REPORT FROM THE WINGSPREAD CONFERENCE ON DOMESTIC VIOLENCE AND FAMILY COURTS

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In February 2007 the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts brought together a working group of thirty-seven experienced practitioners and researchers to identify and explore conceptual and practical tensions that have hampered effective work with families in which domestic violence has been identified or alleged. Five central sets of issues were raised at the conference and are discussed in this report. These include the following: differentiation among families experiencing domestic violence, screening and triage, participation by families in various processes and services, appropriate outcomes for children, and family court roles and resources. The report emphasizes the need for continued multidisciplinary collaboration in order to better serve families affected by domestic violence and it includes an appendix of consensus points as well as suggestions for formation of ongoing work groups.

Keywords: *domestic violence*; *intimate partner violence*; *differentiation*; *screening*; *triage*; *children*; *parenting plans*; *family courts*; *multidisciplinary collaboration*

INTRODUCTION

Although domestic violence is commonly recognized as a serious and widespread problem, there is a surprising lack of agreement about its nature, causes, frequency, and appropriate legal treatment. Researchers and practitioners who work in the field come from a variety of personal and professional backgrounds and have historically viewed domestic violence from different and sometimes competing perspectives.[1] These differences have historically been fueled rather than resolved by research, which has employed a variety of definitions and methodologies and, unsurprisingly, generated a variety of findings, some flatly contradictory.[2] Acrimonious exchanges among both researchers and practitioners have tended to focus attention on contentious issues and left little room for cooperation.

Given this history, the convening of the Wingspread Conference on Domestic Violence and Family Courts is a remarkable accomplishment in itself. Recognizing that the membership of their respective organizations represented some of the contrasting perspectives described above, leaders from the National Council of Juvenile and Family Court Judges (NCJFCJ)[3] and the Association of Family and Conciliation Courts (AFCC)[4] began meeting in 2004 with the hope of opening a productive dialogue about domestic violence for the ultimate benefit of children and families.[5] As discussion progressed the two groups sought an invitation from the Johnson Foundation[6] to hold a jointly sponsored working conference on child custody and domestic violence at the Foundation's Wingspread facility.

The Wingspread Conference on Domestic Violence and Family Courts took place in February 2007. It brought together a working group of thirty-seven experienced practitioners and researchers to discuss ways to meet more effectively the needs of families experiencing

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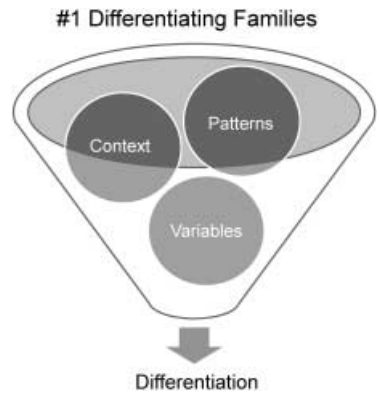
domestic violence. The participants included members of the domestic violence advocacy community; family court judges and administrators; lawyers and mental health, dispute resolution, and other professionals working in the family court system; and academics from the fields of law and social science.[7] Recognizing that much can be accomplished when professional groups communicate effectively and work in concert, the conference organizers planned for a frank and wide-ranging discussion of issues related to current practice, policy, and research.[8] At the most fundamental level, communication about domestic violence has been hindered by the fact that different professional constituencies use that term somewhat differently and use different language to identify and analyze the range of behaviors encompassed by their particular definitions. As a result, people who work in the field receive different and sometimes inconsistent messages about how to help families. Therefore, a major goal for the conference was to begin to develop a common vocabulary for, and a shared understanding of, the ways in which domestic violence manifests and its implications for families. Other goals for the working conference included an examination of the capacity of the court system to support family safety and well-being, identification of ways to improve the case handling process, and consideration of how limited resources might be allocated to and among cases in which domestic violence has been identified or alleged. Given the complex and challenging nature of these aspirations, a final goal was to generate and seek commitment from conference attendees to support specific ongoing projects growing out of the conference agenda.

IDENTIFICATION OF KEY TENSIONS

Much of the work of the conference involved identification and exploration of the conceptual and practical tensions that have hampered effective work with families in which domestic violence has been identified or alleged. Each tension can be thought of as sometimes representing differences of perspective among the various constituencies involved in that work, based on their particular experiences, roles, and priorities, while at other times involving the frank recognition that for all constituencies the work involves conflicting priorities, not all of which can be simultaneously accommodated. Open acknowledgement, discussion, and analysis of these tensions further the goals shared by all the conference participants: developing sound public policy, implementing best practices, keeping family members safe, and fostering the well-being of children caught up in the family court system and dependent on that system to help shape the environment in which they will grow to adulthood.



TENSION #1 DIFFERENTIATION: CONTEXT, CHARACTERISTICS, AND PATTERNS

Families who experience domestic violence differ from one other in significant ways. Violent behavior may range from an isolated incident to pronounced patterns that recur over time, often escalating in intensity and frequency.[9] Infrequent or occasional physical violence may or may not be accompanied by other forms of abuse, including threats, sexual coercion, verbal abuse, isolation, and financial control.[10] The level of prior physical violence may or may not be a reliable indicator of future risk or lethality. The violence may be complicated by other problems such as mental illness or substance abuse. Finally, while researchers agree that exposure to domestic violence is harmful to children's development, not all children are equally affected; there are multiple factors that influence children's well-being and contribute to decisions about their best interests.[11] Frequently the law of any given state or jurisdiction imposes a definition of domestic violence that is both under- and overinclusive and demands uniform treatment of families that fit the definition, despite growing recognition that they are not all alike.[12]

Acknowledgement of the need to differentiate among families experiencing domestic violence has profound implications for practice and policy making. Which characteristics and variables have significance? What meaning should be ascribed to them? How can they be ascertained? Who will be responsible for making those determinations? What if mistakes are made?

There was consensus among conference participants that identification of differentiating characteristics and variables is an important goal and holds the promise of facilitating more effective interventions and outcomes for families and children. However, except in the most clear-cut cases, participants were not yet ready to agree on precisely which characteristics and variables should influence the choice of particular interventions and outcomes. In addition, participants differed in their assessment of the extent to which family court systems, operating with limited resources, could implement a differentiation process with any reliability.

The Status Quo: One-Size-Fits-All

In many jurisdictions domestic violence cases, identified principally by evidence of physical violence, are handled on a one-size-fits-all basis. Increasingly, and appropriately, family courts are recognizing that parenting decisions should be made differently in domestic violence cases than in families where there is no history of violence.[13] However, once the label of "domestic violence" attaches, important differences among families are often ignored. Legal definitions of domestic violence encompass a broad range of behaviors and statutes provide little guidance with respect to distinguishing among them.[14] It is commonly assumed that, in families that have experienced at least one seriously violent incident or in which there is a pattern of physical violence, the recipient of the violence should obtain a protective order, the perpetrator of the violence should be subject to legal presumptions regarding child custody, and both partners should be prevented from using (or alternatively should be required to use) services such as mediation.[15] While such assumptions may be appropriate in many cases, their rigid application is based on the mistaken assumption that all families experiencing domestic violence are alike.

Focus on Context

There was consensus among conference participants that the impact of domestic violence depends in large part on the context in which it occurs. Identical violent acts may have

different meanings depending on the impact on the victim and the intent of the perpetrator.[16] Consider a situation where partner A slaps partner B. First imagine that when the incident takes place there is no prior history of physical violence or of other abusive behaviors between A and B. Then imagine that, although this incident is the first instance of physical violence, A has previously undermined B's efforts to seek employment, denigrated B's parenting in front of the children, and isolated B from her family and friends. Then imagine a situation where A broke B's nose the week before and A is threatening to kill B and harm their children. The act of slapping is the same in each situation but the impact and consequences are very different. As a result, judicial focus on a single violent incident without consideration of its larger context is misleading and dangerously incomplete. Failure to consider context can endanger victims, embolden perpetrators, and place children at risk.

