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Editor's Note

This issue of the *Michigan Child Welfare Law Journal* once again presents a number of diverse topics. In "Infant Emotional Trauma: Bringing the Science of Early Childhood Development into Family Court" (Wotherspoon, Hawkins, Clinton, Vellet & Pirie) the authors review the science of early childhood development to highlight the importance of emotional trauma in infancy and its relevance to family court proceedings. The authors review current scientific views on whether and how infants experience emotional trauma and consider the implications of early and prolonged trauma for brain development and mental health. Implications for child welfare and family law practitioners representing infant clients are discussed, and best practice guidelines for those charged with acting in the best interest of the emotionally traumatized infant are presented.

This issue also includes "Applying the Realities of Child Development to Legal Representation: A Quick Reference for Lawyers and Judges." (Donadio & Wilen) In this article, which originally appeared in an earlier issue of this *Journal*, the authors provide a basic overview of normal child development milestones, as well as variations from the norm. The authors goal is to assist attorneys and judges assess how a child's development might impede the attorney's ability to effectively represent that child.

Finally, this issue includes "Domestic Violence In Child Custody And Parenting Time Disputes – Part I: Impacts On Victims And The Litigation Process" (Bancroft). This article is the first in a three-part series designed to promote readers' understanding of the impact of domestic in violence in child custody and parenting time cases. It describes how commonly-observed attitudes and behaviors of domestic violence perpetrators affect victims and the litigation process. The second and third pieces in this series will be printed in upcoming issues. This series has been adapted from the book *The Batterer as Parent* and was originally printed in the *Michigan Family Law Journal*

I hope you find this issue interesting and useful. As always, the editorial board welcomes your feedback on this and future issues to ensure that the *Child Welfare Journal* is of value to you.

—Joseph Kozakiewicz

Editorial and Review Board

Message from the Chair

On April 19, I had the pleasure of joining in a teleconference with 13 other members of the *2009 Federal Child and Family Services Program Improvement Plan Court Advisory Group.* The group included jurists, Department Of Human Services specialists and practicing attorneys from around Michigan. The idea was to develop collaboration between the agency and the legal system. Certainly an idea supported by our section.

Our section was suggested as an excellent forum to begin conversation and discussion so for your reading pleasure I enclose the recommendations. Feel free to comment as you wish either on the listserv or contact me at *mckaig@aol.com* and your thoughts will be forwarded to the Advisory Group and the Section Council.

—John McKaig, Chair

CFSR PIP Court Advisory Group
Court and Legal System Recommendations

Child and Family Service Outcomes

Permanency Outcome #1: Children have permanency and stability in their living situation.

- Expand and institutionalize the present Permanency Forum as a means of developing and sharing successful practices to improve permanency outcomes statewide. This would include maintaining and expanding the local county teams to include representatives from all stakeholders in protective proceedings.
- Implement concurrent planning statewide. Pursue joint/collaborative training of local jurists/attorneys and caseworkers.
- Regular involvement of foster parents in court proceedings to identify potential placement problems before they result in unplanned moves of children.
- Increased recruitment of **appropriate** foster parents, improved training and support by the supervising agency, improved matching of child's needs to the homes ability to meet those needs.
- Improved communication to and among legal professionals to ensure they are updated on latest statutory requirements and court rules related to protective proceedings, as well as sharing of best practices and identification of systemic problems. Suggestions include using present systems of communication affiliated with formal legal organizations, e.g Michigan Judges Association, Michigan Probate Judges Association, Michigan Bar Association Children's Law Section, etc.
- Establish a court rule that requires "compelling reasons" be noted on the record and in the court order when indicated for not filing for termination of parental rights if the child has been in care 15 of 22 months. Revised court order to accommodate the rule.
- Training of jurists and LGALs regarding DHS policy requirements related to the permanency plan of "APPLA" and "placement with fit and willing relative" to provide basis for court finding of reasonable efforts being made to achieve that plan and court approval of the plan.

- Court should ensure **at each hearing** that the child is safe and well cared for in their present placement and that the agency is providing necessary support to ensure the stability of the placement.
- Court should ensure that foster parents have been properly noticed and encourage their input regarding the child's safety and well being.

Permanency Outcome #2: Continuity of Family Relationships and Connections Preserved.

