (Sage Publ'ns 2002).
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11. See BANCROFT & SILVERMAN, *supra* note 9, at 7.
12. Katreena L. Scott & Claire V. Crooks, *Effecting Change in Maltreating Fathers: Critical Principles for Intervention Planning*, 11 *CLINICAL PSYCHOL.: SCI. & PRAC.* 95 (2004), available at <http://clipsy.oxfordjournals.org/cgi/reprint/11/1/95>.
13. See Jaffe et al., *supra* note 7, *passim*.
14. Joan Zorza, *How Abused Women Can Use the Law to Help Protect Their Children*, in *ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN* 147 (Einat Peled et al. eds., Sage Publ'ns 1995); Janet Bowermaster & D. Johnson, *The Role of Domestic Violence in Family Court Child Custody Determinations: An Interdisciplinary Investigation* (Oct. 1998) (unpublished paper presented at the Fourth Annual International Conference on Children Exposed to Domestic Violence, San Diego, Cal.).
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