

**Custody and Intervention Recommendations in Family Law Cases:**

**A Gender-Inclusive Framework**

John Hamel & Kelley Baker

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Contact:

John Hamel, Ph.D., LCSW  
San Francisco Bay Area, California  
[www.JohnHamel.net](http://www.JohnHamel.net)  
[johnmhamel@comcast.net](mailto:johnmhamel@comcast.net)  
(415) 516-8086

## **Abstract**

Children have been found to be adversely affected from not only having experienced physical abuse and neglect directly at the hands of their caregivers, but also from having witnessed abuse between those caregivers, known as intimate partner violence (IPV). Because existing statutes limit child custody access to parents who have been shown to have engaged in such behavior, accusations are routinely brought forth by attorneys in family court cases on behalf of litigating parents. In this chapter, an overview is presented of the research evidence on IPV and its impact on the well-being of children. It is argued that accusations of IPV, while often valid, are too often false, exaggerated or based on a misunderstanding of the extant scholarly research literature. Assessment procedures are suggested by which custody evaluators can make more informed decisions, so that children are protected from abuse and parental rights are not unnecessarily abridged.

*Keywords:* disputed custody, best interests of children, intimate partner violence, family violence, false accusations, gender paradigm

## **Custody and Intervention Recommendations in Family Law Cases: A Gender-Inclusive Framework**

Consider the following case summaries:

Case #1:

The father secures primary physical custody of his eight-year-old son, Dylan, despite having been previously arrested twice on domestic violence charges, once against the mother, and once against a previous partner that led to a misdemeanor conviction and completion of an anger management course. He is an investment banker, with an outgoing personality and a large circle of friends, and presents a calm, confident demeanor in court. The expensive attorney he has hired to represent him cites parental alienation on the part of the mother for his client's strained relationship with their son. Testimony is given on the mother's history of emotional instability and alcohol abuse, including having picked up Dylan late from school on multiple occasions, and frequently allowing him to watch cartoons for hours as he binges on junk food.

Case #2:

During a protracted custody dispute, the mother seeks a restraining order against the father for threatening to kill her. In the application she alleges several incidents of physical assault, as well as a pattern of coercive psychological abuse against her, which she says were witnessed by their four-year-old twins. This is the first time she has alleged such abuse, and she cannot find independent corroboration. The father agrees that they have had strong disagreements in the past, particularly in the period following their separation a year earlier, but denies perpetrating any form of abuse. In his rebuttal, the father further claims the mother had previously threatened to have him arrested on a

DV charge if he disputed her custody demands, that she is manipulative and prone to outbursts of anger, and that she spansks the children and constantly puts him down in front of them. The judge nevertheless grants the TRO, mandates the father to a batterer intervention program, and allows him only minimal visitation, supervised.

The above examples illustrate some of intimate partner abuse (IPA) allegations made in approximately half of disputed child custody cases litigated throughout the United States (Kelly & Johnson, 2008). Was the correct decision made in each? Individuals who are primarily concerned with protecting battered women and their children are likely to agree with the custody decision made in the second case, but to question the conclusions reached in the first; whereas those concerned mostly with the rights of fathers to have shared custody are likely to hold the opposite point of view, approving of the conclusions made in the first case, but reluctant to accept those in the second without further inquiry. For example, a victim advocate would cite research indicating that the psychological symptoms exhibited by abused women, such as those evidenced in the first case, can impair one's judgement and coping skills. This, they would say, better accounts for the mother's drinking and compromised supervision of Dylan than a lack of concern for his welfare. In response, a fathers' rights activist might point out that men are disproportionately arrested on domestic violence charges compared to women, even for the same level of offense, and that the husband's plea bargain was an understandable legal strategy to avoid incarceration rather than evidence of wrongdoing. A similar bias claim might be made on behalf of the father in the second case, namely that a woman merely needs to make accusations of abuse against one's partner, no matter how frivolous, and will be taken seriously, even though she may be abusing the children. Such accusations, in turn, would inevitably be viewed by the

mother and her representatives as the usual victim blaming characteristic of controlling male abusers.

Child custody mediators and evaluators regularly hear some version of these arguments, which they are expected to evaluate fairly and objectively. Numerous questions remain unanswered about each. Given what is known about the effects of family conflict and violence on children, all points of view must be considered, and all allegations taken seriously and evaluated on what is in the best interests of the children (Gould & Martindale, 2013). This is a daunting task because, as discussed in the chapter by Pisarra and others in this volume: (1) Disputed child custody litigants are motivated to lie, omit, exaggerate, and otherwise shade the truth in ways that make fact-finding difficult; and (2) Intimate partner violence (IPV), more so than other mental health and behavioral problems (e.g., substance abuse), has been highly politicized over the years, with implications for how family court professionals understand this problem (e.g., Brinig et al., 2014; Drozd et al., 2004; Dutton, 2006; Dutton et al., 2010; Hardesty et al., 2012; Johnson, 2005; Kelly & Johnson, 2008; Saunders, 2015).

Incorrect assumptions based on the prevailing gender paradigm, discussed elsewhere in this volume, certainly play a part, as reflected by two of the most widely known researchers in the field of family violence, in one of their earlier works:

Although the terms family violence and domestic violence are commonly used, the most accurate term is the 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 (Jaffe & Geffner, 1998, p. 374).

Fortunately, an increasingly growing number of child custody experts have since come to recognize some of these fallacies and to challenge them:

Advocates believe research supporting the overwhelming prevalence of males as perpetrators in classic battering should be considered probative in the individual case and that women must routinely be given the benefit of the doubt when conflicting allegations exist. Because a classic batterer minimizes, denies, and blames the victim when violence is alleged, it follows that any male doing so is exhibiting behaviors that confirm his guilt. This catch-22, however, does not allow for the possibility of a false accusation (Salem & Dunford-Jackson, 2008, p. 446)

The most rigorously gender-neutral evaluator will also be confronted with perhaps a more fundamental challenge: how to sort out the complexities of intimate partner abuse, not only among the parents but within the context of family relations. All the different types of partner aggressive behaviors – physical, sexual, psychological – must be considered, along with their frequency, chronicity, impact, and degree of bidirectionality; and the relative impact of witnessed IPA on children must be weighed against the impact of direct child abuse or neglect, child alienation, and other types of family dysfunction – as well as the possible psychological harm done to children when they are denied access to one of their parents.

### **IPA and the Best Interests of Children Standards**

Thanks to the efforts of mental health professionals and concerned citizens, laws protecting children from abuse and neglect strengthened in the 1960s, and intimate partner violence have been recognized as a significant social problem, with criminal statutes enacted in the 1980s making domestic violence a crime. However, it was not until the 1990s that the impact of IPA on children was acknowledged and given consideration in disputed child custody cases as

reflected in new family law code sections throughout the United States (Advisory Committee, 1994; Jaffe & Geffner, 1998). For example, in California, Division 8 of the Family Code, Custody of Children, section 3044 (California Legislative Information, 2021a) stipulates that:

(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the child or the child's siblings, or against any person in subparagraph (C) of paragraph (1) of subdivision (b) of Section 3011 with whom the party has a relationship, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Sections 3011 and 3020. This presumption may only be rebutted by a preponderance of the evidence.

Statutes have been enacted in nearly every state, containing either the rebuttable position provision or similar language stipulating that the effects of domestic violence on children should be considered a factor in custody decisions (American Bar Association, 2014). How such terms as “abuse” and “domestic violence” are defined vary from state to state. In California, Division 10 of the Family Code on Prevention of Domestic Violence defines “abuse” in section 6203 (California Legislative Information, 2021b) as “intentionally or recklessly cause or attempt to cause bodily injury; sexual assault; placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or engaging in “any behavior that has been or could be enjoined pursuant to Section 6320.” Section 6203 further indicates that abuse is not to be limited to “the actual infliction of physical injury or assault,” and section 6320(a) stipulates that family courts can issue ex-parte orders enjoining a party from engaging in a number of behaviors, including “molesting, attacking, striking, threatening, sexually assaulting” and

“battering.” An ex-parte order can also be issued to prevent a party from stalking or “disturbing the peace” of the other party. In 2020, this section was amended so that “disturbing the peace” was defined as follows:

(c) As used in this subdivision (a), “disturbing the peace of the other party” refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. This conduct includes, but is not limited to coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

- (1) Isolating the other party from friends, relatives, or other sources of support.
- (2) Depriving the other party of basic necessities.
- (3) Controlling, regulating, or monitoring the other party’s movements, communications, daily behavior, finances, economic resources, or access to services.
- (4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

### **Research on IPA and Family Violence**

How exactly the use of coercive control and physical assaults by one parent against the other impacts children’s best interests is not discussed within these family code sections.

Explanations are left to the forensic professionals who provide expert consultation and testimony, as well as the evaluators tasked with making recommendations on child custody and visitation. As demonstrated by the fictitious case studies cited earlier, these explanations are



subject to the distorting influences inherent in an adversarial system. Differences among child custody researchers on best practices for evaluating cases involving IPA allegations may also reflect personal bias due to personality or life experience or due to the vague and sometimes contradictory legal statutes that guide them, exacerbated by a lack of knowledge about IPA.

**Lack of accurate IPA knowledge.** Without accurate knowledge about IPA, the custody evaluator is at higher risk of relying on specific mental shortcuts, such as representativeness and availability heuristics, which in turn can produce confirmatory bias (Nicholls et al., 2013). A survey of 465 child custody evaluators found that the amount of custody and visitation given to fathers who were alleged to have perpetrated IPA was greater if the evaluator was male, scored high on the Modern Sexism Scale, or believed that mothers sometimes engage in parental alienation and make false allegations (Saunders et al. 2013). These results should be understood in the context of the authors' focus on fathers as perpetrators. Clearly, the pro-father bias among evaluators who hold sexist attitudes towards women should be of concern. However, meanings attributed to correlations found between custody/visitation time and beliefs that women are capable of manipulating the court system are open to interpretation – as a failure by some evaluators to properly assess the significance of IPA or, alternatively, reflecting an accurate understanding of the problem and a willingness to take it seriously. The authors assume the first, leaving the reader with the not-so-subtle suggestion that false allegations and alienating behaviors are not relevant. Additional findings by Saunders et al. (2013) that greater workshop attendance predicted custody decisions favoring the mother are also open to interpretation. The assumption is that training on IPA for family court professionals are reliable; however, there is evidence that many of the mental health professionals, victim advocates, and child custody researchers who might provide such training remain very much under the spell of the gender

paradigm and fail to draw from the full body of accurate, reliable, and up-to-date scholarly research (Hamel, 2014; Hines, 2014).

