Domestic Violence and the Law: An Impassioned Exploration for Family Peace

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In the fall of 1977, we sat at each other’s kitchen tables across rural New Hampshire planning our first safe homes, transportation networks, shelters, and abuse-prevention statutes. Having then just fled an abusive husband, I was determined to ensure that other victims did not share my experiences of shame, humiliation, sorry excuses, and endangerment by my abuser and the legal system. Not yet comprehending the vagaries of legislation and public policy, we codified the incursion into family life as the panacea for eradicating domestic violence. [FN1] We were certain that, once promulgated, such laws would be swiftly implemented, obviating the need for much thought regarding enforcement and continued funding. Surely, we thought, police would arrest for the abuse crimes, prosecutors and family law attorneys would zealously proceed with trial or equitable dispositions, and judges would craft case sentences that gave the batterers the unequivocal message that their behavior would not be tolerated. Such naive talk about the distinctions between enactment and implementation of laws was rivaled only by our underestimation of the difficulty in bringing about attitudinal and systemic change. *720 In thinking about the family law practitioner's response to domestic violence issues over the past few decades, it is heartening to note some progress while remaining deeply concerned that many lawyers have yet to embrace even the most basic tenets of victim safety and offender accountability. The result is that much of our same focus and discourse must continue into the next century, albeit with a generally more informed bar. Domestic violence impacts most lawyers and judges [FN2]; however, those in the field of family law are positioned to dramatically improve the lives of all parties, if they have learned how to intervene effectively. [FN3] The continuing violence indicates that we must examine the larger issues: namely, the social, cultural and economic conditions that will facilitate the victim's freedom from abuse. In our racially polarized nation, it is more critical than ever to honestly examine the politicization of poverty and race in the context of domestic violence policies and practices. We must identify the strategies to revitalize social capital as part of the empowerment equation for battered women.

Clarifying the tradeoffs among equality, liberty, and fraternity is essential to the current policy debates regarding legal interventions for abuse victims. Equality in any legal paradigm must involve scrutiny of who has access to the courts, and in America, it is clearly those with
money. Too often it is the batterer not paying child support whose family pays the lawyer, thus frequently ensuring the abuser's liberty in all but murder, attempted murder, or similarly egregious crimes. It turns out to be the liberty of the victim that is impinged upon, for it is she who cannot freely travel, work, or sleep as a result of the batterer's tenacious stalking, threats, and ongoing violence. And to whom is fraternity most often extended? Too many of the victim's friends and family are rightfully terrified of the batterer or cannot take time from work to accompany her to the frequent court hearings and trials. However, batterers appear quite skilled at recruiting family and friends to testify on their behalf, often lying in the mistaken impression that this will be of help. Their collusion with the abuser not only further endangers the victim, but also increases the likelihood that the batterer will continue to commit crimes and, ultimately, serve some jail time. When battered women have unfettered access to legal counsel, emergency welfare, child support, housing, and other forms of transitional assistance, they understandably have a greater chance of successfully fleeing their batterers. We must focus on the means of a coordinated community response to prevent and, when necessary, intervene effectively in violent incidents. Our efforts must balance victim safety with the offender's civil liberties, carefully weighing the state's interest in averting family violence, which Nashville Police Lt. Mark Wynn aptly calls "domestic terrorism."

How is it that more than two decades later, it appears to be a toss of the dice whether an abuse victim can access a lawyer or court that takes her safety seriously? It is this chilling reality that informs the challenge to lawyers to move beyond dialogue to action, beyond victim-blaming to offender accountability. The most frequently asked question remains, "But, why do those battered women stay with the abusers?" The ongoing, uninformed antipathy toward battered women appears based on the notion of volition: that the victim chooses to stay with her abuser in the face of appealing options. Victims have many valid reasons for staying with or returning to the batterer, not the least of which include a lack of financial resources, no job skills, fear, low self-esteem, and believing that it is in the children's best interest to have their father or a father-figure in the home. Many victims lack knowledge of their legal and other options; thus their response could be greatly impacted by access to well-informed counsel and community legal education efforts. [FN4] Lawyers only contribute to victim-blaming when they focus on judging what standard of acceptable behavior the battered woman has failed to meet, instead of utilizing zealous advocacy to make victim safety the priority. Attorney Barbara Hart explains: Empowerment advocacy believes that battering is not something that happens to a woman because of her characteristics, her family background, her psychological "profile", her family of origin, dysfunction, or her unconscious search for a certain type of a man. Battering can happen to anyone who has the misfortune to become involved with a person who wants power and control enough to be violent to get it. [FN5]

In examining the trends in family law cases with domestic violence issues, several themes emerge, some indicating problematic practices requiring further scrutiny and others reflecting promising practices in need of replication. The first theme focuses on a call to action: a reminder that representation is often fundamental to an abuse victim's ability to access legal remedies for safety. For decades there has existed a crisis in the dearth of legal representation available for battered women, particularly in the areas of child custody, visitation, and divorce litigation. Legal Services Corporation offices must be fully funded, minimally at twice their current levels. [FN6] then mandated to serve the low-income abuse victims in such dire need of
their assistance. Many legal services programs, such as Legal Aid of Central Texas, Texas Rural Legal Aid, Greater Boston Legal Services, and Southeastern Ohio Legal Services, do an excellent job as counsel for battered women, but too many others either refuse to take domestic violence cases or handle so few as to flagrantly violate their congressional mandate to serve the legal needs of their indigent community. If local Legal Aid programs are not adequately funded, states could follow the example of the Ohio and Minnesota Supreme Courts' requirement that lawyers pay increased license fees to fund legal services to the poor. [FN7]

With ready access to eager, bright students, our law schools must include domestic violence issues in substantive law courses and increase their clinical programs, especially those offering comprehensive legal representation for abuse victims. Many law schools fully fund criminal defense clinics that represent domestic violence offenders, but fail to offer any assistance to the victims whose very lives are at risk, and who too often achieve poor results when turning to the courts for protection. [FN8] The Gender Bias Task Force of Texas, Final Report found that attorneys and judges mishandle an array of domestic violence cases, in part because they lack basic education and knowledge on the issue. The 1994 Report specifically recommends that law schools and continuing education programs increase their offerings on domestic violence and gender bias, [FN9] as do many other state courts' gender bias reports. [FN10]

Despite the overwhelming presence of domestic violence in our homes and communities, and documented case mismanagement, there is neither a systematic nor comprehensive approach to its teaching in our law schools or its inclusion in continuing legal education programs. Fortunately, a growing number of law schools now offer family law or domestic violence clinics which fully represent victims beyond simply obtaining a protective order to the myriad complex matters (custody, visitation, divorce, immigration, etc.) which may jeopardize her safety. [FN11] Studying the issue of domestic violence provides a unique opportunity to learn about an enormous social problem that law students, lawyers, and judges must address as professionals, as well as in their personal lives. With females now in nine times more danger in their own homes than they are in the street, it is not surprising that domestic violence--perpetrated by a male partner--is the leading cause of serious injury for American women. [FN12] Sadly, the legacy of this violence is often passed from one generation to the next, absent effective interventions. [FN13] Given the extraordinary power of lawyers and judges to stop the abuse, we can offer little justification for not now educating ourselves about the background dynamics of domestic abuse as well as how we can best help.

