

Avoiding Collusion with Batterers through Recognition of Covert Behavior for Better Outcomes in Family Court

by
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Violence between intimate partners and within families has become a significant issue for the courts over the past few decades, as criminal justice and social service systems have pursued strategies to stop the violence and increase protections for victims and children. According to the Centers for Disease Control, intimate partner violence cost more than \$8.3 billion in 2003, due to medical care, mental health services, and lost productivity.¹ This cost increases significantly when taking into account the other entities affected by intimate partner violence, such as the courts, schools and criminal justice partners. Research among a variety of professional disciplines continues to be conducted on the unique dynamics of intimate partner violence, to shed light on which strategies will best affect this social and criminal issue. But more needs to be done, especially in the arena of family court.

If child custody litigation is centered on “what’s in the best interest of the child,”² then better outcomes need to be driven by research-based findings regarding the effects of the child’s exposure to domestic abuse, recognition of abusers’ tactics to gain power and control over their intimate partners, and a greater understanding of what appear to be counterintuitive behaviors on the part of the protective parent. Without a sufficient level of

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¹ Centers for Disease Control, *Understanding Intimate Partner Violence—Fact Sheet*, National Center for Injury and Prevention and Control (2014), <http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf>.

² See generally Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337 (2008).

knowledge regarding the dynamics of abuse and the covert behaviors of abusers, it is fairly easy for the courts, family mediators and others who are seeking the “best interests of the child” to follow a path of collusion with the batterer, which further victimizes the partner and the children. The doctrine of “best interest” will be most judiciously implemented if courts rely on knowledge and best practices from a transdisciplinary approach, rather than relying on their personal biases, values, or educated guesses, which are often based on myths and misconceptions.³

Before any discussion can occur regarding domestic violence, one needs to have an understanding of what exactly is domestic violence. As this article will examine in Part I, this is not necessarily an easy answer. To begin with, there are discrepancies among many professionals as to the accurate terminology. Over the last few years, the term “intimate partner violence” has been widely accepted, and has replaced “wife abuse” or even “spousal abuse,” especially in light of the recognition and reality of teen dating violence and same-sex violence.⁴ However, the term “intimate partner violence” does not paint a singular picture either, because the parties involved may be found in either the criminal court and/or the civil court, in both, or in neither. Both the criminal definitions and the broader social definition will be examined for clarification and understanding. While the criminal definition may vary among states, it is usually limited to physical violence or other evidentiary documentations of behaviors such as stalking or terrorist threats, for example. The social definition, however, is broader and includes behaviors that may not rise to the level of criminal justice involvement, yet may have more powerful effects on the victim and the family than its criminal counterpart.

In Part II, the article moves into a deeper discussion to help understand the dynamics of intimate partner violence. This section will include the description and discussion of Dr. Lenore

³ Dana E. Prescott, *The AAML and a New Paradigm for “Thinking About” Child Custody Litigation: The Next Half Century*, 24 J. AM. ACAD. MATRIM. LAW. 107 (2011).

⁴ Craig A. Field & Raul Caetano, *Intimate Partner Violence in the U.S. General Population: Progress and Future Directions*, 20 J. INTERPERSONAL VIOLENCE 463 (2005).

Walker's cycle of violence theory,⁵ a common pattern experienced by many victims in abusive relationships. While the theory does not apply to every case of domestic violence, it provides a framework for understanding the seemingly counterintuitive behaviors of many victims and children. A more helpful tool for understanding the dynamics in almost all cases is the power and control wheel, which was developed as part of the Duluth Model.⁶ It is also important to recognize the shame factor, which is present in almost all intimate partner violent relationships and is experienced by all parties involved.⁷ For perpetrators of the abuse, shame manifests as minimization and denial of their behavior and its effects on their partners and/or children. For recipients of the violence, and the children, it appears as silence and "protecting the family secret." As discussed in Part II, overcoming the shame is absolutely imperative if the abuser is going to be stop being abusive.⁸ To wrap up Part II, the important aspect of the intergenerational nature of intimate partner violence will be reviewed. Consistent with social learning theory, the dynamics of interpersonal relationships are learned at home⁹ and some studies show that girls are at higher risk of sexual abuse in homes where the mother is being abused. It is not uncommon for

⁵ Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 330 (1992).

⁶ Domestic Abuse Intervention Programs, *Home of the Duluth Model*, <http://www.theduluthmodel.org/training/wheels.html> (last visited July 11, 2015) (the wheels were initially designed for female victims/male batterers, but they have since been modified to account for same-sex intimate partner violence).

⁷ Deborah King, *The Secret Shame of Domestic Violence*, PSYCHOL. TODAY BLOG, (Oct. 23, 2014), <https://www.psychologytoday.com/blog/mining-the-headlines/201410/the-secret-shame-domestic-violence>.

⁸ DAVID B. WEXLER, MEN IN THERAPY: NEW APPROACHES FOR EFFECTIVE TREATMENT 189 (2009); NADA YORKE, ANOTHER WAY. . .CHOOSING TO CHANGE-FACILITATOR GUIDE (2014); Edward W. Gondolf, *Changing Men Who Batter: A Developmental Model for Integrated Interventions*, 2 J. FAM. VIOLENCE 335 (1987).

