

What Issues Arise for Woman Abuse Survivors and Their Children during the Family Court Process?

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“The presence of domestic violence within a custody dispute demands a different analysis and distinct interventions by judges, policymakers, and mental health professionals.”

Dr. Peter Jaffe*

A variety of issues arise for victims of domestic violence in family law cases. While it is recognized that men can be the victims of domestic violence and that violence can occur in same-sex relationships, these comments focus on the more common form of male violence against intimate female partners.

It is not uncommon for an abusive man to continue or escalate abuse upon separation, including using the family court process and access visits as vehicles to control and harass his partner. Not only do abused women face an increased threat of physical abuse as they defy the control of the abuser and leave him, but they also often face enormously stressful demands such as attempting to negotiate safe and manageable custody arrangements, attempting to live on less money, dealing with the refusal of an abusive partner to leave the matrimonial home, and facing threats from the abuser that he will ensure she never obtains custody of the children. Children who have already been traumatized may be used in attempts to control the abused woman or as an excuse to have increased contact with her when she is attempting to create separation from the abuse.

Unfortunately many survivors speak of their revictimization by the very service systems designed to protect them. *“Rather than safety and healing from traumatic events, these survivors report ongoing dangers in their lives from ex-partners, and never-ending litigation that drains their financial and emotional resources.”* (Jaffe, p. 135) It is our challenge to become services that are knowledgeable about the issues and responsive to the needs of those already victimized. This is not to imply that solutions are simple or that there are unilateral responses to all cases involving domestic violence. There is a need to develop careful screening and to *“differentiate the range of domestic violence to provide measured responses and utilize appropriate resources”* (Jaffe, P. 42).

Clinical experience and research have revealed some of the following difficulties and issues that arise for woman abuse survivors and their children as they proceed through the family court process:

- Pressure to participate in joint mediation, joint custody and shared parenting arrangements with an abusive and controlling partner when the victimized spouse does not feel safe and is not in an equal power position given the partner’s use of abuse and intimidation. There is a risk of coerced settlements that further endanger the abused woman and children.

* Jaffe, P. et Al. *Child Custody & Domestic Violence – A Call for Safety and Accountability.* Thousand Oaks, CA: Sage Publications, 2003, p. viii.

- A court system that emphasizes the notion of “friendly parents” when an abused woman needs separation from the abuser to maintain emotional and/or physical safety.

- Fears for children's safety – in some situations mothers having to force children to go on access visits, even when they are frightened and crying, so that they are not defying orders or seen as uncooperative by the court.
- An abusive partner who attempts to obtain custody of the children as a way to continue abuse and control.
- An abusive partner who uses custody and access arrangements to continue to harass and control i.e. changing times and dates of access visits unilaterally with no consultation; returning children late or not returning them; not showing up for access visits; not returning clothing or needed items with the children, etc. *“Decisions about schools, medical care, extracurricular activities, and religion may become an extended battleground.”*(Jaffe, p. 14)
- An abusive partner who blames the victim in front of the children, accusing the mother of breaking up the family without any acknowledgement of her right to a safe and secure environment, or who interrogates children about their mother's activities and personal life. *“Many batterers engage in alienating and blaming behaviour and openly communicate this to the children.”* (Jaffe, p. 31)
- An abusive partner who uses access visits to have contact with the abuse survivor, pressuring her to reconcile or continuing verbal or even physical abuse.
- Children's fears. *“Children may be frightened by their parents being at the same place (e.g. school play, pick up or drop off from a visit) even if there is not violence or threat of violence.”* (Jaffe, p 29) *“Fear for their mother's safety is an ongoing concern.”* (Jaffe, p. 30)
- Supervised access or supervised drop-offs for access visits done by the abusive man's parents or current girlfriend who may be supportive of the abusive man and in denial of his abuse.
- Supervised access that moves quickly to unsupervised and increasing access with no assessment or consideration of the degree to which an abusive partner has changed.
- An abusive partner who can present himself as charming and co-operative in specific situations but who continues to abuse and harass the victim, while she presents as fearful and distraught. *“Some batterers incessantly remind their spouse that their charm, believability, or tenacity will successfully convince the court of their superiority in family court proceedings.”* (Jaffe, p. 18)
- Proceedings in which judges, lawyers, and abusive spouses overemphasize the possibility that false allegations are being used to further custody claims.
- Financial pressure due to delaying tactics of the abuser – his refusal to sell the matrimonial home, refusal to respond to legal offers, delay in providing financial information, etc.
- Endless court motions by the abuser, incurring costs in legal fees until the victim is worn down or financially unable to continue.
- Obsessive and/or stalking behaviour of the abuser (i.e. constant phone calls, appearing at victim's workplace) not addressed as an important factor in the family court process
- Relying on Legal Aid and running out of coverage given the length and complexity of the proceedings; having no representation other than duty counsel; difficulty finding a lawyer who will accept legal aid.
- Understanding and responding to complicated legal matters (as Jaffe calls it, the “legal labyrinth”) while managing fear that the abuser will carry out his threats and dealing with traumatized children.

