

Chapter 22

Factoring in the Effects of Children's Exposure to Domestic Violence in Determining Appropriate Postseparation Parenting Plans

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INTRODUCTION

Over the past thirty years, children's exposure to domestic violence (DV) has gone from being an overlooked phenomenon to a topic of considerable research and debate. As understanding of the detrimental impacts of DV has grown, it has become increasingly clear that DV is not a matter that solely affects adults, but rather can have an enormous impact on children's development. As a result, researchers and practitioners have been challenged to apply this understanding to child custody determinations. Although there are significant gaps in the research literature, the existing studies show that as a group, children who have been raised in families where there has been violence between the adult intimate partners fare worse than their peers across a range of social, behavioral, and learning outcomes. Unfortunately, much of this research on children's functioning has focused exclusively on the identification of specific pathologies, reducing children's adjustment to the presence or absence of particular behavior problems and disorders. Questions of resilience and vulnerabilities of children have received little attention in the research.

In this chapter we highlight the need for understanding and assessing the impact of exposure to DV on individual children within a developmental framework—that is, in light of the specific developmental tasks of each childhood stage. From this perspective, exposure to DV is likely to interfere with different aspects of development for infants and toddlers, preschoolers, school-aged children, and adolescents. In the second half of the chapter, we identify a set of principles to use when considering competing priorities in developing child-focused parenting plans in cases affected by DV. Finally, we discuss a number of examples of specific dilemmas faced by judges, custody evaluators, and other advocates and advisors in establishing what constitutes the best interests of children who have been exposed to DV.

CHILDREN EXPOSED TO DOMESTIC VIOLENCE: THE BIG PICTURE

In considering the big picture of children's exposure to DV, there are two provisos that need to be kept in mind. First, the phrase itself—*children exposed to domestic violence*—is really a euphemism for a range of damaging experiences. The label originally applied to children of mothers who were battered by a partner, as child "witnesses" of DV. However, the terminology evolved with the recognition that the destructive effects arise even if children do not directly observe intimate partner violence and, further, that children's experiences are often more active than implied by the

term "witnessing." In a large four-city study utilizing phone interviews with children, "exposure" was found to include a wide range of circumstances, including hearing a violent event, visually witnessing the event, intervening, or being directly involved in the violent event (e.g., being used as a shield against abusive actions), and experiencing the aftermath of a violent event.¹

Another study used police-collected data over the course of a year to investigate the patterns of DV to which children are exposed.² Police officers used a standard, validated protocol to collect data on all substantiated DV within a large municipality. When analyzed, police protocols revealed that almost half of all events had children present, and 81 percent of these incidents involved children being directly exposed to the violence. Young children (under age six) were at particular risk for exposure. In addition, children were disproportionately exposed to the most unstable and dangerous profiles of DV, including those involving weapon use, mutual assault, and substance abuse.

Even if a child does not directly observe spousal abuse, living in a home where there is spousal abuse can have serious negative effects. One researcher observes the following:

Hiding in their bedrooms out of fear, the children may hear reported threats of injury, verbal assaults on their mother's character, objects hurled across the room, suicide attempts, beatings, and threats to kill. Such exposure will arouse a mixture of intense feelings in the children. These feelings include a fear that the mother will be killed, guilt that they did not stop the violence, divided loyalties, and anger to the mother for not leaving.³

Beyond the role(s) that children may play or the experiences that they have in witnessing the abuse of their mothers, there are other contextual layers that add to the heterogeneity of the experience for different children. The relationship of the perpetrator to the victim parent and to the child, the severity and frequency of the violence, and the age of the child when he/she experiences familial violence are examples of contextual factors that can vary widely from case to case. It is essential to keep this heterogeneity in mind and not assume uniform characteristics or experiences for children who have been exposed to violence perpetrated against their mothers.

Second, most existing research has focused on extreme cases of DV (i.e., battering). A pattern of repeated incidents of battering of a female partner by her abusive male partner is the most frequently studied, and typically the most destructive and dangerous, pattern of intimate partner violence, but it is only one among several.⁴ Compared to other forms of DV that may be perpetrated on a more equal basis between partners or may be limited to a short period around the dissolution of a relationship, battering is an ongoing use of threat, force, emotional abuse, and other coercive means to dominate one partner and induce fear, submission, and compliance. In studies of shelter and criminal court samples, men are almost always the offenders, and women are victims in cases of this type.

¹ J.L. Edleson, "Children's Witnessing of Adult Domestic Violence," 14(8) *J. Interpersonal Violence* 839 (1999).

² J.W. Fantuzzo & R.A. Fusco, "Children's Direct Exposure to Types of Domestic Violence Crime: A Population-Based Investigation," 22 *J. Fam. Violence* 543 (2007).

³ D.G. Saunders, "Child Custody Decisions in Families Experiencing Woman Abuse," 39 *Social Work* 51, 54 (1994).

⁴ M.P. Johnson, "Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women," 57 *J. Marriage & Fam.* 283 (1995).

As we have argued elsewhere, it is important not to apply policies and procedures developed with respect to male batterers indiscriminately to all cases of DV.⁵ Failure to differentiate among different types of violence can, on one hand, lead to inefficient usage of scarce resources by conceptualizing any incident of violence as battering (e.g., termination of visitation or requiring supervised visitation when not necessary) and can harm a positive parent-child relationship. On the other hand, minimizing battering as "couples conflict" can result in a failure to institute the proper safeguards for women and children. Given the scope of this volume, this chapter addresses the needs of children who have been exposed to the battering of their mother by a male partner, rather than providing an exhaustive analysis of all forms and combinations of violence perpetrated within intimate relationships (i.e., female-to-male violence, mutual abuse, and violence within same-sex male and female relationships).

With these two provisos in mind, the extant literature has documented a range of negative impacts for children exposed to the abuse of their mothers by a male partner. These outcomes include numerous behavioral and psychological difficulties that have been identified in a number of reviews and meta-analyses.⁶ Most notably, research indicates that children exposed to DV are more likely than other children to be aggressive and have behavioral problems,⁷ have different physiological presentations,⁸ exhibit higher rates of posttraumatic stress disorder symptomatology,⁹ and may also develop a "traumatic bond" (a longing for kindness, leading to confusion between love and abuse) with the perpetrator.¹⁰ An additional concern for children exposed to abuse of their mothers is not an outcome per se, but rather the significant overlap with child maltreatment. It is estimated that in families where a male partner is violent towards his spouse, children are themselves directly the victims of violence in approximately 30 to 60 percent of cases.¹¹

The overlap between woman abuse and child abuse is particularly concerning because there is growing evidence that there is a strong dosage effect with respect to the

⁵ P.G. Jaffe, C.V. Crooks & N. Bala, *Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Promising Practices* (Ottawa, ON: Department of Justice. Report 2005-FCY-3E, 2005); P.G. Jaffe et al., "Custody Disputes Involving Allegations of Domestic Violence: The Need for Differentiated Approaches to Parenting Plans," 46 *Fam. Ct. Rev.* 500 (2008).

⁶ J.L. Edleson, *Problems Associated With Children's Witnessing of Domestic Violence* (1999), available at <http://www.vaw.umn.edu/documents/vawnet/witness/witness.html>; K.M. Kitzmann et al., "Child Witnesses to Domestic Violence: A Meta-Analytic Review," 71(2) *J. Consulting & Clinical Psychol.* 339 (2003); D.A. Wolfe et al., "The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique," 6 *Clinical Child & Fam. Psychol. Rev.* 171 (2003).

⁷ S.A. Graham-Bermann, "The Impact of Woman Abuse on Children's Social Development: Research and Theoretical Perspectives," in *Children Exposed to Marital Violence: Theory, Research, and Applied Issues* 21-54 (G. Holden, R. Geffner & E. Jouriles eds., 1998).

⁸ K.M. Saltzman, G.W. Holden & C.J. Holahan, "The Psychobiology of Children Exposed to Marital Violence," 34(1) *J. Clinical Child & Adolescent Psychol.* 129 (2005).