⁹ Jeffrey L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839, 860 (Aug. 1999); Jerome R. Kolbo, Eleanor H. Blackley, & David Engleman, *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 J. INTERPERSONAL VIOLENCE 281 (June 1996); Amy R. Murrell et al., *Characteristics of Domestic Violence Offenders: Association with Childhood Exposure to Violence*, 22 J. FAM. VIOLENCE 523 (Oct. 2007).

these same girls to attract to an abuser in their adult interpersonal relationships.¹⁰ Studies also show that men who are identified as batterers were often raised in homes where there was family violence.¹¹

Part III will examine the common characteristics of batterers, as well as the role of counseling as a strategy to address the co-parenting concerns. Suffice to say that conjoint/co-parenting counseling is, more often than not, contraindicated in cases where domestic violence is occurring due to the power differential between the parties. This strategy is particularly important to reconsider if any risk factors are identified in a danger assessment.¹² Another strategy, which may be more effective than conjoint/couple's counseling to stop the abusive behavior is utilizing batterer intervention programs (BIP). One particular caution, though, is that batterers commonly minimize and deny their behavior and thus need to attend a BIP for a significant amount of time to break down those defense mechanisms and exhibit sufficient change regarding their beliefs and behaviors toward their abusive behaviors and parenting.¹³ Therefore, due to

¹⁰ Sherry Hamby et al., *Teen Dating Violence: Co-occurrence with Other Victimization in the National Survey of Children's Exposure to Violence (Nat-SCEV)*, 2 *PSYCHOL. VIOLENCE* 111 (2012); Penelope K. Trickett et al., *The Impact of Sexual Abuse on Female Development: Lessons from a Multigenerational, Longitudinal Research Study*, 23 *DEV. & PSYCHOPATHOLOGY* 453 (May 2011).

¹¹ AMERICAN PSYCHOLOGICAL ASSOCIATION, *VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY* (1996); Murrell, et al., *supra* note 9, at 524.

¹² See Michele Bograd & Fernando Mederos, *Battering and Couples Therapy: Universal Screening and Selection of Treatment Modality*, 25 *J. MARITAL & FAM. THERAPY* 291 (Jul. 1999); Jacquelyn C. Campbell, *The Danger Assessment Instrument: Risk Factors of Homicide of and by Battered Women*, in *QUESTIONS AND ANSWERS IN LETHAL AND NON-LETHAL VIOLENCE: PROCEEDINGS OF THE FIRST ANNUAL WORKSHOP OF THE HOMICIDE RESEARCH WORKING GROUP* 27-38 (1993); K. Daniel O'Leary, *Conjoint Therapy for Partners Who Engage in Physically Aggressive Behavior*, 5 *J. AGGRESSION, MALTREATMENT & TRAUMA* 145 (2001).

¹³ Jerry L. Jennings, *Preventing Relapse Versus "Stopping" Domestic Violence: Do We Expect too Much too Soon from Battering Men?*, 5 *J. FAM. VIOLENCE* 43 (1990); Nada Yorke, et al., *Implementing a Batterer's Intervention Program in a Correctional Setting: A Tertiary Prevention Model*, 49 *J. OFFENDER REHABILITATION* 456 (2010).

the minimization and denial of batterers, the court order, or condition of parenting access, needs to be fully enforced and supported with consequences for non-compliance. It is also important to note that the purpose and goal of BIPs are not for reconciliation of a relationship, but rather to change abusive behavior patterns and stop the violence.¹⁴

Finally, in Part IV, some myths and misconceptions of intimate partner violence will be exposed and evaluated. Without adequate training to discern truth from error in evaluating the claims of intimate partner violence, courts, child custody evaluators, and others who are the decision makers in child custody litigation will find themselves colluding with the batterer and allowing the continuation of the perpetration of abuse of the protective partner and the children.¹⁵

I. Defining the Definitions

Among the challenges to the courts is defining what domestic violence is. The first hurdle, however, is that the very terminology chosen to describe abuse between intimates is still under review and somewhat subject to individual interpretation,¹⁶ so it is no wonder that it is a difficult issue to deal with effectively in the family court system. When being called to testify as an expert, it is not uncommon to be asked “what do we call it?” Some label it “dynamics of domestic violence”; others use the phrase “spousal abuse,” while still others speak of the “dynamics of intimate partner violence.” For the purposes of this article, the term “intimate partner violence” (IPV) will be utilized because it is gender neutral and will lend itself more adeptly to recognizing that not all abuse in intimate partner relationships can be defined as physical abuse. The term “domestic violence” will be referenced for criminal justice matters.

Not only is the terminology changeable, but the definition of the acts will vary depending on the venue. Interestingly, over the

¹⁴ See YORKE, *supra* note 8, at ix; See Jennings, *supra* note 13, at 44.

¹⁵ Battered Women’s Justice Project, *OVW Child Custody Differentiation Project Progress Summary* (2012), <http://www.bwjp.org/our-work/projects/national-child-custody-project.html>

¹⁶ Centers for Disease Control, *Costs of Intimate Partner Violence Against Women in the United States* (2003), <http://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf>.

past five years, even the Centers for Disease Control has modified its collection of supporting evidence for IPV to now include stalking, rape, and homicide, in addition to acts of physical abuse.¹⁷ For criminal court, the definition of domestic violence is based on specific acts that constitute the elements of the offense, which refers to the evidence of physical abuse.¹⁸ For most jurisdictions, in the hierarchy of domestic abuse offenses, there are usually several categories of felonies and misdemeanors, often depending on the severity of the injury, and sometimes due to the person having prior convictions.¹⁹ But intimate partner violence encompasses a variety of abusive behaviors, such as emotional/psychological abuse, economic abuse, spiritual abuse, and other non-physical acts, which can have a profound impact on a victim's sense of safety and well-being. Often, when questioned in court as an expert witness, I am asked to explain to the jury (or trier of fact) the definition of intimate-partner battering. Whereas the prosecution must prove the elements of the crime, the broader definition of IPV is needed to help the jury discern the more subtle issues regarding victim credibility and likelihood of the offense having been committed. In this light, domestic violence is a pattern of coercive behavior designed to exert power and control over a person in an intimate relationship through the use of intimidation, threatening, harmful, or harassing behavior.²⁰ At this point, it is important to understand that the dynamics of intimate partner battering refer to a pattern of behavior, not a single act of physical aggression, and how a lack of compe-

¹⁷ *See id.*

¹⁸ California Legislative Information, California Penal Code § 273.5(a) (2015), http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=273.5.&lawCode=PEN

¹⁹ *See, e.g.*, California Penal Code § 17(b), which allows for a charge, which may have initially been classified as a felony, to be filed (or reduced) to a misdemeanor depending on particular circumstances. According to the website of the California Courts-The Judicial Branch, the prosecuting attorney (also referred to as the District Attorney in California) has the discretion to file the charges as either a felony or misdemeanor, <http://www.courts.ca.gov/1269.htm>.