Identification of Characteristics and Variables Useful in Differentiating Families

Practitioners and researchers agree that some defining characteristics and variables—among individuals, relationships, and situations—are particularly significant when working with families in which domestic violence has been identified or alleged. However, consensus breaks down about precisely which characteristics and variables hold significance. Without a common vocabulary to describe them, it becomes impossible to determine whether these differences of opinion are differences of language only or reflect deeper differences of perspective. Significance, in this context, is associated either with determining the level of ongoing risk posed to family members, with or without intervention, or with predicting the likely efficacy or impact of particular interventions or custody and access determinations.

There was consensus among conference participants that each domestic violence situation must be closely examined to determine the potential for lethality, the risk of future violence, and the presence of other forms of intimidation.[17] Critical variables identified by conference participants included: the frequency, intensity, and recency of the violence; the presence of sexual coercion or abuse; the existence of nonphysical coercive strategies including verbal abuse, threats, isolation, and financial control; the presence of an established history of violence, criminal activity, substance abuse, or mental health issues; the determination of "who is afraid of what"; the needs, interests and well-being of children; any history of child maltreatment; and the extent to which the violence is consistent with a recognized pattern with proven implications for ongoing risk or the utility or impact of particular interventions or determinations. Family strengths and protective factors should also be taken into account and supported.[18]

Research presented or referenced at the conference supports identification of factors related to risk that may be helpful in differentiating families and confirms the significance of many of the variables identified by conference participants. Ellis and Stuckless, for example, have tested and validated a screening instrument (DOVE) for use in the mediation setting based on nineteen statistically significant predictors of male partner violence grouped into seven categories: past violence (assault, serious physical injury, sexual assault, leaving home or calling police because of partner's violence), past abuse (emotional abuse, serious emotional injury), emotional dependency (threats to harm/kill self if partner left, threats to harm/kill partner if partner left, possessiveness or jealousy), relationship problems (hard to get along with, communication deficits, blame, anger),

mental health problems (taking medication), control (tried to control partner, used violence/abuse to control partner), and substance abuse (drinking, drugs).[19] Johnston, in a review of research on differentiation, enumerates nine indicators of acute dangerousness: threats and fantasies of serious harm, a history of violence, the availability of weapons, drug and alcohol use, high depression and rage, a history of mental illness, an obsession with or possessive attitude toward the partner, a disregard or contempt for authority, and the existence of a recent stressor.[20]

There was consensus among conference participants that additional research is needed to refine this identification and investigation of the characteristics and variables relevant to risk assessment, maintaining the safety of family members, offering appropriate interventions, and making optimal determinations with respect to custody and access.

Aggregation of Differentiating Characteristics into Patterns

Although each family experiencing domestic violence, or in which domestic violence is alleged, must be considered individually and in context, research and experience suggest that characteristics and variables significant for differentiating families may occur in clusters or patterns.[21] Lack of a common descriptive language has hindered identification of these patterns of violence and made it difficult to gauge the level of agreement about them. There was consensus among conference participants that further investigation is warranted.

Both researchers and practitioners have offered domestic violence typologies in an attempt to capture recurring patterns of domestic violence and facilitate appropriately differentiated responses.[22] Thus far, attempts to reach consensus around these patterns and their implications, or to develop a meta-framework within which to situate them, have been bedeviled by the lack of a common vocabulary. Discussions at the conference centered around the following patterns suggested by the research literature:

Violence used by a perpetrator in the exercise of coercive control over the victim. Sometimes referred to as "classic battering," this type of violence occurs when an abuser (usually male) uses force as one tactic in a larger escalating pattern aimed at intimidating and controlling the victim. Physical violence and sexual abuse are often accompanied by threats, psychological and emotional abuse, isolation of the victim, manipulation of children, and exercise of economic control.[23]

Violent resistance or self-defense. This type of violence occurs when a victim (typically female) uses violence to protect herself against a perpetrator who is using force as a part of a larger pattern of coercive control.[24]

Violence driven by conflict. This type of violence takes place when an unresolved disagreement spirals into a violent incident, but the violence is not part of a larger pattern of coercive control. It may be initiated by either the male or female partner.[25] However, female victims are more likely to suffer negative consequences, including injury, than are men.[26]

Separation-instigated violence. With this type of violence, the first violent incident occurs at the time of separation as a response to the trauma of separation on the part of an individual with no history of coercive controlling behavior.[27] Separation-instigated violence may alternatively be viewed as a subset of violence driven by conflict. However, under either approach, care must be taken to distinguish separation-instigated violence from the first violent manifestation of coercive control.

Violence stemming from severe mental illness. Some perpetrators of domestic violence evidence psychosis and paranoia, and their violence is driven by severe mental illness.[28]

Conference participants expressed strong concerns that the inappropriate use of these or other labels could potentially place families in danger, or steer them toward inappropriate interventions. In addition, to the extent that typologies draw bright lines differentiating one type of violence from another, their application is likely to oversimplify family situations which are complex and not so easily categorized in practice. Finally, without substantial expertise and experience on the part of those charged with applying the labels, they are vulnerable to manipulation and misidentification.

There was consensus among conference participants that further research and discussion is necessary to substantiate the existence of these or other patterns of violence, to develop common language to describe them, to investigate their implications, and to prevent the unanticipated negative consequences that could stem from their use. On the positive side, participants appreciated that viewing domestic violence through the lens of potential patterns provides an opportunity to reexamine fundamental assumptions and think about how different family situations could be effectively matched with selected interventions and outcomes based on risk level.

Patterns and Gender

Because of contradictory research findings, researchers have historically disagreed about the extent to which males as opposed to females initiate domestic violence. Crime studies and police-call data show much higher rates of assault by men than by women.[29] However, so-called "family conflict" studies have found nearly equal rates of assault by men and women (and also higher overall rates of assault).[30] Both groups agree that women are more likely to be injured and suffer other repercussions as a result of the violence.[31]

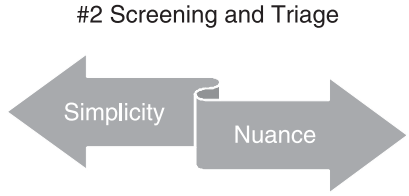
Further investigation of patterns of domestic violence could shed light on the contradictory findings. For example, Murray Straus suggests that researchers have studied different populations experiencing different types of violence.[32] Researcher Michael P. Johnson analyzed the data used in both types of studies and concluded that the crime and police-call data studies were measuring violence used in the exercise of coercive control, which is primarily perpetrated by men, and that the "family conflict" studies were predominantly measuring violence driven by conflict, which may be initiated equally by men and women.[33]

Many conference participants felt strongly that domestic violence is not gender neutral, that gender inequality underlies the violence in many families, and that family court systems must be alert to issues of gender both in the cases coming before them and in their own processing of those cases. At the same time, there was a general recognition that not every case of domestic violence is male initiated and that the ultimate obligation of the court system is to address each case on its own merits.

Summary: Need for Additional Investigation and for a Common Vocabulary

While conference participants agreed that families experiencing domestic violence differ from one another in significant ways, varying points of view were expressed concerning how to think about and explore differentiation. Recognizing that every family is unique and that each situation should be considered in context, those attending the conference expressed ongoing interest in continued efforts to identify distinguishing characteristics and

variables and explore the existence of patterns of domestic violence. All agreed that this important work would be enhanced by development of a common vocabulary to more accurately describe these phenomena.



