

The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics

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Chapter Five

Impeding Recovery: The Batterer in Custody and Visitation

When a batterer and his partner separate, an important new phase opens in his role as a parent. As a period of separation begins, a number of questions regarding the children have to be sorted out by the family members, including: How much time will their father be spending with them? How much control will the children and their mother have over when and how the children spend time with him? How will it be for the children to spend extended periods of time with the batterer without the presence of their mother, and without access to her? Given that separation tends to occur amidst potent bad feelings in both parents, how will it be for the children to spend unsupervised time with a batterer who is involved in particularly high levels of anger and resentment?

In many cases, one concern overarches all of the questions above: Where will the children's primary residence be, and who will be governing the key decisions affecting their lives such as schooling, medical care, and religious education? Batterers seek custody more frequently than non-battering fathers do (APA, 1996; Liss & Stahly, 1993), and can have important advantages over battered women in custody litigation (see below). The stress of a custody dispute can contribute to turmoil and division within families and can deepen a battered mother's traumatic symptoms, with resultant implications for her children. In addition, the court finds itself in the position of having to evaluate the accuracy of domestic violence allegations, and sometimes makes such determinations on the basis of misconceptions about batterers and their victims, rather than relying on thorough investigation. The arena of custody and visitation litigation may be the aspect of domestic violence victimization that has been least examined and reformed.

In cases where the battered woman appears to have severe parenting problems of her own, child protective services may also be involved, adding an additional complication to determinations about the children's future: If the mother is not a safe parent for the children at present, and the father offers to care for the children, should the state or province place them with him? Isn't such a placement preferable to putting them in foster care with people to whom they have no deep emotional or legal connection?

All of these questions have to be sorted out in the context of the impact that domestic violence has had on the functioning of the family. Problems in the batterer's parenting style can become even more pronounced post-separation, with increases in the undermining of the mother's parenting and in other types of irresponsibility or mistreatment towards the children. Many children show behavioral signs indicative of recovery once the batterer is out of the home, and mother's aggression towards their children drops significantly (Holden et al., 1998), progress which renewed contact with the batterer could undermine. Decisions about how best to meet the children's needs thus become urgent and complex when a battered woman and a batterer separate.

Finally, the question remains of whether the children will continue to be exposed to domestic violence. Married women living apart from their husbands experience nearly four times

the frequency of physical assaults, sexual assaults, and stalking than those who are still living with the abuser (Tjaden & Thoennes, 2000). When a woman is attempting to end a relationship, batterers are particularly likely to be violent (Websdale, 1999; Adams, 1989) or to attempt rape (Bergen, 1996).

We begin our examination of these questions with a case example from our custody evaluation practice that illustrates the range of elements that we will be addressed in this chapter. (Certain minor identifying facts have been altered.)

Hilda Verne became involved with Jerry Pendergast while she was still married to Gregory Verne, and ultimately left her marriage to be with Jerry. Hilda and Gregory's two children, Travis (eight at the time) and Cameron (six at the time) continued living with Hilda, but visited regularly with Gregory. Hilda and Jerry eventually had a child of their own, named Nick Pendergast, and two years later had a daughter named Victoria.

Over roughly the next two years, Jerry began to show signs of being violent to Hilda, and the violence escalated. When Nick was four years old, Jerry choked Hilda by the throat in Nick's presence, with Victoria also in the home but outside of the room. Police were called and, observing the marks on Hilda's neck, they arrested Jerry. Some months later, Jerry was convicted of the assault and placed on probation. Jerry was also increasingly assaultive towards Hilda and Gregory's son Cameron, once banging his head against a table and another time dragging him down a flight of stairs by his leg. Travis and Cameron reported the violence in their home to Gregory, who told Hilda he was going to seek custody of their boys. Hilda agreed to give up custody voluntarily, and sought services for herself. The state's child protective arm, DHS, became involved with the case due to Gregory's report about Jerry's violence to Cameron. However, DHS withdrew from the case when Hilda relinquished custody of Travis and Cameron, despite the presence of other children in her home.

When Nick was six and Victoria was four, Jerry was again arrested and convicted for an assault against Hilda, and because of his probation, was incarcerated for eight months. Upon his release, he moved to another town and did not seek visitation with Nick and Victoria until a year later. At that time, he moved back to the area and went to court, and was granted visitation with the children overnight on alternating weekends. Nick's behavior at his mother's home became increasingly difficult after visits with Jerry began, and he would arrive at home saying negative things about Hilda, including stating that she had falsely accused his father of violence. The tensions regarding Nick's behavior escalated to a point where Hilda and he were in chronic conflict and Hilda felt unable to manage him. During one incident, Hilda grabbed Nick hard by the arm and left a large black and blue mark. She reported the incident to school personnel and contacted DHS herself, admitting to her abuse of Nick and seeking services. Upon hearing of this incident, Jerry went to court and filed for custody of Nick, and Bancroft was appointed Guardian ad Litem (GAL).

During the GAL's evaluation, Jerry denied any history of domestic violence towards Hilda or any past partners, stating that Hilda had invented all the allegations. He stated that he had tried numerous times to leave the relationship, and that each time he did so Hilda would fabricate an allegation of domestic assault, or threaten to do so, in order to intimidate him so that he wouldn't leave. He stated that Hilda had fabricated similar allegations against her ex-husband Gregory. He explained the year hiatus in his contact with the children following his release from jail by saying that he feared that if he sought visitation, Hilda would retaliate against him by inventing further incidents of violence, and that he would be returned to jail. He stated that he had parted amicably

with past partners, and that his siblings still kept in touch with one of those women, Deanne, and considered her a friend.

The GAL was able, through Jerry's siblings, to track down Deanne, who said that Jerry had once punched her hard in the eye, and that she had been left with blurred vision for a long time thereafter, for which she had sought medical attention. She expressed concern that her relationship with Jerry's siblings would be damaged by her making these disclosures to the GAL. The GAL also succeeded (with considerable difficulty) in reaching another former partner, who hung up the phone abruptly when asked whether Jerry had been violent in their relationship, and did not answer further phone calls.

The GAL was able to speak to Gregory Verne, who denied that Hilda had ever accused him of assaulting her. He stated that his relationship with Hilda had remained a cooperative one despite mutual bad feelings. However, he also stated that their son Cameron was still experiencing emotional difficulties resulting from Jerry's violence towards him and towards his mother. The GAL was also able to obtain police records and DHS records that gave further evidence of Jerry's history of battering Hilda. DHS personnel stated that Hilda had cooperated with services and appeared serious about improving her disciplinary style with Nick. Finally, the GAL spoke with Nick's former therapist, who said that Nick had participated well in therapy for several sessions, but then had started making statements such as, "My Dad says I don't have to tell you anything," and had gradually stopped being willing to discuss issues from either home. He now was refusing to attend therapy at all, and had said, "My Dad says no one can make me go."

In observing Nick with his mother, the GAL noted that Nick was openly disrespectful and uncooperative to her in the GAL's presence, and would smile at the GAL as if expecting approval for these behaviors. At the same time, Nick twice had abrupt changes where he would grab onto his mother, hold her tightly, and tell her that he loved her, exhibiting insecurity.

Based on the above facts, the GAL recommended that custody remain with mother, that father's visits be shortened somewhat (from two overnights to one), and that mother continue her serious participation in services. Importantly, it was also recommended that father be required to support Nick's return to therapy, and that the therapist be attentive to any signs that Jerry was undermining the therapeutic relationship and/or undermining the mother-child relationship. The court followed the GAL's recommendations with respect to custody, but did not implement the recommended therapy for Nick, nor did it address the GAL's concern that father appeared to undermine the mother-son relationship on an ongoing basis. DHS again closed the case.