²⁰ Leslie M. Drozd, et al., *Safety First: A Model for Understanding Domestic Violence in Child Custody and Access Disputes*, 1 J. CHILD CUSTODY 75 (2004); *see also* Battered Women's Justice Project, *supra* note 15; Edleson, *supra* note 9.

tence in this area can lead to collusion with the batterer and potential harm to the protective parent and the children.

II. Understanding the Dynamics of Intimate Partner Battering

A. Cycle of Violence

As mentioned earlier, the cycle of violence does not fit every incident of intimate partner violence, but it explains a vast number of cases and helps the outsider glean some understanding as to why people stay in abusive relationships for as long as they do. The cycle is traditionally described as the “tension phase,” the “explosion or acute phase,” and the “honeymoon phase.”²¹ The reality though, is that most abusive relationships start off in the “honeymoon phase,” a passionate, emotional-filled state, with no need to acknowledge or deal with common couple conflicts or disagreements, and important decisions such as marriage or having children are treated with a sense of immediacy without truly getting to know each other.

During the tension phase, there is a general sense of uneasiness, sometimes described as “walking on eggshells.” The batterer often becomes critical over minor issues (verbal and emotional abuse is common during this stage) and the beginning of physical acts such as slamming doors and other intimidating behaviors are exhibited. In this stage the partner is usually trying to do or stop doing whatever they think is “setting off” the batterer, but the partner is not really the reason for the batterer’s edginess (although it is common for the partner to believe they can control the batterer’s moodiness), so the tension phase will eventually escalate to the explosion or acute phase. In this second phase, verbal abuse moves beyond name-calling and criticisms, to threats of harm; physical acts of intimidation can intensify from punching holes in walls to actual “hands on” such as grabbing, kicking, hitting, punching, and the use of weapons on the partner. After the explosion stage has occurred, the batterer will commonly become concerned that the partner will

²¹ See Domestic Violence and Sexual Assault Coalition, *Cycles of Violence*, June 6, 2011, <http://www.dvsac.org/cycles-of-violence/>; Walker, *supra* note 5, at 330.

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leave (or that legal action may take place) and therefore engages in behaviors designed to minimize the abuse, which is described as the “honeymoon phase.” These behaviors may be promises “to get help”, apologies (which actually blame the partner for the abuse, such as: “You know how much I love you. I can’t believe you made me do this!”), giving the partner something desirable such as flowers or other gifts, all of which are usually welcomed by the partner and convinces both of them that the incident was isolated and the tension phase is over. In the initial experiences of the abuse cycle, the couple believes they can return to the earlier state of happiness and bliss, but without appropriate intervention, whether it is legal and/or clinical, the “cycle” will continue and the violence usually escalates.

B. Power and Control

The Duluth Model²² uses the power and control wheel to explain the variety of abusive behaviors that are used by a perpetrator to coercively gain control.²³ For example, calling a partner a profane name, itself, may have no real impact in terms of fear or controlling the partner’s behavior; but when such an event in the past has usually been followed by a physical attack, the mere name-calling behavior escalates the incident to become abusive in nature, whether or not the physical act occurs. Other abusive behaviors are described as minimization or denial of the abuse or the effects of the abuse, threats and using the children, isolation, economic abuse, spiritual abuse, sexual abuse, and legal abuse, in addition to many others. Threats to harm or kill the partner, and threats to take the children if the battered woman/protective parent attempts to leave the batterer are powerful influences for why she would stay in the relationship. Unfortunately, the scenario is too often realized as a reality in family court.²⁴ Isolation

²² Domestic Abuse Intervention Programs, *supra* note 6. The Duluth Model is considered one of the forerunners for examining and explaining intimate partner violence. They initially began their work with victims of violence, but later developed batterer intervention programs as a response to stopping the violence among partners.

²³ *See id.*

²⁴ *See* Battered Women’s Justice Project, *supra* note 15; *In re Marriage of Fajota*, 230 Cal. App. 4th 1487 (Cal. Ct. App. 2014). In *Fajota*, the family court services evaluator and the initial judge who conducted the hearing and acknowledged the domestic violence ignored the presumptive finding that domes-

refers to the batterer's attempt to keep the partner from having connections with her family, friends, or any other person who might provide support, or worse, be able to reframe the batterer's behaviors as abusive. Economic abuse often appears as complete control over the finances and can also manifest as refusing to allow the partner to have a job, and/or sabotaging her attempts to have employment which might allow her independence. Spiritual abuse can involve misquoting religious scriptures and doctrines to maintain control or preventing her from attending worship services or other church-related events. Sexual abuse can be manifested as forcing her to watch pornographic movies, forcing sexual relationships with others, in addition to the criminal act of spousal rape.

Legal abuse is all too common in the family court venue. Multiple court hearing continuances, countering for mutual restraining orders when there is no legal basis or legitimate concern for safety to justify such an order, violating child custody orders, and failing to pay child support can wear down the resolve of the partner to pursue legal action to protect herself and the children. In a number of cases, it can cause financial devastation to the protective partners. The unfortunate consequence of this situation is that she and the children can end up homeless²⁵ and it is hard to "argue for custody when you have no home."²⁶ These behaviors, and others, can allow for the coercive control of partners through fear, without ever physically harming them.

tic violence existed and that the Child Protective Services had substantiated five reports of physical abuse on the children. The court ordered joint legal custody and unsupervised visitation, in addition to refusing to grant the mother's restraining order request. During the visits, the children reported being spanked if they refused to provide information on their mother's activities and at one point, the father filed for full custody when the mother sought a second restraining order after he had violated the court's orders to not enter her home. He admitted to the court that he removed much of the bedroom furniture and other items while she was out of the house because they were his property. See also Sharon K. Araji, *Domestic Violence, Contested Custody, and the Courts: A Review of Findings from Five Studies with Accompanying Documentary*, 55 SOC. PERSP. 3 (Mar. 2012).

