

CHAPTER 2

DOMESTIC VIOLENCE: THE WHAT, WHY, AND WHO, AS RELEVANT TO CRIMINAL AND CIVIL COURT DOMESTIC VIOLENCE CASES

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Domestic violence is a widespread societal problem with consequences both inside and outside the family. Its devastating effects on the abused parties, the children, as well as the entire community are often both long and short term. Domestic violence impacts all areas of a person's life: physical and mental health, housing, education, employment, family stability, social relationships, and spirituality. In addition to its immediate effects, there is increasing evidence² that violence within the family becomes the breeding ground for other social problems such as substance abuse, juvenile delinquency, and violent crimes of all types. Consequently, the financial costs of domestic violence to both individuals and communities are enormous.

The roots of domestic violence are embedded in our social structures and customs.³ To eliminate the abuse and to bring about change, a coordinated community response is required.^{4,5} In the past twenty years there has been greater awareness of domestic violence as well as a dramatic increase in specialized services needed to respond more effectively to adult victims and their children and to intervene with the domestic violence perpetrators.

Each part of a community has a role to play: mental/medical health providers, victim advocates, educators, child welfare workers, clergy, the media, social activists, as well as the civil and criminal justice systems. How each segment carries out its respective role in responding to this problem is greatly influenced by its understanding of the realities of domestic violence: what it is, why it occurs, who is involved, and its impact on the adult victims, the children, and the community. In order to strengthen and to continue to improve the role of the courts, this chapter covers those basic elements:

- **The What: Behavioral and Legal Definitions of Domestic Violence**
- **The Why: Causes of Domestic Violence**
- **The Who: The Domestic Violence Perpetrator, the Abused Party, the Children, and the Community**
- **The Impact of Domestic Violence: Specifically the Issues Related to Criminal and Civil Courts**

Domestic violence is a pattern of behavior that consists of multiple, oftentimes daily behaviors, including both criminal and non-criminal acts. While the criminal justice (and sometimes even the civil court) process tends to focus on individual events, it is the entire pattern of the perpetrator's conduct that shapes how the abuser and the abused party are effected and function. Not only are the adult victims impacted by patterns of abuse, but so

are the children, as they are used by the perpetrator to control the adult victim and/or as they witness one parent abuse the other. The entire pattern of the perpetrator's conduct needs to be considered as courts deliberate about the most appropriate findings, sanctions, and court orders.

The presence of domestic violence is relevant in both criminal and civil court proceedings. Criminal courts must respond to the multiple issues raised by domestic violence cases, such as the domestic violence perpetrator's criminal conduct and the safety of the victims/witnesses, their children, and the public. Civil courts face other sets of issues raised by domestic violence when present in cases, such as dissolution of marriages, parenting plans, dependency issues, court orders, and tort actions. Understanding the what, why, and who, as well as the impact of domestic violence, enables judges to improve the court's fact-finding and decision-making in domestic violence cases, and to develop appropriate court procedures to handle these cases more effectively, efficiently, and safely.

I. The What: Behavioral Definitions of Domestic Violence

Understanding domestic violence (whether it is called battering, spousal assault, wife beating, intimate partner violence, etc.) requires an understanding of both the behavioral definition and the legal definitions of domestic violence. Both the behavioral and the legal definitions delineate (1) the relationship between the parties that constitutes the context for the abuse, as well as (2) the behaviors that constitute domestic violence conduct. The behavioral definition is more comprehensive than the legal definition in defining domestic violence conduct and is particularly salient to understanding the impact of the dynamics on the adult victim, children, and perpetrator. The legal definition for Washington State is somewhat broader than the behavioral definition in defining the context and somewhat narrower in defining the conduct. And, there is a great deal of overlap between the two definitions. Understanding both definitions is useful in making the complex decisions facing judicial officers hearing these cases. The following is a review, first of the behavioral definition and then of the legal definition.

Behavioral Definition of Domestic Violence

Domestic Violence is:

- **A pattern of assaultive and coercive behaviors;**
- **Including physical, sexual, and psychological attacks, as well as economic coercion;**
- **That adults or adolescents use against their intimate partners.**

Examples of Domestic Violence Behavioral Tactics

1. Physical abuse

Spitting, poking, shaking, grabbing, shoving, pushing, throwing, hitting with open or closed hand, restraining, blocking, choking, hitting with objects, kicking, burning, using weapons, etc.

2. Sexual abuse

Pressured, coerced, or physically forced sex

3. Psychological abuse

- Acts of violence against others, property or pets
- Intimidation through threats of violence against victims, children, others, or self (suicide), as well as through yelling, stalking, and hostage taking
- Physically or psychologically isolating victims from family, friends, community, culture, accurate information, etc.
- Attacks against victim's self-esteem and competence, forcing victims to do degrading things, controlling victim's activities, etc.
- Alternating use of indulgences: promises, gifts, being affectionate

4. Economic coercion

- Control of funds: spending family funds, not contributing financially to family, withholding funds, etc.
- Control of victim's access to resources: money, health insurance, transportation, child care, employment, housing, etc.

5. Use of children to control victim

- Interrogating children about victim's activities,
- Forcing child to participate in the physical or psychological abuse of adult victim
- Using children as hostages, using visitation with children to monitor adult victim
- Undermining parenting of adult victim, custody or visitation fights, etc.
- False reports to Child Protective Services

A. Domestic Violence Context: Adult or Adolescent Intimate Relationships

1. Variety of intimate relationships

Domestic violence occurs in a relationship where the perpetrator and victim are known to each other. The abused party and the perpetrator are or have been or may become intimate partners. It occurs in both adult and adolescent intimate relationships. The victim and perpetrator may be or have been dating, cohabiting, married, divorced, or separated. They may or may not have children in common. The relationships may be heterosexual, gay, or lesbian.⁶ The relationships may be of short or long duration.

2. Increased access and control due to intimate context

While the abused party is affected by domestic violence in many of the same ways as victims of violence perpetrated by strangers, the domestic violence victim also experiences effects unique to the fact that the abuser is an intimate. Both domestic violence and stranger violence result in the victim being physically and/or psychologically traumatized. However, the effects of trauma are accentuated in domestic violence cases by the fact that the domestic violence perpetrator is known to the victim. The domestic violence perpetrator has on-going access to the victim, knows the victim's daily routine, and can continue to exercise considerable power and control over the victim's daily life, both physically and emotionally. Perpetrators of stranger violence usually do not have this continued access or control over their victims. The intimate context of domestic violence shapes the behavior of both the abused party and the perpetrator during criminal and civil court process. (See Sections IV and V)

3. Entitlement and social supports for domestic violence

Victims of domestic violence not only deal with the particularities of a specific trauma (e.g., head injury) and the fear of future assaults by a known assailant, but also they must deal with the complexities of an intimate relationship with that assailant. Many perpetrators believe that they are entitled to use tactics of control with their partners and too often find social supports for those beliefs. And unfortunately, the intimate context all too often leads those outside the relationship to take domestic violence less seriously than other types of violence. It is the "intimate partner" or "family" nature of the relationships that sometimes gives the perpetrator social, if not legal, permission to use abuse. Unlike victims of stranger violence, victims of domestic violence face

social barriers to separation from the perpetrators, as well as other barriers to self-protection.⁷ (See Section V, H. Barriers.)

4. **Child victims of domestic violence**

The behavioral definition of domestic violence focuses on the pattern of abuse and violence in relationships between adult or adolescent intimate partners and does not technically include child abuse or neglect. However, in many domestic violence cases, children may also be physically harmed or emotionally and developmentally damaged as a result of being used as weapons by the perpetrator against the abused party or as a result of being exposed to the violence. (For discussion on the impact of domestic violence on children, see Section VI, Children as Victims.)

5. **Adolescent domestic violence**

Sometimes in domestic violence cases, the perpetrator and/or the victim may be an adolescent rather than an adult. In cases involving adolescents, there is the same pattern of assaultive and coercive behaviors as that which occurs in adult relationships.⁸ For the purposes of the behavioral definition, domestic violence includes the abusive control done by one adult intimate to another, or by one adolescent intimate to another.⁹

B. Domestic Violence is a Pattern of Assaultive and Controlling Behaviors, Including Physical, Sexual, and Psychological Attacks, as well as Economic Coercion, that One Adult or Adolescent Uses Against an Intimate Partner

1. **Domestic violence consists of a wide range of behaviors.**

Some acts of domestic violence are criminal such as hitting, choking, kicking, assault with a weapon, shoving, snatching, biting, rape, unwanted sexual touching, forcing sex with third parties, threats of violence, harassment at work, attacks against property, attacks against pets, stalking, harassment, kidnapping, arson, burglary, unlawful imprisonment, etc. Other abusive behaviors may not constitute criminal conduct, e.g., degrading comments, interrogating children or other family members, suicide threats or attempts, controlling the victim's access to the family resources: time, money, food, clothing, and shelter, as well as controlling the abused party's time and activities, etc. Whether or not there has been a finding of criminal conduct, evidence of such behaviors indicates a pattern of abusive control, domestic violence.

2. **Domestic violence is a pattern of behavior, not an isolated, individual act.**

The pattern may be evidenced either (a) in multiple tactics in one episode (e.g., physical assault combined with threats and emotional abuse), or (b) in multiple episodes over time. One battering tactic or episode builds on past tactics or episodes and sets the stage for future tactics or episodes. All incidents or tactics of the pattern interact with each other and have a profound effect on the abused party. The use of physical force combined with psychological coercion establishes a dynamic of power and control in the relationship. Also there is a wide range of consequences from the pattern, some physically injurious and some not; all are psychologically damaging. (See Section V.)

3. **Acts of violence against others or property to control the adult victim.**

Some of the acts may appear to be directed against or involve the children, property, or pets when in fact the perpetrator is behaving this way in order to control or punish the intimate partner (e.g., physical attacks against a child, throwing furniture through a picture window, strangling the adult victim's pet cat, etc.). Although someone or something other than the abused party is physically damaged, that particular assault is part of the pattern of abuse directed at controlling the intimate partner.

4. **Psychological attacks through verbal abuse.**

Not all verbal insults between intimates are necessarily psychological battering. A verbal insult done by a person who has not also been physically assaultive is not the same as a verbal attack done by a person who has been violent in the past. It is the perpetrators' use of physical force that gives power to their psychological abuse through instilling the dynamic of fear in their victims. The psychological battering becomes an effective weapon in controlling abused parties because abused parties know through experience that perpetrators will at times back up the threats or taunts with physical assaults. The reality that the perpetrators have used violence in the past to get what they want gives them additional power to coercively control the victims in other non-physical ways. For example, an abuser's interrogation of the abused party about the victim's activities becomes an effective non-physical way to control the abused party's activities when the perpetrator has assaulted the victim in the past. Sometimes abusers are able to gain compliance from the abused party by simply

saying “Remember what happened the last time you tried to get a job . . . to leave me . . . etc.?” (e.g., subtly reminding the victim of a time when the perpetrator assaulted the abused party). Because of the past assaults, there is the implied threat in the statement.

