

## Domestic Violence Allegations in Child Custody Disputes: The Importance of Forensic Perspective

Lyn Greenberg, PhD

Psychologists may encounter domestic violence issues in any number of areas—as community therapists, treatment providers at battered women’s shelters, or court-appointed psychologists forensic evaluations or specialized treatment, or expert witnesses. Domestic violence (hereafter DV) issues may interact with the legal system via criminal, Dependency, family, civil, and/or specialized DV courts. Few areas are as fraught with controversy as the child custody arena.



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The purpose of this article is to describe the *forensic perspective* essential for psychologists who provide professional services in child custody cases (CCC) involving allegations of DV. Hallmarks of the forensic approach include professional objectivity, a multiple-hypothesis approach, balanced consideration of the professional literature, use of valid assessment and intervention methods, disciplined efforts to identify and contain potential sources of bias, and clear expression of the limits of research results, opinions, and psychological data gathered during our involvement in the case. This approach also requires that the psychologist’s recommendations be based on the data obtained in the specific case, rather than being

driven or biased by an ideological approach or limited consideration of the professional literature. (Gould & Martindale, in press; Martindale & Gould, 2004)

While the most child custody cases (hereafter CCC) settle outside of the court process, cases that reach the level of litigation or child custody evaluation involve the highest levels of conflict, the most complex and competing allegations, and the greatest risk to children. A recent survey of child custody evaluators (Bow & Boxer, 2003) found that 37% of the cases referred to child custody evaluators involved allegations of DV; it is unknown how many therapists are engaged are appointed to provide services to parents or children involved in such allegations. Children who face the highest risks following parental divorce include those who are exposed to, or involved in, protracted and intense parental conflict. (J. B. Kelly, 2000; J. B. Kelly and Emery, Robert E., 2003) Conflict dynamics can include experienced or witnessed abuse, the exposure of the child to adult information, disrupted contact with a parent, excessive questioning and demands for information, and direct or indirect demands that the child align with one parent or the other. Often, psychologists will be faced with multiple and conflicting allegations, each of which could represent a serious risk to the safety or healthy development of the child.

No human being is free from bias, and the emotionally loaded

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of application materials, a candidate can request a mentor to assist in any way possible. The position of mentoring chair has been formalized as a responsibility of the president-elect. In his role as mentoring chair, AFP president-elect John Thoburn has developed a one-page outline of the mentoring process. The goal is to help every qualified applicant succeed in attaining the diplomate, and connection with a mentor can be most helpful in making that happen.

It has long been apparent to AFP that the largest pool of potential diplomates resides in Division 43. As of this past year AFP has regularly had a column in each issue of the Division 43 quarterly newsletter, *The Family Psychologist*, thus reaching many prospective applicants.

For years AFP was challenged with maintaining an accurate, up-to-date database. The problem? With changes of officers, the transfer of basic membership information had itself become unnecessarily complicated. Through the generosity of the ABPP office, the AFP database is now housed in Savannah. The database itself is maintained by AFP officers, easily accessed from anywhere via password. Keeping this vital membership information in a single, constant location should greatly ease future transitions between sets of officers.

So much is happening within AFP. At the most recent quarterly board meeting (yes, the AFP board now holds conference call meetings four times per year), we began to outline plans for activities at the APA convention in August 2006. Many ideas were discussed, including social as well as professional activities. And the conference calls themselves now formally include representatives from the American Board of Family Psychology (Irene Goldenberg, president), Division 43 (Mark Stanton, 2005 president, and now Cindy Carlson, 2006 president), and the Family Psychology Specialty Council (William Watson, chair). Stay tuned.

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context of a CCC certainly does not permit a sterile approach devoid of the appreciation of human suffering. Nevertheless, the very importance of issues being addressed in a CCC—children’s short- and long-term safety, risks to parent–child relationships, support of children’s developmental needs, and prevention or amelioration of emotional harm—make it imperative that involved psychologists do everything possible to maximize professional objectivity, seek appropriate information, and alert consumers and the courts to limits on the validity, reliability, and generalizability of psychological information presented to the Court.