TENSION #2 SCREENING AND TRIAGE: SIMPLICITY AND NUANCE

The first-order task of identifying domestic violence falls on those who interact with the family as it enters the court system. Conference participants emphasized that, in many jurisdictions, no person or office is specifically charged with screening for domestic violence. Further, even when a screening process is in place, cases may go undetected because domestic violence can be difficult to discern and either or both of the adult parties, for different reasons, may downplay the abuse. There was consensus among conference participants that families entering the court system should be screened for domestic violence, but less consensus about how this should be accomplished. The ideal recommended by experts is that more than one method of screening be undertaken.[34] In current practice, screening protocols can include one or more of the following: the administration of a written questionnaire,[35] the conduct of a screening interview, a check of court and public records, and continued watchfulness for evidence of domination and control.[36]

There was consensus that, when cases of domestic violence are identified or when initial screening is insufficient to confirm or rule out the presence of domestic violence, families should be individually considered and referred to appropriate services and court processes. As a part of the screening and review process for each family, risk and protective factors should be identified and mitigated or supported, respectively.[37]

Discussions of screening inevitably reproduced participants' concerns about the use of standardized differentiating characteristics, variables, and patterns in the screening process. If the focus of the analysis is on the identification of a serious incident or recurring incidents of physical violence, for example, a historic pattern of coercive control may be overlooked, and the ongoing risk to family members may not be addressed. To avoid such a circumstance, Jaffe, Crooks, and Bala recommend, and conference participants supported, a multimethod, multi-informant approach to family assessment featuring increasingly intense inquiry as higher levels of conflict and abuse are uncovered.[38] Indeed, effective screening may ultimately require use of a variety of screening tools, each developed for a specific purpose and for potential use at different stages of the proceeding. For example, while the initial focus of screening might concern lethality and safety, that initial inquiry might trigger a mental health or substance abuse assessment or a further screening to assess the appropriateness of participation in dispute resolution processes such as mediation.[39]

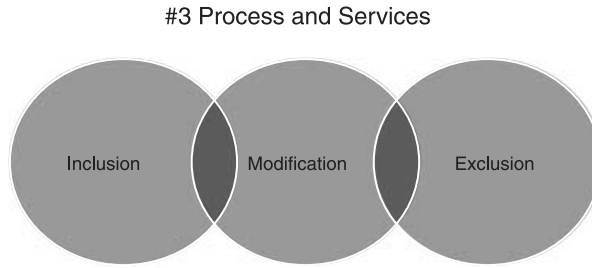
Among conference participants there was a general recognition that few screening instruments are currently aimed at differentiating among domestic violence cases and that many instruments in use in the courts have not been tested or validated.[40] One notable exception, for which participants expressed enthusiasm, is the DOVE instrument referenced above, which "links violence prevention interventions with (a) level of risk; (b) the presence of specific types of predictors; and (c) types and levels of violence and abuse" in the mediation setting. This instrument not only takes risk level and type of violence into account, but has been empirically validated by a two-year field study. DOVE integrates safety planning by recommending specific interventions linked to limitation of opportunities for abuse and consideration of the motivation of the perpetrator.[41]

Beyond the initial challenge of developing, testing, and introducing into court practice screening protocols with the proven capacity to detect domestic violence, steer families toward appropriate services, and guide judicial decision making, conference participants identified three critical additional challenges related to screening and triage.

First, screening procedures must be culturally (and socioeconomically) sensitive.[42] Unfortunately, many tools do not take culture into account and those charged with screening and triage may not be knowledgeable about cultural perspectives that are relevant both to risk assessment and to the choice of intervention or of custody or access determination. Additional research, training, and discussion is needed in this area.

Second, screening instruments must be sufficiently complex and nuanced to provide accurate information, but at the same time they must be simple enough to be administered by people with markedly different educational backgrounds and experience levels. Some court systems employ professionals who are charged with the task of screening and triage but many court systems do not have such resources available. Consequently, instruments and procedures need to be developed for effective use in a wide range of settings and by people with a wide range of expertise.

Third, because errors will occur, screening protocols should include feedback loops and opportunities for both additional input by the parties and others and procedures for formal challenge. Parties may not always distinguish between professional recommendations and court orders, and unless formally adopted by the court, the work of screeners and case managers may not be subject to formal appeal. If that is the case, other forms of accountability and quality control should be instituted.



TENSION #3 PROCESS AND SERVICS: INCLUSION AND EXCLUSION

When families experiencing domestic violence are meaningfully differentiated from one another, it becomes possible to tailor interventions to meet the specific

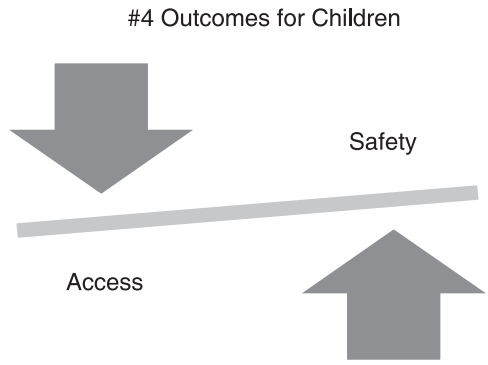
needs of family members. Under the current system, families who have experienced domestic violence may, either because the violence is not identified or because its implications for the future are not understood, be automatically referred to processes and services that, while helpful to many families, are inappropriate and even dangerous in the particular family situation. In the converse, if a family is identified as having experienced violence, family members may, under existing protocols, be discouraged from using processes and services that could, with appropriate attention to safety, be helpful.[43]

Referrals for parenting education were discussed as one example. In many jurisdictions, parents are routinely referred to parenting education courses that stress co-parenting, ongoing contact, and reducing conflict levels. These messages are ill advised in situations where there has been either a history of violence or a pattern of coercive control. Such parents should be excused from the class or, in the alternative, each parent should be offered, separately, a special parenting skills class that would stress safety planning and parallel parenting and offer domestic violence information and referrals.[44] However, referral to a standard parenting education class could be appropriate (especially if no special class exists) in a situation where a single incident took place at the time of separation and there is no other history of coercive control or abuse. Thus, each family situation must be considered in context and in light of what is helpful and safe for individual family members.

Rather than assuming that all violent families benefit from or are harmed by particular interventions, effective screening and case review could lead to an individualized determination of what processes and services would be helpful. With additional research and study, it might be possible to determine which interventions are appropriate for families exhibiting specific characteristics or involved in an identified pattern of violence.[45] At the same time, the usefulness of categorization must be balanced against the danger of adopting rigid approaches that fail to take individual context into account.

Conference participants presented and discussed a comprehensive array of potential services,[46] while recognizing that many services are not currently available in many jurisdictions, that not all services will be suitable for all families, and that much work remains to be done to determine both the efficacy of particular services and their appropriateness for particular families.

Even without further elaboration, a listing of the wide variety of services discussed underscores both their significant potential for assisting families in transition and the need for care in matching families with appropriate services. Among the services discussed were: lethality assessment; batterers' treatment and anger management programs; alcohol and drug treatment; dual-diagnosis consultants and treatment; victim support and treatment; posttraumatic stress groups; therapy; mediation; supervised access and exchange facilities; reunification therapists; parenting coordination; assistance in implementing court-ordered parenting plans; treatment for traumatized children; parenting without violence classes; parenting education, skills training, and coaching; custody evaluation; child protection services; protective orders; removal of weapons; criminal penalties; court orders with triggers; suspended or supervised visitation; case management; interpreter services; housing and employment assistance; immigration services; establishing child support and paternity; child care; and advocacy.



TENSION #4 OUTCOMES FOR CHILDREN: SAFETY AND ACCESS

There was consensus among conference participants that special precautions must be taken when fashioning parenting arrangements for families where domestic violence has been identified or credibly alleged. Those precautions include taking the long view of the process as a case makes its way through the family court system: recognizing that temporary orders or emergency parenting plans may be needed in the short term, that long-term parenting arrangements can and should await a fuller investigation of the family situation, and that some families will require ongoing monitoring and follow-up. At every stage, an effort must be made to match parenting arrangements with both the level of violence and ongoing risk posed by the family situation and the resources available to secure the family's safety and assist the parties in their parenting.

