

LEERGANG PARENTING COORDINATION

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College 2

Onderwerp: Het parenting coordination proces (I), Het parenting coordination proces (II), Bindend advies

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Zaal: Alma

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Leerdoelen

Aan het einde van dit onderdeel heeft u:

- praktische ervaring van parenting coordination opgedaan d.m.v. rollenspellen en het schrijven van een beslissing;
- begrip van het parenting coordination proces.

Onderwerpen

In dit onderdeel komen de volgende onderwerpen aan bod:

- Participatie van kinderen aan parenting coordination;
- Casussen gepast en niet gepast voor parenting coordination;
- Collaterale inlichting nodig voor parenting coordination;
- Voordelen van parenting coordination;
- Onpartijdigheid van de PC;
- Transparantie van het proces;
- Deelname van de partijen.

Te bestuderen

Literatuur

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Examining the role of the parenting coordinator in bringing about therapeutic outcomes for parties to their post-divorce disputes

This presentation asks whether we need to concern ourselves with therapeutic outcomes in family law disputes and, if so, whether parenting coordination, a post-divorce dispute resolution mechanism, can contribute positively to such therapeutic outcomes. Against the background of the principles of therapeutic jurisprudence, definitions of parenting coordination as well as the role of the PC in bringing about therapeutic outcomes for parties to their post-divorce disputes, will be examined. The presentation will refer to case studies, personal experiences and research.

1. Introduction

The legal system in action affects everyone in society. Law can affect people in many ways: economically, socially and in their relationships. Therapeutic jurisprudence (TJ) is an interdisciplinary approach to law that asks how the law itself might serve as a therapeutic agent without displacing due process. It emphasizes how legal actors, legal rules, and legal procedures can produce therapeutic or anti-therapeutic consequences in legal practice.¹

2. Therapeutic jurisprudence

TJ is an interdisciplinary field of philosophy and practice that examines the therapeutic and anti-therapeutic properties of laws and public policies, legal and dispute resolution systems and legal institutions.² It is the 'study of the role of the law as a therapeutic agent.'³ Fundamentally, TJ focuses on the 'socio-psychological ways' in which laws and legal processes affect individuals.⁴ A TJ approach therefore focuses on the process of law as well as its outcomes from the perspective not only of legal actors

¹Wexler DB, 'Therapeutic Jurisprudence: An Overview' *United World Law Journal* (2018) Vol. 1(1) 4. AUK Chapter of the International Society for Therapeutic Jurisprudence was created in 2018, more information available at <http://www.theconsciouslawyer.uk/therapeutic-jurisprudence-uk/> accessed on 18 September 2019.

² Available from the International Society for Therapeutic Jurisprudence website, available at <https://www.intltj.com>, accessed on 24 April 2019.

³ Wexler DB and Winick BJ, 'Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence' (1996) xvii.

⁴ Hora PF, Schma WG and Rosenthal JTA, 'Therapeutic jurisprudence and the drug treatment court movement: revolutionizing the criminal justice system's response to drug abuse and crime in America' *Notre Dame Law Review* (1999) 74 444.

such as judges, attorneys, or other legal professionals, but also those subject to the law such as victims, offenders, families, plaintiffs, and respondents.⁵

TJ asserts that the law can affect wellbeing.⁶ It examines how the law itself might serve as a therapeutic agent without displacing due process.⁷ It emphasizes how legal actors, legal rules, and legal procedures can produce therapeutic or anti-therapeutic consequences in legal practice.⁸

The concept has been defined as follows:

'[A]n interdisciplinary enterprise designed to produce scholarship that is particularly useful for law reform. [It] proposes the exploration of ways in which, consistent with the principles of justice (and other constitutional values), the knowledge, theories and insights of the mental health and related disciplines can help shape the development of the law'.⁹

TJ does not advocate an exclusive focus on therapeutic considerations, but seeks to include them with legal considerations.¹⁰ Moreover, it encourages the empirical testing of therapeutic concerns in the legal process to determine their relevance and impact.¹¹

3. Do we need to concern ourselves with therapeutic outcomes in family law disputes?

It is by now generally accepted in the literature that ongoing high levels of conflict post-divorce or separation are a more potent predictor of poor outcomes for children post-divorce than divorce itself.¹² It is furthermore accepted that the courts are not always the most appropriate forum in which to settle contact and care disputes due to the

⁵ Wexler DB and Winick BJ, 'Therapeutic Jurisprudence and Criminal Justice Mental Health Issues' *Mental and Physical Disability Law Reporter* (1992) 16(2) 229.

⁶ King MS, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' *Melbourne University Law Review* (2008), 32 1096.

⁷ Wexler DB and Winick BJ (eds), 'Essays in Therapeutic Jurisprudence' (1991) xi [hereinafter Essays]. For a complete bibliography of published materials on therapeutic jurisprudence, visit <http://www.therapeuticjurisprudence.org>.

⁸ Essays *supra* note 23 ix.

⁹ Wexler DB and Winick BJ, 'Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence' (1996) xvii

¹⁰ Van Wees KAPC and Akkermans AJ, 'Therapeutic Jurisprudence: de Studie van de Gezondheidseffecten van het Recht' *Tijdschrift voor Vergoeding Personenschade* (2007) 4 139.

¹¹ Essays *supra* note 23 xi.

¹² Kelly JB, 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research' *Journal of the American Academy of Child and Adolescent Psychiatry* (2000) 39(8) 964.

costs involved and the recognition that children's best interests are often not served through litigation.¹³ In addition, it appears that courts are discouraged from considering the emotional context of a particular case or the immediate post-decision future of the parties involved.¹⁴ The adversarial process can therefore be regarded as anti-therapeutic for both the parents and the children involved in a divorce.

Developments in society and changes in legislation have resulted in both of a child's parents having a greater degree of continued involvement in his or her life post-divorce or -family separation. To give effect to the demand for continued involvement, parents can agree on a parenting plan that regulates, inter alia, the contact and care arrangements for the children as well as those decisions regarding their children that parents have to make jointly post-divorce or -family separation. Parenting plans can also make provision for alternative dispute resolution mechanisms in the event that the parents cannot agree on an issue involving the child/children.

Family law disputes, and, in particular, disputes involving children¹⁵ and their best interests require a speedy resolution and outcomes that are long lasting, benefit the family and are in the best interests of the children involved. A therapeutic outcome to family law disputes is clearly preferable to an anti-therapeutic outcome. The question then arises as to how such a therapeutic outcome can be achieved without sacrificing due process.

4. Parenting coordination

Parenting coordination was introduced as an ADR process post-divorce or family separation in the USA and Canada some 40 years ago and evolved 'in response to the needs of family courts overburdened by high-conflict parents ... who take

¹³ Fidler BJ and Epstein P, 'Parenting Coordination in Canada: An Overview of Legal and Practice Issues' *Journal of Child Custody* (2008) 5(1/2) 56.

¹⁴ Gould PD and Murrell PH, 'Therapeutic Jurisprudence and Cognitive Complexity: An Overview' *Fordham Urban Law Journal* (2002) Vol 29(5) 2118.

¹⁵ In the Western Cape the majority of disputes concerned disputes around contact (63%) and almost every PC had been asked to resolve a contact dispute, see Martalas AM, 'Alternative Dispute Resolution Post-Divorce or -Family Separation. Parenting Coordination: A Blueprint for its Regulation in South Africa and its Introduction in the Netherlands' Unpublished PhD, (2018) 248, available at www.pomegranate.org.za/PhD, pp 333-337.

¹⁶ Fieldstone L, Lee MC, Baker JK and McHale JP, 'Perspectives on Parenting Coordination: Views of Parenting Coordinators, Attorneys and Judiciary Members' *FCR* (hereinafter Fieldstone L et al.) (2012) 50(3) 441.

advantage of the legal system to resolve their non-legal child related issues'.¹⁶ High-conflict litigants tend to consume the majority of the court's time and thus require alternative approaches for assisting them in resolving child-related issues. Parenting coordination developed as a remedy to address the courts' and parties' lack of available time and resources in order to reduce the well documented negative effects of parental high-conflict on children.¹⁷

Parenting coordination is defined by the AFCC as (my emphasis):

'a **hybrid legal-mental health** role that combines assessment, education, case management, conflict management, dispute resolution, and, at times, decision-making functions. Parenting coordination is a **child-focused** process conducted by a licensed mental health or family law professional, or a certified, qualified or regulated family mediator under the rules or laws of their jurisdiction, with practical professional experience with high conflict family cases. The parenting coordinator ("PC") assists coparents engaged in high conflict coparenting to implement their parenting plan by: (1) facilitating the resolution of their disputes in a timely manner; (2) educating coparents about children's needs; and, (3) with prior approval of coparents or the court, making decisions within the scope of the court order or appointment contract.¹⁸ A PC seeks to protect and sustain safe, healthy, and meaningful parent-child relationships'.¹⁹

Definitions of the parenting coordination process can be summarised as follows:

- parenting coordination is a dispute resolution process usually employed post-decree;
- it is child-focused and aims to prevent ongoing child exposure to parental conflict;
- it involves a multidisciplinary approach requiring varying degrees of decision-making by the PC;

¹⁷ Fieldstone L et al., (2012) *supra* 442.

¹⁸ In the Western Cape the majority of disputes were settled in the mediation phase (±85%) and very few directives were issued, see Martalas AM, *supra* pp 340-342.

¹⁹ AFCC guidelines 'Overview and Definitions', 2019, available at <http://www.afccnet.org>, accessed on 18 September 2019.

- it borrows from other ADR processes such as mediation and arbitration and includes assessment, education and case management;
- it operates within the legal system of a specific jurisdiction; and
- it offers an alternative to litigation.²⁰

The PC becomes involved with the family when post-divorce disputes arise. Depending on the mandate of the PC, he/she can consult widely to obtain all the relevant information necessary in order, in the first instance, to attempt to mediate an agreement between the parents, and, failing agreement, to make a decision. The PC is therefore well placed to take into consideration all those factors which may improve the chances of a therapeutic outcome for the family.

The role and function of the PC can be summarised as including:

- fulfilling a legal/mental health hybrid role which requires professional qualifications and additional specialised training;
- managing and resolving conflict;
- monitoring and implementing parenting plans including making decisions within the scope of authority given to the PC;
- remaining child focused at all times and ensuring that the best interests of the child or children are being served; and
- providing education and information regarding several processes including the role of the PC itself.²¹

One of the criticisms of parenting coordination is that it frustrates due process. However, parents always retain the right to approach a court for a review of the PC's decision. In addition, when parties divorce, their due process rights to make decisions regarding their children is affected in any event, in that courts frequently delegate decision-making authority to third parties such as a guardian *ad litem* or a contact and care evaluator. The PC can be regarded as such a third- party delegee.²²

5. Conclusion

²⁰ Martalas AM *supra* 248.

²¹ Martalas AM *supra* (2018) 254.

²² Montiel JT, 'Is Parenting Authority a Usurpation of Judicial Authority? Harmonising Authority for, Benefits of and Limitations on this legal-Psychological Hybrid' *Tennessee Journal of Law and Policy* (2011) 7(2) 368-369.

Therapeutic outcomes for post-divorce disputes are likely to enhance the parent-child relationship and can therefore be regarded as being in the best interests of the child involved. The PC appointed to resolve such a dispute is uniquely placed to reduce the anti-therapeutic effects of family law disputes whilst taking into consideration all the factors that would bring about a therapeutic outcome for the child, his parents and other role players in the system of the child.²³

In conclusion, parenting coordination, as a multi- disciplinary alternative dispute resolution mechanism, despite having developed separately from TJ, nevertheless embodies the principles of TJ by providing therapeutic outcomes to family law disputes.

Parenting coordination is well-established in the Western Cape. Since 2012, more than 60% of parenting plans issued in the Western Cape High Court have included a dispute resolution clause. In a reported judgment issued in the Western Cape High Court, Davis AJ goes so far as to state that a PC can be appointed both by agreement between the parents, or without the consent of the parents, provided certain requirements are met.²⁴ In order to ensure therapeutic outcomes for family law disputes for all families in South Africa, it is essential that this form of ADR be introduced to those areas in South Africa where it is not yet practiced.

²³ For more information on family systems theory see for example Titelman P, 'Clinical Applications of Bowen Family Systems Theory' Rutledge, New York 1998 (e-book publication 2014).

²⁴ *TC v SC* 2018 (4) SA 530 (WCC) para 71.

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PARENTING COORDINATION AND DOMESTIC VIOLENCE

GISELLE A. HASS

In this chapter, I address how parenting coordinators (PCs) can navigate the problems that arise when there is violence among family members with whom they are working. Intimate partner violence (IPV), as well as exposure to violence or abuse of children, is an important social and psychological problem, and PCs who work with abusers and victims have significant ethical and professional responsibilities. PCs need to remember that high-conflict relationships are not the same as domestic violence and that working with abusers and victims involves a significant risk that their decisions can harm, rather than help, clients. PCs should have specialized training so that their interventions in cases of family violence, abuse, and coercion are based on a thorough knowledge of the complex issues that play a role in such cases.

In its report on violence and the family, the American Psychological Association (APA) Presidential Task Force on Violence and the Family (1996) stated that psychologists “play an important role in helping to

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Parenting Coordination in Postseparation Disputes: A Comprehensive Guide for Practitioners, S. A. Higuchi and S. J. Lally (Editors)

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promote violence-free families” (p. 111). Because psychologists, as mandated reporters of violence, have been trained to identify risk in many settings and situations, psychologist PCs are in a unique position to identify—and, with further training, properly assess—the complexity of violent acts and interactions that may affect their parenting coordination work with a family. APA’s (2012) parenting coordination guidelines clearly state that “parents who have a history of prior or current domestic violence, also commonly referred to as intimate partner violence, may present substantial safety risks or power imbalances, and may not be appropriate for Parenting Coordination” (p. 67). Having to focus primarily on safety concerns can derail the parenting coordination process.

PCs must also be alert to the possibility that one or more family members may try to use them as another weapon of abuse and control. This means that PCs must routinely screen clients for a history of domestic violence and decide whether the current risks can be safely managed in the PC process. For this to occur, it is important that PCs know about the research regarding family violence, in particularly research regarding domestic violence in situations of separation and divorce, parental alienation, trauma literature, and child maltreatment.

BACKGROUND

APA (1996) defined *family violence and abuse* as comprising the following:

acts of physical abuse, sexual abuse, and psychological maltreatment; chronic situations in which one person controls or intends to control another person’s behavior, and misuse of power that may result in injury or harm to the psychological, social, economic, sexual, or physical well-being of family members. (p. 3)

The abusive behavior can take many forms: physical (grabbing, pinching, pushing, shoving, strangling, punching, assaulting), sexual (rape, pressuring and threatening for sex, public fondling, pornography), psychological (intimidation, threats, causing fear, harassment, stalking, dominating decision making), endangering children (threatening to kidnap, expose to violence, take custody of, deport, or harm the children), economic (trying to make a person financially dependent), destruction of property and harm to pets (Ganley, 1989), immigration-related abuse (threatening to call immigration authorities, threatening to have the partner deported, or refusing to support a visa application; Hass, Dutton, & Orloff, 2000), and emotional (isolation from family and friends, put-downs and name calling, spiteful inaction, ridiculing, blaming; Browne, 1987). The behaviors that make up each one of these

groups have been extensively described in the literature of domestic violence, but the central feature that defines a behavior as abusive is the function of that behavior. This means that one or even several abusive behaviors such as those described above, or mutual disrespect and verbal conflict, taken out of context may not necessarily appear to be abusive until its proper meaning is elucidated as being a tool to exert control by one person over another (M. A. Dutton, 1992).

At the Wingspread Conference on Domestic Violence, the Association of Family and Conciliation Courts (AFCC; Ver Steegh & Dalton, 2008) addressed the contradictions in research and philosophical positions among practitioners and researchers of domestic violence in order to develop an operational framework for the family court system. The agreement reached at this conference highlights the problem that using a “rigid and simplistic categorization of complex family situations . . . (may lead to) mischaracterization of violence based on inadequate assessment” (Ver Steegh & Dalton, 2008, p. 25). Understanding that the phenomenon is much more complex than originally believed, a new reading of the research in domestic violence led to the establishment of four different patterns (Graham-Kevan & Archer, 2003; Holtzworth-Munroe, 2005; Johnson & Ferraro, 2000; Johnston & Campbell, 1993; Kelly & Johnson, 2008): (a) separation-instigated violence (SIV), (b) conflict-instigated violence (CIV), (c) violent-resistance violence (VRV), and (d) abusive–controlling violence (ACV).

Separation-Instigated Violence

SIV includes situations of violence (e.g., destruction of personal property) that occur in a couple with no history of power and control issues or of violence in the relationship or other settings prior to the separation. Violence shows up as an atypical form of loss of control and is associated with the humiliating or traumatic events that led to the separation or with the separation itself. There are often only one or two episodes, and the partners do not report coercive or controlling behavior. This type of violence may be carried out by both men and women (Johnston & Campbell, 1993; Kelly & Johnson, 2008).

Conflict-Instigated Violence

CIV is also called *situational couple violence* (Kelly & Johnson, 2008). This is the type of violence in which power, coercion, and control are not central to the dynamic, and it is initiated at similar rates by both sexes. Violence may have occurred as a result of conflicts escalating out of control and in which one or both partners were violent toward the other. An important characteristic of this type of violence is that partners are not afraid of one

another. It includes forms such as pushing, shoving, and grabbing, in which serious injuries are not common. This type of violence decreases over time and with age, and it often stops after the separation (Gelles & Straus, 1988; Holtzworth-Munroe, 2005; Jaffe, Crooks, & Bala, 2005; Kelly & Johnson, 2008; Ver Steegh, 2005).

Violent-Resistance Violence

This type of violence has been called *self-defense* and includes the use of violence for self-protection when the other person is using force as part of a pattern of coercive control (Johnson & Ferraro, 2000). The person uses violence to control a situation, sometimes to prevent imminent serious harm, rather than trying to exert control over the other person. A person who has been battered in a previous relationship may use physical violence to establish that abuse will not be tolerated with the current partner (Frederick, 2001). This group includes women in shelters as victims of abuse who killed their batterers (Jaffe, Johnston, Crooks, & Bala, 2008).

Abusive–Controlling Violence

ACV, also called *coercive controlling violence* (Kelly & Johnson, 2008) and *intimate terrorism* (Johnson, 2008), is what has been known for years as *classical battering*. This type of violence is characterized by intimidation, coercion, control, and emotional abuse. There is a pattern of unilaterally dominating the other partner through fear. Often there is severe physical and sexual abuse, and abuse across different dimensions, such as economic and child abuse. Victims of ACV are at very high risk following separation and in contested-custody cases. Injuries to victims are more frequent and more severe, and the risk of lethality is present. Denial, minimizing, and blame are perpetrators' most common excuses. When violence is severe and chronic, there is a higher likelihood that the abuser has a severe personality disorder (D. Dutton, 2007; Johnson, 2008). This type of violence is primarily perpetrated by men, but there are also reports of female perpetrators in married, cohabiting, and lesbian relationships (Jaffe et al., 2005; Johnson & Ferraro, 2000).

ACV must be distinguished from SIV, as sometimes what seems like an isolated violent act or violence instigated by the separation is only the first manifestation of coercive control. When there is a history of one partner exercising power, control, and fear over the other (i.e., ACV), there is often an escalating risk of harm at the time of separation. This is true regardless of whether there is a history of physical violence. As the victim tries to leave the abuser, or discloses the family secret of abuse, the abuser may feel a loss of power and control. The abuser may even show sweeter, kinder,

more conciliatory behavior toward the victim, particularly in front of lawyers, courts, and PCs. PCs must be alert to suspiciously defensive and inflexible, as well as flexible or overly compliant, attitudes of the abused parent, which may actually be fear responses to open or subtle control or threats. When there has been violence in a family, and the balance of power is not equal among the parents, one parent may tend to make decisions based solely on safety concerns, and this may not serve either the parent's or the children's needs.

Although categories of violence are helpful, they have certain limitations, and some types of violence cannot be neatly placed into a category, in particular when substance abuse and/or mental illness is involved. Just as with any classifications, reliance on these categories also runs the risk that the PC will oversimplify a complex phenomenon and shortcut the screening process. In addition, sufficient research regarding these dynamics, to determine their progress and stability over time and across relationships, has not yet been conducted. However, the establishment of these four types of domestic violence has resulted in a marked improvement in the ability of professionals and courts to manage cases that involve a history of domestic violence. Although these classifications have forced the revision of research data that assumed domestic violence was a monolithic phenomenon, there remains a long way to go in terms of acquiring sufficient empirical evidence.

DOMESTIC VIOLENCE AND PARENTING COORDINATION

In an ideal world, a PC will receive a referral of a case that has been already evaluated by a custody evaluator, court officer, attorney, or judge and in which a custody order or temporary order was issued that takes into consideration all risk factors. When the court has determined that a case does involve domestic violence or abuse and has issued orders to provide safety to the victims (e.g., orders of protection, supervised visitation, or court-mandated treatment for the abusive parent[s]), PCs should respect this judicial finding and not minimize it on the basis of their own independent reassessment of the underlying facts. In reality, during the period when parents first approach the court to resolve a custody conflict, there may be myriad confounding factors that make the picture of potential risk unclear or inaccurate. Research has documented that allegations of domestic violence or child abuse are not unusual during separations that require judicial intervention (Johnston, Lee, Olesen, & Walters, 2005). Determining the accuracy of those allegations is difficult for the courts because domestic violence occurs inside the privacy of the family, and a lack of concrete evidence is not unusual even in severe cases. In some cases, interparental difficulties that lead to divorce stem from a history of physical, sexual, or emotional abuse by one

partner toward the other or toward the children. In other cases, a person who has suffered severe psychological violence may believe that physical violence will be given greater weight by the court and thus make those allegations. For different reasons, including fear of having his or her concerns dismissed, a person may also misrepresent or exaggerate actual experiences of IPV or his or her own role in it. Most common is the fact that in many cases the nature and extent of the violence are concealed, denied, or minimized because of fear. In sum, it may be very hard to determine the existence of domestic violence during custody litigation.

Although custody evaluators who have been trained in the evaluation of domestic violence in custody cases should be able to identify it and recommend appropriate custody plans, many cases have not had a well-trained custody evaluator, or even a custody evaluation at all. In some cases, the violence may commence after the court has made a custody determination, or it may begin or be revealed after the issue was assessed. There could also be cases in which coercive controlling domestic violence was identified but a joint custody order was issued nonetheless. The laws of a majority of states include presumptions against joint custody in cases where there is a finding that intrafamily violence has occurred (American Bar Association Commission on Domestic Violence, 2008). In addition, the detrimental effects on children placed in the custody of an abusive parent have been well documented (H. Cong. Res 172). In spite of this, a preference for joint custody and cooperative coparenting may incline some courts to minimize the role of domestic violence in custody decisions and parenting plans (Dragiewicz, 2010).

In either situation, the PC's ethical and professional responsibility is to evaluate the presence of domestic violence and use this information to inform his or her practice. Allegations of IPV, as well as child abuse, need to be taken seriously from the very beginning, and without bias. A conscientious screening should provide the PC with a good understanding of the family's past and current situation regarding domestic violence and its current risk of continued violence or coercion.

To maintain the integrity of the PC role and avoid double roles or entering into areas outside one's competency, PCs should refer cases for assessment of specialized issues revealed in the screening as necessary (e.g., anger management or batterer evaluation; substance abuse; victim assessment; or specific psychological, social, academic, or medical evaluations for family members). This information will help the PC better understand the different dimensions to take into consideration when making a determination of the type and function of domestic violence involved in the case and the implications of that violence.

Once the PC has obtained training in domestic violence—including the differentiation of types, level of risk, and impact to the victims—he or she can

use interviews as well as reviews of court documents, collateral documents, basic assessment measures, and expert assessments to obtain an initial picture of the current situation regarding violence and abuse in the family. Once violence has been identified, through screening, as an issue, the PC may decide either that the picture is clear enough to proceed or that the case is too ambiguous and the information too entangled and thus requires a referral to a mental health evaluator with expertise in domestic violence and any collateral issues (e.g., parental alienation, substance abuse) for an in-depth evaluation.