After many years working with male and female domestic violence perpetrators and victims at his clinical practice in the San Francisco Bay Area, it became apparent to the first author that treatment recommendations for custody litigants often failed to meet best practice standards and that the referring parties were alarmingly uninformed about the prevalence, dynamics, consequences, and proper assessment of intimate partner violence (Hamel, 2019). For example, fathers who were found to have perpetrated any IPA, regardless of its level of severity or chronicity, were nearly always required to complete a full, 52-week batterer intervention program. In contrast, partner-abusive mothers were referred either to individual counseling, a shorter course in anger management, or no treatment at all, even if they had demonstrated a clear pattern of serious physical and/or psychological assaults upon their partners.

Accordingly, the first author created a ten-item quiz to measure basic IPA knowledge among Family Court Professionals (Hamel et al., 2009). Online and paper and pencil versions were administered to members of the Association of Family and Conciliation Courts (mediators, evaluators, and family law attorneys), family court judges, shelter workers, and victim advocates drawn from a directory published by the National Coalition Against Domestic Violence and state chapters of the National Coalition against Domestic Violence, and to undergraduate psychology students in partial fulfillment of their introductory psychology research requirement. The results of the study were troubling. The average respondent answered only 2.8 questions correctly. For example, 43% of respondents believe the percentage of IPA perpetrated by men in the general population to be between 85% - 95% (it is in fact about half). Further, 48% assume it is almost

always the man, but sometimes the woman, who perpetrates verbal and emotional abuse and controlling behaviors (it is roughly symmetrical across gender); and more than a third (37%) incorrectly believe that in abusive households the violent father is more likely than the mother to also hit the children. Despite extensive training, the family court professionals did not score significantly better than the undergraduates, and females scored below males. The lowest scores were found among the battered women's advocates, a major source of information and training on IPA (Hines, 2014). Furthermore, the authors found it very telling that:

For those items in which a clear choice was given between opposite but equally incorrect options, one of them consistent with the patriarchal paradigm (i.e., abuse is primarily male-perpetrated), the other in the opposite direction (i.e., abuse is primarily female-perpetrated), that respondents invariably selected the former. Thus, we would suggest that the incorrect responding was not by chance alone, nor due to a general lack of knowledge about IPA (Hamel et al., 2009, p. 45)

**Typologies.** Since the incorporation of the Model Code into family court proceedings, an evolving body of research has generated a more complete and accurate account of IPA dynamics, risk factors, and impact on adult victims and children than earlier formulations (e.g., Jaffe & Geffner, 1998). As summarized in Hamel (2016) and the introduction to this volume, and explored at length in the Bates chapter, IPA is neither completely symmetrical nor asymmetrical across sex. Rather, there is considerable symmetry with respect to rates of physical and psychological abuse and controlling behaviors, and their combination, and the risk factors associated with perpetration and victimization – primarily low income, poor impulse control, domineering personality, trauma, and family of origin issues, substance abuse, and relationship conflict. Moreover, men and women report similar motives for perpetration, including self-

defense, revenge, jealousy, and control, and in the general population, most IPA cases involve bidirectional abuse (Hamel, 2020a; Langhinrichsen-Rohling et al. 2012). On the other hand, women are sexually assaulted at much higher rates than men, incur a much larger share of serious injuries leading to hospitalization, and account for approximately 80% of homicide victims. The emotional impact of physical assaults also disproportionately affects women, although male and female victims appear to be similarly impacted by psychological abuse and coercive control. With the exception of severe, life-threatening assaults, male and female victims alike report that the worse kind of abuse is ongoing emotional abuse (Arias & Pape, 1999; Hines & Douglas, 2015, 2018; Simonelli & Ingram, 1998); resulting in mental health problems as serious, or more so, than those produced by physical assaults (Harned, 2001; Lawrence et al., 2012).

Although scholars may differ somewhat on how to define and categorize such terms as “abuse” or “domestic violence,” there is a consensus that they comprise of a highly heterogeneous set of behaviors and dispositions, with varying etiologies, characteristics, and consequences for victims and children (Austin & Drozd, 2012; Ver Steegh, 2005). It is difficult to “conduct a valid parenting evaluation for a family without knowing and understanding the specific domestic violence context” (Ganley, 2009, p. 5). In a pioneering study of disputed child custody cases involving IPA allegations, using various sound, validated questionnaires, Johnston and Campbell (1993) found an equal number of cases where the father or the mother was the primary relationship aggressor (13.6% and 13.5%, respectively). A pattern of bidirectional IPA was found in 19.3% of the cases, and 5.7% of 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. “In general,” the authors noted, “physical

violence was perpetrated by the partner who felt abandoned, and this could be either the man or the woman” (p. 197). Violence was limited to a few incidents, some episodes more severe than others, during the separation and divorce, and the perpetrators later expressed contrition and embarrassment about their behavior.

As indicated in the Association of Family and Conciliation Courts publication, Guidelines for Examining Intimate Partner Violence (AFCC, 2016), evaluations should distinguish between, on the one hand, aggression that arises due to poor impulse control and conflict management or is “a reaction to the stress of separation or divorce without any history of violence or propensity for future violence,” versus on the other hand aggression where “one partner exercises power to intimidate, isolate, denigrate, control and subordinate the other partner” (p. 3). Various forms of IPV perpetration have been linked to an insecure attachment style, especially one characterized by *anxiety over abandonment* (Dutton; 2006; Sonkin & Hamel, 2019). Parents whose motive is primarily to dominate their partner, whether male or female, are also likely to exhibit signs of personality disorder, mostly Borderline Personality Disorder (BPD) or Anti-Social Personality Disorder (APD), and their abuse is often chronic and severe, featuring both physical and psychological abuse (Babcock et al., 2000; Dutton, 2006; Holtzworth-Munroe & Stewart, 1994; Mauricio et al., 2007; Munro & Sellbom, 2020). Simmons et al. (2005) found evidence of BPD and APD between one-third to one-half of perpetrators mandated to batterer treatment, but high scores for narcissistic and histrionic traits were found as well, particularly among the women, and dependent personality traits among the men. Of relevance to child custody, parents who engage in this type of IPA are more likely to harass, stalk, or assault the other parent after separation, and or perpetrate physical, sexual, or psychological abuse in subsequent relationships, with deleterious consequences for child

witnesses. For more information about personality and other risk factors for consequential IPV, including intimate partner homicide (IPH), the reader is referred to the chapter by Hamel, Dutton, and Lysova in this volume.

As helpful as the AFCC guidelines may be, the various types of relationship aggression that they delineate are based on research that is often misunderstood and overly politicized (Dutton, 2006; Dutton et al., 2010). In the typology proposed by Michael Johnson, IPA related to poor impulse control and escalated conflict is known as *situational couple violence* (SCV), where physical assaults are infrequent, lead to minor or no injuries, and are perpetrated at comparable rates across sex. Abuse perpetrated with the intention to dominate and control, featuring severe physical assaults and chronic psychological aggression, has been variously called *coercive-controlling violence* (CCV), *intimate terrorism*, or simply *battering*, and regarded as overwhelmingly male-perpetrated. Johnson also identified two other types: *mutual violence control*, involving two batterers, and *violent resistance*, where a victim, presumed to be the woman, fights back physically against her batterer (Johnson, 2008; 2011). While these categories recognize the heterogeneity of IPA, they have been tainted by the gender paradigm, insofar as the extant scholarly research finds few differences across sex concerning rates of physical assaults, psychological abuse, the control motive, or rates of self-defense (see the Bates chapter, this volume).

Unfortunately, Johnson's erroneous proposition that CCV is primarily or exclusively male-perpetrated has remained unquestioned by many child custody experts (e.g., Ganley, 2009; Hardesty et al., 2012; Jaffe et al., 2008; Kelley & Johnson, 2008). In fact, large-scale population surveys indicate that rates of CCV are comparable across the sexes, both in the United States (Jasinski et al. 2014) and Canada (Laroche, 2005). Hardesty et al. (2012) correctly cite statistics

from Canada, finding rates of post-separation violence to be around 39% for female victims. However, neglect to mention that the same survey reported that 32% of men who had previously been victimized were re-victimized after separation (Statistics Canada, 2001).

Still, while rates of CCV are comparable across sex as defined by Johnson (high levels of physical and psychological abuse), it would be misleading to suggest that men and women are equally impacted or *terrorized*. There are, in fact, several forms of “battering” (Hamel, 2014):

- (1) *Common battering*. It resembles SCV but includes a control motive and moderate levels of physical and psychological abuse and often stalking. This is roughly gender symmetrical.
- (2) *Physical terrorism*. Far less frequent in the general population, it is characterized by extreme violence and control. The control is maintained through physical force, or the threat of physical force, much like the way a pimp might maintain control over his prostitutes (Stark, 2007). It is mostly male-perpetrated.
- (3) *Emotional terrorism*. It may involve physical aggression, but dominance is established primarily with psychological abuse and emotional control. The victim is not necessarily in danger of being killed and not entirely helpless to protect him/herself. Perpetrated by men and women. Here is an example of emotional terrorism:

Throughout his 8-month relationship with Laura, Bill’s life has been hell. Laura is highly critical of Bill and will force him to stay up until 3 a.m., browbeating him with complaints. As a result of not sleeping and Laura’s harassing calls to his workplace, Bill was fired from his job. Now she refers to him as a “loser” and “a worthless piece of shit.” When he shows disinterest in sexual relations, she ridicules him, questioning

the size of his penis, and calls him a “faggot.” During her rages, she bites, kicks, punches, slaps, and throws objects at Bill...When Bill attempted to call the police, Laura threatened to fabricate spousal abuse charges, claim self-defense, and have Bill arrested, boasting that “they’ll believe me because I’m a woman” (Hamel, 2014, p. 23).

