

***EXCERPT FROM:***

**CHILD CUSTODY AND DOMESTIC VIOLENCE:  
A CALL FOR SAFETY AND ACCOUNTABILITY**

Peter G. Jaffe, Ph.D.  
Nancy K.D. Lemon, J.D.  
Samantha E. Poisson, M.Ed.

***Why is Domestic Violence Relevant to Child Custody?***

Our motivation to write this book grew out of our frustration that well-educated professionals working daily with families in crisis do not seem to understand the relevance of exposure to domestic violence on child adjustment. Repeatedly, these professionals express the view that children are not harmed by exposure to domestic violence, and that perpetration of spousal violence has no bearing on parenting. Even when they acknowledge the possible harm to children, these professionals minimize the potential ongoing and serious challenges to children's well-being after parental separation. In the following sections we will highlight the major reasons why domestic violence is relevant for the determination of child custody disputes and the best interests of children. Many mental health and legal professionals naively believe that once separation has occurred, the violence was over and the children's problems are historical. From our perspective, based on our experience in the justice system and knowledge of the scientific literature, this view jeopardizes the safety of women and children. Not only is domestic violence relevant, it should be a fundamental consideration in determining the best interest of the child post-separation.

**Abuse Does Not End with Separation**

Separation is not a vaccination against domestic violence. To the contrary, physical abuse, stalking and harassment continue at significant rates post-separation. National research in Canada has suggested that for approximately a quarter of abuse victims, the violence became more severe compared to pre-separation violence (Statistics Canada, 2001). Furthermore this same study found that 39% of victims of domestic violence reported that the first incident of domestic violence occurred after separation (Statistics Canada, 2001). Other researchers have similarly found that the rate of post-separation violence is high (Liss & Stahly, 1993).

Visitation can be used by batterers as opportunity to further abuse their former spousal. In Canadian study (Leighton, 1989), one-quarter of the women reported that their lives were threatened during visitation. Often access to children after separation will require specialized supervision facilities to protect both the children and victimized parent from ongoing abuse (Sheeran & Hampton, 1999).

In our clinical experience, children may be frightened by their parents being at the same place (e.g. school play, pick up or drop off from a visit) even if there is no violence or threats of violence. For the adults the violence may be over but for the children the past traumatic event has engendered such fear that any association with the past (e.g. the presence of both parents) can create significant anxiety and distress. Although one parent may be accused of transmitting their anxiety to their children, the most common reason for distress tends to be children's strong memories and feelings about past hostilities.

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## **Child Abuse and Domestic Violence**

Although many professionals are unable or unwilling to appreciate the relevance of domestic violence in determining a child's best interest, there is no debate about abuse directly inflicted on children. Increasingly, mental health practitioners and researchers are recognizing that many maltreated children and abused women come from the same home. Recent reviews of studies across different settings and with different samples indicate that the co-occurrence of child abuse and spousal abuse is high. In an examination of nearly three dozen studies, reviewers found similar empirical findings: between 30% and 60% of children whose mothers had experienced abuse were themselves likely to be abused (Edleson, 1999). According to recent literature reviews, there are nearly one million children were identified by child protection services as victims of substantiated or indicated abuse or neglect and well over one million American women were physically assaulted within the past 12 months (Weithorn, 2001). Frequently, these women and children are in the same homes.

Fear for their children's safety is an ongoing concern for battered women. In a national study conducted by the Canadian Centre for Justice Statistics, women were six times more likely than men to report being afraid for their children (Johnson & Bunge, 2001) when they were victims of domestic violence.

## **Batterers as Poor Role Models**

The family is the fundamental unit of children's socialization. Children learn powerful lessons from their parents including how to resolve conflict and how to cope with having their needs frustrated. Laboratory studies suggest that children may fail to learn how to moderate their emotions when they are exposed to their parents' anger and emotional outbursts (Cummings, Iannotti, & Zahn-Waxler, 1985). When children witness one parent inflicting abuse upon the other, or using threats of violence to maintain control within a relationship, seeds are planted which may result in the cycle repeating itself. If a father believes that he is king of his castle and the children's mother is his servant, lessons on sex-role expectations are being passed on to the children.

Research suggests that most batterers themselves have been exposed to their mother's victimization in childhood (Straus, Gelles, & Steinmetz, 1980). Even in adolescence, dating violence is predicted by abusive role models during childhood that are reinforced by peer groups and societal attitudes (Reitzel & Wolfe, 2001). For younger siblings, the impact of inappropriate role models may be compounded within a family. Not only do these children have to cope with exposure to domestic violence, but they may also be victimized by older siblings who have absorbed the lessons of violence. In fact, this sibling abuse may predict future violence in intimate relationships for both boys and girls (Simonelli, Mullis, Elliott, & Pierce, 2002).

## **Undermining of Non-Abusive Parent**

Many batterers engage in alienating and blaming behaviour and openly communicate this to the children. They blame the mother for ending the marriage without any acknowledgement of her right to a safe and secure home environment. The consequences of the violence in the mother which are common trauma symptoms are twisted by the batterer as signs that the mother is crazy, unfit or unstable. These views are openly shared with the children. Consistent with the "Power and Control Wheel" developed by the Domestic Abuse Intervention Project in Duluth, Minnesota, the children become a tool to utilize in maintaining abusive power and control in the relationship even after separation. The court itself and the batterer's lawyer may inadvertently become an extension of this abuse through the legal proceedings.