- The advisory group agreed that frequency and quality of parenting time and support of the parent-child relationship is critical to child well being and improvement in the timeliness of reunification and the number of children reunified.
- Development of joint task force (courts/DHS/POS agencies) to address/overcome barriers to provision of necessary parenting time.
- Judicial leadership required to facilitate DHS/agency provision of parenting time, consistent with the needs of the child, and to promote timely reunification, despite agency objections and excuses. Need to determine if this is a reasonable efforts issue.
- Parent attorneys can be more assertive in requesting appropriate level of visitation.
- LGAL should evaluate and request increased parenting time if they determine it is in their clients' best interests.
- Assess policy and practice that delays/limits services to parents from preliminary hearing onward.
- SCAO should support courts with related training and data/research.
- Identification of absent parents and relatives required at preliminary hearing. Court should follow up at each hearing.
- Court should monitor at each hearing the following **child well being** issues:
  - Sibling visitation.
  - Efforts by the agency to maintain important connections for the children.

Well Being Outcomes #2 and #3: Children receive appropriate services to meet their educational needs; children receive adequate services to meet their physical and mental health needs.

- Court must ensure at each hearing that the child's specific needs are being met in each of these well being areas, including obtaining a verbal report from the child's court appointed LGAL, input from the foster parents, and input from the child when possible.

System Outcomes

Systems Outcome #2: Case Review System.

- Advisory group consensus that present written case plans and related court reports are woefully inadequate to be utilized as a means of monitoring progress toward permanency, child well being, and child safety.
- Recommend joint court/DHS/POS agency task force to develop a functional, useful, and user-friendly written case plan and related court report.
- Jurist /parent's attorneys/LGAL will need to monitor and hold the agency accountable to include parents and youth in the development of their case plans/service agreements. Court could withhold approval/acceptance of plan until this requirement has been met.
- Strongly recommend institutional change that includes a regular communication process between the courts and DHS either on a local or state level to address statutory and policy issues and changes and how they can be implemented collaboratively and efficiently; data sharing; problem solving; resource development etc.
- Recommend that the Department of Human Services address the "disconnect "between Lansing DHS office and the field operations of DHS which has a significant impact on case management practices, which adversely impacts the operations of the court and ultimately on the care of children and families. The judges advised that this has been an issue raised numerous times by the MPJA without an adequate response.

Safety Outcome # 2: Children are safely maintained in their homes when possible and appropriate.

Excerpt from Executive Summary - Pg 6:
[Performance on Safety Outcome 2 is assessed through two items. One item (item 3) assesses State efforts to prevent children's removal from their homes by providing the family with services to ensure children's safety while they remain in their homes. The other item (item 4) assesses efforts to manage safety and reduce risk of harm to children in their own homes and in their foster care placements. The 2009 CFSR case reviews identified the following concerns in many of the cases reviewed:

- Children remaining in their own homes continued to be at risk either because services were not provided, or the services that were provided did not target the key safety concerns.
- There was a lack of initial and ongoing safety and risk assessments.
- There were continued risk concerns in the home that were not addressed and/or monitored by the agency.]
- The related court concern regarding this outcome is that the court is seeing initial petitions where the case was opened for services for 3 or more months prior to the petition being brought to the court and the parent has been unresponsive, thus leaving the children at risk during that time. Recommend that in these cases DHS Child Protective Services maintain the child in the home, but pursue early court involvement to help enforce parental compliance. DHS and court should collaborate to evaluate the need for possible statutory or DHS policy change to *require* early involvement by the court while the children are in the home under conditions where parents do not engage in services in a timely manner. ◎

Infant Emotional Trauma: Bringing the Science of Early Childhood Development into Family Court

by Evelyn Wotherspoon and Erinn Hawkins, Alberta Health Services, Calgary, Alberta, Canada; Jean Clinton, McMaster University, Hamilton, Ontario, Canada; Sonya Vellet, Psychologist, Private Practice, Calgary, Alberta, Canada; and June Pirie, Alberta Health Services, Calgary, Alberta, Canada

Abstract

The primary purpose of this review is to use the science of early childhood development to highlight the importance of emotional trauma in infancy and its relevance to family court proceedings. To this end, we review current scientific views on whether and how infants experience emotional trauma and consider the implications of early and prolonged trauma for brain development and mental health. Implications for child welfare and family law practitioners representing infant clients are discussed, and best practice guidelines for those charged with acting in the best interest of the emotionally traumatized infant are presented.

Infant Emotional Trauma: Bringing the Science of Early Childhood Development into Family Court

Infancy is an extraordinary period of development during which physical, emotional, and cognitive growth occurs at a pace that is not repeated during any other period of the lifespan. The brain, on average, triples in size between birth and five years of age (Scheeringa & Zeanah, 2001). The developing brain is designed to be molded according to the environment in which it finds itself. This quality allows humans to be highly adaptive to different environments but also leaves the human brain highly vulnerable to adversity during these important early years (Schore, 2001a). Given the sensitivity and vulnerability of the brain in infancy, physical and emotional deprivation or abuse in the first years of life can lead to significant and perhaps even irreparable harm different from what might occur in an older child or adult. Infancy should, therefore, be viewed as a qualitatively different period and must be distinguished from other stages of childhood in the application of child welfare policy and practice (Schore, 2001b). For this reason, the maltreated infant represents a special challenge to the court.

