

Children Exposed to Domestic Violence: Making Trauma-Informed Custody and Visitation Decisions

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ABSTRACT

Sam's mother said that Sam's father first hit her during her pregnancy with Sam, that the violence continued as Sam grew, and that Sam witnessed many of his father's assaults. Sam and his mother twice went to live in a domestic violence shelter, but returned home after a few days. Sam's mother described him as a distressed, frightened, angry child who had difficulty sleeping, whether he was in

shelter or at home, with nightmares that disturbed his sleep every night. He protested and cried whenever she took him out of the house, and he was terrified whenever he was separated from her. When he heard adult voices arguing, even on the television or in the street, he covered his ears and cried. When his father became angry or loud, Sam ran to his mother and clung to her, crying, "No, daddy! No!" At the same time, he was often aggressive with his mother, hitting and kicking her whenever he was even slightly frustrated. When Sam started preschool at age four, his problems increased.

This article explores the risks for young children and the challenges for courts that emerge when parents who are victims or perpetrators of intimate partner violence seek court decisions on child visitation or custody matters. We focus particularly on children age five and younger, a group that is disproportionately represented in families affected by intimate partner violence, and especially vulnerable to its traumatic impact. We examine the literature on children's response to violence between their parents and the literature on parental alienation, a counter-charge that may arise when one parent alleges violence as a reason to limit the other parent's access to the children. We look at challenges faced by both mental health professionals and courts involved in custody determinations and make policy recommendations to help courts make trauma-informed decisions that best serve children.

He cried for his mother and seemed inconsolable without her. He could not sit still and concentrate during quiet activities. He was aggressive with peers, and when the teacher intervened, Sam became aggressive with her. In less than two months, the preschool asked Sam's parents to find another place for him. The teacher said that she could not manage Sam's behavior.

Sam's mother, distraught over the impact that the violence in his home was having on the child, moved once again to a shelter and sought a restraining order. Sam's father opposed the restraining order and sought full legal and physical custody of Sam. He denied any violence, citing the absence of police reports or medical reports to substantiate his claim. He also said that Sam's behavior was normal and that Sam's mother exaggerated any problems that Sam might have. He asserted that Sam's anxiety and fearfulness was due to his exposure to a "crazy mother who is doing her best to

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poison my child's mind against me." He told the court, "There's nothing wrong with Sam except that he's confused. His mother has lied to him for so long that she has him believing that I'm dangerous. I love Sam. I would never hurt him."

What are courts to make of cases like this where the parents disagree so dramatically about what has happened between them and whether their conflicts have had a negative impact on their children? Judges making decisions in cases like Sam's are faced with conflicting sets of value and precedent. On the one hand, they are charged with protecting the best interests of children (Uniform Marriage and Divorce Act, 1974). When the family is functioning well, preservation of that family will meet the child's developmental needs (Goldstein, Solnit, Goldstein, & Freud, 1996). The best interest standard asserts that when the family fails in its functioning, as in abuse or abandonment, or when separating parents cannot agree about custody and visitation, the child's interests should be paramount (Solnit & Nordhaus, 2005). On the other hand, a long line of judicial authority has established that parents have a constitutional right to the care, custody, and control of their children, and that this includes the right to be free from governmental interference in child-rearing decisions, as long as parents fulfill their obligations to care for their children's health, safety, education, and welfare (Guggenheim, 2005).