Additionally, creative approaches are necessary to recruit private and government lawyers to handle a variety of domestic violence cases on a pro bono basis. Baltimore's House of Ruth shelter boasts not only a legal clinic with four attorneys and four advocates, but well over two hundred volunteer attorneys who also handle cases. We must hold up as heroes those lawyers who routinely represent battered women in family law matters without compensation, such as Norwood, Massachusetts, attorney Margaret Drew and Montgomery, Alabama, attorney Judy Barganier. Austin appellate specialist Jim Sylvester prepared an amicus brief to the Texas Supreme Court on behalf of a battered woman *724 whose children were murdered and her mother badly injured by the batterer. The civil suit charges the victim's attorney for failure to obtain a protective order, to conduct safety planning, or to take any meaningful action against the abuser. Phoenix corporate lawyer Heidi McNeil started Advocacy to End Domestic Violence,
which pairs a mentor and new attorney, making it easier to now refer such cases, while educating the legal community in the process. Often, competent representation in custody, visitation, and divorce cases determines the safety and well-being of the victimized family for generations. Batterers obtaining custody of the children and unsafe visitation arrangements constitute two of the most pressing problems facing battered women across the country. The safety of many victims is directly dependent on the goodwill of lawyers with the knowledge necessary to provide access to the courts and community resources. [FN14]

Ethical family law practitioners must make cultural competence a priority by examining the impact of race and culture on our clients. We must educate ourselves about other cultures to ensure that stereotypes and misinformation are not guiding our actions. In its race and the media report, the William Monroe Trotter Institute at the University of Massachusetts-Boston documented that 85 percent of the information published by major media outlets about people of color continues to be negative. Repeated exposure to negative stereotypes adversely impacts our interactions with co-workers, neighbors, victims, defendants, and all others with whom we come in contact. Our court, law firm, agency, and department staffs should also reflect the rich and valued diversity in our communities. All levels of personnel must be included, especially those usually absent among the professional, managerial, and top ranks. It is the responsibility of whites in the workplace to raise such issues; it should not be the role of people of color to repeatedly identify the absence of staff diversity. At the Seattle Municipal Court and the Massachusetts Department of Public Health's Women's Health Unit, top administrators prioritized diversifying their staffs with stellar results. Victims, offenders, and their children have increased confidence in systems in which they are served by people who look like them and share their backgrounds.

Part of self- and community-education should include lawyers subscribing to publications coming out of communities of color, providing a more balanced view, including the good news. Essence, Jet, Latina, *725 Hispanic, Asian American, Ebony, and Emerge are among the more mainstream magazines that can offer insight and information for the reader. Placing an array of magazines in waiting areas of courts, hospitals, and other prominent locations conveys to your community your self-education and efforts to embrace diversity. We must ensure that the posters, brochures, and community education materials that we distribute portray the valued diversity of the people we want to serve and on our staff. Too often we find materials produced only in English and/or showing only white people.

We must work closely with our shelters to educate ourselves about the needs and resources within our communities to serve people of color. For example, you will want to know if there exists a battered women's support group conducted in Spanish, or if the area needs African American batterer's counselors. When services are race- and culture-specific, they are utilized in greater numbers and with higher success rates. In recognition of this fact, Seattle has prioritized making available victim and offender services within community programs. For over a decade, the Seattle Indian Health Center has offered a batterer's intervention program run by Native American therapists. Similarly, other community-based organizations have ensured they have available African American, Asian American, Hispanic and other counselors of color to run victim support groups and batterer's intervention programs. [FN15]
The second theme stresses that the quality of representation is directly proportional to the victim's ability to become or stay safe. In other words, what we do and how we do it makes a big difference. Just as universal screening for domestic violence has become part of the standard of care for medical and mental health practitioners, lawyers' client interviews must also include inquiry about abuse in order to assess the immediate safety issues, regardless of whether the client is the victim, perpetrator, or child. [FN16] A lawyer's silence constitutes collusion with the batterer and likely malpractice. [FN17] The Model Rules of Professional Conduct specify that "(c)ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements *726 of the problem, and use of methods and procedures meeting the standards of competent practitioners." [FN18] Given the growing body of legal, psychological, and popular literature about domestic violence, there can be little doubt that screening is a minimal first step. Lawyers would be wise to follow American Medical Association (AMA) physician guidelines, starting with, "Because abuse is so common in women's lives, I've begun to ask about it routinely." [FN19] The attorney can then follow through with variations of, "Have you been hit or threatened in the relationship? Are you afraid now? Do you want information about a protective order? What can I do to help?"

For any client reporting prior or current abuse, a civil protection order should be fully discussed in the context of completing a Safety Plan. [FN20] In addition to screening for physical harm, lawyers should routinely ask about psychological abuse, [FN21] a common tactic of batterers to destroy the victim's self-esteem. The abuser may have told the victim that no one will believe her, [FN22] that she will be found wherever she goes, that no one will want to help her, and that the violence is all her fault. Attorneys must tell their battered clients, "You are not to blame for the abuse," and "What your partner has done is wrong," and "Help is available." [FN23]

Safety planning must become an integral part of domestic violence intervention practices by lawyers, judges, courts, and all community players, whether or not the victim remains with the batterer. Safety planning is critical because it offers the victim an action plan for staying alive. Safety Plan brochures, available for adults and youth, [FN24] should *727 be distributed throughout our communities to increase the likelihood that victims in need will have access to their potentially life-saving information. Such planning is necessary because contrary to popular belief, leaving the batterer does not ensure safety. Attempting to leave the batterer can cause the abuse to escalate, resulting in an increase in the likelihood of the victim being further harmed or murdered. [FN25] We must stop blaming the victims [FN26] by asking, "why did you stay?" and instead ask, "why does the community engage in such high levels of silence, denial, and minimization regarding domestic violence?" Asking why the victim stays implies that leaving will achieve both safety and an end to the abuse. In fact, the term "separation violence" was coined by experts to describe the typical pattern of batterers to re-assert control when the victim attempts to seek help. In fact, Dr. Angela Browne's research shows that more victims are killed in the process of leaving than at any other time, [FN27] making safety planning a critical component of any intervention. Thus, victims having just fled the abuser are in particular need of assistance in planning how to keep their children and themselves free from harm. Responsible counsel advise their clients about the safety ramifications of their decisions, be they victim, offender, or child.
Lawyers can do much to ensure the availability of Safety Plans throughout their communities. Upon returning home from an ABA domestic violence training session for new bar presidents, Austin solo practitioner Reverend Joseph Parker placed Safety Plan brochures (in plastic holders) in the bathrooms of his parish, David Chapel Missionary Baptist Church. After receiving the ABA Torts and Insurance Practice Section's Domestic Violence Safety Plan brochure, Charleston, South Carolina lawyer Jim Myrick convinced the Charleston Commission of Public Works to send the Safety Plans to each of its 89,000 home and business customers by inserting it in the water bill.