An additional limitation of the Johnson typology is the considerable overlap across categories. One clinical study of 273 couples (Simpson et al., 2007) identified two categories resembling Johnson’s categories of CCV and SCV, consisting of one low-violence and one moderate-severe violence group. However, a number of the low-violence couples perpetrated higher levels of psychological abuse than those in the moderate-to-severe physical violence group. Similar profiles have been found among same-sex partners (Stanley et al., 2006), suggesting that IPA dynamics can best be understood when placed on a continuum. Findings such as these should caution child custody evaluators from developing offender profiles based on limited information. For instance, the inability by victim advocates to distinguish between SCV and battering has unnecessarily caused concern that SCV dads often obtain custody time when they pose minimal danger to the children (Morrill et al., 2005; Rosen & O’Sullivan, 2005). However, “there does not seem to be any research,” according to Austin and Drozd (2012), “to support a conclusion...that coercive controlling fathers are often successful in gaining primary custody” (p. 293). It should be stressed that *the majority of partner violence consists of lower-level assaults that do not lead to significant injury or trauma.*

**Psychological abuse and coercive control.** The code sections previously discussed provide a general guide for determining whether a parent has perpetrated “domestic violence.” Specific examples are given for conducts that would “disturb the peace of the other party,”



including isolating one's partner, monitoring their movements, and other "coercive control" behaviors. PC 6320 correctly defines coercive control not as a discrete incident but rather as a "pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty." Still, there are limitations to these codes and how they should be applied (Follingstad, 2007). There are many other ways by which perpetrators engage in coercive control aside from the examples given, such as legal and administrative abuse (LA), which includes making false reports of domestic violence or child abuse, threats to leave and take the children, and ruining a partner's reputation in the community (Hines et al., 2015). Parental alienation, a form of child abuse, can also be considered a form of IPA (see Harman & Kruk, this volume). Existing measures on psychological abuse/coercive control are not entirely in accord with what items should be included, and the examples given are open to interpretation. How do we determine if someone is forcibly isolated from friends? What was the baseline prior to a reduction in visits, and what percentage would constitute "isolation"? A 10% reduction? A 90% reduction?

Furthermore, what is defined as coercive control may be a simple disagreement – for example, when a woman asks that her boyfriend not associate with drug users. If a husband cancels his wife's credit card after she makes extravagant purchases they cannot afford, is that coercive control or responsible limit-setting? How do we measure the extent to which any act of coercive control actually "interferes with a person's free will and personal liberty"? Many forms of psychological abuse are only coercive if the victim is actually controlled, e.g., by threats of violence (Saunders, 2015). Some individuals are more resilient than others, whereas those who are psychologically fragile, having experienced prior trauma, may feel constrained regardless of the partner due to internal processes of shame and low self-esteem. Finally, whether an act is

“intended” to be coercive is difficult to ascertain. One party, with a more extroverted and dominant personality, may remind, suggest, and initiate activities at higher rates than the other party. Are constant admonitions to avoid junk food examples of coercive control or irritating but well-intended attempts to help?

Ample research can be found supporting the victim advocacy point of view illustrated by the first case study in the introduction to this chapter, that certain male batterers manipulate the family court system by effectively projecting a non-abusive image (Bow & Boxer, 2003; Jacobsen & Gottman, 1998); while their victims, as a result of the physical and psychological consequences of the abuse, may appear as overly hostile and to be a less “fit” parent (Hardesty et al., 2012; Kernic et al., 2005). Research has well-documented the effects of IPV victimization on mothers’ caregiving capabilities, what is known as the *spillover effect* (Chiesa et al., 2018). When mothers attempt to leave the abuser, they sometimes will find resistance among their children, who miss their friends and neighbors, and who will even blame the mother for the abuse (Jaffe & Geffner, 1998). Some women, of course, also manipulate the court system, and project a “non-abusive” image, and their efforts to gain custody have more to do with a sense of entitlement or punishing the partner than what is best for the children.

We recognize that no matter how politicized, both battered women’s advocates and fathers’ rights organizations have voiced valid concerns regarding the way IPA and parental alienation complaints are assessed and litigated within the family court system. We agree with Johnston and Sullivan (2020) that parental alienation is multi-determined and not sex-specific, just as we acknowledge the same regarding other forms of abuse between partners. We further agree with Harman & Kruk (this volume) that IPA and parental alienation are not merely two sides of the same coin, but the same coin of coercive control that includes legal and administrative abuse and

child abuse and neglect. They all threaten the best interests of children, and neither men nor women have a monopoly on these behaviors.

### **The Complexities of Family Abuse**

A significant fact, rarely if ever acknowledged in the family court system, is that conclusions about the impact of IPA on children – which informed the Model Code for child custody evaluations – were based on research conducted almost exclusively with battered women and their children in the 1980s and 1990s. Despite the obvious limitations in generalizing from convenience samples such as these, the path by which family violence was presumed to affect children was assumed to originate with the father, who physically assaults the mother and the children, increasing the levels of stress and pathology within the family, sometimes leading the victimized mother to act out against the children with harsh or abusive parenting. Subsequent research has identified the limitations of this model. In one methodologically sound study, based on a large community sample of 453 couples and their children (Slep & O’Leary, 2005), a higher percentage mothers, compared to fathers, were found to have perpetrated both IPA and child abuse (44.4% vs. 37.3%, and 78.1% vs. 68.2%, respectively). Only 2% of the families with severe violence featured a so-called “battering dad” pattern of combined severe physical assaults on the mother and abuse of the children.

Recent comprehensive literature reviews have identified other paths by which IPA impacts the family. According to MacDonnel (2012), children who have witnessed physical aggression by *either* parent against the other are at significantly greater risk of experiencing internalizing symptoms (e.g., anxiety, depression) as well as externalizing symptoms (e.g., school problems, aggression) than other children. In the short term, internalizing symptoms are experienced to a somewhat greater degree when the child is exposed to IPA by the father or the father figure

because men's violence is relatively more consequential (and more frightening) than violence by women. On the other hand, children and teens who are exposed to physical assaults by either parent are significantly more likely to aggress against peers, family members, and dating partners, and to evidence trauma symptoms and depression later in adulthood (also see: Ehrensaft et al., 2003; Fergusson et al., 2006; Kimber et al., 2018; Straus, 1992).

Children are as much at risk living in a household with an abusive mother as one with an abusive father. In fact, except for sexual abuse, their perpetrator is more likely to be the mother (McDonald et al., 2006), not because mothers are inherently more abusive but because they are the primary caregivers and spend more time with their children than fathers. There is some correlation between physical PA and child abuse, for female and male perpetrators, as high as 67% based on studies using shelter samples, but lower in representative community samples (see: Dutton et al., 2010; Jouriles et al., 2008). Although the combined impact of the two types of abuse has not yet been clearly determined (MacDonell, 2012), children are affected by both. Some studies find the impact of direct child abuse on children to be comparable to witnessed physical IPA, based on research with battered women (Kitzmann et al., 2003); but other research, drawn from Child Protective Services samples (Salzinger et al., 2002) find child abuse to have more deleterious consequences. Such contradictory findings can be explained by other research, showing any chronic form of severe abuse most impacts children – as witnesses to battering serious enough to necessitate refuge in a shelter or as the victim of abuse that has come to the attention of child welfare workers (e.g., Jouriles et al., 2001). Some studies suggest that the highest levels of internalizing and externalizing symptomology in children are more likely due to verbal abuse. For instance, comments by the mother, or the father, intended to shame and denigrate the child (e.g., “you’re worthless,” “little bitch”) can be just as or more impactful than

most forms of corporal punishment or witnessed violence between the parents (Dutton, 2006b; English et al., 2003; Moore & Pepler, 1998).

Family violence is a heterogeneous, multi-dimensional phenomenon, characterized by a variety of possible pathways of abuse (Appel & Holden, 1998; Davies et al., 2006), with stress as a central mediator (Margolin & Gordis, 2003; Salzinger et al., 2003). According to the old model, it may be driven by a controlling-coercive father or by a controlling-coercive mother, whereby one parent, or both, may assault the other and abuse the children; or the partner-abused parent may respond to the stress of victimization by abusing the children. Marital discord and violence may follow rather than precede other forms of family abuse. Sometimes the abuse is initiated by the children against one another, to which the parents may respond with harsh punishment, in turn causing friction within the parental unit leading to an escalation of interparental conflict. In other cases, the abuse originates from a child and is directed at the parents. Mothers are the more frequent victims (Lynch & Cicchetti, 1998) and are often targeted in response to a history of child abuse (Ulman & Straus, 2003). Lynch and Cicchetti (1998) determined that the existence of child behavior problems prior to having been exposed to marital violence contributes significantly to overall levels of family stress, which in turn may aggravate both marital and parent-child relationships. “Violence anywhere in the family,” according to Kitzmann et al. (2003), “may be sufficient to disrupt child development” (p. 346).

However, it is important to note that the less severe types of family violence alleged by family court litigants do not necessarily impact on children to a significantly greater degree than having grown up in a high-conflict, dysfunctional, but non-violent home or experiencing the inevitable stress of marital conflict and impending divorce (Fantuzzo et al., 1991; Grych & Fincham, 1990; Laumakis et al., 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...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” (Wolak & Finkelhor, 1998, pp. 91-92).

Another review (Sturge-Apple et al., 2013), focused on the impact of parental conflict, found children to be more impacted by exposure to conflict characterized by contempt, hostility, and withdrawal compared to those characterized only by anger; and more impacted when the topic under discussion concerns the child (e.g., disagreements over child-rearing, comments blaming the child). As with physical violence, the impact can be direct or indirect, when chronic, intense conflict leads to a decrease in parental sensitivity, warmth, and consistent discipline and an increase in harsh discipline. Parental conflict is more likely to undermine mother-child relationships throughout the toddler years and father-child relationships in the school-age years. Overall, however, parental conflict (especially when characterized by high levels of hostility) seems to have a more pronounced effect on mothers, perhaps because “men generally face fewer responsibilities and challenges in their caregiving roles than women...Therefore, interpersonal conflict may only increase parental difficulties for men under conditions of severe perturbances in the marital subsystem (Sturge-Apple et al., 2006, p. 1638).