5. **Psychological control maintained by intermittent use of physical force and psychological attacks.**

The psychological control of abused parties through intermittent use of physical assault along with psychological abuse (e.g., verbal abuse, isolation, threats of violence, etc.) is typical of domestic violence. These are the same control tactics used by captors against prisoners of war and hostages. Perpetrators are able to control abused parties by a combination of physical and psychological battering since the two are so closely interwoven by the perpetrator. The incident of physical assault may be in the distant past but the coercive power is kept alive by the perpetrator’s other tactics of control.

6. **Perpetrator’s use of indulgences to control victim.**

Domestic violence perpetrators, like captors of prisoners of war, also alternate their abusive tactics with occasional indulgences, such as flowers, gifts, sweet words, promises to get help, attention to children, etc. Some victims may think that the abuse has stopped, whereas for batterers they have simply changed control tactics. Early domestic violence literature sometimes referred to this conduct as part of a “honeymoon phase” when, in fact, these are merely different tactics of control.

7. **Some mistakenly argue that both the perpetrator and the abused party are “abusive,” one physically and one verbally.**

While some abused parties may resort to verbal insults, the reality is that verbal insults are not the same as a fist in the face. Furthermore, domestic violence perpetrators use both physical and verbal assaults. Early research indicates that domestic violence perpetrators are more verbally abusive than either their victims or other persons in distressed/non-violent or in non-distressed intimate relationships.¹⁰

8. **Determining primary aggressor.**

Some argue that there is “mutual battering” where both individuals are using physical force against each other. Careful fact-finding often, but not always, reveals that one party is the primary physical aggressor and the other party’s violence is in self-defense (e.g., she stabbed him as he was choking her) or that one party’s violence is more severe than the violence of the other (e.g., punching/choking versus scratching).¹¹ Sometimes the domestic violence victim uses physical force against the batterer in retaliation for chronic abuse by the perpetrator, but this retaliation incident is not part of a pattern of assaultive and coercive behavior.

9. **Research of heterosexual couples indicates that women’s motivation for using physical force is self-defense, while men use physical force for power and control.¹²**

“Mutual combat” among gay and lesbian partners is also rare. Even though gay and lesbian partners may be approximately the same size and weight, there is usually a primary aggressor who is creating the atmosphere of fear and intimidation that characterizes battering relationships.¹³ Self-defense against a violent partner does not constitute “mutual battering.”

C. The Consequences of Domestic Violence are Often Lethal or Health Shattering

1. Approximately 1.5 million women are physically assaulted or raped by an intimate partner annually in the United States. Since many women experience multiple victimizations, an estimated 4.8 million women experience intimate partner rapes and physical assaults each year.¹⁴ According to the *Washington State Uniform Crime Report*, there were 53,770 domestic violence offenses reported by 245 law enforcement agencies in 2005.¹⁵
2. The United States Department of Justice reported that 37 percent of all women who sought care in hospital emergency rooms for violence related injuries were injured by a current or former spouse, boyfriend, or girlfriend.¹⁶ In 2002, approximately 1,455 murder victims were attributed to intimates. More than three out of four of these had a female victim.¹⁷
3. Domestic violence has a major health impact on victims and their children, not only through direct injury/death but also in terms of impact on illnesses. For a complete review of the health impact of domestic violence, see the introduction by P. Salber, M.D., to *Improving the Health Care Response to Domestic Violence*.¹⁸

There is a large body of health research documenting the health impact on adult victims.¹⁹

4. Without intervention, the perpetrator's pattern of abusive behaviors will most likely escalate in both frequency and severity. The pattern may change with more emphasis on the psychological abuse, or the physical assaults, over time. Regardless of these variations, damage to the abused party and the children may become more severe.
5. The lethality of domestic violence often increases when the perpetrator believes that the abused party is leaving or has left the relationship.²⁰ Other risk factors for dangerousness: threats to kill or maim, stalking, use of weapons, suicidality of the perpetrator, use of alcohol or drugs, co-occurrence of child abuse, and failure of past systems to respond appropriately. (See following section on Assessing Lethality.) For this reason, it is critical that the courts use all available legal remedies, such as protective orders, jail, etc., to provide the victim with protection throughout the duration of the court proceedings.
6. The lethality of domestic violence is tragically clear when the perpetrators kill their partners, as well as the children or other family members, and then kill themselves, or when abused persons, desperate to protect themselves and their children, kill their perpetrators.²¹ Effective intervention in domestic violence cases may stop the violence before it becomes a homicide case.²²

D. Assessing Lethality

One of the more troubling aspects of responding to domestic violence is assessing how dangerous the domestic violence may be in a specific individual case. The research indicates that domestic violence may cause death or severe injury to the adult victim, the perpetrator, the children, or others due to the behaviors of the perpetrator, or the adult victim, or the children. The research on predicting domestic violence homicides reveals crucial but only partial elements of dangerousness. Adult victims have to die to make their way into homicide studies. In many domestic violence cases, the abused parties are left paralyzed, deaf, blind, brain damaged, etc., but not dead. Also, domestic violence homicide statistics often do not capture the perpetrators' violence toward children, others, or themselves. Nor does homicide research capture the damage done when victims or children fight back to escape or protect themselves.

There are a variety of risk assessment instruments that have become available in last ten years. While they all purport to evaluate the risk of

domestic violence, often times they evaluate different aspects of domestic violence, such as:

1. Re-offending or recidivism in legal system (DV Moosaic deBecker), DVSI (Williams & Houghton), K-SID (Gelles & Lyon), O.D.A.R.A. (Z. Hilton), SARA (Kropp et al).
2. A systems safety audit (PSI -Duluth)
3. Predicting homicides (Danger Assessment)
4. Measures based on offender intervention programs (PAS- D. Dutton)

No psychological testing (e.g. MMPI's or other personality measures) is helpful in predicting domestic violence aggressive behavior or dangerousness. (See Appendix B on domestic violence assessments.) There have been some attempts to develop instruments to predict child abuse, but these are not useful in predicting either intimate partner abuse or the risk to children posed by intimate partner perpetrators.

What domestic violence fatality reviews in various states²³ have shown is that much of the salient information related to the homicides or severe injuries was known prior to the homicides by various community systems, but too often decision-makers did not understand the connection between the domestic violence and individual factors or knew only part of the information.

When the courts and the community are weighing the safety needs of the victims and the community, they must consider all the factors and must gather information from multiple sources: the adult victim, children, other family members, perpetrators, and others (probation, counselors, and anyone having contact with family).

What follows is a list of factors to consider when attempting to assess the danger to any party, either through significant injury or death (not just related to DV perpetrator homicide potential) in a particular domestic violence case:

LETHALITY ASSESSMENT: FACTORS TO CONSIDER²⁴

- 1. Perpetrator's access to the victim**
- 2. Pattern of the perpetrator's abuse**
 - a. Frequency/severity/escalation of the abuse in current, concurrent, past relationships
 - b. Use of weapons and use of dangerous acts
 - c. Threats to kill adult victim, children, self
 - d. Imprisonment, hostage taking, stalking
- 3. Perpetrator's state of mind**
 - a. Obsession with victim, jealousy
 - b. Ignoring negative consequences of their abusive behavior
 - c. Depression/desperation
- 4. Individual factors that reduce behavioral controls of either adult victims to protect themselves or perpetrators to monitor consequences**
 - a. Substance abuse
 - b. Certain medications
 - c. Psychosis
 - d. Brain damage
- 5. Suicidality of victim, children, or perpetrator**
- 6. Adult victims' use of physical force**
- 7. Children's use of violence**
- 8. Situational factors**
 - a. Separation violence/victim autonomy
 - b. Presence of other stresses
- 9. Past failures of systems to respond appropriately**

II. Legal Definitions of Domestic Violence

A. Legal Definitions of Domestic Violence Delineate the Relationship between the Parties, and the Scope of the Perpetrator's Abusive Behavior

1. Washington State defines domestic violence as certain crimes committed by one family or household member against another. Most of the family or household members defined by the state in [10.99.020 RCW](#) fit the behavioral definition of intimate partner: “spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time . . . persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship . . .” The behavioral pattern and effects of domestic violence are similar for all adult or adolescent intimate relationships regardless of whether they are spouses, ex-spouses, boyfriend/girlfriend, ex-boyfriend/girlfriend, adult child/adult parent, gay and lesbian relationships, individuals who currently live together and are intimately involved, those who have lived together in the past, or individuals who have children in common.
2. However, [RCW 10.99.020](#) also includes household or family members who are not, nor have they ever been, intimate partners: “adult persons who are presently residing together or who have resided together . . . persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.”
3. While intimate partner violence is the most common form of domestic violence, non-intimate partner violence as defined by Washington law may also appear in the courts. The dynamics are different for intimate-partner violence and domestic violence perpetrated by household members who are not, nor have they ever been, intimate partners with their victims (i.e., adult siblings, adult child to parent roommates, etc.). This chapter and Appendix A on treatment focus primarily on intimate partner violence. The focus of this manual is on intimate partner domestic violence, although the statutory framework does not make this distinction.

The following charts are provided to assist the court in identifying these cases.

B. Relationships Provided for by Domestic Violence Statutes: Chart

Relationship Between Parties	Applicable Statutes
Current Spouses	RCW 26.50.010(2) ; 10.99.020(3)
Former Spouses	RCW 26.50.010(2) ; 10.99.020(3)
Parents of Child in Common	RCW 26.50.010(2) ; 10.99.020(3)
Adult Persons Related by Blood or Marriage	RCW 26.50.010(2) ; 10.99.020(3)
Unmarried Persons of Same or Different Genders Currently or Previously Residing Together	RCW 26.50.010(2) ; 10.99.020(3)
Intimate Partners of Same Gender	RCW 10.99.020(1) ; 10.99.020(3)
Dating Relationships	RCW 26.50.010(2) ; 10.99.020(3)
Biological or legal parent-child relationship	RCW 26.50.010(2) ; 10.99.020(3)

C. Behaviors Included in Domestic Violence Statutes: Chart

Behavior	Statute Citation
Physical Harm, Bodily Injury	RCW 26.50.010(1)
Assault	RCW 26.50.010(1)
Infliction of Fear of Imminent Physical Harm, Bodily Injury, or Assault	RCW 26.50.010(1)
Sexual Assault of One Family or Household Member by Another	RCW 26.50.010(1)
Stalking	RCW 9A.46.010 ; 10.14.020 ; 26.50.010(1)

D. Criminal Charges that Can Result from Domestic Violence

The following chart is not an exhaustive list but illustrates both the behavioral and legal definitions of domestic violence as well as the criminal charges that can result from these acts. Note that some of the behaviors are not considered criminal, but they are nonetheless used by the perpetrator as part of the pattern to control the victim.

