

Domestic Violence and Child Custody

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At Family Court Services, Joanna Levy requests to meet separately with Lauren, the child custody mediator, expressing a fear of being in the same room with her husband, Barry, whom she characterizes as a highly controlling man who physically and emotionally abused her throughout their 8-year marriage. “He yells, puts me down constantly,” she says. “Always criticizing. Nothing I do is ever good enough. I have to beg for grocery money.” Upon further questioning, Joanna elaborates on her husband’s emotional neediness, the constant demands. “The last straw,” she says, “was when he beat me up. I felt like a rag doll, yanked around the living room like that.”

The month before, at a seminar conducted by the local battered women’s shelter, Lauren had learned that the unilateral use of physical violence and controlling behavior, along with the fear that they engender in their victims, are defining characteristics of male batterers. In her meeting with Barry, the mediator is struck by how closely he fits the batterer profile, first by denying having engaged in any abuse himself; and, secondly, by claiming abuse on the part of the victim. “Maybe she’s bipolar, or something,” Barry suggests. “I mean, if anyone needs therapy it’s *her*.” Trying to make the victim think she’s crazy, Lauren remembers, is one of the battering tactics from the “Power and Control Wheel” presented at the training. Lauren recommends to the Court that custody of the children be granted to the mother, and that the father enroll in a 52-week Domestic Violence Batterer program. When he is informed by his attorney that he is allowed only a one-hour weekly visit with the children, supervised by a court-approved agency, Barry gets on the phone and screams at his ex. Consequently, a restraining order is placed against him.

Eight months later, an extensive custody evaluation reveals that Joanna has been previously treated for Borderline Personality Disorder. Employment records, and interviews with extended family members and their last marriage therapist support Barry’s characterization of her as volatile and abusive. Barry had yelled at his wife on numerous occasions, but his criticisms were hardly gratuitous – e.g., in response to her inattention to the children’s needs and refusal to cooperate with the finances. His decision to take control of the money was made after she squandered \$75,000 of the family income on personal vacations and shopping sprees. And in the “rag doll” incident, the children confirm that their father was merely defending himself against an onslaught of kicks and punches by the mother who, in the past, had also slapped their oldest daughter.

How could a case could be so poorly assessed, causing a father to lose access to his children and be forcibly separated and remanded to an extended program of batterer treatment while a neglectful, abusive mother is regarded as the victimized partner? The obvious answer would be a lack of adequate assessment tools and procedures. However, in the case above it will be argued that the mediator was also *predisposed* to arrive at the conclusions she drew. It will be shown that the bias she demonstrated cannot be attributed merely to procedural flaws, but rather to the *gender paradigm*, also known as the *patriarchal paradigm*, the dominant model of domestic violence etiology and intervention that has shaped public policy for the past 25 years.

A product of ideological feminism and the experiences of case workers in the women's shelter movement of the 70's, the patriarchal paradigm posits that intimate partner abuse - physical, sexual and emotional - is perpetrated almost exclusively by males upon their female partners, and that it is used to maintain "male privilege" in a male-dominated society that sanctions such behavior (e.g., Dobash & Dobash, 1979). Thus men account for over 80% of spousal abuse arrests in California (California Department of Justice, 2002), and in some counties they comprise 95% of participants in a batterer intervention program (Simerman, 2002).

In this paper, we will echo Dutton's (2005) contention that research does not support the gender/patriarchal paradigm. We will additionally show that more recent offshoots of this model, such as those based on the work of Michael Johnson (Johnson & Leone, 2005), are also inadequate and misleading, and that the unquestioned adoption of these paradigms by many family court professionals has not been in the best interests of children and their families. It has, we believe, led to assessment bias, an overemphasis on male-perpetrated violence, and a general overemphasis on intimate partner abuse over other types of family dysfunction, including the direct abuse of children.

Findings from the Child Custody Literature

In the past 10 years, an increasing body of research has documented the substantial and far-reaching effects that witnessing intimate partner abuse has on children. Between 80%-90% of children in violent homes are aware of the interparental violence (Jaffe, Wolfe & Wilson, 1990), and estimates on the number child witnesses range from three million (Bancroft & Silverman, 2002) to 10 million per year (Straus, 1992). Such children are at much higher risks than children from non-violent households for exhibiting internalizing symptoms such as depression and PTSD, as well as a variety of externalizing symptoms, among them conduct disorder and school problems (Wolak & Finkelhor, 1998). As a result, the issue of interparental violence has become an increasingly important consideration in disputed child custody cases, as the Model Code of the National Council of Juvenile & Family Court Judges makes clear:

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence (Model Code 401, quoted in Jaffe & Geffner, 1998, p. 373).

The gender-neutral language of the Code, however, belies the assumption among many researchers and family court professionals, that perpetrators are primarily fathers. Peter Jaffe and Robert Geffner, two of the most respected researchers in the field of family violence, state unequivocally that :

Although the terms *family violence* and *domestic violence* are commonly used, the most accurate term is *maltreatment of women and children*, because women and children represent the vast majority of victims. Men are also abused, but in most instances, men's violence against women creates greater injury, pain, and suffering, and a large proportion of women's violence toward men is in self-defense (p. 374).