### **Evaluation Procedures**

Child custody evaluators do not always follow a sound, evidence-based evaluation procedures. A national survey of 115 evaluators by Bow and Boxer (2003) found that 37% of child custody referrals involve allegations of partner violence. Asked to cite the signs or

characteristics to substantiate the abuse allegations, 60% of the respondents listed shame, guilt, fear, low self-esteem, financial vulnerability, or inability to leave – which may simply be symptoms of being involved in a highly charged child custody dispute. Only 31% of the evaluators secured independent confirmation by eyewitness reports or police records, and only 30% said they used a comprehensive risk assessment model, neither specifically for use in child custody cases nor any general IPA questionnaire (e.g., 20% used the Spousal Abuse Risk Assessment). Other evaluators presume “battering” from restraining orders alone (e.g., Morrill et al., 2005; Rosen & O’Sullivan, 2005). Although the issuance of an RO provides some degree of substantiation, they are based on a lower standard of evidence required for a criminal conviction, are more liberally given to mothers than to fathers (Muller et al., 2009), and without other information (e.g., offender’s mental health history) do not by themselves indicate the type of abuse and its impact on the family.

Still, evidence-based assessment protocols have been developed for custody evaluations involving IPA that consider the credibility of the allegations within the context of other forms of family abuse and dysfunction and require the inclusion of corroborating evidence (e.g., Austin, 2001; Austin & Drozd, 2012; Drozd et al., 2004; Drozd & Oleson, 2004). They have been found to significantly increase the probability that offenders are mandated to complete counseling programs (e.g., anger management, batterer intervention, substance abuse treatment), and that victims and their children are provided legal protections (Kernic, 2020). In this section, we draw upon these efforts in light of the emerging scholarly findings on the dynamics, causes, and consequences of intimate partner and family abuse. As articulated by Austin and Drozd (2012), we strive to avoid two types of errors: over-predicting the risk of future IPA and the possible risks for victims (false positive), and under-predicting that risk (false negative):

The aversive effects of concluding that a person has committed violence, or that there is sufficient risk to diminish parenting time, can have profound effects on the parent–child relationship and the quality of life of both. Not heeding risk factors or red flags that follow from a parent’s conspicuously alarming behaviors can place the children at risk and can be lethal to children and ex-partners. If evaluators “miss it” for the court on issues of violence risk and the implications for parenting and co-parenting, the consequences can be extreme with the errors going in either direction. The stakes are high. When there has been severe form of IPV, the evaluator needs to assist the court to reduce uncertainty for the child and parent’s future. The court wants to raise the odds in favor of safety, or to have a low threshold for protective action when there has been high harm in the past, while also appreciating that a parent who perpetrated IPV may have important psychosocial resources to offer the child (p. 267).

To what extent false or exaggerated claims of abuse are used to secure custody and alienate the children from the other parent is still open to debate. Within Johnston and Campbell’s earlier family court 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. In a later publication, Johnston et al. (2005) found higher substantiated rates of “adult abuse” by fathers than by mothers; however, whether these pertained more to substance abuse or IPV 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).



Clearly, the possibility of such false or exaggerated allegations should remind family court mediators, evaluators, and judges to proceed with caution and to refrain from viewing all IPA as the same or perpetrated mostly by men. There are few sex differences in the inclination of custody litigants to behave unethically or otherwise attempt to harm the partner (Clemente et al., 2019). The tendency by some parents to over-control the other parent's activities may be indicative of alienating behaviors aimed at interfering in the child's relationship with the other parent, or they may represent a form of "gatekeeping," wherein a concerned parent is legitimately looking out for a child's interests, possibly to prevent abuse or neglect (Saini et al., 2017). Therefore, custody evaluators are encouraged to follow protocols that help them differentiate between accusations aimed at gaining advantage and genuine abuse concerns while also following legal requirements and professional guidelines.

### **Custody Protocols**

This portion of the chapter describes protocols for conducting child custody evaluations when domestic violence is a factor. The discussion is divided into four sections: (1) preparing to conduct custody evaluations, (2) beginning the evaluation process, (3) gathering data during the evaluation, and (4) evaluating and synthesizing the data.

#### **Preparing to Conduct Evaluations**

Professionals interested in conducting child custody evaluations (CCE) should review minimum requirements set forth by licensing boards and state laws, review professional guidelines, obtain specialized training, and familiarize themselves with the relevant social psychological research on the topic. State laws may vary regarding minimum requirements for professionals. For instance, the second author practices in Texas where chapter 107, section 107.104 of the Texas Family Code states that a custody evaluator must have, "at least a master's

degree from an accredited college or university in a human services field of study and a license to practice in this state as a social worker, professional counselor, marriage and family therapist, or psychologist, or have a license to practice medicine in this state and a board certification in psychiatry...” (Texas Family Code, 2019, p.159). Additional requirements include years of experience, specialized training, supervision, licensure, and at least 8 hours of training in domestic violence

The American Psychological Association (APA, 2010) and the Association for Families and Conciliation Courts (AFCC, 2006) have comprehensive guidelines for conducting custody evaluations. Together, these publications offer custody evaluators guidance in many areas such as informed consent, maintaining neutrality, collateral sources of data, communication with attorneys, record keeping, reducing the potential for bias, and the importance of data-informed recommendations.

AFCC (2016) subsequently issued a supplement to the Model Standards called Guidelines for Examining Intimate Partner Violence, calling for professionals conducting child custody evaluations to acquire specialized training on IPV to assess abuse allegations adequately, understand the effects of abuse on parents and children, and know how to design parenting plans that sufficiently addressed future risks. IPV research has shown an increased likelihood of violence at the time of separation and during divorce (Austin, 2001). Professionals conducting CCE’s can benefit from the knowledge that includes not merely the ability to identify IPV but also an understanding of possible risk factors for future violence and how to consider safety needs for children and parents in their recommendations (Saunders, 2015). Therefore, training should include topics such as assessing the credibility of abuse allegations, awareness of one’s own biases particularly related to gender and domestic violence, types of intimate partner

violence, screening for intimate partner violence, interview techniques for adults and children, and creating appropriate parenting plans when IPV is a factor. Understanding the current social psychological research should include topics on shared parenting, alienation, suggestibility, gender biases in custody litigation, outcomes for children in divorce, the effect of domestic violence on children and coparenting, and therapeutic recommendations for families going through separation and divorce.

Professional guidelines differ from licensure standards and legal mandates outlined in state laws with licensing and legal repercussions if not followed. Professionals wanting to ensure their work has gone beyond minimum standards, exceeded judicial requirements, and is based on current evidenced-based practices should strive to meet these guidelines, as can be found in the AFCC Model Standards (2006).

### **Beginning the Assessment**

The initial tasks for conducting a CCE include defining the professional's role, ensuring that the professional does not have a conflict with litigants or their family members (e.g., having served in another capacity such as a therapist), determining the scope of the evaluation, and obtaining informed consent (APA, 2010). Mental health professionals (MHP) can play many roles in family law litigation. When the role includes or is exclusive to that of a custody evaluator, it is best stated in a court order, making clear to litigants and lawyers that the professional is not providing therapeutic services but is fulfilling a role under the jurisdiction of the court with authority to make custody and parenting time recommendations.

The terminology used to define a MHP's role can vary state to state; some roles include the possibility of opining on custody and parenting time without explicitly stating that a custody evaluation will be performed. For example, a Guardian Ad Litem (GAL) may be able to make

custody and parenting time recommendations under the umbrella of their duty to assist the court in furthering the children's best interest. It is the second author's recommendation that when the state's legal statutes include specific rules for custody evaluations, the court order should include that statute when the professional's opinions on custody, parenting time (access and possession), and decision-making rights could be expected by the litigants, lawyers, and/or the court.

Attorneys wanting to exclude expert opinion about custody that differs from their client's agenda may find support from the court when the role is not defined in the court order to specifically include the right to make custody recommendations pursuant to the duties outlined by the statute.

The scope of the evaluation refers to issues of concern before the court and provides the parameters for the evaluator's investigation (APA, 2010). The AFCC Model Standards (2006) state:

Evaluators shall establish the scope of the evaluation as determined by the court order or by a signed stipulation by the parties and their attorneys.... When circumstances demand that an evaluation be limited in scope, evaluators shall take steps to ensure that the boundaries to the evaluation and the evaluator's role are clearly defined for the litigants, attorneys, and the court (pp. 13-14).

Referral questions are best defined in the court order but can also be conveyed by attorneys, judges, and the parties during initial consultations (Gould, 1999).

Referral questions can be worded in broad terms such as, "What is the best interest of the child?" or specific terms such as, "Is the child resisting contact with the mother/father because of harsh parenting?" A recent article by Garber (2020) discussed the potential for extremely narrow referral questions to contribute to confirmation bias by creating an evaluation process that seeks

to confirm the stated hypothesis. Garber recommended the following wording in situations where a child is resisting or refusing contact with a parent:

Parties will enlist a qualified mental health professional to conduct an evaluation intended to summarize the history and quality of the child's relationship with each parent, seeking in particular: (1) to identify the circumstances and precipitant(s) of any change in the quality of those relationships; and (2) to recommend the specific constellation of interventions best suited to facilitating the child's opportunity to enjoy a healthy relationship with both/all caregivers (p. 390).

It has been the second author's experience that attorneys seldom ask how to phrase the evaluator's appointment or the referral questions within the court order. However, when evaluators have the opportunity, the wording suggested by Garber could be useful in many family law situations involving custody issues.

Obtaining informed consent respects each person's right to understand the process of an evaluation, the limits to confidentiality, and how the information obtained may be used before agreeing to participate in the process. The APA (2010) recognizes informed consent as a process that "honors the legal rights and personal dignity" of each person (p. 865). While the evaluator's intake forms should include descriptions of services, the process of the evaluation, and the limits of confidentiality, this author recommends that evaluators also discuss these topics in their initial meeting with the client. The dialogue provides an opportunity for the client to ask questions and build trust. It has been this author's experience that most clients have never been through a custody evaluation, and many are extremely nervous. Predictability and knowing what to expect can calm a client who feels overwhelmed and frightened.

Discussion about the evaluation process might include a description of how information is obtained (i.e., interviews, home visits, parent-child observations, collateral information, and documentation submitted by the client and attorney). Limits to confidentiality can be used to build trust with the client and clarify how the evaluation process differs from a therapeutic relationship. Many clients do not understand that a custody evaluation report is public information when included in their file at the courthouse. They also do not know that hearings are public, and information about their family obtained during the evaluation may be shared during testimony. This is extremely pertinent since COVID – 19 created the need for video conference hearings. Some jurisdictions have created their own YouTube channels to ensure that hearings are public. Clients appreciate knowing that they can request that their hearing not be televised when testimony includes personal health information and/or private information about their children and that reports including private information can be sealed from public view.