DOMESTIC VIOLENCE - DEFINITIONS AND CRIMINAL CHARGE

Type of Domestic Violence	Behaviors (examples of both criminal and non-criminal acts)	Criminal Charges	Relevant RCWs
Physical Battery	Shoving, grabbing, pushing, slapping, punching, kicking, choking, hitting, burning, assault with a weapon, or shoving, etc.	Assault Manslaughter or Murder Reckless Endangerment Drive by Shooting	9A.36.011-.041 9A.32.060-.070 9A.32.010-.050 9A.36.050 9A.36.045
Sexual Battery	Forced sex, attacks against genitals, forcing sex in front of children, pressured sex, unwanted sexual touching, etc.	Rape Rape of a Child Indecent Liberties Assault with Intent to Commit Rape	9A.44.040-.060 9A.44.073-.079 9A-44.100 9A.36.021(2)(b)
Psychological Battery	Threats of violence against victim or others, suicidal threats or acts, false reports to third parties (CPS, INS, employers), child snatching, reckless driving to intimidate victim, isolating, interrogating, controlling, or degrading victim, etc.	Coercion Telephone Harassment Custodial Interference Harassment Criminal Trespass Stalking Cyberstalking Unlawful Imprisonment Reckless Driving Violation of Court Orders	9A.36.070 9.61.230 9A.40.060-.070 9A.46.020 9A.52.070-.080 9A.46.110 9.61.260 9A.40.040 46.61.500 10.99.040 , 10.99.050 , 26.09.300 , 26.10.220 , 26.26.138 , 26.44.063 , 26.44.150 , 26.50.060 , 25.50.070 , 26.50.130 , 26.52.070 , 74.34.145
Battery of Property/Pets	Attacks against property to control victim, hitting walls, destroying objects, giving away property, setting fire to property, tormenting pets, etc.	Cruelty to Animals Malicious Mischief Theft Arson or Reckless Burning Burglary	9.08.070 9A.48.070-.090 9A.56.030-.050 9A.48.020-.050 9A.52.025
Use of Children to Control Victim	Injury to child during assault on victim, physical or sexual abuse of child, threats of violence, kidnapping, child concealment, children witnessing violence, etc.	Assault of a child Kidnapping Custodial Interference Criminal Mistreatment Homicide by Abuse	9A.36.120-.140 9A.40.020-.030 9A.40.060-.070 9A.42.020-.035 9A.32.055
Economic Coercion	Control of family resources: money, transportation, health care, telephone, retirement/investment funds, lengthy court battles to impoverish victims, etc.		

III. The Why: Causes of Domestic Violence

A. Domestic Violence is Caused by Learning Rather than by Biology or Genetics

1. Domestic violence behaviors, as well as the rules and regulations of when, where, against whom, and by whom domestic violence is to be used, are learned through observation and reinforcement (i.e., as in cases of the male child witnessing the abuse of his mother by his father, or in the proliferation of images of violence against women in the media, or from the judge colluding with the perpetrator in blaming the victim and by not holding the perpetrator accountable for the conduct).
2. Domestic violence is learned not only in the family, but also in society. It is learned and reinforced by interactions with all of society's major institutions: the familial, social, legal, religious, educational, mental health, medical, child welfare, entertainment, media, etc. In all of these social institutions, there are various customs that perpetuate the use of domestic violence as legitimate means of controlling family members at certain times (e.g., religious institutions that state that a woman should submit to the will of her husband; laws that do not consider violence against intimates a crime, etc.). These practices inadvertently reinforced the use of violence to control intimates by failing to hold the perpetrator accountable for the violence and by failing to protect the abused party.
3. Domestic violence is repeated because it works. It is overtly, covertly, and inadvertently reinforced by all of society's institutions.²⁵ The pattern of domestic violence described in the previous section allows the perpetrator to gain control of the victim through fear and intimidation.
4. The fact that most domestic violence is learned means that the perpetrator's behavior can be changed. Most individuals can learn not to batter when they take responsibility for their behaviors and there is sufficient motivation for changing that behavior. The court plays a strong role in providing perpetrators with sufficient motivation to change, and participates in the rehabilitation process by holding perpetrators, not the victims, accountable for both the violence and for making the necessary changes to stop their patterns of coercive control. Most importantly, the court plays an essential role in protecting the abused party during the perpetrator's rehabilitation process, and by monitoring that process

to ensure the perpetrator's compliance with the court orders. (See Appendix A on efficacy of court-ordered treatment.)

B. Domestic Violence vs. Illness-Based Violence

1. Illness-based violence (e.g., Alzheimer's disease, Huntington's Chorea, psychosis, etc.) is rare, but it does happen, and such cases may end up in court as domestic violence. A very small percentage of violence, against abused parties is mislabeled as domestic violence when actually it is caused by organic or psychotic impairments. It is relatively easy to distinguish this illness-based violence from the learning-based violence typical of domestic violence cases. With illness-based violence, there is usually no selection of a particular victim (e.g., whoever is present when the "short circuit" occurs will get attacked, so it may be a helping professional, family member, stranger, etc.), and there is no pattern of abusive tactics. However, with learning-based violence the perpetrators direct a pattern of abusive behaviors toward a particular person or persons.

Also, in cases of illness-based violence there is usually a constellation of other clear symptoms of the disease. For example, with an organic brain disease there are changes in speech, gait, physical coordination, etc. With psychosis there are multiple symptoms of the psychotic process (e.g., he attacked her "because she is a CIA agent sent by the Pope to spy on him using the TV monitor"). With illness-based violence the acts are strongly associated with the progression of a disease (e.g., the patient showed no prior acts of violence or abuse in a 20-year marriage until other symptoms of the disease had appeared).

2. Poor recall of the event alone is **not** an indicator of illness-based violence (see Section IV, B on perpetrators for discussion of their minimization and denial).
3. Knowing in these rare cases that the violence is caused by a disease will not alter the fact that the violence occurred, but it may influence the type of strategies the court chooses to use to increase the safety of the victim, the children, and the public. Furthermore, knowing that the violence is caused by an illness may influence other court considerations, since rehabilitation of perpetrators through specialized domestic violence counseling is contraindicated for illness-based violence. In such cases, the violence can be more effectively managed by appropriate external constraints and by appropriate medical or mental health intervention.

C. Domestic Violence is Not “Out of Control” Behavior, but a Pattern of Behavior that is Used By the Perpetrator Because it Works

1. Often there is a claim that domestic violence is the result of “losing control.” Some perpetrators will batter only in particular ways, e.g., hit certain parts of the body, but not others; only use violence towards the victim even though they may be angry at others (their boss, other family members, etc.); break only the abused party’s possessions, not their own. Domestic violence perpetrators make choices even when they are supposedly “out of control.” Such decision-making indicates they are actually in control of their behavior.²⁶
2. Domestic violence involves a pattern of conduct. Certain tactics require a great deal of planning to execute (e.g., stalking, interrogating family members, etc.). Some batterers impose “rules” on the victims, carefully monitoring their compliance and punishing victims for any “infractions” of the imposed rules.²⁷ Such attention to detail contradicts the notion that perpetrators “lost” control or that their abusive behavior is the result of poor impulse control.
3. Some battering episodes occur when the perpetrator is not emotionally charged and are done intentionally to gain victim compliance.²⁸ The perpetrators choose to use violence to get what they want or to get that to which they feel entitled. Interviews with perpetrators reveal that when using both overt and subtle forms of abuse, perpetrators know what they want from the victims.²⁹ Perpetrators use varying combinations of physical force and/or threats of harm and intimidation to instill fear in their victims. At other times, they use other manipulations through gifts, promises, and indulgences. Regardless of the tactic chosen, the perpetrator’s intent is to get something from the victims, to establish domination over them, or to punish them. Perpetrators selectively choose tactics that work to control their victims.³⁰

D. Domestic Violence is Not Caused by “Stress”

1. We all have different sources of stress in our lives (e.g., stress from the job, stress from not having a job, marital and relationship conflicts, losses, discrimination, poverty, etc.). People respond to stress in a wide variety of ways (e.g., problem solving, substance abuse, eating, laughing, withdrawal, violence, etc.).³¹ People choose ways to reduce stress according to what has worked for them in the past.

2. It is important to hold people accountable for the choices they make regarding how to reduce their stress, especially when those choices involve violence or other illegal behaviors. Just as we would not excuse a robbery or a mugging of a stranger, because the perpetrator was “stressed,” we should not excuse the perpetrator of domestic violence because he or she was “stressed.” Moreover, as already noted, many episodes of domestic violence occur when the perpetrator is not emotionally charged or stressed. When we remember that domestic violence is a pattern of behavior consisting of a variety of behaviors repeated over time, then citing specific stresses becomes less meaningful in explaining the entire pattern.

E. Domestic Violence is Not Caused by Alcohol or Most Drugs

1. Alcohol and drugs such as marijuana, depressants, anti-depressants, or anti-anxiety drugs do not cause non-violent persons to become violent. Many people use or abuse those drugs without ever battering their partners. Alcohol and drugs are often used as the excuse for the battering, although research indicates that the pattern of assaultive behaviors which comprise domestic violence is not being caused by those particular chemicals.³²
2. There does seem to be some conflicting evidence that certain drugs (e.g., speed, cocaine, crack, meth) may chemically react within the brain to cause violent behavior in individuals who show no abusive behavior, except under the influence of those drugs. Further research is needed to explore the cause and effect relationship between these drugs and violence.
3. While research studies cited above have found high correlation between aggression and the consumption of various substances, there is no data clearly proving a cause and effect relationship. There are a wide variety of explanations for this high correlation.³³ Some say that the alcohol and/or drugs provide a dis-inhibiting effect, which gives the individual permission to do things they ordinarily would not do. Others point to the increased irritability or hostility which some individuals experience when using drugs and which may lead to violence. Others state that the high correlation may merely reflect the overlap of two widespread social problems: domestic violence and substance abuse.

Regardless of the exact role of alcohol and drugs, it is important to focus on the violent behavior and not allow substance use or abuse to become the justification for the violence.

4. While the presence of alcohol or drugs does not alter the finding that domestic violence took place, it is relevant to certain court considerations and in dispositions of cases. The use of substances may increase the lethality of domestic violence and needs to be carefully considered when weighing safety issues concerning the abused party, the children, and the community.
5. Court decisions in cases where the domestic violence perpetrator also abuses alcohol and/or drugs must be directed at both the violence and the substance abuse. For individuals who abuse alcohol and drugs, changing domestic violence behavior is impossible without also stopping the substance abuse.

However, it is not sufficient for the court to order the substance-abusing perpetrator of domestic violence solely into treatment for substance abuse or domestic violence. Intervention must be directed at both co-occurring problems, either through (a) concurrent treatments for domestic violence and substance abuse, or (b) residential substance abuse treatment with a mandatory follow-up program for domestic violence, or (c) an involuntary mental health commitment with rehabilitation directed at both the substance abuse and the domestic violence.

F. Domestic Violence is Not Caused by Anger

1. The role of anger in domestic violence is complex and cannot be simplistically reduced to cause and effect. Some battering episodes occur when the perpetrator is upset and some when he is not angry or emotionally charged. Some abusive conduct is carried out calmly to gain the victim's compliance. Some displays of anger or rage by the perpetrator are merely tactics used to intimidate the victim and can be quickly altered when the abuser thinks it is necessary (e.g., upon arrival of police).
2. Current research indicates that there is a wide variety of arousal or anger patterns among identified domestic violence perpetrators, as well as among those identified as not abusive.³⁴ These studies suggest that there may be different types of batterers. Abusers in one group actually reduced their heart rates during observed marital verbal conflicts, suggesting a calming preparation for fighting rather than an out of control or angry response. Such research challenges the notion that domestic violence is merely an anger problem and raises major questions about the efficacy of anger management programs for batterers.