⁹ K.L. Kilpatrick, M. Litt & M. Williams, "Post-Traumatic Stress Disorder in Child Witnesses to Domestic Violence," 67 *Am. J. Orthopsychiatry* 639 (1997); G. Margolin & K.A. Vickerman, "Posttraumatic Stress in Children and Adolescents Exposed to Family Violence I. Overview and Assues," 38 *Prof. Psychol.: Res. & Prac.* 613 (2007).

¹⁰ L. Bancroft & J.G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2002).

¹¹ J.E. Edleson, "The Overlap Between Child Maltreatment and Woman Battering," 5 *Violence Against Women* 134 (1999).

number of negative childhood experiences encountered by a child. The Adverse Childhood Experiences Study (ACES)¹² of the Centers for Disease Control and Prevention has collected data on over 8,500 adults from a large primary health care provider. Within this sample, researchers documented that it is not any one specific childhood experience that determines negative outcomes, but rather the cumulative impact of those types of experiences. The ACES has demonstrated that this dosage effect is evident for a wide range of physical and mental health outcomes among adolescents and adults. In a study undertaken by the first author of this chapter, it was found that each cumulative form of child maltreatment (e.g., physical child abuse, sexual child abuse, exposure to DV) added significant risk for negative adolescent outcomes. Specifically, each additional form of abuse was associated with a 124 percent increase in the likelihood of an adolescent exhibiting violent delinquency by the time they were in grade nine.¹³

Although the serious implications for children who are exposed to DV have been well documented, there are a number of studies which indicate that not all children who directly and indirectly experience family violence later develop severe emotional and behavioral problems.¹⁴ Cunningham and Baker caution against making assumptions that (1) all children are negatively affected by DV, (2) all children are affected in the same way, and (3) DV should be the sole focus of interventions (in light of the overlap with other forms of abuse and adverse experiences).¹⁵ Outcomes of individual cases vary widely and are affected by a combination of factors, including the child's age and developmental status when the abuse or neglect occurred, the types of the child abuse (physical abuse, neglect, sexual abuse, etc.), the frequency, duration, and severity of the spousal violence, and the relationship between the child and the abuser.¹⁶ These varying outcomes can be seen in families where children have similar risk factors and exposure experiences but have very different short-term and long-term outcomes.

In addition to variability among risk factors, children may have access to different protective factors that help buffer the impact of exposure to DV. A supportive relationship with a nonabusive adult, connection to community supports, and some child characteristics have been associated with more positive outcomes for children who experience a range of violence.¹⁷ Due to the variability in outcomes among children who have been exposed to DV and/or abused themselves, presence or absence of particular behaviors is neither sufficient nor necessary grounds for verifying the DV.

¹² V. Fellitti, R. Anda, D. Nordenberg, D. Williamson, A. Spitz, V. Edwards, M., Koss & J. Marks., "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," 14 *Am. J. Preventive Med.* 245 (1998).

¹³ C.V. Crooks et al., "Understanding the Link Between Childhood Maltreatment and Violent Delinquency: What Do Schools Have to Add?" 12 *Child Maltreatment* 269 (2007).

¹⁴ National Clearinghouse on Child Abuse and Neglect Information, *Long-term Consequences of Child Abuse and Neglect* (2004), available at http://nccanch.acf.hhs.gov/pubs/factsheets/long_term_consequences.pdf.

¹⁵ A. Cunningham & A. Baker, *What About Me! Seeking to Understand the Child's View of Violence in the Family* (2004), available at http://www.lfcc.on.ca/what_about_me.pdf.

¹⁶ R. Chalk, A. Gibbons & H.J. Scarupa, *The Multiple Dimensions of Child Abuse And Neglect: New Insights Into an Old Problem* (2002), available at <http://www.childtrends.org/files/ChildAbuseRB.pdf>.

¹⁷ A.H. Gewirtz & J.E. Edleson, "Young Children's Exposure to Intimate Partner Violence: Towards a Developmental Risk and Resilience Framework for Research and Intervention," 22 *J. Fam. Violence* 151 (2007).

Although there is a general dosage effect for violence, some children exhibit resilience in the face of significant and multiple forms of violence. Thus, children's symptomatology is not a litmus test for whether abuse occurred.

MOVING BEYOND PATHOLOGY: UNDERSTANDING THE IMPACT OF DOMESTIC VIOLENCE WITHIN A DEVELOPMENTAL FRAMEWORK

We are only beginning to move beyond an epidemiological emphasis (i.e., measuring rates of particular problems) to an understanding of the broader picture as it relates to children's exposure to DV. A developmental framework is an important starting point for understanding the myriad ways in which exposure to violence affects children's adjustment and growth towards maturity.¹⁸ A developmental framework highlights the major tasks and characteristics for each childhood stage, with a focus on the experiences necessary for children to achieve optimal adjustment and health. Another important tenet of a developmental framework is that development unfolds in a sequential manner: Interference with a developmental task at one stage of childhood can undermine the achievement of future developmental milestones. Ongoing exposure to any form of violence can interfere with the attainment of important developmental tasks, leading to specific difficulties depending on the age of the child. A developmental psychopathology perspective of abuse views the emergence of maladaptive behaviors, such as peer aggression, school failure, and delinquency, within a longitudinal and multidimensional framework.¹⁹ The discussion that follows identifies the developmental features and tasks of the four stages of childhood—infancy and toddlerhood, preschool age, school age, and adolescence—and the specific ways in which DV jeopardizes these processes.

Infancy and Toddlerhood

There has been much publicity about the importance of children's experiences from birth to age three, and for good reason: the first few years of children's lives provide a critical foundation for their subsequent social, emotional, and intellectual functioning. The most important developmental task during the first year in particular is the development of an organized pattern of attachment. Attachment refers to the systematic manner in which an infant comes to relate to his/her primary caregiver (typically the mother). The field of attachment has identified the parent and child behaviors, some of which are innate, that provide the basis for a secure relationship. Infants are "preadapted" to engage in relationship-enhancing behaviors, such as orienting, smiling, crying, clinging, signaling, and, as they learn to move about, proximity seeking. Infant survival depends on becoming attached to a specific person who is available and responsive to the child's needs. Adults are similarly equipped

with attachment-promoting behaviors to respond to infants' needs. These behaviors complement those of the infant—smiling, touching, holding, and rocking. Thus, what begin as instinctive behaviors follow an organized pattern through learning and feedback, primarily from caregivers.²⁰ Attachment is predominantly determined by the extent to which a child's basic needs are met in a consistent and timely fashion. Simply stated, infants who are fed when they are hungry, comforted when they are upset or startled, and changed when they are wet or uncomfortable tend to develop an organized attachment style. The extent to which a caregiver is able to reflect an infant's feelings back to the child is another important component of developing a secure attachment style and helps the child to form his/her earliest understanding of emotions.²¹ The child's attachment style then serves as a prototype for all future relationships and is instrumental in a child's earliest view of the world and the extent to which the world is seen as safe and predictable.²²

The other defining developmental characteristic of this early stage is the explosive neurological development taking place. Newborns actually have far more brain cells than full grown adults, but their brains are much smaller because these neurons have not yet been connected to each other. During the first few years, and to a lesser extent all the way through childhood and adolescence, brain cells are being connected and pathways are being formed, while other cells are being "pruned" and die off.²³ This hardwiring of the brain is a "use it or lose it" phenomenon. Pathways that are used frequently become strengthened, and as the number of connections increase, the speed with which these pathways can be accessed also increases.²⁴ Thus, if within the context of consistent and nurturing caregiving an infant is repeatedly soothed when upset, these calming experiences will usually provide the basis for the child to develop the ability to self-soothe. Conversely, an infant who is repeatedly subjected to loud noise and chaos, and who is inconsistently comforted when upset, will tend to strengthen the fight-or-flight pathways of the brain, largely through overactivation of the hypothalamic-pituitary-adrenal (HPA) axis. Studies with maltreated children and adults with a history of childhood abuse show long-term alterations in the HPA axis and norepinephrine systems, which have a pronounced effect on one's responsiveness to stress.²⁵ These rapid brain development and attachment processes in turn serve as the basis for the emotional regulation that develops over the course of childhood.

²⁰ L.A. Sroufe, "Early Relationships and the Development of Children," 21 *Infant Mental Health J.* 67 (2000).

²¹ J. Cassidy, "Emotion Regulation: Influences of Attachment Relationships," 59(2/3) *Monographs of the Soc'y for Res. in Child Dev.* 228 (1994).