We argue that in balancing these competing values and legal precedents, courts should acknowledge that in cases where there are findings of intimate partner violence (commonly referred to as domestic violence), violent parents may not be adequate protectors of their children's legal and safety interests. These cases may require court intervention to assure that offending parents' contact with their children is safe and that they get the intervention they need to help them change their destructive behavior patterns. Most states provide for some consideration of a history of domestic violence as a factor in making decisions about child custody and visitation, and some states have gone further and established a rebuttable presumption that it is in the best interest of the child that a spousally abusive parent not receive full or joint custody (Kernic, Monary-Ernsdorff, Koespell, & Holt, 2005). In cases of established domestic violence, decision making about

children involves competing and conflicting needs: their need to maintain safe contact with both parents weighed against their need to be protected from the ongoing negative impact of trauma on their development. We further argue that if the court takes a view of the impact of domestic violence on children that is truly trauma-informed, it will acknowledge that the effects of domestic violence do not stop when the parents separate. Children may continue to witness violence at times of custody exchange or between the violent parent and a new partner (Shepard, 1992). But even in cases where children's exposure to physical assault ends with the separation of their parents, the initial trauma and its sequelae will continue to reverberate in the children's development, often changing their developmental trajectories for the worse. By making custody and visitation decisions that are truly trauma-informed, courts can help protect children from these continuing risks to their development.

Negative Impacts of Domestic Violence on Children

Although a full review of the literature discussing the effects of violence exposure on children is beyond the scope of this article, it is now well established that witnessing violence in their homes is associated with adverse outcomes for most children (Groves, 2002; Kitzmann, Gaylord, Holt, & Kenny, 2003; Carlson, 2000; Rossman, Hughes, & Rosenberg, 2000; Edleson, 1999; Margolin, 1998; McCloskey, Aurelio & Koss, 1995). Children exposed to violence between their parents have more internalizing (withdrawn, anxious, and depressed) behaviors and more externalizing (aggressive and destructive) behaviors than do controls (Carlson, 2000; Rossman, et al., 2000; Holden & Ritchie, 1991). They are at risk for insecure attachments to their caregivers, particularly if they are young (Lieberman & Van Horn, 1998). A substantial number of children exposed to violence between their parents are likely to develop post-traumatic stress disorder (Kilpatrick, Litt, & Williams, 1997; Kilpatrick & Williams, 1998; Lieberman, Van Horn, & Ghosh Ippen, 2005). Children's cognitive development is at risk as well. One well-designed study of 5-year-old twin pairs established that children exposed to high levels of domestic violence had IQs that were eight points lower than those of

non-exposed children (Koenen, Moffitt, Caspi, Taylor & Purcell, 2003). Children who come from homes where there is adult partner violence are also at higher risk for physical abuse, exposing them to the trauma of direct victimization, as well as to the trauma of witnessing injury or threats against a parent. (Appel & Holden, 1998; McGee, Wolfe, & Wilson, 1997; O'Keefe, 1994).

There is some evidence that exposure to violence between their parents has a disproportionately strong impact on children under five (Kitzmann, et al., 2003; Fantuzzo, Brouch, Beriam, & Atkins, 1997). In a group of children four years old and younger, children who witnessed assaults against their primary caregivers had more symptoms of aggression, fear, and hyperarousal than children who suffered other kinds of traumas, including direct physical and sexual assault (Scheeringa & Zeanah, 1995), demonstrating that for these very young children witnessing assault on caregivers is indeed overwhelming and traumatic.

Children may suffer indirect effects because of the parenting style of their violent parents. Bancroft and Silverman (2002) suggest that, in addition to the damage that violent parents do to their children by frightening them, being poor role models, and possibly assaulting them directly, batterers undermine the other parent's authority and relationship with the children, making it difficult for children to rely upon that relationship to help them recover from the effects of violence.

A Developmental Model of Trauma

If, however, courts are to make custody decisions truly informed by trauma theory, custody evaluators, guardians *ad litem*, and judges must understand far more than the simplistic principle that witnessing violence between their parents is bad for children. They must understand the impact of traumatic life experiences on the child's developing mind and personality, and the ways these experiences reverberate in the lives of the child and those who care for the child. Pynoos and colleagues describe a developmental model of the impact of trauma that demonstrates clearly that a traumatic event is only the beginning of a chain of impacts that may be experienced across the developmental span of childhood and adolescence (Pynoos, Steinberg, & Piacentini, 1999).