²⁵ National Coalition for the Homeless, *Domestic Violence and Homelessness*, July 2009, <http://www.nationalhomeless.org/factsheets/domestic.html>.

²⁶ See Araji, *supra* note 24, at 5.

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It is vital for the courts, child custody evaluators, and other decision makers, who are charged with determining what is best for the child, to understand the behavior and mindset of one who is using coercive control over family members to perpetrate abuse. While either party can engage in acts of aggression or physical violence, it is essential to recognize the impact of those acts on the partner and more importantly discern whether those acts instill fear absent a physical act of abuse. Take the cattle prod, for example. This explanation, from an anonymous source on a business product website, appeared on a social media site in early 2015 and is shared as an illustration of the impact that one act of physical abuse can have on controlling the future behavior and decisions of a battered partner and the children:

A cattle prod, for those readers who may not be familiar, is a pressure-activated device that delivers an intense electric shock. They're used by ranchers to move cattle from here to there, and as this post on *Cattle Today* makes clear, cattle quickly learn to fear the devices. "[My cattle prod] gets the job done. I too [sic] it not too much, once the cattle know what it is they won't forget it and move the moment they see that thing in my hand. If they need a reminder I make a buzzing sound by holding it on to a metal fence post. Like with everything else, the more you use it the more the animal get used to it and don't bother about it.

C. *Shame*

Another important aspect of intimate partner violence to recognize and understand is the role that "shame" plays in the lives of those experiencing intimate partner violence. For the perpetrator of the abuse, it usually appears as defensiveness, minimization of the violence, or complete denial of the violence.²⁷ It is rare to find a man who does not believe its "wrong to hit women," but often batterers are able to justify their physical abuse by blaming it on their partner. Statements such as "she provoked me" and "she had it coming" are illustrations of this behavior. Turning blame outward helps alleviate the guilt and shame batterers feel, but when mediators, child protection workers, or the courts accept the batterer's explanation for abusive behavior by agreeing that the partner's behavior justified the abuse, they are in fact colluding with the batterer. Unfortunately,

²⁷ See King, *supra* note 7.

in the courtroom setting, it is not uncommon for the abused partner to display anger or what appears to be unreasonable intractability when the court attempts to reach a balanced distribution of funds/child custody, etc.²⁸ This scenario would appear on the surface to support the batterer's contention of how he was provoked into abuse; unless other questions are asked to provide context, it is easy to collude and support the batterer's side of the issue. Batterers also try to present themselves as the "true" victim, even though they are unequivocally the actual perpetrator of the abuse.²⁹ Ironically, many victims tend to take more responsibility for the abuse whereas the batterers will justify their abuse. While contradictory and certainly not in their best interest, this is often the victim's attempt to have some control over the situation and reduce the sense of vulnerability.³⁰ This illustrates another reason why proper training is so important for all of the decision makers.

For the abused partner, surprisingly, it is common for her to *not* consider herself an "abused woman," and she too engages in denial and minimization of the abuse initially, as do her children in order to keep the "family secret."³¹ This factor of underlying shame often contributes to the difficulty of discerning the truth about the violence, because the abuser continues to deny or minimize the abuse and blames the victim, and the recipient of the abuse waits, to what appears to the untrained eye, an inordinate amount of time to report the abuse.³² In fact, in family law, it is

²⁸ See Battered Women's Justice Project, *supra* note 15.

²⁹ NEIL S. JACOBSON & JOHN GOTTMAN, *WHEN MEN BATTER WOMEN: NEW INSIGHTS INTO ENDING ABUSIVE RELATIONSHIPS* 75 (1998).

³⁰ See *id.* at 67.

³¹ Joanne Belknap et al., *Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables Executive Summary*, National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/grants/184112.pdf>; Mary P. Koss, *Blame, Shame, and Community: Justice Responses to Violence Against Women*, 55 *AM. PSYCHOL.* 1332 (2000); Amy E. Street & Ileana Arias, *Psychological Abuse and Posttraumatic Stress Disorder in Battered Women: Examining the Roles of Shame and Guilt*, 16 *VIOLENCE AND VICTIMS* 65 (2001); Jeffrey Stuewig & Laura A. McCloskey, *The Relation of Child Maltreatment to Shame and Guilt Among Adolescents: Psychological Routes to Depression and Delinquency*, 10 *CHILD MALTREATMENT* 324 (2005).

³² OLA W. BARNETT & ALYCE D. LAVIOLETTE, *IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY* at 11 (1993).

not uncommon for the disclosure to not occur until child custody arrangements allow for unsupervised visits or joint legal custody. At this point the protective parent can no longer keep the “family secret,” and alleges the domestic violence, not realizing that she won’t be believed in many cases and her attorney may not be familiar enough with the dynamics of intimate partner violence to help provide adequate legal counsel.³³

D. *Intergenerational Cycle of Abuse*

Probably one of the most common consequences to unrecognized, untreated intimate partner violence is that it often produces the next generation of victims and abusers.³⁴ Although not everyone who is raised in a violent home becomes a victim or abuser,³⁵ the research and studies continue to indicate that children who grow up in households where abuse occurred have a higher probability of being in an abusive relationship as well as suffering a multitude of other adverse experiences.³⁶ This factor makes it extremely important that the evaluators in child-custody litigation recognize they have significant influence on the next generation by the quality of their investigations and recommendations in each case. Training and familiarization with the intergenerational dynamics of intimate partner violence is crucial, although unfortunately most of the research reveals that custody evaluators are deficient in this area.³⁷

³³ Roberta L. Valente, *Addressing Domestic Violence: The Role of the Family Law Practitioner*, 29 *FAM. L.Q.* 187 (1995).