### **Information Gathering**

The primary format for gathering information from parents and children is through interviews, observation, and documentation. Hence, this part of the evaluation process includes individual interviews with each parent, individual interviews with each child, parent-child observations, home visits, testing (either by the evaluator or someone else), collateral contacts, and amassing documentation relevant to the issues. States may vary in the extent to which they outline the duties of the evaluator, but evaluators should confirm that their protocol meets requirements in their state for conducting custody evaluations, realizing that these minimum requirements do not often meet professional expectations. For instance, a custody evaluator in Texas, according to section 107.109 in *The Elements of Child Custody Evaluation* (Texas Family Code, 2019), is required to conduct a personal interview with the parties, an interview

with the child, an observation of the child with each parent, and an interview of each child living in the home. This author has not found one interview with each parent and the child to be sufficient in meeting evidenced-based practices or professional guidelines for conducting child custody evaluations.

Information gathering activities should minimize the possibility of bias by maintaining neutrality, ensuring that balance and equity are practiced (tasks performed with one parent are also performed with the other), remaining cognizant of diversity issues and issues affecting persons who are victims of abuse (APA, 2010; AFCC, 2006; AFCC, 2016). Specific to victims of interpersonal violence, evaluators should consider how fear of retaliation or fear of negatively affecting the outcome of the custody litigation may cause the client to minimize their experiences (AFCC, 2016). Evaluators should continue screening for violence between partners, violence directed at children, and assessing risk factors throughout the information gathering process (Austin & Drodz, 2012).

When answers include allegations of violence or indicate high levels of aggression, conflict, and control, follow up questions should ascertain specific details of the interaction(s) such as dates, who was present, the location, how the incident began, who saw or heard the interaction, whether the client told anyone else about the incident, or if the police were called. This line of questioning helps the evaluator generate a list of collateral contacts and or documents, which can be used to assess the credibility of the allegation (Austin & Drodz, 2012). Additionally, evaluators should identify the form(s) of the violence, the frequency, whether one or both partners initiated the violence, and other situational and contextual variables such as the use of substances, the use of weapons, the involvement of children, and differentiating between an isolated occurrence and a pattern of violence. These variables reflect current frameworks for

assessing intimate partner violence and child abuse during child custody evaluations (Austin & Drodz, 2012; Jaffe et al. 2008; Kelly & Johnston, 2008).

As mentioned previously in this chapter, legal and administrative aggression is a form of intimate partner violence that is particularly relevant to custody litigation, where the parent attempts to use the court, police, and child protective services to gain more custodial time and authority over the children (Harman & Lorandos, 2021). Examples of this type of IPV are filing frequent and unnecessary lawsuits, making false allegations of abuse, making disparaging, and discrediting public statements that effect employment, and threats to take or destroy things of value (Berger et al., 2016; Hines et al., 2015). Clients may not identify these behaviors as abusive when answering general questions about conflict. This author has found that this type of controlling and threatening behavior can be easily identified by asking for a history of previous court action, including identification of the person responsible for initiating the action. Each court action can then be explored in more detail during the interview sessions.

Evaluators should not immediately discount abuse allegations when the client does not have corroborating evidence or witnesses. They need to be sensitive to the fact that victims of abuse often do not report the abuse and or hesitate to make it a central focus in divorce litigation (AFCC, 2016). Likewise, they should strive to maintain objectivity and consider that persons involved in divorce litigation may also have motivations to distort negative information to gain an advantage in custody litigation (Austin, 2000). Males have reported a reluctance to leave their marriages because of fear that their wives will make false abuse claims against them, which could limit their time with the children (Hines & Douglas, 2010). Females have reported fears of retaliation if they expose their partner's abusive behaviors during custody litigation (Saccuzzo et al., 2004). Therefore, custody evaluators need to ensure that their relationship-building efforts



and interview style allow the client an opportunity to build trust and feel safe enough to disclose these behaviors if they have occurred.

**Testing Instruments.** Custody evaluators often use testing instruments to help identify incidents and patterns of abuse, personality disorders, and parenting attitudes and to assess the credibility of abuse allegations. The APA Guidelines (2010) and AFCC Model Standards (2006) direct evaluators to articulate specific reasons for the testing instruments selected, document the ways custody litigation could affect testing results, familiarize themselves with the validity and reliability of the instruments chosen, and gain experience and training in administering, scoring, and interpreting the tests they use.

The CAT-2-C (Controlling and Abusive Tactics Questionnaire) is a 37-item questionnaire that specifically looks at the frequency with which the client and their partner engaged in psychologically and emotionally abusive behaviors (Hamel et al., 2015). The CTS and the CTS-2 (Conflict Tactic Scales) are the most widely used and accurate measures of relationship abuse, and consider roles of victimization and perpetration within the context of conflict. The CTS-2 measures physical, psychological, and sexual abuse as well as rates of injuries (Straus et al., 1996). The reader should refer to the chapter in this book by Hamel and Ennis for an in-depth discussion of the CTS and other instruments that can help the evaluator assess deception. Other sources for assessing the presence and type(s) of abuse include the Mediator's Assessment of Safety Issues and Concerns (MAISC; Holtzworth-Munroe et al., 2010), the Battered Women's Justice Project (BWJP, 2015) initial screening form (the questions are applicable to female and male victims), or the Domestic Violence in Child Custody (DVCC) questionnaire (Drodz, 2008).

Personality and characterological disorders are often found in perpetrators of abuse. The Minnesota Multiphasic Personality Inventory (MMPI-2), the Millon Clinical Multiaxial Inventory (MCMI-III), and the Personality Assessment Inventory (PAI) are the most widely used objective personality tests for custody evaluations. Projective tests, such as the Rorschach and the Thematic Apperception Test (TAT), are often used to infer personality traits/dynamics from stories told by clients as they view realistic or amorphous pictures. The Rorschach is the most widely used and researched projective test for use in custody evaluations. Parenting inventories such as the Parenting Stress Index (PSI; Abidin, 1990), the Parent-Child Relationship Inventory (PCRI; Gerard, 1994), and the Parent Behavior Checklist (PBC; Fox, 1994) are used by some custody evaluators and are most helpful when combined with other testing data, collateral information, documentation, and interview data (Stahl, 2011).

The MMPI-2, MCMI-III, and the PAI include validity scales that, when combined with other testing results and interview data, can increase the evaluator's level of confidence in the overall validity of the client's reporting. The M-FAST (The Miller Forensic Assessment of Symptoms Test; Miller, 2001) is a 25-item questionnaire that assesses the likelihood that a client is exaggerating mental health symptoms related to victimization. The CEDV (Children's Exposure to Domestic Violence) is a 45-item questionnaire that provides a measure, from the child's perspective, of their exposure to domestic violence (Edelson et al., 2008). Custody evaluators who do not conduct psychological testing should consult with the testing psychologist to ensure their understanding of the personality testing results are accurate and discuss additional variables that impacted the client's validity scale scores. Many of the instruments mentioned here do not require the administrator to be a licensed psychologist, but evaluators should ensure they

are working within their licensing parameters and seek consultation for testing results when necessary.

When there are allegations of IPV, it is recommended that evaluators strive to fully understand the events and the context in which the behavior occurred, including whether aggressive behaviors between the parents were caused by one or both parties. Violence between one or both parents should also include to what extent the children observed or were involved in the conflict. Research has shown that children of divorce are most affected by parental conflict when they observe it or are caught in the middle of it, which can include being told about the conflict, being cautioned about the danger of the other parent, being used as a messenger between the parents, being asked to keep notes on the parent, and/or being asked to report abusive behavior that they did not witness to other people (Baker & Darnall, 2006; Harman et al., 2018; Nielson, 2017). When parents compartmentalize their conflict so that the children are not involved, current research indicates that children are not negatively affected. Their long-term outcomes improve by having as much time possible with both parents after divorce (Nielson, 2017).

Identification of the type of violence, how often it occurred, the nature of the injuries sustained, who was responsible or instigated the aggression, who was affected by the behavior, future risks to parents and children, the potential impact on parenting, and lethality risks help the evaluator organize the data by type and level of concerns and potential risks, and makes the synthesis of the data more manageable (AFCC 2016; Austin & Drodz, 2012; Johnston et al., 2009).

**Interviews.** The importance of an evaluator's interview style while assessing for IPV was acknowledged by Holtzworth et al., (2010) in the development of the Mediators Assessment of

Safety Issues and Concerns (MASIC). A semi-structured interview format includes aspects of an unstructured and structured interview style. The questions given to both parents are the same, which is typical in a structured format. However, the evaluator may pursue additional information when responses warrant further explanation or description. It is recommended that additional questions be reserved for clients until both parents have completed the same set of initial questions. Current research has not provided reliability and validity measurements for semi-structured interviews. However, the literature in forensic science supports a consensus that a semi-structured format has greater reliability than unstructured formats, where evaluators may ask a myriad of various questions to each party, some of which may not be the same (Gould and Martindale, 2007).

The second author uses an intake form and a semi-structured interview questionnaire composed of many questions suggested by Stahl (2011), which allow parents to respond independently and during individual interviews with the evaluator. Both include questions that provide opportunities for the evaluator to assess, among other things, parental conflict, aggression, discipline, substance abuse, and power and control dynamics. Some examples include: How do you think the conflict between you and \_\_\_\_\_ (the other parent) affects the child(ren)? How do you think your feelings about \_\_\_\_\_ affect the child(ren)? What do you like about \_\_\_\_\_? How do you discipline? How do you contribute to the conflict between you and (spouse or ex-spouse)? What can you do to improve the co-parenting relationship? What happens when you try to talk to \_\_\_\_\_?

The author has found that conducting the semi-structured interview in three to six, one-hour increments over a two to six-week period allows multiple opportunities to interact with clients. The variety of questions gives parents the chance to share positive memories and

information about their children and consider more difficult issues related to past and present conflict and its effects. This timing allows parents to reflect on the questions and their answers. Often, clients remember an example that describes something they mentioned in the previous session, or they expand on their answer, providing reasons why they acted or responded during the marriage in a certain way, or they may remember that a friend or relative witnessed a concerning event and want to add that person to their collateral list. However, if the essential facts regarding domestic violence incidents are reported differently from one interview session to the next, the evaluator makes a note of the inconsistencies in the client's report, as it reduces credibility and the ultimate weight of the incident on final recommendations.

