

DOMESTIC VIOLENCE AND MOVE-AWAY ISSUES

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BACKGROUND SUMMARY: CUSTODY, VISITATION, & MOVE-AWAY ISSUES

Spousal abuse is a significant problem in California and is involved in a significant number of family breakups. Spouse abuse in these homes is predominately directed at mothers and has serious negative consequences for children, even when they are not themselves physically abused. In cases where the abuse continues or even escalates after separation, visitation and custody arrangements become opportunities for further violence, threats of violence, or intimidation and conflict. A child's continued exposure to such conflict and fear, coupled with its effect on the child's custodial parent, results in significant harm to the child. Therefore, it is sometimes in the best interest of both child and custodial parent to create geographic distance from a spouse abusing parent, *not* to weaken the child's connection with that parent, but to allow for less frequent, though perhaps longer visits that are less dangerous and less traumatic to child and abused parent.

Spouse abuse is frequently motivated by a desire to control the other spouse. When the ability to control is thwarted because the abused spouse leaves, the violence may escalate. Legislation and judicial decisions that increase the abusing spouse's ability to control his ex-partner after separation, increase the danger to that partner and to her children.

A. The Domestic Violence Problem in California

The Office of Criminal Justice Planning reports that domestic violence shelters in California provide emergency shelter for over 9,000 women and 11,000 children annually. Domestic violence programs in California serve over 88,000 women annually and shelters turn away far more women and children than they are able to house.⁵³ In addition, the many victims who seek assistance from attorneys, clergy, family members and informal networks are seldom

counted in official estimates of domestic violence.

Domestic violence is the leading cause of serious injury to women in the United States, more than mugging and car crashes combined (Stark & Flitcraft; 1985). Four million American women were beaten by husbands or boyfriends in 1993 alone (The Commonwealth Fund; 1993). Between 20-30% of all marriages experience physical abuse. Sixty-four percent of female homicide victims in San Francisco are killed by boyfriends/husbands, ex-boyfriends/ex-husbands, or other family members (Family Violence Prevention Fund; 1993). In fact, the Family Violence Prevention Fund of San Francisco found that the number of San Francisco women killed in family violence related homicides exceeded the number related to robberies, drugs, gangs and carjackings *combined (id.)!*

B. How Many Divorces Involve Domestic Violence?

Prior to the general adoption of no-fault divorce laws, national data suggested that **one third** of divorces were filed on grounds of mental or physical cruelty (Walker & Edwall at 130; 1987). California's Family Court Services' study of parents mediating custody and visitation found domestic violence to be an issue in **39 percent** of the sessions.⁵⁴ Experts estimate that when you look at only *contested* custody cases, the number may be as high as **50 percent** (Walker & Edwall at 130).

C. How Does Spouse Abuse Affect Child Witnesses?

While the physical and psychological toll on adult victims of domestic violence may seem obvious, its impact on children, *even when they are not themselves direct recipients of the violence*, is no less devastating. The majority of children in homes in which spouse abuse occurs, are witnesses to the violence (*id.* at 140). Infants in homes in which their mother is being beaten experience poor health, poor sleeping habits, and excessive screaming (Jaffe *et al*

at 40). Preschoolers show signs of terror evidenced by irritable behavior, yelling, hiding, shaking and stuttering; they have somatic complaints and regress to younger forms of behavior. Young children tend to blame themselves for one parent's violence against the other parent (*id.* at 45). Older children and adolescents frequently use aggression as a predominant form of problem solving, exhibit a high degree of anxiety, and may come to identify with the abuser and blame their mother for the violence (*id.* at 40-41). Finally, boys who witness their father beat their mother are three times more likely to beat their own wife and/or children (Walker & Edwall at 129).

Children in homes in which there is spouse abuse are also more likely to be physically and/or emotionally abused themselves (Walker & Edwall at 129). One study found that 70% of wife beaters also physically abused their children (*id.* at 162). Men who batter their partners are more likely to direct nasty and degrading comments towards their children, [and] use humiliating forms of punishment and punishment in gross disproportion to the misbehavior (*id.* at 137).