³⁴ National Child Traumatic Stress Network, *Children and Domestic Violence*, <http://www.nctsn.org/content/children-and-domestic-violence>; Centers for Disease Control and Prevention, *Connecting the Dots: An Overview of the Links Among Multiple Forms of Violence*, (last visited May 29, 2015), http://www.cdc.gov/violenceprevention/pub/connecting_dots.html.

³⁵ Steven M. Harris & Charette A. Dersch, “*I’m Just Not Like That*”: *Investigating the Intergenerational Cycle of Violence*, 9 *FAM. J.* 250 (2001).

³⁶ Robert F. Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 *EUR. ARCHIVES OF PSYCHIATRY & CLINICAL NEUROSCIENCE* 174 (2006); Shanta R. Dube et al., *Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study*, 111 *PEDIATRICS* 564 (2003).

³⁷ Robert Geffner et al., *Conducting Child Custody Evaluations in the Context of Family Violence Allegations: Practical Techniques and Suggestions for Ethical Practice*, 6 *J. CHILD CUSTODY* 189 (2009); Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differenti-*

III. Understanding the Perpetrator of Intimate Partner Violence

Discerning true batterers can be difficult because their behavior is based on more than just the commission of physical acts of violence or aggression. As mentioned earlier, “battering” can consist of many other types of abuse, which may not necessarily be criminal, but the behavior can have a significant impact on the partner and family dynamics. Because of this factor, conjoint counseling and co-parenting counseling can be counterproductive and in some cases place the protective parent and children in more danger.³⁸ Batterers who are perpetrating abuse on their partners can often appear calm and emotionally stable when under pressure³⁹ and use a variety of tactics to derail their partners’ attempts to protect the children. In family court it is not uncommon for the protective parent to display anger for righteous reasons (prior abuse on her and the children, the very real potential for abuse on the children absent her protective presence, and so forth), yet, like an audience watching a magician using a “sleight of hand” technique, the professionals involved are diverted to her display of anger rather than investigating the validity of the underlying claims of abuse.⁴⁰

Rather than referring a family to conjoint/co-parenting sessions when intimate partner violence is alleged, it is prudent to utilize an investigator well trained in intimate partner battering, and if the allegations appear to have some merit, the batterer should be referred to a batterer intervention program (BIP). While the design of BIPs is still evolving as new research evaluates their effectiveness, they nevertheless have an underlying

ated Approach to Parenting Plans, 46 FAM. CT. REV. 500 (2008); Daniel G. Saunders et al., *Factors Associated with Child Custody Evaluators’ Recommendations in Cases of Intimate Partner Violence*, 27 J. FAM. PSYCHOL. 473 (2013).

³⁸ See Saunders et al, *supra* note 37.

³⁹ See JACOBSON & GOTTMAN, *supra* note 29, at 84.

⁴⁰ LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT* 96 (2002); CLARE DALTON ET AL., *NAVIGATING CUSTODY & VISITATION EVALUATIONS IN CASES WITH DOMESTIC VIOLENCE: A JUDGE’S GUIDE* 123-28 (2006), available at <http://www.ncjfcj.org/resource-library/publications/navigating-custody-and-visitation> (describing the behaviors of the batterer when trying to discredit the protective mother in child custody evaluations and litigation proceedings).

goal to redirect abusive behaviors and stop the violence. Measuring the drop in levels of denial or minimization and subsequent increase in acceptance of personal responsibility for violence was the focus of a study conducted with a prison population in 2007-2009.⁴¹ After only eighteen weeks, the men showed increased awareness of what constituted abusive behaviors and increased acceptance of personal responsibility for perpetrating various abusive behaviors. What is of interest is that more than 95% of the men participating in the program had no criminal arrests or convictions for domestic violence or related offenses, yet most admitted to engaging in abusive behaviors with their intimate partners. The measurement survey that was utilized as part of the research is attached in Appendix A. It was developed with a modification of the Abusive Behaviors Checklist⁴² and included additional questions which victims of intimate partner violence have reported. Some research reveals that abusive behaviors can be reduced significantly when a batterer has attended at least a ninety-day program, which would likely lead to the ability for the parents to have a greater probability of co-parenting successfully.⁴³ While all couples argue,⁴⁴ the differences between a couple dealing with intimate partner violence and the ones who were not center on their ability to maintain equal authority and balance. Without this equality, co-parenting would be ineffective and likely to cause future emotional harm to the children.

⁴¹ Yorke, *supra* note 13.

⁴² Melanie Shepard et al., *The Abusive Behavior Inventory: A Measure of Psychological and Physical Abuse*, 7 J. INTERPERSONAL VIOLENCE, 291(1992).

⁴³ Dalton, *supra* note 40. See also Julia C. Babcock et al., *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLIN. PSYCHOL. REV. 1023 (2004); Larry W. Bennett et al., *Program Completion and Re-Arrest in a Batterer Intervention System*, 17 RES. SOC. WORK PRAC. 42 (2007); Lynette Feder & David B. Wilson, *A Meta-analysis of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers' Behavior?*, 1 J. EXPERIMENTAL CRIMINOLOGY 239 (2005); Edward Gondolf, *Changing Men Who Batter: A Developmental Model for Integrated Interventions*, 2 J. FAM. VIOLENCE 335 (1987); Edward W. Gondolf, *Reassault at 30-Months After Batterer Program Intake*, 44 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 111 (2000).