As this introduction suggests, court decision making about parenting arrangements may be viewed as occurring in three phases.[47] Initially courts may be called upon to develop *temporary orders or emergency parenting plans* based on relatively preliminary information. At this stage, safety should be the primary focus. If it seems that one parent poses a risk to other family members, it may be necessary to restrain and/or monitor that parent. There may need to be safety planning for the other parent and the children, including the use of community resources and the possible entry of temporary custody and protective orders.[48]

As more information becomes available, *long-term parenting arrangements* will be considered and implemented, and families may be referred to a variety of services.[49] Depending on the nature of the violence and the resources available, a continuum of parenting arrangements may be considered.[50] Conference participants looked in particular at a continuum suggested by Jaffe, Crooks, and Bala, in which parenting arrangements range from co-parenting to parallel parenting, supervised exchange, supervised visits, and finally no contact.[51] In this model, the frequency, severity, and pattern of the violence (as discussed previously) are foundational considerations. Furthermore, plans must be realistic and based on services and interventions that are actually available for families. As discussed more fully in the next section, lack of resources may seriously limit options and make accommodation of conflicting priorities less likely. Finally as the court process proceeds and additional information becomes available, more refined and tailored planning can be undertaken.

Continuum of Parenting Arrangements[52]

Parenting Arrangement	*Description*	*Indicators & Contraindicators*
Co-parenting	Parents cooperate closely	Requires mutual trust and communication
Parallel parenting	Minimal contact between parents under detailed and highly structured plan	Each parent contributes positively but parents have an acrimonious relationship
Supervised exchange	Transfer children with supervision	Each parent contributes positively but parents need a buffer for transition
Supervised access	Safe contact with high-risk parent	Child has something to gain from safe access to high-risk parent
No contact	No access	No meaningful relationship possible with high-risk parent

For some families, even after the careful crafting of a long-term parenting plan, *ongoing monitoring* and follow-up may be necessary to provide accountability and assure safety going forward.[53] Conference participants recognized the importance of ongoing case management for some families but expressed concern that many courts are not sufficiently equipped or funded to provide it.

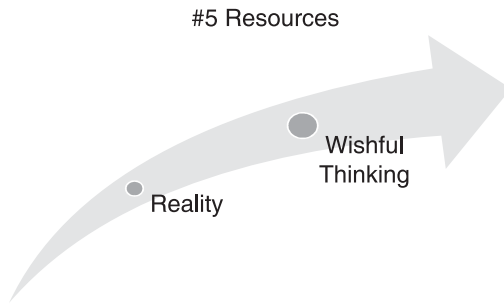
At every stage of the proceedings, courts are faced with important but often conflicting priorities. In cases in which domestic violence is proven or credibly alleged, for example, the initial focus of the court system must necessarily be on safety. Yet judges must simultaneously remain cognizant of the importance of children's healthy relationships with parents or other family members and the costs of disrupting those relationships.

In her presentation to the conference, Janet Johnston suggested a specific method for analyzing conflicting interests. The initial goal, she proposes, should be to meet five guiding principles or priorities:

- Priority 1: Protect children
- Priority 2: Protect the safety and well-being of the victim parent
- Priority 3: Respect the right of adult victims to direct their own lives
- Priority 4: Hold perpetrators accountable for their abusive behavior
- Priority 5: Allow child access to both parents[54]

However, where the simultaneous achievement of all five priorities is not possible, priorities lower on the list should be successively relinquished until the conflict is resolved.[55] Thus, in a situation where visitation cannot safely occur, for example, Priority 5 (access) may be sacrificed in favor of the other four priorities.

In summary, there was consensus among conference participants that differentiation of families experiencing domestic violence is central to the task of making safe and appropriate plans for parenting at every stage of a family law proceeding. However, additional research and discussion is needed to explore the extent to which specific parenting arrangements can be safely associated with particular patterns of domestic violence.[56] Furthermore, the safety and efficacy of parenting arrangements in cases involving domestic violence also depends on the availability of resources both to conduct the assessments that will match families with appropriate parenting arrangements and to provide appropriate supporting services.



TENSION #5 FAMILY COURT RESOURCES AND ROLES: WISHFUL THINKING AND REALITY

All the conference discussions were colored by recognition that family courts are experiencing increased caseloads involving more complex cases, while at the same time the resources available to them are dwindling. The American Bar Association reported in 2003 that, between 1984 and 2000, domestic relations filings increased by 79%.[57] Also in 2003, the National Center for State Courts found that domestic relations filings had increased by 14% during the previous ten years[58] and that, among domestic relations cases, the highest increase in filings was in the category of custody cases, which increased by 36% between 1993 and 2001.[59]

While caseloads have increased, fewer parties are represented by attorneys. For example, in Oregon at least one party was unrepresented in 80% of family cases.[60] Not only do unrepresented litigants require more court resources, but also pro se victims of domestic violence are less likely to be informed of their legal options and less likely to be protected from abusive partners who may use the court system to continue to exert coercive control.[61] Many families, whether or not they have legal representation, do not have resources to pay for services such as custody evaluations, therapy, mediation, or parenting coordination.

Conference participants stressed, in addition, that the role of the family court has changed dramatically in recent years. In addition to deciding cases that are presented to them, court systems are increasingly involved in managing cases. What is sometimes referred to as "differential case management" involves early screening of cases, assessment of family needs, creation of a service plan including referral to services and appropriate court processes, development of a parenting plan, and potential postdecree monitoring.[62] Thus, the role of the court has expanded beyond decision making to encompass potential ongoing involvement with some families.[63] Many court systems are struggling to meet these new expectations and some question whether courts are appropriately prepared or qualified to do so.[64]

Conference participants were in agreement that, at a minimum, family courts need the ability to coordinate with other courts in the same court system and with court- or community-based agencies. Considerable enthusiasm was also expressed for the use of unified family courts where all matters pertaining to the family are heard in the same court by the same judge.[65] Coordination is especially important in domestic violence cases where there may be simultaneously pending divorce, paternity, criminal, and child protection actions. Use of unified family courts avoids multiple actions, conflicting orders, and unnecessary delays,[66] but at the same time involves a further commitment of resources.

A note of caution repeatedly sounded in these discussions was the danger of resting increasing responsibility on family court professionals to make sophisticated and nuanced

judgments about levels of risk and the appropriateness of specific interventions and determinations without providing the resources to ensure that these professionals are adequately qualified and trained. Some participants were also uncomfortable with the idea of courts becoming "agencies" providing "services" and potentially neglecting their important role in fact finding and as enforcers of the laws designed to protect victims of domestic violence.

All participants agreed on the critical need for additional family court resources and they actively debated various responses to an underfunded system. Some urged finding ways to make do with current resources while others favored more aggressive approaches including political activism.

CONCLUSION

As its organizers had hoped and anticipated, the conference proved to be a fertile environment within which to explore how better to serve families affected by domestic violence. The participants were able to move beyond the roadblocks that had previously hampered multidisciplinary collaboration and work together in an atmosphere of open exploration and mutual respect.

The presence of all the professional groups represented at the conference was vital to its success. Domestic violence advocates have increased awareness of domestic violence and changed the legal landscape for victims—they continue to assist, and speak out on behalf of, the women they serve. Family court judges and administrators struggle to ascertain the best interests of children exposed to domestic violence in the face of increased caseloads and diminished resources. Mental health, dispute resolution, and other professionals working in the family court system are a valuable, but scarce resource for families experiencing domestic violence and for decision makers. Finally, researchers and scholars identify and provide cutting-edge research to promote the development of best practices. The expression of all these diverse and divergent points of view heightens the level of discourse about domestic violence and ultimately leads to more thoughtful and effective outcomes.

Conference participants were scrupulous in listening to contrasting points of view and working to clarify points of agreement and areas for future research. As one participant wrote, in reflecting on the work of the conference and the contributions made by researchers, practitioners, policy makers, and advocates:

> The solutions to the problems we address need the attention of all of these parties. Empirically grounded research has an important contribution to make but its role is limited to the extent that it addresses the dilemmas at hand, and here is where experienced practitioners have a tremendous amount of wisdom to offer (asking the pertinent questions and offering pragmatic solutions). Further, in that good policy is partly based on collective moral principles and community values, the inputs of concerned citizens—specifically advocates and their clients—are also essential to finding solutions. These diverse voices can provide alternative perspectives in thinking about the issues, identify gaps in services/laws/policies, and suggest unintended consequences of solutions that get proposed.[67]

During the conference many participants were energized by hearing fresh perspectives, considering new research, and learning about innovative programs and approaches. Some felt an urgent desire to develop protocols and implement best practices while others urged

caution and reflection. On one hand, judges and practitioners seek immediate direction on how they might more effectively handle domestic violence cases. They are eager to have families with whom they work or who come before them benefit from advances in the field without unnecessary delays. On the other hand, all are aware of the danger inherent in proceeding without taking time to thoroughly evaluate options, listen to different points of view, and consider potential unforeseen problems.