As we will see shortly, the general domestic violence literature does not support these conclusions. Even within the disputed child custody literature, the findings are weak and contradictory. In a review by Logan, Jordan and Horvath (2002) of 82 cases adjudicated in one Kentucky jurisdiction between 1997 and 1998, it was determined that in cases where partner violence was documented in the court record, fathers had perpetrated 57% of the assaults, compared to 19% for fathers in the non-DV group; and mothers had perpetrated 35% of the assaults, compared to 11%. The usefulness of these results are questionable, however, given the infrequent use by the participating evaluators of either formal psychological testing or collateral sources – or any mention of any specialized domestic violence questionnaires or protocols. The national survey of 115 evaluators by Bow and Boxer (2003) found that 37% of child custody referrals involved allegations of partner violence. Of these, 51% of the abuse (including physical aggression, emotional abuse, and controlling behavior) was alleged to be male-instigated, 17% bidirectional but mostly male-instigated, 14% bidirectional and mutual, 11% female-instigated, and 7% bidirectional but mostly female-instigated. Asked to cite the signs or characteristics with which to substantiate the abuse allegations, 60% of the respondents listed shame, guilt, fear, low self-esteem, financial vulnerability or inability to leave – none of which necessarily point to victimization, but may be signs of perpetration (Dutton, 1998), or simply symptoms of being involved in a highly-charged child custody dispute. In fact, only 31% of the evaluators secured independent confirmation by eyewitness reports, police records, etc, and only 30% said they used a comprehensive violence risk assessment model such as Austin's (2001), or any type of domestic violence questionnaire (e.g., 20% used the Spousal Abuse Risk Assessment). A recent review of 400 mediation reports in San Diego (Johnson, Saccuzo and Koen, 2005) found 200 cases involving domestic violence, of which the father was the clear perpetrator in 80 of them. No information was given regarding rates of female-perpetrated or mutual abuse.

In the Portland and Minneapolis study by Newmark, Harrell and Salem (1995), which utilized the Conflict Tactics Scale, the most widely-used instrument for measuring extent of partner violence, 80% of the women and 72% of the men claimed to have been physically assaulted by their ex partners. Men reported somewhat less incidents of physical intimidation and overall physical abuse, but similar rates of severe violence involving the use of weapons. In perhaps the most thoroughly investigated sample of disputed child custody cases involving partner abuse, using a variety of well-established questionnaires, Johnston and Campbell (1989) found an equal number of cases in which the mother (13.5%) and the father (13.6%) had been the dominant aggressors throughout the relationship, and another 19.3% that involved a pattern of mutual violence. In a small number of cases (5.7%) the violence was due to severe psychopathology. Most significantly, in almost half (46.7%) of the relationships, there had been no history of violence until the period of separation and divorce.

The disputed child custody literature also yields contradictory findings with respect to the importance that domestic violence is given by evaluators. A review of 60 disputed child custody cases in Florida (Sorensen, 1995) found that judges are highly reluctant to award custody to parents who had been accused of child or partner abuse, even with little or no corroboration. Johnson, Saccuzo and Koen (2005) found that some form of joint physical custody arrangement was recommended in 17.3% of cases involving domestic violence, versus 25.2% in those that did not. In the survey by Ackerman and Ackerman (1996), only 28% of the evaluators cited partner abuse as a reason for denying joint custody, while 76% cited a parent's alienation tactic of exaggerating abuse by the other. "In our professional experience in over 20 years of completing

custody and visitation assessments,” Jaffe and Geffner (1998) write, “the nonidentification of domestic violence in divorce cases is the source of the real problems that occur” (p. 381).

However, the “real problem” is assumed to be nonidentification *specifically of male-perpetrated* violence. Of particular concern is research showing that fathers with a violent history may sometimes secure custody of the children. The true extent of the problem is difficult to ascertain. Most of this research is based on interviews with battered women and selected, non-scientific case reports (e.g., Liss & Stahly, 1993; Zorza, 1995), and murky about the amount of custody these fathers are able to secure, the extent to which they are violent, whether the violence was mutual, and the presence in the partner of possibly more serious problems, such as drug abuse. Some studies presume “battering” from the existence of restraining orders alone (e.g., Morrill, Dai, Dunn, Sung & Smith, 2005; Rosen & O’Sullivan, 2005), even though restraining orders are liberally issued, and are unreliable indicators of actual violence (e.g., Epstein, 1993). Thus, a case in which a father may have perpetrated one minor act of violence (e.g., grabbing) in a mutually abusive, high-conflict relationship, and was able to increase his custody time from one hour to two hours a week, could be cited as an example of a “battering dad” who “gets custody” of his children. A somewhat more sophisticated case review, conducted by Kernic and her colleagues in Portland (Kernic, Monary-Ernsdorff, Koepsell & Holt, 2005), indicates that even when a victimized mother secures primary custody, the abusive father may be allowed unsupervised visitation, often without having to complete a batterer treatment program. Not clear is how many of these fathers continued to pose a threat to their ex or to their children; but for those who did, no one would disagree that visitation, if any, should have been highly restricted until these men could demonstrate significant behavior change.