⁴⁴ See JACOBSON & GOTTMAN, *supra* note 29, at 79.

IV. Myths and Misconceptions of Domestic Violence

There are a number of common myths and misconceptions associated with intimate partner violence. Myths permeate the general perceptions, such as “both men and women batter;” “domestic violence is anger out of control;” “if it was really happening others would know about it;” “the woman must want it/be crazy or she would leave;” and the list continues. Unfortunately, these myths can cause decision makers to misinterpret facts that indicate battering, which generally leads to their collusion with the batterer. Some current research, which is getting some traction with decision makers, is “women are just as violent as men!”⁴⁵ The critiques of the study, however, point out that the conclusion reached by the authors is only concerned with the “number” of aggressive acts, but fails to take into account the impact, the damage, and the power of the aggressive act to control the other partner.⁴⁶

Another study compared the impact of the violence committed by men and women. In this study’s comparison the researchers found that male violence does much more damage than female violence (unless the female uses a weapon to equalize the force), that women are more likely to be injured to the point of needing medical care, and that women are more likely than men to be killed by an intimate partner.⁴⁷ One common misconception is that when a person “threatens to kill their partner” they are just “blowing off steam and don’t really mean it.”⁴⁸ Accord-

⁴⁵ MURRAY A. STRAUS ET AL., VIOLENCE IN THE AMERICAN FAMILY: BEHIND CLOSED DOORS 12 (1980); Russell P. Dobash et al., *The Myth of Sexual Symmetry in Marital Violence*, 39 SOC. PROBS. 71 (Feb. 1992).

⁴⁶ PAT J. KINCAID, THE OMITTED REALITY: HUSBAND-WIFE VIOLENCE IN ONTARIO AND POLICY IMPLICATIONS (1982); Dobash et al., *supra* note 45, at 72; Dina Vivian & Jennifer Langhinrichsen-Rohling, *Are Bi-directionally Violent Couples Mutually Victimized? A Gender-Sensitive Comparison*, 9 VIOLENCE & VICTIMS 107 (1994).

⁴⁷ See JACOBSON & GOTTMAN, *supra* note 29, at 35

⁴⁸ Carolyn Rebecca Block, *Risk Factors for Death or Life-Threatening Injury for Abused Women in Chicago*, final report for the National Institute of Justice (2004), <https://www.ncjrs.gov/pdffiles1/nij/199732.pdf>; Neil Websdale, with Bahney Dedolph, *Lethality Assessment Tools: A Critical Analysis* (2011), http://www.vawnet.org/research/print-document.php?doc_id=387&find_type=web_desc_AR.

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ing to many experts in the field, information regarding threats to kill a partner should be taken very seriously.⁴⁹ In addition to threats to kill, it is important to question whether the woman has ever been choked or grabbed around the neck.⁵⁰ Another common misconception is that ongoing abusive behavior is obvious to most people; an accompanying mistake is the assumption that somehow the abuser is “always an angry person.” While some abusers are angry much of the time and at most people, the hallmark of many batterers is just the opposite.⁵¹ They are able to maintain their composure under seemingly difficult circumstances and only express their anger at loved ones behind closed doors. A case in point is the all too common news story about a man who kills his partner, his children, and then kills himself. These reports are often accompanied by interviews with neighbors, co-workers and friends, who report being “shocked” when they learn of the family homicide or homicide/suicide committed by someone who “was such nice guy,” stating “they seemed like such a happy family.”⁵²

⁴⁹ Jacquelyn C. Campbell, *Safety Planning Based on Lethality Assessment for Partners of Batterers in Intervention Programs*, 5 J. AGGRESSION, MALTREATMENT & TRAUMA 129 (2001); Jacquelyn C. Campbell, et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089 (2003); Jacquelyn Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 NIJ J. 14 (Nov. 2003), <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>. Dr. Campbell has done extensive research on lethality issues of IPV and has developed a Danger Assessment tool which is utilized by law enforcement and victim advocates. Through her research she has found about twenty predictive behaviors for potential lethality.

⁵⁰ Laura Dugan et al., *The Effects of State and Local Domestic Violence Policy on Intimate Partner Homicide*, (2004), <https://www.ncjrs.gov/pdffiles1/nij/199711.pdf>.

⁵¹ See JACOBSON & GOTTMAN, *supra* note 29, at 45; See BANCROFT & SILVERMAN, *supra* note 40, at 15, 121.

⁵² Tracy Bloom, *Father, Toddler Dead in Apparent Murder-Suicide Following Domestic Dispute at O.C. Home: Sheriff's Dept.*, KTLA TV5, May 28, 2015, <http://ktla.com/2015/05/28/father-toddler-dead-in-possible-murder-suicide-following-domestic-dispute-at-o-c-home-sheriffs-dept/>; Craig Huber, *Coroner IDs Domestic Homicide Suspect; Victim Mourned*, KVVU TV5, Oct. 21, 2014, <http://www.fox5vegas.com/story/26264172/coroner-ids-domestic-homicide-suspect-as-friends-mourn-victim>; Brian Nordli, *Metro Officer, Wife and Child Dead in Apparent Double-Murder, Suicide*, LAS VEGAS SUN, Jan. 21, 2013, <http://lasvegassun.com/news/2013/jan/21/fire-possible-homicide-involving-metro-officer-und/>.