In general, interviews with parents should elicit information that helps the evaluator identify and assess historical patterns of relationship, family dynamics, the quality of parent-child relationships, how conflict is managed, child development knowledge, parenting skills and characteristics, co-parenting ability and future capacity, concerns the parents have for one another's parenting and/or relationship with the children, major physical and/or emotional health issues, risk factors for future abusive behavior and/or exposure to violence, preferences for custody and parenting time (including justifications for their preferences), work schedules and child care options/plans, and each parent's willingness to support and nurture the child's relationship with the other parent. (Austin & Drodz, 2012; Gould & Martindale, 2007, Gould & Stahl, 2000; Stahl, 1994, 2011).

Interviews with children should be age-appropriate and aim to provide the evaluator with information that helps the evaluator understand the quality of the child's relationship with each parent and with each of their siblings, the child's current functioning, the child's educational, emotional, and physical wellbeing, the child's preferences for parenting time with each parent,

and the child's exposure to violence, in order to provide the evaluator some sense of the child's personality, unique interests, and temperament (Stahl, 2011). When the child's answers regarding likes, interests, activities, friends, and school reflect the parents' answers about the child on the same topics, the evaluator has some assurance that the parents know and understand the unique aspects of their child, which in part speaks to the quality of the relationship between them.

A semi-structured format can be used with children over the age of four and can be conducted while children are engaged in age-appropriate activities like Legos, arts and crafts, or sand tray. For example, information that speaks to the child's relationship with each parent might be ascertained by asking, "What are your favorite things to do with your mom/ with your dad? Tell me something you do not like about your mom/dad? Who do you go to when you need help with something? Who helps you with your homework? How do they help you? How do you get to school in the morning? Who else is awake when you get up?" Assessing after school routines helps the evaluator understand the differences between the households and differences in the caretaking behaviors of the parents (e.g., How do you get home from school? Who is home when you get there? What do you do when you get home? Who cooks dinner? Where does everyone eat?). Asking questions about favorite activities with each parent can provide the evaluator with information about quality time and caretaker involvement in child-centered activities (Stahl, 2011). Asking the child how it feels when their parents speak negatively about each other provides the evaluator with information regarding potentially alienating behaviors and the extent to which the child may be experiencing loyalty binds. Depending on the answer to this question, the evaluator may need to follow up and ask for specific examples about what is being said to the child. Parental alienation behaviors include badmouthing a parent to the child or

where the child can hear, limiting time with a parent, asking the child to spy on the parent, making the child choose between the parents, telling the child that they are not safe with the other parent or that the other parent has abused or neglected them (Baker & Darnall, 2006; Kelly & Johnston, 2001). Parents in the early stages of divorce often make mistakes and knowingly or unknowingly expose their children to negative comments or adult information. When these behaviors are severe and rise to the level of causing harm to the child's relationship with the other parent, they are recognized as a form of psychological and emotional abuse (Clawar and Rivlin, 2013, Harman et al., 2018; Warshak, 2013). For additional information on alienating behaviors, the reader can refer to the chapter in this text by Harman and Kruk.

The parent-child relationship can be overlooked in a custody evaluation where the concerns of the parents are more focused on each other and their deficiencies as spouses than they are on the parents' relationship with and their parenting of the children (Gould & Martindale, 2007). When one parent appears to be taking on more responsibility than the other parent, the author finds it useful to ask some additional questions about caretaking when the parents were still living together to assess how the parents divided responsibilities during the marriage. Evaluators may need to consider the amount of time a parent has been functioning as a single parent before concluding that the parent is unwilling or incapable of managing certain tasks and include some follow up questions about how the parent would like to share in parenting more and why they have not done so yet. The extent to which the parent is child-focused, can relate to the child in developmentally appropriate ways, keep the child safe, respond to their emotional and physical needs, and nurture the relationship between the child and the other parent are qualities that the evaluator will want to assess. Protocols that require each parent to bring

each child to an interview session address the need for equity in the evaluation process and provide additional opportunities to observe the child in each parent's care.

**Parent child observations.** Parent-child observations allow evaluators to gain information that informs "goodness of fit" criterion. They can be conducted in an office or home setting and are recommended by APA and required by some state laws governing custody evaluations (APA, 2010; Texas Family Code, 2019). Home visits provide opportunities to assess parenting skills and the parent-child relationship in the family's natural environment, while in-office observations provide information from a more controlled environment. When the child is under four years of age, this author performs an unstructured parent-child observation in her office playroom, where the parent and the child interact in non-directed play and observes the parent-child interactions in each parent's home. Parent-child observations can be structured or unstructured.

A structured observation involves the parent and the child engaging in a structured activity designated by the evaluator (e.g., build something together with these blocks, or the parent might instruct the child in a cleanup activity). An unstructured observation allows the evaluator to observe the parent and child in free play (Acklin & Cho-Statler, 2006). AFCC (2006) advises that, "Evaluators shall be mindful of the fact that their presence in the same physical environment as those being observed creates a risk that they will influence the very behaviors and interactions that they are endeavoring to observe." The value of parent-child observations has been debated by some psychologists who believe that the information gained is most likely tainted by the presence of the evaluator (Bricklin, 1995). Others have noted the value of seeing parents and children interact in neutral as well as natural settings such as their home,



despite the lack of scientific evidence to support that the observations yield reliable information (Ackerman, 1995; Hynan, 2003; Stahl, 1994).

The author has found observations of children, both in the office and in their home environment, to be particularly useful. The neutral office setting provides privacy for conducting the semi-structured interview questions, some of which may be difficult for a child to answer in the home when an honest answer may include negative comments about the parent. A natural observation in each home yields a different type of information, such as the style and quality of sibling interactions, parent-child interactions, family dynamics, the differences/similarities in the parents' homes, and whether the home environment reflects the child's interests and achievements. Hynan (2003) recommends a minimum of two 45–60-minute sessions between each parent and child. This author conducts at least one 60-minute observation at each home and considers the extent to which her presence may have affected the behavior of those observed. She does not hesitate to visit the home more than once, especially if the child and/or parent's behavior during the home visit was notably different than what was observed during other interactions. An additional consideration is given to the amount of time the parent and child have lived in the home. When parents have recently separated, the parent with the new home may not have an equal number of pictures, toys, furniture, or child memorabilia as the parent who remained in the marital residence. This should not be construed as a lack of interest in the child's activities and achievements unless other information supports that hypothesis.

There are formal and informal coding systems available for parent-child observations. The reader can refer to Hynan (2003) for a discussion on the System for Coding Interactions and Family Functioning (SCIFF) and the Family Problem Solving Guide (FAMPROS). Additional options for formal coding systems are discussed in Kerig and Lindhahl (2001). An informal

coding system should include notes on reciprocity during interactions, attunement, compliance, over control or under control, intrusiveness, encouraging autonomy, cooperation, limit setting, negative behaviors toward the parent, and avoidance of the parent. Information obtained from parent-child observations that do not converge with other collateral data provided by teachers, therapists, or coaches should have limited diagnostic value regarding its accurate representation of the parent-child relationship (Acklin & Cho-Statler, 2006).

**Collateral Information.** Collateral information is part of the information-gathering phase and often confirms and disconfirms information about the events and topics discussed by parents and children during individual interview sessions. As with other evaluation tasks, professionals should consult their state family law statutes to determine legal requirements regarding information gained from third parties as part of a custody evaluation. In Texas, the code directs the evaluator to talk to all persons with relevant information about the child (Texas Family Code, 2019). However, the determination of what constitutes relevant information, who possesses that information, and to what extent it affects recommendations is left to the judgment of the evaluator (AFCC, 2016).

Professional guidelines encourage the use of multiple and diverse methods of information gathering to enhance the reliability and validity of the evaluator's findings, opinions, and recommendations (APA, 2010; AFCC, 2006). Possible sources of collateral information are teachers, therapists, school counselors, special education directors, doctors, coaches, friends, family members, camp directors, preschool directors, private childcare providers, ex-spouses/significant others, current significant others, police officers, and housekeepers. Collaterals may provide information through written or oral means and may submit relevant records about the parents and/or the child such as email communications, school records, therapy

notes, bank statements, CPS reports, legal reports, school reports, diaries and journals, audio and video recordings, letters and cards, and psychological testing. The evaluator uses their own judgment to determine the weight and credibility of the information obtained (AFCC, 2016). The Model Standards (AFCC 2006) state, "Valid collateral source information is critical to a thorough evaluation. Sufficiency and reliability of collateral source information is a determination to be made by the child custody evaluator" (p. 12). The Model Standards remind evaluators to gather information from many sources, consider alternative hypotheses, consider whether the collateral has relevant and important information, include oral and written sources of information, and reveal limitations in their reports when collateral information was not available or could not be obtained.

Collateral sources should help in making informed decisions on how to share information about the family. Limits of confidentiality, the scope of the evaluator's work, and the way in which the information may be used (e.g., in a written report as support for recommendations and/or findings) are disclosures that should be included, as they can increase the safety for collaterals. This is particularly important for collaterals which are providing information or have witnessed abuse between the parents and/or between the parent(s) and the child(ren).

A determination of who should provide collateral information occurs throughout all stages of the evaluation. This author has no knowledge of research suggesting that identification of collaterals should be limited to one specific phase. She strives for a complete and thorough investigation such that information gained from new collaterals which can confirm, disconfirm, or otherwise increase her knowledge of an event or family dynamic may serve to strengthen the reliability and validity of her findings and recommendations. Initial paperwork includes a release of confidential information form used for professionals such as teachers, lawyers, therapists, and

doctors, and a form for references who are nonprofessionals with relevant information about the parents and the children. The process of gathering history and answering the semi-structured interview questions may reveal several additional people who need to be added to the reference form and the release of information form. Additionally, if events occur during the evaluation process, new collaterals who witnessed the event may be included. For example, if a parent angrily confronts the other parent at the child's basketball game, other parents who witnessed the exchange become relevant collateral sources.