3. Remembering that domestic violence is a pattern of behaviors rather than isolated, individual events helps to explain the number of abusive episodes that occur when the perpetrator is not angry. Even if experiencing anger at the time, perpetrators still choose to respond to that anger by acting abusively. Ultimately, individuals are responsible for how they express anger or any other emotions, and for how they try to control adult victims through intimidation or force.

G. Domestic Violence is Not Caused by Problems Inherent in the Relationship Between the Two Individuals or by the Abused Party's Behavior

1. People can be in distressed relationships and experience negative feelings about the behavior of the other without choosing to respond with violence or other criminal activities.
2. Looking at the relationship or the abused party's behavior as a causal explanation for domestic violence takes the focus off the perpetrator's responsibility for the violence, and unintentionally supports the perpetrator's minimization, denial, externalization, and rationalization of the violent behavior.

Blaming the abused party or locating the problem in the relationship provides the perpetrator with excuses and justifications for the conduct. This inadvertently reinforces the perpetrator's use of abuse to control family members and thus contributes to the escalation of the pattern. The abused parties are placed at greater risk, and the court's duties to protect the public, to assess damages, to act in the best interests of children, and to hold perpetrators accountable are greatly compromised.

3. Many batterers started bringing this pattern of control into their early dating relationships. They bring these patterns into their adult intimate relationships and tend to repeat those patterns in all their intimate partnerships, regardless of the significant differences in the personalities, or conduct of their intimate partners, or in the characteristics of those particular relationships. These variables in partners and relationships support the position that, while domestic violence takes place within a relationship, it is not caused by the relationship.
4. Research indicates that there are no personality profiles for battered women.³⁵ Battered women are no different from non-battered women in terms of psychological profiles or demographics. Once again this challenges the myth that

something about the woman causes the perpetrator's violence. Furthermore, one research study indicates that no victim behavior could alter the perpetrator's behavior.³⁶ This also suggests that the victim's behavior is not the determining factor, whether or not the perpetrator uses violence and abuse in the relationships.

5. Domestic violence in adolescent relationships further challenges the belief that the abuse is the result of the victim's behavior. Oftentimes, the adolescent abuser only superficially knows his victim, having dated her only a few days or weeks before beginning to abuse her. Such an abuser is often acting out an image of how to conduct an intimate relationship based on recommendations from peers, music videos, or models set by family members, etc. The adolescent's abusive conduct is influenced more by that image than by the victim's actions.
6. Both adult and adolescent batterers bring into their intimate relationships certain expectations of who is to be in charge and what mechanisms are acceptable for enforcing that dominance. It is those attitudes and beliefs, rather than the victims' behavior, that determine whether or not persons are violent.

IV. The Who: The Domestic Violence Perpetrator

The following information about perpetrators cannot be used as a predictive profile to determine whether or not a party is a perpetrator of domestic violence. Individuals may have some of these characteristics and not act in abusive ways. Obviously, only by evaluating the facts of the case and hearing evidence of the behavioral pattern associated with domestic violence can we determine if it occurred and who the perpetrator is. However, knowing some of the following issues related to domestic violence perpetrators can assist in fact-finding, decision-making, and determining how the court can intervene most effectively.

A. Perpetrators of Domestic Violence Can Be Found in All Age, Racial, Socioeconomic, Educational, Occupational, Personality, and Religious Groups

1. Perpetrators are a very heterogeneous population whose primary commonality is their use of violence. Also, there is no specific personality diagnosis for domestic violence perpetrators. While there is a great deal of discussion in the literature about the psychological profile of batterers, especially as it relates to predicting outcome in their relationships, it is premature to offer personality profiles for abusers.³⁷ There appear to be clusters of personality characteristics for different abusers just as there are clusters of personality characteristics for non-abusers.³⁸ The literature suggests that there may be different types of batterers who use different controlling tactics to different degrees.³⁹ Part of this variance may be explained by different types of batterers or by the fact that those studied are at different stages in their own histories as abusers.

2. Certain cultural groups are sometimes viewed as being more violent than others are in the United States, in spite of a lack of systematic study of this issue. Most often the question of whether there are cultural differences in the frequency or severity of domestic violence is raised regarding cases that involve persons of color or third world immigrants. The reality is that most cultures, including the white culture in the United States, have until recently been unwilling to take a stand against domestic violence. It is premature, without careful research, to say whether some individuals from some cultural backgrounds perpetrate more domestic violence than others. The tendency to view other cultures as being more violent than one's own results from a combination of factors:
 - a. The tendency to focus only on another culture's more obvious cultural supports for domestic violence without also being aware of that culture's prohibitions against it. Cultural illiteracy results in the failure to see that most cultures have a mixture of conflicting messages about domestic violence (e.g., "you never hit a woman" versus "sometimes women have to be disciplined," etc.)
 - b. The failure to acknowledge just how violent one's own culture is, and how it gives permission to and tolerates its own domestic violence.

3. Culture may influence the specific tactic an abuser may use to control the victim. For example a Christian batterer may quote scripture out of context to justify the abusive conduct and to blame the victim. Or, a gay batterer may threaten to “out” the victim in order to gain further control by intimidation. Or, a batterer may threaten a victim about immigration status or deny a victim contact with ethnic traditions.
4. Culture may also influence the resources accessible to victims and their children. Within certain cultures there is high regard for community authorities, whereas in others there is fear of government authorities. These cultural differences will effect whether or not victims will use resources of community systems or agencies (e.g., courts, police, shelters, etc.).
5. Culture may influence the intervention strategies (e.g., treatment programs) used with groups of abusers. There is a growing body of literature on culture-specific intervention approaches for batterers.^{40 41 42 43 44}
6. Just as the court would not find the values of a culture to be a mitigating circumstance in crimes such as robbery, speeding, or violence against a stranger, it should not treat domestic violence any less seriously based on assumptions regarding a particular culture’s acceptability of domestic violence.
7. The diversity of the batterers is limited only by the diversity represented in the community. Sometimes the court system as a whole, or a particular court, deals with one group more than another (e.g., a particular socio-economic class or a particular ethnic group). This may lead to some inaccurate generalizations about perpetrators or victims as courts think about perpetrators (or victims) only in terms of those cases that happen to be in that court. When the court process is accessible to all, and domestic violence issues are identified, then the diversity of perpetrators will be apparent.

B. Some Domestic Violence Perpetrators Minimize or Deny, While Others Lie about Their Violence

1. For some, minimization and denial are defense mechanisms against the psychological pain of recognizing they are abusing those they supposedly love, or those who are family to them. This kind of minimization and denial is a self-con rather than an attempt to lie to someone else. Examples of minimization or denial include: “I only hit once,” “I never hit them,” “I just put them to the floor,” “the children never saw the abuse,” etc.

2. Other perpetrators do lie, even in court, to avoid the consequences of their behavior and to maintain control of their partner. Unlike the “self-conners” who are deluding themselves, those who are lying know they are not telling the truth and are conning others. Many times batterers are looking for others to collude with them in order to establish further control over the victim (e.g., “See, even the judge agrees with me that you deserved what you got.”).

C. Perpetrators of Domestic Violence Externalize Responsibility for Their Behavior to Others or to Factors Supposedly Outside of Their Control

1. Perpetrators’ externalization is apparent when they blame others for their abusive behavior as in the following collection of offenders’ statements about their abusive behavior: “she wouldn’t listen to me,” “she’s an alcoholic,” “I have PTSD (post traumatic stress disorder),” “the cop didn’t like me,” “the Child Protective Services worker believes anything my kids say,” and “I got a women’s libber judge.” These perpetrators fail to mention their violence even though most had committed serious assaults against their partners.
2. In court, perpetrators may go into great detail to “explain” or justify their abusive behavior by focusing on the abused party’s behavior that supposedly caused their violence. Batterers attempt to keep the court’s focus off their abusive conduct by moving the focus to the victim.
3. The court can cut through a perpetrator’s minimization, denial, and/or externalization by focusing on descriptions of the perpetrator’s behavior during an incident and over several incidents, rather than on the circumstances surrounding the behavior. How and when the perpetrator acted provides more relevant information for the court, than why he or she acted, and allows for more productive fact-finding.

D. Domestic Violence Perpetrators Have a Great Need To Be in Control of Others, Especially the Abused Party

Those who batter are very controlling of situations and other people. Perpetrators often direct their behaviors in court primarily for the purpose of controlling the abused party, and secondarily to control the court process. They will use whichever tactics will work in a particular situation.

E. The Perpetrator’s High Need To Be in Control also Extends to the Children

1. Batterers tend to be highly controlling of children (see Section VI on Children). The abusers think of their children as merely an extension of themselves and are often unable to separate their needs or issues as adults from the needs and issues of the children. For example, a perpetrator who is fearful of vehicle accidents may insist that the children never ride in a car driven by someone other than one of the parents. These children can grow into their teen years never being allowed to be independent of the batterer’s control.
2. Perpetrators are often self absorbed and view others solely in terms of their own needs. Some perpetrators ignore their children and focus solely on the adult intimate, while others also focus on the children but often as a means to control the victim. Domestic violence perpetrators are often unwilling or unable to consider the best interests of the child(ren).⁴⁵

F. Domestic Violence Perpetrators Tend To Be Excessively Jealous and Possessive

Some perpetrators are very possessive of the abused party’s time and attention. They often accuse the abused party of sexual infidelity, and of other supposed infidelities, such as spending too much time with the children, with the extended family, with work, with friends, etc. With or without social networks, perpetrators see themselves as being very isolated and only able to talk to the abused party. Their jealousy is often not based on the victim’s behavior or intent, but instead is one more part of the perpetrators’ pattern of coercive control.

G. Domestic Violence Perpetrators May Have Good Qualities in Addition to their Abusiveness

Some domestic violence perpetrators may be good providers, hard workers, and good conversationalists, witty, charming, or intelligent. Sometimes both the court and the abused party are misled by these positive qualities and assume then that the violence did not really happen since only individuals who are “monsters” could commit such acts, or that the violence can be ignored because this “good” person will soon stop. The reality is that even seemingly normal and nice people may batter and may be very dangerous. Battering stops only when perpetrators are held accountable for both their abuse and for making the changes necessary to stop the violence. Battering stops when perpetrators choose to stop.

H. The Majority of Perpetrators in Domestic Violence Cases are Male, While the Abused Parties are Female

1. National crime statistics show that approximately eighty-five percent (85%) of spouse abuse victims are women.⁴⁶
2. While women sometimes use physical force against partners, it is often self-defensive violence.⁴⁷
3. Furthermore, studies indicate that while both men and women sometimes use some of the same behaviors, the effects of male violence are far more serious than female aggression as measured by the frequency and severity of injuries.⁴⁸
4. Although there seems to be a gender pattern to domestic violence, the courts must determine the primary aggressor and take domestic violence seriously regardless of who is doing what to whom.