Judges can help by implementing a policy in which civil or criminal actions involving domestic violence or child protection will not be dismissed prior to an advocate's completing a Safety Plan with the victim. Given that so many victims asking to dismiss a protective order, criminal, or civil case have been intimidated into making the request, the judge can institute a practice of using Safety Plans to educate the victim about options. Not only can the victim be told that she is welcome to return to the court at any time she needs help, but the advocate will have the opportunity to more fully explain available community resources. The effort should be made to ensure that safety planning is conducted with every victim on every contact, augmented by comprehensive community legal education efforts. Safety Plans should be placed in bathroom stalls and public areas of every church, municipal/governmental building, beauty parlor, pharmacy, school, hospital, court, police station, day-care, library, recreation center, sports arena, restaurant, museum, hotel, and as many other locations as possible within our communities.

An important component of ethical representation of an abuse victim is seeking the assistance of domestic violence advocates when needed. Beyond safety planning, we must work closely with advocates to assist victims with maintaining separation and safety after the initial crisis. These cases are complex and not often amenable to simple solutions, but experienced advocates can often provide invaluable guidance. For example, a battered mother may be facing numerous problems, from eviction and debt collection to medical and emotional difficulties. If the victim is immigrant, elderly, lesbian, gay, handicapped, a teen or otherwise traditionally underserved, advocates may be able to provide information on resources, counseling, and creative intervention strategies. Because all victims and offenders differ, what works with one may not work with another, and advocates can help with needs assessments.

Attorneys representing batterers need to know that it is possible to ethically and zealously represent an abuser without placing the victim in further danger. Since the abuser's lawyer may be the only person with any influence over the batterer, speaking up can reap surprising results. The defense attorney should fully discuss with the batterer the ramifications of continuing the violence, including permanent loss of the relationship with the victim, a court-ordered intervention program, and possible jail. Being knowledgeable about the most successful batterer's intervention programs will allow the lawyer to tailor advice to the abusive client. Defense attorneys Lee Rosen, of Raleigh, North Carolina, and Donald Wolff, of St. Louis, Missouri, suggest that private attorneys should be clear that continued representation is contingent on the batterer's acknowledging the problem and entering a batterer's intervention program.
The third theme involves the limiting or micro approach to both lawyering and judging domestic violence cases. Often only the most recent crimes are considered, when the entire history of abuse must be weighed, particularly in determining child custody, visitation, equitable property division, and related matters. Dr. David Adams, a noted batterer's expert, reminds us that "domestic violence is a planned pattern of coercive control," necessitating that all facets of the perpetrator's abuse of power and control be acknowledged, documented, and considered in the case disposition. [FN33] For example, financial abuse is quite common, yet may not be readily apparent, unless the attorney asks discerning questions and knows which behaviors may be indicative of coercion. Because Massachusetts family lawyer Margaret Drew also has expertise in tax and estate planning law, she sees the manifestations of abuse when one partner tries to manipulate the couple's financial matters exclusively for his or her own benefit. Washington, D.C. family attorney Kirk Callan Smith further suggests that lawyers more zealously pursue alimony and significant distribution of property on behalf of abuse victims, because fault is a factor to be considered with both. Smith argues that lawyers have an ethical obligation to explain to our clients all the options and to let them make the final decisions, not being deterred by the likelihood (or lack thereof) of obtaining the requested alimony or property. He cautions that arguments should not be based on punishment for the batterer because equity is the basis of both requests. Rather, Smith offers, "lawyers can make arguments about preventing unjust enrichment and doing substantial justice."

In the same vein, some family lawyers respond to victims and batterers with a limited array of remedies, based upon their own lack of *730 knowledge. Interview forms should include questions on a wide range of possible problems, allowing counsel and client to jointly prioritize existing crises. The abused client may request legal assistance for a divorce or custody matter, but may also face imminent eviction, health, child-related, consumer, employment, or other problems that dramatically impact the lawyer's ability to effectively represent her. Lawyers must be trained to ask the abused or abuser client: (1) What do you want to see happen? (2) What is your biggest fear? (3) What can I do to help? and (4) What do you want to do when this is over? The answers can reveal a good deal about the degree of danger the victim faces or the crimes the batterer is contemplating.

Certainly, there is no expectation that the lawyer personally address every problem; rather, it is essential that we identify them and make appropriate referrals. In many areas of the country, a victim without a car is effectively denied access to helping resources, court, child care, work, and, ultimately, independence. Thus, assisting this client in obtaining a low-cost or donated car could dramatically increase the likelihood of her being able to live independent of the batterer. Some attorneys might argue that helping a client obtain a car is not their job, but zealous representation is hindered by the absence of transportation. The lawyer can also work closely with the local shelter or other service providers to ensure that they help the client obtain a car or other needed items, such as housing or employment.

Economic empowerment of the victim can be greatly enhanced through referrals to guidance counselors, job and educational counseling, mentor programs, scholarship and financial aid programs, and other means of permanently lifting her out of poverty. Given that the lack of money forces many victims to return to the perpetrator, attorneys and courts must provide information about achieving economic self-sufficiency. Part of improving our interventions with
abuse victims and offenders is to expand the notions of what constitutes the practice of law; to make the driving force the response to the question, "What action will increase victim safety?" [FN34] For many victims, part of that answer lies in their need for money. Thus, a critical component of safety planning is economic empowerment. Certainly domestic violence afflicts all income levels, but fleeing is exacerbated for victims without financial resources and job skills. Upper-income abuse victims often cite their perpetrator's control of all the finances, intentionally denying access for even basic living expenses. Welfare benefits, once the minimal *731 safety net for battered women, fail to provide sufficient funds to support a family of any size, given that half of the states pay less than $400 per month in benefits for a family of three. [FN35] It is not surprising, then, that family violence is the leading cause of homelessness and poverty for women and children. [FN36] Without information about job and educational opportunities, victims may be forced to return to the abuser. It is, therefore, incumbent upon lawyers to initiate inquiry about abuse as part of their intake procedures, as well as a mechanism for asking victims about their economic status. We can then assist them in creating their life plans by creating a step-by-step "action plan" to achieve financial independence, thus increasing the likelihood of victims being able to empower themselves.