*D. Why Move-Away Legislation
May Have a Disproportionate
Impact on Cases Involving
Domestic Violence*

Moveaway decisions have a disparate impact on women for a number of reasons: more mothers than fathers are custodial parents (Bowermaster at 846); women are less likely to have chosen the domicile they find themselves in at the time of a divorce (*id.*); women are more economically vulnerable than men post-divorce (Weitzman at 323), in part because of career sacrifices made pre-divorce in response to child-rearing responsibilities *and* because of child-rearing responsibilities *post-divorce* (Bowermaster), and thus more likely to require a move in order to better their ability to be self-supporting. Judicial decisions and legislation that make relocation difficult, therefore, disparately impact women. The victims of spouse abuse are also primarily women. While researchers disagree regarding the frequency with which women physically abuse husbands or boyfriends, one thing is clear: women are far more often the recipients of *serious physical assault* at the hands of their domestic partners than are men. Crime studies find that women are victims in roughly 85 to

90% of all reported domestic violence offenses.⁵⁵ Not only are mothers, as a group, most likely to be the ones petitioning for permission to relocate, abused women may be disproportionately represented in the sub-group of mothers requesting relocation. Why? High-conflict families, those couples who are in ongoing conflict post-separation, are the least likely subgroup to negotiate a moveaway decision without court intervention. This group of "high-conflict" cases are likely to include a significant number of domestic violence cases (J. Johnston).

These factors combined — the disparate number of custodial parents who are women, the increased likelihood that mothers, who frequently did not choose their current locale, will request relocation, the increased likelihood that any group of mothers will contain more spouse abuse victims than does a comparable group of fathers, and the likelihood that high-conflict divorces, which are least likely to resolve issues without court intervention, include a significant number of domestic violence cases — suggests that cases involving domestic violence will be over-represented in contested moveaway cases.

The following are the key questions in moveaway cases in which there has been a history of domestic violence: will this decision enhance or diminish the *physical safety* of abused family members?; will it enhance or diminish the ability of abused family members to recover and stabilize after abuse?; and, will it decrease the likelihood that the perpetrator will re-expose the children to future domestic violence, either with their parent or with a new intimate partner?⁵⁶

WHY DOMESTIC VIOLENCE
VICTIMS NEED MOVE-AWAY
LEGISLATION

A. Separation Assault & Domestic Violence

Domestic violence frequently continues and even escalates long after the parties separate. Approximately 56% of women killed by husbands/lovers or ex-husbands/lovers are separated at the time of the homicide (G. Barnard, *et al.*). Up to three-fourths of domestic assaults reported to law enforcement agencies occur after separation (U.S. Dept. of Justice; 1983). Though popular conceptions of battering focus on isolated incidents of physical abuse in which the abuser "loses control," increasing

evidence suggests that this is far from the truth. Battering is most often one of a series of tactics designed to maintain or establish control over the victim.⁵⁷ It is no surprise, perhaps, that this effort to control frequently escalates when the abused spouse thwarts the abuser's dominance by leaving or threatening to leave the relationship.

Tactics of control *post*-separation may include threats to take the children through legal or illegal means, dragging out litigation so as to deplete the woman's financial resources and thus diminish her willingness and ability to fight, as well as refusing reasonable compromises regarding custody and visitation arrangements. Evidence suggests that for some abusers, even a custody fight is aimed less at a genuine desire to be a primary caretaker than at a desire to harass and hurt his former wife (L. Crites & D. Coker at 9).

In battering relationships...the men rarely compromise... using the children to further hurt their spouses or to try to protect themselves from their fear of abandonment. (Walker & Edwall at 140)

Additionally, the exercise of visitation often becomes an opportunity to threaten and physically abuse the former spouse (*see* Recommendations of National Council of Juvenile and Family Court Judges). Thus, many women who separate from an abuser are literally trapped. They continue to suffer threatened or actual physical and sexual assaults at child visitation, but a judicial prohibition against relocating with the children means they must remain near the abuser. The other option, to leave the children with the abuser, is equally untenable. Many abusers abuse again in subsequent relationships (*supra* note 5). Therefore, even if the abusive spouse has not been abusive to the children, the risk of re-exposure to spouse abuse is high. Furthermore, allowing the abuser's threats to force a parent to relocate without the children teaches the children that violence and control tactics are appropriate because they "work" (Crites & Coker at 11).