Approximately six months later, a new crisis erupted. Hilda had been continuing to find Nick's behavior unmanageable, and had finally requested to Jerry that he take Nick for a few days so that she could have respite. Jerry accepted, and then went to court to seek custody of Nick on an emergency basis, saying that Hilda could not care for him appropriately. DHS was contacted by the court and reinvolved in the case. Hilda explained in court that she had only been looking for respite, not for a change in custody, and that she needed additional services to help her control Nick. The court, however, assigned custody to DHS. DHS spoke with the GAL and learned the background of the case, including Jerry's history of violence towards multiple partners and his violence towards Cameron. DHS nonetheless opted to place Nick in his father's care, where he remained for the subsequent 60 days that constituted the standard DHS assessment period. At the end of that period, due largely to intervention by domestic violence specialists within the DHS system, Nick was returned to Hilda's custody. Nick showed symptoms of trauma from his long

separation from his mother (during which only a handful of visits with his mother were permitted). However, DHS did assist the mother to place Nick in therapy at a clinic specializing in child trauma and issues of exposure to domestic violence (at the GAL's recommendation). The new therapist set as a priority the strengthening of the mother-son relationship and assisting the mother to reestablish parental authority.

CREATING A CONTEXT FOR CHILDREN'S HEALING

Divorce or separation can be a deeply distressing experience for children, with long-term implications for their well-being (review in Kelly, 1993; Wallerstein & Blakeslee, 1989). We observe that this distress can be compounded in cases where the children have previous exposure to domestic violence and to the disruptions in family functioning that it engenders, and thus consider it appropriate to speak of these children as "dually traumatized." They may also carry additional traumatic effects from having been the direct targets of physical, sexual, or psychological abuse, which children of batterers experience at elevated rates (see Chapter Two).

The long-term prospects of children in these circumstances are tied to their ability to heal from these dual sources of trauma. This healing depends in turn on access to an environment that is conducive to emotional recovery. A range of studies have been conducted regarding resilience in children (review in Heller, Larrieu, D'Imperio, & Boris, 1999). Hetherington found, for example, that divorced children in low-conflict environments were better adjusted than children of high conflict couples that were still married (cited in Kelly, 1993).

The following elements are critical to the creation of a healing environment for children of battered women:

1) *A sense of physical and emotional safety in their current surroundings.* The establishment of both the actuality and the sensation of safety is a first and indispensable step towards any process of emotional healing from trauma (van der Kolk & McFarlane, 1996; Herman, 1992), and is likely to be especially important for children whose previous experience has included fear and danger.

2) *Structure, limits and predictability.* We have observed that domestic violence can create a sense of chaos in children's home environment, as they feel unable to predict what will happen at any given moment. While some of our battering clients build visibly toward incidents of violence, others can erupt at any time without warning signals. A batterer's disciplining of his children tends to alternate between harshness and leniency (Holden & Ritchie, 1991), and the mother's authority is undermined by the battering (Hughes & Marshall, 1995). We therefore find it evident that children need structure, limits, and predictability as a counterweight to the dynamics they have lived with in order for healing to take place.

3) *A strong bond to the non-battering parent.* The quality of children's relationship with a nurturing parent has been established to be among the best predictors of their thriving, and to their ability to recover from marital conflict or parental psychopathology (Furstenberg & Cherlin, 1991; review in Johnston, Kline, & Tschann, 1989). Further, children's post-divorce adjustment is tied largely to the "overall quality of life" in the custodial home, including the creation of a "nurturant, protective milieu" (Wallerstein, 1991, p. 353).

These identified needs are accentuated for children who have experienced profound and chronic emotional distress or trauma, where a strong bond to a caretaking parent has been shown to be critical for recovery (review in Heller et al., 1999; additional studies in Graham-Bermann, 1998). Traumatized children need to be with a parent who is able to "acknowledge, recognize, and bear witness to the child's pain" (James, 1994, p. 60). Research indicates that children's sense of security is critical in their responses to domestic violence and potential for resilience (Cummings, 1998), and that a strong mother-child relationship is an important contributor to resilience in children of battered women (Jaffe & Geffner, 1998; review in Jaffe, Hurley, & Wolfe, 1990). Assisting the healing of mothers' relationships with their children is thus a critical aspect of promoting recovery in children exposed to domestic violence (Erickson & Henderson, 1998). One prominent divorce researcher has observed that joint custody that is imposed over the mother's objections can interfere with the healthy flourishing of mother-daughter relationships (Wallerstein & Blakeslee, 1989), and we have observed such interference with both daughters and sons in domestic violence cases.

In order for mother-child bonds to be strong and healthy following exposure to domestic violence, we believe that the following elements are necessary: a) The children feel that their mother can now protect them; b) The children recover their respect for her; and, c) The children feel that the surrounding social environment supports them in being close to her, countering any efforts by the batterer to shame them regarding their closeness to her.

4) *Not to feel responsible to take care of adults.* Children exposed to domestic violence can come to feel burdened with responsibility for the protection and care of their mother, father, or siblings. Specific elements we recommend towards relieving this burden include: a) Adults using good judgement in deciding how much information to share with them about adult lives and concerns; and, b) The children feeling that their parents and siblings are healing from the emotional injuries they suffered prior to and during the parents' separation. Interventions by courts and child protective services need to make allowance for the mother's healing needs to assist children to be less preoccupied with her well-being.

5) *To have contact with the battering parent if it can occur with adequate protection for children's physical and emotional safety.* In our experience few children prefer to stop all contact with their battering fathers, although this does occur in some cases, usually where the batterer's violence has been extraordinarily terrifying or where he has abused the children directly. We find that children generally wish to be able to continue to express their love for their father, to have him know them, and to be able to tell him about key events in their lives. They also may want reassurance that he is not in overwhelming emotional distress. However, this contact needs not to interfere with the other healing needs we are discussing here, including the strengthening of mother-child relationships.

6) *A strong bond to their siblings.* Overall level of family support is important in fostering resilience (Heller et al., 1999). As we saw in Chapter Three, children exposed to domestic violence often have unusually high levels of tension in their sibling relationships. Healing damaged relationships with siblings, and drawing strength from sibling connections that have not been damaged severely, can be important to recovery in children exposed to battering.

These characteristics of a healing environment should serve as a frequent reference point in examining the most constructive responses to batterers as parents post-separation, including the structuring of custody and visitation.

BATTERERS' POST-SEPARATION CONDUCT WITH CHILDREN

In Chapter Three, we discussed a number of post-separation issues in the parenting of batterers involving ways in which they may further or intensify their undermining of the mother's authority at this point, and other ways in which they may interfere with mother-child relationships. A number of additional dynamics need our attention here.

Levels of Post-Separation Involvement

Some of our clients avoid involvement in their children's lives post-separation, either to escape responsibility for spending time with them or to avoid paying child support. Based on reports from mothers, the effects on the children of these disappearances vary depending largely on how afraid the children were of their father and how much interest he had previously taken in them. Some children reportedly show only brief sadness or concern about the father, while others remain distressed by his absence for an extended period of time. Some ex-partners of our clients state that the batterer's disappearance has been an important source of emotional reinjury to the children.