Acknowledging this tension, those attending the conference took two preliminary steps toward furthering the conference agenda. First, in a concluding session, they reviewed areas of agreement and disagreement and arrived at points of general consensus. Throughout this report, we have highlighted those points of consensus, but in addition they are reproduced in their entirety in the appendix below. Second, participants agreed to form several ongoing work groups to continue this important conversation and to invite others to join in the process. Finally, as all participants recognized, it is critical that resources be found and allocated to support this important work, and further research on, dialogue about, and development of, best practices for handling domestic violence cases involving child custody.

APPENDIX

As indicated in the text of this report, the closing session of the conference was dedicated to reviewing areas of agreement and disagreement and affirming points of general consensus, which are documented here.

POINTS OF CONSENSUS

Differentiating Families Experiencing Domestic Violence

1. Families experiencing domestic violence are not all alike. Consequently, there is a need to identify characteristics and variables that meaningfully differentiate among families experiencing domestic violence. Recognizing differences among these families does not alter the fact that all cases of domestic violence warrant attention and concern.
2. Important ongoing tasks for practitioners and researchers are to: (a) identify characteristics and variables significant for differentiating among families with a history of domestic violence; (b) explore the existence of patterns of domestic violence and investigate hypotheses related to them; and (c) develop a common vocabulary to describe identified characteristics, variables, and patterns. These ongoing inquiries must be undertaken with care to prevent unforeseen and unintended negative consequences including rigid or simplistic categorization of complex family situations and mischaracterization of violence based on inadequate assessment.

Screening, Triage, and Assessment of Families

3. For each family, the implications of domestic violence must be understood and evaluated in context. In assessing risk, the court system should primarily consider risk to the physical and emotional safety of parents, children, and other

family members but remain sensitive to potential disruption of parent–child or other family relationships. The court system should also identify a family's protective factors and support them with appropriate interventions and determinations.

4. Screening and assessment of families are necessary to flag the presence of domestic violence; to evaluate risks and protective factors within the family; and to determine whether significant differentiating characteristics, variables, or patterns are present. Additional work is necessary to create, test, and refine effective and culturally sensitive screening and assessment protocols.

Referral to Processes and Services Based on Family Needs

5. Differentiation of families experiencing domestic violence may be helpful in determining which interventions are likely to benefit them. Additional work is necessary to identify best practices for intervention and referral.

Outcomes Tailored to Meet the Needs of Children

6. Differentiation of families experiencing domestic violence may be useful when considering appropriate outcomes for children. Additional work is necessary to (a) understand when access to children should be supervised or suspended, (b) identify appropriate short- and longer-term parenting arrangements, (c) evaluate the feasibility and desirability of ongoing court monitoring, and (d) develop best practices and model orders based on this work.

Family Court Resources

7. In order to effectively serve families experiencing domestic violence, the family court system needs the capacity to perform responsible screening and assessment, offer or link families to appropriate services, and make determinations that support the safety and well-being of children and families. In order to accomplish these goals, courts need the ability to coordinate with other courts in the same court system and with court- or community-based agencies.
8. Despite the critical impact of the family court system on children and families, it operates in most, if not all, jurisdictions with insufficient resources. As a result, families without private resources are disadvantaged in their access to the courts and related services.
9. For the family court system to function with integrity in cases involving domestic violence, it must be sensitive to the wide variety of family forms and cultural backgrounds of the parents and children who use its services.

Need for Ongoing Collaborative Endeavor

10. Families will be better served if practitioners, researchers, advocates, clients, and policy makers engage in ongoing dialogue to identify shared knowledge about domestic violence and agree on areas warranting additional investigation and attention. Listening to diverse voices improves the likelihood that important issues will be addressed, gaps in knowledge identified, best practices developed, and unintended consequences avoided.

11. To the extent that professionals from different disciplines use different terminology to describe and discuss domestic violence, communication will be enhanced by working together to develop shared understanding and vocabulary.
12. Practitioners and researchers gain valuable insights from each other when given the opportunity for meaningful exchange. Empirical research is most useful to practitioners when it addresses issues and dilemmas that are currently being faced. Similarly, practitioners offer wisdom to researchers regarding pertinent questions and the need for pragmatic solutions.
13. Resources should be sought and allocated for the purpose of funding jointly identified research projects, enhancing communication about hypotheses and results, and implementing findings.

Implementation and Next Steps

The group present at the birth of this initiative commits to continue to work toward its fruition and to engage others in its implementation. To that end, a working group or several working groups should be created to:

A. Identify characteristics and variables significant for choosing appropriate interventions and outcomes for families; explore the existence of patterns of domestic violence and investigate hypotheses related to them; and develop a shared vocabulary to describe those characteristics, variables, and patterns;
B. Heighten the cultural awareness of professionals who work with families experiencing domestic violence;
C. Develop effective and culturally sensitive screening and assessment tools and protocols;
D. Identify best practices for intervention and provision of services;
E. Address how to make truly child-centered custody and visitation determinations that provide for children's safety and security.

Endorsements of the Report From the Wingspread Conference on Domestic Violence and Family Courts

Organizational Endorsements

- Board of Directors, AFCC
- Board of Trustees, NCJFCJ

Endorsements of conference attendees:

- Hon. Karen S. Adam, Superior Court of Arizona
- Hon. Carl Ashley, Milwaukee, WI
- Daniel A. Bloom, Pachman Richardson LLC
- Hon. Susan B. Carbon, Concord, NH
- Chic Dabby-Chinoy, Director, Asian & Pacific Islander Institute on Domestic Violence/ Asian & Pacific Islander American Health Forum, San Francisco, CA
- Clare Dalton, Professor, Northeastern University School of Law
- Robin M. Deutsch, Children and the Law Program, Massachusetts General Hospital

- Desmond Ellis, La Marsh Centre for Research on Violence and Conflict Resolution
- Hon. William Fee, Steuben Superior Court
- Mary Ferriter, Esdaile, Barrett & Esdaile
- Loretta M. Frederick, Battered Women's Justice Project, Winona, MN
- Susan Hanks, Superior Court of California, County of Alameda
- Janet R. Johnston, San Jose State University
- Hon. William G. Jones, Charlotte, NC
- Joan B. Kelly, Psychologist, Corte Madera, CA
- Kris Koeffler, Rock County Domestic Violence Intervention, Milton, WI
- Lorraine Martin, Clinical Coordinator, Office of the Children's Lawyer, Toronto, Ontario, Canada
- Kelly Browe Olson, Professor, University of Arkansas Little Rock Bowen School of Law
- Jeremy Nevilles-Sorell, Mending the Sacred Hoop
- Hon. Victor Reyes, Pueblo, CO
- Hon. Arline Rotman, Norwich, VT
- Robin Runge, Washington, DC
- Peter Salem, AFCC
- Andrew Schepard, Professor of Law and Director, Center for Children Families and the Law, Hofstra University School of Law
- Hon. Hugh Starnes, Fort Myers, FL
- Nancy Ver Steegh, Professor, William Mitchell College of Law
- Sujata Warrier, Director, New York City Program, New York State Office for the Prevention of Domestic Violence
- Frances Q. F. Wong, Circuit Judge, First Circuit, State of Hawaii, Deputy Chief Judge and Senior Judge of the Family Court

Endorsements of invitees who were unable to attend the conference:

- Nick Bala, Queen's University
- Peter Jaffe, Centre for Research on Violence Against Women & Children
- Hon. Dale R. Koch, Portland, OR
- Michael P. Johnson, Pennsylvania State University

NOTES

1. *See, e.g.*, Clare Dalton, *When Paradigms Collide: Protecting Battered Parents and Their Children in the Family Court System*, 37 FAM. & CONCILIATION CTS. REV. 273 (1999); Peter Salem & Billie Lee Dunford-Jackson, *Beyond Politics and Positions: A Call for Collaboration Between Family Court and Domestic Violence Professionals*, 46 FAM. CT. REV. 437–53 (2008).