PCs need to take signs of domestic violence seriously, not only because of ethical and professional mandates but also because of the serious long-term consequences for the family members and the parenting coordination process. The following points, made by Jaffe et al. (2008, pp. 501–504), summarize the research regarding parent–child relationships and family styles when domestic violence is present and are important to take into consideration:

- Spousal abuse does not necessarily end with separation of the parties.
- In extreme cases, domestic violence following separation is lethal, especially in the case of more abusive relationships (ACV).
- Perpetrators of domestic violence are more likely to be deficient, if not abusive, as parents.
- Individuals who have a pattern of abusing their partners (ACV), and those who commonly resolve conflicts using physical force (CIV), are poor role models for children.
- Abusive ex-partners (ACV) are likely to undermine the victim's parenting role.
- Abusive ex-partners (ACV) may use family court litigation as a new forum to continue their coercive controlling behavior and to harass their former partner.
- Diminished parenting capacities often occur among victims of domestic violence.
- A victim's behavior under the stress of abusive relationships (ACV) and during the aftermath of a stressful separation (SIV) should not inappropriately prejudice the residential or access decision.
- Victims of abusive relationships may need time to reestablish their competence as parents and need the opportunity to learn how to appropriately protect and nurture themselves and their children.

When there is a history of ACV and a current dynamic of coercive control, the PC most probably will not be able to work with the parents at all, or at least not in the manner in which the coordination is usually conducted.

This is because perpetrators of abusive and controlling domestic violence frequently seek to assert control over the victim through the use of threats and physical aggression. Even when the physical violence and abuse stops, abusers may use the children as pawns and may be intimidating and inflexible as coparents. In such situations, it can be difficult, if not impossible, for PCs to use the multitude of mediation, collaboration, and dispute resolution skills at their disposal.

These collaboration tools, which are so useful in many high-conflict families, can instead become weapons manipulated by a coercive parent. By their very nature, parenting collaboration tools depend on increasing the parents' mutual sense of trust and fair dealing—something that cannot be relied on in cases with a history or risk of domestic violence and a dynamic of coercion. Not the least of these concerns is that in these situations the PC also becomes a target for the abuser, and a great deal of time and energy are lost in managing the abusive parent in order to maintain one's professional and personal integrity. The safest thing for PCs to do, assuming they feel prepared and comfortable working with cases that involve domestic violence, is to screen cases carefully, refer ACV cases back to the referring court or to experts, and accept only those cases in which, in spite of past or current conflict (usually CIV and SIV), parents are able to use parenting coordination services safely and productively. Both novice and experienced PCs will also benefit greatly from having a seasoned mentor with whom to discuss the case and who can offer a second opinion.

SCREENING FOR DOMESTIC VIOLENCE

The APA parenting coordination guidelines (2012) state, "PCs carefully determine whether a specific case involving past or present intimate partner violence or child maltreatment is appropriate for the PC process, with a particular focus on safety concerns and substantial power imbalances" (p. 67). The ethical obligation of psychologists, and by extension all PCs, is to determine the likelihood that the process of parenting coordination may ignore or facilitate abuse, exploitation, or intimidation of any family member. When a parent seeks to assert control over the other parent, the children, or the PC, through the use of threats and coercion, the process becomes unsafe and counterproductive.

Screening for domestic violence should thus be done in every single case. PCs cannot assume, on the basis of its absence from information provided by the court, the custody evaluation, the attorneys, or the parents, that a screening has been conducted and that violence is not a factor in the case. Identification of the type of violence, its context, and its nuances is the PC's

first step toward understanding the complexity of the case so that he or she can determine its suitability to the parenting coordination process. PCs without mental health training who feel unprepared to conduct this screening should refer the case for a professional evaluation. However, with training, PCs should be able to manage this aspect of the role. The factors to assess include the following:

- the frequency, intensity, and recency of the violence;
- the presence of sexual coercion or abuse;
- the existence of nonphysical coercive strategies, including verbal abuse and intimidation, threats, isolation, and financial control;
- the presence of an established history of violence;
- the mutuality of the violence or who the primary perpetrator is;
- criminal activity, substance abuse, or mental health issues;
- the impact on the victim(s);
- the fear one parent may have of the other, the victim's fear of imminent danger, and the victim's vulnerability;
- any history of child maltreatment;
- the extent to which the violence is consistent with a recognized pattern with proven implications for ongoing risk or lethality;
- the ability of family members to participate in the parenting coordination process without fear, coercion, or intimidation; and
- the utility or impact of particular interventions or determinations.

This screening does not have to be exhaustive, but it must look at the different angles of the problem, including abuse by stepparents, children who turned abusive against the vulnerable parent or the abusive parent, and abuse by other family members.

Following certain practices at the outset of the case may help identify productive paths of further inquiry. For instance, the AFCC guidelines specifically state that "in cases of domestic violence involving power, control, and coercion, the PC shall conduct interviews and sessions with the parties individually" (AFCC, Task Force on Parenting Coordination, 2006, p. 12). It is good practice to meet with each parent separately during the first session in order to better assess the individual allegations parents may have against one another. This is a sound ethical practice because each party would be safer in an individual setting to fully disclose a history of violence or coercion in the family, in particular, if it has not been exposed earlier in the process. If the parents meet as a couple, a victim may not feel safe discussing or describing any past or present abuse, harassment, or conflict for fear of retribution, or the abuser may take the opportunity to "rewrite history" and the victim may be too afraid to voice a contradiction.

The AFCC (2006) parenting coordination guidelines offer the following recommendation:

The PC should review the custody evaluation, other relevant records, interim or final court orders, information from interviews with parents and children and other collateral sources, domestic violence protection orders, and any other applicable cases involving criminal assault, domestic violence or child abuse, educational records, and analyze the impasses and issues as brought forth by the parties. (p. 8)

The goal when studying this information is to elucidate the multiple facets of the dynamic of abuse. It is important to remember that a lack of documents demonstrating the incidence of domestic violence is not proof that it did not exist. Similarly, having evidence of one or a few incidents of physical violence may not contribute greatly to an understanding of underlying coercion, whether it was mutual or there was a primary perpetrator, and the specific types of violence that occurred in the relationship. The presence of violence in the relationship needs to be evaluated within its context because identical violent acts may have different meanings depending on the impact on the victim and the intent of the perpetrator, the individual victims' vulnerabilities and protective factors, and the social and community environment.

Standardized Measures of Domestic Violence

Standardized measures and risk assessment surveys to assess domestic violence may be useful to PCs during a screening. There are numerous inventories and scales that measure different dimensions of domestic violence, such as abusive acts of physical and sexual violence, psychological abuse, and other forms of interpersonal violence. Many of these measures also focus on attitudes toward domestic violence and consequences thereof, including physical injury and psychological impact.

Among the most popular measures available to assess domestic violence is the Conflict Tactic Scales (Straus, 2007) and two other versions of it, the Conflict Tactics Scale—Second Edition (Straus, Hamby, Boney-McCoy, & Sugarman, 1996) and the Conflict Tactics Scale: Parent–Child Version (Straus, Hamby, Finkelhor, Moore, & Runyan, 1998); the Psychological Maltreatment of Women Inventory (Tolman, 1999); the Abuse Observation Checklist (M. A. Dutton, 1992); and the Proximal Antecedents to Violent Episodes Scale (Babcock, Costa, Green, & Eckhardt, 2004). One criticism regarding measures such as these is that they have respondents self-report the violent acts they have experienced (M. A. Dutton & Goodman, 2005; Johnson, 2006) and respondents are not provided an understanding of the dynamic of coercion and control within the relationship. Furthermore,

Donald Dutton (2006) criticized those self-report or structured interview measures because they use information from one partner to confront the other. He believes that such instruments prime clinicians to be biased against alleged abusers and to dismiss their responses as denial or minimization. Another criticism of these measures is that, although they assess the presence of domestic violence, they do not assess motivations and context, do not reliably differentiate among types of violence, and minimally address the role of coercive control. In addition, they are not designed to assess post-separation violence or violence in the parenting coordination process.

An appropriate screening of IPV should address coercive control, which is the key construct that differentiates a pattern of abusive behaviors from those that may be situational and transitory and those that are a tool in the search for and maintenance of power and control over the other person (M. A. Dutton & Goodman, 2005). M. A. Dutton and Goodman (2005) defined the concept of *coercive control* as “a dynamic process linking a demand with a credible threatened negative consequence for noncompliance” (pp. 746–747). Although violence in a relationship makes a partner more vulnerable to coercion, a serious threat can be coercive in the absence of previous physical or sexual violence. In fact, when coercive control is successful the physical violence is less intense or frequent, because it is no longer required to maintain control with an already-submissive victim (Tanha, Beck, Figueredo, & Raghavan, 2009). Therefore, a standardized measure of violent acts may find minimal indications of violence and thus miss the presence of coercive control.

Furthermore, evaluations of IPV need to include a measure of coercive control to accurately differentiate among the different categories of violence described earlier (SIV, CIV, ACV, and VRV) and identify how this dynamic plays out in the conflict related to the custody of the children. PCs need to assess whether one of the parents makes certain demands that are not in the best interest of the children’s well-being and requires strict surveillance of the other parent to ensure compliance. For instance, coercive control is often at play when a parent makes child support payments contingent on compliance with certain demands, such as children’s calls and visits with that parent.

In some situations, however, the coercion may not be so clear and concrete. The PC should obtain a record of the couple’s history to determine whether the agent of coercion has “set the stage” (M. A. Dutton & Goodman, 2005, p. 750), meaning that there were negative consequences to the victim for noncompliance in the past and that thus the threat is successful based on the victim’s experience with the abuser. In this case, the victim appraises the threat as a credible risk on the basis of his or her previous experience with the abuser. This helps differentiate a victim of coercion from a parent who is afraid to act or reveal information to the other parent because

he or she is afraid of being disliked or displeasing, an overarching personality trait that occurs not only with the ex-partner. In cases where coercion is a powerful tool in the hands of one parent, the other parent will not be free to make his or her own decision. Worth mentioning is that PCs have the ethical duty not to be part of involuntary or unreasonable agreements based on the sole interest of the abuser, although strategic concessions by the vulnerable parent may need to be respected.

Another subtle form of coercion occurs when the abuser uses arguments against the other parent that unfairly exploit his or her vulnerabilities. Often, such vulnerabilities may not constitute a significant parenting weakness or deficit and may include a disability, a history of previous abuse, immigration problems, or a health problem. The abusive partner tries to use this information to manipulate or exploit the situation and in this way obtain the parenting benefits that he or she wants regardless of the best interest of the children.

Popular measures that assess coercive control are the Domestic Violence Evaluation (Ellis & Stuckless, 2006), the Coercive Control Survey (M. A. Dutton, Goodman, & Schmidt, 2005), and the Relationship Behavior Rating Scale (Beck, Menke, Brewster, & Figueredo, 2009). These measures help determine whether one partner has greater control over the other, but they cannot be used in isolation, without formal measures of physical and sexual violence, because do not measure the current risk during the parenting coordination process or in the coparenting process.

Screening of Current Danger and Risk to Victim(s)

One of the overriding concepts PCs should consider when deciding whether a case with a history of domestic violence can be safely managed in parenting coordination is the level of risk to all parties involved. Although worst-case scenario events such as homicide and suicide are rare, they seldom occur without red flags, including a history of previous violence (Campbell, 1992; Langford, Isaac, & Kabat, 1998). Several elements are implicated in the screening of risk. Empirically supported risk factors can be static or dynamic. *Static factors*—for example, past behaviors that are indexes of future risk, such as the number and type of previous criminal offenses (Mossman, 1994)—cannot be modified. *Dynamic factors*, on the other hand, can change over time or with treatment (Hanson & Harris, 2001), such as alcoholism, personality traits, problem-solving skills, or the stress of separation. The predictors of post-separation violence that research has linked to serious harm are sexual assaults; infliction of serious physical injury; and abuser behavior such as drinking, outbursts of anger, jealousy, emotional dependence, and general controlling behavior (Ellis & Stuckless, 2006; Ellis, Stuckless, & Wight, 2006).

Determining the risk helps the PC make a decision about his or her ability to manage the case in the parenting coordination process. Moreover, when the PC is able to identify dynamic risk factors, he or she is in a position to make referrals for the type of services that parents need to reduce the likelihood that these risk factors will play a role in the dynamic of violence and coercion. For instance, a parent can be referred for a substance abuse evaluation and treatment, anger management, psychotherapy, and other such services. The PC can help a parent make progress toward the goals of lifting initial restrictions and achieving greater involvement with the children as the parent becomes more stable and psychologically healthy.

Some of the major standardized instruments that measure risk are the Danger Assessment instrument (Campbell, Webster, & Glass, 2009), the Spousal Assault Risk Assessment Guide (Kropp, Hart, Webster, & Eaves, 1999), and the Ontario Domestic Assault Risk Assessment (Hilton, Harris, & Rice, 2010). These instruments are relatively narrow in scope and were not designed specifically for post-separation violence. They do not take into account specific concerns such as whether there have been threats communicated through the children.

Models of Domestic Violence Assessment in Custody

Recently, there have been interesting attempts to create models that assess the different dimensions of domestic violence and collateral phenomena in order to obtain a picture that will inform the work with these families. These models have risen in relation to custody evaluations. Although personally conducting a comprehensive evaluation of domestic violence may not always be an efficient use of a PC's time and may fall outside the scope of the PC role, it is important for PCs to know about these models in order to refer parents for evaluation if, after the screening, the PC deems that the issues at stake require further clarification.

The *safety first model* (Drozd, Kuehnle, & Walker, 2004) assesses whether the child is safe in a variety of situations, including instances of parents' violence, substance abuse, mental illness, use of credible threats, and other forms of violence in the family. Problems in the relationship between the child and the parents are assessed on the basis of the classifications developed by Kelly and Johnston (2001) and Drozd and Olesen (2004), which delineate the continuum of relationships with both parents, including affinity with one parent and affectional bond with the other, alignment with one parent with little or no emotional bond with the other, alienation consisting of anger and hatred toward one parent while maintaining a close but sometimes unhealthy bond with the other parent, and estrangement in which there is little or no emotion toward one parent while maintaining a relationship with the other (Drozd et al., 2004).

The *potency, pattern, and primary perpetrator model* (Jaffe et al., 2008) differentiates between types of violence and relate them to parenting behaviors. The first factor, *potency*, refers to the degree of severity, dangerousness, and potential risk of serious injury and lethality. This factor pays particular attention to the signs that reveal a tendency for explosive or deadly violence that can appear in a family with no history of violence or other warning signs. *Pattern* refers to the way acts of coercion and domination have combined over time and how they may predict future violence, including post-separation control that may involve the children and continued litigation. The third factor, *primary perpetrator*, aims to distinguish the violence from that which is mutual or involves alternate initiators.

Both of these models provide a systematic structure of inquiry to evaluate the type of violence and the factors to consider in custody evaluations. PCs who refer their cases for these specialized evaluations may obtain in-depth knowledge regarding the risks inherent in the custody decision and parenting plan ordered and either determine the different interventions to reduce risk or reject the case as being unfit for the parenting coordination process.

Mediator's Assessment of Safety Issues and Concerns

The most comprehensive instrument, and one more relevant to the screening of interpersonal violence, is the Mediator's Assessment of Safety Issues and Concerns (MASIC; Holtzworth-Munroe, Beck, & Applegate, 2010), a behaviorally based measure of IPV and abuse that assesses psychological abuse, coercive control, stalking, physical violence (including extreme physical violence), sexual assault/abuse, and fear throughout the relationship and over the past year. It is important to differentiate a past history of violence from current violence and control among ex-partners. The MASIC also asks about risk factors for lethality, such as access to weapons, and reasons for leaving the relationship. In sum, this instrument includes all the major concepts discussed earlier as relevant to the determination of the nature and dynamic of violence among divorced or separated parents.

Because it was intended to be used in court involved cases, the MASIC takes care of forensic concerns, such as not asking a parent about his or her own perpetration of violence so as not to self-incriminate. It consists of a structured interview and checklists that do not require one to have specialized training, and it can be administered during the intake phase of the case. It is not copyrighted and is easily obtainable. The MASIC has not been the subject of empirical validation or reliability studies.

The MASIC also offers procedural changes for mediation based on the level of risk. Although it was created to determine risk in the context of mediation, its procedural strategies to increase safety can be used by PCs.

Some of the accommodations are, for instance, that parents cannot have contact with each other, staggered arrival and departure times for parents, an escort for a parent to and from his or her car, and mediation conducted by telephone or online.

The importance of using a standardized instrument to assess a history of violence and risk lies in the fact that when only an open format interview is used, parents may minimize or rationalize the abuse dynamic and lethality risk. Sometimes, parents may not be in the best position to make the determination regarding how the parenting process may turn into another tool of abuse or of increased risk; however, in some cases victims of IPV are particularly sensitive to the level of risk and their opinion is better informed than the PC's. Having a systematic and comprehensive way of screening domestic violence allows PCs to delve into these important issues and manage their ethical decision of whether to proceed with the case.

Issues of Credibility

The determination regarding the credibility of domestic violence allegations when there is no evidentiary finding and documentation is nonexistent or ambiguous has been the subject of several articles (e.g., Austin, 2000; Bow & Boxer, 2003). The presence of secondary gains and self-interest factors may incline a person to malingering, exaggerate, deny, or become defensive. Austin (2000) proposed a six-factor test to guide clinical decisions regarding the credibility of domestic violence allegations, which, although designed for custody evaluators, may be useful for PCs, because it provides a systematized manner of looking at the data. The six factors are as follows (Austin, 2000, pp. 468–471):

1. objective verification (e.g., police records, medical records),
2. pattern of abuse complaints (timing of the complaint and whether there is a long-term history of abuse),
3. corroboration of credible witnesses (in light of the fact that relatives and friends who have chosen a side in the custody discord may or may not be credible witnesses),
4. absence of disconfirming verbal reports of credible third parties (meaning that relatives and friends fail to rule out the presence of domestic violence),
5. psychological profile and past history of abusive behavior by the alleged perpetrator, and
6. the psychological status of the alleged victim.

PCs should keep in mind that false allegations of abuse are rare (6%; Thoennes & Tjaden, 1990). Allegations of abuse are not raised more frequently in divorce and custody cases than at any other time (Brown, Frederico, Hewitt,

& Sheehan, 2000). Fathers are more likely than mothers to make intentionally false accusations of abuse (21% compared with 1.3%; Bala & Schuman, 2000).

ASSESSMENT OF DOMESTIC VIOLENCE IMPACT

Another factor to weigh when trying to determine the appropriateness of parenting coordination services is the impact of violence on the parties and their children and their needs regarding safety. When there has been a history of IPV, the impact may take many different forms, including trauma, depression, low self-esteem, resentments, stressful memories, emotional alienation, strong dislike, and other emotional experiences. In particular, victims of domestic violence who are depressed and suffering from posttraumatic stress disorder may present poorly in court and be further victimized by the family court, best-interest legal representatives (guardians ad litem, children's attorneys) or custody evaluators (Golding, 1999; Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005). PCs need to understand the nature of these consequences and how they affect their clients' lives at different levels, in order to proceed in a sensitive and ethical manner. Emotions of loss and resentment that will heal in time need to be differentiated from credible fears or traumatic reactions that would make it impossible for the victim to face the abuser without psychological deterioration. Knowledge regarding the impact of the violence on the family is particularly helpful when the children have been traumatized, because parents need to modify their parenting practices to promote healing and safety.

The assessment of the impact of domestic violence, child abuse, and coercive control on family members regarding the experience of, or exposure to, domestic violence can begin with the initial interview and be aided by gleaning the evidence of the parties' functioning in different areas, such as school, work, and social environments. The issue is to understand whether there has been a marked decline in functioning related to conflict or violence before or after separation. PCs who suspect psychological trauma in a client may want to refer the client for evaluation or psychotherapy. When one or more parties in the family have been traumatized, PCs need to integrate this knowledge among their goals and interventions for the family.

The Substance Abuse and Mental Health Services Administration (n.d.) issued a statement urging providers of public services to become informed about trauma. Delivery of services may need to be modified on the basis of an understanding of the vulnerabilities of or triggers for trauma survivors that traditional service delivery approaches may exacerbate. Without conducting psychotherapy, which is outside the scope of the PC's role, PCs may inform their interventions from the

literature on trauma to address the consequences of trauma in the individual and facilitate healing. For instance, this can be achieved by not forcing visitation with the abuser when children were traumatized by abuse they have suffered or witnessed and not pursuing direct contact when one party fears the other until those emotions are worked through. This philosophy encourages service providers to understand that there is a relationship between substance abuse, depression, eating disorders, anxiety, and symptoms of trauma, such that a parent who has been victimized by the other may present with some of these problems, but they are linked to the abuse and are likely to abate when the parent feels safe and receives treatment. If PCs are well informed about this connection, they can go beyond focusing on symptom management to promote an emphasis on skill building and emotional growth. The perspective that trauma is an organizing experience that forms the core of an individual's identity, rather than a single discrete event (Harris & Fallot, 2001), allows the PC to make recommendations and modifications that lead to healing, recovery, and repair.

IMPLICATIONS OF THE DOMESTIC VIOLENCE SCREENING FOR PARENTING COORDINATORS

The outcome of a domestic violence screening by the PC, or a comprehensive assessment of domestic violence by another professional, should clarify whether credible allegations of domestic violence are found and whether the case can be safely managed in parenting coordination. The information obtained should provide a fit with one of the four subtypes of IPV reviewed earlier in this chapter and provide other relevant factors to take into consideration and, with this information, the PC can decide whether to exclude the case from the parenting coordination process. PCs also use the information gathered to determine whether they need to decline a domestic violence case because they do not have the expertise, resources, or procedures in place to manage coercive tactics and the imbalance of power and control, even if it does not reach the level of ACV. PCs are strongly advised to not accept a case until they have fully screened it.

If the PC obtains credible evidence that there is ongoing violence in a family, then mandated reporters such as psychologists and other mental health professionals have a professional duty to inform the appropriate authorities of suspected incidents of self-risk or a threat to another person, as well as of child abuse or neglect, that meet mandatory reporting standards for their jurisdiction. In the same vein, if coparenting is not in the best interest of the children and a parenting plan for shared custody has been issued, PCs should raise this concern with the court.

The information from a screening can also help determine the type of coparenting collaboration and management of relationships that would best fit the needs of the family. PCs should evaluate all the information obtained with regard to their ordered or agreed-on role to make sure their authority is defined very clearly or to ensure that their role is limited to helping the parties comply with court orders rather than establishing a coparenting engagement. It is also important to evaluate the parenting plan and make sure it is sufficiently comprehensive so as to minimize implementation problems or misinterpretations. The PC may want to request that the order or agreement for his or her appointment allows for regular or as-needed court status conferences or reports so that the judge may monitor the parties, bring greater levels of accountability and authority to the process, and review violations.

PCs should assess the appropriateness and practicality of trying to implement a custody arrangement or parenting plan vis-à-vis the emotional and physical safety of the children and parents. There may be occasions when, after evaluating all the available information and conducting the screening, the PC believes the parenting plan as ordered is unworkable or that the parents would be unable to coparent even if all known and available measures for safety are used. This may happen in cases in which a proposed coparenting arrangement creates unsafe physical or emotional conditions for the children and the potential for greater abuse or manipulation. PCs may receive cases in which the custody arrangement or parenting plan may have been court ordered, or may have been stipulated to by the parties, without all the necessary information to assess its safety provisions. In other cases, new conditions may require a change of initial presumptions and, with that, a change in safety provisions. It is outside the PC's purview to make changes to the custody order or to alter significantly the conditions of access, but sometimes safe and efficient services cannot be provided within certain frameworks. In such cases, the PC may consider not taking the case or terminating the process if it has already been initiated. PCs should know the statutory definition of domestic violence in the jurisdiction(s) where they practice, because this information may be useful to justify rejecting a case.