A second group of batterers in our observation conduct themselves either fairly responsibly or quite responsibly with the children post-separation. We have interviewed former partners of our clients who have been separated for five years or more, who report that they have not had major post-separation problems with the batterer as a parent, and whose children are primarily positive about their relationship with him. Some of the characteristics we observe in these batterers include:

- a) They generally do not have histories of having chronically or deliberately undermined the mother's authority, or used the children as weapons against her, *while the couple was still together*;
- b) They used somewhat lower levels of psychological abuse towards the mother while the couple was together than other batterers, though their levels of physical violence vary;
- c) They were more accepting than other batterers of the end of the relationship; and,
- d) They show stronger abilities than most other batterers to focus on the children's needs, rather than perceiving the children as extensions of themselves.

A third category of batterers, which is the largest group in our experience, remain involved with their children post-separation and continue or worsen patterns of inappropriate parenting behavior that they exhibited while the family was still together. These behaviors can be intensified by the batterer's desire to curry favor with the children in order to be the preferred parent, and in order to overcome any resistance the children have to spending extensive time with him. We find that concerns about psychological manipulation of the children by the batterer are raised by the mother in a majority of our cases where the couple is divorced or separated.

Competitiveness with the Mother

After a relationship ends, many of our battering clients attempt to establish that they are competent and caring parents and that their ex-partners are not. We observe that parenting can become an arena through which the batterer attempts to prove to friends and relatives that he was the more psychologically healthy member of the couple, striving thereby to discredit his ex-

partner's reports that he was abusive. We have had numerous clients over the years make statements to us to the effect of, "You'll see what happens now that we've broken up, her life is going to fall apart, because I am the one who has been holding her together." One way a batterer can attempt to make this prediction come true is by creating as many difficulties as possible in the parenting life of his ex-partner.

The negative effects on children of competitiveness between divorced or separated parents are believed to be potentially serious even in the absence of battering (Wallerstein & Blakeslee, 1989). We find these behaviors by batterers to represent a sharpened psychological risk to children attempting to recover from the effects of exposure to domestic violence.

Inconsistency

A substantial portion of our divorced or separated clients exhibit ambivalence about the extent of contact they desire with their children. We find that the more self-centered batterer makes such decisions with little regard for the needs or feelings of his children, focusing instead on what degree of involvement with the children feels good to him. At the same time, we find that the high level of entitlement typical to such a client can lead him to the belief that his lack of involvement should not decrease his parental rights or authority. We thus have the phenomenon of the batterer who disappears for months or even years from the children's lives, often failing to pay child support over that period, but then resurfaces and seeks a court order granting him visitation for 48 hours on alternating weekends. We find that such requests can be looked upon favorably by family courts, who are reluctant to limit participation by a father who is now showing interest. However, in the context of domestic violence, the following factors should be taken into account, based on our experience: a) Batterers who disappear from their children's lives tend to be high in selfishness and self-centeredness, with resultant increased risk to damage mother-child relationships (as in the case example that opened this chapter); b) Batterers who are inconsistent parents tend to remain so, and thus the children may grow close to him only to lose him again, setting back their healing process; and, c) Granting extended visitation privileges to a batterer following a disappearance can reinforce his belief that he will not be held to a reasonable standard of parental responsibility. For the above reasons, batterers who resurface after long absences need to be reintegrated slowly and carefully into their children's lives.

Interference with Children's Participation in Therapy

We receive recurring reports from our clients themselves, from their ex-partners, and from therapists, regarding the sabotaging of the children's therapeutic relationships by the batterer, as occurred in the case example above. (See also Peled, 2000). Agencies that offer group counseling for children exposed to domestic violence are reporting a mounting problem with batterers' succeeding through the legal system in preventing their children from attending the group (Doug Gaudette, personal communication, 2000). The tactics reported to us most commonly involve pressuring and influencing the children regarding their participation. Some examples include: Telling them that therapists try to get children to say bad things about their fathers so that the father can be taken away from them completely; telling them that therapy is "stupid"; saying that therapy is for people who are crazy; and pressuring boys to perceive therapy as feminine in nature and undignified for a boy. Clients of ours have also threatened therapists with law suits if they see the child, have made repeated harassing calls, or have even threatened physical harm to the therapist. In one case, three different therapists had refused to work with the child out of fear, as the batterer had successively threatened each one.

Based on our observations, we can identify a number of factors that motivate batterers to interfere with children's therapy. The primary reason appears to be that batterers wish to avoid accountability for their actions as parents; the direct involvement with the children of an independent professional can interfere with a batterer's ability to discredit concerns raised by the mother about his parenting. Additionally, some batterers may perceive, more or less correctly, that the children's participation in therapy or in a psychoeducational group leads them to be more questioning of the batterer and more difficult for him to manipulate or intimidate.

A concern about therapy increasingly expressed by our clients is that their children will be persuaded falsely by a therapist that incidents of mistreatment have occurred, such as sexual abuse. We have reviewed much of the literature on children's memory and suggestibility (see Geddie, Beer, Bartosik, & Wuensch, 2001; review in Banyard, 2000; review in Reed, 1996; Doris, 1991; Zaragoza, 1991), and find the following points to be of critical relevance to our discussion here: a) Some children can be caused, through misleading questions, to provide inaccurate information. However, most studies find that only a minority of children can be led to give false information, even among pre-school age children, and that it is easier to lead them about peripheral details than about central information. There is not evidence that children can be easily persuaded that a traumatic event has occurred, especially one involving betrayal by a trusted caretaker; b) Children vary by age and by personality in their ability to be guided into making false statements through the use of leading questions. In most cases this process is not the same as the inculcation of a memory, appearing to have more to do with the child's desire to cooperate, which suggests that subsequent non-leading interviews may be able to clarify earlier errors; c) There continues to be important evidence, including from recent studies, of the relative soundness of most memories that children report in non-coercive circumstances, and investigatory methods are available to assess whether children's earlier statements have been coerced; d) Children give more accurate information to specific, non-leading questions than to more general and open-ended questions, so the term "leading" needs to be carefully defined in order to avoid rejecting appropriate questions; and e) Methods are available to increase the accuracy of information collected through interviewing children, and to reduce their vulnerability to suggestion.

The ongoing debates regarding memory in adults, particularly recovered memories of childhood trauma (reviewed in Banyard, 2000, and in Courtois, 1999; see also Pope, 1996, and Williams, 1994a, 1994b), have sometimes carried over into court cases involving children's memories of events which they have never forgotten. This represents a confounding of two distinct bodies of research that are not interchangeable.

Finally, we observe from our own cases that a thorough investigation sometimes reveals extensive evidence of the accuracy of a child's allegations in cases where the batterer claimed that the child's memory had been inculcated. It thus appears that many batterers may be concerned more about accurate statements that may be elicited by a therapist than about inaccurate ones. At the same time, our experience indicates that concerns about ethics and practices of some therapists are indeed warranted.

Use of Visitation to Gain Access to the Mother

A batterer may use visitation as a way of creating opportunities for contact with his ex-partner (Sheeran & Hampton, 1999; McMahon & Pence, 1995; Adams, 1989), so that he can pressure her for a reunion, harass or intimidate her verbally or assault her (Liss & Stahly, 1993; Walker & Edwall, 1987). Some of our clients have used visitation to gain information from the

children regarding the mother's address, place of employment, or routines. Assaults and murders sometimes occur during exchanges for visitation (Websdale, Sheeran, & Johnson, 1998; McMahon & Pence, 1995), and in one recent publicized case a woman was murdered in the parking lot of a supervised visitation center following a scheduled visit (Sheeran & Hampton, 1999).