2. *See* Sujata Desai & Linda E. Saltzman, *Measurement Issues for Violence Against Women, in* SOURCEBOOK ON VIOLENCE AGAINST WOMEN 35 (Claire M. Renzetti et al. eds., 2001); Murray A. Straus, *The Controversy Over Domestic Violence By Women: A Methodical, Theoretical, and Sociology of Science Analysis, in* VIOLENCE IN INTIMATE RELATIONSHIPS 17 (Ximena B. Arrias & Stuart Oskamp eds., 1999) [hereinafter Straus, *The Controversy*]; Murray A. Straus et al., *The Revised Conflict Tactics Scales*, 17 J. FAM. ISSUES 283 (1996); Murray A. Straus, *Physical Assaults by Wives, in* CURRENT CONTROVERSIES ON FAMILY VIOLENCE 67 (Richard J. Gelles et al. eds., 1993) [hereinafter Straus, *Physical Assaults*].

3. The NCJFCJ was founded in 1937. Its mission is to "improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation's children and families." NCJFCJ, http://www.ncjfcj.org/content/view/15/75/ (last visited Apr. 11, 2007).

4. The AFCC "is an interdisciplinary, international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict." AFCC, http://www.afccnet.org/about/mission.asp (last visited Apr. 11, 2007).

5. Judge Bill Jones is to be credited for setting up a meeting between Billie Lee Dunford-Jackson, Co-Director of the Family Violence Department of the NCJFCJ, and Peter Salem, Executive Director of the AFCC.

6. The Johnson Foundation pursues its mission of cultivating ideas that sustain community by hosting Wingspread conferences: "small meetings of thoughtful inquiry convened in an atmosphere of candor and purpose." The Johnson Foundation, http://www.johnsonfdn.org/mission.html (last visited Apr. 4, 2007). The Johnson Foundation provided the facility for the conference and the other costs were born equally by the AFCC and NCJFCJ.

7. Those attending the conference included the following people: Hon. Karen S. Adam, Superior Court of Arizona; Hon. Carl Ashley, Milwaukee, WI; Daniel A. Bloom, Pachman Richardson LLC; Hon. Susan B. Carbon, Concord, NH (President-Elect, NCJFCJ, 2007); Hon. George Czutrin, Hamilton, ON; Chic Dabby-Chinoy, Director, Asian & Pacific Islander Institute on Domestic Violence/Asian & Pacific Islander American Health Forum, San Francisco, CA; Clare Dalton, Professor, Northeastern University School of Law; Robin M. Deutsch, Children and the Law Program, Massachusetts General Hospital; Richard Ducote, Richard Ducote and Associates; Billie Lee Dunford-Jackson, NCJFCJ; Desmond Ellis, La Marsh Centre for on Violence and Conflict Resolution; Hon. William Fee, Steuben Superior Court (President-Elect, AFCC Research, 2006–2007); Mary Ferriter, Esdaile, Barrett & Esdaile (President, Association of Family and Conciliation Courts, 2006–2007); Loretta Frederick, Battered Women's Justice Project; Richard Gelles, University of Pennsylvania; Susan Hanks, Superior Court of California, County of Alameda; Janet R. Johnston, San Jose State University; Hon. William G. Jones, Charlotte, NC; Hon. Scott Jordan, Reno, NV; Joan B. Kelly, Psychologist, Corte Madera, CA; Kristin Koeffler, Rock County Domestic Violence Intervention; Lorraine Martin, Clinical Coordinator, Office of the Children's Lawyer, Toronto, Ontario, Canada; Kelly Browe Olson, University of Arkansas Little Rock Bowen School of Law; Jeremy Nevilles-Sorell, Mending the Sacred Hoop; Hon. Victor Reyes, Pueblo, CO; Hon. Arline Rotman, Norwich, VT; Robin Runge, American Bar Association Commission on Domestic Violence; Peter Salem, AFCC; Andrew Schepard, Professor of Law and Director, Center for Children Families and the Law, Hofstra University School of Law; Maureen Sheeran, NCJFCJ; Hon. Hugh Starnes, Fort Myers, FL; Nancy Ver Steegh, Professor, William Mitchell College of Law; Sujata Warrier, Director, New York City Program, New York State Office for the Prevention of Domestic Violence; Hon. Frances Q. F. Wong, Circuit Judge, First Circuit, State of Hawaii, Deputy Chief Judge and Senior Judge of the Family Court; facilitators Bernard Mayer and Lonnie Weiss; and observer Nadine Neufville, U. S. Dept. of Justice Office on Violence Against Women. In addition, the following people were invited to attend but were unable to do so: Nick Bala, Queen's University; Peter Jaffe, Centre for Research on Violence Against Women & Children; Hon. Dale R. Koch, Portland, Or. (President, NCJFCJ, 2007); Michael P. Johnson, Pennsylvania State University.

8. In preparation for the conference, participants were invited to read the following two articles: Peter G. Jaffe et al., Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices 56 (2005), *available at* http://www.justice.gc.ca/en/ps/pad/reports/2005-FCY-3/index.html; and Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 La. L. Rev. 1379 (2005).

9. Janet R. Johnston, Ph.D., Dep't of Justice Studies, San Jose State Univ., Presentation at the Wingspread Conference on Domestic Violence and Family Courts: Challenges for Research on Domestic Violence and Child Custody Disputes: An Overview (Feb. 16, 2007).

10. *See* discussion of aggregation of differentiating characteristics into patterns (Tension #1, section D).

11. Johnston, *supra* note 9.

12. See following discussion, Tension #1, section A concerning the status quo for further discussion of the one-size-fits-all approach.

13. Jaffe et al., *supra* note 8, at 56 (discussing collision of two realities: the trend toward co-parenting and need for safety in domestic violence cases).

14. *See* Ver Steegh, *supra* note 8, at 1379.

15. *See id.*

16. Loretta Frederick & Julie Tilley, *Effective Interventions in Domestic Violence Cases: Context is Everything,* Battered Women's Justice Project, Minneapolis, MN, May 2001, http://data.ipharos.com/bwjp/documents/effective_interventions.pdf.

17. *See* William G. Austin, *Partner Violence and Risk Assessment in Child Custody Evaluations*, 39 Fam. Ct. Rev. 483 (2001) (urging a risk assessment approach).

18. *See* Jeffrey L. Edleson, *Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment Under the Law?, in* Protecting Children From Domestic Violence: Strategies for

Community Intervention 8, 11 (Peter G. Jaffe et al. eds., 2004) (factors include level of violence, child's degree of exposure, other stressors, harm for each child, and child's resilience); Robert E. Emery & Lisa Laumann-Billings, *An Overview of the Nature, Causes, and Consequences of Abusive Family Relationships: Toward Differentiating Maltreatment and Violence*, 53 Am. Psychol. 121, 128 (1998) (five classes of variables related to consequences of victimization); B.B. Robbie Rossman et al., *Young Children Exposed to Adult Domestic Violence: Incidence, Assessment and Intervention*, *in* Protecting Children from Domestic Violence: Strategies for Community Intervention 30, 31–37 (Peter G. Jaffe et al. eds., 2004) (effect on children by age); Jerome R. Kolbo & Eleanor H. Blakely, *Children Who Witness Domestic Violence: A Review of the Empirical Literature*, 11 J. Interpersonal Violence 281, 290 (1996) (mediating factors include frequency and duration of abuse, whether the abuse was physical and verbal, whether the child was abused, age, gender, maternal stress, and family disadvantage). *See also* Joan B. Kelly & Robert E. Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 Fam. Rel. 352 (2003) (general adjustment of children to divorce).

19. Desmond Ellis & Noreen Stuckless, *Domestic Violence, DOVE, and Divorce Mediation*, 44 Fam. Ct. Rev. 658 (2006). *See also* Desmond Ellis, *Divorce and the Family Court: What Can Be Done About Domestic Violence?*, 46 Fam. Ct. Rev. 531–36 (2008).