It is important that a PC does not feel forced to work with a parenting arrangement that does not provide safety for all family members. The court may have to review the case to find a different temporary arrangement that best fits the safety needs of the family before a coparenting plan is attempted. It is important that the PC remember that the continuum of parenting arrangements include coparenting, parallel parenting, supervised exchange, supervised contact, and no contact (Jaffe et al., 2008). Each of these arrangements should be fit to specific circumstances between the parties and the children, taking into consideration their special resources and pattern of violence.

Kelly (2011) recommended the following general notions. Situational couple violence—if minor and infrequent, and if the violence has stopped—may be handled effectively in parenting coordination within certain parameters, such as neutral transition sites, avoidance of face-to-face meetings, and other safety precautions. SIV can also be managed through parenting coordination, if there was only one violent act, the parent acknowledges the abusive behavior and sought out treatment or help to avoid repeating it. ACV is, in almost all cases, inappropriate for parenting coordination. Such cases should be referred to expert domestic violence resources that can offer protection and safety to the victim and specialized perpetrator treatment for the abuser while the court or parties address their custody litigation over time.

The decision to accept a case with a history of domestic violence also depends on the PC's training, experience, and background. The vulnerable mental and emotional states of parents involved in high-conflict litigation when there is a history of domestic violence makes it difficult for them to adhere to and maintain appropriate boundaries. Instead, strong emotions and impulses often overwhelm the parties, making their needs or disagreements seem very urgent (Johnston & Roseby, 1997). Therefore, these cases demand clear boundaries early on and maintenance of those boundaries throughout the PC process. Deutsch, Coates, and Fieldstone, (2008) noted that, aside from the need for boundaries to preserve the working relationship, limit setting is also needed and that such limit setting provides models of appropriate behavior for the parents. These cases also require careful documentation, scrupulous investigation and follow-up, a great deal of patience, and an ability to remain nonjudgmental and professional. Abusive parents may make the PC the new target, creating acrimony with the PC, and threatening or actually reporting complaints regarding the PC to their lawyers, the courts, licensing boards, or a professional associations (see Chapter 7, this volume, for a more detailed discussion of this). These cases may test the PC's resilience and increase the risk of professional burnout (Boyan & Termini, 2005).

PARENTING COORDINATING MODIFICATIONS FOR CASES WITH RISK ISSUES

When a PC decides to accept a case in which there are issues of risk for interpersonal violence, the parenting coordination process needs to be modified. In particular, the PC's functions of negotiation, mediation, and arbitration can be difficult to implement when one party does not feel safe to participate freely because of fear, trauma, or coercion. As Beck and Raghavan (2010) noted, "If one party is being coercively controlled, non-coercive negotiations are likely impossible" (p. 557). Tailoring one's services to potential

issues of risk was recommended in APA's (2012) parenting coordination guidelines: "The scope of parenting coordination interventions may need to be significantly limited or modified in some cases, with an emphasis on monitoring parties' adherence to court orders and facilitating safe implementation of the court orders and parenting plans" (p. 67). Ver Steegh and Dalton's (2008) report from the Wingspread conference, which was further expanded by Jaffe and colleagues (2008, p. 509), noted that the following five priorities should be used as a guide when interests conflict:

1. protect the children from violent, abusive, and neglectful environments.
2. protect the safety and well-being of the victim parents (under the assumption that they will be better able to protect their children);
3. respect the right of adult victims to direct their own lives, thereby recognizing the state limitations regarding parental rights;
4. hold perpetrators accountable for their abusive behavior in the context of court proceedings, and have them acknowledge problems and seek help; and
5. allow children access to both parents, if safe (implement the least restrictive plan that most benefits children with the least amount of risk).

The way this list works is that when achievement of all five priorities is not possible, the priorities lower on the list need to be abandoned until the risk of abuse is resolved. PCs are also warned to keep in mind the long-term life of the case and that some measures may be implemented in the short term with the goal of working toward relaxing those restrictions as the case progresses satisfactorily.

Modifications in the parenting coordination process to ensure the safety of all family members may need to be implemented by the PC; however, the lack of research regarding the management of domestic violence in parenting coordination significantly limits the analysis of specific recommendations at present. Fieldstone, Carter, King, and McHale (2011) surveyed all PCs practicing in Florida. The data analysis included a principal-components factor analysis that classified the clients into three major groups: (a) Triangulation (parents who placed the child at the center of the conflict), (b) Cooperative Dialogue (parents who were able to support the child's positive relationship with the coparent), and (c) Destructive Conflict (in which animosity was particularly volatile and led to a breakdown of communication). Although Fieldstone et al. (2011) did not directly study management of domestic violence, the interventions with the Destructive Conflict clients provided information

relevant to domestic violence situations. The survey revealed that when PCs with a mental health background worked with Destructive Conflict clients, they tended to use the following four types of interventions: (a) holding less frequent first meetings with both parents, (b) typically holding sessions with each parent separately, (c) more coaching of negotiation skills, and (d) more frequent meetings with the children involved in the case.

On the basis of their clinical experience, Boyan and Termini (2005) recommended the following safety measures for conjoint meetings when parents display anger or have a history of domestic violence. These measures can be combined in different ways: caucus or shuttle sessions, videotaped sessions, bringing someone to wait in the waiting room, bringing someone to sit in the session with them without that person participating, having the vulnerable parent sit with free access to the door or sit closer to the PC, and having one parent arrive and leave before the other parent. The authors recommended that safety measures be established before work with the parents commences. These measures are helpful only if they serve to support the parents and do not compromise the autonomy of the vulnerable parent to freely participate in the process.

In addition to Fieldstone et al.'s (2011) findings and recommendations by clinicians (Boyan & Termini, 2005), the literature on custody evaluations and mediation, parenting coordination training, and clinical experience passed through informal channels contains useful information that PCs should consider when modifying parenting coordination services. The following are some of these recommendations:

- Respect the injunctions (e.g., restraining orders). If the court has issued a restraining order, the PC should work within this framework instead of asking the court to make an exception and allow the parties to meet for parenting coordination sessions.
- Excuse parents from mandated parenting education groups that focus on coparenting and decreasing conflict.
- Establish and maintain precautions, such as removal of weapons before meetings; a provision forbidding the use of alcohol, narcotics or other substances while with the children; presence of a third person during exchanges; use of a neutral public place during exchanges; or use of a safe exchange facility, such as a police station.
- Consider temporary orders of emergency parenting plans for the short term when the time share as ordered presents high risks.
- Focus on enforcement of the judge's order and implementation of the parenting plan through monitoring and follow-up to ensure compliance with orders. The PC's entire role may be limited to this focus in difficult cases.

- In addition to follow-up, request, if necessary, periodic review hearings or status reports for ongoing judicial monitoring.
- Make referrals to community resources and services, such as perpetrator treatment programs, anger management, victim services, supervised access centers, mental health services, and substance abuse services. Ensure that other experts brought into the case have the information they need and are qualified to handle the demands of their task. It is important that those service providers collaborate with the PC in terms of shared goals and case management so that PCs are aware of attendance and progress in those programs to make sure the goals are moving forward and achieved.
- Work and coordinate with attorneys, advocates, teachers, and other professionals involved with the family to encourage safety measures in all these settings and at all levels.
- Focus on setting in place protocols and procedures that ensure compliance with the details of the order, and reduce or eliminate opportunities for abuse to occur.
- Have more regular and direct contact with these parents to monitor the dynamic closely and identify any escalating risk, as well as the readiness of vulnerable family members to accept greater involvement with the abusive parent without retraumatization.

PARALLEL PARENTING

Worthy of special mention is the technique of *parallel parenting* (Stahl, 2000; Sullivan, n.d.), the process whereby the parents parent their children at different times and have little or no direct interaction with each other.

When parents do not get along, are uncomfortable or intimidated in each other's presence, prefer not to deal with each other, or have an order of protection, then a parenting plan that eliminates opportunities to interact and have conflict with each other is in the child's best interest. The intervention is somewhat counterintuitive in nature, in that the PC's role is to help these parents disengage while simultaneously helping them learn to work together. Parents work independently in that each parent is responsible for the decisions about the child during the time that the child is in that parent's household. Each parent receives the information about the child, such as school notices, report cards, and medical notes, independently. The goal is to disengage the parties from the conflict itself and avoid opportunities for abuse or quarrels. This option allows the PC to assume a role that will avoid a coparenting model that is inappropriate to the safety of the parties. Because in parallel parenting

the parents are unable to hold each other accountable, the PC needs to pay close attention to the quality of their parenting skills.

According to Sullivan (n.d.), in parallel parenting nothing is assumed and the parenting plan has to spell out everything. PC should encourage the relationship among parents to be businesslike, impersonal, and civil. Each meeting conducted with the parents, whether individually or together, is public and formal, scheduled by appointment at a mutually convenient time. Third parties are allowed to be present in these meetings. The PC or the parent initiating the request sends a summary of the understanding reached, from which the other parent confirms or disconfirms this understanding. The schedule is written down in detail and placed on a calendar. Nothing is left open to interpretation, and there is no flexibility in scheduling. See Chapter 7, this volume, for a thorough discussion of working with difficult clients.

PARENTING COORDINATOR MONITORING OF PROGRESS

Jaffe and colleagues (2008) recommended that when restrictions are placed on a parent there should also be explicit goals and behavioral criteria necessary to graduate from such restrictions, a review of progress, and a means of monitoring. Finally, although there is concern that the risks outweigh the benefits in parenting coordination cases with a history of domestic violence (Martindale, 2007), there are significant benefits in many cases. PCs have greater control over the process than parents with a history of conflict in terms of enforcing orders, addressing rule-breaking behavior, identifying subtle undermining behaviors, disengaging parents, and focusing on the children's protection. Given the limited resources courts have to closely monitor these cases, PCs who are well trained in domestic violence can function as a bridge between the parents in order to protect the best interests of the children. The PC should exercise caution in deciding, for each case, whether the benefits of proceeding with parenting coordination will outweigh the risks.

CONCLUSION

As I have illustrated in this discussion of domestic violence in parenting coordination, the complexity of this issue is formidable. The lack of research and literature regarding the management of domestic violence in parenting coordination leaves room for idiosyncratic interventions, which can be dangerous and misguided. In addition, although the published PC guidelines (AFCC, Task Force on Parenting Coordination, 2006; APA, 2012) address this matter, there is room for varying interpretations. This is of great

importance because cases that involve domestic violence may include the risk of injury or death, and even small missteps can heighten risk. In addition, PCs hold a great deal of power and authority, and thus they need to be careful to not replicate a situation of greatly unbalanced and oppressive control over the family. The safety and physical, sexual, and emotional well-being of family members has to be balanced with the limits of the PC's role and the parents' civil rights. Because of this, the importance of a PC's experience and training in dealing with families exhibiting domestic violence and child abuse cannot be underestimated.

It is encouraging to see that, since the Wingspread conference in 2008 (Ver Steegh & Dalton, 2008), more and more attention has been given to domestic violence, and an increasing number of publications are discussing the issue of domestic violence in family court, with greater clarity and uniformity being achieved. The specialized practice of parenting coordination will profit from this movement and continue to grow more responsive to new developments in the field, leading to heightened awareness of the safety needs of the parties involved in these custody battles. In the coming years, greater study and awareness of domestic violence should lead to the development of more well-defined standards of practice for parenting coordination cases that confront this issue.

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DIFFERENTIATION AMONG TYPES OF INTIMATE PARTNER VIOLENCE: RESEARCH UPDATE AND IMPLICATIONS FOR INTERVENTIONS

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Michael P. Johnson

A growing body of empirical research has demonstrated that intimate partner violence is not a unitary phenomenon and that types of domestic violence can be differentiated with respect to partner dynamics, context, and consequences. Four patterns of violence are described: Coercive Controlling Violence, Violent Resistance, Situational Couple Violence, and Separation-Instigated Violence. The controversial matter of gender symmetry and asymmetry in intimate partner violence is discussed in terms of sampling differences and methodological limitations. Implications of differentiation among types of domestic violence include the need for improved screening measures and procedures in civil, family, and criminal court and the possibility of better decision making, appropriate sanctions, and more effective treatment programs tailored to the characteristics of different types of partner violence. In family court, reliable differentiation should provide the basis for determining what safeguards are necessary and what types of parenting plans are appropriate to ensure healthy outcomes for children and parent-child relationships.

Keywords: *domestic violence; differentiation among types of intimate partner violence; coercive controlling violence; situational couple violence; gender and violence; implications for interventions and family court*

INTRODUCTION

When violence between intimate partners emerged as a recognizable issue in our society in the mid-1970s (Straus, Gelles, & Steinmetz, 1981; Walker, 1979), empirical knowledge of this social, psychological, and legal phenomenon was very limited. As advocates for women organized shelters across the nation to provide safety and assistance for abused women, clinical information emerged that described patterns of severe physical and emotional abuse. The victims were most notably described by Walker (1979) and others as “battered women,” and the male perpetrators were labeled “batterers.” This early and important recognition and conceptualization of intimate partner violence has guided policy, law, education, and interventions to date. The term “domestic violence” was adopted by women’s advocates to emphasize the risk to women within their own family and household, and over time the term became synonymous with battering. Family sociologists also studied violence in families and between intimate partners in the 1970s and 1980s, typically in large nationally representative samples, and this information diverged significantly from shelter, hospital, and police data with respect to incidence, perpetrators, severity, and

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context. In particular, large-scale studies seemed to indicate that women were as violent as men in intimate relationships (Archer, 2000). Domestic violence advocates and service providers largely ignored or strongly rejected these studies because they were so at odds with their experiences in the shelters, hospitals, and courts. Advocates also feared that what they viewed as misinformation (that women were as violent as men) would dilute society's focus on and funding of services and education for battered women (Pleck, Pleck, Grossman, & Bart, 1978). Thus, until recently, the two groups most concerned with intimate partner violence, feminist activists/practitioners and family sociologists, have rarely intersected, and misunderstanding and acrimonious debate have interfered with a more constructive and unified approach to what remains a serious societal problem for intimate partners and their children.

Over the past decade, a growing body of empirical research has convincingly demonstrated the existence of different types or patterns of intimate partner violence (Graham-Kevan & Archer, 2003; Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000; Johnson, 1995, 2006; Johnson & Ferraro, 2000; Johnston & Campbell, 1993; Leone, Johnson, Cohan, Lloyd, 2004). This information has far-reaching implications for court processes, treatment, educational programs for professionals, and for social and legal policy. Among some social scientists, it is no longer considered scientifically or ethically acceptable to speak of domestic violence without specifying the type of partner violence to which one refers (Johnson, 2005a). Among women's advocates, as well, there are those who recognize that long-term adherence to the conviction that all domestic violence is battering has hindered the development of more sophisticated assessment protocols and treatment programs that may identify and address problems of violence for both men and women more effectively (Pence & Dasgupta, 2006).

This article first discusses the value of differentiation among types of intimate partner violence, concerns raised by advocates about such differentiation, and the various terminologies used under the canopy of domestic violence. It then describes the underlying reasons for the confusion and heated controversy regarding gender and violence and focuses on empirical research that supports differentiation among four types of intimate partner violence (Coercive Controlling Violence, Violent Resistance, Situational Couple Violence, and Separation-Instigated Violence). The ongoing controversy regarding the prevalence of female violence will be considered in these contexts. A fifth type of violence, Mutual Violent Control (between two coercive controlling violent partners), has been described by Johnson (2006), but little is known about its frequency, features, and consequences, and it will not be described here. Implications of the overall body of knowledge are discussed, in particular the need to rethink current one-size-fits-all policies, and the need for more sophisticated assessment and treatment interventions utilized by criminal, civil, and family courts. There is consideration as well of the meaning of violence differentiation research for custody and access disputes, parenting plans, and parent-child relationships, and whether violence is likely to continue or cease after parents separate and divorce.

POTENTIAL VALUE OF DIFFERENTIATION

The value of differentiating among types of domestic violence is that appropriate screening instruments and processes can be developed that more accurately describe the central dynamics of the partner violence, the context, and the consequences. This can lead to better

decision making, appropriate sanctions, and more effective treatment programs tailored to the different characteristics of partner violence. In family court, reliable differentiation of intimate partner violence is expected to provide a firmer foundation for determining whether parent–child contact is appropriate, what safeguards are necessary, and what type of parenting plans are likely to promote healthy outcomes for children and parent–child relationships (Jaffe, Johnston, Crookes, & Bala, 2008). It is possible, as well, that increased understanding and acceptance of differentiation among types of domestic violence by the broad spectrum of service providers, evaluators, academics, and policy makers will diminish the current turf and gender wars and lead to more effective partnerships and policies that share the common goal of reducing violence and its destructive effects on families.

Although social scientists understand that humans and their circumstances are inherently messy and that there will always be individuals, couples, and situations that do not fit into major identified patterns, this fundamental understanding can sometimes be lost in the translation to practice. Thus, a central concern of women’s advocates is that research differentiating among types of intimate partner violence will lead to the reification or misapplication of typologies and that battering will, as a result, be missed—with potentially lethal results. Advocates also fear that typical information available to the court for decision making is too limited to make effective distinctions and that effective screening processes and appropriate assessment tools are not available or in place.

TYPES AND TERMINOLOGIES: SEARCHING FOR ACCURATE DESCRIPTORS

When practitioners, researchers, and policy makers gather together, the term domestic violence has been observed to mean different things to different participants. On the one hand, gender-neutral laws have been enacted that identify any act of violence by one partner against another as domestic violence and, for many social scientists as well, the term refers to any violence between intimate partners. On the other hand, for many in the field, domestic violence describes a coercive pattern of men’s physical violence, intimidation, and control of their female partners (i.e., battering). The terms domestic violence and battering have been used interchangeably by women’s advocates, domestic violence educators, and service providers for three decades, based on their belief that all incidents of domestic violence involve male battering.

We will use the term Coercive Controlling Violence for such a pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence against partners. This pattern is familiar to many readers through the Power and Control Wheel (Pence & Paymar, 1993) (see Figure 1), a model that is used extensively in women’s shelters and support groups. Many women’s advocates use the term domestic violence for this pattern. For example, the National Domestic Violence Hotline (USA) defines domestic violence as follows: “Domestic violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner” (http://www.ndvh.org/educate/what_is_dv.html). This is probably the pattern that comes to mind for most people when they hear terms such as wife beating, battering, spousal abuse, or domestic violence. In one of the early typologies of intimate partner violence, Johnson (1995) used the term Patriarchal Terrorism for this pattern. This label was later changed to “Intimate Terrorism” in recognition that not all coercive control was rooted in patriarchal

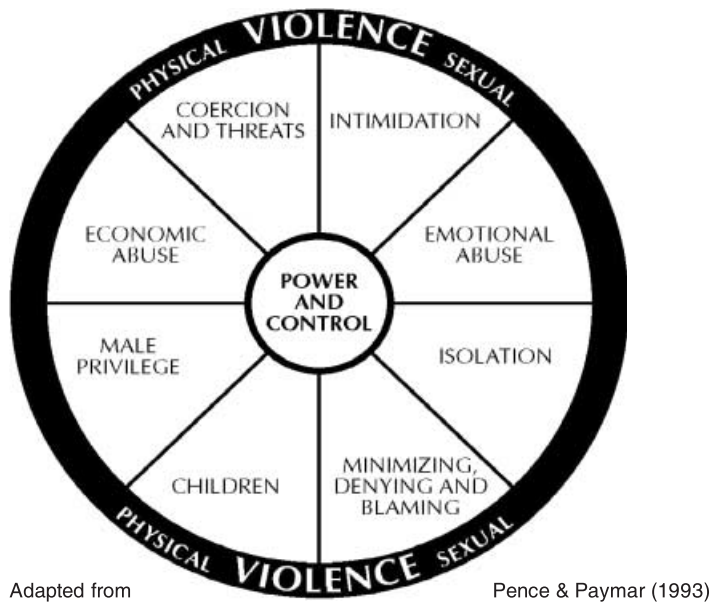


Figure 1 The Power and Control Wheel.

structures and attitudes, nor perpetrated exclusively by men (see Johnson, 2006, p. 1015, note 2, for larger discussion). In a discussion of domestic violence terminology at the Wingspread Conference (2007)¹, some participants expressed reluctance to adopt or use the term Intimate Terrorism in courts, and in this and a companion article, the term Coercive Controlling Violence has been adopted (Jaffe et al., 2008).

Violent Resistance (to a violent, coercively controlling partner) has been described elsewhere as Female Resistance, Resistive/Reactive Violence, and, of course, Self-Defense (Pence & Dasgupta, 2006). Until recently, many women's advocates and clinical researchers have characterized all violence perpetrated by women in intimate relationships as female resistance (e.g., Walker, 1984; Yllö & Bograd, 1988). They have been reluctant to acknowledge that some women's violence occurs in the context of nonviolent partners or in mutual violence that does not have coercive control as a central dynamic. The term Violent Resistance posits the reality that both women and men may, in attempts to get the violence to stop or to stand up for themselves, react violently to their partners who have a pattern of Coercive Controlling Violence.

Johnson's term, Situational Couple Violence, is used here to identify the type of partner violence that does not have its basis in the dynamic of power and control (Johnson & Leone, 2005). Johnson (1995) originally used the term Common Couple Violence, but abandoned it because many readers reacted to it as minimizing the dangers of such violence. This violence is similar to Male-Controlling Interactive Violence (described by Johnston & Campbell, 1993) and Conflict Motivated Violence (Ellis & Stuckless, 1996; Ellis, Stuckless, & Wight, 2006).

To describe violence that first occurs in the relationship at separation, the term Separation-Instigated Violence is used. Johnston and Campbell (1993) called it Separation-Engendered Violence, but some participants in the Wingspread Conference felt that "engendered" might

be confusing in an area in which the role of gender is central to some explanations of intimate partner violence. It is important to differentiate this type of violence from *continuing* violence that occurs in the context of a separation. It is often the case that Situational Couple Violence continues through the separation process and that Coercive Controlling Violence may continue or even escalate to homicidal levels when the perpetrator feels his control is threatened by separation.

Until recently, regardless of the label used, the majority of research on domestic violence has focused on male violence and the women victims of this violence. The results of large survey studies were used to point to the prevalence and consequences of intimate partner violence. However, research methodologies have not, by and large, asked the questions that might distinguish among types of intimate partner violence. The original and revised Conflict Tactics Scales (CTS; Straus, 1979; Straus, Hamby, Boney-McCoy, & Sugarman, 1996) have been the most common research measures of domestic violence, and the 1996 version includes separate measures of psychological dimensions (cursing, demeaning, isolating, coercion, threats, stalking, etc.), physical violence (slapping, shoving, kicking, biting, choking, mutilation, etc.), sexual violence (raped, forced unwanted sexual behaviors), and financial control (controlling purchases, withholding funds, etc.). The most common use of these scales, however, has been to identify specific violent acts rather than more general patterns of behavior, and the physical violence items of the CTS are still the most widely used approach to assessing levels of domestic violence.

CONTROVERSIES REGARDING VIOLENCE AND GENDER

For over two decades, considerable controversy has centered on whether it is primarily men who are violent in intimate relationships or whether there is gender symmetry in perpetrating violence. Proponents of both viewpoints cite multiple empirical studies to support their views and argue from different perspectives (e.g., see Archer, 2000; Dutton, 2005; Holtzworth-Munroe, 2005; Johnson, 2001, 2005a, 2006; Kline, 2003; Straus, 1999). More recently, efforts have been made to build bridges between the research and interpretations of the feminist sociologists and the family violence researchers, including family sociologists (e.g., Anderson, 1997). These two viewpoints can be reconciled largely by an examination of the samples and measures used to collect the contradictory data and the recognition that different types of intimate partner violence exist in our society and are represented in these different samples. Johnston and Campbell (1993) and Johnson (1995) argued that domestic violence was not a unitary phenomenon and that different types of partner violence were apparent in different contexts, samples, and methodologies. This observation was also made by Straus (1993, 1999), who asserted that researchers were studying different populations and that most likely these different forms of violence had different etiologies and gender patterns. Other researchers (e.g., Holtzworth-Munroe & Stuart, 1994; Babcock, Green, Webb, & Yerington, 2005) have come to a similar conclusion.