V. The Who: The Abused Party

A. Victims of Domestic Violence Can Be Found in All Age, Racial, Socioeconomic, Educational, Occupational, Religious, and Personality Groups

Victims of domestic violence are a very heterogeneous population whose primary commonality is that they are being abused by someone with whom they are or have been intimate. They do not fit into any specific “personality profiles.” Being the abused party is the result of behaviors done by another rather than the result of personal characteristics. Consequently, just as with victims of other trauma (e.g., car accidents, earthquakes, etc.), there is no particular type of person who is battered.

B. Abused Parties May or May Not Have Been Abused as Children, or in Previous Relationships

There is no evidence that previous victimization, either as adults or as children, results in women seeking out or causing current victimization.⁴⁹ Domestic violence is under the control of the perpetrator, not the victim.

C. Abused Parties May Be Very Isolated as a Result of the Perpetrator’s Control Over the Victim’s Activities, Friends, Contacts with Family Members, etc.

1. Some of the abused party’s behaviors within the court process can be understood in light of the control the perpetrator has managed to enforce by isolating the victim, either physically or psychologically.
2. Through incremental isolation of the abused party, some perpetrators can increase their psychological control of the abused party to the point that they literally determine reality for the abused party. At first perpetrators cut the abused parties off from other supportive relationships by claims of “loving them so much and wanting to be with them all the time.” In response to these statements, the abused party initially spends ever-increasing amounts of time with the perpetrator. These tactics are replaced with more overt controls, such as verbal and physical assaults in order to separate the abused party from family or friends. Without outside contact, it becomes more and more difficult for the abused party to avoid the psychological control of the perpetrator. Even when victims maintain contact with family, friends, or co-workers, the batterer continues to undermine the support or influence of such relationships by continually undercutting and criticizing those relations (e.g., “your friend is a dyke,” “your family just wants to interfere,” “those people are trying to break up this family,” etc.). Some abused parties come to believe the perpetrator when they are told that if they left the perpetrator, they would not be able to survive alone. Others resist such distortions, but only at great emotional cost.
3. Batterers isolate and control by controlling the victim’s access to accurate information and providing disinformation. Batterers continually give misinformation to the victims (e.g., “You need my signature to file for citizenship,” etc.) and intervene to keep victims from getting accurate information (e.g., child welfare, domestic violence advocates, health care providers, legal advocates, etc.).
4. The psychological control tactics used by perpetrators are similar to those used in brainwashing prisoners of war and hostages. The more successful a perpetrator has been in isolating the abused party, the more he or she controls what the abused party believes. Breaking the isolation of the abused party requires intervening in the control that the perpetrator has imposed on the abused party.

D. Only a Minority of Abused Parties Minimize or Deny the Violence, or Rationalize it by Blaming Themselves for Making the Perpetrator Angry

1. The majority of victims does not minimize or deny the abuse. Battered victims talk directly about the domestic violence, but the community too often does not want to listen to or acknowledge what the victims are saying. Rather than confront its own barriers to accepting the truth from victims, the community ignores what they are hearing and focuses in a pejorative way on the minority of battered women who minimize the abuse in order to survive. Understanding the reasons why some battered women deny or lie about the abuse can assist the community in designing appropriate supports.
2. Victims fear the perpetrator's escalation, abuse, and control. Due to the lack of community support, some abused parties lie about the abuse against themselves, or their children, because they fear retaliation by the perpetrator. The perpetrators in these cases may have terrorized the abused party over the period of time between the assault and the time of the court proceeding in order to coerce the abused party into lying. The perpetrator may increase the violence and the threats of violence, or they may bargain with the abused party to change the story with promises that if they do, the violence will stop.
3. Victims minimize and deny the abuse due to community barriers. Sometimes the abused party lies or does not reveal the abuse because they have been told by law enforcement, lawyers, counselors, their ministers, child welfare, etc., that nothing can be done, and that only the abused party can stop the violence by changing the behavior that makes the perpetrator angry. Or, systems advise adult victims to avoid raising issues regarding domestic violence because it will be used against them (e.g., family law attorneys who advise clients not to raise domestic violence concerns or allegations of child abuse in dissolution proceedings). In such cases, the abused party has learned that the systems with the power to intervene will not act. Thus, they are forced to try to work out their own deals with the abuser in hopes of stopping the abuse.
4. Sometimes, the abused party's minimization and denial is actually a survival mechanism. For example, the abused party may block out the physical pain of assault in order to be more able to protect the children from the violence. When asked by others if they were

injured or if their spouse “hurt” them, an abused party may honestly say “no” because they have been so successful in blocking even the physical pain. Other abused parties may tell only parts of the violent episode in court because openly acknowledging what happened is too overwhelming. Or, they may not think their abuse is domestic violence because it did not result in hospitalization or life threatening injuries. This minimization or denial about parts of the abuse becomes part of surviving domestic violence and of being able to keep moving.

5. Other abused parties minimize or deny the abuse because they find it very painful to acknowledge that their husbands/partners/lovers are battering them. Violence is supposedly done by hateful strangers, not by loving intimates. For some, it is easier to acknowledge the violence done by a stranger than by a loved one. Oftentimes, the community focuses on the victim as still “loving” the perpetrator without considering the other motivators for minimizing by the abused parties.
6. Victim’s minimization and denial can be reduced by increasing safety and support. In the courtroom, the abused party’s minimization and denial of domestic violence may be decreased when she/he is encouraged to behaviorally describe what happened at specific dates and times, rather than by asking the abused party to evaluate whether or not the perpetrator’s behavior was abusive. Using questions such as “when the perpetrator got angry, what did he/she do?” or “what did he/she do next?” etc., rather than “did he/she hurt or beat you?” will often provide the court with the information (e.g., what, when, who?) necessary to ascertain the facts.

E. What May Appear at First To Be “Crazy” Behavior (i.e., wanting to return to the perpetrator in spite of severe violence, or asking for divorce only after years of abuse) May in Fact Be a Normal Reaction to a “Crazy” Situation

1. The primary reason given by victims of domestic violence for staying with the perpetrator is the realistic fear of the escalating violence. Victims may know from past experience that the violence gets worse whenever they attempt to get help. Research shows that domestic violence tends to escalate when the victim leaves the relationship. National Crime Statistics show that in almost seventy-five percent (75%) of reported spousal assaults, the partners were divorced or separated.⁵⁰ More recent research confirms the same trend of the most dangerous time for the battered woman is at separation.⁵¹ Perpetrators may repeatedly tell

the abused party that she/he will never be free of them. The abused party believes this due to past experience. When they did attempt to leave, the perpetrator may have tracked them down or abducted the children in the attempt to get the victim back.

2. It is a myth that abused parties could easily leave the relationship if they wanted to, and that the perpetrators would let the abused party leave without using violence as a way of preventing them from going. Perpetrators do not let abused parties leave their control.
3. It is a myth that abused parties stay with perpetrators because they like to be abused. Even in cases where the abused party was abused as a child, she/he does not seek out violence and does not want to be battered.

F. Many Domestic Violence Victims Who Appear Reluctant to Continue the Legal Proceedings or Who Request that Court Orders Be Rescinded Have the Same Goal as the Court: To Stop the Violence

1. Victims use various formal and informal strategies to resist the abuse

Contrary to the myth that all victims are passive and submissive, they use many different formal and informal strategies to cope with, and to resist, the abuse.

2. Communities lack of follow through

Sometimes the victims will turn to the court system for help, and will follow through on the court process, only to see that the court does not stop the violence. For example, the abused party may obtain a protective order, and then see that the existence of that order does not deter the perpetrator. This is particularly true in jurisdictions where perpetrators are rarely arrested for violations of court orders. The abused party may seek a continuation of a restraining order, or extension of the protection to children or other family members, only to be told there has not been a recent assault to justify extension of the order for a longer period of time. Or, because the perpetrator is police or military, the court is unwilling to grant the new protection order which may have consequences to employment. In such cases, the abused party sometimes re-engages in prior survival strategies of complying with the perpetrator during the court process because it often appears that the perpetrator is more in control of the process than the court is.

3. Victims looking for immediate stop to abuse

While the court can stop some violence using the legal remedies available over a period of time (e.g., no-contact orders, bail, hearings, convictions, sentence, probation), the abused party may be attempting to stop the violence immediately. Using a variety of strategies, such as agreeing with the perpetrator's denial and minimization of the violence in public, accepting promises that it will never happen again, requesting that the court terminate the protective order, not showing up for court hearings, saying that she "still loves" him, etc., the victim may be able to stop the immediate violence temporarily.

4. Trauma induced ambivalence

Sometimes victim behavior, such as being a reluctant witness or an ambivalent petitioner, is consistent with both being traumatized by violence and being a person traumatized by an intimate. People who have experienced trauma, especially multiple times, may appear inconsistent. Sometimes the way that the abused party is acting is in direct response to what the perpetrator did immediately preceding the court hearing, or has been doing throughout the relationship. The victim's safety plan and protective strategies are merely different than the ones the court may have.

5. Victim behaviors as survival behaviors

Rather than viewing the domestic violence victim's behavior as either masochistic, or crazy, or "in denial," or as indicating that there really was no violence, it should be viewed as a normal response to violence and as contributing to the adult victim's survival and the survival of the children.

G. While the Majority of Domestic Violence Victims Using the Court Process Follow Through with the Proceedings, Sometimes Some Victims Fail to Appear at Subsequent Hearings

1. Contrary to the myth of the reluctant witness, the majority of domestic violence victims follow through with the court proceedings when appropriate supports and resources are made available. When courts have high percentages of domestic violence victims not following through, the courts can remedy this by identifying and correcting the court barriers to follow through, rather than by just blaming the victims.

2. Some abused parties may fail to show up at later hearings because the police have failed to enforce the temporary order. The result is the abused party feels that a permanent order will be useless in stopping the violence.
3. Some abused parties fail to show up for hearings because either the perpetrator or others tell them that the orders will be dropped if they do not show up for the hearing. Thinking that the violence had stopped and that the order is no longer necessary, the abused party may not appear at the next hearing. In other cases, the perpetrators have intercepted the notification of hearings intended for the abused party, or threatened the victim by an escalation of violence.
4. Sometimes abused parties go to court and request that the court process stop after a temporary order is issued because the violence has temporarily stopped. They may decide that a permanent order is now unnecessary. Abused parties may be unaware that the perpetrator has merely switched tactics of control. Rather than use violence, or the threat of violence, the perpetrators are temporarily using good behavior in order to manipulate their way out of the court proceedings.

H. Barriers to Victim's Protecting Themselves and Their Children

Sometimes uninformed helpers or courts assume that victims could just leave, get a protection order, or do something to stop the violence if they just wanted to act. The reality is that there are multiple external barriers that victims have to overcome or work around in order to carry out a protective strategy. Understanding these barriers allows communities to join with victims to problem solve the barriers and safety plan, rather than continue to victim blame.