Professional judgment is used in determining the weight of the information provided by collateral sources (AFCC, 2006). Eye-witness accounts are generally more valuable than information that was shared with the collateral by a parent or by someone else and are reflected in the court's value for evidence gained firsthand as opposed to hearsay. However, when assessing all forms of abuse, the evaluator must consider that domestic violence often occurs without anyone ever seeing it, many times go unreported to lawmakers or therapists. Clients may minimize them for fear of retaliation. In these cases, a relative or close friend may have been the only person sought out after a particular incident. These collaterals can provide information that increases the credibility of the partners' accounts regarding the event, even though they did not witness the interaction. They can also provide information about the emotional, psychological, and physical injuries sustained. When collateral information is limited, it should be noted as limited in its reliability, and the reasons for the limitations should be shared in the report (AFCC, 2006; Gould & Martindale, 2007).

### **Synthesis of the Data**

At this point in the process, the evaluator should continually revise hypotheses as collected data confirms or disconfirms them. This back-and-forth process continues as the data

is categorized and organized around the significant events, the primary concerns of the clients, and the themes that have been identified (Drodz et al., 2013). Data should be viewed in terms of the potential impact of IPV behaviors on co-parenting capacity, quality of parenting, maintaining a secure relationship with each child, ability to engage in activities that support developmentally appropriate and enriching activities, respect of the child's unique personality, and nurture a positive sense of self; ability to provide physically, emotionally and financially for the child, encourage age-appropriate responsibility and autonomy, engage in appropriate discipline and monitoring, and allow the child age-appropriate social activity and independence (AFCC, 2016; Austin, 2000; Austin & Drodz, 2012; Gould & Martindale, 2013; Saunders, 2013).

The data supporting partner violence and child abuse should describe how the violence impacted the parent and the child during the marriage and also consider the potential of how it could affect the parent and the child post-divorce. By organizing collateral information and data provided by the clients, an evaluator can assess future risks of violence, which consider patterns of aggression, level of aggression, type of aggression, the harm sustained, and the persons affected. Recommendations for parenting time, decision making, and co-parenting should reflect findings and consider the future safety of the parent and the children (AFCC, 2016; Austin, 2000; Austin & Drodz, 2012; Saunders, 2013).

In situations when a child is resisting or rejecting contact with a parent, an evaluator will need to analyze and organize the data so that it informs the court as to the reasons for the child's resistance/rejection. There can be many reasons why a child is refusing contact with a parent during separation and divorce, ranging from justified reasons such as abuse and poor parenting to unjustified reasons such as psychological manipulation and alienation (Drodz, & Olesen, 2004; Garber, 2020; Harman et al, 2018). Sorting out the data can be complicated by the fact that

extremely alienated children can distort normal parenting flaws during interviews with the evaluator (Baker, 2018; Baker & Darnall, 2006; Clawar & Rivlin, 2010; Gardner, 1985; Warshak, 2013). Evaluators should review Amy Baker's (2018) Four Factor Model for assessment of parental alienation; the Decision-Making Tree for differentiating estrangement from alienation (Drodz & Olesen, 2004; Drodz et al., 2013); and Clawar and Rivlin (2010) for programming and brainwashing strategies used by parents in custody litigation. Bernet et al., (2020) found evidence that the Parental Acceptance Rejection Questionnaire (PARQ) differentiated alienated children from abused children.

There is no one "official" way to write a custody evaluation report. The evaluation needs to have collected the required information as defined by family law statutes and recommended by professional guidelines. However, the organization of the information within the report is left to the discretion of the evaluator. Professionals need to find the format that works best for them. This author suggests asking for feedback from lawyers and clients and reading reports written by other seasoned professionals. In an organized and clear manner, the report should explain the integration of the clinician's judgments, grounded in the data obtained and using the scientific literature to support the recommendations and data interpretation (Gould & Stahl, 2000). The recommendations for custody and treatment (if needed) usually follow the body of the report, such that it is clear to the reader why certain recommendations were made. Citations for research supporting the recommendations and the evaluator's judgments conclude the report.

### **Child Custody Recommendations**

Consider these additional brief case summaries:

Case #3

The father admits to having grabbed his wife on a couple of occasions in the past, after their children were born, each time during a period of tension and escalated marital conflict. He has not been physically violent for more than two years but sometimes yells at her. She yells back and often initiates the verbal abuse. The father, due to how he was raised, does not spank his kids, and monitors carefully how he speaks to them, whereas the mother often yells at the kids, and recently slapped her 13-year-old daughter in the face for being disrespectful. Who should get custody, and why?

#### Case #4

The mother is seen on video on screaming at her husband, begging him not to leave, while holding a frightened child in her arms, as he pleads for her to calm down. He has been arrested twice on misdemeanor domestic violence charges, has cheated on her, and has left her alone at home for days at a time. By herself, she can barely manage their young children. Her attorney says her screaming is an understandable emotional reaction to his abuse; his attorney claims that he only leaves to get away from her unpredictable physical and emotional outbursts. Who should get custody, and why?

### **General Considerations**

Based on the principle that custody time, visitation, orders of protection, and counseling recommendations should reflect the extent of substantiated PA and child abuse, the recommendations listed in Table 1 are listed from least restrictive to most restrictive, alongside the four major abuse levels, listed from least to most severe: low, low/moderate, moderate/high and high. The levels reflect, in general terms, the severity, frequency, and time frame of the abuse (e.g., did it emerge long before, or during, the period of separation), whether physical, sexual, or psychological. The latter include parental alienation behaviors and legal and

administrative abuse. The highest priority is given to “the safety of the child, the parties, and other involved individuals” (AFCC, 2016, p.4).

Due to space limitations and for purposes of flexibility, we give a range of custody and intervention options for each level, considering whether the abuse was perpetrated against the children, against a partner, or both. We also factor in whether the partner conflict or abuse was witnessed by the children and whether it was unidirectional or bidirectional. Recommendations for counseling include mediation, co-parent counseling, individual therapy, child therapy, anger management, batterer intervention programs, and child-parent reunification therapy. Not included are substance abuse or other mental health counseling, depending on the needs of the family. For an intervention to work, it must address the risk factors relevant to the client. These are implied within each of the four levels (e.g., high-conflict couples lack adequate impulse control and conflict resolution skills), but the full panoply of risk factors and how a client might respond to the intervention(s), can only be determined on a case-by-case basis.

**Custody and Visitation.** The suggestions in Table 1 are generic, meant as a rough guide with which to navigate the myriad of factors warranting investigation in child custody evaluations, rather than a specific set of recommendations for any particular case. The types of child and partner abuse included at each level do not always match up with one another in real-world settings (e.g., couples who engage in SCV may engage in moderate to severe child abuse). There is some overlap between the levels (in a high conflict relationship, the parties may have, in some circumstances, behaved like batterers (e.g., highly jealous, making threats). Within the spectrum of recommended treatment for a given level (e.g., up to 26 weeks of anger management and or parenting counseling for SCV/Separation and Divorce Violence), the amount should be lowest when there is only one type of abuse and highest when both are present. The extent of bi-



directionality in abuse between the parents does not in itself indicate what form the abuse takes. Are both physically violent, or is one more likely to perpetrate physical aggression and the other psychological aggression? As indicated in an earlier section, victims often find the latter more impactful, but only when chronic and severe. Not factored in Table 1 is whether other forms of family abuse, such as abuse between the siblings or by a child towards a parent, contribute to family stress and dysfunction. The extent to which they do will determine whether family-centered modalities of treatment should be recommended.

The presence of child witnesses is an important consideration. In cases of high conflict or SCV/Separation and Divorce Violence, there is a lesser risk to a child, even if they have witnessed or heard some of the violence if the offending party or parties are getting help and a restraining order is in place. In cases involving chronic battering or intimate terrorism, however, it must be assumed that the children are at least indirectly affected (the victim's parenting abilities have been compromised), or likely to witness the abuse at a later time, either against the victimized parent or a new partner. A competent evaluation must investigate the extent to which the children were impacted by the abuse they witnessed. Which parent is the greater threat to the child when one parent primarily engages in psychological abuse and the other primarily engages in physical abuse? The seriousness of the threat also depends on severity and chronicity, as does the existence of partner abuse by one parent and child abuse and neglect by another, illustrated in Case #3. Here, careful interviewing and testing can provide some guidance. One child may articulate greater fear of the father's spankings than mother's physical assaults on the dad, whereas it may be the exact opposite for another child, perhaps a sibling in the same house. If the child does not exhibit any symptoms, internalized (e.g., anxiety) or externalized (aggression), how should that affect visitation or counseling recommendations? As with children who did not

witness the violence that nonetheless had a severe impact on the adult victim, it must be assumed that the functioning of a child who has experienced high levels of family abuse may eventually deteriorate if the offending parent is not held accountable.

In Table 1, we note the importance of child preferences as one way to resolve custody decisions when both parents are abusive, short of severe child abuse or intimate terrorism. However, child preferences must be weighed in the context of their age and development and the favored parent's ability to adequately care for the child, including the use of positive parenting practices. A key consideration is whether the attachment bond between parent and child is a healthy one, not shaped by the effects of parental alienating behaviors nor toxic identification with a highly domineering parent. Given the complexities of family relationships, it would seem to be a herculean task to tease out precisely the extent to which the perpetration of domestic violence by one parent against the other is indeed "detrimental to the best interest of the child." Research indicates that a child need not have witnessed incidents of physical abusive or coercive control to be affected if the abuse has interfered with the victim's ability to parent. If the latter, how does that impact, in turn, affect the child, independent of the victimized parent's own parenting behaviors?

An example would be when a mother is depressed due to the chronic battering she has experienced, and she takes her frustrations out on the children and/or is so psychologically compromised that she is unable to properly care for them. Who is the greater threat – the father or the mother? If both are a threat, should preference be given to the mother, who can be presumed to re-establish a loving relationship with her children once she has escaped the violence, or to the father if he shows rapid progress in a batterer intervention program? Research suggests that abused mothers do overcome the effects of the abuse once they are safe (e.g., Bogat

et al., 2006; Levendosky et al., 2006). Is the mother more deserving of our sympathy because she is an IPA victim, or the father, whose behavior may be driven by longstanding family-of-origin trauma? In the example given in Case #4, the picture is even more complicated, given mom's mental health issues. Her emotional outbursts are a threat to the children, yet how dependable a caregiver could the father be, given his philandering? The research does not provide clear-cut answers to these questions. Value judgments seem almost inevitable, so the evaluator must be especially attentive to personal biases. A guiding principle is that a child's best interests are compromised when the benefits gained from avoidance of further abuse exposure and its consequences are less than the psychological impact of separation from an otherwise good parent.