The myth that “the woman must want it/be crazy or she would leave” indicates a complete lack of understanding as to the lethal danger posed to a woman if and when she decides to leave her abuser. Studies have shown this can be the most dangerous time for her physical safety. Some researchers put her risk at 75% greater for being a victim of homicide and this phenomenon has been called “separation violence.”⁵³ An even more interesting counterargument to this myth is the recent story in the sports world about Coach Mike Rice from Rutgers University.⁵⁴ In the story and accompanying video it was revealed that Coach Rice regularly and viciously attacked his players, both emotionally and physically. When a colleague, an ex-NBA player and former director of player development brought the behavior of Coach Rice to the attention of those in higher authority, he was allegedly fired. What was apparent, however, was the video which showed Coach Rice yelling profanities at the players and throwing basketballs at them, at times actually making contact with a part of their body; in one case it was the player’s head. In light of this myth about intimate partner violence, one has to ask, “Why would physically fit, strong and agile young men, who were, in some cases, twice the size of Coach Rice put up with such behavior? Why didn’t they leave? Are they crazy? Do they just like the abuse?” The answer is far more complicated, and in this case of the basketball players, they likely had a lot to lose by retaliating against Coach Rice. This example illustrates the difficulty in being in a relationship where reporting the abuse may have worse repercussions than remaining silent.

A similar misunderstanding or misconception common in family court is the concept of “high-conflict divorce.” As Bancroft and Silverman point out in their critique of this theory, the study which was conducted by Johnston and Campbell found a history of domestic violence in approximately 75% of the intractable custody conflicts, yet there was a failure to acknowledge

⁵³ Cathy Humphreys & Ravi K. Thiara, *Neither Justice nor Protection: Women’s Experiences of Post-Separation Violence*, 25 J. SOC. WELFARE & FAM. L. 195 (2003); See BANCROFT & SILVERMAN, *supra* note 40, at 145.

⁵⁴ Don Van Natta Jr., *Video Shows Mike Rice’s Ire*, ESPN, Apr. 3, 2013, http://espn.go.com/espn/otl/story/_id/9125796/practice-video-shows-rutgers-basketball-coach-mike-rice-berated-pushed-used-slurs-players.

that it was in fact the dynamics of domestic violence.⁵⁵ New research addresses the need for a paradigm shift regarding the intractable custody conflicts which can address the dynamics of domestic violence and its negative effect on the well-being of the children and safety for all concerned.⁵⁶ One helpful offering is the use of a decision tree to help mediators and other influential decision makers navigate through multiple reports of maltreatment and develop new descriptions to accurately assess the dynamics in an intractable custody conflict.⁵⁷

Finally, the belief, whether a myth or misconception, that intervention from the court will “stop” the abuse from continuing, still appears in some court rulings, but is countered by the reality of what is termed “post-separation power and control.”⁵⁸ Issuing restraining orders does not always stop the abuse, but at least it allows for law enforcement intervention if the harassment continues. It is still amazing how many courts will decide not to continue the restraining order out of a misplaced belief that if the parties are no longer together, then the order is unnecessary.⁵⁹ Additionally, another form of continuing abuse and harassment is for the abuser to refuse to pay child/spousal support, which pushes the mother and children into financial destitution, even homelessness;⁶⁰ and then, of course, using the child custody exchanges to continue the harassment and control over their partner who left him. These and many other covert abusive behaviors are used by batterers to continue exerting power and control over their partners. Unfortunately, many abusers are adept at enlisting the help of the courts and agencies to continue on this

⁵⁵ BANCROFT & SILVERMAN, *supra* note 40, at 131;

⁵⁶ Peter Jaffe, et al., *A Framework for Addressing Allegations of Domestic Violence in Child Custody Disputes*, 6 J. CHILD CUSTODY 169 (2009); Margaret K. Dore, *The “Friendly Parent” Concept: A Flawed Factor for Child Custody*, 6. LOY. J. PUB. INT. L. 41 (2004).

⁵⁷ Leslie Drozd, et al., *Is It Abuse, Alienation, and/or Estrangement? A Decision Tree*, J. CHILD CUSTODY 65, (2004).

⁵⁸ Domestic Abuse Intervention Programs, *The Abuse of Children*, <http://www.theduluthmodel.org/cms/files/Using%20Children%20Wheel.pdf>.

⁵⁹ *Fajota*, 230 Cal. App. 4th 1487; Araj, *supra* note 24.

⁶⁰ See National Coalition for the Homeless, *supra* note 25; National Alliance to End Homelessness, *Domestic Violence*, http://www.endhomelessness.org/pages/domestic_violence.

path.⁶¹ For these reasons it is imperative that the court rely on experienced child custody evaluators who have been trained in understanding the dynamics of intimate partner violence, which include the effects on the children as well as covert behaviors on the part of the abuser.

V. Conclusion

In conclusion, it is important to recognize the current built-in weaknesses in the family court system and, as professionals, make concerted efforts to alleviate them to avoid colluding with batterers and jeopardizing the safety and emotional well-being of the protective parent and their children.⁶² Without proper training, one will not properly recognize the subtleties of non-criminal domestic violence because, unlike stranger-on-stranger violence, domestic violence has unique features that allow it to flourish and be misunderstood by the uninformed. Fortunately, properly administered counseling and effective intervention can have a positive impact on changing behavior when it is appropriately applied and followed-up with reliable consequences. Because of the many myths and misconceptions of domestic violence, it is imperative that decision-makers access reliable experts to assist in discerning truth from error and minimizing personal biases, for the physical and emotional safety of the next generation.

Hopefully with proper training for judges and others involved in child custody litigation, and systemic changes to address abuse effectually, seemingly counterintuitive behaviors of the protective parent, such as recanting and “failing to mention” the incidents of domestic violence until later in the proceedings, will trigger “red flags” to investigate alleged abuse, with an educated eye toward covert behaviors of the batterer, rather than a dismissal of the protective parent’s attempt to mitigate the harm of placing the child unsupervised with the battering parent. Not only does collusion with the batterer produce negative outcomes within the family court, it perpetuates the next generation of abusers and victims.

⁶¹ BANCROFT & SILVERMAN, *supra* note 40, at 122-26.

⁶² See Battered Women’s Justice Project, *supra* note 15, at 6-11.

Appendix A

Recognition & Personal Responsibility Scale

Nada J. Yorke, LCSW (2009)

(Circle the option that best estimates how many times you have committed these behaviors within a personal, intimate relationship, regardless of your partner’s behavior.)