The barriers to victims taking steps to protect themselves and their children (e.g., leaving the relationship, getting a protection order, testifying in court, etc.) are multiple and vary for each abused person. The barriers include:

1. Perpetrator's escalating violence and control

Perpetrators escalate their physical and sexual assaults against victim, children, or others, as well as escalate their intimidation by stalking, attacks against property, threats to take children, false reports to Child Protective Services (CPS) or Immigration and Customs Enforcement, etc.

2. **Economic and resource barriers**

Economic barriers include lack of safe housing, income, child care, health insurance, transportation, education, and funds for lawyers, etc. The batterers often control the victim's access to resources either because they provide them (e.g., the health insurance) or because they consume the resources (e.g., gasoline for transportation) needed to support the victim and the children.

3. **Community barriers**

Community barriers include: lack of victim services, childcare, a coordinated legal response, etc.; pressures to maintain relationship from family/religious/cultural values; and victim blaming attitudes (e.g. being told by perpetrator, counselors, courts, child welfare, ministers, police, family, friends, etc. that the abuse is the victim's fault and that victims are responsible for making all the changes needed to stop the abuse).

4. **Individual barriers**

Individual barriers include ambivalence about relationship; being immobilized by psychological and physical trauma (some victims of trauma may not be able to organize everything required to separate and to establish a new life for themselves and their children, particularly during the period immediately following the trauma and while the perpetrator continues the abusive tactics).

Too often helpers focus on wanting victims to overcome the individual barriers and ignore the reality of barriers posed by the batterer and the community.

VI. The Who: The Children as Victims of Domestic Violence⁵²

In cases involving domestic violence, the children living in these homes are often the forgotten victims of domestic violence. Children do not merely witness domestic violence, but also are at risk of being victims of physical or sexual abuse by domestic violence perpetrators, and/or of being victimized by the perpetrator's use of children to control the adult victim.⁵³ The early literature in the field made note that male children of battered spouses may be more at risk to grow up to be abusers, but little attention was initially given to the immediate effects on children of the perpetrator's abusive conduct. In the 1990's, there was more focus given to these more immediate effects. Studies show that we can no longer presume that children free of physical injuries are not (nor will be) damaged physically,

psychologically, developmentally, and emotionally by the domestic violence perpetrator's conduct.

However, studies also show that we cannot presume that all children in homes, where there is intimate partner violence, experience statute-defined child maltreatment and/or neglect and should be removed from those homes.^{54 55} That over reaction puts children in danger of losing the one parent (the adult victim) who is supportive of them, and it puts them at risk of being traumatized by being separated from their home and community.⁵⁶ Current research indicates that domestic violence impacts children in a wide variety of ways.⁵⁷ The nature and extent of the damage and risk of danger to children will vary depending primarily on five factors:

1. The specific abusive control tactics used by the perpetrator
2. The impact of the intimate partner abuse on the adult victim
3. The impact of the intimate partner abuse on the child
4. A lethality assessment of the domestic violence
5. The specific protective factors in the case: the adult victim's, the child's, the perpetrator's, and the community's.

The effects of the perpetrator's conduct may be mitigated by the social supports to the child provided by the adult victim, family, other significant adults, social groups, and/or communities.

Given the widespread prevalence of domestic violence, all court cases involving children (e.g., family law, juvenile, dependency courts, as well as criminal courts) should be routinely screened for domestic violence (see section below on routine screening). If domestic violence is identified, then the routine screening should also identify the adult victim and domestic violence perpetrator. Given that there is so much variance in domestic violence impact on children, any time domestic violence is identified in cases involving children, a comprehensive assessment of the specific risk posed to children by the intimate partner violence should be conducted and made available to the court. (See section below for overview of children's domestic violence risk assessment.)

In responding to either criminal or civil domestic violence cases where children are involved, the court should consider the following information in its deliberations. (For further discussion regarding how these findings can assist the court in fact-finding and decision-making, see Chapters 11 and 12.)

A. Overlap Between Domestic Violence and Child Maltreatment

Researchers estimate that the extent of overlap, between domestic violence and child physical or sexual abuse, ranges from 30 to 50 percent.⁵⁸ Girls are five to six times more likely to be sexually abused by

battering fathers than non-battering fathers.⁵⁹ Some shelters report that the first reason many battered women give for fleeing the home is that the perpetrator was also attacking the children.⁶⁰ Adult victims report multiple concerns about the impact of spousal abuse directly on the children.⁶¹ Furthermore, the more severe and fatal cases of child abuse overlap with domestic violence.⁶²

B. Perpetrators May Physically or Psychologically Traumatize Children in the Process of Battering Their Adult Intimates

While the children may not be the specific target of the domestic violence perpetrator, domestic violence perpetrators may traumatize children in the process of battering their adult intimate partners in the following ways:

1. The perpetrator intentionally injures (or threatens violence against) the children, pets, or the children's loved objects, as a way of threatening and controlling the abused parent.
 - a. For example, the child is used as a physical weapon against the victim, is thrown at the victim, or is abused as a way to coerce the victim to do certain things; or
 - b. The children's pets or loved objects are damaged, or are threatened with damage (e.g., attacks against pets or loved objects are particularly traumatic for young children who often do not make a distinction between their own bodies and the pet or loved object). An attack against the pet is experienced by the child as an attack against the child.
2. The perpetrator unintentionally physically injures the children during the perpetrator's attack on the adult victim.
 - a. When the child gets caught in the fray (e.g., an infant injured when mother is thrown while holding the infant); or
 - b. When the child attempts to intervene (e.g., a small child is injured when trying to stop the perpetrator's attack against the victim).⁴³
3. The perpetrator uses the children to coercively control the adult victim:
 - a. Isolating the child along with the abused parent (e.g., not allowing the child to enter peer activities or friendships);

- b. Engaging the children in the abuse of the other parent (e.g., making the child participate in the physical or emotional assaults against the adult);
 - c. Forcing children to watch the abuse against the victim;
 - d. Interrogating the children about mother's activities;
 - e. Forcing the victim to always be accompanied by a child or children in order to set up surveillance of the mother's activities;
 - f. Taking the child away after each violent episode to ensure that the abused party will not flee the abuser, etc.; and
 - g. Asserting that the children's "bad" behavior is the reason for the assault on the intimate partner.
4. Assaulting the abused parent in front of the children.
- a. In spite of what parents say, children have often either directly witnessed the acts of physical and psychological assaults, or have indirectly witnessed them by overhearing the episodes or by seeing the aftermath of the injuries and property damage.
 - b. Research reveals that children who "merely" witness domestic violence may be affected in the same way as children who are physically and sexually abused.⁶³
5. Even after separation, batterers use the children as pawns to control the abused party. When the abused party and perpetrator are separated, the perpetrator's main vehicle for continued contact and control of the adult victim is through the children (whether they are the legal parents of the children or not). Consequently batterers often seek out legal control of the children in order to maintain control over the adult victims. And, courts are often reluctant to set limits on parental access to children by the domestic violence perpetrator. When adult victims have separated from batterers, without the batterers being held accountable for their abusive tactics, the batterers focus their control of the adult victims through the children. In these cases, the intent is to continue the abuse of the adult victim, with little regard for the damage to the children resulting from this controlling behavior.⁶⁴ Consequently, separation may increase, rather than decrease, the children's exposure to abusive tactics. Examples include:

- a. Using lengthy custody battles as a way to continue control over the other parent (e.g., repeated challenges to parenting plans, visitation schedules, court ordered parenting evaluations, domestic violence evaluations, etc.).
- b. Making or threatening false reports against the adult victim to Child Protective Services, ordering children not to tell the adult victim what is happening during visitation, etc.
- c. Holding children hostage or abducting the children in efforts to punish the abused party or to gain the abused party's compliance.
- d. Some visitation periods become nightmares for the children because of physical abuse by the perpetrator, or because of the psychological abuse that results when the abuser interrogates the children about the activities of the victim, etc. During visitation, some perpetrators will go into tirades about the abused party's behaviors, or will repeatedly break into sobbing because the abused party is "causing" the separation or exposing children to their abusive conduct toward new partners
- e. Insisting that the children take care of all perpetrator's emotional needs, or expecting unlimited visitation or access by telephone/email/school visits/etc. in order to avoid being alone (e.g., one perpetrator persuaded the court to order each of his two adolescent sons to stay alternate nights with him after the separation, ignoring the children's needs for time with each other or with their friends).
- f. Actively undermining the parenting of the adult victim by setting up expectations of the child to directly contradict the parenting of the adult victim (e.g., bedtimes, school work schedules, social activities, excessive indulgences). Sometimes, this takes the form of intervening in their relationships with step siblings or other family members.

C. Effects of Domestic Violence on Children

1. Consequences of the perpetrator's abuse vary according to the age and developmental stage of the child.⁶⁵

a. **Infants**

During this stage, one crucial developmental task for the very young child is the development of emotional attachments to others. Being able to make attachments to others provides a foundation for healthy development of the individual. This attachment and appropriate stimulation increases infant brain development. Domestic violence not only interrupts the infant's attachment to the abuser, but also can interrupt the child's attachment to the abused party. The perpetrator often intervenes on the abused party's care of the young child. The violence may not permit the bonding between either parent and the child. This results in the child having difficulty forming future relationships and can block the development of other cognitive, emotional, and relational skills and abilities.

b. **Toddlers 2 to 4 years old**

At these ages, toddlers are developing a separate sense of self and agency ("No" and "Me do."). The perpetrator's abuse of the adult victim may interfere with the toddler's separation, and contribute to anxious attachment to either parent and/or interrupt learning to do tasks for oneself.

c. **Children 5 to 10 years old**

The primary tasks of children at this age are problem-solving development and cognitive development. The perpetrator's violence and pattern of control can impede or derail both of these tasks. For example, a child may have difficulty learning basic concepts in school because of her or his anxieties about what is happening at home.

d. **Teenagers**

The central developmental task of teenagers is becoming autonomous and developing relationships. This partly occurs as teens separate from their relationships with parents and establish peer relationships. Often, the learning from family relationships is duplicated in peer relationships. Consequently, for teens who are coping with the domestic violence perpetrator's abuse against the other parent, there are no positive models within the family for learning the relationship skills necessary for establishing mutuality in healthy adult relationships (e.g., listening,

support, non-violent problem-solving, compromise, respect for the other, acceptance of differences, etc.).