The fourth theme involves the examination of the unintended consequences of typical family law practices with matters involving domestic violence. Early on, mediation was embraced as a more rational approach to resolution of these complex, emotionally charged cases. Mediators have often said, "We will deal with custody, visitation, and property division issues now and will not discuss the abuse." Wishful thinking at best, this concept ignores the fact that the violence, and resulting fear, taint all aspects of the negotiation process. Threats made prior to the session, or one look inside, can force victims to give up rights and remedies to which they are entitled, in exchange for the illusion of safety. The extraordinary power imbalance and the batterer's refusal to negotiate in good faith usually sabotage even well-intentioned mediations. In too many cases victims have lost custody of their children, marital property, and other rights to which they were entitled.

By the time some jurisdictions realized that mediation was not only inappropriate in most domestic violence cases, but clearly dangerous, they had already enacted state statutes and local court rules. As the push for alternative dispute resolution has swept the country, those seeking to keep domestic violence cases out of the courtroom declared mediation the answer, without properly examining the unintended consequences of endangering many abuse victims. At the very least, courts ordering *732 mediation should institute a careful screening mechanism to predetermine the presence of domestic violence. If the court then insists that mediation must occur, the victim and offender should not be in the same room, [FN37] and the victim should have legal counsel and/or an advocate present. [FN38] Couple's counseling is also dangerous and ill-advised because the same power imbalance and lack of protections exist.

Backlash in various incarnations has been an unintended result of promulgating protective order legislation. Some judges have sabotaged the legislative intent of protecting the true victims by issuing mutual orders without evidence of mutual combat. While it may sound obvious that only the injured party should obtain relief from the court, too many batterers have been able to obtain mutual orders simply by saying, "I want her to stay away from me, too." Sometimes counsel for both parties will stipulate to mutual orders because this may appear to be a harmless concession. Not only is the adult victim endangered by mutual orders, but the
children are also placed at greater risk for future harm and are further traumatized when they fail to see the true victim provided protection and witness the batterer gain powerful leverage via the arrest and/or mutual order. Because we are so quick to condemn those victims staying with the abuser and those wishing to dismiss orders, the least we can do is take seriously those victims seeking protection through the courts. The problem sometimes begins with law enforcement officers who arrest both parties or only the true victim because the batterer has mastered portraying himself as the victim and may have injuries that were inflicted by the victim in self-defense. Attorneys must ensure that their law enforcement, as well as the bar, are being adequately trained and monitored regarding the handling of domestic violence cases. Unless the court finds that mutual combat has taken place, [FN39] and absent one party's acting in self-defense, orders issued to both parties will have a chilling effect on the true victim coming forward for help again.

Similarly, joint custody initially appeared to be in the best interest of the children, because both parents would share equally in the decision-making, nurturing, and raising of them. That children are adversely impacted by domestic violence is now well documented [FN40] and intellectually understood. Yet, attorney and court practices in some jurisdictions continue to reflect the outdated notion that if children have not been physically battered, evidence of domestic violence will be of little import in fashioning orders and agreements. Tragically, such denial places both the abused parent and children at greater risk for further harm, and all but ensures that the abuser will have further involvement with the criminal justice system. [FN41] For far too long, we have failed to recognize that children need protection in all legal proceedings involving domestic violence issues. Whether using guardians ad litem, court-appointed special advocates (CASAs), domestic violence program advocates, or others speaking for the child, courts must ensure that the children's interests are addressed in the course of litigation. For example, in Denver's Domestic Violence Court, former Judge Jacqueline St. Joan and Rocky Mountain Children's Legal Clinic Director Shari Shink established a program with the Denver Safehouse (a battered women's shelter) for joint training guardians ad litem. Guardians are then appointed in domestic violence cases in which custody, visitation, and other children's issues are being litigated. [FN42]

Batterers should not receive joint or sole custody of the children, [FN43] in part because men who batter their partners are also likely to abuse their children. [FN44] One study estimated a 70 percent co-incidence of partner and child abuse in violent families. [FN45] Not surprisingly, the more serious the battery of the mother, the more severe the child maltreatment. [FN46] Courts should understand that after parental separation, there is increased risk that the batterer will physically, sexually, and/or emotionally abuse the children. [FN47] Post-separation, batterers will often use the children as leverage to coerce the victim to return; whether promising gifts for them or invoking guilt for depriving them of a father figure. [FN48] Children report being routinely grilled by the batterer-father regarding their mother's actions, dress, social life, and spending habits, in flagrant disregard for the emotional toll exacted. [FN49]

We know that the way we treat our children determines the level of crime in our communities, for children who grow up in a violent family are more likely to abuse others or to be victims of abuse as adolescents and adults. [FN50] The children need not be directly beaten in order to take on violent and delinquent behavior; it is enough for them to witness their mothers'
The Massachusetts Department of Youth Services found that children growing up in violent homes were six times more likely to attempt or complete suicide, had a 24 percent greater chance of committing sexual assault crimes, a 74 percent increased incidence of committing crimes against the person, and a 50 percent higher likelihood of abusing drugs and/or alcohol. [FN51] Frequently, children have witnessed the domestic abuse, either by being present in the same room or hearing it. [FN52] Another study comparing youth who were delinquent and those who were non-offending found that a history of family abuse was the primary distinction between the two groups. [FN53] Our children who witness abuse are in pain and some self-medicate with drugs and alcohol in response to an adult community seemingly apathetic about their families' plight.

*735 As a result, courts should presume that a batterer is not fit to be the sole or joint custodian of the children. Just such a presumption was unanimously passed by Congress in 1990, in response to the realization that too many batterers were able to present well in court and obtain custody of the children. [FN54] Most states now require that courts must consider evidence of domestic violence in making custody determinations. [FN55] However, too often the courts have minimized or rationalized the abuse, as well as its impact on the children. Family and battered women's advocates applaud Louisiana's 1992 amendment to its custody code, which includes the above-referenced presumption against custody to the batterer but also specifies that the abusing parent can only obtain supervised visitation and must successfully complete a batterer's intervention program. [FN56] The "best interest of the child" standard requires that abusers not receive joint or sole custody of their children, and that unsupervised visitation be predicated on their showing of non-abusive and respectful behavior.