Based on hundreds of studies, it is quite apparent that both men and women are violent in intimate partner relationships. There is gender symmetry in some types of intimate partner violence, and in some relationships women are more frequently the aggressors than their partners, including with their nonviolent partners. It is also the case that men and women are injured and experience fear in situations where the violence is frequent and severe, although the extent of symmetry in severity of injuries and fear is disputed based on different studies.

Data in samples obtained primarily from women's shelters, court-mandated treatment programs, police reports, and emergency rooms are more likely to report the type of physical and emotional violence that we are calling Coercive Controlling Violence. It is characterized by power and control and more often results in injuries to women. In these samples, the violence is asymmetric and perpetrated largely by men against their partners, although critics argue that coercively controlling violent women are either ignored, not recognized, infrequently arrested, or not ordered to treatment programs (Dutton, 2005).

In contrast, large-scale survey research, using community or national samples, reports gender symmetry in the initiation and participation of men and women in partner violence. This violence is not based on a relationship dynamic of coercion and control, is less severe, and mostly arises from conflicts and arguments between the partners (Johnson, 2006). These partners are most likely involved in Situational Couple Violence; are less likely to need the services of hospitals, police, and shelters; and therefore are a relatively small minority of individuals in studies using shelter and agency samples. However, Situational Couple Violence is generally more common than Coercive Controlling Violence and therefore dominates the violence in large survey samples. Incidence of Coercive Controlling Violence may be further lowered in surveys due to a high refusal rate among such partners, because both perpetrator and victim are reluctant to admit the violence for fear of discovery or retribution (for a larger discussion of this sampling issue, see Johnson, 2006).

Using a 1970s data set and a control tactics scale to distinguish controlling violence from noncontrolling violence, Johnson (2006) found that 89% of the violence in a survey sample was Situational Couple Violence and 11% was Coercive Controlling Violence. The Situational Couple Violence was roughly gender symmetric. In contrast, in the court sample, only 29% of the violence was Situational Couple Violence, and 68% was Coercive Controlling Violence which was largely male perpetrated. Similarly, in the shelter sample, 19% of the violence was Situational Couple Violence and 79% was Coercive Controlling Violence, which again was largely male perpetrated.

Thus, when family sociologists and/or advocates for men claim that domestic violence is perpetrated equally by men and women, referring to the data from large survey studies, they are describing Situational Couple Violence, not Coercive Controlling Violence. As will be discussed, these two types of violence differ in significant ways, including causes, participation, consequences to participants, and forms of intervention required.

COERCIVE CONTROLLING VIOLENCE

Researchers identify Coercive Controlling Violence by the pattern of power and control in which it is embedded (Johnson, 2008; Graham-Kevan & Archer, 2003). The Power and Control Wheel (see Figure 1) provides a useful graphical representation of the major forms of control that constitute Coercive Controlling Violence: intimidation; emotional abuse; isolation; minimizing, denying, and blaming; use of children; asserting male privilege; economic abuse; and coercion and threats (Pence & Paymar, 1993). Abusers do not necessarily use all of these tactics, but they do use a combination of the ones that they feel are most likely to work for them. Because these nonviolent control tactics may be effective without the use of violence (especially if there has been a history of violence in the past), Coercive Controlling Violence does not necessarily manifest itself in high levels of violence. In fact, Johnson (2008) has recently argued for the recognition of "incipient" Coercive Controlling Violence (cases in which there is a clear pattern of power and control

but not yet any physical violence), and Stark (2007) has argued, even more dramatically, that the focus in the law should shift from the violence itself to the coercive control as a “liberty crime.”

Coercive Controlling Violence is the type of intimate partner violence encountered most frequently in agency settings, such as law enforcement, the courts (criminal, civil, and family), shelters, and hospitals. Johnson, using Frieze’s Pittsburgh data, found that 68% of women who filed for Protection from Abuse orders and 79% of women who contacted shelters were experiencing Coercive Controlling Violence (Frieze & Browne, 1989; Johnson, 2006). This predominance of Coercive Controlling Violence in agencies probably accounts for the tendency of agency-based women’s advocates to see all domestic violence as Coercive Controlling Violence, but it is important to note that a great many cases even in these agency contexts involve Situational Couple Violence (29% and 19% in the courts and shelters, respectively, for the Pittsburgh data).

In heterosexual relationships, Coercive Controlling Violence is perpetrated primarily by men. For example, Johnson (2006) found that 97% of the Coercive Controlling Violence in the Pittsburgh sample was male-perpetrated. Graham-Kevan and Archer (2003) report that 87% of the Coercive Controlling Violence in their British sample was male-perpetrated. The combination of this gender pattern in Coercive Controlling Violence with the predominance of Coercive Controlling Violence in agency settings accounts for the consistent finding in law enforcement, shelter, and hospital data that intimate partner violence is primarily male-perpetrated (Dobash, Dobash, Wilson, & Daly, 1992). However, it is important not to ignore female-perpetrated Coercive Controlling Violence. Although it may represent only one-seventh or so of such violence (if you accept Graham-Kevan and Archer’s numbers, or 3% if you accept Johnson’s numbers), it is necessary that we recognize it for what it is when we make decisions about interventions.

While there is very little systematic research on women’s Coercive Controlling Violence, there are a few qualitative studies that clearly identify it in both same-sex (Renzetti, 1992) and heterosexual relationships (Hines, Brown, & Dunning, 2007; Migliaccio, 2002). For example, Hines et al. (2007) found that 95% of the men calling the Domestic Abuse Helpline for Men reported that their partners tried to control them. And the tactics used by these women included all of the tactics identified in the Power and Control Wheel (with “use of the system” substituted for “assertion of male privilege”). Renzetti’s (1992) findings for lesbian relationships are similar, with the addition of some control tactics that are unique to same-sex relationships, such as threats of outing. Because of the paucity of research on women’s Coercive Controlling Violence, the quantitative data reviewed next will focus on men.

Although Coercive Controlling Violence does not *always* involve frequent and/or severe violence, on average its violence is more frequent and severe than other types of intimate partner violence. For example, for the male perpetrators in the Pittsburgh data, the median number of violent incidents was 18. In 76% of the cases of Coercive Controlling Violence the violence had escalated over time, and 76% of the cases involved severe violence (Johnson, 2006). The combination of these higher levels of violence with the pattern of coercive control that defines Coercive Controlling Violence produces a highly negative impact on victims.

A number of recent studies considering injuries resulting from different types of partner violence show a high likelihood that a victim will be injured or even severely injured by men’s Coercive Controlling Violence (Johnson, 2008; Johnson & Leone, 2000; Leone, Johnson, Cohan, & Lloyd, 2004). For example, Johnson (2008) reports that 88% of women experiencing Coercive Controlling Violence in the Pittsburgh study had been injured in the

most violent incident and 67% had been severely injured. Using data on only one incident (the most recent), Johnson and Leone (2000) found that 32% of women experiencing Coercive Controlling Violence in the National Violence Against Women Survey (NVAWS) had been injured, 5% severely. Campbell and Soeken (1999) report in their literature review that nearly half of physically abused women also report forced sex and others report abusive sex. In addition to the injuries produced directly by abusive and violent sex, there is increased risk of sexually transmitted diseases, including HIV, and abused women who have been sexually assaulted report higher incidence of gynecological problems (Campbell & Soeken, 1999).

It is well established that homicide rates are higher for women who have separated from their partners than for women in intact relationships (Hotton, 2001; Wilson & Daly, 1993), and this heightened risk of homicide following a separation is not found for men (Johnson & Hotton, 2003). Thus, in the family courts, one major concern is the potential for further injury—or death.

Research on dangerousness and lethality has established that for violent male partners control issues are an important predictor of continued or increased violence. The question addressed in this research is: Given the fact that a woman has already been attacked by her intimate partner, what predicts the likelihood that she will be attacked again or even killed? One of the major predictors of continued violence is the presence of the controlling behaviors that define Coercive Controlling Violence. For example, one study comparing victims of intimate partner femicide with a control group of nonlethally abused women found that 66% of the femicide victims had high scores on a scale of partner's controlling behaviors, compared with 24% of the abused control group (Campbell et al., 2003). A qualitative study of 30 women who had survived an attempted intimate femicide found that 83% "described examples of their partners using stalking, extreme jealousy, social isolation, physical limitations, or threats of violence" as a means of controlling them (Nicolaidis et al., 2003, p. 790). It is also important to note that, although 10 of these women had no history of repeated physical abuse by their partners, 8 of those 10 did have partners who *had* been controlling. It is clear that coercive control must be considered a major risk factor for continued or increased violence.

It is not unusual for victims of Coercive Controlling Violence to report that the psychological impact of their experience is worse than the physical effects. The major psychological effects of Coercive Controlling Violence are fear and anxiety, loss of self-esteem, depression, and posttraumatic stress. The fear and anxiety are well documented in many qualitative studies of Coercive Controlling Violence (e.g., Kirkwood, 1993; Dobash & Dobash, 1979; Ferraro, 2006), and quantitative studies confirm that fear and anxiety are frequent consequences of intimate partner violence (Sackett & Saunders, 1999; Sutherland, Bybee, & Sullivan, 1998).

There is considerable evidence establishing the effects of Coercive Controlling Violence on self-esteem, much of it derived from the qualitative data collected from women using the services of shelters. Kirkwood devotes large parts of her research report to issues of self-esteem, reporting that "all of the women expressed the view that their self-esteem was eroded as a result of the continual physical and emotional abuse by their partners" (Kirkwood, 1993, p. 68). Chang (1996) saw this loss of self-esteem as so central to the experience of psychological abuse that she used a quote from one of her respondents as the title of her book, *I Just Lost Myself*.

Depression is considered by many to be the most prevalent psychological effect of Coercive Controlling Violence. Golding's (1999) analysis of the results from 18 studies of

battering and depression found that the average prevalence of depression among battered women was 48%. However, because none of these studies distinguished between Coercive Controlling Violence and other types of partner violence, this number most certainly understates the effects of Coercive Controlling Violence. When Golding separated out studies done with shelter samples (likely to be dominated by Coercive Controlling Violence), the average prevalence of depression was 61%.

Nightmares, flashbacks, avoidance of reminders of the event, and hyperarousal (i.e., the major symptoms of posttraumatic stress syndrome) have more recently been recognized as consequences of domestic violence. In a study of survivors of domestic violence who were receiving services from shelters or other agencies, 60% of the women met criteria for a diagnosis of posttraumatic stress syndrome (Saunders, 1994). Johnson and Leone (2000), using the NVAWS data, found that victims of Coercive Controlling Violence were twice as likely as victims of Situational Couple Violence to score above the median on a scale of posttraumatic stress symptoms.

VIOLENT RESISTANCE

The research on intimate partner violence has clearly indicated that many women resist Coercive Controlling Violence with violence of their own. For example, Pagelow's (1981) early study of women who had sought help in shelters in Florida and California found that 71% had responded to abuse with violence of their own. Although in the early literature such violence was generally referred to as "self-defense," we prefer the term Violent Resistance because self-defense is a legal concept that has very specific meanings that are subject to change as the law changes and because there are varieties of violent resistance that have little to do with these legal meanings of self-defense (Johnson, 2008).

Nevertheless, much Violent Resistance does meet at least the common-sense definition of self-defense: violence that takes place as an immediate reaction to an assault and that is intended primarily to protect oneself or others from injury. This was the largest category of violence identified by Miller (2005) in a qualitative study of 95 women who had been court mandated into a female offenders program after arrest for domestic violence. Miller classified an incident as "defensive behavior," which constituted 65% of her cases, if the woman had been responding to an initial harm or a threat to her or her children.

Much of women's Violent Resistance does not lead to encounters with law enforcement because it is so short-lived. For many violent resisters, the resort to self-protective violence may be almost automatic and surfaces almost as soon as the coercively controlling and violent partner begins to use physical violence himself. But in heterosexual relationships, most women find out quickly that responding with violence is ineffective and may even make matters worse (Pagelow, 1981, p. 67). National Crime Victimization Survey data indicate that women who defend themselves against attacks from their intimate partners are twice as likely to sustain injury as those who do not (Bachman & Carmody, 1994). Although there is little data on men's Violent Resistance, one study substantiated its possible existence. In that study of men calling an abuse hotline, the following comment was reported: "I tried to fight her off, but she was too strong" (Hines, Brown, & Dunning, 2007, p. 66).

The Violent Resistance that gets the most media attention is that of women who murder their abusive partners. The U.S. Department of Justice reports that, in 2004, 385 women murdered their intimate partners (Fox & Zawitz, 2006). Although some of these murders may have involved Situational Couple Violence that escalated to a homicide, most are

committed by women who feel trapped in a relationship with a coercively controlling and violent partner. In comparing women who killed their partners with a sample of other women who were in abusive relationships, Browne (1987) found that there was little *about the women* that distinguished them from those who had not murdered their partners. What distinguished the two groups was found in the behavior of the abuser. Women who killed their abusers were more likely to have experienced frequent attacks, severe injuries, sexual abuse, and death threats against themselves or others. They were caught in a web of abuse that seemed to be out of control. Seventy-six percent of Browne's homicide group reported having been raped, 40% often. Sixty-two percent reported being forced or urged to engage in other sexual acts that they found abusive or unnatural, one-fifth saying this was a frequent occurrence. For many of these women, the most severe incidents took place when they threatened or tried to leave their partner. Another major factor that distinguished the homicide group from women who had not killed their abusive partners is that many of them had either attempted or seriously considered suicide. These women felt that they could no longer survive in this relationship and that leaving safely was also impossible. These findings are confirmed in a recent study of women on trial for, or convicted of, attacking their intimate partners (Ferraro, 2006).

The dominant image of women who kill their partners presented by the media is one in which a desperate woman plans the murder of a brutal husband in his sleep or at some other time when she can catch him unawares. In reality, most of these homicides take place while a violent or threatening incident is occurring (Browne, Williams, & Dutton, 1999, p. 158). Although a few of Browne's (1987) cases involve a plot to murder the abuser, or a wait following an assault for an opportunity to attack safely, the vast majority took place in the midst of yet another brutal attack (see also Ferraro, 2006). A few were women using lethal violence in reaction to a direct threat to their child.

SITUATIONAL COUPLE VIOLENCE

Situational Couple Violence is the most common type of physical aggression in the general population of married spouses and cohabiting partners, and is perpetrated by both men and women. It is not a more minor version of Coercive Controlling Violence; rather, it is a different type of intimate partner violence with different causes and consequences. Situational Couple Violence is not embedded in a relationship-wide pattern of power, coercion, and control (Johnson & Leone, 2005). Generally, Situational Couple Violence results from situations or arguments between partners that escalate on occasion into physical violence. One or both partners appear to have poor ability to manage their conflicts and/or poor control of anger (Ellis & Stuckless, 1996; Johnson, 1995, 2006; Johnston & Campbell, 1993). Most often, Situational Couple Violence has a lower per-couple frequency of occurrence (Johnson & Leone, 2005) and more often involves minor forms of violence (pushing, shoving, grabbing, etc.) when compared to Coercive Controlling Violence. Fear of the partner is not characteristic of women or men in Situational Couple Violence, whether perpetrator, mutual combatant, or victim. Unlike the misogynistic attitudes toward women characteristic of men who use Coercive Controlling Violence, men who are involved in Situational Couple Violence do not differ from nonviolent men on measures of misogyny (Holtzworth-Munroe et al., 2000).

Some verbally aggressive behaviors (cursing, yelling, and name calling) reported in Situational Couple Violence are similar to the emotional abuse of Coercive Controlling

Violence, and jealousy may also exist as a recurrent theme in Situational Couple Violence, with accusations of infidelity expressed in conflicts. However, the violence and emotional abuse of Situational Couple Violence are not accompanied by a chronic pattern of controlling, intimidating, or stalking behaviors (Leone et al., 2004). Babcock et al. (2004) identified one group of men in batterer treatment groups and a community sample that appears to be men involved in Situational Couple Violence (the “family-only” group). These men had low scores on a scale that assessed violence to control, violence out of jealousy, and violence following verbal abuse compared to two other groups that appeared to be involved in Coercive Controlling Violence. Their reported violence was less severe and less frequent compared to the other two groups. Significantly, the men engaged in Situational Couple Violence did not differ from the nonviolent control group on measures of borderline and antisocial personalities or general violence outside of the family.

Situational Couple Violence is initiated at similar rates by men and women, as measured by large survey studies and community samples. Using the Conflict Tactics Scales, Straus and Gelles (1992) found male rates of violence toward a partner of 12.2% and female rates of 12.4%. In a Canadian survey of cohabiting and married respondents, males reported 1-year rates of husband-to-wife violence of 12.9% and female respondents reported wife-to-husband violence of 12.5% (Kwong, Bartholomew, & Dutton, 1999).

In the Canadian survey, men’s and women’s rates for each of nine specific types of violence were similar except for “slapping” and “kicked/bit/hit,” where significantly more women than men reported perpetrating these acts. More than half of those reporting any violence in the past year reported violence perpetrated by both partners (62% men, 52% women). Eighteen percent of men and 35% of women reported female-only violence, and 20% of men and 13% of women reported male-only violence. The majority of violence reported did not result in injury to either men or women. The incidence of severe husband-to-wife violence reported by males and females was 2.2% and 2.8%, and wife-to-husband severe violence was 4.8% as reported by males and 4.5% as reported by females. Injuries were reported by a small number of both men and women (Kwong et al., 1999).

In samples of teenagers and young adults (dating, cohabiting, married), rates of physical violence toward partners are considerably higher than in general survey populations, and several studies find females more frequently violent than males. Magdol et al. (1997) reported that women perpetrated violence 37.2% of the time toward their partners and men 21.8% in a community-representative sample of young adults. In a sample of antisocial aggressive teenagers and young adults, women acknowledged higher rates of perpetration of violence than men (43% vs. 34%) (Capaldi & Owen, 2001). Douglas and Straus (2006) found that, among dating couples in 17 countries, females assaulted their partners more often than did males (30.0% vs. 24.2%).

Situational Couple Violence is less likely to escalate over time than Coercive Controlling Violence, sometimes stops altogether, and is more likely to stop after separation (Babcock et al., 2004; Johnson & Ferraro, 2000; Johnson & Leone, 2005; Johnston & Campbell, 1993). It may involve one isolated incident, be sporadic, or be regularly occurring. The time frame can involve the past only, throughout the relationship, or only currently (e.g., in the several months prior to separation). Using the NVAWS data, 99% of the women experiencing Situational Couple Violence reported no violence in the past 12 months (vs. 78% of the Coercive Controlling Violence group) (Johnson & Leone (2005). While more minor forms of violence are typical of Situational Couple Violence, it can escalate into more severe assaults with serious injuries. Thirty-two percent of perpetrators (men in the NVAWS data set) had committed at least one act of severe violence (Johnson & Leone, 2005). Comparable

data were not available for women. Severe violence in Situational Couple Violence is particularly likely when violence occurs more frequently (daily or weekly). With a community sample of at-risk teenagers or young adults, frequent and bidirectional physical aggression was associated with higher scores on antisocial behavior by both men and women, and women were at much greater risk for injuries than the men (Capaldi & Owen, 2001). When violence was frequent and injuries were sustained, both men and women were more likely to be fearful of each other. However, this study lacked dyadic measures of power and control, so it is not possible to determine if this was Situational or Coercive Controlling Violence, or a combination of both.

Situational Couple Violence results for women in fewer health problems, physician visits, and psychological symptoms, less missed work, and less use of painkillers, compared to women who are victims of Coercive Controlling Violence (Johnson & Leone, 2005). A large representative study in New Zealand found that depression and suicidal ideation were related to higher levels of partner violence victimization in both men and women. Thus one would expect to see more severe health and psychological symptoms in Situational Couple Violence that is very frequent (Magdol et al., 1997).

Overall, these and other survey data support claims that women both initiate violence and participate in mutual violence and that, particularly in teenage and young adult samples, women perpetrate violence against their partners more frequently than do the men. Based on knowledge available, this gender symmetry is associated primarily with Situational Couple Violence and not Coercive Controlling Violence. It is hoped that future research will enable clearer distinctions between violence that arises primarily from partner conflicts in contrast to violence that is embedded in patterns of coercion and control.

SEPARATION-INSTIGATED VIOLENCE

Of special relevance to those working with separating and divorcing families is violence instigated by the separation where there was no prior history of violence in the intimate partner relationship or in other settings (Johnston & Campbell, 1993; Kelly, 1982; Wallerstein & Kelly, 1980). Seen symmetrically in both men and women, these are unexpected and uncharacteristic acts of violence perpetrated by a partner with a history of civilized and contained behavior. Therefore, this is not Coercive Controlling Violence as neither partner reported being intimidated, fearful, or controlled by the other during the marriage. Separation-Instigated Violence is triggered by experiences such as a traumatic separation (e.g., the home emptied and the children taken when the parent is at work), public humiliation of a prominent professional or political figure by a process server, allegations of child or sexual abuse, or the discovery of a lover in the partner's bed. The violence represents an atypical and serious loss of psychological control (sometimes described as "just going nuts"), is typically limited to one or two episodes at the beginning of or during the separation period, and ranges from mild to more severe forms of violence.

Separation-Instigated Violence is more likely to be perpetrated by the partner who is being left and is shocked by the divorce action. Incidents include sudden lashing out, throwing objects at the partner, destroying property (cherished pictures/heirlooms, throwing clothes into the street), brandishing a weapon, and sideswiping or ramming the partner's car or that of his/her lover. Separation-Instigated Violence is unlikely to occur again and protection orders result in compliance. In Johnston and Campbell's (1993) sample of 140 high-conflict custody-disputing parents, 21% of the parents reported Separation-Instigated

Violence. Another study (not restricted to custody-disputing families) indicated that 14% of violence reported began only after separation, although there was no assessment of whether violence with coercion and control had characterized the prior intimate partner relationship (Statistics Canada, 2001).

For professionals in family court or the private sector, it is critical to use assessment instruments that ask discerning questions to distinguish Separation-Instigated Violence from the chronic patterns of emotional abuse and intimidation of Coercive Controlling Violence. A partner's decision to leave may unleash potentially lethal rage, harassment, and stalking in borderline/dysphoric men with a history of Coercive Controlling Violence, where jealousy, impulsivity, and high dependence on the partner are central (Babcock et al., 2004; Dutton, 2007; Holtzworth-Munroe et al., 2000; Jacobson & Gottman, 1998). Unlike perpetrators of Coercive Controlling Violence, men and women perpetrating Separation-Instigated Violence are more likely to acknowledge their violence rather than use denial and are often embarrassed and ashamed of their behaviors. Some have been caring, involved parents during the marital relationship, with good parent-child relationships. Their partners (and often the children) are stunned and frightened by the unaccustomed violence, which sometimes leads to a new image of the former partner as scary or dangerous. Trust and cooperation regarding the children become very difficult, at least in the shorter term (Johnston & Campbell, 1993).

INTIMATE PARTNER VIOLENCE IN CUSTODY AND ACCESS DISPUTES

The research discussed above has not focused specifically on intimate partner violence reported by parents with custody and access disputes. Because there is little research regarding this population, it is not known if the frequency, severity, context, or type of violence observed in custody-disputing parents is more similar to that seen in large-scale surveys (i.e., Situational Couple Violence) or the Coercive Controlling Violence more characteristic of shelter and police samples. However, the number of family law cases in which domestic violence allegations are made is quite high, and multiple and mutual allegations (e.g., substance abuse, child abuse, neglect) are common. In a California Family Court study of cases with custody and access disputes entering mandated (and early) custody mediation, intimate partner violence was reported by at least one parent in 76% of the 2,500 cases (Center for Families, Children, and Courts, 2002). Most of the violence did not occur in the prior 6 months. In 47% of the cases, neither parent had raised the issue of violence before or during mediation (either in separate screening interviews or separate sessions), suggesting that Situation Couple Violence was characteristic of some partners, may have occurred only in the past or episodically during the relationships, may have been mutual, and was not deemed important enough to be an issue in their mediated discussions about the children. It is also possible that victims of Coercive Controlling Violence were fearful of raising the history of violence, even in a separate session (it should be noted that parents are mandated to attend one session, and those unable to reach agreement then move into litigated and judicial processes). Further research will be needed to clarify what types of violence are characteristic or predominant in child custody disputes.