At the time of the initial trauma of hearing or seeing one parent assault the other, children's feelings of fear and horror are accompanied by an intense wish to turn to those who usually protect them: their parents. Because they cannot turn to their parents in this moment of crisis, an unsolvable conflict arises for children, and they are left alone with unmanageable feelings of terror (Osofsky, 1999). These feelings are accompanied by activation of their central nervous systems resulting in a cascade of stress hormones (De Bellis et al., 1999). The effect of this surge of stress hormones is hyper-alertness; children are ready to fight or flee from harm and are attuned only to self-protection. If this chain of events happens too often, it can result in permanent changes in the way the child's mind and body process stressful cues, such that even mildly stressful events are perceived as threatening (De Bellis et al., 1999). This state of hyperarousal and hypervigilance affects a child's cognitive, emotional, and social development. If children are reminded of the original assaults, or if they experience new assaults, a similar stress response occurs, leaving child witnesses at risk for constant states of agitation (Pynoos et al., 1999).

Domestic violence is a trauma that fits this model of repetitive surges of stress hormones. Losses that follow domestic assaults (for example, the separation of the family, the need to change schools, the loss of home, friends, and familiar patterns) present children with new challenges to their development. When one parent uses intimidation and violence or the threat of violence to exert control over the other, the family lives in a state of trauma and turmoil. Children are subject to repeated stress and ever-broadening networks of traumatic reminders. They may live in constant states of fear and anxiety, and their anxiety is heightened whenever they are reminded of the violence they have witnessed.

In the case of Sam, described above, his mother's description of his behavior illustrates children's complex response to violence in their homes. Unable to get the violence that he witnessed out of his mind, he responds with fear and anxiety to a variety of reminders. Because he is afraid that his mother may be injured or killed, his fear of being separated from her is overwhelming. Because leaving home has sometimes meant stays in strange, confusing shelters, Sam is now afraid to leave his home for fear that he will not come back. When events in his life arouse these fears, he becomes

restless, irritable, and aggressive. His sleep is disturbed, he has trouble concentrating, and he has few strategies besides aggression for dealing with frustration. His development is at risk not only because of the initial trauma of witnessing violence. His hyperarousal, fearfulness, and aggression make it difficult for him to succeed at many of the ordinary developmental tasks of early childhood: exploring the world, learning, and forming relationships with peers.

Protective Factors for Children

Trauma theory also informs us about what might be protective for children like Sam. Especially for young children, secure relationships with a caregiver can protect them from many of the emotional and behavioral problems that follow trauma (Pynoos et al., 1999; Lieberman, Van Horn, & Ozer, 2005). Young children use their relationships with attachment figures to regulate their emotional responses in times of fear or stress, to help them cope with their negative feelings, and to help them learn adaptive ways to calm and regulate themselves (Lieberman, 2004). When a child has suffered a trauma, precisely these capacities are threatened (Lieberman, 2004; Groves, 2002; Pynoos et al., 1999). Considering these findings, the custody arrangement that may be most protective of young children's development after the trauma of witnessing domestic violence is one that places them with the non-offending parent so that the child is able to use the restorative power of the attachment relationship to regain equilibrium. Such an arrangement may include carefully controlled access to the offending parent. This plan allows children protection from reminders of violent traumatization that may be associated with the offender; it also allows children to begin to restore their sense of the non-offending parent as a reliable and protective caregiver. Young children's mental health is dependent upon consistent, reliable caregiving. Supporting traumatized children's secure relationships with caregivers gives them, therefore, support in re-regulating their affect, and learning more adaptive coping strategies.

In families with documented domestic violence, opportunities for the children to have safe contact with the offending parent may be important. In one study of preschool children whose parents had separated after

at least one incident of father-to-mother domestic violence witnessed by the child, children who had weekly contact with their fathers suffered fewer symptoms of depression, as reported by their mothers, than did children with no contact with the father, although the type of contact did not seem to make a difference. Children who had weekly supervised contact with their fathers also were protected from symptoms of depression (Stover, Van Horn, Turner, Cooper, & Lieberman, 2003). This study has limitations, including a small sample size, but it demonstrates the centrality of attachment relationships in the lives of very young children. Even when fathers have been violent and frightening, continuing contact with them, where that can be accomplished safely, may help protect their young children from feelings of sadness and loss.