- Extreme fear about a man who is “only” emotionally abusive but who is becoming erratic and dangerous.
- Fear about extreme outcomes. *“At the extreme end of the continuum of domestic violence cases are ones in which credible threats of abduction and homicide take place.”* (Jaffe, p. 32)
- Children who want to stay with the abuser to continue to live in the family home, have access to financial resources, take care of their father, or who are impressed by the power of the father. *“No court should accept a child’s desire to live with an abusive parent.”*(Jaffe, p. 56)
- Child Welfare Legislation that is applied in ways that battered women feel penalized - living with the threat or the reality of having children removed; having to prove their parenting when it was never in question previously; living under supervision orders from the Children’s Aid Society; dealing with workers who blame the abused woman for the abuse and not leaving earlier.

Myths about Domestic Violence That Can Affect the Family Court Process:

- **Abused women can simply put the past behind them while negotiating family court issues.**
“With a history of domestic violence, professionals cannot instruct or advise parents simply to put the past behind them. These situations require a careful evaluation of the violence including the possibility that one parent may pose a significant threat to the other parent and the children. It is unreasonable to expect a parent who has experienced physical, sexual and/or psychological abuse at the hands of the other parent to negotiate custody and visitation agreements when fear is the overriding emotion.” (Jaffe, p. 3)
- **A man is only abusive to his wife. It doesn’t affect his abilities as a parent.**
“As long as parents did not directly abuse their children, little consideration was given to the impact of spousal violence on child adjustment. In our view, batterers, by the very nature of their behaviour, cannot be good parents. Modelling violence as a means of resolving conflict and illustrating ways of controlling and humiliating another parent are not acceptable. When parents socialize their children into violence and sexism, the whole community suffers in the long run. (Jaffe, p. 155) “The family is the fundamental unit of children’s socialization. Children learn powerful lessons from their parents including how to resolve conflict and how to cope with having their needs frustrated. ... When children witness one parent inflicting abuse on the other, or using threats of violence to maintain control within a relationship, seeds are planted that may result in the cycle repeating itself. If a father believes that he is the king of the castle and the children’s mother is his servant, lessons on sex-role expectations are being passed on to the children.”
(Jaffe, p. 30-31)
- **Joint custody is the best arrangement so children can have access to both parents.**
“An essential principle from the high-conflict divorce area is that joint custody and shared parenting plans are not viable resolutions. One of the most renowned authors in

the field, Dr. Janet Johnston, has written extensively about the specialized needs of high-conflict families. She suggests that any notion of joint custody be abandoned and replaced with very clear custody and visitation plans, limiting the parents' opportunity for renewed hostilities that would compromise children's post-separation adjustment. Flexibility in the plan is viewed as fanning the flame for ongoing conflict. In these cases, the custody and visitation plans must not only consider the developmental needs of the children but also the nature and severity of the parental conflict. Increased severity calls for decreased flexibility. Visitation plans must safeguard both the mother's and the children's physical well-being. Recommended interventions include supervised transfers, less frequent visitation, and exchanges in neutral places such as schools to avoid parental contact. ...At the same time, there are special considerations involved in high-conflict custody cases in which domestic violence is present. In some of these cases, it may be appropriate to require supervised visitation or no visitation at all."(Jaffe, p. 15)
"Courts in these cases seem unaware of how much co-operation is required to create and sustain a joint custody arrangement." (Jaffe, p. 113)

- **Once the separation occurs, the abuse ends.**

"Separation is not a vaccination against domestic violence. To the contrary, physical abuse, stalking, and harassment continue at significant rates post-separation. National research in Canada has suggested that for approximately one quarter of abuse victims, the violence became more severe compared with pre-separation violence.(Statistics Canada, 2001) ... Visitation can be used by batterers as an opportunity to further abuse their former spouse. In a Canadian study (Leighton, 1989), one quarter of the women reported that their lives were threatened during visitation." (Jaffe, p. 29) "58% of male offenders perpetrated violence against their new partners after the dissolution of a previously abusive relationship." (Jaffe, p. 32)

- **Batterers can easily change their behaviour.**

"Some judges appear overly confident that violent men can transform into good fathers by attending an anger management group. Their confidence is such that some judges are inclined to award generous access on the assumption that change is an inevitable outcome of participation in a treatment program, such as anger management or alcohol abuse intervention programs. This optimism is simplistic, and, in some cases, dangerous." (Jaffe, p. 57) "These cases are a special challenge for judges who, in their compassion for fathers, may compromise children's safety out of a genuinely held belief that children benefit from a relationship with their parent no matter how abusive they may appear. Judges also hold naïve beliefs about how quickly batterers can change their behaviour and interaction style. In the absence of overwhelming evidence of abuse or expert testimony about abusive relationships, the courts may be swayed by the passionate pleas and promises by fathers to change their behaviours. Batterers, by their very nature, excel at misrepresenting themselves in this environment." (Jaffe, p. 16)

We need to improve our ability to assess whether an abusive man has completed a designated program and to clinically assess the abuser's degree of change, including incorporating current reports from the victim. Family court decisions should reflect this information.