²² C.M. Parkes, J. Stevenson-Hinde & P. Marris eds., *Attachment Across the Life Cycle* (1996); M. Rutter & L.A. Sroufe, "Developmental Psychopathology: Concepts and Challenges," 12 *Dev. & Psychopathology* 265 (2000).

²³ J.P. Shonkoff & P.C. Marshall, "The Biology of Developmental Vulnerability," in *Handbook of Early Childhood Intervention* 35-53 (J. Shonkoff & S. Meisels eds., 2d ed. 2000).

²⁴ B.D. Perry, *Maltreatment and the Developing Child: How Early Childhood Experience Shapes Child and Culture* (2004). Presentation summarized by A. Cunningham, available at <http://www.lfcc.on.ca/mccain/perry.pdf>.

²⁵ J.D. Bremner, "Long-Term Effects of Childhood Abuse on Brain and Neurobiology," 12 *Child & Adolescent Psychiatric Clinics of N. Am.*, 271 (2003); C.B. Nemeroff, "Neurobiological Consequences of Childhood Trauma," 65(Supp. 1) *J. Clinical Psychiatry* 18 (2004).

¹⁸ L.L. Baker, P.G. Jaffe & K. Moore, *Understanding the Effects of Domestic Violence: A Handbook for Early Childhood Educators* (London, ON: Centre for Children and Families in the Justice System of the London Family Court Clinic, 2001); Gewirtz & Edleson, *supra* note 17.

¹⁹ D. Cicchetti, S.L. Toth & A. Maughan, "An Ecological-Transactional Model of Child Maltreatment," in *Handbook of Developmental Psychopathology* 689-722 (A.J. Sameroff, M. Lewis & S.M. Miller eds., 2d ed. 2000).

The abuse of an infant or toddler's mother interferes with attachment and ultimately influences the rapid brain development taking place. Any form of violence exposes the child to loud and overwhelming stimuli, and the abuse of the infant's mother interferes with the child's primary source of comfort and emotional regulation. It is very difficult for a woman who is being victimized by her partner to attend to her child's needs in a consistent manner. Concomitantly, the infant's brain is developing in such a way that the capacity for self-soothing may be underdeveloped while the speed with which the child becomes aroused to perceived threat may be overdeveloped, essentially hardwiring the infants brain differently than would be the case for infants not exposed to such violence. Indeed, infants under the age of one have been shown to exhibit symptoms of posttraumatic stress disorder when exposed to severe violence towards their mothers.²⁶ Furthermore, exposure to violence between adults predicts adjustment difficulties for children aged one to three over and above difficulties predicted by angry adult conflict.²⁷

Preschool-Aged Children

One of the most important developmental tasks for preschool-aged children (age three to six) is to develop basic social skills, such as cooperation, turn-taking, and negotiation. Simultaneously, they are learning to express emotions in acceptable ways. Where a toddler will understandably throw a tantrum when frustrated, a preschooler is expected to have more control over how frustration is expressed.

One of the most longstanding and robust psychological theories explaining the process by which these social skills are acquired is Social Learning Theory.²⁸ According to this theory, much social skill and emotional development takes place through observation of others: How do others react in particular situations, and what are the consequences of their actions? How do people apologize when they are in the wrong? What does it mean to be friends? How do people who love each other show that they are angry? A critical tenet of Social Learning Theory is the salience of perceived contingencies and reinforcement with respect to learning from observing others' behavior. That is, young children do not simply imitate those around them; rather, they are more likely to imitate and acquire behaviors that they perceive to lead to positive outcomes. Thus, they are particularly vulnerable to learning that violence has an instrumental value to the perpetrator and that it is an acceptable way to have one's personal needs met. All of these lessons are being learned continuously from their observation and experience of relationships. As the family unit is still the major arena of socialization for this age group, being exposed to DV puts preschoolers at high risk for acquiring aggressive behaviors and failing to develop more appropriate means of problem solving.

In addition, preschoolers tend to have rigid ideas about gender roles. Because there is so much information for them to process, the use of male and female as organizing concepts is a useful way for them to categorize. As a result, this is the age when

²⁶ G.A. Bogat, G.E. DeJonghe, A.A. Levendosky, W.S. Davidson, W. S. & A. von Eye, "Trauma Symptoms Among Infants Exposed to Intimate Partner Violence," 30 *Child Abuse & Neglect* 109 (2006).

²⁷ R. McDonald et al., "Violence Toward a Family Member, Angry Adult Conflict, and Child Adjustment Difficulties: Relations in Families With 1- to 3-Year-Old Children," 21 *J. Fam. Psychol.* 176 (2007).

²⁸ A. Bandura, *Social Learning Theory* (1977).

many things are classified as male or female (e.g., girl vs. boy toys and activities, male vs. female occupations) with a strong tendency to overgeneralize.²⁹ For example, preschoolers may hold fast to the notion that all doctors are male and all nurses are female, even when presented with an exception to that rule.

In light of their rapid development of social skills and emotional regulation, as well as their highly gendered worldview, preschoolers are very susceptible to learning negative ideas about what it means to be a man or a woman, if they are experiencing the gender-based abuse of their mothers. One of the most important messages that preschoolers should receive is about the unacceptability of violence and the need to find alternate ways to solve problems or express anger. Where displays of aggression are expected and somewhat accepted among infants and toddlers, a chief developmental task of the preschool period is to learn to inhibit these impulses toward aggression.³⁰ Preschoolers who are exposed to DV receive powerful and mixed messages in this regard and, not surprisingly, show higher levels of aggression than their peers. Remembering that development is sequential, children who have been exposed to violence since infancy may be attempting to navigate these developmental tasks in the preschool years with preexisting vulnerabilities.

School-Aged Children

During the school-age development period (ages six to twelve), children place great significance on things being fair and rule based. The preference for rules and order is reflected in their play; this is the age when children can develop elaborate games with each other that have complex rules and regulations. Children this age can understand intent, and they are largely committed to a "just world hypothesis" (i.e., a "good things happen to good people" worldview). As a result, they are prone to explanations of events that are logical and just. In cases where children have experienced the abuse of their mothers, they may try to make sense of the violence by attributing blame to their mother. For example, when asked if it is ever okay for a man to hit a woman, school-aged children whose mothers have been battered will typically say no, but they may add a proviso for extenuating circumstances (e.g., "No . . . unless she is disrespecting her husband").³¹ In their attempts to rationalize the gender-based violence to which they are exposed, they may develop negative attitudes about the acceptability of violence and the roles of women and men in relationships.

Another relevant feature of school-aged children is that they develop increased identification with their same-sex parent. They also tend to play in gender-segregated groups that differ in their styles of interaction. Thus, school-aged children who experience the abuse of their mother by a male partner may have different responses and vulnerabilities based on gender, with boys being more likely than girls to develop externalizing aggressive behavioral problems. In one study that analyzed children's responses to various conflict scenarios, abusers' sons who had been excluded by peers were found to show the most violent responses of the children included. In this study, boys and girls exposed

²⁹ L.A. Serbin, K.K. Powlishta & J. Gulko, "The Development of Sex Typing in Middle Childhood," 58 *Monographs of the Soc'y for Res. in Child Dev.* 5 (1983).

³⁰ R.H. Baillargeon et al., "The Evolution of Problem and Social Competence Behaviors During Toddlerhood: A Prospective Population-Based Cohort Study," 28 *Infant Mental Health J.* 12 (2007).

³¹ P.G. Jaffe, D.A. Wolfe & S.K. Wilson, *Children of Battered Women* (1990).

to DV were significantly more violent in conflicts involving aggression and exclusion compared to their nonexposed counterparts.³² Both boys and girls are developing important social skills and gender roles for relating, and there is a potential to learn negative lessons from witnessing gender-based violence perpetration.

The most important developmental task for this age group is successful engagement at school: developing the intellectual, physical, social, behavioral, intellectual, and physical skills to function effectively with their peers and teachers. In this age group, children's sense of self-esteem and competence tends to be tied to their performance and engagement at school. Children who live with a male perpetrator of violence may experience many barriers to school success. They may be tired from inadequate sleep and unable to focus in class, or they may have sporadic attendance. Even if they attend regularly, it is difficult for children in this age group to focus on their schoolwork when they may be worrying about their mother or father. These children may not have a consistently quiet and orderly place to do their homework. They may not have access to a parent who is in the right frame of mind to help them with their homework.