There is evidence that certain male batterers are highly manipulative and can effectively project a nonabusive image (Bow & Boxer, 2003; Jacobsen & Gottman, 1998); while their victims may, as a result of the anxiety, depression and other psychological consequences of the abuse, appear to be a less “fit” parent (Kernic et al., 2005). Their victims often relent out of fear of further abuse, and because they are economically dependent. When mothers attempt to leave the abuser, they sometimes will find resistance among their children, who miss their friends and neighborhood, and who will even blame the mother for the abuse (Jaffe & Geffner, 1998). Other research, however, indicates that mothers litigating custody may not be so disadvantaged. In one survey female respondents indicated that they felt as empowered vis-à-vis their ex as the male respondents, and far more empowered by the court system (Newmark, Harrell & Salem, 1995).

To what extent false or exaggerated claims of abuse are used to secure custody and alienate the children from the father is still open to debate. Gardner (1992) and Turkat (1995) argue for high rates of alienation, primarily by mothers. Friedman (2004) has identified a subgroup of alienating mothers with what he calls counterdependent-borderline personality traits, who vigorously and effectively pursue their custody rights regardless of the level of pathology they may exhibit. Within Johnston and Campbell’s 1989-1990 sample (Johnston and Campbell, 1993), 13% of the parents had filed false or exaggerated domestic violence claims, at a rate seven times more often by mothers compared to fathers. Johnston, Lee, Olesen and Gans Walters (2005) found higher substantiated rates of “adult abuse” by fathers than by mothers; however, the degree of partner violence versus substance abuse was not clarified. Also, as with other child custody studies, this was a non-random study that may not generalize beyond the particular sample, criteria for substantiation were not standardized, and “the range or degree of severity of the abuse was not rated” (p. 16).

Lack of attention and ignorance are the primary reasons given for the failure to properly identify interparental violence in disputed child custody cases. According to Logan et al. (2002):

The frame of reference for custody evaluations is grounded in divorce literature from family studies disciplines that, with few exceptions (Saposnek, 1998), often do not even reference domestic violence...The family studies literature primarily focuses on “normal” divorce processes and has not fully acknowledged or integrated research findings from domestic violence studies (Logan et al., 2002, p. 737).

Findings from the General Domestic Violence Literature

Not under investigation – the proverbial “elephant in the middle of the room” - is the extent to which battering *moms* get custody, because mothers are a priori ruled out as perpetrators. The nonidentification of domestic violence may indeed be a major problem, but with respect to *female* abusers, as well as male. It cannot be assumed (Jaffe and Geffner, 1998) that when children blame the mother for father’s violence, they are always wrong. Some mothers who are not physically assaultive engage in high levels of emotional abuse and controlling behaviors, while others are the primary, or sole perpetrators of physical assaults (Dutton & Nicholls, 2005; Hamel, in press; Hamel, 2005). Family court professionals may indeed have not previously “acknowledged or integrated research findings from domestic violence studies.” However, to the extent that they now *are* acknowledging studies on partner violence, it has been outdated and misleading research that they have drawn upon. Prevalence rates indicating rates of male-perpetrated abuse at 85% to 95% of total assaults, are based on unreliable crime surveys and samples of battered women, which are inherently limited. Representative population surveys consistently show that intimate partner abuse is perpetrated by men and women at equal rates, initiated as often by women as by men, rarely in self-defense, and typically caused by psychopathology, stress and previous history of violence rather than patriarchal factors (Dutton & Nichols, 2005).

Women certainly bear the greater share of physical injuries, but at a rate of between 2:1 (Archer, 2000) and 4:1 (Tjaden & Thoenes, 1998) over men, and not the often-cited but misleading 7:1 rate, which actually measured medical help-seeking behavior, not injuries per se (Straus & Gelles, 1990). And although women suffer the greater share of psychological distress when victimized by partner *violence*, men and women are equally impacted by partner *abuse* (Pimlott-Kubiak & Cortina, 2003).

A recent offshoot of the gender-patriarchal paradigm, based largely upon the work of Michael Johnson (Johnson, 2005; Johnson & Leone, 2005), acknowledges that women initiate intimate partner violence as often as men, but only the less serious, conflict-related type he calls “common couple violence” or “situational violence.” More serious violence, resulting in greater injuries and motivated by misogynistic attitudes and a perpetrator’s use of abusive and controlling behaviors to dominate the partner - what Johnson calls “intimate terrorism,” or “patriarchal terrorism,” and what others would simply call “battering” - is assumed to be perpetrated almost entirely by men (see table 1 for list of abuse and control tactics). In the disputed custody literature (e.g., Bancroft & Silverman, 2002; Dalton, 1999), these assumptions, mistaken as they are, are even further distorted. Thus, violence by women is not only dismissed or marginalized as “expressive,” but men’s violence is conceptualized in every case as coercive or “instrumental,” despite Johnson’s own admission that “situational violence” represents the far

greatest share of the total. An example is Dalton's (1999) critique of Johnston and Campbell's (1993) failure to identify the men involved in mutual violence as "batterers."