An unexpected consequence of attempted gender neutrality in determining custody is that too many battered women are losing custody of their children to the abuser. Contrary to popular belief, most fathers who attempt to gain custody of their children do so successfully. [FN57] Certainly, in some of those cases the father was the more fit parent. However, in other instances the battered mother lost custody of her children because she had no access to legal counsel and did not know how to defend herself against the well-financed attorney of the batterer. As part of the judges' rationale, they frequently cite that as long as the offender is only battering an adult partner, this should not impact child custody decisions. [FN58] In addition to devaluing women and further endangering them, this erroneous assumption also greatly harms the children. [FN59] The majority of batterers grew up witnessing their fathers beating their mothers, [FN60] confirming that domestic violence is a learned behavior. Even with legal representation, it can take years for victims to prove that the batterers used death threats, alienated the children, hid assets, and otherwise continued their pattern of total control throughout the divorce process. [FN61] In the meantime, the children are learning that violence is an acceptable means to an end. Thus, the generational cycle will continue unless the children are taught, with our actions, that: (1) Most men are not violent to their partners and children; (2) there is no excuse for domestic violence; and (3) the abusive behavior will not be tolerated.

Abuse victims and children often face renewed violence in the course of visitation, necessitating that lawyers and judges prioritize safety concerns when establishing visitation schedules. [FN62] In recognition of the highly volatile atmosphere in visitation settings, Louisiana is to be commended for its emphasis on victim (adult and child) safety. As previously
noted, Louisiana presumes that neither joint nor sole custody can be awarded to a perpetrator of adult or child abuse, but requires supervised visitation until the perpetrator has successfully completed a batterer's intervention program. [FN63] The National Council of Juvenile and Family Court Judges also proposes that abusers should be limited to supervised visitation until they have completed a certified program and had a batterer's expert evaluate them. [FN64] Child-focused visitation centers, such as those in Houston [FN65] and in Brockton, Massachusetts, [FN66] require that all staff (including security personnel) receive training in family violence dynamics, as well as clear policies designed with victim safety in mind. Where there is evidence of serious domestic violence, courts should assume that any visitation with the battering parent will be supervised. [FN67] Supervised visitation *737 must not be conducted by any relative or friend of the batterer, as they are frequently afraid of the perpetrator and certainly unable to control him.

Additionally, any associated costs should be paid by the battering parent, [FN68] because the visitation center's services would not be needed but for the batterer's unlawful behavior. Further, the ABA House of Delegates' resolution on Unified Family Courts suggests that courts should: (1) ensure that children be exchanged for visitation only in protected places; (2) allow only supervised visitation (with the batterer paying costs); (3) prohibit visitation (supervised or otherwise) unless the batterer has completed a specific batterer's intervention program; and (4) allow visitations only when the batterer has abstained from possessing or consuming alcohol or drugs for a designated time prior to and during visitations. [FN69] When appropriate, the courts can also deny overnight visitations, mandate that abusers who have threatened kidnapping must post bond to ensure the children's return, maintain confidentiality of the victim and children's address, and be open to other creative conditions that will promote victim safety. [FN70] Although we might believe that psychologists would render objective analyses, it is of great concern that their child custody recommendations frequently ignore domestic violence. Surveying psychologists from 39 states, researchers found that of the criteria used to make custody decisions, a history of domestic violence was seen as relevant by only 27.7 percent of respondents. [FN71] Such findings are appalling given that more than forty state statutes require judges to consider domestic violence in custody decisions. Particularly disturbing were the factors that custody evaluators did believe were more important than a history of abuse. Seventy-five percent of the psychologists believed that sole or joint custody should not be granted to a parent who "alienate[s] the child from the other parent by negatively interpreting the other parent's behavior." [FN72] For psychologists without training in the dynamics of domestic violence, the abused parent's efforts to protect herself and her *738 children could easily be misinterpreted as intentionally alienating the batterer-parent. This is in spite of the American Psychological Association's determination that there exists no scientific basis for the theory of parental alienation syndrome. [FN73] Surprisingly, just 54.7 percent stated they would recommend sole custody be given to the primary caretaker, while 25 percent weighed economic stability as a key factor. [FN74] Clearly, it is the judge's and lawyer's responsibility to identify and engage psychologists who have received training regarding domestic violence and its adverse impact on children.

We can prioritize child safety by utilizing CASA [FN75] and other children's advocates if they have been trained in the dynamics of family violence. Attorneys involved with neglect and abuse or other child safety cases can utilize the expertise and guidance of their local, state, and
national CASA staff. Whether we use the models of the Denver Domestic Violence Court or Dade County Juvenile Court, we must ensure that the children, victim, and offender all have their interests represented.

Under the theme of unintended consequences, we must examine the statues and practices that presume that all legal matters have been resolved in the divorce case. By requiring that all related issues be handled in the divorce, many states effectively preclude subsequent legal action as redress for the abuse. Thus, domestic violence issues must be addressed in order to avert claim preclusion in future tort litigation against the abuser. Victims are encouraged to detail the abuse in the divorce pleadings to allow the court to make the proper safety and remedial orders, yet such information is exactly what impedes future litigation. Especially if child and adult victims will need ongoing therapy or will incur other expenses as a direct result of the abuse, it is critical to ensure either restitution and a settlement that includes anticipated costs or a final order that allows for further tort action to cover such expenses. If the child and/or adult victims have been emotionally traumatized, lawyers must remember to address the punitive as well as compensatory damages. Austin family lawyer Kristen Proctor has handled a number of cases involving tort actions against domestic violence perpetrators. In one particularly egregious case, Ms. Proctor knew that the defendant would be unable to pay the damages awarded, but believed that the victim deserved to have the court validate her entitlement to compensation for the torture she had endured. Thus, her firm was willing to represent this abuse victim on a pro bono basis, as well as other victims in family law cases.

The fifth theme that bears scrutiny relates to practices that fail to adequately protect victims, but continue simply because this is how it has always been done, it is easier, or the lawyer does not want to rock the boat. For example, it is puzzling why pre-nuptial agreements do not routinely include language penalizing violent behavior, with automatic monetary benefits for the victim. Similarly, lawyers who fail to argue for the longest possible duration for their clients' protective orders are skirting malpractice unless the victim or safety planning has dictated otherwise. For fear of alienating powerful players, most lawyers do not want to challenge problematic judges or prosecutors, even if they are not following the law or themselves behave in an abusive manner. Although tax-paid, public servants, both judges and prosecutors, have absolute immunity regarding any actions taken in the course of performing their official duties, thus insulating them from most legal actions. However, courageous advocates and lawyers in a number of jurisdictions have been able to reform intolerable practices short of litigation. Some success has been achieved when concerned lawyers and citizens meet with the judge or prosecutor and specifically outline the problems, as well as the needed changes. If the judge, prosecutor, or other players are not amenable to improvement, a "court watch" program may provide the necessary documentation of dubious behavior. El Paso County District Attorney Jaime Esparza asked his local Junior League to undertake a court-watch project to document not only how victims are treated in the courts, but also how the lack of adequate funding for judges and prosecutors impedes their ability to provide high quality services. Dallas County Assistant District Attorney Cindy Dyer was told by a judge that she would be held in contempt of court if she attempted to bring a domestic violence case forward without the victim. She invited a friend's bridge club to the court the next morning. The judge not only allowed the trial to go forward without the victim, but the jury found the defendant guilty and gave him a
twenty-year sentence. Implementing a court watch can be accomplished in virtually any jurisdiction, regardless of its size or resources.