2. The negative effects of the perpetrator's abuse in interrupting childhood development may be seen immediately in cognitive, psychological, and physical symptoms, such as:⁶⁶
 - a. Eating/sleeping disorders;
 - b. Mood-related disorders, such as depression or emotional neediness;
 - c. Over-compliance, clinging, withdrawal;
 - d. Aggressive acting out, destructive behavior;
 - e. Detachment, avoidance, a fantasy family life;
 - f. Somatic complaints, finger biting, restlessness, shaking, stuttering;
 - g. School problems; and
 - h. Suicidal ideation.
3. The children's experience of domestic violence also may result in changes in perceptions and problem-solving skills, such as:
 - a. Young children incorrectly see themselves as the cause of the perpetrator's violence against the intimate partner.
 - b. Children using either passive behaviors (withdrawal, compliance, etc.) or aggressive behaviors (verbal and/or physical striking out, etc.) rather than assertive problem-solving skills.
4. There also may be long-term effects as these children become adults.
 - a. Since important developmental tasks are interrupted, these children may carry these deficits into adulthood. They may never recover from getting behind in certain academic tasks or in interpersonal skills. These deficits impact their abilities to maintain jobs and relationships.
 - b. Recent research indicates there are long-term health effects from experiences of family violence during childhood.⁶⁷
 - c. Male children in particular are affected and have a high likelihood of battering intimates in their adult relationships.⁶⁸

5. Sometimes, the children do not wait to become adults before using violence themselves (e.g., against the victim, the abuser, their peers, other adults, etc.). The following cases illustrate the influence of domestic violence on children's violence.
 - Two sons witness long-term violence of father against mother. One son attacks mother; second son kills his brother, defending mother from brother's attack.
 - Child attacks mother while they are residing in shelter for battered women.
 - Child kills father as he attacks mother.

D. Promising Practice: Routine Screening for Domestic Violence in Court Cases Involving Children^{69 70}

1. Given the prevalence of domestic violence and its potential impact on both children and the legal issues before the court, all legal cases involving children should be screened for domestic violence.
2. If domestic violence is identified, then screening should also identify the domestic violence perpetrator and the adult victim in the case.
3. Given that domestic violence is potentially lethal and is an issue of power and control, unidentified domestic violence in court cases involving children often results in the court having inadequate information to decide the issues before it that are vital to the children (e.g., protective orders, parenting plans, and dependency issues). Consequently, routine screening for domestic violence increases the likelihood that domestic violence will be identified in a timely manner, and the issues before the court can be considered in light of the domestic violence (as well as other co-occurring issues).
4. All personnel involved in these cases (Attorneys General, Prosecutors, Family Court Personnel, Family Law Attorneys, Guardians ad Litem (GALS), Court Appointed Special Advocates (CASA), Custody Evaluators, Child Welfare workers) should have specialized training in screening protocols in order to carry out screening in a way that promotes safety for the children and for the adult victim.⁷¹

E. Promising Practice: Assessment of the Specific Risks to Children Posed by the Domestic Violence (See Appendix B Assessment Protocol)

Once domestic violence is identified in court cases involving children, a specific assessment should be conducted to assess the risks posed to children by the domestic violence. There is too much variance in impact of domestic violence on children to attempt to render findings without knowing the specifics of the domestic violence pattern, its impact on the children, its impact on the adult victim, the lethality assessment, and the protective factors in the individual case. This assessment should include information about, and a consideration of, the following:

1. Detailed description of the pattern of abusive conduct.

Risk to children cannot be determined without gathering information about the entire pattern:

- Physical assaults,
- Sexual assaults,
- Psychological assaults,
- Economic coercion, and
- Use of children to control the adult victim.

2. Detailed description of the impact on the adult victim:

- Medical and mental health,
- Employment,
- Housing, and
- Family/social relationships.

3. Detailed description of the impact on the child:

- Medical and mental health,
- Child care,
- Housing,
- Schooling,
- Social/family relationships,
- Parenting by adult victim, and
- Parenting by the perpetrator.

4. **Lethality assessment (See previous section on lethality factors to consider)**

A lethality assessment should also be conducted as part of the comprehensive assessment of risk posed to children by the domestic violence. When there is a history of domestic violence, some children are at risk of injury, death, or psychological harm. Some even become at greater risk during legal proceedings or post-separation of the perpetrator and the adult victim.

5. **Description of protective factors⁷² found in**

a. The adult victim

Battered parents go to great lengths to protect children, only to have their efforts labeled as “failure to protect” (e.g., when complying with batterers in order to protect their children, or when heeding the divorce attorney’s advice not to report their concerns to CPS), or as “making false accusations to get a better deal in divorce proceedings” when calling the police after being attacked by their abuser following separation. Battered parents demonstrated a wide range of protective strategies: teaching child to hide during the violence, sending children to stay with friends, fleeing communities, getting protection orders, etc. These often go unrecognized as protective factors by evaluators, or they are mis-identified as poor parenting or as “failure to protect.” Too often, evaluators use the batterer’s continued abuse of the adult victim as evidence of failure to protect the children, when in fact the continued contact may indicate the failure of the community to protect the adult victim and the children. Evaluators need to carefully assess adult victims for help-seeking behaviors and for protective factors, both formal and informal, and give appropriate weight to the multiple ways battered parents nurture and protect children in the midst of domestic violence.⁷³

b. The children themselves

The children, because of age and skill may be able to engage in self-protection, and they may have relationships with the adult victim or others that promotes their resiliency.

c. The perpetrator

When batterers accept full responsibility for their conduct and for changing it, and can understand the damage to the children, they have the basis for rebuilding healthy relationships with the children. They may have employment, willingly respect court orders, support the parenting of the adult victim, and participate in programs for batterers. All of these would be considered protective factors.

d. The community

Does the community have adequate child care services, support programs for abused parties, intervention programs for batterers, prompt law enforcement response to violations of court orders, etc.? All of these community services are protective factors for children in homes where there is domestic violence.

6. **Specialized training in assessing domestic violence**

All personnel involved in these cases (Attorneys General, Prosecutors, Family Court Personnel, Family Law Attorneys, Guardians ad Litem (GALS), Court Appointed Special Advocates (CASA), Custody Evaluators, Child Welfare workers) should have specialized training in what an appropriate domestic violence assessment of risks posed to children should contain. Those responsible for conducting the assessments (GALS, Child Welfare Workers, CASA, Mental Health Professionals, Child Custody Evaluators) should have additional training on domestic violence assessment protocols, in order to conduct assessments that promote safety for the children and for the adult victim.⁷⁴

F. Need for Specialized Training on Domestic Violence and Children: Identification and Assessment

1. The issues related to children and domestic violence are complex, and the expertise and research about these issues is emerging. Oftentimes, the courts rely on the input of professionals to make decisions in these complex cases. Unfortunately, few Family Court Services staff, Guardians ad Litem (GALS), Court Appointed Special Advocates (CASA), Child Protective Services (CPS) Social Workers, or even professional custody evaluators have the specialized training necessary for identifying domestic violence, and for evaluating its impact on parenting and on

children. Too often, these professionals are relying on concepts and research based on families without identified domestic violence.

Domestic violence has some unique effects on families and requires specialized assessment and interventions to be effective in maintaining the safety and well-being of the children and the adult victim.⁷⁵ Consequently, applying “high conflict” family research, concepts of “parental alienation syndrome,” or “failure to protect” to families with domestic violence endangers the children, as well as the battered parent.

2. Specialized training should be required not only for judges and for commissioners, but also for lawyers and any professional providing evaluations to the courts in these cases.
3. The courts should work collaboratively with other community agencies to review policies and procedures, and ensure that they are keeping up with the current expertise in this field.

G. This Specialized Assessment Should Be the Basis for Recommendations for Court Orders Involving Domestic Violence and Children, Parenting Plans, and Dependency Decisions⁷⁶

The safety and well-being of the children exposed to domestic violence are increased as the courts direct their efforts to:

1. Increasing the safety of the adult victim and the children

If the information indicates either the children or adult victim is in danger of physical harm, then the court should seek to increase the safety of both. It should not assume that the children are not in physical danger simply because there was not evidence of physical harm in the past. There have been a number of cases where children were killed or harmed for the first time during or immediately following legal proceedings. The violence had been directed at the adult victim in the past, but when it appears that the adult victim is no longer under their control, some batterers will direct their violence against the children.

2. Respecting the autonomy of the adult victim

Batterers want to maintain power and control over the victim even if separating or divorcing. They will often seek arrangements through the children, as a means of maintaining that power and control, by requesting certain parenting or custody arrangements.

These arrangements are very detrimental to children because the perpetrator's focus remains on the control of the adult victim and not on the best interests of the children. Consequently, when there is a history of domestic violence, parenting plans should limit the batterer's ability to control the adult victim through the children (e.g., granting sole decision making to the adult victim, having clear visitation schedules where contact between the two parties is limited, clear child support expectations with payments going to support enforcement, etc.).

3. Holding the domestic violence perpetrator, not the victim, responsible for both the abuse and for stopping it

Domestic violence perpetrators harm children, either directly or indirectly, when battering the other parent. It is important for the children's safety and well being that the perpetrator's responsibility for being abusive, and for changing the behavior, is made clear. Both parenting plans and child welfare service plans that require batterers to successfully complete a batterer's intervention, and/or to follow other restrictions, are useful in clarifying the batterer's accountability, not only for the batterer as a parent, but also for the children. It is a very confusing message to children to be placed in parenting plans which force contact with domestic violence perpetrators who take no responsibility for what they did to the other parent and for its impact on the children. It further complicates the matter for children when the parenting plans or service plans subtly, or not so subtly, place blame for the abuse on the non-offending parent.

VII. The Who: The Community as Victim

A. Domestic Violence Ripples Out into the Community as the Perpetrator's Violence Also Results in the Death or Injury of Those Attempting to Assist the Victim or Those Who Are Innocent Bystanders

Examples of the tragic consequences of domestic violence to the community can be seen on a daily basis in newspapers across the country as they recount the latest homicide of an ex-spouse, current partner, their children, innocent bystanders, as well as those who attempt to intervene in the violence. Although often not identified by the media as "domestic violence" homicides, these cases often have a history of abusive and controlling behavior by one party against the other. For example:

- In California, a domestic violence perpetrator kills the victim, his daughters, and several of the victim's co-workers, as well as a police officer.
- In New York, a nightclub is burned down by the boyfriend of an employee, resulting in numerous deaths of patrons inside.
- In Colorado, a lawyer is shot in court by a domestic violence defendant.
- In Washington, a lawyer is killed by the husband of a client he was defending in a custody case where domestic violence was alleged.
- In Washington, a domestically violent perpetrator kills his wife and her two female friends as they wait in the courthouse for the judge's decision in an annulment hearing.
- In Washington, a police chief kills his wife and himself in front of their two children.

B. The Financial Cost of Domestic Violence to the Community in Terms of Medical Care, Days Missed from Work, Response of the Justice System is Phenomenal

A study conducted at Rush Medical Center in Chicago found that the average charge for medical services provided to abused women, children, and other people was \$1,633 per person per year. This would amount to a national annual cost of \$857.3 million.⁷⁷

From 1987 to 1990, crime cost Americans \$450 billion a year. Adult victims of domestic violence incurred 15 percent of the total cost of crime victims (\$67 billion).⁷⁸

C. The Cost to the Community in Lost Lives and Resources as a Constant Reminder that Domestic Violence is Not a Family Affair and it is Not a Private Affair. It is a Community Affair Demanding a Community Response

VIII. Impact of Domestic Violence in Criminal and Civil Courts

A. Domestic Violence in Criminal Court Proceedings

Domestic Violence appears in criminal courts in a wide variety of ways.