1= Never	2= Rarely	3= Some	4= Often	5= Many times
(0 times)	(1-3 times)	(4-8 times)	(9-15 times)	(More than 15 times)

- | | | | | | |
|--|---|---|---|---|---|
| 1 I called them names and /or demeaned them. | 1 | 2 | 3 | 4 | 5 |
| 2 I put down their family and/or friends. | 1 | 2 | 3 | 4 | 5 |
| 3 I told them they were a bad parent. | 1 | 2 | 3 | 4 | 5 |
| 4 I used the children to control them, like threatening I would take the kids or get custody. | 1 | 2 | 3 | 4 | 5 |
| 5 I never listen to their ideas. I made all of the household decisions myself. | 1 | 2 | 3 | 4 | 5 |
| 6 I accused them of paying too much attention to someone else or something else. | 1 | 2 | 3 | 4 | 5 |
| 7 I sent them flowers or bought them presents after we had fights or when they threatened to break off the relationship. | 1 | 2 | 3 | 4 | 5 |
| 8 I became upset and angry when housework or meals were not done, when or as, I expected. | 1 | 2 | 3 | 4 | 5 |
| 9 I restricted them from doing things they wanted, such as attend school, work, go out with friends, go on an overnight trip or vacation without me; even visiting | 1 | 2 | 3 | 4 | 5 |
| 10 I said things purposely intending to threaten them (if you don’t do this, this is what will happen to you). | 1 | 2 | 3 | 4 | 5 |
| 11 I threatened or attempted to commit suicide as a means to keep them with me or control them. | 1 | 2 | 3 | 4 | 5 |
| 12 I glared or gave menacing looks intended to control or intimidate them. | 1 | 2 | 3 | 4 | 5 |
| 13 I called them “crazy” when I’m angry with them. | 1 | 2 | 3 | 4 | 5 |

- 14 I forced them to do humiliating or degrading acts. 1 2 3 4 5
- 15 I called them “too fat” or “too skinny” or “stupid” or said other things to put them down. 1 2 3 4 5
- 16 I used the children to relay messages to them when I was angry and not speaking to them. 1 2 3 4 5
- 17 I had friends or family “watch” them when I was not around and report back to me. 1 2 3 4 5
- 18 I insisted they bring me food, drink, etc. even when I could get it myself. 1 2 3 4 5
- 19 I threw or threatened to throw things or broke objects, toys or possessions on purpose. 1 2 3 4 5
- 20 I kicked, punched, or smashed walls, doors or furniture. 1 2 3 4 5
- 21 I drove recklessly when they were in the car. 1 2 3 4 5
- 22 I pressured them to have sex when they didn’t want to. 1 2 3 4 5
- 23 I refused to do any housework or childcare, because that is their job. 1 2 3 4 5
- 24 I pushed or shoved them 1 2 3 4 5
- 25 I grabbed them and held their arms in anger. 1 2 3 4 5
- 26 I slapped them on any part of their body in anger. 1 2 3 4 5
- 27 I punched or hit them with my fist. 1 2 3 4 5
- 28 I refused to get them medical care when injured or pregnant. 1 2 3 4 5
- 29 I kicked them. 1 2 3 4 5
- 30 I threatened them with a knife. (regardless of intent to use it). 1 2 3 4 5
- 31 I threatened them with a gun. (regardless of intent to use it). 1 2 3 4 5
- 32 I threatened them with an object (). 1 2 3 4 5
- 33 I threw them around (onto the bed, couch, into the car, etc). 1 2 3 4 5
- 34 I choked or tried to strangle them to shut them up. 1 2 3 4 5

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- 35 I physically forced them to have sex, or had them do sexual things they didn't like or did not want to do. 1 2 3 4 5
- 36 I spanked the children harder than I intended. 1 2 3 4 5
- 37 I told them to stop "babying" the kids after I had disciplined them. 1 2 3 4 5
- 38 I threatened to kill them, the family pet, or someone they knew. 1 2 3 4 5
- 39 I confined or locked them in isolation for long periods of time or refused to let them leave home. 1 2 3 4 5
- 40 I told them I could have hurt them worse--to stop crying. 1 2 3 4 5
- 41 I made what I did to them sound like it was an "accident." 1 2 3 4 5
- 42 I told them about sexual affairs to embarrass or humiliate them. 1 2 3 4 5
- 43 I left them in dangerous places alone to teach them a lesson. 1 2 3 4 5
- 44 I used sex to make up to them after assaulting them. 1 2 3 4 5
- 45 I physically and/or verbally abused them in front of the children or others. 1 2 3 4 5
- 46 I raised my voice to dominate a conversation or to take control. 1 2 3 4 5
- 47 I criticized their sexual performance to humiliate them. 1 2 3 4 5
- 48 I told them that seeing their friends or family is harmful to our relationship. 1 2 3 4 5
- 49 I refused to let them leave when I was angry. 1 2 3 4 5
- 50 I made them look at pornography or have sex with with someone else when they didn't want to. 1 2 3 4 5
- 51 I made my partner cook or iron my clothes for me, even if they didn't feel well, or it was last minute. 1 2 3 4 5

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- 52 I told my them they are the only one who really 1 2 3 4 5
understands me and I can't live without them.
- 53 I listened in on phone calls, checked the mileage 1 2 3 4 5
on the car, called them repeatedly at work,
checked to see if they were they said they would
be, or had other people check on them.
- 54 I shown up at places I knew they would be, even 1 2 3 4 5
though they told me to leave them alone.
- 55 I blamed them for my angry outbursts. 1 2 3 4 5
- 56 I put them on an allowance, required them to 1 2 3 4 5
give me their paycheck, told them they were not
capable of managing the finances, or insisted on
making all financial decisions myself.