The Batterer in Unsupervised Visitation

In the overwhelming majority of cases with which we have been involved, or which we have learned about through our research, family courts have granted men who batter unsupervised visitation with their children. Even in cases where supervised visitation is imposed, the requirement is generally temporary. We have yet to encounter a case where unsupervised visitation was conditioned on reliable evidence that the batterer had overcome his battering problem (see Chapter Eight); in cases where some period of supervision is imposed, it is generally lifted based on the batterer's conduct *in the supervised visits*, which is not a reliable measure of safety (see Chapter Two).

The parenting of batterers in unsupervised contexts poses multiple risks to children (Hart, 1990a). We observe that some of these are continuations of existing problems in the parenting of batterers (see Chapters One through Three), and others are fomented or exacerbated by the post-separation attitudes and behaviors typical of our clients. The risks, which are detailed in Chapter Seven, include the exposure of the children to new acts of violence, their use as weapons by the batterer for post-separation reprisals, direct mistreatment by the batterer, and many others.

Various combinations of the above factors can lead children to feel unsafe during visitation, and their anxiety sometimes continues after they are returned to their mother's care, or arises in anticipation of subsequent visits. As one battered mother we interviewed stated, "By the time they are back to sleeping well at night and feeling relaxed again, it's almost time for the next visit, and they start to get anxious again." The underlying goal of making it possible for children to feel safe, which is a crucial aspect of the context of recovery, can thus sometimes be compromised through unsupervised visitation. Children can also be made to feel responsible for the batterer and guilty regarding his emotional distress. For example, we have had a number of cases where the batterer tells the children that he cries frequently when he is apart from them, and the same tactic is described in Erickson & Henderson (1998).

Because of the complexity of the dynamics involved, children's orientation towards unsupervised contact with their battering fathers is often one of marked ambivalence. The partners of our clients describe the period prior to a visit as tending to involve a mixture of excitement and anxiety. The lack of structure and supervision that are common in visitation with batterers can be exciting for children, while simultaneously engendering insecurity. Exposure during visitation to an atmosphere of high negativity regarding their mother, and sometimes towards women and children in general, can create confusion. In our experience, overexposure to sweets, video games, violent movies, or other stimuli that may be restricted in their custodial home can lead children to experience visitation in an addictive way, where they use such stimuli to anaesthetize themselves to the fear and insecurity of being in the batterer's care. The batterer's exposure of the children to violence in media may be especially important, since such violence has been found to trigger children's feelings regarding battering that they have witnessed previously (Eron, Huesmann, & Zilli, in Graham-Bermann, 1998).

We have observed many of our cases that children may spend several months to a few years of gradually declining interest in visitation, as these sources of excitement become less potent and the upsetting aspects of irresponsible or undermining parenting by the batterer become more distressing to the children. However, batterers can often succeed at persuading courts that the children's mother is responsible for their mounting reluctance to visit.

Finally, we wish to make note of what we have found to be a dearth of research on the behavior of batterers during unsupervised visitation. This is an important gap to fill, in order to test and expand clinical observations.

Effects on Children of Unsupervised Visitation

Children's behavioral and emotional functioning often improves when a battered woman separates from a batterer (Holden et al., 1998). Battered women's service providers with whom we have spoken observe that these gains sometimes fade once children begin to have visitation with the batterer, particularly if the visits are unsupervised, with a resurgence of their symptoms and of their level of conflict with their mothers. Jaffe and Geffner (1998) observe that this decline can gradually lead to withdrawal and a sense of resignation in the child if a proper protective plan is not put in place regarding custody and visitation.

As we discussed in Chapter Two, some children react to the violence that they have witnessed, and to the self-centered or aggressive parenting style of the batterer, by becoming increasingly rejecting towards him and reluctant to participate in visitation. This outcome, and the painful internal loyalty struggles that children experience when deciding to reject their fathers in this fashion, could perhaps be prevented by requiring proper supervision during paternal visits (Liss & Stahly, 1993).

The Batterer in Supervised Visitation

Because of the manipulative style of many batterers, supervised visitation does not guarantee children's emotional safety and well-being in our experience, unless the visitation is vigilant and is performed by a professional trained in the parenting of batterers and the dynamics of domestic violence. We have been involved in cases where batterers at supervised visitation centers have passed messages to children through notes written in the margins of books; where a batterer/incest perpetrator took advantage of a momentary lapse in the supervisor's attention to take pictures of the child's rear end, which was later discovered; where an incest perpetrator continued pressuring the child for kisses in supervised visitation; where various verbal messages were passed to the mother through the child; and various other risks to both children and their mothers.

In less structured forms of supervision, the risks of manipulation are even greater. In a case we are involved in currently involving a batterer/incest perpetrator, the supervisor has lengthy conversation with the father during visits. The existence of these conversations means that the supervisor is not fully focused on the child's safety, and means that the father is receiving the opportunity to develop a relationship with the supervisor which could compromise her neutrality and vigilance. We have been involved in several other cases where such conversations led the supervisor to become increasingly sympathetic to the abuser and hostile to the battered mother. In a similar case of ours, family members who were appointed to supervise visits appeared to be

directly involved in shaming the child regarding his disclosure of sexual abuse and pressuring him to recant.

The Batterer and Child Support

Batterers are less likely than non-batterers to pay child support fully and consistently (Liss & Stahly, 1993). They often avoid paying altogether, especially if they do not intend to seek custody (Jacobson & Gottman, 1998). Women may be afraid to press for child support because of the danger of physical assault by the batterer (Kirkwood, 1993), and the batterer may explicitly threaten to hurt her if she pursues payment (Ptacek, 1997). The woman may also fear that the batterer will retaliate with actions for custody or increased visitation if she seeks child support; we have found this fear to be realized in several cases in which we have been involved. The impact on the battered woman and her children of his refusal to pay child support, or to pay at an appropriate rate, needs to be understood in the context of his overall history of economic abuse, which is common with batterers (Pence & Paymar, 1993), and how that history has affected the family.

We find that custody and visitation evaluators do not typically consider the batterer's history of responsibility in paying child support as a relevant factor in assessing his level of parenting commitment and his capacity to prioritize his children's needs. In one of Bancroft's first custody evaluations, the batterer was seeking custody of a three-year-old girl yet admitted openly that he had three children from a previous relationship for whom he paid no child support, and whom he made no effort to visit "because they moved to New Mexico and it was too much of a pain."

BATTERERS' MOTIVATIONS FOR SEEKING CUSTODY OR INCREASED VISITATION

Studies suggest that batterers are more likely than non-battering fathers to seek custody, especially of sons, and are as likely as non-battering fathers to prevail (APA, 1996; Liss & Stahly, 1993; Walker & Edwall, 1987), a perception that our professional experience tends to confirm. We are able thus to make some observations of the reasons why batterers exhibit increased likelihood to pursue custody or to use legal action to attempt to expand their visitation schedules:

1) *Distorted perceptions of their victims.* Batterers generally have a contemptuous outlook on their partners, which can be sharpened by separation. For example, numerous clients of ours have expressed their conviction that their partner's decision to leave the relationship was evidence of the woman's immaturity, weak commitment to the relationship, or lack of concern for the children, as with the client who told us, "Obviously, it's no big deal to her if our children come from a broken home." Our clients almost universally minimize the role of their abusiveness in causing the end of the relationship.

2) *Distorted perceptions of themselves.* We find it nearly universal among batterers to have little sense of the seriousness of their own abusiveness and its effects on their children. Their tendency to self-centeredness can lead to grandiose or romanticized self-images. Further, we encounter cases where the batterer is in denial about the marked improvement that has occurred in the children's emotional, social, and scholastic functioning following the reduction in their exposure to him.

