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Jay G. Silverman

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When Paradigms Collide: Exploring the Psychology of Family Violence and Implications for Legal Proceedings

Jay G. Silverman, Ph.D.*

This is an incredibly important area, and I really appreciate what folks have had to say so far this morning on how difficult an area of practice this really is. Some of what we have done as psychologists, as people trained in child development and child protection, is close our eyes to a lot of what is the reality of women and children's lives and how to serve them in cases of disputed child custody involving a history of domestic violence. What we have moved towards, very importantly, in thinking about intimate partner violence (IPV), is moving away from incidence-based definitions of the problem (e.g., something happened once, something was thrown, somebody was shoved equaling partner violence). At least this is true in our conceptualization of the problem. The research side is still quite dependent on such checklist-based definitions, unfortunately. What is very important for the practitioners here to understand is that IPV should be thought of as a pattern of behavior that results in coercive control of other members of the family, where other people are living in fear based on some history of actual or credible threats of violence. And that is something that isn't really that difficult to assess, when you're speaking to people, but it's not easy to assess when you're using standardized measures.

* Jay G. Silverman, Ph.D., is an Assistant Professor in the Department of Health and Social Behavior and Director of Violence Prevention Programs at the Division of Public Health Practice, has co-authored the first book about the impact of the parenting of men who abuse their female partners, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* (Sage Publications Inc., 2002). *The Batterer as Parent* sets out to debunk the myths about the short and long-term impacts of batterers on children.

Violence against women is now recognized as a public health issue, both in the U.S. and internationally.¹ When we look at statistics from all large representative studies and national studies conducted across the globe, it is extremely clear that the brunt of family violence is experienced by women and children.² Women are much more likely to experience this intimate violence and much more likely to be injured.³ They are also much, much more likely to be killed.⁴ The majority of perpetrators of child homicides are partners of battered women.⁵ A very large percentage of the population is affected by domestic violence.⁶ For all of these reasons, we desperately need to move away from the individual psychology-based conceptions of this problem. This is a broad social, political problem and a huge public health threat around the world.

Physical violence is what we most commonly focus on. The physical is the easiest to measure and it's more convincing. So, that tends to be what we talk about. But, other forms of violence are likely to occur more often. Usually where there is physical violence or a credible threat of physical violence, other forms of emotional abuse, economic control, immigration-related abuse or exploitation of other vulnerabilities exist as control tactics.⁷ Recent studies are helping us to understand some of the non-injury health consequences of intimate partner vio-

1. See WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH (Etienne G. Krug et al. eds., 2002).

2. See Heise L. Ellsberg & M. Gottmoeller, *Ending Violence Against Women*, 27 Population Reports 1 (Dec. 1999), available at <http://www.inforhealth.org/pr/11/violence.pdf> (last visited Nov. 24, 2003).

3. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T, OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 5 (2000), available at <http://www.ncjrs.org/pdffiles1/nij/181867.pdf>. (last visited Nov. 24, 2003).

4. See LAWRENCE GREENFIELD ET AL., U.S. DEP'T OF JUSTICE, VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOY-FRIENDS, AND GIRLFRIENDS 11 (1998), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vi.pdf> (last visited Nov. 24, 2003).

5. M.E. Herman-Giddens et al., *Underascertainment of Child Abuse Mortality in the United States*, 282 JAMA 463, 463-67 (2000).

6. See TJADEN & THOENNES, *supra* note 3, at 9-11.

7. See, e.g., Anita Raj & Jay G. Silverman, *Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367 (2002).

lence.⁸ They include digestive problems, abdominal pains, urinary tract problems, headaches, back pains, etc.⁹

And for children, what we are grappling with in the past decade is to find a way to integrate our growing knowledge of partner violence against women with our longer term accumulated knowledge of child abuse and neglect. Both IPV and child abuse experts are guilty of closing our eyes to the other problem, seeing these as separate issues, as separate ways of thinking about families, as separate training specialties, and it has been to the tremendous detriment of both fields, and much more importantly, to the well being of women and children. But, we are beginning to understand how closely tied child abuse and intimate partner violence really are. There have been a good number of studies that show a tremendous overlap between child maltreatment and woman battering.¹⁰ Whether it's coming from studies that are focusing on child abuse neglect, or focusing on intimate partner violence, if you ask the right questions, you will find that where there's children involved, there are bad things going on for those children. The same characteristics of an individual that lead them to desire or use force to control their partner, absolutely lead them to desire that same control and to be likely to perpetrate that same neglect or abuse of their children.¹¹ We would all like to believe that people do their best to be good parents and when there is a problem in the marriage, that doesn't necessarily mean that their not working hard to be the best parents they can. Unfortunately, when somebody is battering a partner, my experience is that they are almost always actively involved in some sort of child abuse or neglect. And it's something that we need to pay attention to. Even in terms of homicide, this is something that is very hard to swallow for a lot of people, but the largest groups that are responsible for child homicide in the United States are

8. See Stephanie A. Eisenstat & Lundy Bancroft, *Domestic Violence*, 341 NEW ENG. J. MED. 886 (1999).

9. *Id.* at 889.