Socially, children exposed to various forms of violence often develop relationships with their peers and teachers that mirror the relationship models they know best. Instead of a healthy sense of autonomy and self-respect, their models of relationships have elements of being both a victim and a victimizer—those who rule and those who submit—and during interactions with peers, maltreated children may alternate between being the aggressor and being the victim.³³ The strategies that may have worked while the child was living with an unpredictable perpetrator of violence, such as hypervigilance and fear, evolve to become highly responsive to threatening or dangerous situations. These strategies are in conflict, however, with the new challenges of school and peer groups. As a result, children with histories of abuse and neglect may be more distracted by aggressive stimuli and misread the intentions of their peers and teachers as being more hostile than they actually are. These children's aggressive behaviors, along with their tendency to overreact to perceived hostility from others, make it difficult for them to establish positive relationships with peers and teachers. Rejection by pro-social peers, in turn, raises the likelihood of these children associating with other deviant and rejected children. Such peer groups, in turn, raise the risk of antisocial behavior as these children enter adolescence.

It may be difficult to redress the social skills problems of exposed children in that these deficits may be based on problematic emotional regulation. In a longitudinal study of children's development, exposure to DV at age 5 predicted emotional dysregulation at age 9.5, which in turn predicting problems with friendships, peer group interactions, and externalizing and internalizing behavior problems at age 11.³⁴ This study provides a clear example of how interference with developmental tasks at one age (in this case, developing emotional regulation) later undermines functioning in a range of areas (such as friendships, peer groups, and emotional well-being). Clearly, exposure to violence at home presents myriad challenges for school success in both the academic and social realms.

³² B. Ballif-Spanvill, C.J. Clayton & S.B. Hendrix, "Witness and Nonwitness Children's Violent and Peaceful Behavior in Different Types of Simulated Conflict With Peers," 77 *Am. J. Orthopsychiatry* 206 (2007).

³³ K.A. Dodge, G.S. Pettit & J.E. Bates, "Socialization Mediators of the Relation Between Socioeconomic Status and Child Conduct Problems," 65 *Child Dev.* 649 (1994).

³⁴ L.F. Katz, D.M. Hessler & A. Annett, "Domestic Violence, Emotional Competence, and Child Adjustment," 16 *Soc. Dev.* 513 (2007).

Adolescence

Adolescence (over the age of twelve) is a time of rapid change and development for children. In a relatively short period of time, they are expected to mature from being children to being prepared for the demands of adult roles. There are two major developmental tasks undertaken during this period. The first has to do with increased autonomy and differentiation from the family of origin. Essentially, adolescents need to develop an adult identity, and one of the ways they accomplish that is to develop an understanding of how they are similar and different from the other members of their families. There is significant boundary-testing during this phase as adolescents experiment with adult behaviors.

The other set of developmental tasks has to do with the rapidly changing relationship patterns of adolescence.³⁵ Peer relationships become much more intense than previously, replacing the family as the primary socializing force in children's lives. Romantic relationships become a major focus for adolescents and evolve from group-based dating experiences in early adolescence to dyadic relationships that are more similar to adult relationships by mid- to late adolescence.³⁶ Parallel to the emergence of intimate dating relationships, youths need to navigate the development of a sexual identity, all within the rapidly occurring physical changes of puberty.

Youths who are exposed to the abuse of their mothers are hindered in these tasks in a number of important ways. These children may not have a solid foundation with their parents from which to navigate the separation that occurs during adolescence. They may be more prone to engage in violence in their own dating relationships, as that is the behavior that has been modeled. In particular, boys may be at increased risk for perpetrating violence in their intimate relationships, and girls may be at increased risk of remaining in a relationship with an abusive partner. Alternatively, adolescent boys may begin to perpetrate violence within their own families, typically directed towards their mothers and siblings. Although boys are the perpetrators in the majority of adolescent-to-parent violence, adolescent girls also may become assaultive with their mothers in an attempt to show that they are not "weak" or vulnerable like their mothers.³⁷ Furthermore, in an attempt to establish their adult identities without the secure foundation of healthy family relationships, they may be more likely to engage in risk-taking behaviors and to abuse drugs or alcohol.

Summary

A child's exposure to the abuse of his/her mother by a male partner causes interference with normal developmental processes, resulting in a range of subtle and not-so-subtle difficulties in emotional regulation and the development of positive and healthy relationships, as well as affecting the child's behavior. Understanding a child's developmental stage and needs is essential for developing appropriate plans and interventions. Within such a framework, sometimes children who appear to be coping well may be not attaining their optimal developmental trajectories.

³⁵ D.A. Wolfe, P.G. Jaffe & C.V. Crooks, *Adolescent Risk Behavior: Why Teens Experiment and Strategies to Keep Them Safe* (2006).

³⁶ W. Furman & D. Buhrmester, (1992). Age and Sex-Differences in Perceptions of Networks of Personal Relationships," 63 *Child Dev.* 103 (1992).

³⁷ B. Cottrell & P. Monk, "Adolescent-to-Parent Abuse: A Qualitative Overview of Common Themes," 25 *J. Fam. Issues* 1072 (2004).

A classic example of this superficial robustness is the “parentified child” who has been inappropriately burdened with adult matters and responsibilities and who assumes an adult role within the family. Although parentified children may appear responsible, polite, and even more mature than their peers, this pseudomaturity comes at a cost.³⁸ Developmentally, they are not being allowed the chance to be children and to achieve their developmental tasks, which might in turn lead to difficulties down the road. For example, an adolescent who takes on the responsibilities of running the house and trying to appease the adults may seem pleasant, but she is not establishing the autonomy or relationships with peers that are an integral part of adolescence and that provide important stepping stones toward becoming an independent adult. If there has been DV prior to the parents’ separation, prioritization of the child’s needs in the context of a custody dispute requires an understanding of the developmental tasks and characteristics of the child at each stage. From this vantage point, the negative impacts on the child of exposure to a mother’s abuse is critical, regardless of whether a child meets diagnostic criteria for a particular psychological disorder.

DEVELOPMENTAL FRAMEWORK FOR PARENTING PLANS

There is increasing recognition that perpetrators of DV are not appropriate candidates for custody or joint custody in most cases.³⁹ In many jurisdictions, this recognition has been codified as a statutory rebuttable presumption against custody for a perpetrator of DV. As courts become better at implementing these standards in cases where the mother has been victimized by a male partner, disputes about visitation occur more frequently than genuine disputes over custody. These problems with visitation can continue for many years, whereas disputes over custody are usually resolved “once and for all.”

Visitation can be very problematic for victims of abuse and their children, as it is difficult to have it legally terminated. The continuing contact with an abusive ex-partner that visitation requires can be stressful and create risks for abused mothers and their children. Abusive ex-partners may use visitation to try to denigrate and undermine children’s respect for the custodial parent, encouraging the children to behave in destructive or defiant ways when they return home.

It must also be appreciated, however, that many children want to see their noncustodial parents, even if these parents have abused their partners. In many cases, children “may benefit from such contact, as long as safety measures are provided, the contact is not overly extensive, and the abuser is not permitted to cause setbacks in the child’s healing process.”⁴⁰ In cases where actual custody is not at stake, the options for structuring visitation include supervised exchange, supervised visitation, and termination of access.

Supervised Exchange

Supervised exchange involves transferring children from one parent to the other under the supervision of a third party. The supervision can be informal, for example,

³⁸ Bancroft & Silverman, *supra* note 10.

³⁹ National Council of Juvenile and Family Court Judges, *Model Code for Family Violence* (1994), available at http://www.ncjfej.org/dept/fvd/publications/main.cfm?Action=PUBGET&Filename=new_modelcode.pdf.