In two Australian samples of parents with custody or access disputes, 48–55% of cases (general litigants sample) and 63–79% (judicial determination sample) contained allegations of partner violence. Approximately half of the allegations in the general litigants sample and 60% of the judicially determined sample were of a particularly serious nature.

Allegations of child abuse were less than half that number, but allegations of child abuse were almost always accompanied by allegations of spousal violence (Moloney, Smyth, Weston, Richardson, Ou, & Gray, 2007). In a California sample of parents disputing custody or access who were undergoing child custody evaluations, domestic violence was substantiated for 74% of the mothers' allegations against fathers and 50% of fathers' allegations against mothers. More child abuse allegations by fathers against mothers were substantiated (46%) than allegations by mothers substantiated against fathers (26%), and in 24% of cases, child abuse allegations were substantiated for both mother and father within the same family (Johnston, Lee, Olesen, & Walters, 2005). Interpretation of research findings to date is confounded by different samples, measures, and legal definitions of domestic violence and child abuse, but it is clear that the percentage of parents reporting intimate partner violence and child abuse is higher among separating and divorcing parents than in the general population.

Only one study (comprising two samples) to date has differentiated among types of intimate partner violence in custody and access disputes (Johnston & Campbell, 1993). In this extremely high-conflict group of parents who were chronically relitigating parenting and access disputes, three fourths of the separating/divorcing couples had a history of violence. Twenty-six percent were not violent, 10% involved minor violence, 23% moderate, and 41% severe violence. Men and women were mostly in agreement about who perpetrated minor acts of violence and women's moderate acts of violence, but substantial gender disagreement existed about severe violence perpetrated by men, with women reporting substantially more severe violence from their partners than the men reported. Except for cuts sustained by both genders, women's injuries were more frequent and severe than men's. Johnston and Campbell (1993) identified five categories of intimate partner violence: male battering (what we are calling Coercive Controlling Violence), female initiated violence, male-controlling interactive violence (similar to Situational Couple Violence), separation-engendered violence, and violence that arises from mental illness, in particular, the disordered thinking of psychotic and paranoid disorders. In this small group (5%) are individuals who often do not repeat their violence if they are treated with medication. Situational Couple Violence (20% of all couples) and Separation-Instigated Violence with no prior history of violence (21% of all couples) were most common and generally involved less serious violence. Johnston notes that these findings should not be generalized to the larger divorcing population of parents or even parents disputing custody because of the chronic history of repeated litigation and continuing high conflict between these parents and the size of the sample.

INTIMATE PARTNER VIOLENCE AND CHILDREN'S ADJUSTMENT

The effects of intimate partner violence on children's adjustment have also been well documented (Bancroft & Silverman, 2004; Graham-Bermann & Edleson, 2001; Fantuzzo & Mohr, 1999; Holtzworth-Munroe, Smutzler, & Sandin, 1997; Jaffe, Baker, & Cunningham, 2004; Wolak & Finkelhor, 1998). Violence has an independent effect on children's adjustment and is significantly more potent than high levels of marital conflict (McNeal & Amato, 1998). Much of this research has not differentiated among types of partner violence when describing the outcomes for children and has been conducted in samples of children whose mothers were in shelters where Coercive Controlling Violence was more likely to predominate. Behavioral, cognitive, and emotional problems include

aggression, conduct disorders, delinquency, truancy, school failure, anger, depression, anxiety, and low self-esteem. Interpersonal problems include poor social skills, peer rejection, problems with authority figures and parents, and an inability to empathize with others. Preschool children traumatized by the earlier battering of their mothers had pervasive negative effects on their development, including significant delays and insecure or disorganized attachments (Lieberman & Van Horn, 1998). School-age children repeatedly exposed to violence are more likely to develop posttraumatic stress disorders, particularly when combined with other risk factors of child abuse, poverty, and the psychiatric illness of one or both parents (Ayoub, Deutsch, & Maraganore, 1999; Kilpatrick & Williams, 1997). Threats to use or use of guns and knives is associated with more behavioral symptoms in 8–12-year-olds, when compared to youngsters where there was intimate partner violence without knives and guns (Jouriles et al., 1998). There are also higher rates of both child abuse and sibling violence in violent, compared to nonviolent, high-conflict marriages.

Further research that differentiates among types of violence is likely to demonstrate that children's exposure to Coercive Controlling Violence, as compared to Situational Couple Violence or Separation-Instigated Violence, is associated with the most severe and extensive adjustment problems in children. Early support for this was provided by Johnston (1995) who reported that boys experiencing Coercive Controlling Violence were significantly more symptomatic than boys in families with Situational Couple Violence, and boys in families with Separation-Instigated Violence, or no violence, were least symptomatic.

IMPLICATIONS FOR INTERVENTIONS

BATTERER INTERVENTION PROGRAMS

Batterer programs come in many forms but the general experience with them is that they have minimal success. For example, one recent review of experimental and quasi-experimental studies of the effectiveness of such programs estimates that with treatment 40% of participants are successfully nonviolent; without treatment 35% are nonviolent (Babcock et al., 2004). Unfortunately, studies of program effectiveness do not, in general, make any distinctions among types of violence or types of so-called batterers. It is possible that treatment programs are generally effective with some participants (such as those involved in Situational Couple Violence), but not with others (such as those involved in Coercive Controlling Violence). Another possibility is that different types of intervention work for different types of violent men or women. Although very little research has been done on this issue to date, there is already some evidence for differential effectiveness. For example, one recent study of almost 200 men court mandated to an intervention program found that men involved in Situational Couple Violence were the most likely (77%) to complete the program, with two groups involving Coercive Controlling Violence falling far behind them at 38% and 9% completion (Eckhardt, Holtzworth-Munroe, Norlander, Sibley, & Cahill, in press). Another study found that, in a 15-month follow-up, only 21% of men involved in Situational Couple Violence were reported by their partners to have committed further abuse, compared with 42% and 44% of the two groups of Coercive Controlling Violence (Clements et al., 2002).

This research suggests that tailoring interventions to the type of violence in which the participants are engaged may greatly improve the effectiveness of interventions. In fact,

existing versions of so-called batterer intervention programs are already well-suited to differentiating among types of intimate partner violence. The feminist psycho-educational model that is the most common approach is quite clearly based on an understanding of intimate partner violence as Coercive Controlling Violence (Pence & Paymar, 1993). The approach involves group sessions in which facilitators conduct consciousness-raising exercises that explicate the Power and Control Wheel, explore the destructiveness of such authoritarian relationships, and challenge men's assumptions that they have the right to control their partners. Participants are then encouraged to approach their relationships in a more egalitarian frame of mind.

Some men report that they are insulted by these feminist programs that assume that they are determined to completely control their partner's life (Raab, 2000). If, in fact, they are involved in Situational Couple Violence and not Coercive Controlling Violence, then the second major type of batterer program, cognitive behavioral groups, may be what they need. Cognitive behavioral groups focus on interpersonal skills needed to prevent arguments from escalating to verbal aggression and ultimately to violence. These groups teach anger management techniques, some of which are interpersonal (such as timeouts), others cognitive (such as avoiding negative attributions about their partner's behavior). They also do exercises designed to develop their members' communication skills and ability to assert themselves without becoming aggressive. Although these are techniques that are also used by marriage counselors in the context of couples counseling, couple approaches are almost never recommended for batterer programs because of the threat they might pose to victims of Coercive Controlling Violence. Thus, these techniques are typically used with groups composed only of violent men or women, without their partners.

One relatively new development in intervention is a consequence of dramatic increases in the number of arrests of women for intimate partner violence in jurisdictions that have implemented mandated arrest policies. Although on the surface many of these groups appear to function much like the groups for men, research into how they actually function suggests that at least some of them assume that many of their participants are involved in Violent Resistance (Miller, 2005). They function much like the support groups for victims of Coercive Controlling Violence that are found in shelters, encouraging the development of safety plans and providing skills for coping with their partners' violence within the relationship. This focus does not address those women who have perpetrated Situational Couple Violence, where cognitive behavioral approaches might be more effective.

Given that these different approaches appear to be targeted to the major types of intimate partner violence, it seems reasonable to develop an effective triage system by which different types of violent men and women would be provided different types of interventions. It may be useful to differentiate even more finely. For example, for some men and women involved in Situational Couple Violence, the problem is poor communication skills, impulsivity, and high levels of anger, while for others it may be alcohol abuse. Similarly, for some involved in Coercive Controlling Violence the problem is rooted in severe personality disorders or mental illness and may call for the inclusion of a more psychodynamic approach to treatment. For others the problem is one of a deeply ingrained antisocial or misogynistic attitude that would be more responsive to a feminist psycho-educational approach. In all cases, of course, holding violent men and women accountable for their violent behavior in the criminal justice system and family courts provides essential motivation for change. Many perpetrators and victims would benefit if all courts mandated and implemented reporting requirements regarding attendance and completion of violence and substance abuse treatment programs.

IMPLICATIONS FOR MEDIATION

Advocates for abused women have long been opposed to the use of custody and divorce mediation, whether voluntary or mandated. Their criticism is based on the view that power imbalances created by violence cannot be remedied regardless of the skill of the mediator and that abused women will not be able to speak to their own or their children's interests out of fear, intimidation, and low self-esteem (Grillo, 1991; Schulman & Woods, 1983). Despite this opposition, many jurisdictions in the United States have implemented custody mediation programs and mandates. In contrast, others have passed legislation automatically excluding mediation for custody disputes where domestic violence occurred at any point in the marriage or separation.

Court-based mediation programs have become increasingly responsive to the legitimate challenges and questions raised by women's advocates and incorporated a variety of new screening and service procedures to protect the victims of partner violence, including separate sessions, different arrival and departure times, metal detectors, referrals to appropriate treatment agencies, presence of support persons, and monitoring of no-contact orders. Empirical research indicates that mediation has certain advantages for women when compared to the adversarial process (Ellis & Stuckless, 1996), and women report high levels of satisfaction with mediation where there was physical or emotional abuse during marriage or separation (Davies, Ralph, Hawton, & Craig, 1995; Depner, Cannata, & Ricci, 1994). It has been noted that the adversarial system often fails to protect victims of Coercive Controlling Violence and that, when mediation is provided in safe settings, victims of intimate partner violence may have more opportunities to be heard and feel empowered with respect to addressing the needs of their children (see Newmark, Harrell, & Salem, 1995).

The research that supports differentiation among types of domestic violence provides valuable indicators for the use of mediation in custody and access disputes. In order to benefit from the identification of different patterns of partner violence, it is imperative that screening instruments have questions that identify not only intensity of conflict, frequency, recency, severity, and perpetrator(s) of violence, but also patterns of control, emotional abuse and intimidation, context of violence, extent of injuries, criminal records, and assessment of fear. Screening instruments should be focused on risk assessment (e.g., DOVE scale; Ellis, Stuckless, & Wight, 2006), be gender neutral in choice of language, and include questions about both partners' violence to be answered by both partners.

Based on the research descriptions of different types of partner violence (and the reported experiences of many mediators in family courts), it is likely that the majority of parents who have a history of Situational Couple Violence are not only capable of mediating, but can do so safely and productively with appropriate safeguards. These men and women appear to be quite willing to express their opinions, differences, and entitlements, often vigorously (Ellis & Stuckless, 1996; Johnston & Campbell, 1993). It is also likely that parents with Separation-Instigated Violence will benefit from mediation, again, with appropriate safeguards and referrals to counseling for the violent partner to help restabilize psychological equilibrium. What is needed, in addition to appropriate screening, are mediators whose domestic violence training has included attention to differentiation among types of intimate partner violence (rather than an exclusive focus on battering and the Power and Control Wheel). A model of mediator behavior that employs good conflict management skills to contain parent anger and rules describing contained and civilized communications between the parties is also essential. It is anticipated that, with Situational Couple and Separation-Instigated Violence, parents would engage in mediation with protection

orders in place and that transfers of the children between parents would take place in either neutral and public settings or using supervised exchanges until there was no further risk of violence.

The use of custody mediation where Coercive Controlling Violence has been identified is more problematic. When screening indicates fear for one's safety, a history of serious assaults and injuries, police intervention, or severe emotional abuse, including control and intimidation, alternatives to mediation should be considered. If both parties prefer that mediation proceeds, it should be in caucus, with separately scheduled times, a support person present, and protection orders in place. This increases opportunities to discuss safety planning, what type of parenting plans and legal decision making will protect the parent and children (e.g., supervised access and exchanges, no contact), and referrals to appropriate treatment interventions and educational programs for both parents (see Jaffe et al., 2008).

IMPLICATIONS FOR FAMILY COURT

INTIMATE PARTNER VIOLENCE AND CHILD ABUSE

Although intimate partner violence is often an issue even in divorces that do not involve children, the major policy concerns regarding such violence in family courts have focused on matters of child custody and access. The central policy question is most often "Should any parent who has been violent toward his or her partner have unsupervised access to or custody of his or her children?" Behind this view of the issue are two concerns: (1) What is the impact of intimate partner violence on children in cases in which neither parent is violent toward the children? and (2) What is the likelihood that someone who is violent toward his or her partner will also be violent toward the children? From our perspective, the answer to both questions is that it depends upon what type of violence you are talking about.

What is generally unstated in the arguments about the link between intimate partner violence and child abuse is that authors are generally referring to Coercive Controlling Violence, not Situational Couple Violence, without so specifying. Studies seem to show that the risk of child abuse in the context of Coercive Controlling Violence is very high (Appel & Holden, 1998). However, the extent to which there is or is not a link between Situational Couple Violence and child abuse (as opposed to child hitting/slapping/shoving that does not rise to the legal threshold of abuse) is still unknown. It seems likely that the sampling biases of various studies account for the different estimates of the overlap between intimate partner violence and child abuse—from 6% to 100% according to one discussion of that literature (Appel & Holden, 1998). It may be that the lower 6% findings involve Situational Couple Violence, Separation-Instigated Violence, or Violent Resistance, while the 100% findings involve Coercive Controlling Violence. If research establishes that Violent Resistance and Situational Couple Violence are not strongly linked to the risk of child abuse, then the courts and child protective services will have additional support for the usefulness of making such distinctions in deliberations about child custody in specific cases (Jaffe et al., 2005; Johnston, 2006; Johnston & Kelly, 2004; Johnston et al., 2005; Ver Steegh, 2005). It should be pointed out that the detrimental effects of high levels of parent conflict during marriage and after separation, independent of partner violence, on quality of parenting and children's adjustment have been well established (see Kelly, 2000 for a review).

CHILD CUSTODY ASSESSMENTS

It is important that child custody assessments be conducted carefully, with an underlying empirical basis for conclusions and recommendations whenever possible. Allegations and evidence of women's violence, as well as men's, must be treated seriously and investigated rigorously. Most importantly, distinctions should be made among types of violence whenever possible. Custody assessors must hold multiple hypotheses when conducting an evaluation (Austin, 2001). Allegations of intimate partner violence, child abuse, neglect, and substance abuse are often very challenging, both professionally and personally. Gendered assumptions, inadequate training, and incomplete or biased social science data can interfere with the full development of the information necessary to protect children and parent(s) and to develop appropriate parenting plans and treatment interventions.

In cases in which there is a custody battle between a violent, coercively controlling parent and a partner who is resisting with violence, the primary risk to the children is most likely the parent perpetrating Coercive Controlling Violence. In such cases, it is likely that the Violent Resistant parent needs not only safe custody and access arrangements, but also relevant parent education to restore appropriate parenting practices. In cases in which the violent relationship between the parents involves Situational Couple Violence or Separation-Instigated Violence, there may not be increased risk to children in all cases, particularly if either type of violence is singular and mild. If the Situational Couple Violence is chronic or severe, what is needed is a more nuanced analysis of the situational causes of the violence and whether it is only one or both of the parents who escalate to physical aggression. If one partner has an anger management problem, then he or she is the parent most at risk for child abuse. If the problem is one of couple communication or chronic conflict over one or several relationship issues, generalization to child abuse is unlikely.

The issues are complicated and differ depending on the type of violence, but one thing is clear: The assessment of the violence must include information about its role in the relationship between the contesting parties. A narrow focus on acts of violence will not do. There is a need to err on the side of safety in these matters, particularly when information about the parents' violence is limited and the court's response is inadequate because of lack of appropriate personnel and screening procedures. Once sufficient court resources are invested in individual cases, more nuanced responses can be considered.

Jaffe and his colleagues (2008) suggest an approach that combines attention to types of violence with other information. They recommend an assessment in terms of potency (severity of the violence), pattern (essentially a differentiation among types), and primary perpetrator. Their discussion makes it clear that some courts are already recognizing a variety of nuanced choices regarding child custody. They distinguish among five different possible outcomes: co-parenting generally involving joint custody in which both parents are involved in making cooperative decisions about the child's welfare; parallel parenting with both parents involved, but arrangements designed to minimize contact and conflict between the parents; supervised exchanges of the child from parent to parent in a manner that minimizes the potential for parental conflict or violence; supervised access, when one or both parents pose a temporary danger to the child, provided under direct supervision in specialized centers and/or by trained personnel with the hope that the conditions that led to supervised access will be resolved and the parent can proceed to a more normal parent-child relationship. In the most serious cases, in which a parent poses an ongoing risk to the child, all contact with the child would be prohibited.

CONCLUSION

Current research provides considerable support for differentiating among types of intimate partner violence, and such differentiations should provide benefits to those required to make recommendations and decisions about custody and parenting plans, treatment programs, and legal sanctions. As indicated, there is a need for continuing research on partner violence that will expand and refine our understanding of these men and women who engage in violence within the family. Among other things, little is known about the precipitants of female violence, the types of emotional abuse and violent acts they perpetrate, and the impact on children's adjustment, particularly with emotionally abusive, controlling women who are violent with their nonviolent partners. The significant role of substance abuse in intimate partner violence has been observed, but not with respect to differentiation among types of violence. Treatment programs that focus on the causes and contexts of different types of violence are more likely than one-size-fits-all approaches to address the major issues underlying the violence and, therefore, to develop recommendations that achieve more positive results.

NOTE

1. Wingspread Custody and Domestic Violence Conference. Cosponsored by the Association of Family and Conciliation Courts and the National Council of Juvenile and Family Court Judges. February 15–17, 2007.

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Child Participation in Post-divorce or -separation Dispute Resolution

Astrid Martalas

Abstract

Both article 12 of the CRC and Sections 10 and 31(1) of South Africa's Children's Act 38 of 2005 require that children are given the opportunity to make their views known in matters that affect them. This chapter explores obtaining children's views in post-divorce or -separation disputes via a dispute resolution mechanism known as facilitation in South Africa. Three case studies have been selected to demonstrate the importance of taking children's views into account when post-divorce or -separation disputes arise.

1 Introduction

Articles 12(1) and (2) of the UN Convention on the Rights of the Child (CRC) support child participation by compelling States Parties¹ to ensure that a child is given the right to freely express his or her views in any matter affecting that child and that a child is given the opportunity to be heard.²

Child participation is effected directly through consultation with the child, or indirectly by consulting with an adult or adults involved with the child, such as a parent, teacher or therapist, or by investigating the specific circumstances of a particular child. This chapter sets out to demonstrate the importance of child participation in post-divorce or -separation dispute resolution by referring to three case studies in which the author had been appointed as the facilitator.

Furthermore, the chapter describes facilitation, a post-divorce or -separation dispute-resolution mechanism in the Western Cape province of South Africa, and compares it with mediation, another post-divorce dispute resolution mechanism available in South Africa.

¹ South Africa ratified the CRC on 16 June 1995. The sixteenth of June is a public holiday in South Africa known as National Youth Day; more information is available at www.sahistory.org.za (accessed on 27 January 2016).

² Art. 12(1) and (2) CRC.

The chapter outlines the obligation on the facilitator to hear the 'voice of the child', as required in the Children's Act.³ The importance of hearing the 'voice of the child' in post-divorce or -separation disputes is demonstrated in the three case studies that follow. It is submitted that obtaining the voice of the child in these case studies assisted the facilitator to successfully mediate the disputes or, alternatively, issue a directive that was in the best interests of the child. It is further submitted that, without the involvement of the children, the resolution of the disputes might not have been in their best interests.

2 Post-divorce or -separation Dispute-Resolution Mechanisms in South Africa

With the introduction of the Children's Act, parents who are co-holders of parental responsibilities and rights post-divorce or -separation, are obliged to give 'due consideration'⁴ to the views and wishes expressed not only by the child but also by the other co-holder of parental responsibilities and rights before decisions can be made which could have an adverse effect on, amongst other things, the child's contact with the other co-holder of parental responsibilities and rights, the child's education and the child's well-being. The Children's Act also makes provision for a parenting plan in which parents could agree that certain aspects of their child or children's care would require a decision to be made jointly between the holders of parental responsibilities and rights.⁵ Parents post-divorce or -separation are not always able to come to agreement around issues that require joint decision-making and disputes frequently arise that require quick and relatively inexpensive dispute-resolution mechanisms. Other than continued litigation, two such mechanisms are currently available in South Africa.

It is noted here that arbitration in family matters is not permitted in South Africa in terms of the Arbitration Act.⁶

2.1 *Mediation*

Mediation as an alternative dispute-resolution mechanism has been formally introduced in the field of family law in South Africa since the 1980s.⁷ The

3 Children's Act 38 of 2005 (hereinafter, the Children's Act).

4 S. 31(1)(a) and s. 31(2)(a) Children's Act.

5 S. 33 Children's Act.

6 S. 2 Arbitration Act 42 of 1965.

7 Hoexter Commission Fifth and Final Report, Part B, Commission of Enquiry into the Structure and Functioning of the Courts RP78/1983.

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Children's Act supports mediation, stating that '[i]n any matter concerning a child, an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided'.⁸

Mediation with regard to parenting plans and parental responsibilities and rights of unmarried fathers is required in terms of the Children's Act.⁹ Several High Court judgments have ordered parents to mediate to resolve post-divorce or -separation disputes around contact.¹⁰ In the matter of *MB v NB* where the parties were involved in protracted litigation, Brassey AJ commented in his judgment that 'mediation was the better alternative and it should have been tried'.¹¹ This view was supported by the Supreme Court of Appeal when, in an unreported case, Lewis JA ordered that '[i]n the event that the parties experience difficulty in arranging contact they must first attempt to resolve this through a mediator rather than through court proceedings'.¹²

Despite judicial approval, mediation remains largely voluntary¹³ and typically occurs prior to divorce or separation as a means of working towards reaching a settlement. Parents may choose to enter into mediation to resolve disputes that arise post-divorce or -separation, but the mediator usually does not have decision-making powers. Should the mediation fail, the parties to the mediation are no closer to a decision.

2.2 Facilitation

A mechanism for dispute resolution post-divorce or -separation, referred to as facilitation, was introduced into divorce orders in the Western Cape province of South Africa about eight years ago. De Jong describes facilitation as

a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high-conflict parties in implementing parenting plans and resolving

8 S. 6(4) Children's Act.

9 S. 21(3)(a), s. 33(5)(b), s. 34(2)(b)(ii)(bb) Children's Act.

10 *Van den Berg v le Roux* (2003) All SA 599 (NC), *Townsend-Turner and another v Morrow* (2004)¹ All SA 235 (C), *S v J* (SCA)(unreported case no 695/2010).

11 *MB v NB* 2010 (3) SA 220 (GSJ).