Not only do some battered women seek to relocate in order to gain geographic distance from the abuser, they may also need to move to gain financial stability and to be near family and other support systems. As a group, women are economically disadvantaged by divorce, while the economic

position of men generally improve. This problem is frequently exacerbated for battered women because abusive men often control the finances, even when the woman is gainfully employed. In addition, abused women frequently forego job opportunities or lose jobs as a direct result of the abuse: too many days missed while nursing a black eye or a broken bone, too many upsetting phone calls at work, too much overtime missed because her husband backs out on his promise to cover childcare, or too many threats made against co-workers result in firing. Relocation near family members may help the abused parent to gain economic and psychological support as well as offer a measure of protection from further assault.

B. Frequent and Continuing Contact in the Context of Spouse Abuse

Any family's decision to relocate involves advantages and disadvantages: harms caused or cured by the move; harms caused or cured by staying. Family relationships are dynamic, therefore a court's moveaway decision is never between a fixed status quo and a new locale. For example, if a move-away request is denied, the "status quo" will be affected by the family's inability to relocate. This inability will likely enhance family tensions linked, for example, to the inability of a second spouse to pursue job opportunities, the inability to move near an ill parent, or economic pressures enhanced by the inability to better the family's financial position. The dynamic of the "status quo" in domestic violence cases is frequently disastrous for the family trapped in geographic proximity to the abusing parent. The result may be a downward spiral in which the physical and emotional integrity of the family unit is seriously compromised.

While children in lower-conflict divorcing families may be benefitted by numerous exchanges with the non-custodial parent, the harm to children caused by ongoing conflict and danger experienced in divorcing domestic violence families, far outweighs any such advantages.

The truth is, when it comes to visitation and custody in cases involving spouse abuse, *frequent* stays with the noncustodial abusive parent is *not* always in the child's best interest. Experts on children and divorce note that children are harmed by chronic conflict and violence between their parents:

The more frequent the access arrangement between children and the [spouse abusing] noncustodial parent, the greater the level of physical and emotional abuse and conflict between the parents. The more severe the parental conflict, the greater the child's distress and dysfunctional behavior.⁵⁸

[Similarly], [W]hen parents are involved in protracted post-separation conflict, custody and visitation arrangements that maximize contact with both parents appear to be problematic for children (J. Johnston press release at 2.)

California's Center for the Family in Transition reaches a similar conclusion in its Proposed Guidelines for Custody and Visitation for Cases with Domestic Violence:

No legal custody arrangement should maintain a high level of continuous parental conflict or hinder the partner's ability to make appropriate and timely decisions regarding their children....

Where there is ongoing conflict and reasonable fear of violence between parents, and/or the child shows continued stress reactions to transitions between parents, access arrangements that require the child to make frequent transitions between parents should be avoided....

Where there is ongoing conflict and fear of violence, timesharing schedules that require the child to spend substantial amounts of time with both parents are not usually advisable (Janet R. Johnston, Proposed Guidelines at 5-7).

Not only are children harmed by experiencing ongoing conflict and intimidation from an abusing parent, they may also be harmed because of the emotional toll such violence takes on their custodial parent. The most recent research regarding the well-being of children post-divorce finds that the two most important factors affecting children are the functioning of the primary custodial parent and the children's exposure to conflict between parents:

Our review [of research] convinced us that the most important factors in assuring the well-being of children after divorce are that the [custodial] mother be an effective parent, providing love, nurturing, a predictable routine, and consistent, moderate discipline, and that the children not be

exposed to continual conflict between the parents.⁵⁹ (F. Furstenberg & A. Cherlin at 118-19).

This conclusion is consistent with domestic violence research which suggests that the harm to children of witnessing spouse abuse is somewhat mediated by the mother's functioning (G. Hotaling, *et al.* at 237). If the mother continues to be in danger after separation or, as is often the case, if she is in even *greater* danger post-separation, her ability to care for her children may be compromised.