Historically, child protection work has maintained a narrow focus on the physical safety and prevention of cruelty to children (Tomison, 2001). More recently, research findings have led to a broader focus on the emotional toll and lifelong health implications of early neglect, emotional deprivation and psychological as well as physical abuse (Shonkoff, Boyce, & McEwan, 2009). These findings present a new challenge for the courts and those who advocate on behalf of parents and young children: how to collect and present clear evidence of harm when the harm is psychological and the consequences will not be evident for years to come?

Fortunately the science of early childhood development has substantially improved our understanding of the social and emotional world of the infant. Groundbreaking longitudinal studies such as the Minnesota Study of Risk and Adaptation (Sroufe, Egeland, Carlson, & Collins, 2005) and the Hawaii Longitudinal Study (Werner, 2000) have illuminated the developmental pathways of young children who experience deprivation and trauma. The confluence of findings from neurobiology, psychology, and attachment research has furthered our ability to

explain the interweaving physical and psychological mechanisms of human development and pathology, particularly in the area of brain development, the maturation of our stress response system, and the emerging capacity to regulate our emotions, attention, and behavior (DeBellis, 2005; Fisher, Stoolmiller, Gunnar, & Burraston, 2007; Grossmann, Grossmann & Waters, 2005; Schore, 2001b).

Through these studies we have come to understand that infant behavior (particularly the infant's social behavior) is not random or haphazard; it is organized, meaningful, and significant. While many questions remain unanswered, it is now well established that many emotional problems have their origins in childhood, follow a predictable and recognizable developmental path, and could be most effectively prevented in the earliest years (Shonkoff et al., 2009; Shonkoff & Phillips, 2000; Sroufe et al., 2005; van IJzendoorn, Schuengel, & Bakermans-Kranenburg, 1999). We also now have convincing evidence that some of the most common childhood psychiatric disorders (attention-deficit/hyperactivity disorder, oppositional defiant and conduct disorders, anxiety and depression) are as prevalent among preschool children as they are among older children (i.e., between 14-21%; Egger & Angold, 2006) and likely have their roots in the convergence of specific risk factors, particularly in problematic early relationships with caregivers (Greenberg, 1999; Pally, 2002; Shonkoff & Phillips, 2000; Schore 2001a, 2001b). When cases involving abused or traumatized infants come before the court, it is imperative that all participants recognize the opportunity to fundamentally influence the life trajectory of these children and are equipped with the skills and knowledge to effectively represent their interests.

In the sections that follow, we carefully examine the experience of emotional trauma in infancy and its developmental consequences. Throughout this discussion we highlight the implications for child welfare and family law professionals. We then offer some best practice guidelines to those charged with acting in the best interest of the emotionally traumatized infant. We assert that the science of early childhood development has much to offer the child protection workers, legal advocates, and courtroom judges who are charged with the task of protecting abused and neglected infants. Judges, caseworkers, and advocates need to have at least a cursory understanding of infant development – particularly the impact of emotional trauma on the social, emotional, and physical development of young children – to represent their best interests, to weigh the competing rights and interests of adults concerned with their care, and to set these children on a path of optimal development.

Understanding Emotional Trauma in Infancy

Infant emotional trauma differs from that occurring later in life in two important ways. As we shall see, it is not the infant's memory of any specific event that causes psychological impairment or disorder; rather, it is (1) the quality of the infant's environment, particularly the environment of relationships, and (2) the physical and psychological impact of chronic stress and understimulation that influence later development (Shonkoff et al., 2009). A brief description of infant brain development and the stress response system will help clarify these assertions and the implications for child advocacy in the family courtroom.

Brain Development. Exactly how the brain develops depends on the interaction between the infant and his or her environment. The quality of the infant's environment and experiences depends, to a large degree, on the capacity of the primary caregiver to offer emotional nurturance, appropriate stimulation, and adequate physical nourishment. The developing brain is extremely sensitive to the caregiving environment such that if the infant is consistently exposed to an unresponsive caregiver, brain development can be significantly altered. To fully understand this, it is essential to understand what is happening in early brain development.