The increasing acceptance of Johnson's typology should be of concern not simply because it is simplistic, ignoring for example impulsive violence characteristic of those with Borderline Personality Disorder (Dutton, 2005), but also because his conclusions regarding gender are based on biased samples. Johnson cites data from Pittsburgh in claiming that men comprise fully 97% of intimate terrorists, then cites research by Graham-Kevan and Archer (2003) as evidence for an 87% rate. However, Johnson fails to mention that a large proportion of the women surveyed in the Pittsburgh sample were battered women, and that the Graham-Kevan and Archer sample involved battered women and male prison inmates. Johnson conveniently omits any reference to a follow-up study by these same researchers. Using a more representative community sample (college students and faculty in the U.K.), they found rates of 9% for male intimate terrorists and 13% for female intimate terrorists, based upon Johnson's own criteria

The assertion that "only men are controlling" is simply that – an assertion. The few studies in which questions regarding the use of abuse and control tactics have been posed to both male and female respondents dispute this claim. From a population of 6002 couples survey in the second National Family Violence Survey, Straus and Gelles (1990) found rates of verbal and symbolic abuse (e.g., throwing things) to be the same across gender (between 6-8 incidents per year). In a survey of college students (Straus, 2001), the men reported having perpetrated 15.1 incidents of verbal, symbolic and emotional abuse upon their female partners in the past year; the rate reported by the women was 16.0. Kasian and Painter's (1992) survey of a dating population (N= 1,625) found higher levels of the following tactics to be used by women: general control, jealousy, verbal abuse and withdrawal. No differences were found for use of diminishment of self-esteem, a category which includes put-downs, ridicule, etc.

Even among populations of men arrested for spousal abuse, women engage in high levels of abusive and controlling behaviors. For instance, in the Stacey, Hazelwood and Shupe Texas study (1994), the female victims actually scored higher on perpetration of 4 of the 13 items (deny rights to privacy, deny access to family, withdraw emotionally to punish, withhold sex to punish); and there were only slight differences among the genders for the following items: deny freedom of activities, deny access to friends, deny access to money, deny financial input and censor phone calls, etc. Stalking, when coupled with an immediate physical threat, is more often perpetrated by men, but within the broader category of stalking behaviors known as obsessional relational intrusion (e.g., repeated, unwanted phone calls) gender differences tend to disappear (Langhinrichsen-Rohling, Palarea, Cohen and Rohling, 2000; Spitzberg & Rhea, 1999; Tjaden and Thoennes, 1998.) Among the various abuse and control tactics, only sexual coercion appears to be perpetrated primarily by males. And sexual coercion rates are more comparable when non-violent tactics are measured, such as taking advantage of someone while they are intoxicated, threatening to smear them as impotent or gay, etc. (Busby & Compton, 1997; O'Sullivan, Byers and Finkelmann, 1998; Waldner-Haugrud & Magruder, 1995).

Johnson also neglected to report on Coker et al's (2002) re-analysis of the 1998 National Violence Against Women Survey (NVAWS). Johnson previously had found high rates of intimate terrorism for men based upon data given by the female victims; however, he chose to ignore the data given by the male victims (Johnson, 2000). Following up on Johnson's work and looking at *all* of the NVAWS data, Coker and her colleagues (2002) found lifetime rates of power and control victimization for men and women to be nearly identical (6.8% vs. 6.9%, respectively), and incidence of verbal abuse and jealousy/ possessiveness victimization to be

twice as high for the male victims (10.5% vs. 5.2%). The number of female terrorists in Canada, from a general population survey of nearly 26,000 people (LaRoche, 2005), was determined to be around 2% of the population; male terrorists represented 3%. This translates to the percentage of male terrorists at approximately 60% of that category. Whether we accept this data, or the Graham-Kevan and Archer data which suggests a 50% greater incidence of partner terrorism by females, the number of “patriarchal” male terrorists is far less than the 97%, or even 87% figures claimed by Johnson. The overall rate for both genders is, of course, very low compared to rates for less severe, mutual violence.

There is a distinction between abuse and control *tactics*, as discussed above, and the overall level of power wielded by individuals in a given relationship. Proponents of the patriarchal/gender paradigm would argue that men have the greater power by virtue of living in a patriarchal society in which men have greater access to economic and political resources (e.g., Pagelow, 1981). This argument, too, has little basis in fact. Felson (2002) correctly points out that institutional power does not necessarily trickle down to the individual husband, and that some women wield considerable power by dint of their personality, control over the children, and the extent to which they are valued and desired. One series of questions in the second National Family Violence Survey (Coleman & Straus, 1990) sought to determine the number of male-dominated vs. female-dominated households, asking “who has the final say” in buying a car, having children, what house or apartment to take, what job either partner should take, whether a partner should go to work or quit work, and how much money to spend each week on food. The overwhelming number of households were found to be equalitarian in decision-making. Male-dominant households represented only 9% of the total; and 8% were female-dominated, a slight difference indeed, especially considering that this data is now 20 years old and a greater number of households can be presumed to be female dominated or equalitarian. Similarly, research supports gender-comparable rates of *lack* of decision-making power among litigants in disputed child-custody cases (Newmark et al., 1995).

This is not to imply that “all domestic violence is the same.” The “fear factor” is an important consideration, particularly for safety planning or when choosing a treatment modality. Women certainly express a greater fear of physical harm. It is true that fear has a large subjective dimension (e.g., previously-victimized women may express fear when there are no objective reasons why they should), and that men are reluctant to compromise their socially-sanctioned roles as strong and masculine (e.g., Cook, 1997; Miggiaccio, 2002). However, given that they indeed suffer two-thirds of physical injuries, more women, on average, have reason to fear a partner’s physical assaults, or threats of assault, than the reverse (Follingstad, Wright, Lloyd & Sebastian, 1991; Morse, 1995). To what extent, and exactly how, the “fear factor” should be factored into future attempts to typologize partner violence is uncertain.