- **Many of the reports of abuse are false allegations to further custody claims.**

“Women who raise concerns about a violent partner in family court proceedings are unlikely to be believed because lawyers and judges tend to overemphasize the possibility that false allegations are being used to further custody claims. Certainly there is the possibility that false allegations are being lodged; however, much more common are false demands by actual perpetrators of violence. The overwhelming evidence is that victims of domestic violence are more likely to cover up, minimize, and deny their abusive experiences than to lodge false allegations. Yet genuine batterers routinely denounce their accuser and commonly retaliate with accusations that their partners are actually the aggressors, are unfit, or are systematically brainwashing the children.” (Jaffe, p. 17)

▪ **The myth of the “friendly parent’.**

“At times, the statutes requiring courts to take domestic violence into account conflict with other statutes that give preference in custody decisions to the parent most likely to allow or encourage “frequent and continuing contact” with the other parent. These are usually referred to as “friendly parent provisions”, and are based on the assumption that the “friendly parent” is a better parent because he or she is fostering the relationship between the child and the other parent.

These provisions can work against an abused parent, because the batterer may appear in court to be a more “friendly” parent. The abused parent often wants to limit contact with the batterer, which may appear to judges, mediators, evaluators, and other court staff as hostility – when, in fact, it may be due to fear about her or his own safety and the safety of the children. (Jaffe, P.68)

What is Needed:

We have a great deal of work to do in providing an adequate range of services, improving training within all related services, adapting legislation to more effectively reflect increasing knowledge within this field, and developing the community coordination that is necessitated in these circumstances. As Barbara Hart states:

*“Safety is not simple. Minimally, it entails being free of violence and coercion. But safety goes well beyond and includes the ability to negotiate life’s daily challenges without having decisions intruded upon and contravened by a controlling partner. It includes the confidence that the battering parent will not dispute the routines of children. It is the freedom from public and private denigration from an abusive spouse. It is a cessation of stalking. It is the knowledge that disagreement with the child’s father will not precipitate violent retaliation.” Hart, B.J. (1998). *Safety and Accountability: The Underpinnings of a Just Justice System*. Harrisburg, PA: Pennsylvania Coalition against Domestic Violence, p.3.)*

In his book “Child Custody & Domestic Violence”, Jaffe conducts a comprehensive analysis of potential changes including a review and analysis of responses in the United States, New Zealand, Canada, and Australia.

At a minimum, we could begin by focusing on the following:

- Ensuring that we ask about domestic violence in all cases, asking specifically and in a variety of ways that support a victim to disclose.
- Treating every allegation seriously and following up with a thorough and comprehensive investigation.
- Establishing whether a history of domestic violence exists – including severity, frequency and duration of the violence (Jaffe, pp. 35 – 52, pp.157 – 162).
- Examining the impact of the violence on the victims and their children.
- Differentiating the range of domestic violence to provide measured responses and utilize appropriate resources.
- Learning to conduct or commission lethality assessments in situations where a woman is expressing extreme fear about her own or her children’s safety. (Sinclair, D. pp. 143-152.)
- Considering the impact of every intervention we make and asking whether it promotes the emotional and physical safety and well-being of an abused woman and children.
- If we are representing or working with an abusive man, understanding that we do him and his children a disservice by colluding with denial and minimization of abuse; refusing to support him in tactics that further harass and control any victims of his abuse; referring abusive men to treatment specializing in domestic violence as opposed to more general anger management groups; determining whether a man participates in treatment and adapting family court decisions to reflect the degree of change or lack of change reported by professionals experienced in domestic violence.
- Making decisions that take into consideration the previously identified concerns of victims and do not perpetuate the identified myths.
- Continuing to educate ourselves in the field of domestic violence so that we can do the above and develop informed, knowledgeable responses.

References:

Jaffe, P., Lemon, N. & Poisson, S. (2003). *Child Custody & Domestic Violence – A Call for Safety and Accountability*. Thousand Oaks, CA: Sage Publications.

Sinclair, D. (2000) *In the Centre of the Storm – Durham Speaks Out*. A Report funded by Status of Women Canada for the Project “Custody & Access Issues Affecting Woman Abuse Survivors & Their Children”. (Available: www.durhamresonsetowomanabuse.com)