Many of these attributes are considered to be hallmarks of high quality psychological practice; indeed, one can find references to many of these concepts in the APA Ethical Code. (American Psychological Association, 2002). Nevertheless, when issues are raised concerning the safety of children, psychologists may be subject to powerful temptations and pressures to limit investigation, consider only a narrow range of hypotheses and professional literature, bias services in support of a particular theoretical model, or express opinions exceeding the psychologist’s information base or role in the case. Often, these errors arise out of a genuine desire to protect children and adult victims from harm. Nevertheless, any process that places flawed data or conclusions before the court cannot be truly protective of children, and may indeed expose them to other risks not considered by the psychologist who abandons forensic objectivity.

### Objectivity requires Action

Professional objectivity is too often described as a static characteristic, i.e. as an attribute that one does or doesn’t “have.” I would argue however, that maintaining objectivity requires *active, ongoing efforts and disciplined procedures*. None of us can remain objective if we disregard those procedures, as bias can emanate from the psychologist’s procedures as well from

personal or political issues. To maintain appropriately objectivity, the psychologist must establish a disciplined process to *actively* generate rival hypotheses for each allegation or observation in question, and to *actively* seek out evidence to confirm, disconfirm, or amplify the behaviors in question.

Few of us do this automatically, and it may be particularly difficult in the context of emotionally loaded issues such as children’s safety, and in the face of initial observations that appear to lead us toward a particular conclusion. Nevertheless, the failure to generate rival hypotheses and seek information that disconfirms initial impressions can lead to poor decision making and tragic consequences for children. (Martindale, 2005).

As Gould and Martindale (in press) note, threats to professional objectivity can also arise due to strong alignment with a particular political position or argument in the scholarly literature. If a psychologist is predisposed to support or reject a particular scholarly view, he or she may limit the range of hypotheses considered and miss risks or dynamics occurring in the family. A psychologist can certainly hold a strong political position and also bring methodological integrity to psychological evaluation, consultation, or treatment. This requires, however, that the psychologist be aware of, and seriously consider, various research and scholarly arguments that may give rise to different hypotheses regarding the family. An accurate assessment of a family is most likely if the psychologist is aware of the context of allegations, considers a full range of psychological literature, generates hypotheses based on all of the literature and circumstances, and seeks data to confirm or disconfirm each hypothesis.

### Understanding the Context

DV allegations emerge against a complicated background of individual family circumstances, legal issues, and a sociopolitical environment that sometimes gives greater attention to arguments made in broad strokes. Few would argue with the

proposition that DV issues were historically minimized in our society, sometimes with deadly results. It required powerful advocacy, some involving psychologists, to establish statutes and procedures that offer better protection to victims of DV. Currently, more than 24 states have mandatory arrest statutes when police are called in cases of DV, and most states also have established statutory schemes for considering DV when determining the best parenting plan for the child (Austin, 2000; Bow & Boxer, 2003). Training programs for evaluators and judges have also expanded across the country. Bow and Bates (2003) found that most practicing child custody evaluators had completed post graduate training in DV, take such allegations seriously, and strongly consider them when recommending custody plans to the courts.

Notwithstanding these improvements, DV allegations present considerable challenges in child custody disputes. DV often goes unreported, and risk of violence may increase at the time of marital separation. True battering relationships—i.e. those characterized by a *pattern of coercive control*—may involve complex patterns of physical and psychological threats and violence (Greenberg, Drozd, & Gonzalez, 2005). Even with mandatory arrest statutes, corroboration and or documentation of allegations may be difficult or impossible to obtain. The CCC may also become a venue for the perpetrator to continue to exert control over the victim, and the perpetrator's public presentation may be starkly different from his/her behavior in private (Bow & Boxer, 2003).

Conversely, in the context of current child custody law, an allegation of DV can be a powerful weapon in a disputed CCC. Such an allegation can lead to severe limitation or even suspension of a child's contact with a parent, which can have profound effects on both the parent-child relationship and the outcome of the custody dispute. Some studies have found that primary physical custody is often awarded to the parent alleging abuse, even if the allegation is unsubstantiated (Sorensen, Goldman, Ward, Albanese, & al, 1995). Other authors, based

on interviews of allegedly battered women, have alleged poor training among evaluators and systematic judicial and evaluator bias against women who allege DV (Silverman, Mesh, Cuthbert, Slote, & Bancroft, 2004). It is not uncommon for a single case to present multiple and conflicting allegations, ranging from violence to child abuse to the intentional undermining of the other parent's relationship with a child.