**Intervention options.** Custody evaluators should make treatment recommendations based on the risk posed by family abusers to the children and the victimized party. Treating therapists, in turn, are expected to follow the relevant guidelines set forth by their licensing bodies and, where they apply, guidelines for cases involving child custody. According to The California Association of Family and Conciliation Courts, court-involved therapists (CITs) should have competence and knowledge in child development, child interviewing and suggestibility, domestic violence, child abuse, special needs issues such as substance abuse, and high conflict dynamics, including risks to children from exposure to parental conflict, parental undermining, alienation, and estrangement (AFCC, 2010).

**The RNR model.** The intervention recommendations in Table 1 follow long-established principles established by the governing bodies of professional mental health organizations, which are presented in the corrections field, including domestic violence, as the Risk-Need-Responsivity (RNR) model of treatment (see Roberts, this volume). In this model, the first R

refers to the amount of treatment necessary to proportionately address the level of risk posed to the victims. This translates in child custody cases as the amount of treatment based on future risk to children of being directly abused or having to witness PA, and the risk posed to the victimized parents that such abuse might have on their parenting abilities, as determined by the evaluation procedures described in the previous section. In criminal cases, some of the most widely-used and established domestic violence risk assessment instruments include the SARA and the ODARA (see Hamel & Ennis, this volume). The N refers to the various client needs (problems) that must be addressed in order for treatment to be effective (e.g., low income, poor impulse control, aggressive personality, relationship conflict). Risk and need are addressed in Table 1, with more extended periods of perpetrator treatment suggested for cases involving battering, where behavior is chronic and likely to persist, and rooted more in personality rather than situational factors involving poor communication and conflict resolution skills. Finally, the second R stands for how treatment is delivered. “The responsivity principle,” as described by Stewart et al. (2013) “stresses...the successful matching of treatment strategies to their learning styles, motivation level, and cultural context” (pp. 512-513).

**Perpetrator treatment.** Criminal justice statutes regulating batterer intervention programs (BIPs) for criminally convicted domestic violence offenders vary from state to state, mandating as few as 16 and as many as 52 group sessions. These one-size-fits-all programs, which usually prohibit individual and family treatment, were established at the behest of victim advocates as a very generic response to domestic violence, with little input, if any, from mental health professionals or family violence researchers. They can be effective with family court litigants, but the length and modality of the intervention should be case-specific (Babcock et al., 2016). SCV and Separation and Divorce/Violence offenders do not fit a “batterer” profile;

unless they have been criminally convicted, referral to a BIP is contraindicated. A standard, skills-building CBT-type anger management program is the more appropriate option for such clients, with a parenting component or additional parenting counseling when child abuse and neglect have been found. When the abuse is primarily directed at the children, one option is a so-called “child abuser” program. In California, such programs are regulated under PC 271.3, and allow for a combination of group, individual, and family therapy and services must be delivered by a licensed mental health professional (California Legislative Information, 2021c). An in-depth discussion of the San Francisco Bay Area program can be found in Pratt & Chapman (2007).

For the various types of batterers described in Table 1, a BIP is an appropriate intervention, where, depending on the treatment model, clients can acquire the impulse control and relationship building skills available in anger management, along with help overcoming their deeply ingrained aggressive tendencies, childhood of origin and trauma issues, and gendered attitudes of entitlement (Hamel, 2014). Examples of the latter include dismissing one’s partner as being too “emotional,” or expecting sex on demand (male entitlement); or expecting the partner to work an exorbitant number of hours to maintain an extravagant lifestyle, assuming that children “belong” with the mother, or justifying physical assaults on one’s partner because he’s a man and should just “take it” (female entitlement). In cases involving a chronic history of serious abuse perpetration, especially when testing reveals evidence of serious personality disfunction, a separate course of individual psychotherapy should be recommended in addition to the batterer intervention program.

Child custody evaluators should be aware that professional licensure is not required of BIP group facilitators in many states. Some, such as California, allow peer counselors who lack

many of the AFCC competency requirements cited above and have a surprisingly poor understanding of domestic violence dynamics (Cannon et al., 2016). It should also be pointed out that many of the programs that identify as “pro-feminist,” such as the Duluth Model, while appropriate for men who hold misogynistic or highly patriarchal attitudes, is contraindicated for most other men, who have different issues and would feel uncomfortable and unmotivated in such an environment. Research supports the responsivity principle, according to which the relationship between therapist and client, or group facilitator and members, is more important than the particular philosophy of treatment, and client preferences are a key in establishing a working therapeutic relationship. Such a relationship is compromised when there is too much of a mismatch between client needs and intervention model, and thus a lack of responsivity (Babcock et al., 2016; Hamel, 2020b). The responsivity principle also suggests that the treatment modality should be tailored to the client’s learning style. Therefore, notwithstanding the unique benefits of the group format, family court litigants should be allowed to work on anger/battering issues in individual therapy if they have such a preference. In one-on-one sessions, clients can learn the same impulse control and conflict skills while exploring the issues causing and maintaining their abusive behavior in greater depth. An in-depth treatment model is available in the excellent volume by Murphy and Eckhardt (2005).

**Conjoint and Family Counseling.** The majority of intimate partner abuse is bidirectional, and both parents, in some way or another, are involved in the complexities of family abuse, given the multiple pathways of abuse and its effects and the central mediating role of stress. More often than not, then, the treatment recommendations for family abuse perpetrators outlined in Table 1 apply to both parents. Wherever possible, then, the parents should be encouraged to participate in conjoint sessions and or therapy involving other family members.

The advantages of these modalities include an opportunity for the clinician to more accurately observe couples and family dynamics, gauge client progress, and provide an environment in which everyone is learning the same information and acquiring the same set of skills. There is no attempt to reunite the parents, as with intact families, but rather to facilitate cooperation and begin the healing process. Sound guidelines for family interventions in custody cases can be found in Greenberg et al. (2019). The reader is referred to Hamel (2014), Hamel and Nicholls (2007), and Cooper and Vetere (2005) for resources on working with violent families. Suggestions on how to work with families disputing custody can be found in Carolla (2007). They include a description of *therapeutic supervised visitation*, an alternative to standard visitation arrangements that can provide a bridge to later parent-child reconciliation and other family therapy sessions. See Hamel (2008) for an account of the initial resistance to family interventions for IPA and the many safe and effective approaches that have since been developed, many by staunch self-identified feminist therapists. The review by Eckhardt et al. (2013) documents best practices for working with IPA victims.

Johnston et al. (2009) outlines the best therapeutic practices in cases involving parental alienation, with the aligned parent, the rejected parent, and the children. Therapeutic interventions for alienation cases are determined by the severity of the child's resistance to the parent. The reader should refer to Warshak (2020) for the most current discussion on managing and treating parental alienation cases.

Because the parental subsystem is key to the safety and well-being of a family, systemic interventions in child custody cases involving high conflict and abuse must begin with the parents. Sessions should be conducted by competent therapists who have expertise with divorcing couples and domestic violence, are competent in managing highly charged situations,

can effectively set limits and can intervene when there is evidence of power and control behaviors (Gutierrez, 2008). “A lack of appropriate structure, clarity, and definition at the outset of the treatment,” writes Smith (2016), “can later undermine the progress of the therapy” (p. 500). Johnston et al. (2009) suggest that co-parenting sessions should be conducted in stages, beginning with an initial agreement. This is followed by an assessment of the issues and how parental conflict and abuse have impacted the children, then a neutral reformulation of the issues to engage cooperation. Throughout the course of treatment, the clinician copes with client resistance and ongoing conflict and, ideally, is able to help the clients resolve their issues. Termination comprises the final stage, with follow-up sessions as necessary.

The therapist should always be on the lookout for any signs of bullying or, alternatively, evidence of fear, but discussions about past events, including incidents of partner violence, are to be avoided. Working with average or high-conflict couples the therapist may allow some bickering and conflict in order to assess the couple’s level of dysfunction; however, this is a dubious luxury when conducting co-parenting sessions. The therapist must insist that the parties talk to one another with respect and focus on solutions, and be prepared to instruct them in how this is to be done (Hamel, 2014, p. 195).

Except for cases involving chronic battering, claims by custody litigants that they are “not safe” if in the same room with the ex-partner should be given consideration but not automatically believed. Especially in an adversarial setting such as the family court system, reports by litigants that they are in fear should be interpreted with caution, given the highly subjective nature of emotions and the possibility of legal and administrative abuse. Still, conjoint sessions would not be appropriate for couples who are unable to work productively



during the sessions or still acting out with aggression outside the therapy office. In such cases, parallel conjoint sessions are a reasonable alternative. These should be conducted by the same therapist, who, ideally, works in close collaboration with other treatment providers – the batterer intervention, anger management, and parenting programs, as well as those working with other family members, including the victims. When interparental conflict is protracted, some states allow for a court-ordered Parent Coordinator to act as the de facto case manager, but more directly and with more authority (Deutsch et al., 2018; Sullivan & Burns, 2020), and having “a much greater likelihood of succeeding and having a positive impact on children’s adjustments” (Sullivan, 2008, p. 11).

**Motivational factors.** Studies with court-mandated offenders find they are motivated to change less by fear of incarceration and more by a desire to be a better person and to spare their children from further abuse (Hamel, 2020b). Family court litigants can be induced to actively participate in treatment to share custody of their children. These natural motivators are not always sufficient if clients are not sufficiently engaged. This can occur for many reasons, first and foremost the unwillingness of some perpetrators to take responsibility for their actions. Other factors include a mismatch between the client and the type of recommended intervention, as mentioned above, as well as failure by the courts to provide and enforce a reasonable reunification schedule. The first author has seen firsthand how much more involved BIP and anger management clients are in the therapeutic process when they are able to incrementally secure additional visitation with their children, and how discouraged they become when those visits are unnecessarily postponed despite evidence of verifiable progress. Properly rewarded clients become further motivated, which in turn accelerates the change process, leading to long-

terms changes and, ultimately greater safety to victims than what a temporary order of protection may provide.

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