⁴⁰ Bancroft & Silverman, *supra* note 10.

by a family member, neighbor, or volunteer, or through the use of a public venue for the exchange, such as the parking lot of a police station. The supervision can also be formalized through a supervised access center or by using a designated professional, such as a child care worker or a social worker. The underlying premise is that by having third-party witnesses, the parents will be on their best behavior; by staggering their arrival and departure times, they will not come into physical contact. Supervised exchange provides a buffer in cases where the ongoing conflict cannot be contained by the parents at transitions, exposing the children to high levels of conflict. It is also useful in cases where there has been an historical pattern of DV, and the victim experiences distress or trauma coming into contact with the other parent. However, supervised exchanges do not mitigate the risk of violence to a spouse if there are ongoing concerns about safety of children and their primary caretaker.

In our experience, supervised exchanges are sometimes inappropriately utilized to create a sense of safety when a more restrictive measure (such as supervised visitation) is warranted. As well, informal third-party exchanges may be well intended but inadequate; supervision may require a knowledgeable professional to monitor safety and detect inappropriate behaviors. For example, some parents may be involved in more subtle behaviors that are emotionally abusive, undermine the other parent, or signal threats to the other parent. These more insidious transgressions are difficult for lay people or family members aligned with the perpetrator to identify.

Supervision may be especially appropriate during an initial period after separation when the risk of violence or parental conflict may be higher than after some time has passed. Exchange supervision is less costly, intrusive, and restrictive than visitation supervision but should be contemplated only if there is no significant risk of direct harm to the children or victim from the perpetrator. Any red flags with respect to escalating violence or lethality would contraindicate the use of supervised exchange to protect the well-being of the children and their mother.

Supervised Visitation

Supervised visitation is a parenting arrangement designed to promote safe contact with a parent who is deemed to be a risk due to behaviors ranging from physical abuse to abduction of the child. It may also be appropriate where a child fears a parent, for example, because of having witnessed that parent perpetrate abuse or because of having been abused by that parent. Although supervised visitation is a long-accepted practice in the child protection field, it has emerged more recently in the parental separation context. More serious concerns demand specialized centers and well-trained staff, as opposed to volunteers; in reality, shortage of supervised visitation programs remains a significant challenge for most communities. In more extreme cases, the safety offered by the supervisor is not appropriate for the degree of risk, and, therefore, no contact may be a more appropriate plan. Supervision is intrusive and often expensive. It should usually be considered only for a transition period during which the parent proves that the supervision may not be required or, conversely, that visitation should be terminated.

There is great variability among supervised visitation centers as far as the training of staff and mandates for their programs. Some parents may require extensive assistance during visitation to say and do appropriate things that match their children’s needs and stage of development. In some cases, there may be a strained relationship due to

historical events, the anxiety of the custodial parent, and the lengthy disruption of any meaningful parent-child relationship. In these circumstances parents may require more than a safe place; significant interventions by a trained professional may be necessary to promote healing and enhance parenting. There are situations where the demands on the supervisor outstrip his/her skills or mandate. There are also special considerations about refusing cases after intake due to the assessment of excessive risk or terminating visits in midstream due to inappropriate parental behavior and/or children's refusal to attend.

Supervised visits cannot be a substitute for a comprehensive evaluation by a qualified mental health professional. Without a proper custody evaluation, a court may draw inappropriate conclusions about the meaning of successful and unsuccessful supervised visits out of context of the larger picture. Too often supervision is dropped (i.e., visits are no longer supervised) after a period of time where nothing overly negative has occurred. We would argue that before supervision is ended, the onus is on a perpetrator of the violence to show that he has made significant changes and is taking responsibility for past transgressions, not merely that he can contain inappropriate behavior under close scrutiny.⁴¹

It has long been recognized in child protection cases that it is important for there to be clear expectations and contracts (between supervisor and court, counsel, and parents) for supervision. More recently, supervised visitation centers that work with families who have experienced DV are moving towards similarly articulated guidelines and contracts. These contracts have many benefits. Supervised parties have clear boundaries about acceptable and unacceptable behaviors; supervisors know what behaviors they are monitoring; court personnel have records and information upon which to base subsequent decisions; and there is clear agreement among parties of the state of affairs (versus an informal arrangement where the supervisor and supervised party may both see the supervised party as a "victim"). The Supervised Visitation Network in the United States has excellent standards and guidelines, as well as sample contracts available on their Web site.⁴²

Termination of Visitation to an Abusive Partner

Although legislation and case law effectively create a presumption that continued contact between a noncustodial parent and child is in the child's best interests, if there are significant concerns about DV, it may be appropriate to terminate visitation, especially if there is ongoing battering that involves some form of postseparation spousal abuse or threats.

If a court has initial concerns about visitation and therefore orders supervised visitation, the court may consider abusive conduct or a failure to regularly visit as a reason for terminating supervised visits. Similarly, if it is acknowledged at the time of the original visitation order that the father has an anger problem and must take part in counseling, his failure to complete a program, or his completion of a program while continuing his harassment and threats against the mother, will justify termination of all visits.

The unhappiness of a custodial parent about visitation, or her sense of anger or hatred towards the noncustodial parent, does not in itself justify a termination of visitation. However, where there is a history of abuse of the custodial parent during, and especially

⁴¹ For extensive discussion, see Bancroft & Silverman, *supra* note 10.

⁴² Supervised Visitation Network (2003), available at <http://www.svnetwork.net/StandardsAndGuidelines.html>.

after, the end of the period of cohabitation, the custodial parent's fear may legitimately be an important factor in terminating visitation. Consideration of threats to the safety of the custodial parent is important in any decision about visitation; no parent should be placed in a position of danger to facilitate contact between a child and an abusive parent.

If visitation has been terminated due to significant concerns about spousal violence and its effects upon a child, in order to resume visitation the parent with a history of abuse should bear the onus of demonstrating that he recognizes the effect that his conduct had on the children, has taken significant steps to change his behavior, and that it would be in his children's best interests to see him. Evidence that it could help the father's psychological state or meet his needs should not be persuasive in any visitation application, especially when visitation had been limited or terminated due to his abusiveness. Parents who have lost visitation rights due to their abusive conduct (almost always fathers) generally have very significant histories of abuse. Therefore, it should not be surprising that, in practice, these men rarely succeed in persuading a court to reinstate visitation.

Principles for Making Parenting Arrangements and Resolving Conflicting Priorities

In choosing among the preceding options, there are generally multiple factors to consider as far as developing a plan that promotes the best interests of any children involved. The case has been made for a risk-benefit analysis of different kinds of parenting plans that are in the best interests of the particular child and family.⁴³ What are some guiding principles for undertaking this kind of analysis? Together with our colleague Janet Johnston, we have developed a set of priorities for making decisions about the care of children in cases where DV is present:⁴⁴

1. Priority #1 is to protect children directly from violent, abusive, and neglectful environments.
2. Priority #2 is to provide the support and safety required to ensure 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. Priority #3 is to respect and empower victim parents to make their own decisions and to direct their own lives (thereby recognizing the state's limitations in the role of *loco parentis*).
4. Priority #4 is to hold perpetrators accountable for their past and future actions (i.e., in the context of family proceedings, have them acknowledge their responsibility and take measures to correct abusive behavior).
5. Priority #5 is to allow and promote the least restrictive plan for parent-child visitation *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 but abandoning the lower priorities when essential to resolving conflicts. This approach provides a

⁴³ C. Sturge & D. Glaser, "Contact and Domestic Violence—The Experts' Court Report," *Fam. L.* 615 (Sept. 2000).

⁴⁴ Jaffe et al., *supra* note 5.

child-focused pathway to just and consistent resolution of many common dilemmas. For example, in principle, if a parent denies engaging in substantiated violence and does not comply with court-ordered treatment, Priority #5 should be dropped or modified by suspending or supervising visitation. If the perpetrator is not taking responsibility for his actions, then in order to ensure that violence does not recur, the victim should be allowed to relocate upon request (Priorities #1 to #3 taking precedence over Priorities #4 and #5). Note that Priority #5, as stated, requires that visitation be suspended in some cases, even though a violent parent has sought and benefited from corrective treatment (e.g. if a child, traumatized by a the parent's past abusive conduct, continues to be highly distressed and resistant to supervised visits despite reasonable efforts to alleviate that distress).