3) *Desire to impose control.* For some batterers, custody litigation is an important arena through which they seek to impose control and domination which the end of the adult relationship

has weakened (McMahon & Pence, 1995; Walker & Edwall, 1987). Entitled attitudes can feed this desire for control, as many batterers believe that they should have ultimate authority over decisions involving the children.

4) *The desire to retaliate.* We observe that many of our clients who seek custody of their children reveal under questioning that their motive is to hurt and frighten their ex-partners (See also Doyne et al., 1999), for which custody actions can be uniquely effective in our experience. The costs of custody litigation can also be devastating to a mother's financial position, and can eliminate many opportunities for her children to improve their living conditions or participate in enriching activities.

5) *The desire for vindication.* Our divorced or separated clients tend to have a strong drive to prove that they are more emotionally healthy than their ex-partners, partly to refute claims of abuse. These men sometimes pursue custody as a way to gain social validation. (See also Doyne et al., 1999). Our clients who win custody do interpret their victories as validation of their perspectives, and children unfortunately appear to interpret an award of custody to the batterer in the same way.

6) *Their view of the effects of battering on their ex-partners.* It is common for battered women to suffer from depression, substance abuse, hypervigilance, emotional lability, sleep disturbances, and many others (M.A. Dutton, 1992; Douglas, 1987). Because batterers almost universally fail to recognize the impact of their actions on their partners, they view these symptoms as inherent problems in the woman and as reasons why she should not be given responsibility to care for the children (Dalton, 1999).

7) *The desire to gain economic or legal concessions.* A number of our clients have admitted that they filed for custody in order to gain a bargaining chip to trade off against alimony, child support, or conjugal assets. Many battered mothers report to us that they accepted settlements that left them and their children in poor economic circumstances in order to keep custody of their children. Batterers may also sometimes use custody actions to coerce their ex-partners to drop criminal charges (Adams, 1989).

8) *Other reasons for wishing to intimidate.* Several clients of ours have initiated actions for custody upon learning that their ex-partners had begun new relationships, or upon being accused of child sexual abuse.

9) *Avoidance of child support.* We have had a small number of cases in which the batterer's attempts to win custody appeared to be motivated primarily by the desire to avoid having a child support obligation.

BATTERERS' ADVANTAGES IN CUSTODY DISPUTES

Batterers win custody of their children with greater frequency is generally realized. Although it is widely believed that family courts have a bias in favor of mothers, custody studies have demonstrated that since the 1970's, fathers have been at a marked advantage in custody disputes (Gender Bias Study Committee, 1990; Weitzman, 1985). There is a general reluctance among family courts in the U.S. (Walker, 1989) and abroad (Eriksson & Hester, 2001) to consider a man's battering as a reflection on his parenting or a factor in determining custody. The partners of our clients often state that the fear of losing custody is a major factor in their decisions to postpone

leaving the batterer. This is particularly true for those women who do not have any proof of the history of violence (such as arrest records), or whose batterers have the economic resources to pursue litigation.

A battered mother faces multiple disadvantages in custody litigation, many of which are related to the history of domestic violence. We review here the central reasons why batterers are so often able to prevail:

1) *The effects of domestic violence on family dynamics.* As we examined in Chapter Three, battering tends to undermine a mother's parental authority and create multiple tensions between mothers and children. The difficulty that battered mothers may have controlling their children's behavior can be exacerbated in the immediate aftermath of a separation by the father's absence from the home; children may target the mother for their anger regarding the parental separation, and at the same time may feel free to behave as they choose now that the batterer's authoritarian presence is gone. Custody evaluators may observe that the mother has trouble controlling her children and may conclude that she lacks parenting skills. At the same time, batterers can do well under observation, and children may appear relaxed and comfortable with the batterer in the presence of the evaluator. Children are often better-behaved while in the batterer's care, partly due to conscious or unconscious fear of him (Pickering et al., 1993; Johnston & Campbell, 1993b). Children may also side with the batterer because they perceive him as the more powerful parent and therefore wish to identify with him (Jaffe & Geffner, 1998; Liss & Stahly, 1993; Walker & Edwall, 1987), or may request to live with him due to traumatic bonding (Doyme et al., 1999).

2) *The batterer's ability to manipulate or intimidate children's statements to the custody evaluator.* It is not uncommon for a batterer to succeed in persuading the children that he is the victim in the adult relationship or that the mother's behavior causes the abusive incidents. (See also Roy, 1988.) A batterer who was previously neglectful of the children may abruptly make his children a high priority, due to his desire to seek custody, and we have observed that this change can have a powerful emotional effect on children who have been craving more attention from him. Children may have difficulty disclosing domestic violence because of their fear of repercussions for themselves or for their mothers (Jaffe & Geffner, 1998). In a custody evaluation of ours, for example, a teen boy requested to be placed in his father's home, but in response to questions primarily spoke positively about his mother and negatively about his father. However, he repeatedly expressed concern that his father had been falsely accused of domestic violence and that he did not have friends. In other cases, children may request to be in the batterer's custody because of ways in which he has shaped their perceptions of their mother and because of his history of currying favor with them.

We have also seen indications of batterers pressuring or rehearsing their children's statements to the evaluator. In one case, for example, a three-year-old boy said to the evaluator "give my Dad a chance," but further questioning revealed that he did not know the meaning of the expression. Finally, in some cases children exhibit signs of being afraid to express a preference to live with their mother due to concern over the batterer's reaction.

3) *The batterer's economic advantage.* Our divorced and separated clients generally have more financial resources than their ex-partners, especially in the period immediately following separation. (See also review in Ellis & Stuckless, 1996; review and bibliography in Schafran, 1994; review in Gender Bias Study Committee, 1990). These financial advantages can not only make it possible to hire a more experienced and skilled attorney, but also to spend money on discovery,

depositions, hearings, and trials. We receive many reports from battered mothers of settling cases on terms that they consider detrimental to their children because they cannot amass the resources to pay for a trial. Additionally, we have observed in some cases that the batterer's economic advantages appeared to sway the custody evaluator, who felt that the children would be happier in the more fortunate class circumstances of the father. (See similar observation in M.A. Dutton, 1992.)

Domestic violence is an important cause of homelessness for women and children (Zorza, 1991), but courts may grant custody to the father if the mother is homeless, even if her economic position is largely due to his failure to pay child support or other economically irresponsible behaviors on his part (Gender Bias Study Committee, 1990).

4) *Psychological testing and evaluation.* We find that psychological evaluation is widely used to assist in custody determinations, but there are various reasons to question its validity for this purpose (Zibbell, 1994), especially where a history of domestic violence is alleged. Because of the absence of serious psychopathology in most batterers (see Chapter One), and because of the potent traumatic effects of domestic violence on victims, batterers often outperform their victims in psychological testing. Battered women have higher rates than non-battered women of symptoms associated with a large range of personality disorders and mental illnesses (review in Stark & Flitcraft, 1988) which can lead to incorrect diagnosis by evaluators not familiar with domestic violence trauma (Herman, 1992; Rosewater, 1987). The MMPI-2, for example, includes many questions that, if answered accurately by a battered woman, will contribute to elevated scale scores, such as whether she believes someone is following her, whether she has trouble sleeping at night, whether she worries frequently, or whether she believes another individual is responsible for most of her troubles (Pope, Butcher, & Seelen, 2000). Battered women tend to have quite elevated MMPI scores for anger, alienation, and confusion, and somewhat elevated scores for paranoia and fearfulness, with low scores for intactness and ego strength, regardless of race (Rosewater, 1987). We have observed that such test results are sometimes used successfully by a batterer to discredit a woman's reports of abuse, even where independent evidence of his behavior exists.