An Alaskan grandmother recounted that she was from a small fishing village with a judge who refused to treat the abuse against her granddaughter seriously. So, the grandmother asked four of her elderly friends to accompany her to court for a few days. They brought their knitting and sat in the front row to be sure they had the judge’s eye. They knitted away throughout the morning, only pausing to peer over their glasses when he did something they did not like. By the end of the morning, the judge’s curiosity got the better of him, and he asked the grandmothers what they wanted. Because they had called their nearest shelter to find out the relevant laws, they were prepared with a list of needed changes to follow the law. This grandmother reports that within six months they had transformed the practices of the court, which required a visit only now and again to be sure the changes are permanent. Thus, whether court watches are carefully planned or hastily pulled together in response to an emergency case, they can be quite an effective mechanism to bring about needed changes. Perhaps most important, the process of sharing the volunteers’ court-watch findings with judges and prosecutors has resulted in several of them acknowledging the problematic aspects of their behavior, then improving it markedly. Affording citizens the opportunity to help with court watches educates the volunteers, but more importantly, abuse victims deserve no less than an accountable judicial system. [FN76]

A sixth theme addresses the continuing problem of the courts’ not holding batterers responsible for their dangerous and unlawful behavior, even when the court’s own orders are being flaunted, jeopardizing the victim’s safety. Often such inaction reflects the troublesome minimization and denial regarding the perpetrator’s actions, often due to a lack of training about batterers and effective intervention programs. [FN77] Batterer’s intervention programs should not be viewed as a panacea, particularly without other community support services in place. Certainly they have a greater chance of reducing recidivism if the police and courts treat domestic violence seriously and will ensure that sanctions result from violations. Batterer’s treatment experts suggest that a "batterer profile" can help assess several generalized, common characteristics and provide insight to better shape the programs with which we try to help offenders. First, a batterer’s public behavior is frequently quite different from his private actions. [FN78] Second, most abusers do not have a problem with anger or "poor impulse control;" rather they exert what Dr. David Adams calls "a planned pattern of coercive control." *741 Because many of us were sending perpetrators to short-term "anger management" programs in the belief that we were helping, it was shocking to learn from renowned batterer’s experts that most abusers are not "out of control" or angry. On the contrary, they use anger to manipulate and control their partners and children. As Paul Kivel, the co-founder of the Oakland Men’s Project, says, "Anger is not the problem," [FN79] yet too many courts still refer batterers to anger management classes instead of behavior-based intervention programs.

Third, excusing and minimizing violent behavior is a common tactic of batterers, who sometimes claim that they were "out of control." However, by listening to perpetrators and examining their behavior, counselors have learned that the violent behavior is most often deliberate. While there are some batterers who exhibit generalized violence, most will not assault the police officer who gives them a speeding ticket or the boss who yells at them for being late to
work. Indeed, most abusers with a criminal record have either assaulted other intimate partners or been convicted of drunk driving or substance abuse offenses. [FN80] Batterers may also try to excuse violence by blaming drugs or alcohol. In spite of the high correlation between substance abuse and domestic violence, [FN81] batterer's experts report that, while alcohol or drugs might act as a disinhibitor, they do not cause the violence. Therefore, it is imperative that abusers who exhibit both violence and substance abuse are understood to have two separate problems for which they must be held accountable and get help. [FN82] A fourth common characteristic is the batterer's manipulation of the children, which frequently increases after separation and includes tactics against the battered mother of forced spying, excessive criticism and name-calling, threats and coercion. [FN83] To respond effectively to the perpetrators and to reduce recidivism, batterer's intervention programs must be long-term, [FN84] culturally competent, *742 [ FN85] and behavior-based. [FN86] with community support to provide sanctions for new incidents [FN87] and ongoing partner contacts.

Another troubling practice relieving batterers of responsibility involves attorneys who tamper with domestic violence victims as witnesses in criminal matters. Family and other lawyers who counsel their clients to drop criminal charges (or refuse to testify) in exchange for a more equitable case disposition or a monetary settlement are likely committing malpractice. One client had been advised by her attorney that it was reasonable for the batterer to ask that she refuse to testify in the forthcoming criminal case, in exchange for her receiving more favorable visitation and child support schedules. Detrimentally relying on the lawyer's counsel, the victim notified the Travis County (Texas) Attorney's office that she would not take part in the prosecution, necessitating that they dismiss the case. When the victim then sought to renew her protective order based on the batterer's renewed threats, the County Attorney's office refused to assist her, based on her previous "lack of cooperation." [FN88] Obstruction of justice and witness tampering can also occur when a batterer's attorney attempts to negotiate a payoff, thereby allowing higher income batterers to avoid responsibility by buying the victim's acquiescence.

Batterers are also particularly adept at avoiding their responsibilities to provide child support, too often with few repercussions in spite of strict laws. Given that nonpayment of child support is a primary cause of child poverty in America, it is puzzling why its collection is not prioritized. More than 80 percent of all noncustodial parents either pay nothing or less than 15 percent of their income for child support, [FN89] with approximately $35 billion now owed to our children in child support *743 arrearages. [FN90] Batterers often use nonpayment of child support as a means of harassing the victim and forcing her to return because of a lack of financial resources. Obtaining the child support not only increases the likelihood that the children will be taken out of poverty, but also that they will not be again forced to return to the violent home.

Swift, sure sanctions for nonpayment of child support have proven quite successful. Tulsa's Judge Linda Morrissey reports an amazing 93 percent collection rate, within thirty days, for employed batterers. She reports that if they do not comply with the court's child support order within one month, they are sent to jail. For those unemployed, Judge Morrissey requires that they produce written documentation of their good faith efforts to obtain a job. [FN92] She argues that if court orders are not fully enforced in a timely manner, the non-paying parent rightly assumes there is no need to comply. If, on the other hand, the county jail awaits those unwilling to support their children, it is far more likely that the payments will be forthcoming.
As part of holding perpetrators accountable, we must ensure that lawyers who batter their partners are disciplined according to law, for they are violating the American Bar Association's Model Code of Professional Conduct, as well as state law. [FN93] Several states have taken such cases seriously. New Jersey's Supreme Court, in In the Matter of Lawrence G. Magid [FN94] and in In the Matter of Salvatore Principato, [FN95] ruled that the lawyers' conviction for assault against their partners constituted a violation of Rule 8.4. Not only did the court order a public reprimand of the lawyers, but it also stated, "We caution members of the bar, however, that the court in the future will ordinarily suspend an attorney who is convicted of an act of domestic violence." [FN96]

A final plea to engender greater offender accountability and victim safety is to welcome men's involvement in anti-violence efforts. There are extraordinary men around the country who are or should be true *744 heroes in the domestic violence movement. Dr. Bob McAfee, past-president of the American Medical Association and a surgeon from Portland, Maine, who serves on the American Bar Association's Commission on Domestic Violence, is responsible for instituting many progressive policies to assist domestic violence victims at the AMA, as well as in his own practice. Tampa's Chris Griffin and Michael Bedke are corporate attorneys who have successively chaired the ABA Commission on Domestic Violence. Each provided quite inclusive leadership, with zeal, tireless dedication to improving legal responses to victims, and ensuring that much-needed training manuals, seminars, and videos were produced. Many more have helped, but literal armies are needed, and appear ready to assist if we are organized in laying out a menu of options to best utilize their talents.