20. Johnston, *supra* note 9.

21. Patterns of domestic violence may be another way to take historical context into account. *See* Frederick & Tilley, *supra* note 16; Jaffe et al., *supra* note 8, at 17–18 (discussing Frederick and Tilley contexts).

22. Desmond Ellis, La Marsh Research Centre on Violence and Conflict Resolution, York University, Presentation at the Wingspread Conference on Domestic Violence and Family Courts: Differentiation: Implications for Practice (Feb. 16, 2007) ("Knowledge of different types of IPVA can help practitioners manage the risk of domestic violence by male and female ex-partners but their relative contribution towards achieving this end has not yet been demonstrated by researchers."). *See* Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 Fam. Ct. Rev. 476–99 (2008).

23. *See* Desmond Ellis & Noreen Stuckless, Mediating and Negotiating Marital Conflicts 2 (1996) [hereinafter Mediating] (control instigated abuse); Ellis & Stuckless, *supra* note 19, at 658; Frederick & Tilley, *supra* note 16 (intimidation and control: battering); Michael P. Johnson & Kathleen J. Ferraro, *Research on Domestic Violence in the 1990s: Making Distinctions*, 62 J. Marriage & Fam. 948, 950, 954 (2000) (Intimate Terrorism); Janet R. Johnston & Linda E. G. Campbell, *Parent-Child Relationships in Domestic Violence Families Disputing Custody*, 31 Fam. & Conciliation Cts. Rev. 282, 286–87 (1993) [hereinafter *Parent-child Relationships*]; Janet R. Johnston & Linda E. G. Campbell, *A Clinical Typology of Interparental Violence in Disputed-Custody Divorces*, 63 Am. J. Orthopsychiat. 190 (1993) (ongoing and episodic male battering); Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 Psych. Bull. 476, 492 (1994).

24. Johnson & Ferraro, *supra* note 23, at 4. *See also* Frederick & Tilley, *supra* note 16 (self defensive or responsive to battering).

25. *See* Mediating, *supra* note 23, at 34 (conflict instigated violence); *Parent-Child Relationships*, *supra* note 23, at 292 (male-controlling interactive violence); Michael P. Johnson, *Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence,* 12 Violence Against Women 1003 (2006) [hereinafter *Conflict and Control*]; Michael P. Johnson, *Domestic Violence: It's Not About Gender—Or Is It?*, 67 J. Marriage & Fam. 1126 (2005) [hereinafter *Domestic Violence*]; Michael P. Johnson, *Apples and Oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence*, 2 J. Child Custody 43 (2005) [hereinafter *Apples and Oranges*]. *See also* Frederick & Tilley, *supra* note 16 (absence of violence, intimidation and control: isolated act).

26. *See* Kristin L. Anderson, *Perpetrator or Victim? Relationships Between Intimate Partner Violence and Well-Being*, 64 J. Marriage & Fam. 851, 861 (2002); Dina Vivian & Jennifer Langhinrichsen-Rohling, *Are Bi-Directionally Violent Couples Mutually Victimized? A Gender-Sensitive Comparison*, 9 Violence & Victims 107, 118 (1994).

27. Johnston & Campbell, *supra* note 23, at 293–94 (separation-engendered and post divorce trauma); *Conflict and Control, supra* note 25, at 1003; *Domestic Violence, supra* note 25, at 1126; *Apples and Oranges, supra* note 25, at 43. *See also* Susan E. Hanks, *Translating Theory into Practice: A Conceptual Framework for Clinical Assessment, Differential Diagnosis, and Multi-Model Treatment of Maritally Violent Individuals, Couples and Families, in* Intimate Violence: Interdisciplinary Perspectives 163, 163–64 (Emilio Viano ed., 1992) (violence as an acute affective storm within a primary relationship manifesting a failure to master a family developmental stage and/or cope with an overwhelming life crisis).

28. *Parent-Child Relationships*, *supra* note 23, at 294–95 (psychotic and paranoid reactions). *See also* Frederick & Tilley, *supra* note 16 (history of mental impairment or incapacity); Hanks, *supra* note 27, at 172 (repetitive acute violent behavior in multiple relationship secondary to severe mental disorder and/or drug or alcohol

addiction); Amy Holtzworth-Munroe et al., *A Typology of Male Batterers: An Initial Examination, in* Violence in Intimate Relationships 45, 46–47 (Ximena B. Arriaga & Stuart Oskamp eds., 1999) (generally violent/antisocial batterers).

29. Straus, *The Controversy*, *supra* note 2, at 23 (male to female rations as follows: National Crime Survey, 13:1; National Crime Victim Survey, 7:1; and police call data, 9:1).

30. Kathleen J. Ferraro, *Women Battering: More Than a Family Problem, in* Women, Crime, and Criminal Justice: Original Feminist Readings 135, 137 (Claire Renzetti & Lynne Goodstein eds., 2001) (reports of use of violence against a partner was 12.1% for men and 11.6% for women in the 1975 NFVS and 11.3% for men and 12.1% for women in the '1985 NFVS); Straus, *Physical Assaults*, *supra* note 2. *See also* Martin S. Fiebert & Denise M. Gonzalez, *College Women Who Initiate Assaults on Their Male Partners and the Reasons Offered for Such Behavior*, 80 Psychol. Rep. 583 (1997) (twenty-nine percent of studied female college students admitted to physical aggression against male partners).

31. Richard J. Gelles, Intimate Violence in Families 93 (1997). *See also* Lisa D. Brush, *Violent Acts and Injurious Outcomes in Married Couples: Methodological Issues in the National Survey of Families and Households*, 4 Gender & Soc'y 56 (1990); Canadian Centre for Justice Statistics, Family Violence in Canada: A Statistical Profile 2005, 22, *available at* http://www.statcan.ca/english/freepub/85–224-XIE/85–224-XIE2005000.pdf.

32. Straus, *Physical Assaults*, *supra* note 2, at 77.

33. Johnson & Ferraro, *supra* note 23, at 948 (using the terms intimate terrorism and common couple violence rather than violence used in the exercise of coercive control and violence driven by conflict).

34. Linda Girdner, A.B.A. Ct'r on Children & the Law, Domestic Abuse and Custody Mediation Training for Judges and Administrators: Instructor's Guide 15 (1999).

35. *See* Carla B. Garrity & Mitchell A. Baris, Caught in the Middle: Protecting the Children of High-Conflict Divorce 42 (1994) (Conflict Assessment Scale); Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117, 2156 (1993) (Conflict Assessment Protocol); Nancy R. Rhodes, *The Assessment of Spousal Abuse: An Alternative to the Conflict Tactics Scale, in* Intimate Violence: Interdisciplinary Perspectives 27 (Emilio C. Viano ed., 1992); Alexandria Zylstra, *Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators*, 2001 J. Disp. Resol. 253, 272 (2001); Girdner, *supra* note 34, at 17–26 (Tolman Screening Model and others); Glenda Kaufman Kantor & Jana L. Jasinski, *Dynamics and Risk Factors in Partner Violence, in* Partner Violence: A Comprehensive Review of 20 Years of Research 1, 40 (Jana L. Jasinski et al. eds., 1998) (Abusive Behavior Inventory, The Aggression Scale, The Danger Assessment Instrument, Spouse Specific Aggression Scale); Marilyn McKnight, Mediating in the Shadow of Domestic Violence 14–15 (1997); René L. Rimelspach, *Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program*, 17 Ohio St. J. on Disp. Resol. 95, 112 (2001); Mary Pat Treuthart, *In Harm's Way? Family Mediation and the Role of the Attorney Advocate*, 23 Golden Gate U. L. Rev. 717, 730 (1993).

36. Linda Neilson, *Assessing Mutual Partner-Abuse Claims in Child Custody and Access Cases*, 42 Fam. Ct. Rev. 411, 427 (2004). *See* Jaffe et al., *supra* note 8, at 28 (discussion of elements of assessment in domestic violence cases).