No psychological test exists that can determine whether an individual is a batterer, nor which batterers are most likely to reoffend (Gondolf, 1998a), nor have we encountered any test of a woman that can establish whether abuse allegations that she is raising are true. Nevertheless, some prominent evaluators believe that psychological testing should be used routinely any time that abuse allegations are raised (e.g. Stahl, 1999).

Psychological tests, including both standardized tests such as the MMPI-2 and projective tests such as the Thematic Apperception Test (TAT) and the Rorschach, are poor predictors of parenting capacity and are commonly given inappropriate weight by custody evaluators (Brodzinsky, 1994; Zibbell, 1994). Efforts to detect psychological traits associated with likelihood to abuse children have been unsuccessful (review in Wolfe, 1985). Some individuals with substantial psychopathology parent fairly well because of healthy value-systems or because of concerted efforts to insulate the children from the effects of the mental illness (Herman, 1992). At the same time, some psychologically normal people parent badly, because of abusiveness, selfishness, or unhealthy value-systems. (See American Psychological Association, 1994, on importance of assessing impact of value-system on parenting.) Finally, one study of normative MMPI-2 data for parents in custody litigation found that several elevations were typical, including hysteria, paranoia,

psychopathic deviant, self-favorability, over-controlled-hostility, and others (Bathurst, Gottfried, & Gottfried, 1997), suggesting that test results should be interpreted cautiously in this context.

5) *Poor quality of some custody evaluations.* Despite claims of rigorousness by some custody evaluators, we find the overall quality of custody evaluation to be of concern. Both authors have had occasion to review dozens of reports by Guardians ad Litem, and we find the following problems to be chronic:

a) Evaluators who do not grasp the basic dynamics of domestic violence (Lawton & McAlister Groves, 2000; Dalton, 1999), who fail to ask about domestic violence or its effects on the children (McMahon & Pence, 1995), who do not keep abreast of professional literature regarding abuse (Caplan & Wilson, 1990), or who do not consider domestic violence a major factor in custody determination (Ackerman & Ackerman, cited in Doyne et al., 1999). Graduate training programs for psychologists "have largely ignored abuse as a specific content area" (Pope & Feldman-Summers, 1992, p. 353). Many professionals continue to believe that battering behavior is produced by phases of elevated conflict in relationships and that the problem will be resolved as situational stresses dissipate (Jaffe & Geffner, 1998). Given that Guardians ad Litem are often mental health providers by profession, the above observations are consistent with research indicating that a high rate (91%) of therapists fail to identify the seriousness of domestic violence when it is presented to them in a scenario, and 40% do not consider it important to address the violence that they are aware of (Harway & Hansen, 1993), and that therapists frequently fail to recognize domestic violence in evaluating and diagnosing battered women (Gondolf, 1998b).

b) Evaluators who are heavily influenced by their personal experience of the alleged batterer, who allow themselves to be manipulated by him (Dalton, 1999; Walker & Edwall, 1987), and whose concern for the hurt feelings that he expresses overrides concern regarding the available evidence of his abusiveness.

c) Evaluators who fail to investigate the allegations, dismissing them on the basis of their impressions of the parties or based on psychological test results. A large percentage of custody evaluators fail to seek third-party sources of information, or even to review the relevant court records (Caplan & Wilson, 1990). In one case that we researched in which a mother had fled to a battered women's shelter with her children, the Guardian ad Litem reported to the court that the alleged batterer was not dangerous enough to warrant such flight. He wrote further that the children should be placed in the father's custody immediately because of the mother's unnecessary flight to shelter. We reviewed the custody evaluator's reports in the case carefully, and found that he had not conducted any investigation into the domestic violence history or level of risk.

In some cases evaluators may fail to examine evidence that supports the abuse allegations, yet recommend that custody be switched to the alleged abuser as a consequence to the mother for having brought a false allegation (Rosen & Etlin, 1996), and some judges change custody to the father on this basis (Myers, 1997b).

d) Evaluators who assume that most abuse allegations are exaggerated or fabricated, despite the lack of evidence to support this view (Jaffe & Geffner, 1998). For example, a guidebook to custody evaluation from 1986 does not address battering except to caution professionals regarding women's tendency to exaggerate reports of violence (Parry, Broder, Schmitt, Saunders, & Hood in Jaffe, Wolfe, & Wilson, 1990). Evaluators may be unaware of the overall prevalence of domestic violence in society (Straus & Gelles, 1990), of the evidence that it is even more common

in couples that are divorcing (review in Kalmuss & Seltzer, 1986), and still more common in divorced couples who have ongoing custody and visitation conflicts (Johnston & Campbell, 1988). Lacking this awareness, evaluators may be highly suspicious of the frequency with which domestic violence allegations appear in their cases, when in fact that frequency is statistically predictable.

6) *Gender and racial bias.* There is important evidence that fathers may be favored over mothers in custody disputes. For example, the Gender Bias Study commissioned by the Supreme Judicial Court of Massachusetts studied over 2100 disputed custody cases, and found that fathers win sole custody more than three times as often as mothers do, and win at least joint custody in more than 70% of contested cases (Gender Bias Study Committee, 1990). Courts may assume that a father who seeks custody is unusually caring and concerned (Gender Bias Study Committee), and may be unaware of the frequency with which batterers seek custody. Mothers and fathers sometimes appear to be judged by different standards (Gender Bias Study Committee; Walker & Edwall, 1987), with mothers evaluated on the basis of their history of performance as parents, and fathers evaluated on the basis of their expressions of emotion and their stated intentions for the future. Mothers also appear to be judged more harshly than fathers for any period of separation from the children, which can for example have negative implications for a battered woman who may have needed to flee without her children at some point (Gender Bias Study Committee).

We also observe the presence of societal ambivalence regarding a mother's appropriate role in protecting her children from their legal father. Prior to separation or divorce, professionals and other community members, including child protective services, may be harshly critical of a mother whom they perceive as guilty of "failure to protect" her children from exposure to a batterer (Magen, 1999; Whitney & Davis, 1999; Edleson, 1998). However, a societal reversal tends to take place once a mother and an abusive father are no longer together. At this stage, we have observed that professionals often become suspicious of a mother's motives for attempting to protect her children, and may attribute children's symptoms to the mother's alleged anxiety, overprotectiveness, or vindictiveness against the alleged abuser. Battered mothers can thus sometimes be caught in a societal contradiction that works to the advantage of batterers. (See similar observations in Jaffe & Geffner, 1998, and Faller, 1991.)

Courts and custody evaluators sometimes appear to apply different standards of proof to allegations regarding inappropriate parenting by fathers and those regarding mothers. We observe for example that allegations of domestic violence or incest perpetration tend to require a high measure of supporting evidence, while allegations that a mother is attempting to alienate the children from their father (for example, by making false accusations of abuse) are sometimes accepted with little or no factual basis (see also Rosen & Etlin, 1996). We further note a discrepancy between the strong weight placed on children's statements in cases where they request visitation with their battering fathers, and the simultaneous tendency to discount their statements in cases where they do not desire such visitation.

Courts and custody evaluators tend to look more favorably on step-mothers than on step-fathers (Zorza, 1995; Utah Task Force on Gender and Justice, 1990; Gender Bias Study Committee, 1990). This bias creates an ironic twist, where an underlying societal assumption that women are more nurturing and less dangerous to children than men may assist a batterer to win custody.