12 *S v J* (SCA)(unreported case no. 695/2010).

13 At the time of writing, other than where required by the Children's Act, mediation in South Africa is voluntary. In March 2014, the Department of Justice gazetted Court Annexed Mediation Rules. Pilot projects have been rolled out at several Regional Courts throughout South Africa.

pre- and post-divorce parenting disputes in an immediate, non-adversarial, court-sanctioned private forum.¹⁴

Facilitation has also received judicial approval. In *Schneider NO v Aspeling*, a case which was heard in the Western Cape High Court and concerned two minor children of an unmarried couple whose father had died, Davis J made the following ruling regarding disputes around maintenance:

Any dispute in regard to the payment of any medical expenses defined herein shall be referred to a FAMAC-appointed¹⁵ facilitator who shall be entitled to facilitate the dispute and make a ruling that is binding on both parties, unless it is varied by a court of competent jurisdiction, alternatively, varied by the facilitator following a separate review. The costs of the facilitator shall be shared equally between the parties unless directed to the contrary by the facilitator.¹⁶

Further on in his judgment Davis J made the following ruling regarding disputes around contact: 'In the event of there being any dispute regarding contact, howsoever arising, it is agreed to the matter being referred to a facilitator as set forth in para 4.8 above.'¹⁷

The inclusion of a facilitation clause in a divorce order is a choice made by parents when they decide to get divorced or separated. There is no legislation regarding facilitation in South Africa and parties to a divorce or separation are reliant on the advice of their attorneys or mediator when deciding whether to appoint a facilitator or not. If they agree to include facilitation as a way of resolving post-divorce or -separation disputes, the facilitation clause usually forms part of their parenting plan which is incorporated in their divorce order. If parents divorce or separate without the inclusion of a facilitation clause, they can vary the divorce order by agreement at a later stage to include a facilitation clause.

The facilitator is frequently appointed either by name or by profession in terms of a court order. Facilitators are typically appointed from the mental health and legal professions.¹⁸ If no specific person has been appointed to act

¹⁴ *De Rebus*, July 2013, 38–41.

¹⁵ Family Mediation Association of the Cape (hereafter FAMAC).

¹⁶ *Schneider NO and others v AA and Another* 2010(5) SA 203 WCC p. 222 para. 4.8.

¹⁷ *Schneider NO and others v AA and Another* 2010(5) SA 203 WCC p. 223 para. 5.5.

¹⁸ The author is a PhD candidate at Utrecht University in the Netherlands, and this information, which forms part of the study, was obtained by scrutinising all divorce orders issued

as facilitator, the parents are required to reach agreement on who will be appointed as facilitator, failing which the chairman of an organisation such as FAMAC will appoint the facilitator. The facilitator is mandated to resolve disputes. The types of disputes that the facilitator is mandated to resolve are usually clearly (or sometimes not so clearly) described in the facilitation clause. In 2008 FAMAC developed a standard facilitation clause¹⁹ which has been generally accepted by the legal fraternity and has to date been included (with or without variations) in more than 3,000 divorce orders issued in the Western Cape High Court between 2008 and 2013.²⁰

The facilitation clause typically authorises the facilitator to mediate joint decisions in respect of the minor child or children and to review contact arrangements having regard to the best interests of the children.²¹ Should the facilitator not be able to settle a dispute through mediation, the facilitator is mandated to issue a directive which shall be binding on the parties unless or until a court of competent jurisdiction holds that such directive is not in the children's best interests.²²

A similar post-divorce or -separation dispute-resolution mechanism exists in the United States and Canada and is referred to as 'parenting coordination'.²³ There are significant differences between parenting coordination and facilitation, but they do not fall within the scope of this chapter. A detailed description of parenting coordination can be found in the AFCC guidelines produced in 2005.²⁴

The introduction of facilitation became a popular and effective way of resolving these disputes, both with regard to time and costs. Only one

in the Western Cape High Court from January 2008 till December 2013 (hereafter, personal research). From about 2011 onwards, many divorce orders refer to the appointment of a 'facilitator who shall be conversant with working with children and families in the context of disputed care' and no mention was made of a specific professional category. FAMAC trains facilitators who are accredited mediators and who are typically mental health or legal practitioners. In the USA and Canada, the AFCC and BC guidelines, produced in 2005 and 2011 respectively, require that parenting coordinators are mental health or legal practitioners with specific experience and training.

¹⁹ See Addendum A to this chapter.

²⁰ Personal research.

²¹ S. 7 Children's Act.

²² See Addendum A to this chapter.

²³ Kelly J 'Origins and Development of Parenting Coordination' in Higuchi SA & Lally S (eds) *Parenting Coordination in Postseparation Disputes: A Comprehensive Guide for Practitioners* (2014) 13.

²⁴ Association of Family and Conciliation Courts Task Force on Parenting Coordination 'Guidelines for parenting coordination' (2006) 44(1) *Family Court Review* 164-81.

professional is involved, the process is informal in nature and a decision can be made within a relatively short period of time. The case discussions below will highlight the need for speedy resolution of the disputes. The number of parents who have chosen facilitation as a method for resolving disputes has increased from about 35 per cent in 2008 to almost 70 per cent in 2012 and 2013.²⁵

In addition to speedy dispute resolution, facilitation aims to minimise the impact of parental acrimony on children, improve the quality of parenting post-divorce or -separation to the benefit of the entire family including the children, and to 'avoid or minimize further legal or administrative proceedings in relation to the child'.²⁶ The negative effects of parental acrimony on the well-being of children post-divorce has been well researched, and Kelly regards parental conflict and violence as one of the biggest risk factors influencing post-divorce or -separation adjustment in children.²⁷ Facilitation also has an educational component in that it aims to assist parents to learn how to resolve disputes regarding their children between themselves.

3 The Voice of the Child in Dispute Resolution

3.1 *The Voice of the Child as Described in the Children's Act*

Two sections of the Children's Act make specific reference to the voice of the child and to child participation. Section 10 stipulates that

every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.²⁸

Section 31 requires that due consideration has to be given to the 'views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development'²⁹ before a decision is made in respect of a child. A child is defined in the Act as a 'person under the age of 18'.³⁰

²⁵ Personal research.

²⁶ S. 7(1)(n) Children's Act.

²⁷ Kelly JB 'Paternal involvement and child and adolescent adjustment after separation and divorce: Current research and implications for policy and practice' Paper presented at the second International Family Law and Practice Conference (2013) London.

²⁸ S. 10 Children's Act.

²⁹ S. 31(1)(a) Children's Act.

³⁰ S. 17 Children's Act.

Divorce orders often state specifically that a facilitator may meet with a child to hear his or her views regarding a particular dispute. However, understanding the parameters of developmental psychology and being able to engage with children in such a way that their true voices, unencumbered by parental alienation or fear, can be heard is a skill that requires extensive training and relevant experience. The facilitator can also obtain the voice of the child through the child's teachers, therapist or any other relevant person, but must bear in mind that they will invariably put their own interpretation or slant on what the child tells them.

In the author's experience as a psychologist, parents sometimes show resistance to the facilitator's consulting with the child or children, because they are of the view that children should not decide the disputes. It is made clear to the parents that Sections 10 and 31 of the Children's Act oblige one to ascertain the views of the child, but it is important to note what Davel and Skelton point out in this regard:

[N]either s 10 nor s 31(1) transfers the power or the duty to make a decision on the particular matter to the child. The child simply has the right to participate and to have due consideration afforded to his or her views and wishes, bearing in mind his or her age, maturity and stage of development. Thus it is not the child's ability to make an informed decision which is relevant, but his or her ability to participate and to make his or her views and wishes known.³¹

Again in the author's experience, direct consultation with a child, coupled with collateral information from others such as teachers and therapists, provides the best opportunity to hear the child's views accurately.

That the ability accurately to obtain the voice of a child is necessary in facilitation became apparent when a recent survey amongst facilitators practicing in the Western Cape revealed that 100 per cent of facilitators had facilitated disputes around contact (regular contact, holiday contact, primary residence), whereas only 25 per cent of them indicated they had spoken to children directly.³² While it remains unclear how the facilitators who did not speak to the child or children directly obtained their views on a matter such as a change in contact arrangements, the possibility exists that these facilitators may have relied solely on the opposing views of the parents in order to resolve the dispute.

31 Davel CJ & Skelton AM (eds) *Commentary on the Children's Act* revision service 6 (2013) 3–34.

32 This information was obtained from the responses to a questionnaire sent to all facilitators in the Western Cape registered with FAMAC. The questionnaire formed part of the personal research referred to earlier.

Hearing the voice of the child focuses the dispute away from the parents to the child and allows parents the opportunity, through feedback from the facilitator, to become aware of how the child experiences the dispute and the acrimony surrounding it.

3.2 *Obtaining the Child's Voice*

Prior to speaking to a child to obtain his or her views, one needs to ascertain the child's 'age, maturity and stage of development'.³³ This could incorporate a developmental history of the child concerned. The facilitator who intends speaking to the child needs to have an understanding of developmental psychology.

Below are some examples of the factors that need to be taken into account when consulting with children.³⁴ This is by no means a complete list, but it highlights the expertise required when consulting with young children.

- School-age children rarely ask for clarification and instead try to answer questions they do not fully understand.
- Young children are particularly deferential to adults' beliefs, an attitude which can be conveyed through the questions they ask, the comments they make and their demeanour.
- Young children create their own explanations if what they observe around them is not age-appropriate, such as when a very young child witnesses or experiences sexual abuse.
- Avoidance is a common childhood strategy for coping with anxiety-provoking situations; accordingly, the child will simply make statements such as 'I don't know, I forgot', or change the topic.
- It is better to ask open-ended questions that require a narrative multi-word response than a question that requires a yes/no response.
- The language and culture of the child is very important. In some cultures it is regarded as disrespectful for a child to make eye contact with an adult and this is therefore an indication of respect and not of dishonesty or evasiveness.

The facilitator needs to be mindful of how the caregivers have prepared the child for the interview. When talking to children, there are always concerns

33 S. 31(1)(a) Children's Act.

34 Saywitz KJ 'Developmental underpinnings of children's testimony' in Westcott HL, Davies GM & Bull RHC (eds) *Children's Testimony: A Handbook of Psychological Research and Forensic Practice* (2002).

around exposure, influence or coaching by their caregivers. The most extreme form of coaching is parental alienation.³⁵ All of these factors can influence the information that the child will provide.

Prior to the consultation, the facilitator needs to ensure that the possible fears of the child are addressed; children may be afraid they will get into trouble for what they say and that their parents will be told afterwards. Conflicted children require a lot of time to accept that it is their view that needs to be heard, not what they think their parents would want them to say. They need time to formulate their own views.

The pace, breadth and depth of a consultation depends on many things, such as how a particular child copes with anxiety, the nature of the questions asked, or how conflicted the child is. The linguistic development of the child is of particular importance.³⁶

The facilitator as child interviewer must be mindful of the fact that adult bias can be conveyed in tone of voice, facial expression or questions that suggest a particular answer. Young children often expect that the adult knows the answer and will therefore try to provide the correct answer. If the adult asks the same question again, the child may assume automatically that the previous answer was wrong and thus change the answer.³⁷

4 Case Studies ■ Please check the edit made to the heading level 4.

The author has been appointed as a facilitator in more than 300 cases, all of which involved disputes between the divorced or separated parents of minor children. Prior to speaking to the children and/or their caregivers, the facilitator obtains an in-depth understanding of the current dispute and familiarises herself both with the dynamics between the parents as well as the background to the current dispute. The cases below were selected to demonstrate the paramount importance of obtaining the views of the children concerned, and it is

35 Gardner RA 'Parental alienation syndrome vs parental alienation: Which diagnosis should evaluators use in child custody disputes' (2002) 30(2) *American Journal of Family Therapy* 93–115.

36 Walker AG *Handbook on Questioning Children: A Linguistic Perspective* 3 ed (2013); Saywitz K & Camparo L 'Interviewing child witnesses: A developmental perspective' (1998) 22(8) *Child Abuse and Neglect* 825–43.

37 Saywitz KJ 'Developmental underpinnings of children's testimony' in Westcott HL, Davies GM & Bull RHC (eds) *Children's Testimony: A Handbook of Psychological Research and Forensic Practice* (2002).

submitted that without obtaining these views, the facilitator would not have ensured that the children's best interests were served.

Please insert a footnote here: The examples presented below reflect adaptations of cases encountered in the author's practice. It is however stressed that none of the scenarios describe a specific case.

4.1 *Choice of High School*

4.1.1 Background

The divorced parents of a 13-year-old boy were unable to come to agreement regarding which high school their son should attend. In terms of their parenting plan, the choice of school was to be decided jointly between them. They had opted for a facilitation clause in their consent paper which empowered the facilitator to facilitate disputes around joint decisions.

The father was of the view that his son should simply attend his alma mater. The mother, who was an artist, indicated that her son was very artistic and should therefore attend a school which emphasised arts and culture. Neither parent had asked their son which school he wanted to attend. There was also a belief among the parents that the child ought not to be asked, since choice of school was considered a parental decision.

4.1.2 Consultation with the Child

The child concerned presented as a mature child who was able to engage with the facilitator and present his views clearly. Together with one of his teachers, he had prepared a list of the advantages and disadvantages of the schools proposed by his parents as well as a third school which was his choice. He had also attended the open days at each of the three schools. A further consultation with two of the child's teachers revealed that he was generally regarded as a mature boy for his age and that his input should be sought in this matter.

The child's lists were a crystallisation of what he regarded as important, and he had taken into account factors such as the variety of subjects offered at each school, sports and art facilities, the societies and clubs offered by each school, the costs of extracurricular activities, the entrance requirements of each school, and which of his primary-school friends were going to each school.

From the consultation it was clear that the child had given due consideration to the options available to him, possibly more so than his parents, who were at that stage still locked into wanting to win the dispute by attempting to obtain a directive in favour of their particular choice.

4.1.3 Directive

After discussions with the parents, they admitted that neither of them had considered the third school but also said it was acceptable to them. In this case it was not necessary to issue a directive, since the parents agreed that the child should attend the school of his choice.

4.2 *Contact Arrangements for an Autistic Child*

4.2.1 Background

The divorced parents of an 11-year-old boy were unable to come to agreement regarding the amount of contact the father should have with his son. They had opted for a facilitation clause in their consent paper which empowered the facilitator to facilitate disputes around contact. The child resided primarily with his mother.

The child was severely autistic and, at age 11, was still pre-verbal. He had been assessed by many professionals and there was no dispute around the diagnosis. Both parents had read extensively about their child's difficulties. The child attended a school for autistic children.

The father's request for contact was well within the usual contact arrangements for an 11-year-old child; the father had requested contact on alternate weekends from a Friday after school until Sunday afternoon and Wednesday overnight contact during the week in which there was no weekend contact.

4.2.2 Consultation with Teachers and Carers

Direct consultation with the child was not possible in this case. The facilitator arranged a visit to the school to observe the child and to meet with his teachers, therapists and caregivers.

It is submitted that without observing the child himself, the author's knowledge and understanding of the child would have been based only upon the professional reports which were made available as well as the author's theoretical knowledge and understanding of autism. In spending time in the child's classroom and meeting with the relevant adults involved in his care, it became clear that the seemingly normal contact arrangements requested by the father were entirely inappropriate for this child and were likely to cause the latter great psychological distress.

4.2.3 Directive

A directive was issued allowing for limited contact with the father, with the proviso that the contact would be increased based on the child's ability to adjust to additional contact. The directive made it clear that the limited contact was the result not of any deficiency in the father's ability to care for his child but of the child's restricted ability to cope with changes in his environment.

4.3 *Parental Alienation*

4.3.1 Background

The divorced parents of a 7-year-old girl were unable to come to agreement regarding the amount of contact the father should have with his daughter. They had opted for a facilitation clause in their consent paper which empowered the facilitator to facilitate disputes around contact. The child resided primarily

with her mother, and the father had had limited contact with his daughter from the time of his separation from the mother two years before. Since then, the father's contact had been supervised by the child's mother, and consisted of one hour per week at a coffee shop with a playground attached to it. The father had now requested unsupervised overnight contact.

The mother claimed that the child did not want to see her father and that she allowed contact only because she had been advised to do so by her attorney. She was reluctant to have the facilitator consult with the child, since she believed such a process would be traumatic for her daughter. The mother presented the facilitator with several negative statements which she claimed her child had made about the father. They included allegations that the child had witnessed the father physically abusing the mother when the child was about 1 year old; that the father responded to the child as one would to a dog, by flicking his fingers at her; and that the mother's new partner was a better father. She also said the father bought inferior-quality presents for her daughter.

The father admitted to a physical argument with the mother, but, in his recollection, the child had not been present. He indicated that he would clap his hands when he saw his daughter and call her to him.

4.3.2 Consultation with the Child

A consultation was arranged in which the facilitator consulted with the child on her own; after half an hour, the father arrived and his interaction with his daughter was observed.

The child separated easily from her mother, walked confidently into the facilitator's room and asked to sit down. She proceeded to rattle off, almost verbatim, all the negative statements that her mother had presented regarding the father. Once she was finished, she asked the facilitator if she could play.

When the father arrived, she appeared overjoyed to see him and they played together for the remainder of the consultation. There was a good reciprocal connectedness between them.

The father brought some toys, but the daughter did not touch them. Upon direct questioning by the facilitator, the child indicated that she had been warned by her mother not to play with anything that her father would give her, because it was 'rubbish'. When the mother entered the room, she (the mother) immediately described the toys, which at that stage were still in a packet, as 'rubbish'.

4.3.3 Directive

It was clear both from the information provided in the consultation with the child as well as from the observations of the child's interactions with her

parents, that she had been coached by her mother to make certain statements regarding the father. Her behaviour towards her father did not support these statements.

On further investigation, there appeared to be no valid reason why the father's contact should be supervised, and a directive was issued which contained increased unsupervised contact.

5 Conclusion

In resolving disputes between divorced or separated parents, the facilitator, in the first place, has to attempt to mediate the dispute. The mediation process exposes the facilitator to background information to the dispute and helps him or her to gain an understanding of each parent's perception of the needs of their child or children.

The Children's Act and the divorce order make provision for child involvement in the dispute-resolution process. The facilitator is in the unique position of being familiar with the disputing parents, the dynamics of their interpersonal interactions and the background to their dispute before approaching the child concerned. In addition, the facilitator has access to information provided by teachers, therapists and other caregivers. With appropriate training and experience, the facilitator is able to obtain the views of the child around whom there is a dispute. These views are then made available to the parents for discussion. In some instances this assists the parents in coming to an agreement regarding their dispute. In instances where no agreement is reached, the facilitator is authorised to make a decision, and the information gleaned from the child helps the facilitator to make a decision that is in the best interests of the child.

The case studies presented in this chapter demonstrate the necessity of child inclusion by highlighting the sometimes surprising and unexpected information obtained by consulting directly with a child or his or her caregivers, information, which would otherwise not have become available to assist the facilitator and the parents in coming to a decision in the best interests of the child.

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Research in progress

Martalas AM *Alternative Dispute Resolution after Divorce or Separation: Evaluating Facilitation as Applied in South Africa (Western Cape Province) and Exploring its Introduction in the Netherlands* (Uncompleted PhD thesis, Utrecht University, the Netherlands). This research is supervised by Prof. K. Boele-Woelki (UU) and Prof. M. de Jong (UNISA).

Cases

MB v NB 2010 (3) SA 220 (GSJ).

S v J (SCA) (unreported case no 695/2010) 19 October 2010.

Schneider NO and others v AA and Another 2010(5) SA 203 WCC.

Townsend-Turner and another v Morrow (2004)1 All SA 235 (C).

Van den Berg v le Roux (2003) All SA 599 (NC). Legislation

Arbitration Act 42 of 1965.

Children's Act 38 of 2005.

Addendum A

Dispute Resolution Clause prepared by the Family Mediation Association of the Cape (FAMAC) 2008: ■ We have changed full italics in the list into roman. Please check and confirm.

1. In order to resolve disputes arising from the parties' exercising their parental rights and responsibilities as specified in this agreement, the parties agree that a facilitator be appointed to resolve disputes by mediation, or, if mediation is not successful, by making directives as a facilitator in accordance with the following:
 - 1.1 The facilitator, who shall act as an expert and not as an arbitrator, shall be a mediator who has been accredited for at least three years by the Family Mediators' Association of the Cape (FAMAC) or its successor in title, or who is recognised by the chairperson for the time being of FAMAC as having the requisite expertise. The facilitator shall be appointed by agreement between the parties, failing which either party, or the parties jointly, may in writing request the chairperson for the time being of FAMAC to appoint a facilitator;
 - 1.2 The facilitator shall continue to act until he/she resigns, or both parties agree in writing that his/her appointment shall be terminated, or his/her appointment is terminated by an order of a Court having jurisdiction. If the facilitator's appointment is terminated or he/she resigns, he/she shall be substituted by another facilitator appointed in accordance with the terms of this Agreement.
 - 1.3 If the parties are unable to reach agreement on any issue concerning the children's best interests and/or any issue where a joint decision is required in respect of the children, the dispute shall be formulated in writing and referred to the facilitator who shall attempt to resolve the dispute by way of mediation as speedily as possible:
 - 1.3.1 If the facilitator, in the exercise of his/her sole discretion, regards a particular issue raised by one of the parties as trivial or unfounded, he/she is authorised to decline the referral of such issue;

- 1.3.2 If the facilitator is unable to resolve a dispute by way of mediation he/she may resolve the dispute by issuing a directive which shall be binding on the parties subject to the provisions herein (especially but not limited to paragraph 1.4.3 below);
- 1.3.3 Each party and the children (if necessary) shall participate in the dispute resolution process as requested by the facilitator;
- 1.3.4 The facilitator shall use his/her discretion in considering the weight and sufficiency of information provided and may expand their enquiry as they deem necessary. Each party agrees to give the facilitator the power to gather information through interviews, correspondence, email, telephonic and/or other informal means, and to make his/her recommendations upon the information provided and obtained;
- 1.3.5 No record need be kept of the findings, decisions and recommendations of the facilitator and the grounds therefor. No communications made by the facilitator in issuing directives shall be deemed to be privileged as to the Court, the participants, their legal representatives and others or any mental health professionals assessing or treating the children;
- 1.3.6 The facilitator shall determine the protocol of all communications, interviews and sessions, including who shall or may attend meetings. Legal representatives shall not be entitled to attend such meetings, but a party shall be permitted to caucus privately with his or her legal representatives, either in person or by telephone, during such meetings. The parties and their attorneys shall have the right to initiate or receive communication with the facilitator. Any party or counsellor may communicate in writing with the facilitator provided that copies are provided to the other party, and if applicable, their legal representatives;
- 1.3.7 The facilitator may confer individually with the parties and with others, including step-family members, extended family members and friends, permanent life partners, household members, school and educational personnel, care providers, healthcare providers for the children and therapists for the children and the parties, and the parties authorise such persons to provide information to the facilitators;
- 1.3.8 The facilitator is authorised to appoint such other person as may be deemed by the facilitator necessary in order for the facilitator to make a decision in respect of the issue in dispute.
- 1.4 The facilitator is authorised to

- 1.4.1 Mediate joint decisions in respect of the children having regard to the best interests of the children;
- 1.4.2 Regulate, facilitate and review the contact arrangements in respect of the children having regard to their best interests;
- 1.4.3 Issue directives binding on the parties on any issue concerning the children's welfare and/or affecting their best interests which directive shall be binding on the parties unless or until a Court of competent jurisdiction holds that such directive is not in the children's best interests;
- 1.4.4 Resolve conflicts relating to the clarification, implementation and adaptation of this agreement or any subsequent parental responsibilities and rights agreement having regard to the best interests of the children;
- 1.4.5 Require the parties and/or the children to participate in psychological or other evaluations or assessments.
- 1.5 The facilitator shall, when required to issue directives, do so based on his/her professional opinion and shall not act in a quasi-judicial capacity nor shall he/she act as an arbitrator. The facilitator is not appointed as psychotherapist, counsellor or legal representative for the children or either of the parties. The parties record that they are aware of their right to consult appropriate professionals in these fields as and when necessary.
- 1.6 All participants, including the facilitator, the parties and legal representatives, shall use their best efforts to preserve the privacy of the family and, more particularly, the children and restrict dissemination of information related to decisions to those who need to know the information.
- 1.7 Neither party may initiate Court proceedings for the removal of the facilitators or to bring the Court's attention to any grievances regarding the performance or actions of the facilitator without first setting out the grievance in writing, making copies available to the other party and the facilitator, and then meeting and conferring with the facilitator in an effort to resolve the grievance. If after such a meeting the matter remains unresolved and Court proceedings are initiated, a copy of such proceedings must be delivered to the facilitator personally and the party initiating the proceedings shall be required to furnish written proof to the Court that this has been done.
- 1.8 In the event that a party fails to participate in any dispute resolution process despite having been requested to do so by the facilitator,

tor, or fails to attend a dispute resolution session, or fails to reply to the facilitator's communications within five days, which communications may be by telephone, email or fax, or fails to pay the facilitator's costs upon request, or fails to co-operate in the dispute resolution process in any other way, the facilitator shall proceed with the dispute resolution process in the absence of that party. In such circumstances the facilitator shall be entitled to issue a directive and his/her decision shall be binding on both parties until such decision has been varied by a court of competent jurisdiction.