10. See, e.g., S.M. Ross, *Risk of Physical Abuse to Children of Spouse Abusing Parents*, 20 CHILD ABUSE & NEGLECT 589 (1996).

11. LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 29 (Sage Publications Inc., 2002).

dads and former male partners.¹² We only need to look in the newspapers—it's there all of the time. Sometimes you have to read between the lines, and they forget to connect the last dot for you, but it really is there. And this threat to children doesn't go away after marital separation. Women and children are probably experiencing the greatest threat to their safety at the point where they are seen by professionals in this room. What keeps very many women from ever taking steps to get away from an abusive male partner is the threat that they will lose their children or their children will be hurt if they make that move.¹³ People who have gotten to that point, where they feel the threat of remaining is greater than the threats associated with leaving, know they have a tremendous amount on the line. What tools are left available to the abusive individual who is looking to maintain control are those children. We see a tremendous overlap again between highly contested child custody cases and history of intimate partner violence.¹⁴ I think that that is absolutely no coincidence. It's the people who are most likely to be saying "I'm going to get custody of those kids, I am not going to work with you as a co-parent" and who are the least likely to want to figure out what children really need, to work to understand and care for these kids, who are likely to have perpetrated some abuse against their families. Not always, but it's a huge overlap. Beyond the health issues, there are major social concerns for kids who are exposed to intimate partner violence—*anxiety, low self-esteem, low social adjustment, hostilities, aggression, and school related issues, both academic and behavioral.* But there is a very broad range in children's responses to exposure to domestic violence. The research demonstrates that effects are most pronounced in younger children.¹⁵ That's very important. Often, we will hear arguments that "they are only three, they are fine." Even if they've heard some things, we're often not so worried about that. But it's really important that we don't do that, because those kids are most af-

12. See Herman-Giddens et al., *supra* note 5, at 463.

13. See BANCROFT & SILVERMAN, *supra* note 11, at 13.

14. See Catherine C. Ayoub et al., *Emotional Distress in Children of High-Conflict Divorce: The Impact of Marital Conflict and Violence*, 37 FAM. & CONCILIATION CTS. REV. 297 (1999).

15. H.M. Hughes, *Psychological and Behavioral Correlates of Family Violence in Child Witnesses and Victims*, 58 AM. J. ORTHOPSYCHIATRY 77 (1988).

fectured by this kind of exposure. They will heal when there is distance and safety from the abuse. This is very important. What decisions we make regarding safety we provide through our reports and orders in terms of safe settings for supervision and custody must consider whether there is safety from someone who has perpetrated abuse or neglect. We are deciding how likely these individuals are going to begin to heal from what has happened to them.

Parenting behaviors and roles in the family continue after this divorce and separation. What are the parenting characteristics of batterers? Beyond the obvious perpetration of physical violence against children, we often overlook sexual abuse, i.e., incest perpetration. There is a high overlap statistically—men who perpetrate partner violence are much more likely than other men to be incest perpetrators against their daughters.¹⁶ We are often faced with allegations of sexual abuse and our lives would be easier if we could assume they are for the most part false. False allegations of sexual abuse have also been studied and have found to be actually over-estimated—most often these allegations are found to have some basis and not made maliciously.¹⁷ They are based on true belief of the mother based on a child's behavior. Such allegations need to be investigated. I am not certainly sitting up here saying that any allegation should be blindly believed, but investigation of this issue is critical. Too often, these are ignored in a court setting based on what the particular emotional state of the parties is or some other factor.