Finally, we receive numerous reports of bias against battered mothers of color and immigrant battered women in custody litigation. We are unaware of current research on this problem.

7) *"Friendly parent" custody presumptions.* Many states have established presumptions that custody should go to the parent who is most likely to foster a relationship between the children and the other parent. Such presumptions can work against battered mothers, who may be striving appropriately to restrict their children's contact with the batterer (Zorza, 1996). Some courts and legislatures, however, have specifically recognized that "friendly parent" provisions are not applicable to domestic violence cases (Lemon, 1999; Family Violence Project of the NCJFCJ, 1995; American Bar Association, 1994).

8) *Shortage of properly trained attorneys.* Overall, training of family law attorneys on domestic violence is low, the quality of representation provided to battered mothers is often inadequate, and few jurisdictions are structured in a way that gives a fair opportunity to those parties who wish to represent themselves (Family Violence Project of the NCJFCJ, 1995).

Ethical and Professional Problems in Custody Evaluation

Both our professional experience and our research suggest that problems of unethical and unprofessional conduct by custody evaluators may be widespread (Silverman, Andrews, Bancroft, Cuthbert, & Slote, 2001; Senate Committee on Post Audit and Oversight, 2001). The concerns that are raised most commonly involve false or deliberately misleading statements by custody evaluators in reports to the court, and other acts of severe bias in favor of the batterer. There appears to be an urgent need for the establishment of oversight and review of the performance of custody evaluators.

BATTERERS' TACTICS IN CUSTODY AND VISITATION DISPUTES

Family courts and child protective services often appear skeptical of domestic violence or child abuse allegations brought by women in custody and visitation litigation, believing that such reports are exaggerated for strategic purposes (Jaffe & Geffner, 1998; Walker & Edwall, 1987). Familiarity with common tactics used by batterers in custody and visitation conflicts is important for professionals who intervene with families post-separation, in order to avoid being drawn away from careful consideration of the evidence:

Projecting a non-abusive image: Batterers can use a calm speaking style, sensitive language, and dramatic expressions of love for their children to persuade evaluators and court personnel that they are unlikely to be physically dangerous or psychologically injurious. They may persuasively characterize the adult relationship as having been mutually destructive, and may account for the mother's allegations of abuse through such tactics as saying that she is upset because he had an affair or because her father abused her as a child. A batterer sometimes will admit to less serious acts of violence, such as shoving the woman or throwing objects, thereby increasing his credibility and creating the impression that the woman is vindictive. We repeatedly hear statements from batterers along the lines of, "I want to put our relationship behind us and just cooperate as well as we can to raise these children, but she isn't willing to let go of the past." Batterers tend further to be skilled at characterizing their ex-partners as dishonest, cruel, substance abusing, immature, or mentally ill (see also Ayoub et al., 1991), or as having a problem with men in general (Walker & Edwall, 1987).

Use of his new partner as a character reference: Many of our clients become quickly involved with a new partner after their relationship with the victim ends and treat her relatively well (see also Pence & Paymar, 1993.) We have observed in dozens of cases that the new partner becomes an ally to the batterer in conflicts with his former victim. We find in custody evaluations, for example, that the batterer's new partner may state adamantly that her partner could not possibly be abusive and that his ex-partner is fabricating her allegations. (On a number of occasions, our investigation has revealed extensive evidence that the man is in fact a batterer and potentially a dangerous one, which has created ethical dilemmas. Is it our responsibility to inform the new partner of the potential risk to her? Does doing so conflict with our appropriate role as custody evaluator?)

Using the mother's anger or mistrust to discredit her: The batterer may be able to influence court personnel and custody evaluators by drawing attention to the mother's anger or mistrust (Walker & Edwall, 1987), which is common in women who have suffered abuse (M.A. Dutton, 1992; Rosewater, 1987), but which may not fit with the expectation among some professionals that a battered woman would present only as victimized or helpless. One influential theorist claims that a mother's anger is an indicator of false allegation in incest cases (Gardner, 1991, 1987).

In addition, a batterer strive to persuade court personnel that the mother's concerns about the children are overreactions based on her own feelings about him, although battered mothers' ratings of the their children's problems have been found not to differ significantly from those of independent observers such as teachers (Sternberg et al., 1998; Gleason, 1995).

Defensive accusations: A batterer is sometimes able to create confusion or uncertainty by accusing the victim of the same violent or verbally abusive behaviors that he expects to be accused of. He may state that his ex-partner was violent towards him and the children, controlling, unfaithful, or unwilling to accept the end of their relationship. In a number of cases of ours, the batterer reported to the court that the mother was blocking his telephone access to the children, and in two of those cases we were able to obtain tapes of conversations that indicated that the battered mother was not interfering with contact with the other parent but that the batterer was.

Presenting himself as the party who is willing to communicate: Our clients are sometimes able to take advantage of the belief among professionals that the parents should communicate with each other despite any history of abuse (e.g. Johnston & Roseby, 1997). The operating assumption is that the more the two parents speak to each other, the better things will be for the children. But we find that the reality in domestic violence cases can be the opposite, as the batterer may use communication to intimidate or verbally abuse his ex-partner, or in some cases to pressure her for a reunion. In many cases a battered mother who declines all contact with the abuser may be doing what is best for her own recovery and that of her children.

Manipulating mediation or dispute resolution: Mediation in domestic violence cases generally does not serve the interests of battered women and their children (ABA, 1994; Hart, 1990b), although there are some indications that it can be used productively if the battered woman is participating voluntarily and strict guidelines are followed (Maxwell, 1999; Magaña & Taylor, 1993). Mediators may have little training in domestic violence and may make serious errors as a result (Maxwell). Batterers can manipulate the mediation process by beginning with an extreme set of demands, and then offering compromises from those positions. This strategy can have the effect of causing the mother to appear inflexible, as she expresses reluctance to "meet him in the middle." Battered mothers report to us that they sometimes make agreements in such

circumstances that they believe are unfair or potentially harmful to their children, out of fear of the batterer or out of concern that the mediator will report to the judge that the batterer is being more willing to negotiate than she is. (See also Liss & Stahly, 1993.) Compromises a battered mother makes in such circumstances may be used against her later, as in one case of ours where the custody evaluator reportedly said to the mother, "If he's so dangerous, why did you give him unsupervised visitation before?" At the same time, a battered mother who does insist early in the legal process on supervised or restricted visitation may be accused of having been invested from the start in cutting the father off from his children.

Finally, mediation sessions can be opportunities for a batterer to intimidate his ex-partner with hostile facial expressions, muttered threats, and degrading accusations. Lawyers representing batterers sometimes act as arms of this intimidation, laughing derisively at statements made by the battered woman, ridiculing her, or making threatening her with future legal actions. Batterers may re-create prior power dynamics by dominating the discussion in the session.

Using litigation as a form of abuse: Our clients can cause severe stress for their ex-partners through the use of court actions. Scheduling of repeated motions for increased visitation, decreased child support, or other demands can cause both emotional distress and financial hardship to the mother, including the potential for her to lose her job due to repeated absences from work for court dates. Batterers who visit little with the children, or who are inconsistent about paying child support, may nonetheless file motions to have the children with them on key holidays or on the children's birthdays; the threat of being apart from her children at these important life events can cause emotional anguish to a battered mother. Written statements for court, such as affidavits, can contain statements that are emotionally injurious to battered women (Ellis & Stuckless, 1996).