In closing, I must admit to not having the patience I did twenty-two years ago. When I hear the tired stories of those accusing victims of "abusing the system, crying wolf, violating her own protective order, being uncooperative for not wanting to endanger herself by testifying, lying about the abuse, and refusing to leave," I cringe, praying for patience and restraint. Of course, there are those who misuse any law, but we do not advocate abolition of insurance because some people intentionally destroy their cars, and then collect payment for an accident. As attorneys and judges, we should be celebrating that domestic violence victims are increasingly turning to the courts for protection from abuse, for they offer us the opportunity to use the law to save lives. In 1977, and even today, some would say that we are breaking up the families by having shelters. As Las Vegas Safe Nest Shelter Director Estelle Murphy clarifies, "That's like accusing hospitals of encouraging injuries." We know that swift, sure interventions and safe shelters can interrupt the intergenerational cycle of learned abuse by teaching our children that the community will not tolerate violence. "We have a choice," Juvenile Court Judge Dale Harris says. "Will our children and women have homes they can run to or homes they must run away from?" [FN97] For the adult victims and their children, competent legal counsel means the difference between escalating abuse and life without terror. Lawyers' and judges' promising practices deserve recognition and replication. We have the power and responsibility to ensure intolerance for domestic violence. As a lawyer and survivor, I can attest to the profound impact of passionate attorneys, advocates, and judges, for they have helped keep thousands of victims and me alive for many years.

[FNa1]. Clinical Professor, University of Texas School of Law; co-founder and consultant,
National Training Center on Domestic and Sexual Violence; domestic violence, child abuse, and juvenile prosecutor and advocate since 1977.

[FN1]. "Domestic violence" occurs when one intimate partner uses physical violence, threats, stalking, harassment, or emotional or financial abuse to control, manipulate, coerce, or intimidate the other partner. Roberta Valente, Domestic Violence and the Law, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK, THE AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE (1996) [hereinafter THE IMPACT OF DOMESTIC VIOLENCE]

[FN2]. See THE IMPACT OF DOMESTIC VIOLENCE, supra note 1, with chapters covering the relevance for most fields of law, including children's; civil rights; contracts; corporate; criminal; elder; employment evidence; general practice; health care; government and public sector; housing and homelessness; insurance; judiciary; law firm management; legal services; mediation; military; poverty; probate, estate and trust; professional responsibility and ethics; real property; safety planning; screening; sexual harassment; solo practitioners; sports and entertainment; state and local government; tax; trial practice and torts.


[FN6]. In 1996, Legal Services Corporation's (LSC) funding was slashed from $415 million to $283 million, forcing 12.7 percent of local offices to close. Substantial restrictions were placed on the types of litigation LSC offices could bring and whom they could serve. Alan W. Houseman, Can Legal Services Achieve Equal Justice, 2 ABA DIALOGUE 33 (Winter 1998). In 1999, it was necessary for all state bars to lobby heavily simply to restore funding to $250 million after the House Appropriations Committee slashed it to $141 million. To stay abreast of current funding status and congressional activity, contact the ABA's Governmental Affairs webpage at <http://www.abanet.org/legadv>. Julie Strandlie, Battle for Adequate Funding for the Legal Services Corporation Heats Up, 3 ABA DIALOGUE 26 (Summer 1999).

[FN7]. Terry Carter, Cash Counsel, Supreme Courts in Two States Require Lawyers to Pay Higher License Fees to Help Fund Legal Aid, A.B.A. J. 38 (June 1997).


[FN9]. GENDER BIAS TASK FORCE FINAL REPORT, Feb. 1994 (hereinafter THE TEXAS
REPORT).


[FN11]. To obtain a "Domestic Violence and the Law" course syllabus, Domestic Violence Clinic Proposal and Manual, Domestic Violence Case Hypotheticals for 20 Areas of Law, and other relevant information from the author's programs at the University of Texas School of Law, see webpage at <http://www.cavnet.com>.


[FN13]. See generally infra on the impact of domestic violence on children.

[FN14]. The author is grateful to the Denver lawyer who procured her divorce on a pro bono basis in 1984, helping obtain child support and permanent protective order, after a seven-year search for affordable legal assistance.

[FN15]. Based on the author's experience as a court advocate with the Seattle City Attorney's Family Violence Project, 1984-85, and follow-up interviews with Linda Lewis, court advocate with the project from 1985 to the present.

[FN16]. Judge Cindy Lederman of the Dade County (Florida) Juvenile and Dependency Court has pioneered their protocol for screening all children and adults for abuse, then providing counseling and other needed services.

[FN17]. The Model Rules of Professional Conduct mandate that attorneys "provide competent representation to a client," which "requires the legal knowledge, skills, thoroughness and preparation necessary for the representation." Rule 1.1.

[FN18]. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 cmt. 5.


[FN20]. A Safety Plan offers the victim practical steps for protecting herself during an explosive incident, when preparing to leave, at work, in public, and with the children.

[FN21]. Joan S. Meier, Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice, 21 HOFSTRA L. REV. 1295 (1993); See also PATRICIA EVANS, THE VERBALLY ABUSIVE RELATIONSHIP, HOW TO RECOGNIZE IT AND HOW TO RESPOND ("All Domestic Violence Begins with Verbal Abuse") (1992).

[FN22]. While not discounting the reality of male victims (both gay and heterosexual), the vast


[FN24] Safety Plans, in English and Spanish, can be obtained from the Texas Attorney General's Office of Victim Compensation, 1-800-983-9933, or from the American Bar Association's Torts and Insurance Practice Section. These Safety Plans are not copyrighted in the hope that readers will reproduce them in their home jurisdictions, listing local resources. Police, sheriff, shelters, bar associations, or other entities can reproduce and distribute them, as the Bexar County (Texas) Women's Bar Association, the Travis County (Texas) Women's Bar Association, and the Dallas District Attorney's Office have all done.


[FN28] Phoenix City Councilor Peggy Billstein has installed brochure holders with English and Spanish domestic violence safety plans in all 900 city bathrooms.