Applied to children of women who have been battered by a partner, the first two priorities identify the need to protect children from violence; in many cases, supporting women who have been battered may be the best way to achieve the first priority. However, if a victim leaves one abusive relationship and subsequently establishes a relationship with another abusive partner, these principles require an alternative safe place for the child to live. This may be achieved by offering the mother a choice: "Live with your violent mate, or continue to have your child in your care and custody." This type of case may require involuntary removal of a child from a mother's care by child protection services. (Here, Priorities #3, #4, and #5 are dropped, and Priority #2 may have to be dropped as well.)

SPECIFIC DILEMMAS IN IDENTIFYING BEST INTERESTS OF CHILDREN

Within the context of a developmental understanding of children's exposure to DV and in light of these aforementioned principles, we now turn to four specific dilemmas that custody evaluators and decision makers may encounter in identifying appropriate parenting plans. For each dilemma, we provide some general considerations, a case example, and a brief analysis of the example.

Dilemma #1: Child Expresses Strong Wish to Live With Father Who Has Perpetrated Violence Against Child's Mother

A letter to a judge from a child pleading to live with his/her father can be emotionally compelling evidence in a custody dispute; most jurisdictions identify children's views and preferences as a factor to consider in determining their best interests. 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 as well as to respect the requests and fears of a child who is rejecting a violent parent. However, the stated preferences of children who have been abused or witnessed violence should be interpreted with caution, optimally with the help of a child therapist. Some children can be intensely angry at an abusive parent but do not feel safe enough to verbally resist or refuse visitation, or even minimal contact within the safe confines of supervision, until long after the parents' separation. In other cases, children who have witnessed or sustained abuse become aligned with the more

powerful perpetrator and reject the parent who was victimized. This alignment with the abusive parent may reflect fear of that person or identification with the more powerful parent. In some cases, abusive husbands have a "princess-like" relationship with their daughters. Other factors, such as not wanting to move away from friends, leave familiar surroundings, or change schools may play an important role in shaping children's expressed wishes. Children also may claim to want visits with an abusive father because they think they might be able to protect their mother by appeasing their father. 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 considered in a given case.

Sometimes individuals who abuse their partners present very well. In such cases, the abuser is highly manipulative and able to con assessors, especially those who may not be familiar with patterns of abuse or who are impressed by the children's wishes and their apparently close relationship with the abuser. This may be challenging for the counsel of an abused spouse to counteract, but it is possible to do so, especially by introducing independent evidence of abuse as well as by having mental health professionals testify on the effects of DV on children.

Example #1: Hector, age thirteen, has witnessed the verbal and physical abuse of his mother (Carla) by his father, Joseph, over a period of five years. Carla describes the abuse as mostly verbal and emotional, taking the form of insults and humiliation, although there were also a number of physical assaults. On two occasions, Carla fled to a women's shelter with Hector and his fifteen-year-old sister, Luisa, but on both occasions she returned due to concerns about being able to provide for the children and because Joseph had expressed contrition. Carla has been concerned for a long time about the impact of Joseph's behavior on their children, particularly Hector, who has exhibited significant aggression. During the past year, Hector's behavior has escalated into physical assaults towards his sister and, most recently, a classmate. Carla separated from Joseph following Hector's incident at school. She and the children have been staying with extended family, as Joseph is still in the family home. Carla was shocked and dismayed when she overheard Hector telling a cousin that he plans to return to live with Joseph as soon as he gets a chance to tell his side of the story to the social worker who has been appointed to the case.

Case Analysis: As children age, their wishes are generally given increasing weight by judges and lawyers. It is hard to tell a thirteen-year-old boy like Hector that he cannot do what he wants. Judges may feel that children of that age "will vote with their feet," in any event. Hector's wishes are not surprising, since boys may identify with their father and see him as the source of power and influence in the family. They also may have come to devalue their mother's role and feel that there is no future in choosing the "weaker" and more vulnerable parent. Because he is heading into adolescence, and therefore peer groups and friendships are becoming more important, he also simply may not want to be out of his home and away from his friends.

Given Hector's adjustment difficulties and concerns about his behavior toward women, especially as he grows closer to the stage in which he will develop

romantic partnerships, his developmental needs are unlikely to be met by staying with a male parent who has neither sought treatment nor taken responsibility for his own abusive behavior. As a result, Hector's wishes are not synonymous with his best interests, even though he is old enough to express those wishes clearly. Furthermore, given the duration of the violence he witnessed and the behaviors he has demonstrated in response to that violence, it is unlikely that his behavior will improve simply because his parents have separated and the violence is no longer overt. Therefore, in addition to a parenting plan that gives custody to Carla and limits unsupervised visitation with Joseph, Hector's mother will need some supports to help her son develop more appropriate attitudes and ways of expressing conflict. Ideally, any parenting plan will be complemented by specialized counseling for Hector on the impact of exposure to DV. The case will likely require ongoing judicial case management, so that the outcome is predicated on Joseph's taking responsibility for his violence and completing a batterer intervention program. A comprehensive plan for the family would likely also require provision of services and support to Luisa, who has had to contend not only with having observed the victimization of her mother by her father, but also having experienced the direct aggression of her brother.

Dilemma #2: Different Children From Same Family Have Experienced Different Levels of Exposure and Therefore Have Conflicting Wishes

Not all children who are exposed to DV suffer the same consequences or experience similar adjustment problems. This reality is especially striking when observed in members of the same family; younger children and adolescents may exhibit a range of reactions, depending on age, gender, sibling order, and temperament as well as the parent with whom they more closely identify.

Even children residing in the same home may have had vastly different experiences and varying exposure level to the abuse of their mother. For example, older adolescents may absent themselves from the home and observe less actual violence than younger children; conversely, older children may also be more involved in direct attempts to intervene. Extremely young children may be more unaware of the violence (although consciously unaware is not the same as unaffected). Favoritism towards a particular child by a perpetrator of violence might also change the individual experiences of children within the same family. These situations pose dilemmas for the court in developing parenting plans, since children are generally seen as a "package deal," and there are practical impediments to developing different plans for different siblings.

Example #2: During his marriage to Nina, Steve was emotionally abusive and controlling, and he threatened her numerous times, but Nina never called the police; she reports that these threats occurred when the children were asleep. Steve was also emotionally abusive to their son, Jeremy (age twelve). In addition, Steve was physically aggressive to Jeremy on numerous occasions, in circumstances that Steve characterized as discipline and as an attempt to "make a man" of Jeremy. When Nina tried to intervene in these situations, Steve would deride her for making a "sissy" of their son. Jeremy, a soft-spoken boy who looks younger than his age, experiences significant anxiety and has

few friends at school. In comparison to his harsh treatment of Jeremy, Steve clearly favored their daughter, Caley (age nine), whom he referred to as his "little princess." Since separating from Nina, Steve has shown little interest in seeing Jeremy but has purchased numerous gifts for Caley, including some age-inappropriate clothing. He also tends to confide in Caley about the problems he and Nina had in their marriage. Although Jeremy does not want to have visitation with his father, Caley has expressed clear wishes to have regular visits, including overnights, with her father. Steve also wants access to the baby (Maya, now age two), who was born shortly after the couple separated. His argument in this regard is that since she was not even born when the conflict ensued, she could not have any negative feelings towards her father unless she had been brainwashed in this regard by her mother.

Case Analysis: In considering the needs of these children, it is important to look at their exposure to direct and indirect violence. In addition to being exposed to the abuse of his mother, Jeremy himself is a victim of child maltreatment. There is clear research evidence that children exposed to DV and direct child maltreatment fare worse as a group than those exposed to either DV or maltreatment alone.

However, there is less research on siblings who have observed the abuse of another child in the family. Although few studies have been done in this area, it seems likely that witnessing a sibling being abused by a parent figure threatens the emotional security a child experiences.⁴⁵ That is, the child may have a secure relationship with the parent, but the experience of seeing a sibling victimized by that parent may profoundly shape a child's view of the world and relationships. In such circumstances, the child may be physically safe but be suffering from anxiety related to the possibility that he/she might be a future victim or may even be feeling guilty over being spared.