Using the battered woman's sexual orientation against her: If a battered woman becomes involved in a relationship with another woman after separating from the batterer, he may be able to use her lesbianism to his advantage in court proceedings. In a case that we were involved in, the batterer was able to secure a court order prohibiting the woman from allowing the children to have any contact with her new partner, although he had no such restrictions. In a case from Florida cited in Fray-Witzer (1999), a judge awarded custody of an 11-year-old girl to her father, who was a convicted murderer, on the grounds that the girl should not be raised by lesbians. *Using actions in one court to his advantage in another.* We observe, for example, that when a criminal charge is filed by the mother, the batterer may use this fact in family court as evidence of her efforts to keep him away from his children at all costs. If he is acquitted of the criminal matter, he may be able to persuade the family court that the allegation was malicious. Because judges and jurors "expect more corroboration of physical injuries in domestic violence cases than in other serious crimes," the chances of an acquittal are high (Gender Bias Study Committee, 1989, p. 587). Similarly, the batterer may be able to escape accountability in the criminal court by claiming, for example, that the woman is bringing the criminal charges to gain leverage in the custody battle. Clients of ours have sometimes told explicit lies in criminal court regarding actions or dispositions in a family court, or vice-versa.

Involving his own parents: We receive an increasing number of reports of cases where the parents of batterers seek grandparent visitation, increasing the emotional and financial stress for the battered mother, reducing her time with her children, and increasing the father's access to the children.

Additional Tactics for Discrediting Reports of Abuse

We wish to examine briefly a few important additional tactics used by some batterers to discredit the mother's concerns. First is the increasing use of the claim of "parental alienation," a term used to account for some cases in which children refuse to visit with a batterer or disclose sexual abuse. In some cases, mothers may be accused of alienating their children because of giving them accurate information regarding the history of domestic violence, which we believe overlooks the potential benefits to children's recovery of access to basic facts about the abuse in the home. In the case that opens this chapter, for example, the batterer repeatedly told the children that the mother had falsely accused him of violence, which was causing them to become mistrustful and resentful towards her. Correcting the batterer's dishonest statements was critical to preventing him from damaging the children's relationships with their mother.

Mothers are sometimes accused of parental alienation for reporting domestic violence, physical abuse, or sexual abuse of their children to the court, and in these cases may lose custody (Jaffe & Geffner, 1998). In a criticism of the inappropriate use of the "parental alienation" concept, Jaffe and Geffner write, "In our professional experience in over 20 years of completing custody and visitation assessments, the nonidentification of domestic violence in divorce cases is the source of the real problems that occur." (1998, p. 381)

Some batterers claim that children's resistance to visitation is the product of the mother's anxiety, which may reverse cause and effect. Mothers often do have appropriate anxieties about sending their children on visits with the batterer, especially in cases where the children have made worrisome reports to her about past visits or are exhibiting signs of distress. Similarly, claims that enmeshment (mutual overdependence) exists between the mother and the child may be used to account for a child's reluctance to leave the mother to attend visitation, without attending to the possibility that the child's difficulty in separating is related to previous distressing experiences during visitation, or to the effects of witnessing incidents of violence. Children who are victims of sexual abuse have also been observed to cling to their mothers (Finkelhor & Browne in de Young, 1986).

Batterers can create skepticism by stating that the mother's allegations of domestic violence or child abuse did not arise until the couple separated. However, it is widely recognized that battered women sometimes tell no one about the abuse prior to separation because of shame, fear, and many other factors (Dalton, 1999). There are important reasons why child abuse reports may first arise at separation or divorce, including the fact that the mother's growing awareness of the batterer's mistreatment of the children sometimes is the precipitator of the separation (Jaffe & Geffner, 1998). Children also may disclose abuse at this time that is longstanding (Faller, 1991; MacFarlane & Waterman, 1986), due to their fear of being placed in the abuser's custody or of spending increased time alone with him. Another possibility is that child abuse may begin or intensify after separation because of an abuser's desire to punish or harass his ex-partner (Faller, 1991; MacFarlane & Waterman, 1986), and a number of battered mothers have reported to us that they have returned to the abuser because he was abusing, neglecting, or threatening the children during visitation. (See also Liss & Stahly, 1993).

Less common but apparently increasing are accusations of Factitious Disorder by Proxy (or "Munchausen By Proxy") which is a type of psychological abuse in which a parent creates the belief in the child that he or she is chronically ill. This is a rare and complex syndrome, but in some cases has been concluded to be present on the basis of poor evidence or an inadequate

understanding of the nature of the disorder (Mart, 1999). Batterers sometimes raise an allegation of Factitious Disorder by Proxy to account for children's negative reactions to visitation.

Batterers in our cases often attribute a mother's allegations of child maltreatment to interparental tensions. However, evaluators should examine the possibility of opposite causality, with the escalating conflict between the parents resulting from the mother's efforts to intercede on her children's behalf. As one study of battered mothers found, "The mothers' empathy with their children's needs pushed them toward confrontation with their husbands when the children became targets of their fathers' overwhelming needs or anger. The mothers then decided to take action on behalf of their children that they had not taken for themselves." (Ayoub et al., 1991, p. 204).

EFFECTS ON CHILDREN OF CUSTODY LITIGATION

The negative effects on children of custody and visitation litigation are widely recognized (Wallerstein & Blakeslee, 1989; Johnston and Campbell, 1988). In the context of domestic violence, professionals should be particularly alert to following issues: The insecurity that litigation causes to children regarding where they will be living; the stress caused to the mother, which can affect her parenting; the heavy demands on the mother's time that litigation can cause; economic hardships that can result from legal expenses and missed work; profound internal conflicts for the children regarding what to say to custody evaluators; and pressure or manipulation from either or both parents, which tends particularly to be applied by batterers. Custody litigation gives the batterer, and the court, a great deal of power over the life of the battered woman, and trauma survivors can experience setbacks in their recovery when they are forced to enter situations where they are once again experiencing disempowerment (Herman, 1992). A batterer who pursues custody can thus compound the destructive effects that his past conduct has had on the family.

The risk that custody will be awarded to a batterer has the further effect of causing many battered women to feel forced to stay with abusive partners (Crites & Coker, 1988). Liss and Stahly (1993) reported that 20% of battered mothers involved in custody litigation stated that they had returned to the batterer at least once in the past due to his threats to hurt or take the children, and numerous partners of our clients have told us that the fear of losing custody is a prime reason why they delay leaving. Thus the systemic failure to protect battered mothers from losing custody may be a contributor to keeping children in situations that are traumatizing them.

SUMMARY

Separation or divorce between a batterer and a battered mother does not reliably increase the safety and well-being of children, especially in cases where the batterer is the children's legal father with the right to pursue visitation or custody. Systemic responses by family courts, child protective services, therapists, and other human service professionals play a critical role in determining whether the separation will ultimately contribute to the children's safety and healing, or will instead create a context for children and their mother to be further victimized. Batterers are sometimes able to take advantage of societal ambivalence towards mothers who attempt to protect their children from abusive fathers. The process of custody and visitation litigation itself can become a form of continued abuse of the mother, with important secondary effects on the children. Court personnel and custody evaluators sometimes lack a sophisticated understanding of the dynamics of domestic violence and its effects on family functioning, or of the dynamics of trauma in

general. Thorough investigation of allegations of domestic violence or child abuse is sometimes lacking, with courts relying instead on psychological testing or on stereotypes regarding abusers and victims. The risk to children from batterers is often underestimated, especially in cases of "lower-level" violence. Improved policies in practices in various areas are necessary to strengthen the ability of battered mothers to protect their children from the effects of unsupervised exposure to their battering fathers.