Some researchers and practitioners have pointed out that the courts and court-related services often overlook the specific role of a domestic violence perpetrator as a parent (Bancroft & Silverman, 2002). The impact of a batterer goes beyond the trauma of exposure to violence and tension in a home and involve undermining the other parent's authority, retaliating for any efforts to find safety, sowing divisions in the

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family and using the children as a weapon (Bancroft et al., 2002). These issues are rarely addressed by custody evaluators and judges.

### **Violence in New Relationships**

Violent fathers may move on to new partners and continue to inflict abuse if there has been no meaningful intervention or accountability. One research study found that 58% of male offenders perpetrated violence against their new partners after the dissolution of a previously abusive relationship (Woffordt, Mihalic, & Menard, 1994). This high likelihood of continued violence results in ongoing exposure to abuse for children of divorce. Ironically, some judges and mental health professionals tend to view re-involvement on the part of the male as an indicator of stability or maturation in these new relationships. In our clinical experience with child custody cases involving domestic violence, the key witness for the father is usually a new wife or female partner who testifies to the kind and gentle manner of the batterer in this new relationship. The message to the judge is that the problem is one of interaction or the difficult mother rather than any accountability or acknowledgement for past violence.

### **Perpetual Litigation**

The family court can be utilized by batterers as a means of continuing their abusive behaviour. Through extensive litigation, that drains the emotional and financial resources of the abused woman, the batterer may draw the judge and his own counsel into his desire to maintain control of the relationship. Some authors have suggested that batterers are twice as likely to apply for custody of the children compared to non-batterers and are equally likely to be successful in this pursuit (Bowermaster & Johnson, 1998) and (Zorza, 1995). In one study involving 52 abused women many of them faced years of litigation in which they felt little intervention by court to protect them from ongoing legal harassment (Sinclair, 2000).

### **Extreme Outcomes**

At the extreme of the continuum of domestic violence cases are ones in which credible threats of abduction and homicide take place. Missing children's organizations are a monument to what desperate parents do to each other and their children rather than the action of strangers. Tremendous fear and distrust is engendered just by the possibility of such action by mothers or fathers. Some of these cases involve a parent committing a wilful, criminal act and other cases appear to be a parent seeking safety from an abusive spouse (see Chapters 3 and 4 for legal implications).

Threats of homicide are taken more seriously in this decade because of the growing literature linking domestic violence, separation and homicide as well as the development of risk assessment tools (Campbell, 1995; Campbell, Sharps, & Glass, 2001). Children may become involved as witnesses to homicides or homicide victims themselves in these extreme circumstances (Websdale, Town, & Johnson, 1999). In New Zealand such a tragedy in which a batterer killed his three children results in a government inquiry and legislative changes that presumes that batterers will not have custody of children (Busch & Robertson, 2000).

### **Conclusion**

In conclusion, from a clinical and legal perspective domestic violence must be an important area of inquiry in addressing child custody disputes. If a history of domestic violence is present, a unique analysis must follow and all the data and patterns of behaviour weighed differently. It is as if legal and mental health professionals need a different lens through which to view the information and competing allegations in the determination of a child's best interest. Domestic violence within a custody and access case demands a paradigm shift. By way of analogy, legal and mental health professionals can be considered akin to security guards at an airport. Ninety percent of the passengers pass quickly and unfettered through the screening

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process without sounding the alarm, much as the vast majority of divorcing parents need minimal legal resources to resolve their post-separation parenting plan. However, when the alarm indicates the presence of metal or an x-ray highlights an unusual shape in a piece of luggage, extra time and care is required to conduct a more thorough search. Similarly, when parents express concerns about their safety and their children's safety, the dangers must be more closely examined.

Clearly, one size does not fit all families in custody disputes. Lawyers, judges and mental health professionals need to ensure that the right interventions are matched to the right clients. Some of the best developments of the late 1900s, such as mediation and joint custody, are not appropriate solutions to child custody disputes involving domestic violence. Just as an airport security guard can jeopardize the welfare of all passengers by ignoring warning alarms, legal and mental health professionals who ignore warning signs of domestic violence can endanger children and parents by minimizing, denying or excusing the reality of domestic violence.

The approach to this problem requires care and competence lest the issue of domestic violence is dismissed or overshadowed by concerns centering on "false allegations." The advances in this field are occurring at a time when there is considerable backlash about recognizing violence in the family. There are still many professionals who are skeptical about the prevalence of domestic violence and equally likely to suspect that mothers are raising violence allegations to further their custody claims and associated financial support. Sometimes mothers are accused of using a history of domestic violence to deflect concerns about their parenting abilities.

At the extreme, some professionals believe that a significant number of mothers actively try to ruin the relationship between fathers and children through conscious and wilful alienation. These views have been fuelled by the concept of parent alienation syndrome (PAS) espoused by psychiatrist Richard Gardner over the past twenty years (Gardner, 1992). Although PAS has no scientific foundation to support the reliability and validity of such a label (Kerr & Jaffe, 1998; Faller, 1998), it has nonetheless been embraced by several groups and uncritical mental and legal professionals. This issue will be addressed in more detail in Chapter Two.

This opening chapter conveys the importance of considering domestic violence within the context of disputed child custody cases. Some authors would argue that the determination of child custody is so complex that it would be unfair to give too much weight to any one factor such as domestic violence (Stahl, 1994). The authors feel strongly that domestic violence has been widely overlooked and minimized in this field. We believe that it is imperative that we centralize our focus on those child custody cases where domestic violence is a legitimate factor in the best interest of the children and the safety and well-being of family members. In the next chapter, we turn our attention to issues related to assessing children and parents in these complex clinical and legal proceedings.

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