In this high-stakes and emotionally loaded context of a CCC, the psychological information provided to the Court may be of critical importance. Quality psychological information can assist the Court in making decisions that protect and support the child's needs. Conversely, poor psychological practice can lead to inappropriate decisions with devastating impact on the lives of children and families. The quality of psychological information may well depend on the psychologist's objectivity, thoroughness, familiarity with the literature, and ability to appropriately apply the research to the case at hand.

### **Complexities in the Research**

Recent years have seen an explosion of research into the nature, characteristics, context and impact of DV on children. While historical research focused overwhelmingly on women and children residing in battered women's shelters, recent research has involved community as well as clinical samples. While it is beyond the scope of this paper to review this research, it is important to underscore the complexities in the picture that is emerging. For example, while it was historically assumed that perpetrators of abuse were overwhelmingly male, studies among non-clinical samples have found that women initiate violence as frequently as men do, and that most bidirectional, or "common couple" violence does not result in serious injury (Fergusson, Horwood, & Ridder, 2005). Nevertheless, among the minority of DV cases that result in serious injury or death, men are much more likely to be the perpetrators (Bow & Boxer, 2003; Fergusson et al., 2005). Moreover, some types of violence may be prompted by the parental separation and create increased risks shortly after separation and during

litigation, with a very low risk of recurrence after the emotional and legal issues of the divorce are resolved (Johnston & Campbell, 1993).

Exposure to DV or intense parental conflict may place children at increased risk for any number of problems including becoming victims of abuse themselves, demonstrating hyperarousal or other symptoms of trauma, identifying with the aggressor, learning inappropriate means of resolving interpersonal conflicts, exhibiting negative outcomes due to intrusive parenting, or the severe disruption of a relationship due to the sudden occurrence of violence in a previously nonviolent parent (Drozd et al., 2004). Nevertheless, many children have warm and supportive relationships with parents who were violent with one another, and do not themselves become victims of abuse (Appel & Holden, 1998). Dutton (2005) notes the differences between the shelter populations who were historically studied in DV research and populations contesting custody, and advises caution applying historical research results to divergent populations.

Responsible professionals can debate the merits of any particular study or argument; nevertheless, the global implication of recent literature is to suggest that DV is *not* a unitary phenomenon. Given the enormous diversity among families, this conclusion is not surprising. Nevertheless, such research results have often come under attack from those whose ideological viewpoint is inconsistent another model or specific result. Under some particularly unfortunate circumstances, these discussions have devolved into mutual accusations among "camps" of professionals, including suggestions that those advancing an opposing view are unconcerned about children or the impact of DV or parental conflict. Such professional polarization does little to advance psychological practice, education to the Courts, or the needs of these vulnerable children.

Nowhere has this polarization been more

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evident than in discussions of *alienation*, or the undermining of a parent–child relationship by another significant adult. Such issues may arise when children are exposed to parental conflict. Allegations of alienation occur frequently in high-conflict CCC, and may be raised in addition to, or to counter, allegations of DV. Alienation, as defined in current literature (Drozdz & Olesen, 2004; Kelly & Johnston, 2001), must be distinguished from developmental issues, affinity to a parent, alignment, or estrangement due to poor parenting or abuse. It is also to be distinguished from “parent alienation syndrome,” a concept proposed and advanced by Richard Gardner (Gardner, 1998). I agree with those who state that the concept of “parent alienation syndrome” has not held up well in professional research or literature. Nevertheless, the more nuanced, complex descriptions of alienation (Kelly & Johnston, 2001) are quite consistent with established findings in areas such as children’s adjustment to divorce, the impact of exposure to parental conflict, and the impact of suggestive questioning and stereotype induction (Pezdek, Finger, & Hodge, 1997; Roseby & Johnston, 1998). It is also noteworthy that descriptions of true batterers often include an element of undermining the child’s relationship with the victimized parent (Bow & Boxer, 2003).

In addition to the differences among samples studied, both the professional literature and legal statutes show enormous variability in the definitions used to describe DV. Drozd (2006) has noted, “Labels without behavioral anchors are useless. Labeling something as ‘domestic violence’ can be problematic without behavioral examples that help define the label.” While none of the descriptive or typology models have been completely validated empirically, the extant research is certainly sufficient to suggest that DV arises from a variety of individual and family circumstances. To the degree that there is variability in the genesis, maintenance and expression of DV, the character and severity of risks to children will also vary.