Dilemmas for the Court When the Facts of Domestic Violence are Unclear

In some cases the history and extent of domestic violence are well documented in prior arrests, probation records, restraining orders, and victims' medical records. Other cases, such as the case of Sam, are neither simple nor one-sided. Although the mother alleges ongoing domestic violence witnessed by the child, and the child's behavior is consistent with a trauma response, the father tells a different story. He denies violence and asserts that the mother is exaggerating the child's problems. There are no police reports or medical documentation as accompanying evidence of the domestic violence.

In all but the most egregious cases of domestic violence, it can be very difficult for the courts to determine the facts of the allegations and the extent to which a child has been traumatized. Trauma-informed decision making does, however, require that courts take allegations of intimate partner violence seriously and devote the resources necessary for a thorough investigation of whether or not the allegations are true. These questions can best be addressed with a thorough evaluation provided by a professional who is knowledgeable about child development, family law, child trauma, and domestic violence. However, these resources are scarce and expensive in many court settings. In the absence of these resources, it is also possible for the judge to identify evidence that the parties' attorneys must pro-

duce, or in the case of pro se litigants, to ask the parties directly for information that will help determine the extent of child exposure and the basic questions about safety. The reader is referred to the National Council of Juvenile and Family Court Judges' publication, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*, an excellent resource to assist judges in determining which cases require an evaluation, what the content of the evaluation should be, who the evaluator should be, and what to do if there are no resources for evaluations. The publication is available from the NCJFCJ by e-mailing fvdinfo@ncjfcj.org.

Trauma-informed Risk Balancing in Complex Cases

Trauma-informed decision making about child custody does not imply that courts should treat all allegations of domestic violence as equally harmful or credible. If the court does determine that intimate partner violence has occurred, trauma-informed decision making requires two additional analytic steps, both of which consider the child's level of trauma, as well as safety. First, the court should understand the level of violence to which the child was exposed (by seeing the incident, hearing it, or being affected by its aftermath). Although any level of violence can be disturbing for a child, exposure to severe or repeated violence is more likely to leave children traumatized (Pynoos et al., 1999).

Second, the court should assess the perpetrator's risk of escalating violence or future serious violence that may put the child or the non-offending parent's ability to care for the child at risk. Several instruments exist that can be used to assess risk of recidivism in cases where partner assault has been established. One of these, the Ontario Domestic Assault Risk Assessment (ODARA) is an actuarial assessment that has demonstrated strong effectiveness in predicting re-assault (Hilton et al., 2004). It is designed to be completed by investigating police officers who are trained to complete the measure by coding data drawn from criminal databases. Its direct utility by courts is limited because courts may not, in family law cases, have access to arrest databases. The ODARA, however, does have value in helping courts understand what risk factors are associated

with especially high risks of re-assault. Variables with the highest weights and, therefore, the most predictive value, in the ODARA include history of prior domestic assault; a past sentence of 30 days or more for any kind of assault; prior violation of bail, parole, probation, or no-contact orders; the presence of more than one child in the home; and the offender having more than one indicator of a substance abuse problem. Other structured screens for violence are available, including the Danger Assessment (Campbell, 1986), and the Spouse Abuse Risk Assessment (Kropp, Hart, Webster, & Eaves, 1995). These measures were not actuarially created, as was the ODARA, but rather were developed by selecting variables demonstrated by the empirical and clinical literature to distinguish domestically violent men. Sheeran and Hampton (1999) propose a risk assessment screening tool that can be used in courts and in visitation centers that contains many of the same variables as do the Danger Assessment and the Spousal Assault Risk Assessment. Factors for which they recommend screening include:

- Escalation of violence, especially physical violence
- Recent acquisition of a weapon or change in use of weapons
- Suicidal or homicidal ideation, threats, or attempts
- Change in substance use/abuse patterns
- Stalking
- Obsessive jealousy of or preoccupation with the non-offending parent
- Violent behavior that is tied to mental health problems
- Violent or criminal behavior outside the family
- Increase in personal risk-taking by the offending parent
- Imprisonment of the non-offending parent in the home
- Symbolic violence, including destruction of the non-offending parent's pets or property
- The non-offending parent's attempt to flee the offending parent, or to terminate the relationship

These empirically derived screens do not have the same predictive strength as an actuarially created instrument such as the ODARA. On the other hand, they provide a structure for information gathering that has been

demonstrated to be moderately effective in predicting re-assault, and that is superior to unaided clinical judgment. If a predictive screener is administered and one or more of these risk factors is present, courts should be concerned about the possibility of future incidents of violence in which the child may be directly injured or the non-offending parent severely injured or killed. Higher numbers of factors present generally indicate a higher risk. Trauma-focused decision making about custody or visitation implies that the court should use this information to protect children from such escalating risk by making orders that limit the offending parent's access to the other parent and require that contact between the offending parent and the children be monitored and supervised.

The Question of Parental Alienation in Domestic Violence Cases

The case of Sam raises another issue: possible parental alienation. Sam's father asserted that Sam's mother lied to Sam about his dad and convinced him that his dad is dangerous. A more direct assertion of parental alienation would be hard to conceive. Gardner (1985, 1992, 2002) refers to parental alienation as a syndrome in which one parent, typically the mother, consciously "programs" the child by claiming that the other parent is mean, abusive, and unloving toward the child resulting in the child becoming adamant that he or she does not want any contact with the alienated parent. Although a full review of the literature regarding parental alienation syndrome is beyond the scope of this article, the syndrome has met with criticism both in academic circles and in the courts. It has not been classified as a diagnosis in the accepted psychological diagnostic manual (American Psychiatric Association, 2000). It has been attacked as lacking empirical support and peer review, and as being based solely in the author's anecdotal clinical experience and, as such, not meeting the standard for scientific evidence established by the Courts in *Frye v. U.S.*, *Daubert v. Merrell Dow Pharmaceuticals*, and *Kumbo Tire v. Carmichael* (Williams, 2001).

Although these are important critiques, there is an additional risk associated with applying theories of parental alienation in cases where family violence has occurred, and this risk exists whether the violence was

directed against a parent or against a child. In such cases, non-offending parents can be placed in an impossible bind. If they do not object to unsupervised contact between a violent parent and the child, they are seen as failing to protect the child. If they do raise objections, they may be accused of alienation (Schultze, 1997). We recommend that a court wishing to make a trauma-informed custody or visitation decision in a case where it is convinced that violence has actually occurred not accept evidence of parental alienation against the non-offending parent. Parents' efforts to protect children from potential harm in these cases should not be treated as a form of alienation, but rather as evidence of their efforts to protect the child.

Using the Assistance of Mental Health Professionals in Domestic Violence Cases

Given the complexity of contested custody cases involving allegations of domestic violence, courts often turn to mental health professionals to provide information to assist in decision making. Clinicians may be asked for their opinion of the child's best interest as part of the custody evaluation; they may also be asked to testify in court about the child's experience. They may also have relevant information about the child's experiences and their impact on the child's development that will help the court to make a trauma-informed decision. Treating clinicians who report to the court, either directly or indirectly, have extra burdens of professionalism and responsibility, as outlined by Greenberg, Gould, Gould-Saltman, and Stahl (2001), and courts must carefully assess the evidence that clinicians offer to be sure that they meet these burdens.