Of greater significance to family court cases, research indicates that *regardless of the perpetrator’s gender, children and adolescents are adversely affected by witnessing interparental violence* (English, Marshall & Stewart, 2003; Fergusson & Horwood, 1998; Johnston & Roseby, 1997; Mahoney, Donnelly, Boxer & Lewis, 2003), and at risk to perpetrate partner abuse in adulthood (Kaura & Allen, 2004; Langhinrichsen-Rohling, Neidig & Thorn, 1995; Sommer, 1994; Straus, 1992). Furthermore, mothers who hit their partners have just as much of an increased risk of hitting their children as partner-violent fathers (Appel & Holden, 1998; Margolin & Gordis, 2003; Straus & Smith, 1990). Mothers who are violent towards their children may sometimes be “battered wives,” as is often assumed, but more often than not are perpetrators of partner abuse (English et al., 2003). It has not been determined whether direct

child abuse is more detrimental on children than witnessing interparental violence (Kitzmann, Gaylord, Holt & Kenny, 2003), but several studies have found that children are far more adversely affected by mother's verbal abuse than by witnessing partner violence by either the mother (English et al., 2003) or by the father (Moore & Pepler, 1998). Furthermore, some children may be as, or more affected by non-physical parental *conflict*. For instance, Grych & Fincham (1998) found that children from either high conflict or violent homes exhibited the same kinds of internalizing and externalizing problems; and in a national longitudinal study involving 682 children, Litrownik et al. (Litrownik, Newton, Hunter, English & Everson, 2003) found that parents who verbally and emotionally abused each other were more likely to physically abuse their children than parents who engaged in interparental violence. According to Wolak and Finkelhor (1998):

Pervasive conflict that takes the form of overt verbal hostility *or* violence harms children by causing stress, impairing effective parent-child relationships, and training children to be aggressive. Overall, children from violent homes appear to be at greater risk for showing clinical-level behavioral and emotional problems, but it is likely that some symptoms are caused by the conflict and not necessarily the violence (pp. 91-92).

New Trends in Child Custody Assessment

In light of these findings, the focus on male-perpetrated abuse is clearly misplaced. It might seem astounding at how such a large, convincing body of research could be almost entirely overlooked. But among those of us who have worked with both male and female perpetrators and have explored in depth the existing family violence literature, this oversight is, sadly, very much the norm. What is generally taught in the domestic violence field, and by extension to family court professionals, continues to be framed within the construct of a radical form of feminism that favors political correctness over scientifically-sound, empirically-based procedures for conducting research, and for conducting assessments.

Donald Dutton, one of the most prolific and respected researchers in the field of family violence, writes:

It appears to me that a scholarly paradigm has developed where the same group of authors mutually cites each others work and generate one model of family violence; the father is the batterer, the mother is the victim, the child is victimized by observation of the father's violence. This is the essence of an academic paradigm. A social reality is created that directs belief and focus of future research and disregards conflicting data (Dutton, 2005, p. 8)

Such pervasive research bias can be found in numerous studies, sometimes blatantly so, such as the 2005 special issue of *Violence Against Women*, in which none of the four showcased studies looked at female-perpetrated abuse. Sometimes the bias is more subtle, as in the case review by Logan et al. (2002), which cites research by Weitzman (1985) purporting to prove that women suffer a substantial decrease in their standard of living (alleged to be 73%) following divorce; but neglects to mention that these findings were later found to be grossly inaccurate, and that Weitzman herself admitted to have been in error (McNeely, 1998). Throughout their article, Logan et al. frame the problem of domestic violence as one of male perpetrators and female

victims, despite their own findings, flawed as they were, indicating a substantial amount of violence perpetrated by women. In light of this bias, we can better understand the recommendations of the mediator in the case study presented at the beginning of this paper. Again, quoting Dutton:

What is problematic about Jaffe et al.'s analysis, and the others we will review below, is that while their description of the actions and consequences of abuse on the child are accurate, there is a priming of assessors to look only at the male as the abuse perpetrator, and having done so to suspect his denial of abuse. Denial of abuse will not exonerate him because really abusive men deny abuse as well...No algorithm is provided through which the truth might mystically emerge. Essentially the authors develop skepticism about male accounts and then advise the evaluator to use a clinical judgment already primed to disbelieve the alleged perpetrator (pp. 4-5).