- 1.9 Each party shall be liable for one half of the costs of the facilitator, unless otherwise determined by the facilitator. The facilitator shall be empowered to direct that a party shall refund the costs of the dispute resolution process, or part thereof, to the other party in appropriate cases. The facilitator may decline to convene meetings or to issue directives until such time as his/her costs and the costs of any other person appointed in terms of 1.3.8 above have been paid.

9

INCLUDING CHILDREN IN THE PARENTING COORDINATION PROCESS: A SPECIALIZED ROLE

JOAN B. KELLY

The core roles and functions of the parenting coordinator (PC) have been described in earlier chapters of this book and elsewhere (American Psychological Association [APA], 2012; Association of Family and Conciliation Courts, Task Force on Parenting Coordination, 2006; Carter, 2011; Deutsch, Coates, & Fieldstone, 2008; Kelly, 1994, 2002, 2008; Kirkland & Sullivan, 2008). One additional specialized role—the practice of including children in the parenting coordination process when relevant and appropriate—provides significant benefit to children and parents, and enhances the PC's effectiveness. Listening to children's voices helps parents resolve their child-related disputes and reduces child-focused conflict.

In this chapter, I first describe the goals, rationale, and criteria for including children; the risks and benefits of listening to children; and the experience and knowledge base needed by the PC. In the remainder of the chapter, I describe a semistructured nontherapeutic model for interviewing children

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that enhances a PC's consistency and thoroughness as well as child responsiveness. Child and adolescent participation in the parenting coordination process is not considered to be psychotherapy, although being heard about important matters may sometimes have a therapeutic effect for children of all ages. Although in this chapter I focus specifically on including children in the parenting coordination process, the structured interview is effective in child custody mediations, child custody evaluations, guardian ad litem interviews, and judicial interviews, with appropriate adaptations compatible with the particular forum in which they take place.

INCLUDING CHILDREN IN THE PARENTING COORDINATION PROCESS

Children's input in the parenting coordination process is important, and the PC's goal is to ensure that their unique needs and individual desires are recognized and taken into careful consideration. Despite what some people may assume, children are indeed capable of meaningfully participating in the parenting coordination process, and my own experience has shown that they usually are grateful to have their voices heard.

Goals and Rationale for Listening to Children in the Parenting Coordination Process

The overall goal for including children's voices in the parenting coordination process is to expand the PC's knowledge of each child's particular needs and wishes as provided directly by the child. This information supplements and complements information that is filtered through the often polarized, and sometimes distorted, views and opinions of the parents. The PC uses this specific information to help parents reach appropriate agreements or to make decisions when parental negotiations do not succeed. Another goal of including children's voices is to help parents understand that children's views and needs are not mirror images of their own and that their children are separate, unique individuals. Appropriately differentiating child and parent as distinct individuals and establishing the need for parent-child boundaries are important tasks in high-conflict families (Johnston, Kuehnle, & Roseby, 2009; Kelly, 2003). Listening to the voices of children brings each child into focus for both the PC and parents in a powerful and unique way.

Children's interviews, when appropriately conducted, provide the PC with a more integrated and reliable view of the family and each child's particular experience within the family. The input sought from children is intended to be directly relevant to specific parental disputes and helps shape parents'

agreements and PC decisions (if authorized). In adversarial proceedings, parents' needs and opinions are often cloaked and presented by lawyers and parents as children's "best interests" (Kelly, 1994, 1997). By obtaining children's input and providing sensitive feedback to parents, PCs can move beyond the simplicity of best interests clichés and more accurately describe children's needs and desires. Because the PC usually has a long-term contractual relationship with parents, he or she has the ability to establish a productive and trusted working relationship with children and can schedule sessions with them as disputes arise for which their input would be valuable. Listening to children's views and ideas, combined with careful feedback to parents, often enhances the PC's credibility with parents. In some instances, the process begins to empower children to raise questions and concerns at home that are important to them, and even sometimes to ask for an appointment with the PC when a big issue arises about which they want to comment.

Are Children Able to Participate Meaningfully?

Contrary to popular belief, theory, and inadequate research of past decades, children are not passive participants in their families but major agents and players. Across a wide age range, youngsters are reliable observers of their experiences within the family, their relationships to each parent, and their living arrangements and environments both before and after the parents' separation. They are capable of understanding and speaking to their experience—if they are provided with developmentally appropriate scaffolding by parents, teachers, and mental health professionals (Smith, Taylor, & Tapp, 2003).

Empirical studies (Dunn, Davies, O'Connor, & Sturgess, 2001; Kelly & Kisthardt, 2009; Smart, 2002; Smart & Neale, 2000; Smith & Gollop, 2001) have demonstrated that a large majority of school-age children and adolescents are not informed about the parental separation in advance or included in any discussions of the implications the separation has for their lives. They do not typically have opportunities to ask questions or make suggestions. Interim and final parenting plans are most often imposed on them without any consideration of their views. However, research indicates that youngsters in separated and divorced families want their voices to be heard and their needs and opinions considered in divorce processes. They understand the difference between providing input and making a decision. Most children and adolescents prefer that their parents and other decision makers make decisions after listening to and considering children's views and ideas (Birnbaum & Bala, 2010a; Birnbaum, Bala, & Cyr, 2011; Boshier, 2006; Cashmore & Parkinson, 2008; Gollop, Smith, & Taylor, 2000; Kelly, 2002; Parkinson & Cashmore, 2008; Smart, 2002; Smart & Neale, 2000; Smith et al., 2003; Taylor, 2006; Taylor, Tapp, & Henaghan, 2007). In all divorce-related forums

studied, including judicial interviews, children and adolescents expressed positive evaluations of the opportunity to be heard (Birnbaum & Bala, 2010a; Kelly, 2002; Parkinson, Cashmore, & Single, 2007; Smart & Neale, 2000; Taylor, 2006; Williams, 2008) and thought that it led to better decisions and outcomes. Adolescents were more likely to see their parenting plans or living arrangements as fair when they had opportunities for input, compared with adolescents who were not consulted (Cashmore & Parkinson, 2008). Even when judicial decisions did not reflect the child's expressed views and desires, most children reported that the process of being heard was important and valuable (Birnbaum & Bala, 2010a).

There is no comparable empirical research on the experience of children and adolescents being included in the parenting coordination process. In my decades of experience, first conducting research interviews of children to understand their reactions to their parents' divorce, then later in custody mediation and parenting coordination processes, not one child or adolescent refused to come for an interview. Some came reluctantly, but once present and offered a supportive ear in a structured interview context, the vast majority of children were lively, informative, happy to be heard, and grateful to have their centrality acknowledged in the postseparation family. Furthermore, they were eager to have most, if not all, of their ideas and opinions conveyed to their parents in a sensitive feedback process. Some expressed a desire to their parents to return to the PC so that additional ideas and concerns could be discussed (Kelly, 2002).

Criteria for Including or Excluding Children in the Parenting Coordination Process

There are specific reasons why the PC should or should not include children in the parenting coordination process, including the need to have written, formal authorization to include them. Other factors to consider are the children's age and developmental capabilities, the nature of the parents' disputes, and the PC's own background and experience in working with children.

Including Children

PCs are advised to include children in the process only if there is explicit written authorization in a stipulation, court order, or private consent agreement to speak with the child. The format for listening to children, either in separate interviews, conjointly with siblings, and even occasionally with parents, should not be at the parents' discretion. If a PC believes that children's input is valuable in this often contentious process, then he or she should ensure that appropriately protective and directive language is included in the contract for the PC's services. PCs might consider declining a case if a

parent opposes any PC contact with children. More often, after an explanation of the importance of including children's voices, these parents mute their opposition and agree to enabling language in the stipulation, order, or consent agreement.

The question of which children can or should be included in the parenting coordination process depends on the child's age, developmental capabilities, the content of parental disputes, and mental health professionals' knowledge and experience in talking with children. Assuming child-related knowledge and experience, many PCs include children from age 6 and up. It is helpful to see preschool and kindergarten age children at least once to get a sense of the younger children, observing their play, language, and cognitive capacities. They may occasionally be included in interviews with an older sibling, if appropriate, to observe their relationships with older siblings. Talking with very young children requires an understanding of their limited language, memories, cognitive capacities, and immature sense of time and the need to frame questions and comments in a manner that can be understood.

In determining when or how often to listen to children, most PCs believe that children are to be consulted periodically, as necessary, rather than on a regular basis, and only when the content of the parental dispute is directly relevant to the child and important for the child's well-being. Children do not need to be consulted about minor schedule changes or other disputes that do not directly affect their activities, relationships, or well-being. On the other hand, in a parental dispute about whether a 7-year-old should attend a 2-week sleepover camp, the child's views and feelings about a lengthy separation from both parents will be important in working with the parents to reach an agreement.

Excluding Children

Some PCs may lack knowledge of child development and be inexperienced in working with children and thus decide it is inappropriate for them to interview children (Kelly, 2002; Warshak, 2003). Certainly such caution is warranted, although I believe that the relevant knowledge and skills can be acquired with diligence, attendance at specialized seminars that offer training in interviewing children in the context of divorce processes, and ongoing consultation. In particular, mental health professionals can learn to conduct these brief interviews in a sensitive and productive manner, as can some experienced family lawyers. Some PCs, instead of conducting the interview themselves, establish a collaborative relationship with an experienced colleague who interviews a child or children as the need arises and provides written and verbal information to the PC, similar to the role of the child specialist in collaborative divorce processes. This adds a layer of complexity

to the parenting coordination process, and more cost. If such an arrangement were developed, it would be essential to include its details in the stipulation, court order, or private consent agreement.

A PC may decide not to include children previously traumatized by parental violence, emotional abuse, or the mental illness of a parent and who may be reluctant to meet with a PC for the purposes of sharing their opinions and views. The PC will assess the value of directly obtaining the child's input and the costs and benefits to the child. Although some of these children want to be heard, they are more likely to need ongoing psychotherapy in which the therapist and PC communicate as necessary about the child's needs.

As indicated above, very young children (under age 5) are generally not included because their information is unlikely to be sufficiently reliable or specific to be useful. Sometimes there are very informative surprises. A 7-year-old who had been stridently refusing contact with her father for 9 months was interviewed with her 4-year-old brother following a carefully planned weekend visit with the father. She immediately reported to the PC, "We had a terrible time! . . . It was just awful! . . . He doesn't pay any attention to our needs . . . just his own needs! He is so selfish!" The 4-year-old piped up, "I had a *really* good time . . . I *love* my daddy . . . I *miss* my daddy!" In response, the sister angrily insisted to her brother, "No you didn't! . . . you had a *terrible* time!" This most revealing and helpful interview also spoke to the high vulnerability of the younger boy's future relationship with his father, given the (unwarranted) highly negative attitudes of mother and sister toward his father.

PCs also may decide not to speak with children when parents demonstrate the ability to reach an agreement on their child disputes with the PC's assistance. Other children have had a stressful succession of inquisitive professionals in the form of custody and child abuse evaluators, child legal representatives, and therapists in highly contested and protracted adversarial proceedings. They are wary, and weary, of being on the spot again. In such cases, the PC may choose not to become yet another "helping" professional, in particular if the child currently has a positive working relationship with a therapist with whom the PC may consult as necessary (and when authorized to do so in the parenting coordination stipulation, court order, or private consent agreement). As an example, I once asked the therapist of a 12-year-old to learn what she could about the girl's wishes for her summer activities about which her parents had widely divergent and disputed ideas of her best interests. The therapist later discussed this with the child and provided me with the child's preferences and additional helpful comments about why the preferred activities would help this youngster's problems with the emotional constriction and anxiety relating to ongoing intense parent conflict.

Risks and Benefits for Children in Participating in the Parenting Coordination Process

Involving children in the parenting coordination process has both risks and benefits. Most risks are minimal; the biggest potential threat is a poorly conducted interview that may yield incomplete or inaccurate information as well as make the child feel ill at ease. Potential benefits are that the child feels validated and listened to and that the PC can find out, directly from the child, how various aspects of postseparation life have been going.

Potential Risks

The potential risks for children and adolescents who participate in the parenting coordination process are relatively small due to the ongoing nature of the PC's relationship with the family. Through successive meetings, e-mails, and phone conversations, PCs accumulate knowledge about parental anger and negative behaviors as well as children's vulnerabilities. In this respect, the work of the PC is substantially different from that of the custody evaluator, who generally meets with the child a few times in a compressed time frame in order to make recommendations about the ultimate question of custody or access. In this latter setting, children are more likely to experience parental pressure and manipulation because the stakes are quite high for everyone. Children's opinions and wishes can also be unduly influenced by worries about a parent's well-being, an unhealthy identification with a parent, or fear of a punitive response from a parent if they say the "wrong thing." Some younger children have unstable opinions and wishes, and others may want some result that is not in their best interests. All of these potential risks are substantially diminished in the parenting coordination process, for two reasons. First, a PC does not have the authority to change custody arrangements or substantially alter the parenting plan; second, a PC becomes aware of coercive parental influences on children's views through communications with parents and other professionals.

More worrisome risks for children in being interviewed in the parenting coordination process are the quality and tone of the interview. Poor interview techniques yield poor, incomplete, or erroneous information, including a failure to match the child's age with developmentally appropriate language and questions, and the use of confirmatory strategies to get answers that the PC wants or thinks are correct. In addition, an interview style and approach that is too therapeutic, vague, lacking structure, or unfocused is not likely to be useful. Sometimes child interviewers structure their questions and comments to confirm their biases, or are dismissive of children's views, wishes, and opinions, because they do not fit the PC's beliefs about what children need. Just as with custody evaluators or judges, PCs may come to the process with their own

psychological baggage, a reliance on outdated research or untested theory, or a vulnerability to being aligned with or persuaded by a parent or lawyer to do their bidding. Open and structured interviews reduce the likelihood of confirmatory biases, as does consultation.

Potential Benefits

There are additional specific benefits for children, parents, and parent-child relationships in listening to children's voices. It is helpful to develop a "conflict history" of each child's experience in a high-conflict family before the separation and at the current time (I provide more details on this in the next section) that becomes the basis for subsequent strategic work with parents on behalf of the child. The PC can validate the child's experience and make simple, empathic statements about how painful and difficult this experience can be for children and teenagers. Children are asked if they have comments or advice they want the PC to give to their parents about the conflict. The following are typical comments: "Tell them I hate it when they fight . . . I want them to stop it" and "Tell my dad that when he says mean things about my mom, it makes me sad . . . and kinda angry . . . I don't like it." In this early session, the PC begins the process of forming an alliance with the child and becoming an advocate for the child's needs, being careful not to demonize the parents in any way. The PC tells the child that he or she will be working with the child's parents to encourage them to stop fighting or arguing in front of the child and the child's siblings and to help the parents learn to leave their children out of their conflict. The PC asks for permission to talk with children's parents about how upsetting the conflict is (assuming that it is experienced by the child in that way). Children's information provides the basis for future work with parents on behalf of the child.

A second direct benefit for children is the exploration of the child's current situation to find out how things are working for the child in general and in the child's postseparation life and living situations (I provide more details about specific inquiries in the next section). Children are then asked whether there are things they would like to see improved or changed, or things that would make their lives easier and happier. The child begins to perceive that the PC is a helping ally, and one can often observe a sense of relief, as if the PC is lifting some heavy burdens from the child's shoulders.

As the PC works with parents, settling disputes, structuring their communications to avoid conflict, encouraging emotional disengagement, and helping them focus more clearly on their children, some parents begin to settle down into less acrimonious patterns of interaction. When the child's voice is a part of the process, the goal of restructuring the coparental relationship into a more civil businesslike partnership with parallel parenting is

more easily reached (Hetherington & Kelly, 2002; Kamp Dush, Kotila, & Schoppe-Sullivan, 2011; Kelly, 2007; Maccoby & Mnookin, 1992).

Knowledge and Skills Necessary for Including Children

To interview children effectively in any divorce process, a mastery of interviewing skills with youngsters is essential. Although the base knowledge underlying good skills is beyond the scope of this chapter, several points are important. These are child-friendly interviews, not adversarial interrogations; they should feel supportive to the child. Judicious use of empathy, as opposed to sympathy, is helpful in appropriate instances. Skilled interviewers will note heightened anxiety or withdrawal if the child feels pushed too hard and change course accordingly. Most important, all those who interview children in divorce processes will be more effective if they like children, find them interesting, and are comfortable and relaxed in their presence.

Developmentally appropriate communications are characterized by clarity in word choice; simple and short sentences, rather than complex ones with multiple topics; and simple, brief questions that are asked one at a time. Research indicates that children use words and numbers before they understand their meaning, sometimes repeat others' sentences without understanding their meaning, and readily respond to questions with incomplete or inaccurate knowledge of their meaning (Poole & Lamb, 1998; Saywitz, 1995). This indicates the need to check in with children to make sure they understood your words, comments, and questions and that you accurately understood what they have said. Most adult language directed at children is characterized by short utterances, in particular, commands and questions, for example, "Do your homework," "How was school?" and "Don't hit your sister!" Children are not typically engaged in interactive conversations in which they are given the opportunity to provide a narrative description (Ceci, 1994; Poole & Lamb, 1998). Although their work was written for the context of child sexual abuse investigations, Poole and Lamb (1998) and Saywitz (1995) provided helpful research, developmental issues in interviewing children, examples of egregious interviewing, and positive guidance for interviewers (see also Ceci & Bruck, 1995; Garbarino & Stott, 1990). When interviewers use open-ended questions, as demonstrated in later sections of this chapter, children's narratives are richer and more accurate. It is important to note as well that younger children have an immature knowledge of time and temporal concepts. In discussing children's living arrangements after separation, PCs will need to be careful in describing and inquiring about typical patterns of parenting plans (i.e., when children are at each residence), using concrete language and visual aids as necessary to ensure understanding.

Familiarity with the research literature on children's age-related responses to separation (Wallerstein & Kelly, 1980), and factors that increase risk or promote resilience in children following separation and divorce will provide PCs with an understanding of the types of situations children and adolescents are most likely to experience (Fabricius, Sokol, Diaz, & Braver, 2012; Hetherington & Kelly, 2002; Johnston et al., 2009; Kelly, 2012; Lamb, 2012; Pruett, Cowan, Cowan, & Diamond, 2012; Sandler et al., 2012). For example, knowledge of the types of parent conflict that are most destructive, and of which protective parental behaviors have been found to diminish the negative impacts of high conflict, will provide guidance for PCs in asking high-quality questions of both parents and child and in increasing understanding (Birnbaum & Bala, 2010b; Buchanan, Maccoby, & Dornbusch, 1991; Grych, 2005; Kelly, 2003, 2007, 2012). Similarly, keeping current on research on elements of effective parenting after separation, and typical problems in parent-child relationships following separation, will help guide PCs (Amato & Fowler, 2002; Fabricius et al., 2012; Kelly, 2012; Lamb, 2010; Pruett et al., 2012). It is not necessary to be a child development expert, but PCs should be familiar with the attachment formation process; age-related language, thinking, and social skills; developmental differences in expression of anger; development of objectivity and abstract thinking; and normative parent-child relationships and peer relationships at different ages (see Siegler, DeLoache, & Eisenberg, 2010; Thompson, 2006).

THE STRUCTURED INTERVIEW MODEL FOR INTERVIEWING CHILDREN

In the following sections, I explain the value of interviewing children during parenting coordination and describe a model that helps PCs prepare for the interview, conduct the interview, and provide feedback to parents.

Purpose and Nature of the Interview

The purpose of interviewing children during parenting coordination is to get an honest sense of how they feel about their parents' conflict and what they want. It is important to note that the interview does not comprise a form of psychotherapy; instead, the point is to find out about the child's needs, experiences, and wishes as they pertain to the parents' divorce and conflict.

The Purpose of Child Interviews

There are typically two types of meetings with children. The first is an initial "getting to know the child" session early in the case for the purpose

of beginning to establish a relationship with the child; educating him or her about the role of the PC; and learning about the child's experiences with the parents' separation and divorce, and in particular, parental conflict. Additional later sessions are scheduled as needed for learning about specific ideas, needs, and concerns relevant to particular parental disputes. These boundaries help the PC enjoy a working relationship with the child that does not blur or merge inadvertently into psychotherapy. In most instances, child input is routinely sought when parents are disputing such things as extra-curricular activities, summer camps, joint parental attendance at school and recreational events, parent-child relationship problems and communication, and problematic transitions between households.

The primary goal of the structured child interview I describe in this section is to gather focused information that is relevant to particular parental disputes and the child's family living situations and that will typically be used, in whole or part, to help the parents reach agreements. It is a child-focused protocol in which the child largely determines the vocabulary, content, and pace and the interviewer directs the flow of the interview by raising specific issues. Skillful PCs find 1-hour sessions are generally sufficient and appropriate for the child's capacity for attention and focus. Another session might be scheduled if more information is needed or there are multiple topics to explore.

Child Interviews Are Not Therapy

As indicated earlier, there is general agreement that child interviews, whether for mediation, custody evaluation, legal representation, or parenting coordination, are not psychotherapy or counseling (see the APA's, 2012, parenting coordination guidelines). The parents have not provided their consent for therapy, the child is not an identified client, and the PC does not make formal diagnoses or bill insurance for sessions. This role change is a critical issue for all PCs who are mental health professionals to understand and master. In the course of a given session, PCs may hear about child or adolescent difficulties in the postseparation family or in social and educational functioning but does not take on the competing—and unethical—dual role of therapist to help children. If significant problems are apparent, a recommendation for therapy (e.g., a specialized drug treatment program) would be appropriate, accompanied by a rationale describing the child's need. In some jurisdictions, the PC would have the authority to make a decision or arbitrate this issue if the parents were not able to agree.

Effective Interviewer Style

The most effective way of learning about children's experiences, needs, and wishes in a high-conflict postseparation family is to have an open, honest

dialogue with the child about issues the PC must address on behalf of the child that arise from parent conflict. A friendly, responsive but professional demeanor, offering support as needed while staying focused on the issues, is most effective. The PC's posture should be relaxed, calm, and alert, with good eye contact. Some inexperienced child interviewers are prone to overdo praise or gush with forced emotion, which is inappropriate and seen as fake by many children. Others will be tense, moving abruptly through topics, not stopping to explore important comments, out of anxiety or an effort to quickly complete the interview.

Assuming the PC has established a relationship earlier with the child, the PC would begin a typical session by getting an update on how things are going in the child's life. This might include questions about behavior or problem raised by one or both parents recently, such as not completing homework ("What do you think is the problem? Possible solutions?"). The PC then moves directly to addressing and settling the current dispute(s).