In some cases, children may be best supported by sharply limiting contact with a habitually violent parent; in others, psychologically intrusive parenting poses a greater risk than physical violence; in a third subset, children may suffer the greatest harm if a historically warm parent–child relationship is disrupted. In some cases, therapeutic intervention may be necessary to resolve the effects of trauma and mistrust following an uncharacteristic episode of violence. Still others may require intervention with parents who have engaged in bidirectional violence, modeled violence as appropriate behavior, or directly abused or endangered their children. Others may require recommendations or interventions to protect the children from exposure to parental conflict and emotional pressure to align with one parent and deny any positive attachment to the other.

Serious risks to children may be created by any of these situations, as well as countless other variations not described above. Adequate risk assessment and intervention requires that the full range of potential risks be considered (as consistent with the Court appointment), with recommendations and interventions targeted to the nature of dysfunctions found and the likely risks to children. This requires that the psychologist be familiar with a broad range of available research and models of DV, family conflict, adjustment to parental separation, and approaches to assessing allegations of domestic violence..

### Thoroughness and balance

The forensic perspective requires that psychologists approach allegations of DV with an open mind, considering a variety of possible explanations for each of the behaviors observed and events alleged.

Gould and Martindale (in press) have urged that evaluators critically examine allegations of DV in terms of both the accuracy of the allegations and the long-term effects on the children involved, rather than focusing on the “label” of DV. This requires a detailed analysis of both the specific behaviors alleged and the meaning of those events to the adults and children involved. It also requires that the evaluator screen for related

dynamics of family conflict, coercive control, undermining of parent–child relationships, or intrusive parenting that may pose risks to the child, whether or not they are specifically described in the allegations presented or fit a predetermined definition of “DV.” These issues should also be considered by therapists and consultants providing services in CCC, as a “tunnel vision” approach to treatment may miss risk factors and poorly address issues that can seriously impact children’s development. This is not to suggest that psychologists should violate role boundaries or abandon their responsibility to advocate for clients’ needs when retained as therapists or consultants, but rather to suggest that our view of clients’ needs may be broader and more accurate when we approach these cases with a forensic perspective.

Some authors (Johnson, 2005) have urged that evaluators and therapists slant their work toward assumptions that DV allegations are true, that one parent is the primary perpetrator, and that children are best protected by limiting or eliminating contact with that parent. For example, Johnson (2005) has urged that professionals involved in CCC *assume* that any case involving allegations of DV is a case of “intimate terrorism” (battering) by one partner, *until proven otherwise* (Johnson, 2005, p. 50, emphasis added). Given that most DV is unwitnessed and undocumented, and many allegations can never be completely disproven, the implications of such assumption-driven approaches are enormous. The psychologist who assumes a primary perpetrator may miss indications that both parents were violent; the psychologist who assumes the accuracy of one parent’s allegations may risk indications that a parent is forcing the child to participate in the custody conflict. A psychologist who assumes that the “safest” course for a child is to eliminate contact with a parent may unnecessarily devastate a primary attachment relationship for the child. Most psychologists would agree that it is helpful to protect a child from a violent or toxic parent; many would also agree that children can be devastated by the loss of significant attachment figures.

Available research also suggests that it may be devastating to children to be used as pawns in their parents' custody conflicts. (Johnston, 2005; Roseby & Johnston, 1998).

## The forensic psychology perspective requires that psychologists approach allegations of DV with an open mind, considering a variety of possible explanations for each of the behaviors observed and events alleged.

Thorough assessment requires that we approach allegations with an open mind, and seek information to support, disconfirm, or amplify allegations made by either parent. Sources of information may include statements and behavior from both children and parents, observational data, psychological testing, and collateral information and interviews. Conclusions and opinions are driven by the *data*, and presented to the Court with a description of the limitations of our findings. Biased or incomplete procedures can lead to flawed opinions, discredited expert testimony, and unprotected children.

### Core Obligations

The legal system is an imperfect venue for resolving DV allegations in a contested CCC. Most psychologists involved in CCC have seen children suffer harm, and perceptions often differ as to whether the "fault" for these outcomes lies with parents, attorneys, mental health professionals, judges, or the system itself. Any of us can advocate for changes in the system. Nevertheless, when we enter that system as psychologists involved with a particular family, we undertake an obligation to remain true to the core principles of quality forensic practice. This requires active efforts toward objectivity, completeness, humility, forthrightness, and adherence to the boundaries of our role. When we

violate these principles, we ultimately do a disservice to parents, children, counsel, the Courts, and the credibility of our profession as a whole.

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