[FN29] The University of Texas School of Law has English and Spanish safety plans in all its bathrooms and national domestic violence hotline stickers on all its pay phones.

[FN30] Memorial Hospital in Las Cruces, New Mexico, has English and Spanish safety plans in all its bathrooms.


[FN37]. Harvey I. Hauer, Making Mediation Work, FAM. ADVOC. 27 (Spring 1997).

[FN38]. Unrepresented women tend to feel coerced and have greater difficulty participating. ERIC GALTON, MEDIATION: A TEXAS PRACTICE GUIDE 100 (1993).

[FN39]. Det. Charles Mesino, former head of the Phoenix Police Department Domestic Violence Unit, states that mutual combat arrests should occur in no more than 3% of arrests, and that even that number is probably too high, and that mutual orders place the officers at greater risk because the abuser has not been given a clear message.


[FN41]. Adams, supra note 33, at 25.

[FN42]. Interview with Judge Jacqueline St. Joan, in Denver, Colorado (Feb. 3, 1994), and interview with Shari Shink, Executive Director of the Children's Legal Clinic, in Denver, Colorado (Feb. 3, 1994).


[FN44]. Susan Schechter, Jon Conte & Loretta Fredrick, Domestic Violence and Children: What


[FN46]. See Wife Beating and Child Abuse, supra note 40, as cited in Hart, supra note 44.


[FN49]. Adams, supra note 33, at 25.


[FN51]. Susan Guarino, Delinquent Youth and Family Violence: A Study of Abuse and Neglect in the Homes of Serious Juvenile Offenders, Massachusetts Dep't of Youth Services Publication #14,020-200-74-2-86-CR, at 5, 36 (1985). Note, the Texas Youth Commission and those in approximately eight other states have also conducted studies documenting the high correlation between domestic violence and juvenile delinquency.


[FN57]. Finding that 70% of fathers were granted custody who requested it. Summary of

[FN58]. Lynn Hecht Schafran, Gender Bias in Family Courts, Why Prejudice Permeates the Process, FAM. ADV. 22 (Summer 1994).

[FN59]. Id. at 27.


[FN61]. See, e.g., Woman Gets $18 Million in Divorce Fraud Case, N.Y. TIMES, June 15, 1997, at 14, col. 5, describing a jury verdict awarding Joyce Lozoya $6 million in compensatory and $12 million in punitive damages against her ex-husband, Raymond Cohea Gracia. In 1989, Mr. Gracia was awarded custody of the couple's four children, although he had threatened to kill his wife if she persisted in trying to obtain custody and visitation rights, and had hidden assets.


[FN65]. For further information on the "Safe Program" run by Marinelle Timmons at the Victim Assistance Centre and structuring visits to run concurrently, call 713/755-5625.

[FN66]. For further information on starting a Visitation Center, contact Pat Kelleher, Director, Brockton Visitation Center, 180 Belmont St., Brockon, MA 02401, 508/583-5200.


[FN68]. Id.

[FN69]. Id.

[FN70]. CONRAD N. HILTON FOUNDATION, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE, MODEL CODE PROJECT OF THE FAMILY VIOLENCE PROJECT, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES § 405 (1994), as cited in Davidson, supra note 67. For further information on the Model Code and other issues related to visitation, custody and child protection in the context of domestic violence, contact the
National Resource Center on Domestic Violence and Child Protection at 1-800-52-PEACE.


[FN72]. Id. at 72.

[FN73]. See 1 (6) DOM. VIOLENCE REP. 11, 12 (1996), as cited in id.

[FN74]. Id.

[FN75]. Texas CASA (Court Appointed Special Advocates) programs provide advocates for abused and neglected children in the court system, particularly those in foster care.

[FN76]. For guidance in establishing a court watch program, see Sarah M. Buel, Court Watches: Improving Services to Victims By Documenting Practices, TEX. PROSECUTOR J. (Sept./Oct. 1999) or call The Battered Women's Justice Project at 1-800-903-0111.

[FN77]. Contact the Battered Women's Justice Project, at 1-800-903-0111, for information about reputable batterer's intervention programs and general information regarding batterers.

[FN78]. Adams, supra note 33 at 23.

[FN79]. PAUL KIVEL, UNLEARNING VIOLENCE: A BREAKTHROUGH BOOK FOR VIOLENT MEN AND ALL THOSE WHO LOVE THEM, HOW TO REPLACE DOMESTIC ABUSE WITH NEW RULES AND NEW ROLES, REAL POWER AND RESPONSIBLE ACTION, 100 (1992).


[FN81]. Adams, supra note 33, at 25.

[FN82]. Id.

[FN83]. Id. at 24 and 25.

[FN84]. Experts suggest that a minimum of one year is essential since many batterers do not even emerge from the denial phase for about six months. One of the most successful programs, "Man Alive," is directed by Hamish Sinclair, a former batterer, and runs for three years in Marin, Sacramento, and San Francisco Counties, California. Similarly, at the Pivot Project in Houston, batterers are encouraged to continue attending sessions after completing the standard program. As with Man Alive, some of these "graduates" are then able to confront the new batterers
entering the program with a myriad of excuses. The batterers are also taught how to return to their communities to teach others to be nonviolent.

[FN85]. See Oliver J. Williams & R. Lance Becker, Domestic Partner Abuse Treatment Programs and Cultural Competence: The Results of a National Survey, in VIOLENCE AND VICTIMS (1994).

[FN86]. See above discussion as to the contraindication of "Anger Management" programs because domestic violence is not about the inability to control anger, but, rather is based on the abuse of power and control by violence. Thus, Dr. David Adams asserts, batterers need to be taught that they will be held responsible for their actions, just as everyone else is.

[FN87]. The Quincy (Massachusetts) Court Probation Department's Domestic Violence Unit (under the leadership of Deputy Chief Bruce Carr) takes a tough, no-nonsense approach to batterers who violate the conditions of their pre-trial release or sentences. By establishing a "revocation session" every Tuesday morning, Presiding Judge Charles Black further reinforces the message that there will be sanctions for the violation of protective or any other court orders.

[FN88]. Interview with client P.K., in Austin, Texas, on May 10, 1997, substantiated by her attorney and the assistant county attorney handling the case.


[FN91]. Pennsylvania found that the most common factor among those men who did not pay child support was their shared propensity for committing domestic violence crimes. Interview with Barbara Hart, Legal Counsel for the Pennsylvania Coalition Against Domestic Violence (Oct. 4, 1996).


[FN93]. Rule 8.4 specifies that it is a professional misconduct for a lawyer to "(b) commit a criminal act..."; as cited in Heidi McNeil, Disciplining Attorneys Who Have Battered Their Partners, 1 DOM. VIOLENCE REP. 1 (Apr./May 1996).


Judge Dale Harris presides over the juvenile court in Lynchburg, Virginia.

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