Beginning with Gould's *Conducting Scientifically-Crafted Child Custody Evaluations* (Gould, 1998), a handful of books and articles have emerged, outlining specific protocols for assessing family violence in the context of disputed child custody. In his upcoming book, Gould (Gould & Martindale, in preparation) warns of the limitations of Bancroft and Silverman's (2002) assessment model, which was developed from studies with battered women in shelters. Austin (2001) outlines six evaluation dimensions (temporal, sex or perpetrator and causal direction of violence, severity of physical harm, type of aggression, presence of major risk factors, and children exposed to the violence) which have the advantage of placing abuse on a continuum, rather than in discrete categories such as those of Janet Johnston or Michael Johnson. Furthermore, Austin challenges the preoccupation with male-perpetrated violence that has marred the protocols suggested by Jaffe and Geffner (1998), and has cautioned evaluators to keep in mind the complex dynamics of partner violence – e.g., pointing out that in some cases physical abuse is met by verbal abuse, or the reverse. And recently, Drozd and Olesen (2004) have put forth guidelines in the form of a “decision tree,” in which the evaluator is helped to distinguish between the differing phenomena of abuse, alienation, estrangement, sabotage and protective parenting. The importance of such guidelines and protocols cannot be exaggerated, because how well a custody evaluation is conducted bears directly on what is recommended with respect to custody and interventions for the family. Johnston et al. (2005) write:

In collaboration with community services, family courts will need to set explicit behavioral goals and treatment contracts with families who are court-ordered to interventions. Custody evaluators need to make specific recommendations to this end. The needs of families and their prognosis for change must be triaged and carefully matched with scarce resources that are appropriate to the need (p. 19).

It has been the author's experience, having for the past 20 years conducted family violence assessments, and having provided batterer intervention and parenting counseling services, to individuals referred through the family court system in the San Francisco Bay Area, that the needs of these families have *not*, on the whole, been “triaged and carefully matched with scarce resources.” In particular, it seems that allegations of domestic violence against fathers are taken more seriously than those made against mothers. As previously mentioned, women are mandated to batterer intervention in numbers far less than the actual number of female batterers

in the general population. Whether this holds for mothers involved in disputed child custody cases is a hypothesis that ought to be tested through further research.

References

- Ackerman, M.J., & Ackerman, M. (1996). Child custody evaluation practices: A 1996 survey of psychologists. *Family Law Quarterly*, 30 (3), 565-586.
- Appel, A., & Holden, G. (1998). The co-occurrence of spouse and physical abuse: A review and appraisal. *Journal of Family Psychology*, 12 (4), 578-599.
- Archer, J. (2000). Sex differences in aggression between heterosexual partners: A meta-analytic review. *Psychological Bulletin*, 126 (5), 651-680.
- Austin, W. (2001). Partner violence and risk assessment in child custody evaluations. *Family Court Review*, 39 (4), 483-496
- Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.
- Bow, J., & Boxer, P. (2003). Assessing allegations of domestic violence in child custody evaluations. *Journal of Interpersonal Violence*, 18 (12), 1394-1410.
- Busby, D., & Compton, S. (1997). Patterns of sexual coercion in adult heterosexual relationships: An exploration of male victimization. *Family Process*, 36, 81-94.
- California Department of Justice. (2002). *Adult and juvenile arrests reported, 2001, arrested for 273.5 PC*. Criminal Justice Statistics Center.
- Coker, A, Davis, K., Arias, I., Desai, S., Sanderson, M., Brandt, H., & Smith, P. (2002). Physical and mental health effects of intimate partner violence for men and women. *American Journal of Preventive Medicine*, 23 (4), 260-268.
- Coleman, D. & Straus, M. (1990). Marital power, conflict and violence in a nationally representative sample of American couples. In M. Straus & R. Gelles (Eds.), *Physical violence in American families*. New Brunswick, N.J.: Transaction Publishers.
- Dalton, C. (1999). When paradigms collide: Protecting battered parents and their children in the family court system. *Family & Conciliation Courts Review*, 37, 273-296.
- Dobash, R.P., & Dobash, R.E. (1979). *Violence against wives: A case against the patriarchy*. New York: The Free Press.
- Drozd, L., & Olesen, N. (2004). Is it abuse, alienation, and/or estrangement?: A decision tree. *Journal of Child Custody*, 1 (3), 65-106.
- Dutton, D. (1998). *The abusive personality*. New York: Guilford.
- Dutton, D. (2005, in press). Domestic abuse assessment in child custody disputes: Beware the domestic violence research paradigm. *Journal of Child Custody*.
- Dutton, D., & Nicholls, T. (2005). A critical review of the gender paradigm in domestic violence research and theory: Part I – Theory and data. *Aggression and Violent Behavior*, 10, 680-714.
- English, D., Marshall, D., & Stewart, A. (2003). Effects of family violence on child behavior and health during early childhood. *Journal of Family Violence*, 18 (1), 43-57.
- Epstein, E. (June-July 1993). Speaking the Unspeakable. *Massachusetts Bar Association Newsletter*, 33, 1.
- Fergusson, D., & Horwood, L. (1998). Exposure to interparental violence in childhood and psychosocial adjustment in young adulthood. *Child Abuse & Neglect*, 22 (5), 339-357.
- Follingstad, D, Wright, S., Lloyd, S, & Sebastian, J. (1991). Sex differences in motivations and effects in dating relationships. *Family Relations*, 40, 51-57.
- Friedman, M. (2004). The so-called high-conflict couple: A closer look. *The American Journal of Family Therapy*, 32, 101-117.
- Gardner, R. (1992). *The parental alienation syndrome: A guide for mental health and legal professionals*. Creskill, NJ: Creative Therapeutics.
- Gould, J. (1998). *Conducting scientifically-crafted child custody evaluations*. Thousand Oaks,