1. The perpetrator of domestic violence is the defendant, and the victim is a witness. As cited previously in Section II, the perpetrator of domestic violence may commit a wide variety of crimes in the process of abusing and controlling the victim. These may be either felonies or misdemeanors. However, in

understanding the perpetrator's and victim's behaviors, it is helpful to the court to consider the specific charges in light of what is known about the dynamics of domestic violence. For example, how a domestic violence victim responds to the perpetrator's arson is both the same and different than how a victim of arson responds to a stranger doing the same criminal act.

2. The domestic violence victim may be the defendant in a criminal case. The victim may be charged with crimes when she has used physical force to defend herself and the children. The domestic violence victim may be the defendant if she has been coerced into illegal behavior by the domestic violence perpetrator.⁷⁹ An understanding of the domestic violence dynamics can assist the court in its decision-making.
3. The children experiencing domestic violence may be either victims, witnesses, or defendants in criminal cases. A child may have witnessed the domestic violence, may have been victimized by the violence, or may have used physical force to protect a family member from domestic violence, or a child may have become a perpetrator or victim in his/her own adolescent relationships. Once again, an understanding of the dynamics of domestic violence can assist the court in its proceedings.

B. Domestic Violence Appears in a Wide Variety of Ways in Civil Proceedings

1. Abused party seeks dissolution of marriage and rehabilitative compensation.
2. Abused party seeks temporary protection order, protection order, or modification of a protection order.
3. Abused party seeks restraining order during divorce proceedings due to continued harassment by the abuser at place of employment, at children's school, and/or at homes of family members.
4. Abused party seeks compensation for physical and psychological damage caused by abuser in lengthy marriage.
5. Abused party seeks supervised and limited visitation until abuser successfully completes treatment program for batterers.
6. Abused party seeks change in marital property settlement entered under coercion of the perpetrator.

7. Abused party seeks sole decision-making and primary residential custody of children in order to reduce control of the batterer, and as way to improve batterer's focus on the children.
8. Abuser asks for changes in parenting plan as way to maintain access to and control over the abused party.
9. Termination of the abuser's parental rights is sought as a result of physical abuse of the children.
10. Termination of the abused party's parental rights is sought as a result of failure to protect the children from the perpetrator's abuse.

C. The Perpetrator's Controlling Behavior during Criminal and Civil Court Proceedings

Domestic violence perpetrators often attempt to control the court process as a means of showing the abused party that the perpetrator, not the judge, is in control of the legal process. Perpetrators of domestic violence become very adept at using the legal system as one more tactic of control against the victim.

1. Physical assaults or threats of violence against the abused party and others inside or outside the courtroom, threats of suicide, threats to take the children, etc., in order to coerce the abused party to change the petition or to recant previously given testimony.
2. Following the abused party in or out of court.
3. Sending the abused party notes or "looks" during proceedings.
4. Bringing family or friends to the courtroom to intimidate the abused party.
5. Long speeches about all the abused party's behaviors that "made" the perpetrator do it.
6. Statements of profound devotion or remorse to the abused party and to the court.
7. Requesting repeated delays in proceedings; dragging out parenting plan proceedings over two to three years.
8. Requesting changes of counsel, or not following through with appointments with counsel.

9. Intervening in the delivery of information from the courts to the abused party, so that the abused party will be unaware of when to appear in court.
10. Requesting mutual orders of protection as a way to continue control over the abused party and to manipulate the court.
11. Continually testing limits of visitation/support agreements (e.g., arriving late or not showing up at appointed times and then, if the abused party refuses to allow a following visit, threatening court action).
12. Threatening and/or implementing custody fights to gain leverage in negotiations over financial issues.
13. Enlisting the aid of parent rights groups to verbally harass abused party (and sometimes courts) into compliance.
14. Using any evidence of damage resulting from the abuse as evidence that the abused party is an unfit parent (abused party's counseling records, etc.).

D. Courts Can Intercede in the Perpetrators Controlling Behaviors in the Courthouse

1. Ensuring that a safe place is available in the courthouse for abused parties to wait until their case is called; having courthouse security procedures, such as metal detectors, etc.
2. Calling domestic violence cases as early as possible on the court calendar or having a calendar, that is solely for domestic violence cases.
3. Ensuring that any statements made from the bench indicate that the court takes evidence of domestic violence seriously in the cases before it.
4. Using court policy to assure the safety of the abused party by ordering the alleged abuser to remain in the courtroom until the abused party has left the building.
5. Ordering the court security person, if requested, to accompany the abused party to transportation.
6. Intervening where appropriate on the economic coercion of the batterers.

7. Intervening, where appropriate, when batterers use the children to control and abuse the adult victim.
8. Holding the batterer, not the victim, responsible for following the court orders.

IX. Conclusion

Domestic violence cases present unique challenges for the courts. These cases can be handled more effectively and efficiently if fact-finding and decision-making are based on an understanding of both the societal and familial context in which domestic violence occurs and is reinforced.

The criminal and civil court systems' response to domestic violence must be part of a coordinated community effort to end the devastating consequences of violence within the family. Criminal and civil court judges can play a powerful role in a coordinated response by:

- **Holding perpetrators, not victims, of domestic violence accountable for stopping their abusive conduct;**
- **Ensuring that victims have access to the justice and protection of the courts; and**
- **Considering both the short-term and long-term damaging effects of the perpetrator's abuse in their decision-making.**

¹ This chapter has been adapted from other chapters written by this author in the following publications: *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases: A National Model for Judicial Education* (1991), *Domestic Violence in Civil Court Proceedings: A National Model for Judicial Education* (1993), *Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* (1995), *Domestic Violence: A National Curriculum for Family Preservation Practitioners* (1995), *Domestic Violence: A National Curriculum for Child Protective Services* (1996) (San Francisco, CA: all published by The Family Violence Prevention Fund); and in the *Domestic Violence Manual for Judges*, Vol. I and Vol. II (Olympia, WA: published by the Office of the Administrator for the Courts, 1992, 1993, 1997, and 2001).

² Example of such research: J. Silverman, A. Raj, L. Mucci and J. Hathaway, "Dating Violence Against Adolescent Girls and Associated Substance Abuse, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality," *Journal of the American Medical Association* 286, no. 5 (2001): 572-579.

³ E. Pence and M. Paymar, *Criminal Guide for Policy Development* (Domestic Abuse Intervention Project, 1985).

⁴ S. Schechter and J.L. Edleson, *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* (Reno, Nevada: The National Council of Juvenile and Family Court Judges, 1999).

⁵ *National Consensus Guidelines on Identifying and Responding to Domestic Violence Victimization in Health Care Settings* (San Francisco, CA: The Family Violence Prevention Fund, 2002).

⁶ For the purposes of this manual, masculine pronouns are sometimes used when referring to perpetrators of domestic violence, while feminine pronouns are sometimes used to reference adult victims. This is not meant to detract from those cases where the victim is male or the perpetrator is female. This pronoun usage reflects the fact that the majority of domestic violence victims are female and perpetrators are male. The United States Department of Justice estimates that 95 percent of reported assaults on spouses or ex-spouses are committed by men against women. H. Douglas, "Assessing Violent Couples," *Families in Society* (November 1991): 525-535. This pattern has continued in repeated surveys, such as *Intimate Partner Violence and Age of Victim, 1993-99* (Bureau of Justice Statistics Special Report, United States Department of Justice, October 2001). There are no prevalence figures for domestic violence in gay and lesbian relationships, but experts (Lobel, 1986; Renzetti, 1992; Letellier, 1994) indicate that domestic violence is a significant problem in same sex relationships, as well. Consequently, there are some examples in the manual specific to gay and lesbian or heterosexual relationships, while other examples can be found in all intimate relationships.

⁷ B. Hart, "Battered Women and the Criminal Justice System," *American Behavioral Science* 36 (1993): 624-38.

⁸ Barrie Levy, ed., *Dating Violence: Young Women in Danger* (1991).

⁹ In Washington, individuals 16 years or older come within the scope of both [RCW 26.50](#) (orders for Prosecution of Domestic Violence Offender) and [RCW 10.99](#) (criminal provisions concerning domestic violence).

¹⁰ G. Margolin, L. Gleberman, J. John and T. Ransford, *Interpersonal Factors Associated with Marital Violence* (paper presented at the Third National Family Violence Research Conference, University of New Hampshire, Durham, 1987).

¹¹ D. Saunders, "When Battered Women Use Violence: Husband-Abuse or Self-Defense?" *Violence and Victims* 1, no. 1 (1986): 47-60; L. K. Hamberger and T. Polente, "Counseling Heterosexual Women Arrested for Domestic Violence: Implications for Theory and Practice," *Violence and Victims* 9, no. 2 (1994): 125-37.

¹² D. Saunders and A. Browne, "Domestic Homicide," *Case Studies in Family Violence*, ed. R. Ammerman and H. Michel (1991); M. Wilson and M. Daly, "Til Death Do Us Part," in *Femicide: The Politics of Woman Killing*, ed. J. Radford and D. E. Russell (1991).

¹³ P. Letellier, "Gay and Bisexual Male Domestic Violence Victimization: Challenges to Feminist Theory and Responses to Violence," *Violence and Victims* 9, no. 2 (1994): 95-106; K. Lobel, ed., *Naming the Violence: Speaking out about Lesbian Battering* (1986); C. Renzetti, *Violent Betrayal: Partner abuse in lesbian relationships* (1992).

¹⁴ P. Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (National Institute for Justice, United States Department of Justice, and the Center for Disease Control and Prevention, November 2000).

¹⁵ *Crime in Washington 2005 Annual Report* (Washington Association of Sheriffs & Police Chiefs and the Washington State Criminal Justice Training Commission, 2005).

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- ¹⁶ Michel R. Rand, "Violence-Related Injuries Treated in Hospital Departments," *Bureau of Justice Statistics, Special Report* (Washington, DC, United States Department of Justice, August 1997).
- ¹⁷ M. Durose, C. Wolf Harlow, P. Lanagan, M. Motivans, R. Rantala, E. Smith and E. Constantin, *Family Violence Statistics Including Statistics on Strangers and Acquaintances* (Bureau of Justice Statistics, United States Department of Justice, June 2005)
- ¹⁸ C. Warshaw and A. Ganley, *Improving Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* (San Francisco, CA: Family Violence Prevention Fund, 1995).
- ¹⁹ A. Coker, P. Smith, L. Bethea, M. King and R. McKeown, "Physical Health Consequences of Physical and Psychological Intimate Partner Violence," *Archives of Family Medicine* 9 (2000).
- ²⁰ J. Campbell, "If I Can't Have You No One Can: Power and Control in Homicide of Female Partners," *Femicide: The Politics of Women Killing*, ed. J. Radford and D. Russell (1992).
- ²¹ Research on battered women who kill has found no distinguishing characteristics between battered women who kill and those who do not. The only differences found in comparing these two groups of battered women were found in their batterers (the men who were killed had been more violent against the victim, as well as the children, than those who were not killed). A. Browne, *When Battered Women Kill* (1987).
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