In cases such as the one outlined here, it might be tempting for a custody evaluator or judge to view the children as very different and allow or require access to the two girls, since they have not been directly victimized. There are a number of potential problems caused by such an approach. First, that plan makes the son a "problem child" and a symptom-bearer for the violence in the family. The daughters may not have any immediate fear of their father, but questions have to be raised about him as a suitable parent in regards to the behavior he has modeled and the fear engendered in other family members. In addition, there may be evidence to justify worrying about the father's boundaries with his older daughter. Finally, simply because the youngest child may not have a memory of the abuse her mother experienced does not mean she is unaffected. In this case, safety and rehabilitation efforts must be in place before the father can have unsupervised contact with the children. It may be a question of time before the girls experience his wrath or become pawns in punishing their mother for separation.

⁴⁵ E.M. Cummings & P.T. Davies, "Emotional Security as a Regulatory Process in Normal Development and the Development of Psychopathology," *8 Dev. & Psychopathology* 123 (1996); P.T. Davies et al., "Child Emotional Security and Interparental Conflict," *67 Monographs of Soc'y for Res. in Child Dev.* 1 (2002).

Dilemma #3: Father Has Ceased His Violence Toward Children's Mother but Continues to Minimize Impact of His Behavior on His Children

Even when there is evidence of DV, it is often naively assumed that separation puts an end to the violence and emotional trauma. Separation may end the violence in many cases, but in other cases the perpetrator may escalate his violence. Separation is the most dangerous period in terms of repeated or lethal violence. Differentiating between these two trajectories (i.e., cessation of violence versus escalation of violence following separation) is a critical task for all professionals involved with the courts, and there is a growing body of risk assessment factors in this regard.⁴⁶ Separation in itself is not a therapeutic intervention, and often no substantial change can be expected in the perpetrator without his taking responsibility and getting involved in an appropriate intervention program. Further, even if the physical violence towards the mother and children stop upon separation, emotionally abusive patterns of behavior may continue.

The question of appropriate intervention is a tricky one in that the extent to which batterer intervention programs in general are effective is somewhat unclear.⁴⁷ The reality is that well-developed programs work for some men and not for others; it somewhat depends on which criteria are considered as constituting success and the timeframe being considered. Drop-out rates are high, and some men may cease physical violence while maintaining or increasing other forms of power and control. Furthermore, research suggests that it is not the nature or length of a program alone that determines outcomes; rather, the extent to which programs are encompassed within a responsive criminal justice system appears to be critical.⁴⁸ Programs that are nested in systems that respond quickly and consistently to transgressions (such as absenteeism at sessions) tend to achieve better results.

However, even with a program that achieves reasonable results, there will always be significant variation among individual participants' progress. As a result, completion of a batterer intervention program alone should not be considered evidence that a perpetrator of DV has taken responsibility for past abuse and has made a commitment to not use violence in the future. Perpetrators with severe violence histories especially require some form of ongoing monitoring or follow-up to assess progress. The use of collateral information (in addition to perpetrators' self-reports) is also essential. It is critical that decision makers not rely on their own "gut feeling" or character assessment in determining whether or not a batterer has reformed his behavior, as these impressionistic assessments are highly unreliable.

In some cases, a perpetrator of DV may have ceased his violence but continues his attempts to control and harass his former partner through legal tactics.⁴⁹ A common tactic is the filing for custody by a previously uninvolved father for the purpose of punishing his partner for leaving or pressuring her to return. If an abuser has replaced physical assault with excessive litigation, use of superior financial resources, claims

⁴⁶ J.C. Campbell, *Assessing Dangerousness: Violence by Batterers and Child Abusers* (2007).

⁴⁷ J.C. Babcock, C.E. Green & C. Robie, "Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment," *23 Clinical Psychol. Rev.* 1023 (2004).

⁴⁸ E.W. Gondolf, *Batterer Intervention Systems: Issues, Outcomes, and Recommendations* (2002).

⁴⁹ P.G. Jaffe, C.V. Crooks & S.E. Poisson, "Common Misperceptions in Addressing Domestic Violence in Child Custody Disputes," *54 Juv. & Fam. Ct. J.* 57 (2003).

of parental alienation, use of phone calls and exchanges as a means of having access to his victim, and other similar tactics, there is no reason to believe he has essentially changed. Conversely, a perpetrator who has truly changed and has come to understand the impact of his former behavior might be willing to defer his claims to visitation in order to allow his victims time to heal and rebuild trust.

The question of what constitutes appropriate intervention for batterers vis-à-vis their parenting is also a subject of some debate. Interventions range from add-on modules included at the completion of a general batterer intervention program to specific parenting interventions for batterers. Nonetheless, interventions designed to address the parenting deficits of men who batter their partners are critical for comprehensively addressing the needs of children who have been exposed to this violence.⁵⁰ The Caring Dads program, for example, is a seventeen-week program that has been designed for fathers who have abused their children and/or exposed their children to woman abuse. The program is based on principles emerging from the literature on batterer intervention, working with resistant clients, and child abuse.⁵¹ Any intervention for fathers who have been abusive should be coordinated with other community service providers to avoid unintended negative consequences (such as reduced monitoring regardless of actual progress in the program).⁵² In addition to research on interventions with fathers who perpetrate abuse, there is emerging literature on analyzing whether a batterer has changed as a parent. Such an analysis includes examining the extent to which he makes a full acknowledgement of his violence, takes responsibility for the behavior rather than project blame, articulates the impact of his behavior on his partner and children, develops new relationship skills, and makes proper amends or restitution.⁵³

Example # 3: After years of Sean engaging in belittling and controlling behavior, Alycia decided to end their relationship following an altercation that escalated to a physical assault. Because the police responded to the physical assault, Sean was ordered to attend a batterer intervention program, which he did reluctantly. Subsequent to the separation, there has been very little contact between the parties and no further violence. Alycia was initially comfortable with Sean having unsupervised visitation with their seven-year-old daughter, McKayla, because he had previously been quite an involved father, and McKayla did not witness the physical assault. However, Alycia has become increasingly concerned about McKayla's behavior following visits with her father. McKayla is very belligerent and defiant following these visits and has made comments to the effect that "Daddy has no furniture in his apartment because he has to give mommy all his money." McKayla has also stated that her father says she does not have to listen to her mother. As a result of observing these behaviors, Alycia has made a motion for Sean's visitation to be supervised. For his part, Sean strongly contests the need for supervised visitation and argues that Alycia is trying to alienate his

⁵⁰ K.L. Scott & C.V. Crooks, "Intervention for Abusive Fathers: Promising Practices in Court and Community Responses," *57 Juv. & Fam. Ct. J.* 29 (2006).

⁵¹ K.L. Scott et al., *Caring Dads: Helping Fathers Value Their Children* (2006); K.L. Scott & C.V. Crooks, "Preliminary Evaluation of an Intervention Program for Maltreating Fathers," *7 Brief Treatment & Crisis Intervention* 224 (2007); C.V. Crooks et al., "Eliciting Change in Maltreating Fathers: Goals, Processes, and Desired Outcomes," *13 Cognitive & Behav. Prac.* 71 (2006).

⁵² K.L. Scott et al., "Accountability Guidelines for Intervention With Abusive Fathers," in *Parenting by Men Who Batter* 102-17 (O. Williams & J. Edleson eds., 2006).

⁵³ O. Williams & J.L. Edleson eds., *Parenting by Men Who Batter* (2006).

daughter from him. Furthermore, he notes that he has attended a positive parenting course (on the advice of his lawyer), which is more than his ex has done to improve her parenting.

Case Analysis: In this case, the violence ended with the separation, but the domestic abuse continued, although in a different form. In cases like this one, it may be tempting for professionals to accept the abuser's version of his actions, to minimize the abuse, and fail to recognize this behavior as part of the pattern of abuse perpetrated during the marriage. There are worrisome signs that the ongoing behavior is intended to demean and belittle Alycia. Any treatment program has clearly failed if abusive behaviors continue, and Sean's continuing abuse does not speak well to his role and responsibilities as a parent. Visits should be limited and supervised until Sean completes another session of group treatment or enters a specialized program for abusive parents. Clearly, the bar needs to be set higher than mere completion of a parenting program. Indeed, attendance at a regular parenting-after-separation program can do more harm than good in these cases in that the core problems are not addressed. At these programs, communication between parents is emphasized over personal responsibility for behavior; child discipline is emphasized over parents' attitudes towards children, and leaders typically convey great empathy for the challenges of child rearing, all of which can increase an abusive father's sense of entitlement or of being the wronged party.⁵⁴ Indicators for unsupervised parenting have to include a full acknowledgement of the inappropriate behavior and a commitment to developing alternative skills. Unless Sean understands the harm his behavior causes McKayla (presumably through appropriate, targeted intervention), he is not qualified to parent without supervision.