First and foremost, clinicians who are treating children involved in custody disputes have the obligation to keep an open mind, to consider a number of alternative hypotheses that might explain a situation, and not to rely on information about the child from only one parent or one point of view. In some situations, it may not be possible to interview both parents. The offending parent may be unavailable or unwilling to be involved in the treatment. In these cases, clinicians must bear in mind that they are only hearing one point of view, and they should make that clear when they offer evidence. If it is not clear, the court should ask questions to establish whether or not the clinician

has interviewed both parents and/or seen the children interact with both parents. The clinician's opinion in court may be of less value if it is based on a single parental perspective.

Second, clinicians who work with children whose parents are involved in custody litigation should be aware of a broad range of literature and be able to apply it to the clinical situations with which they are confronted. Greenberg and colleagues (2001) propose that at minimum clinicians must be current in the expanding research base on children's adjustment to divorce, the impact of conflict and violence on children, children's suggestibility, child abuse and domestic violence, alienation dynamics, and children's coping. Courts should demand that professional witnesses understand these domains and take them into account in any opinions that they render.

Mental health professionals can make valuable contributions to the decision-making process, but courts must be prepared to demand a high level of open-mindedness and neutrality from them. If they are working with the parents, they must not become aligned with one parent over the other. If they serve as the child's therapist, they are the primary interpreters and advocates for the child's needs, but they must avoid aligning with one parent over the other and accepting one parent's interpretation of the child's best interest without exposing that interpretation to careful scrutiny. They must consistently advocate for the child's safety and sound development, and honestly confront the strengths that each parent brings to the child as well as the risks that each parent poses. Courts accepting evidence from treating clinicians must uphold these high standards and confront possible biases if they are to make effective trauma-informed decisions.

Conclusion

The needs of children who are traumatized by exposure to violence in their families are complex. The sequelae of this exposure to violence can affect their development for many years, and the younger the child at the time of exposure, the more profound and broad-based will be the impact on that child's development. Although there are factors in addition to child trauma that courts must weigh when making custody decisions, we urge the courts to consider the children's traumatic

experiences as essential elements, so that their needs in this domain will be given the weight they deserve.

Mental health professionals can partner with the court to help bench officers understand the impact of trauma on child development, and what children need to help them achieve optimal developmental outcomes in spite of exposure to terrifying circumstances, so that the court can make custody and visitation decisions informed by these principles. In hearing from mental health professionals, however, the court must demand that they address the child's needs without being swayed by the perspective of one parent over the other.

The burden on courts in these cases is great. It is important that the judge making a decision about custody or visitation know what the child's experience has been and how the child was affected. The judge must also understand what risk factors are present that predict that the offending parent will continue to place children at physical and psychological risk by continuing to commit acts of violence. Uncovering the facts when they are contested can be costly in time and money. Proceeding without knowing the facts, however, can be costly for the child. Children who are repeatedly sent off to spend unsupervised time with parents who frighten them remain hyperaroused and anxious. Their anxiety may make it difficult for them to form trusting relationships, to regulate their emotions, and to ready themselves to learn. They may become increasingly angry with the parent who must repeatedly send them to visit someone they believe is dangerous and terrifying. There is also a cost to custodial parents, who have an increasingly difficult time seeing themselves as reliable protectors for their children when they must routinely send them into a potentially dangerous situation.

Trauma-informed decision making by the court helps parents and children avoid these painful traps. The court must analyze the facts carefully and understand: 1) to what was the child exposed; 2) how did the child react at the time; 3) how has the child functioned since the trauma; 4) what are the risks that violent patterns will continue; and 5) who is best equipped to help the child recover. Not every case of domestic intimidation and threat will be traumatic for the children involved, but courts are urged to seriously con-

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sider that many of these incidents will be traumatic, and to make custody and visitation decisions in ways that prioritize the child's emotional and developmental needs above all else.

Trauma-informed decision making will stretch all of

the professionals involved in a case to think and act outside their accustomed zones of comfort. It will demand the allocation of needed resources to cases in which it is possible that a child has been traumatized. It will be worth the extra effort.

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