37. Conference participants identified the following factors as directly impacting children and adults: level of violence and dangerousness, control dimension, determination of best interests of children, cultural issues, role of extended family, resources, whether positive to maintain relationship with both parents, developmental stages of children, parenting capacity, substance abuse, mental health issues, proximity of parents, employment schedules, and sibling issues. *See* Jaffe et al., *supra* note 8, at 13 (chart of variables hypothetically associated with impact of domestic violence).

38. Jaffe et al., *supra* note 8, at 25–29 (specialized assessment needs are delineated for normal conflict, high conflict, and spousal violence cases).

39. E-mail from Janet R. Johnston, Ph.D., Dept. of Justice Studies, San Jose State, Univ. to Nancy Ver Steegh, Professor of Law, William Mitchell College of Law (Sept. 12, 2007, 08:27 CST) (on file with author). *See* Loretta Frederick, *Questions about Family Court Domestic Violence Screening and Assessment*, 46 Fam. Ct. Rev. 523–30 (2008).

40. Ellis & Stuckless, *supra* note 19, at 659.

41. Ellis & Stuckless, *supra* note 19, at 659–63. *See* Sujata Warrier, "*It's in Their Culture": Fairness and Cultural Considerations in Domestic Violence*, 46 Fam. Ct. Rev. 537–42 (2008).

42. Conference participants also encouraged sensitivity toward disability issues.

43. Ver Steegh, *supra* note 8, at 1379.

44. *See* Geri S. W. Fuhrmann et al., *Parent Education's Second Generation: Integrating Violence Sensitivity*, 37 Fam. & Conciliation Cts. Rev. 24 (1999).

45. For example, the DOVE instrument recommends specific mediation interventions based on risk category. Ellis & Stuckless, *supra* note 19, at 664.

46. One comprehensive presentation to conference participants was made by Janet R. Johnston, Ph.D., Dep't of Justice Studies, San Jose State Univ.: Presentation Reviewing Research on Differentiation at the Wingspread Conference on Domestic Violence and Family Courts (Feb. 16, 2007). Other suggestions grew out of brainstorming discussions among participants.

47. Johnston, *supra* note 9.

48. *Id.*

49. *Id.*

50. Jaffe et al., *supra* note 8, at 37–54.

51. *Id.*

52. *See Id.* at 37–45 (see article for more complete discussion).

53. Johnston, *supra* note 9.

54. *Id.*

55. *Id. See* Janet R. Johnston, *A Child-Centered Approach to High-Conflict and Domestic-Violence Families: Differential Assessment and Interventions*, 12 J. Fam. Stud. 15 (2006); Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: The Need for Differentiated Approaches to Parenting Plans*, 46 Fam. Ct. Rev. 500–22 (2008).

56. Johnston, *supra* note 9 (Suggesting (1) that co-parenting could be appropriate in some cases of separation-engendered violence after the crisis has passed and trauma resolved; (2) that parallel parenting with monitored exchanges could be appropriate in cases of conflict-instigated violence and for violent resistors; (3) that sole parenting with restrictions or no access could be appropriate for acutely dangerous perpetrators, abusive relationships, substance abusers, etc.).

57. *Justice in Jeopardy*, Rep. of A.B.A. Commission on the 21st Century Judiciary (A.B.A., Chicago, Ill.), July 2003, at 24–25, *available at* http://www.abanet.org/judind/jeopardy/pdf/report.pdf (in contrast general civil filings increased by 30%, criminal filings by 46%, and juvenile filings by 66%) (citing National Center for State Courts, Examining the Work of State Courts 1999–2000—A National Perspective from the Court Statistics Project 76 (Brian J. Ostrom et al. eds., 2001), *available at* http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=603).

58. National Center for State Courts, State Guide to Statistical Reporting, Domestic Relations 30 (2003), *available at* http://www.ncsconline.org/D_RESEARCH/csp/2003_Files/2003_DomRel.pdf.

59. *Id.* at 31.

60. Oregon Task Force on Family Law, Creating a New Family Conflict Resolution System: Final Report to Governor John A. Kitzhaber and the Oregon Legislative Assembly 5 (1997). *See also* Steven K. Berenson, *A Family Law Residency Program?: A Modest Proposal in Response to the Burdens Created by Self-Represented Litigants in Family Court*, 33 Rutgers L.J. 105, 109 (2001) (one party unrepresented in 80% of cases); Connie J. A. Beck & Bruce D. Sales, *A Critical Reappraisal of Divorce Mediation Research and Policy*, 6 Psychol. Pub. Pol'y & L. 989, 993 (2000) (at least one spouse appearing pro se in 67% of domestic relations cases and 40% of child custody cases) (72% of domestic relations cases involved at least one unrepresented party).

61. Jaffe et al., *supra* note 8, at 33–34.

62. *See* Andrew Schepard, *The Evolving Judicial Role in Child Custody Disputes: From Fault Finder to Conflict Manager to Differential Case Management*, 22 U. Ark. Little Rock L. Rev. 395 (2000); Peter Salem et al., *Triaging Family Court Services: The Connecticut Judicial Branch's Family Civil Intake Screen*, 27 Pace L. Rev. 741 (2007).

63. Conference participants noted that judges are currently rewarded for closing cases, not monitoring them for an indefinite period.

64. Jaffe et al., *supra* note 8, at 6–7 ("Family courts rarely have the resources beyond parenting education and mediation services, and these more complex cases require a more sophisticated set of resources. These resources include: timely access to specially trained assessors with expertise in family violence; supervised access centres; treatment resources for individual family members (including perpetrators, victims, and children); and ongoing court monitoring which may be needed in cases of child-related disputes with histories of family violence").

65. *See* Barbara A. Babb, *Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, 32 Fam. L.Q. 31, 32 (1998); Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 Fam. L.Q. 3, 15 (1998).

66. Carolyn D. Schwarz, *Unified Family Courts: A Saving Grace for Victims of Domestic Violence Living in Nations with Fragmented Court Systems*, 42 Fam. Ct. Rev. 304, 309–10 (2004).

67. E-mail from Janet R. Johnston,Ph.D., Dept. of Justice Studies, San Jose State Univ. of Nancy Ver Steegh, Professor of Law, William Mitchell College of Law (April 25, 2007, 16:16:00 CST) (on file with author).

Nancy Ver Steegh is a professor at William Mitchell College of Law in St. Paul, MN, where she teaches family law, domestic violence law and policy, and alternative dispute resolution. Her publications include articles about child custody and domestic violence, mediation and domestic violence, children and domestic violence, and mandatory divorce education. She is the coauthor of two family law books, Work of the Family Lawyer *and* Family Law: Examples & Explanations. *She is a frequent presenter at national conferences and is a member of the board of editors of the* Family Law Quarterly *and the* Family Court Review, *as well as serving on the board of directors of the Association of Family and Conciliation Courts. She has prior experience working as a legal aid lawyer representing victims of domestic violence and she has trained police, prosecutors, and judges nationwide. Professor Ver Steegh earned her J.D. from Washington University School of Law and her M.S.W. from the George Warren Brown School of Social Work.*

Clare Dalton is a Distinguished University Professor at Northeastern University School of law, where she teaches torts, family law, and the law of domestic violence. She is the founder and former executive director of Northeastern's Domestic Violence Institute, which has received funding from multiple sources, including the Centers for Disease Control and Prevention and the U.S. Department of Justice, for innovative service projects, in partnership with local law enforcement, health, mental health, shelter, and other community organizations and agencies. Her recent articles address the role of family court systems in cases involving domestic violence. She is the coauthor of Domestic Violence and the Law: Theory and Practice *(2nd ed., Foundation Press, 2008), and of* Navigating Custody & Visitation Evaluations in Cases With Domestic Violence: A Judge's Guide *(National Council for Juvenile and Family Court Judges, 2004, revised 2006). She is a frequent presenter at national conferences and in training programs for legal and other professionals working with individuals and families exposed to violence at home. Professor Dalton earned her B.A. in Jurisprudence from Oxford University and a Masters in Law from Harvard Law School.*