Dilemma #4: Father Has Benefited From Treatment, Changed His Behavior, and Taken Responsibility for Past Abuse, but Children's Mother Does Not Want to Acknowledge These Changes and Allow Visitation

There is a legal presumption that absent a proof of real risk of physical or emotional harm, it is in the best interests of a child to have significant contact with each parent. There are cases where a parent with a history of abuse has undertaken all the requirements of a court order and followed a counselor's suggestions, but the victimized parent is still concerned about child safety issues and does not want visitation to occur. These cases pose a dilemma since there is an implied (or explicit) promise from the court that completing and benefiting from required programs will be rewarded by parental contact. A previously victimized parent who does not recognize the progress may be stuck in the past or not be willing to ever forgive the other parent for past misconduct. In these cases, the court and custody evaluators have to distinguish between the parent who is so traumatized by the past that she cannot move forward and the parent who is simply bitter and unwilling to accept personal improvement in an ex-partner, even when it is genuine.

⁵⁴ K.L. Scott & C.V. Crooks, "Effecting Change in Maltreating Fathers: Critical Principles for Intervention Planning," 11 *Clinical Psychol: Sci & Prac.* 95 (2004).

Example #4: Max and Joanne both describe their marriage as a tumultuous one, with frequent arguments and poor communication and problem solving. On several occasions prior to the final separation, Max stormed out of the house during arguments and went to stay with his brother for a few days. According to Max, he "lost it" during a final confrontation, punched a hole in the wall, and pushed Joanne on his way out the door. Joanne called the police, and Max was required to attend a group treatment program as part of an early intervention initiative that resulted in all charges being dropped. Although initially furious that he had to attend a batterers program, Max found the material useful and came to realize the harmful impact of his previous behavior on Joanne and the children. The program Max attended had a module about parenting, and Max was especially affected by the realization that the yelling and name-calling to which he subjected the children was harmful to them. He and Joanne have had virtually no face-to-face contact since the separation. Max has a new partner but remains committed to playing an active role with his children. There are particular roles that Max would like to maintain in this regard. As a teacher, he feels he would be able to help their ten-year-old daughter, Samantha, who has been diagnosed with a mild reading disability. In addition, Max has coached his son Jason's soccer team for the past four years and would like to continue in that capacity. Although Max has taken responsibility for his past behavior, Joanne sees him as an abusive and manipulative person who will turn the children against her. When asked to clarify her concerns, Joanne raises arguments that she and Max had in the past but is not able to identify any current behaviors. She is unwilling to consider any unsupervised access between Max and the children.

Case Analysis: Max has taken important steps toward reestablishing his relationship with his children. While he was emotionally abusive towards his spouse and children, there was only one incident of physical violence towards his partner at the time of separation. He has taken responsibility and has much to offer his children based on his past parenting. He needs a chance to parent; the challenge is to try to counsel Joanne to see the benefits of this. Smaller steps can be taken to keep the adults apart through supervised exchanges and building towards longer visits. A planned third-party review (such as by a custody evaluator) may be an important safeguard in making decisions based on desirable behavior that has emerged only recently. The notion of monitoring or reevaluation is particularly important, because only time will tell whether the changes Max has shown are lasting; many perpetrators of DV are able to appear remorseful and sincere about changing their behavior in the short term but revert to old patterns once the eyes of the court are no longer focused on them. If Max is indeed able to continue a pattern of positive interaction with his children and noninterference with his ex-partner, Joanne will have to accept the court's granting Max significant contact with his children. In these complicated cases, deliberate undermining of the father-child relationship by the mother or her refusal to follow court orders could eventually trigger a referral to a protective services agency, due to the potential for emotional harm to the child.

SYSTEMIC CHALLENGES

In this chapter, we have argued that legal and mental health professionals need to be guided by the five priorities discussed above (see "Principles for Making Parenting Arrangements and Resolving Conflicting Priorities"), giving precedence to the safety of the children and the nonoffending parent before considering the needs or wishes of abusive adults. For professionals to make sound decisions that promote the best interests of children, they must understand the relevance of DV to parenting as well as have insight into children at different stages of development. Further, they must be able to translate this understanding into practice.

To make any of our recommendations or analysis meaningful, there must be access to good service providers and a coordinated and collaborative approach to DV. The lack of services and coordination remain concerns in many communities. Shortage of supervised visitation centers, parenting programs for batterers, and access to a range of culturally relevant services remain serious roadblocks to the implementation of comprehensive parenting plans following separation.

In the custody-evaluation arena, two research papers present very different pictures of the extent to which the field has changed. Bow and Boxer surveyed custody evaluators across the United States and found that the vast majority reported that they recognized DV as a critical factor in their work.⁵⁵ These practitioners indicated that they considered utilizing specialized assessment resources and made differential custody and visitation recommendations when DV was identified. In contrast, studies in the Louisville, Kentucky, courts found that DV was often overlooked in court assessments. This group of studies was particularly compelling because they were based on actual court documents as opposed to the self-report of practitioners. This analysis of custody evaluation reports suggests that DV was not a factor in the recommendations made, even when DV was identified in the same report.⁵⁶ Furthermore, an analysis of court records found that court settlement methods (e.g., mediation, adjudication) did not vary for families with and without DV histories. Parents with a history of DV were as likely to be steered into mediation as those without, despite the inappropriateness of mediation in cases involving DV. In addition, custody outcomes did not differ between families with and without this history.⁵⁷ Thus, although evaluators may believe they have a good grasp of the dynamics of woman abuse and may feel confident that they are able to assess for this kind of abuse, as a group they may not be applying this framework in making their recommendations.

CONCLUSIONS

In this chapter we highlighted the literature in the field of children's exposure to DV and outlined the importance of using a developmental framework to consider the consequences of this experience. We offered four sample case scenarios to illustrate some of the dilemmas faced by the courts and custody evaluators in sorting

through the host of factors relevant to children's best interests when formulating parenting plans.

Although we provided the case scenarios to help identify important issues, it is not our intention to oversimplify the complex clinical and legal issues that are raised in these cases. None of the scenarios include enough detailed information to declare that a former perpetrator of DV is truly safe. Rather, the scenarios were meant to demonstrate how the range of pertinent issues can be analyzed from the standpoint of children's developmental needs.

Clearly, the impact of DV on children is a significant factor to consider in developing parenting plans after separation. Although courts and community services have begun to recognize the potential harm of children's exposure to this violence, no simple analysis exists for creating a recipe for parenting plans. The impact of DV may vary according to a host of variables, such as the severity and frequency of the violence and the risk of its recurrence, as well as child characteristics such as age, gender, sibling order, and additional challenges in the child's life.

Beyond the characteristics of the children, there is significant variability among patterns of violence as well as among profiles of perpetrators. Some DV represents an ongoing pattern of abuse and control; in other cases, acts of violence may be isolated and out of character and may not create fear in the victim. A pattern of violence that is abusive and controlling may suggest an individual who is unfit to parent or even have unsupervised visits with the child. Some DV perpetrators may be remorseful and respond to appropriate treatment programs that address their adult relationships and parenting skills. Thus, a history of DV raises questions about parenting but provides no simple answers. Similarly, knowing that DV has ended cannot be equated with emotional safety for children. A developmental framework is an important step toward putting the needs of children back at the forefront of postseparation parenting plans in cases where children have been exposed to violence towards their mother by a male perpetrator.

⁵⁵ J.N. Bow & P. Boxer, "Assessing Allegations of Domestic Violence in Child Custody Evaluations," 18 *J. Interpersonal Violence* 1394 (2003).

⁵⁶ L.S. Horvath, T.K. Logan & R. Walker, "Child Custody Cases: A Content Analysis of Evaluations in Practice," 33 *Prof. Psychol.: Res. & Prac.* 557 (2002).

⁵⁷ T.K. Logan et al., "Child Custody Evaluations and Domestic Violence: Case Comparisons," 17 *Violence & Victims* 719 (2002).