Other important parenting characteristics that require careful investigation and time with all parties are neglectful authoritarianism, undermining of mother's role as a parent, and role reversal. Role reversal is where the parenting dynamic is based on the parent's needs rather than the child's.¹⁸ Examples are unwillingness to be drawn into activities that are the child's choosing, but demanding participation of the child in activities that are interesting to him. Undermining the mother's role

16. See BANCROFT & SILVERMAN, *supra* note 11, at 84.

17. Nancy Thoennes & Patricia Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 CHILD ABUSE & NEGLECT 151 (1990).

18. See BANCROFT & SILVERMAN, *supra* note 11, at 35.

often involves characterizing her to the child as unfit, unintelligent, not able to provide for needs, etc.¹⁹ This can lead to behavior evident in interviews with children—mom will be blamed for what's gone on, with one or more of the children treating her very disrespectfully. This can lead an investigator to blame the mom, thinking these kids are treating her this way and she seems to be letting it happen, this women is obviously in very tough shape, look at the way they are acting. Divisions in the family are also often a product of batterers' behavior with their children.²⁰

Post separation risks are very important to consider. Men who batter are often inconsistent in their demands and follow-through regarding visitation.²¹ There may be great contention over his needs to have access to particular weekends or holidays, and then when it comes time for the visit, he doesn't follow through. Too often, we don't follow-up and ask ourselves what does this tell us. Another important red flag is interference in services for children. In many situations, abusive men will view any type of therapy as a threat to their control. Another more obvious concern is the use of visits and exchanges to continue abuse of mom, at least emotionally. These threats need to be guarded against. He may behave abusively toward children in unsupervised visitations, or in supervised visitation where the supervisor is not a professional. Supervision really needs to be professional. In many cases we'll find the supervisor is his mom or new partner. That's not supervision. Inappropriate behavior in visitation may include portraying or promoting disrespectful behavior to the mother, blaming the situation on the mother, and trying to have a child take care of their needs as a victim of the situation (e.g., "I'm so depressed. I miss you so much. I don't know if I can go on. I'm afraid I might hurt myself. Help me."). This is not only incredibly inappropriate; it is incredibly detrimental.

There are also common behaviors seen in the courts in such cases. Use of his professional relationships or status to dispute the abuse is an example. Many abusive men are able to conform and be quite upstanding citizens in other realms. These

19. *Id.* at 33.

20. *Id.* at 77.

21. *Id.* at 106.

are not people who have any generalized anti-social behavior. You see over and over again the TV cameras on the bewildered neighbors saying "but he was such a nice guy." This is not data to rely on. Using the victim's anger to discredit her is also a common tactic. Making false defensive allegations (e.g., "she's the one who has actually abused the kids.") is often seen. This can make for an extremely confusing situation for court personnel and may lead to conclusions that these are just two vindictive people in a divorce and that none of the allegations should be taken seriously.

Mediation is not appropriate when there have been allegations of abuse. Over and over again we've heard from battered women that they felt coerced by probation officers into agreeing to things that they do not want. Because of the history of abuse, the fear, an abuser's threatening body language, etc. they may enter into agreements that they would not have otherwise.

With regard to the healing environment, physical and emotional safety is paramount. Structure, limits, predictability, these are obvious things that are very, very important. A strong bond to the non-battering parent. This bond with the non-abusive caretaker of the children has to be protected. We have to understand that this may be under attack post-separation from the abusive parent. We must help children maintain that bond. We must make sure that children are protected from feeling responsible for what is happening between the adults. Children do, most often, want to have contact with a parent, even when there is acknowledged, documented abuse. But, it has to be safe. Again, professional supervision has to be available. Bonds with siblings must also be protected. We've seen many cases where teenage boys are inappropriately awarded to the father while the younger children remain with the mother based on beliefs regarding the importance of a father at this point in their lives or mom's difficulty in managing a teenager's behavior. This is a huge mistake. There is no basis for these kinds of decisions. Almost every battered mother we have worked with has experienced discrediting of her concerns for her children. Over and over again, a mother's desperate concern that the children are continually being exposed to the things that she knows they were exposed to in the marriage is used to characterize her as hysterical and alienating the chil-

dren from their father. Because these pleas are often very emotional, they are often discredited. It's very difficult for us to stand back, we don't have very much time, and this person just seems to be a problem—they won't sit down, they won't be "rational." We have to work harder to consider the perspective of a responsible parent. They have a tremendous amount at risk. They and their children may have been severely traumatized at the hands of the man on the other side of the aisle. Although it's very difficult to work through these cases, we have to work much harder to reconsider paradigms that may be appropriate in divorce cases where domestic violence is not an issue. I'm going to end here. I'm not going to talk about the Battered Mothers' Testimony Project. The full report on this project is available from Wellesley College online.²² I do appreciate your time.

22. WELLESLEY CENTERS FOR WOMEN, THE BATTERED MOTHERS' TESTIMONY PROJECT: A HUMAN RIGHTS REPORT ON CHILD CUSTODY & DOMESTIC VIOLENCE IN MASSACHUSETTS, *available at* <http://www.wcwoonline.org/wrn/projects.html> (last visited Nov. 18, 2003).