- CA: Sage.
- Gould, J., & Martindale, D., (in preparation). *The art and science of child custody evaluations*. New York: Guilford.
- Graham-Kevan, N., & Archer, J. (2003). Intimate partner terrorism and common couple violence: A test of Johnson's predictions in four British samples. *Journal of Interpersonal Violence*, 18 (11), 1247-1270.
- Graham-Kevan, N., & Archer, J. (in press). Using Johnson's domestic violence typology to classify men and women in a non-selected sample. *Journal of Abnormal Behavior*.
- Grych, J., & Fincham, F. (1990). Marital conflict and children's adjustment: A cognitive-contextual framework. *Psychological Bulletin*, 108, 267-290.
- Hamel, J. (in press). Fixing only part of the problem: Public policy and batterer intervention. *Family Violence and Sexual Assault Bulletin*.
- Hamel, J. (2005). *Gender-inclusive treatment of intimate partner abuse: A comprehensive approach*. New York: Springer.
- Hamel, J., & Nicholls, T. (in preparation). *Family approaches to domestic violence: A guide to gender-inclusive research and treatment*. New York: Springer.
- Jacobsen, N., & Gottman, J. (1998). *When men batter women*. New York: Simon & Schuster.
- Jaffe, P., Wolfe, D., & Wilson, S. (1990). *Children of battered women*. Newbury Park, CA: Sage
- Jaffe, P., & Geffner, R. (1998). Child custody disputes and domestic violence: Critical issues for mental health, social service, and legal professionals. In G. Holden, R. Geffner, & E. Jouriles (Eds.), *Children exposed to marital violence: Theory, research and applied issues*. Washington, D.C.: American Psychological Association.
- Jaffe, P., Lemon, N., & Poisson, S. (2003). *Child custody and domestic violence*. Thousand Oaks, CA: Sage.
- Johnson, M. (2000). The differential effects of patriarchal terrorism and common couple violence: Findings from the National Violence against Women Survey. Paper presented at the Tenth International Conference on Personal Relationships, Brisbane, Australia.
- Johnson, M. (2005, in press). Apples and oranges in child custody disputes: Intimate terrorism vs. situational couple violence. *Journal of Child Custody*.
- Johnson, M., & Leone, J. (2005). The differential effects of intimate terrorism and situational couple violence: Findings from the National Violence Against Women Survey. *Journal of Family Issues*, 26 (3), 322-349.
- Johnson, N., Saccuzon, D., & Koen, W. (2005). Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. *Violence Against Women*, 11 (8), 1022-1053.
- Johnston, J., & Campbell, L. (1989, April). Profiles of domestic violence in divorcing families disputing custody and patterns in parent-child relationships: A qualitative study. Presented at the 66th annual meeting of the American Orthopsychiatric Association.
- Johnston, J., & Campbell, L. (1993). Parent-child relationships in domestic violence families disputing custody. *Family and Conciliation Courts Review*, 31 (3), 282-298.
- Johnston, J., & Roseby, V. (1997). *In the name of the child*. New York: The Free Press.
- Johnston, J., Lee, S., Olesen, N., & Gans Walters, M. (2005). Allegations and substantiations of abuse in custody disputing families. *Family Court Review*, 43 (2), 283-294.
- Kasian, M. & Painter, S. (1992). Frequency and severity of psychological abuse in a dating population. *Journal of Interpersonal Violence*, 7 (3), 350-364.

- Kaura, S., & Allen, C. (2004). Dissatisfaction with relationship power and dating violence perpetration by men and women. *Journal of Interpersonal Violence, 19* (5), 576-588.
- Kernic, M., Monary-Ernsdorff, D., Koepsell, J., & Holt, V. (2005). Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence. *Violence Against Women, 11* (8), 991-1021.
- Kitzmann, K., Gaylord, N., Holt, A., & Kenny, E. (2003). Child witnesses to domestic violence: A meta-analytic review. *Journal of Consulting and Clinical Psychology, 71* (2), 339-352.
- Langhinrichsen-Rohling, J., Neidig, P., & Thorn, G. (1995). Violent marriages: Gender differences in levels of current violence and past abuse. *Journal of Family Violence, 10* (2), 159-175.
- Langhinrichsen-Rohling, J., Palarea, R., Cohen, J., & Rohling, M. (2000). Breaking up is hard to do: Unwanted pursuit behaviors following the dissolution of a romantic relationship. *Violence and Victims, 15* (1), 73-89.
- LaRoche, D. (2005). Aspects of the context and consequences of domestic violence-situational couple violence and intimate terrorism in Canada in 1999. Government of Quebec.
- Liss, M., & Stahly, G. (1993). Domestic violence and child custody. In M. Hansen & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (pp. 175-187). Newbury Park, CA: Sage.
- Litrownik, A., Newton, R., Hunter, English, D., & Everson, M. (2003). Exposure to family violence in young at-risk children: A longitudinal look at the effects of victimization and witnessed physical and psychological aggression. *Journal of Family Violence, 18* (1), 59-73.
- Logan, T., Jordan, C., & Horvath, L. (2002). Child custody evaluations and domestic violence: Case comparisons. *Violence and Victims, 17* (6), 719-742.
- Mahoney, A., Donnelly, W., Boxer, P., & Lewis, T. (2003). Marital and severe parent-to-adolescent physical aggression in clinic-referred families: Mother and adolescent reports on co-occurrence and links to child behavior problems. *Journal of Family Psychology, 17* (1), 3-19.
- Margolin, G., & Gordis, E. (2003). Co-occurrence between marital aggression and parents' child abuse potential: The impact of cumulative stress. *Violence and Victims, 18* (3), 243-258.
- McNeely, C. (1998). Lagging behind the times: Parenthood, custody, and gender bias in the family court. *Florida State University Law Review, 25* (4).
- Moore, T., & Pepler, D. (1998). Correlates of adjustment in children at risk. In G. Holden, R. Geffner, & E. Jouriles (Eds.), *Children exposed to domestic violence* (pp. 157-184). Washington, DC: American Psychological Association.
- Morrill, A., Dai, J., Dunn, S., Sung, I., & Smith, K. (2005). Child custody and visitation decisions when the father has perpetrated violence against the mother. *Violence Against Women, 11* (8), 1076-1105.
- Morse, B. (1995). Beyond the Conflict Tactics Scale: Assessing gender differences in partner violence. *Violence and Victims, 10* (4), 251-269.
- Newmark, L., Harrell, A., & Salem, P. (1995). Domestic violence and empowerment in custody and visitation cases. *Family and Conciliation Courts Review, 33* (1), 30-62.
- O'Sullivan, L., Byers, E., & Finkleman, L. (1998). A comparison of male and female college students' experiences of sexual coercion. *Psychology of Women Quarterly, 22*, 177-195.
- Pagelow, M. (1981). *Women-battering: Victims and their experiences*. Beverly Hills, CA:

- Sage.
- Pearson, P. (1997). *When she was bad: Women and the myth of innocence*. New York: Penguin Books.
- Pimlott-Kubiak, S., & Cortina, M. (2003). Gender, victimization and outcomes: Reconceptualizing risk. *Journal of Consulting and Clinical Psychology, 71* (3), 528-539.
- Rosen, L., & O'Sullivan, C. (2005). Outcomes of custody and visitation petitions when fathers are restrained by protective orders: The case of the New York family courts. *Violence Against Women, 11* (8), 1054-1076.
- Simerman, J. (2002, November 17). Domestic violence caseworkers assess shift in abuse focus. *Contra Costa Times*, p. A33..
- Sommer, R. (1994). *Male and female perpetrated partner abuse*. Doctoral dissertation, University of Manitoba. University Microfilms International, ISBN-0-315-99064-3.
- Sorensen, E., Goldman, J., Ward, M., Albanese, I., Graves, L., & Chamberlain, C. (1995). Judicial decision-making in contested custody cases: The influence of reported child abuse, spouse abuse, and parental substance abuse. *Child Abuse & Neglect, 19* (2), 251-260.
- Spitzberg, B., & Rhea, J. (1999). Obsessive relational intrusion and sexual coercion victimization. *Journal of Interpersonal Violence, 14* (1), 3-20.
- Stacey, W., Hazelwood, L., & Shupe, A. (1994). *The violent couple*. Westport, CT: Praeger.
- Straus, M. (1992, September). *Children as witnesses to marital violence: A risk factor for lifelong problems among a nationally representative sample of American men and women*. Report of the twenty-third Ross Roundtable on Critical Approaches to Common Pediatric Problems, M5796.
- Straus, M. (1993). Physical assaults by wives: A major social problem. In R. Gelles & D. Loseky (Eds.), *Current controversies on family violence* (pp. 67-87). Newbury Park, CA: Sage.
- Straus, M. (1999). The controversy over domestic violence by women. In X. Arriaga & S. Oskamp (Eds.), *Violence in intimate relationships* (pp. 17-44).
- Straus, M. (2001). Scoring and norms for the CTS2 and CTSPC. Paper no. CTS28, available online at murraystraus@unh.edu.
- Straus, M. & Gelles, R. (1990). *Physical violence in American families*. New Brunswick, N.J.: Transaction Publishers.
- Straus, M., & Smith, C. (1990). Family patterns and child abuse. In M. Straus & R. Gelles (Eds.), *Physical violence in American families*. New Brunswick, N.J.: Transaction Publishers.
- Tjaden, P., & Thoennes, N. (1998). Prevalence, incidence and consequences of violence against women. National Institute of Justice, NCJ 172837.
- Turkat, I. (1995). Divorce related malicious mother syndrome. *Journal of Family Violence, 10* (3), 253-264.
- Vivian, D., & Langhinrichsen-Rohling (1994). Are bi-directionally violent couples mutually victimized? A gender-sensitive comparison. *Violence and Victims, 9* (2), 107-124.
- Waldner-Haugrud, L., & Magruder, B. (1995). Male and female sexual victimization in dating relationships: Gender differences in coercion techniques and outcomes. *Violence and Victims, 10* (3), 203-215.
- Wietzman, L. (1985). The divorce revolution. Free Press: New York.
- Wolak, J., & Finkelhor, D. (1998). Children exposed to partner violence. In J. Jasinski & L.

- Williams (Eds.), *Partner violence: A comprehensive review of 20 years of research* (pp. 184-209). Thousand Oaks, CA: Sage.
- Zorza, J. (1995). How abused women can use the law to help protect their children. In E. Peled, P. Jaffe, & J. Edleson (Eds.), *Ending the cycle of violence: Community responses to children of battered women* (pp. 147-169). Thousand Oaks, CA: Sage.