CONCLUSION

Legislation that makes it difficult or nearly impossible for a custodial parent to move with her or his children, places a heavy burden on the many battered women seeking to escape violence and rebuild a stable life for themselves and their children. Such legislation unwittingly provides a powerful tool of control for abusive men who seek to retaliate against a partner for leaving or who seek to continue to control a partner after separation. These separation assaults are attacks on the woman's autonomy. Many abusers use custody and visitation battles as a tool of ongoing control. Battered women are often forced to remain in close proximity to an ex-partner who threatens them at every turn and who continually disrupts the lives of their children. Where ongoing separation abuse is present, including intimidation, threats, harassment, as well as physical abuse, we must recognize that relocation may be the only adequate measure of protection for a battered woman and her children.

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ENDNOTES

- 1 For example, WEAVE in Sacramento received over 11,000 crisis calls in 1993 and housed only 19 percent of those requesting shelter. WEAVE sheltered a total of 463 women and 584 children in the same year. (Author's conversation with Nancy Nolan, staff attorney for WEAVE).
- 2 Author's conversation with Wendy Constantine, Family Court Services liaison with California Judicial Council. The study was a large scale representative study conducted for two weeks and included information from nearly all California counties. No attempt was made to verify the accuracy of domestic violence reports or to measure the severity of the violence reported. In Santa Clara county alone, domestic violence is raised as a concern in about 27 percent of mediation cases. Conversation with Steve Barren, Family Court Services of Santa Clara County.
- 3 See, e.g., Gail A. Goolkasian, "Confronting Domestic Violence: A Guide for Criminal Justice Agencies," in *U.S. Dept. of Justice Report* (1986) (86 %); Daniel G. Saunders, "Wife Abuse, Husband Abuse, or Mutual Combat? A Feminist Perspective on the Empirical Findings," *Feminist Perspectives on Wife Abuse* at 97 (Yllo & Bograd, ed. 1988) (numerous police report studies find female to be the sole victims in about 90% of reported domestic violence assault cases.) There are cases in which men are fearful of their ex-wife's violence and in such cases, the concerns addressed in this paper would also apply. In addition, the dynamics of domestic violence are similar in same-sex relationships and abused partners in these relationships require the same protection.
- 4 Research suggests the number of batterers who abuse in a second relationship to be between 57% and 86%. Daniel Saunders, "Child Custody Decisions in Families Experiencing Woman Abuse," *Social Work* (Sept. 1993); see also Lenore E.A. Walker & Glenace E. Edwall, "Domestic Violence and Determination of Visitation and Custody in Divorce," in *Domestic Violence on Trial* (ed., Daniel J. Sonkin: 1987) (93% of batterers studied admitted to having abused a previous partner).
- 5 See, e.g., Mary Ann Dutton, *Empowering and Healing the Battered Woman* at 18 (Springer Pub. Co. 1993); Jan E. Stets, *Domestic Violence and Control* at 110 (1988); Daniel J. Sonkin & William Fazio, "Domestic Violence Expert Testimony in the Prosecution of Male Batterers," in *Domestic Violence*

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- 6 B. Hart, "State Codes on Domestic Violence: Analysis, Commentary and Recommendations," *National Council of Juvenile and Family Court Judges* at 34 (citing J.S. Wallerstein and J.R. Johnston, "Children of Divorce: Recent Findings Regarding Long-Term Effects & Recent Studies of Joint and Sole Custody," 11 *Pediatrics in Rev.* 197 (1990); J.R. Johnston, J.M. Tschann, "Ongoing Post-Divorce Conflict Effects on Children of Joint Custody and Frequent Access," 59 *Amer. J. Orthopsychiat.* 576 (1989).

- 7 The same authors conclude:

1. The more effectively custodial parents can function, the better will be their children's adjustment.

2. The less parental conflict children are exposed to, the better will be their adjustment.

Frank Furstenberg & Andrew Cherlin at 107-08.