This approach is demonstrated in the following (modified and condensed) interview with an 8-year-old girl named Mary.¹ Mary was interviewed after information had been gathered by phone from each parent.

PC: Your mom and dad are having a dispute² about who should be at your piano recital. . . . They can't agree on this, and I'd like to find out what you think. [pause] Are you aware that they have some conflict about this?

Many children are aware not only of the content of the dispute but also of one parent's, if not both parents', positions.

The PC then reviews the dispute:

PC: Your dad just found out about your recital next week and wants to attend . . . he thinks it's important that he be there. Your mom doesn't think he should be allowed to come to the recital. (Pause) Do you know why?

Mary: Sort of . . .

PC: Can you tell me? (Or, "Your mom said that since she pays for your lessons, it is 'her activity' with you, not your dad's.")³ It's important for me to find out what you think about this so I can help your parents settle this.

¹This and all subsequent names are pseudonyms, and case examples have been modified to protect confidentiality.

²The choice of words will depend on the child's age and sophistication; other word possible word choices include *disagreement*, *having some conflict*, *argument*. In my own work as a PC, I avoid strong words like *fighting*, unless the child uses them first.

³Ownership of a child's activity, either because of payments in support of the activity or because the event falls on a parent's scheduled time, is a common dispute. A PC would do well to tell parents that the PC regards children's activities as belonging to the child, rather than a parent, and that it honors and generally pleases children to have both attend their activities if they can behave in a civil manner.

The PC then gets the particulars of where the recital is taking place, whether Mary likes studying piano, what pieces Mary will be playing, and learns through this dialogue that Mary is proud of her accomplishments. Although the PC had asked for these details from the parents, she establishes common ground by repeating the questions with Mary.

PC: Would you like your dad to be present . . . to hear you?

Mary (*shyly*

and quietly): I really want him to be there . . . to see me play.

The PC reassures Mary that most children who are proud of their work want both parents to see and appreciate it. The PC asks about the postrecital reception and whether Mary has any concerns or worries about both parents being present in the same room.

Mary (*hesitantly*): Maybe you can tell them how to behave, too.

Mary is reassured by the PC's intention to develop some rules for her parents, and the PC asks Mary what ideas she has.

Mary: They don't have to sit together . . . maybe on opposite sides of the room.

PC: Would you like them both to come to the reception afterwards, or just one of them?

Mary affirms that it would be nice to have them both there, and the PC tells her what she will say to the parents about being in the same space in a polite way, but not talking to each other except to say hello. She asks Mary if that sounds OK. Mary is very pleased.

The Structured Child Interview

This interview model has six phases: (I) Beginning the Interview, (II) Establishing Rapport, (III) Obtaining Focused and Specific Information, (IV) Integrating the Child's Narrative, (V) Reviewing the Interview With the Child, and (VI) Feedback to Parents. If a child is to be interviewed only once, as is typical in custody mediation and judicial interviews, all six phases would normally be included. In the parenting coordination process, once the PC has seen children, subsequent sessions will typically cycle through the last four phases. In the following sections, I briefly describe each of the six phases.

The Child Interview Site

The office setting should be child friendly, with several comfortable chairs near or around a low table (not a large desk), and space to sit on the floor with pillows. No special equipment is required. The most important

consideration is to limit distractions that will interrupt the child's focus in the interview. Structured games (e.g., checkers, Chutes and Ladders), intricate building materials, Legos, and complex puzzles are counterproductive because they allow the child to avoid talking. Instead, stick doll figures, animal hand puppets, small cars and trucks, and drawing materials are sufficient, but not critical, for productive sessions. In my own work as a PC, I do not ask children to draw a family or any other drawing assignment, because being absorbed in an elaborate drawing project is a distraction and can take a good bit of time. If a child chooses to draw, ask him or her to wait before starting another "so that I can ask some important things about your mom and dad" (or whatever topic is current). Although dollhouses may be valuable for custody evaluations or research, they are not necessary and can be a distraction; also, dollhouse play is not a reliable source of information. It is helpful to have "tension relievers" (e.g., diamond-shaped magnets).

Preparing Parents to Talk With Children

Prior to a first child interview session, the PC should explain again to parents the reasons for listening to children and the length of the sessions (typically 1 hour) and should describe the relaxed atmosphere and the focus on understanding the child's experiences, views, and needs. Parents should be reassured that if a child does not want to talk, that is all right, and that most do talk quite readily. Parents and child benefit if the PC rehearses parents on major points to convey to their children about coming for an interview with the PC. These points, phrased as though they are being communicated from parent to child, include the following:

- We are working with a professional, called a *parenting coordinator*, to help us reduce our conflicts and make decisions when we have arguments.
- We want you to have the chance to talk to the parenting coordinator we are working with.
- The parenting coordinator is interested in your ideas and opinions about how things have been going since the separation, and what we can do to make things better.
- You don't need to take sides—you can say what you want.
- You will not be making decisions; we will, or the parenting coordinator will help us.

The PC should mention that it is sometimes tempting for parents to coach children prior to the child interview about how they want a dispute or issue to be settled; the PC should ask parents to refrain from such behavior, describing the stress it places on children.

Phase I: Beginning the Interview

At the first meeting, the PC greets the child, invites him or her to the office, settles on what name the child prefers, and thanks the child for coming: "I've been meeting with your parents, so I've heard them talk about you. It's nice to meet you myself." The PC then explores the child's understanding of why he or she has come to talk with the PC, what the child was told by parents, and corrects any distortions or misunderstandings. The PC first describes his or her role and work with parents, emphasizing in particular the twin goals of (a) helping parents agree when they argue about something that affects the child and (b) helping parents reduce their conflict. Then the PC explains the purpose of consulting with the child:

Your ideas are important . . . it will help me when your parents have a disagreement or dispute to know what you think would work for you. . . . You won't decide things but you will have a chance for input.

The PC discusses whether the sessions are confidential (a big word that probably needs to be explained) and that at the end of each session the PC will review the things the child has said and ask what he or she especially wants the parents to hear. As always, and in particular with younger children, the PC will check in to see whether the child understands. Throughout all interviews, it is important to take detailed notes, including direct quotes, and explain why ("I want to make sure that I get it right and that I remember things well").

Phase II: Establishing Rapport

The purpose of establishing rapport is to help the child feel comfortable and safe, to reduce anxiety about the interview and interviewer. It takes only a few minutes of the hour but is well worth it. Benign, general questions are asked first, including such things as what grade the child is in, favorite and least favorite subjects in school, the child's views of his or her teacher, favorite activities and hobbies, whether there are pets and where they are now living, and views of siblings and friends. The PC should avoid inquiring about whether the child understands what the truth is but instead should ask the child to let the PC know if he or she does not understand any questions that are asked. The PC should make sure that questions are really questions, not answers. "You like school, right?" is a closed-choice question with the interviewer's preferred answer. A better phrasing is, "How is school for you since your mom and dad stopped living together . . . since they separated?" because this allows the child to answer on his or her own terms. The PC should not rush but instead give the child a chance to process syntax and the cognitive demands of the questions.

Phase III: Obtaining Focused and Specific Information

This third phase is the core of the structured interview: the targeted information gathering phase. It follows rapport building with a simple statement of wanting now to learn more about what things have been like for the child since the parents' separation or divorce. This focus in Phase III is also appropriate for custody mediators who talk to children, and it can be readily adapted for custody evaluations, child legal guardian interviews, and judicial interviews.

First is a quick review of the separation itself—how the child found out that his or her parents were going to separate.⁴ Typical questions include: Who told the child, was he or she surprised, does the child know why, what did the child think about the separation, was it upsetting, and how is it now? Next is a review of the child's current living arrangements, asking the child his or her schedule for both weekends and midweek:⁵ "What days during the school week are you with your mom?" "When or what days do you see your dad? Do you sleep overnights there during the school week?" "What happens on weekends: Where do you live, and sleep?" The PC already has this information, but the questions provide an entry into the topic of how the living arrangements are working for the child, things that aren't good, things that are OK. "Who takes you to school in the morning; how does that work?"⁶ The PC continues by inquiring how the child gets from house to house: "Who takes you? Does that work OK for you?" "Is there ever conflict between your parents at that time? If so, what happens?" Additional questions might include the following:

- Can you take some of your favorite stuff between houses?
- Does your room feel like a home at both Mom's and Dad's house?
- Do you share a bedroom with anyone?
- Are there some things that you'd like me to suggest to your parents that would make it easier?

The last part of this opening focus on the separation and living arrangements is to ask the child to describe daily routines in each home (e.g., meals, homework, household chores, TV time, fun activities, bedtime routines). This

⁴With younger children, the concrete phrases "not live together anymore" or "live in two separate homes" would be more appropriate until the PC can determine that the child knows the meaning of the words *separation* and/or *divorce*.

⁵Younger children understand the concrete concepts embedded in the phrases "during the week, when you are in school," and weekends, "when you don't have school," before they have the ability to conceptualize and describe schedules in more abstract temporal terms.

⁶I tend to avoid the word *feel*, instead asking "how things are working," "how is that for you?", and "what's not working?"

inquiry helps the PC understand the child's adaptation to and satisfaction with new living arrangements. PCs do not need to visit children's homes.

The Child's Experience With Conflict

For children who have lived in high-conflict family situations, inquiries about their experiences with parent conflict before separation and at the current time are particularly relevant for future educational interventions with parents. The child's responses will also guide interventions in future sessions, in particular, in teaching the child how to respond protectively when parents make demeaning comments about the other parent (e.g., "It hurts my feelings when you say mean things about Mom/Dad . . . it makes me sad/mad").

Much of this inquiry about conflict experiences will take place in the initial getting-to-know-you session with continued updates as appropriate in future sessions. Questions can address the frequency and intensity⁷ of conflict before the separation and at present, whether the child has seen or heard violence (i.e., hitting, shoving) between the parents and, if so, whether the child was scared and what, if anything, the child did when one or both parents yelled at or hit each other. Examples of specific questions include the following:

- Did you try to stop them from fighting? What was that like. . . Did it work?
- Does Mom or Dad ask you to give messages to the other parent? If so, are they angry ones? How does their conflict make you feel?
- Are there any problems when your mom or dad calls you at your other parent's home?
- When you have a back-to-school night or soccer match, do you like to have both parents attend, or only one?

The PC may make empathic statements regarding how painful and frightening these experiences can be for children, if appropriate. Children should be asked if they have advice they want the PC to give their parents. It is typical to hear something along these lines: "Tell them I hate it when they fight or say mean things about my other parent" and "Tell them to stop it!" Although it may appear that questions regarding conflict and a child's responses would take a long time, it is usually possible to accomplish this smoothly and efficiently and proceed onward.

⁷One would not use these technical terms with children younger than 10 or 11, instead starting with "how often," which also can be difficult for younger children to quantify, and following up with "Did it happen a lot? Or just a little bit?" This may help the PC develop some understanding of the child's prior experience.

Children's Relationships With Both Parents

It is essential for the PC to understand the nature and quality of children's relationships with both parents from the child's vantage point, to complement, contrast, and extend the parent's perspective. To build a body of information that will provide guidance for the PC's future work with parents, questions rooted in reliable social science research about parenting effectiveness, closeness in parent-child relationships, and child adjustment following separation and divorce are the focus of this inquiry (for reviews, see Clarke-Stewart & Brentano, 2006; Fabricius et al., 2012; Hetherington & Kelly, 2002; Kelly, 2007, 2012; Kelly & Emery, 2003; Lamb & Lewis, 2013; Pruett et al., 2012; Sandler et. al., 2012; Sandler, Miles, Cookston, & Braver, 2008). One important dimension of parenting addressed by research is relationship quality, which is assessed via such variables as parental warmth, emotional support, acceptance, and encouragement; positive communication, including listening to the child; conflict; and negativity. A second dimension is effective discipline, including explaining and enforcing age-appropriate rules and expectations, enforcing rule compliance, and avoiding harsh and disproportionate punishment. These components characterize authoritative parenting, the most effective parenting style associated with positive child outcomes, in contrast to coercive, authoritarian parenting.

Starting with the general question "How are things between you and your mom (or dad)?", the PC's inquiry should focus on feelings of closeness, whether the child feels supported, how each parent expresses anger and affection, and help with activities and school projects. What things does the child like to do with each parent? How easy is it to talk with Mom/Dad? Does the parent listen to the child about important things? If parent and child have a conflict, how does it get worked out? Are there different rules in each home and, if so, how does that work? Other specific questions may include the following:

- How does Mom (Dad) discipline you when you break a rule or don't do what they ask?
- Do you think Mom (Dad) is fair?
- Are your brothers and sisters treated the same?

As with each set of questions, it is important to check in as necessary to make sure you have understood the child's family reality accurately. After initiating open-ended questions, the PC should follow up with additional specific questions as appropriate to develop a greater understanding of the child's experience.

The Child's Ideas and Perspectives on the Current Parental Disputes

In this segment of Phase III, the PC should explain to the child that his or her mom and dad have a disagreement and have not been able to agree

about the particular dispute for which the child is being asked for input. In the parenting coordination process, many disputes arise about children's extra-curricular activities, or summer programs and schedules. Whether focused on activities, or the time-share issue in a custody dispute, the PC should provide a simple description of the dispute. The following questions between a PC and an 11-year-old child named Lisa illustrate this process.

PC: I've been talking to your dad and your mom, and they have different ideas about what you should do this summer. They haven't been able to agree yet, and I am helping them to decide. Are you aware of this? (Many children know about the dispute.) It's important for me to hear what you think, and what you would like.

If children are not aware of the dispute, the PC acquaints them with its major points:

PC: Your mom feels strongly that you should take a sailing program for 2 weeks, and then Girl Scout camp later in the summer after your vacations with your parents. Your dad feels strongly that you should sign up for an additional Spanish class to get better at speaking it, and also get tutoring in math. That's quite a difference, isn't it?

In the example case of Lisa, the PC tells her that she has reviewed her grades and scores and talked to her teacher. The PC asks Lisa what she would like to happen, and Lisa gives a clear response:

Lisa: I don't want more Spanish and math . . . I work hard in school, I get As, and I just want to hang out this summer and do fun things. I told Mom that I wanted to go to sailing camp with one of my friends . . . it will be fun!

PC: Why do you think your dad wants you to have more school?

Lisa: I've told him already I don't want to do that . . . he always pressures me about school. I wish he'd stop it.

PC: From what I've learned, you are doing well in school. Your ideas for summer make sense and sound like something new and fun. I want to share your comments about this with your parents; is that OK?

Lisa gives the PC permission to do so, the PC thanks her for her input, and says that if her parents don't agree after the PC's feedback, the PC will make the decision. The PC inquires as to whether Lisa has anything else to bring up, responds to any further issues, and thanks her for coming. In a custody evaluation or child custody mediation, this direct and open approach would be similar:

PC: Your mom and dad have not been able to agree about how much time and what days you will spend with your mom and with your

dad, and they have different ideas about whether you should spend an overnight at your dad's house during the school week.

The evaluator or mediator would then explore these issues further with the child.

The related questions of suggestibility and the credibility of children's comments, wishes, and perspective are important ones and beyond the scope of this chapter (see Bruck, Ceci, & Hembrooke, 1998; Ceci & Bruck, 1995; Kuehnle, 1996; Poole & Lamb, 1998; Saywitz, 1995). In the parenting coordination process, the PC has multiple opportunities over time to assess these issues with children and parents. In general, once the PC has ensured that the child has understood the questions, she or he should listen for whether the child or adolescent sounds rehearsed or stilted, uses very adult language, persistently repeats certain phrases and statements, directly echoes a parent's position, or is unable to produce memories and descriptions that provide support for his or her wishes or perspectives. If the PC suspects that the child's wishes sound very much like one of the parent's strongly held positions, it is effective to ask a child how much of what the child said is his or her idea, why it is important to the child, and whether the child's mom or dad wants him or her to share the same idea. For example, when a preadolescent tells you how much he or she hates a parent, and argues vigorously against any contact with that parent, but is unable to provide a coherent and detailed underlying story that explains this rigid and strident position, it is reasonable to be wary. The PC should look for characterizations of parents that are framed as all good or bad with no nuance or shades of gray, which suggest a strong and potentially unhealthy alignment with one parent (unless the PC knows the parent to be destructive, harsh, critical, and lacking in expressions of support, and the child is realistically estranged; Fidler, Bala, & Saini, 2013; Kelly & Johnston, 2001). Is the child capable of independent thinking on the disputed issues commensurate with his or her age? PCs and other professionals experienced in interviewing children develop the ability to discriminate what is really the child's voice, presented in age-appropriate language choice and syntax, rather than the pressured voice of a parent with an agenda.

Phase IV: Eliciting and Integrating the Child's Narrative

An effective child interview elicits a narrative that tells the PC about the child's life at the current time and his or her reaction to continuing family situations and parental disputes set in motion by the separation. The various topics and sample questions proposed in the previous section are not intended to be a rigid menu for interviewers to follow. The interview structure should focus on issues that research and practice have identified as being important to children of separation and divorce. Each child presents him- or herself

differently and has both similar but distinct issues and conflicts compared with other youngsters. Although the child interview is structured, it also is flexible. It starts with certain points of inquiry but explores in more depth as appropriate, expands in some areas noted to be relevant to the child, ignores other irrelevant topics, and stops when the PC has a good understanding of the child's situations and views.

Most children, starting at age 8, are ready to provide such pertinent information and appreciate being included. A calm PC style; a supportive structure; and age-appropriate language, phrasing, and questions will reward PC efforts with clear, often poignant responses that create a more fully integrated story about the child in the family context of ongoing parental disputes, as well as parental support, and the larger world in which the child engages. Age 8 should not be a rigid dividing line for excluding younger children, because they too can provide thoughtful perspectives or comments. The decision to include children younger than 8 years will most likely be related to the PC's experience and comfort with younger children. Although the child's experience with parental anger is powerful and often damaging, it is important to remember that it is not the totality of the child's life experience.

Phase V: Reviewing the Interview With the Child for Feedback to Parents

Children and adolescents generally have important things to say in interviews that merit feedback to parents in the hopes of reaching a constructive resolution of a particular dispute that meets the child's needs, or for motivating positive behavioral change. In voluntary settings, such as a private sector custody mediation interview, specific feedback is usually given with the permission of the child. In the parenting coordination process, it is not mandatory that the PC share the child's observations and wishes with parents, but providing such feedback to help resolve disputes is essentially the rationale for including children. It would be disrespectful to children to interview them without providing appropriate feedback to the parents, unless the child has strong opinions to the contrary. If a child consistently refuses to allow the PC to share any of his or her thoughts with parents or to help the PC make recommendations and decisions, it would be appropriate not to include the child as the process continues.

At the end of the interview, the PC reviews the child's major statements or views with the child, using direct quotes when possible, and asks which comments the child would like the PC to share with parents. Sometimes children and adolescents express their ideas, reactions, and feelings quite strongly. With particularly sensitive or derogatory comments about a parent, it is useful to model how the PC will phrase it (e.g., reframing to delete

swearing, softening a child's harsh statements while retaining meaning), to obtain the child's approval or make the message palatable to a parent. The following are some examples:

- Can I tell them you said it hurts your feelings and makes you sad when they say mean things about each other?
- Can I say how much you love each of them but get very upset when they act like that's not OK? That you want to be close and be with each of them, and don't want them to be mad at you for feeling that way?
- I'm not going to say that you called your parents #\$\$@#, but will it be OK if I say that you were pretty angry about their fight the other day over attending your school play? And you'd really like them to be more mature?

It is surprising how often children and adolescents say, "You can tell them everything!" This often expresses how frustrated and upset they are about the negative parental behaviors of one or both parents and from being excluded from important dialogues about their lives. Providing feedback is possible, of course, only if the PC takes detailed notes throughout the interview, which is essential as well for interviews and phone contacts with parents and other professionals. If the parenting coordination is guided by a stipulation and court order for PC services, the PC may file a motion in court to withhold child notes demanded by an angry parent if the PC believes it will be harmful to the child and the parent-child relationship. Over my 15 years of PC practice, I have never had a parent demand the child's records, and only once was I subpoenaed to appear in court, which required the notes. In this instance, detailed notes from interviews with this child and parents were very important in leading the judge to approve my decision.

Phase VI: Providing Feedback to Parents

Providing feedback from child interviews to parents requires preparation and sensitivity to both children and parents. Before providing feedback, the PC should review the child's comments and take time to formulate a presentation of information that may not be welcomed by one or both parents. It is best if each child is discussed separately, providing general observations first about the child's participation—how extensive, willing, anxious, thoughtful the child was and whether he or she wanted to share some or all information shared with parents:

PC: John was very willing to talk with me and was comfortable in saying what was important to him. When we went over the interview at the end, he told me the things that were important for me to share with you. He was serious, thoughtful, and very impressive.

Use “affect” words to describe some of the situations in which children find difficult to engage the parents’ emotional attention, such as, “John is worried about . . . struggling with your angry behaviors toward each other . . . fears that you won’t love him if he says how he feels . . . missing his dad very much and wants to find a way to see him more.” Use specific quotes from the child when possible, because the sometimes unwelcome news is heard more readily when presented in the child’s voice and choice of words. It also deflects parent feelings of PC favoritism or lack of impartiality to hear children’s voices directly through the PC.

After providing feedback for each child, the PC should ask for the parents’ reactions to the input, and discuss. Sometimes a parent will start to cry, others may ask more questions, and some may angrily disagree with what you said:

PC: Susan was worried that you would be angry but still felt that I should tell you these things. It takes children a lot of courage to say important things about their parents’ behaviors. I told her I would talk with you about her worry.

The next step is to raise questions about how each parent will use the information provided, either to help settle the dispute that was the focus of the child interview or in talking with their child directly. If a child’s input does not support a strong parent opinion, it is important that the PC acknowledge this up front and then provide the feedback:

PC: In talking with Sam, I learned quite a bit about how he feels about the possibility of a sleepover camp. Dad, I know that you really wanted him to attend a 2-week sleepover camp because you thought he needed to be “toughened up.”

In this case, the PC had learned from the mother something that the father acknowledged: that Sam had not experienced any lengthy separations from either parent before and had very little experience sleeping over at friends’ homes. Sam had told the PC that he really didn’t want to go because he thought he would be very homesick. The PC explained to Sam that most 7-year-olds would have trouble with a 2-week separation:

PC (to parents): Sam told me he was willing to try out the day camp that was suggested by Mom that has one overnight stay each week. He thought he’d be OK with that, and he’d like to do it with his friend, David. He also told me that “Maybe next year I’ll be ready for a longer sleepover camp!”

After discussing normal developmental issues further, and the possible longer term fallout from an extended separation when a child is not ready, Sam’s

father agreed to the 2-week day camp. Such direct feedback is seen by parents as the greatest help in resolving parental disputes and relieves the PC of making a decision.

Sensitive child input can serve as a wake-up call to parents to begin changing their hostile behaviors and attitudes toward ex-partners. Hearing the child's words and how strongly the child wants his or her parents to stop hurtful behaviors is sobering to all but the most angry and hardened parents. Some parents have told me in later sessions that they thought constantly about what the child had said, and it motivated them to work on changing behaviors. In one post-feedback session, a tearful mother apologized to her children's father for her anger and for fighting to limit his time with the children. She then invited him to join her in reducing their anger toward each other and become the supportive and thoughtful parents they were before their separation 4 years earlier.

CONCLUSION

In this chapter, I have provided a conceptual framework and supporting research suggesting that including children is a valuable addition to the parenting coordination process. The rationale and goals for including children in the parenting coordination process were described, as were suggestions to help PCs prepare for interviewing children. I also described a structured interview format that I have found to be valuable for consistently eliciting helpful and rich information from children. A child interview, sensitively undertaken, enables the PC (or custody mediator, child custody evaluator, or judge) to develop a rich understanding of children's needs, perspectives, and wishes on topics relevant to each family's disputes. The input provided by children often helps parents reach beneficial agreements and, when parents are unable to agree, gives the PC the information needed for arriving at sound decisions that may directly affect children's future well-being.

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