Although babies are born with most of their brain cells, or neurons, intact, to function properly those neurons need to connect with one another. The first year of life is the most exuberant in terms of the production of brain cell connections (called synapses), and the brain over-produces synaptic connections during this period. In order to maximize efficiency, the brain develops solid neural connections, or a circuitry, *in response to experiences that are repeated* over and over again, while connections that are not used are lost or pruned away. "The neurons that fire together, wire together" and "use it or lose it" are two common expressions neuroscientists use to describe this process (Doidge, 2007). If the child does not

receive enough stimulating experience in the first two years of life, such as in cases of neglect and emotional deprivation, there is an over-pruning of synaptic connections among brain cells that are critical to the development of many cognitive functions (Glaser, 2000). Additionally, as we shall discuss in more detail later, the stress associated with unresponsive caregiving also has a negative impact on the brain. To summarize, there is a considerable and growing body of research to suggest that adversities such as chronic emotional deprivation can be biologically embedded during infancy when the brain is more sensitive and adaptive to the environment (Shonkoff et al., 2009). In other words, chronic emotional deprivation is a "one-two punch" of lack of stimulation and increased stress that is felt throughout the lifespan.

The relationship between an infant and his or her primary caregivers literally builds and shapes the brain, which in turn organizes the growth of the physical, cognitive, and emotional systems (National Scientific Council on the Developing Child [NSCDC], 2004). The equal contribution of biology and environment (i.e., it is nature ***and*** nurture, not nature vs. nurture) is essential for child advocates to understand because it helps explain why chronic emotional unresponsiveness or relationship deprivation during these crucial years can be so traumatic and damaging even when physical needs are attended to and even if the child will not recall these experiences. Developmental research suggests that not only do the earliest relationships sculpt the brain, but they also affect its physical growth (NSCDC, 2005; Perry, 1994), influence the activation of certain genes (Meany et al., 1996), set the foundation for social competence, such as empathy and moral reasoning (Moore, 2007), and as we shall see in the next section, influence the development and effective functioning of the stress response system.

The Stress Response System. We have survived as a species, in part, because of our stress response system, also commonly referred to as our "flight or fight system." When we sense a frightening or dangerous event, our brain gets alerted and sends signals to our amygdala, two almond-shaped organs deep in our brain. This "alerting" of the amygdala sets out a chemical pathway leading to the release of adrenalin and cortisol from a small organ on top of the kidneys called the adrenals. Neuroscientists refer to this neural pathway as the HPA axis because the path is through the hypothalamus to the pituitary to the adrenals (Cohen, Perel, DeBellis, Friedman, & Putman, 2002; Glaser, 2000).

A frightening event, such as a sudden threat, causes this stress response system to become activated and leads to physical changes that prepare us for the threat; our heart rate increases, our breathing speeds up, we become acutely focused. This response all occurs at the chemical message level with the release of adrenalin, which causes us to be physically aware of the changes. Cortisol is also released to help with the creation of additional energy to respond to the threat, such as to keep running from the attacker (Glaser, 2000).

We tend to remember terrifying events because of another effect of the chemical messengers that are released. The part of our brain responsible for new learning and memory, the hippocampus, has numerous cortisol receptors to monitor the cortisol level in the brain. This helps us remember and prepare for that danger should it arise again (Lupien et al., 1996). When the level of cortisol climbs to a certain level the hippocampus sends a message to "down regulate" or turn off the secretion of cortisol (Glaser, 2000).

Because it is not yet fully developed, the baby's stress response system is highly sensitive to the actions of the caregiver. The caregiver acts as the primary "down regulator" of stress for the baby or young child. By engaging in repetitive, predictable, and soothing interactions with the infant, the baby's aroused state becomes soothed and eventually the normally developing infant learns to regulate these states independently. However, the baby who is roughly or inconsistently handled develops a more reactive stress response with different biochemical pathways and signals that have life-long implications for health and learning (American Academy of Pediatrics [AAP], 2000; Cohen et al, 2002; NSCDC, 2005; Pally, 2002).

Because the infant is so dependent on the caregiver to regulate stress, unpredictable or frightening behavior on the part of the caregiver can be traumatic in itself, or the response of the caregiver can amplify or dampen the impact of other traumatic experiences (Caldji et al., 1998; Garbarino & Ganzel, 2000; Sameroff & Fiese, 2000; Scheeringa & Zeanah, 2001l; Sroufe et al, 2005; Werner, 2000;). Disruptions or disturbances in this sensitive relationship between infant and caregiver can be traumatizing to the infant, even in the absence of a clearly defined catastrophic event that we would normally associate

with emotional or psychological trauma, such as a fire or flood (Hildyard & Wolfe, 2007; Schore, 2001b). Rather than a single harrowing event, it is the "drip by drip "of daily experience that sculpts the stress pathway in the developing brain of the infant. Caregivers who do not read the infant's cues accurately and soothe the baby's distress, or who are consistently behaving in ways that frighten the infant, create the conditions for potentially toxic levels of stress hormones in the infant's brain, particularly the hippocampus. In severe cases, this can lead to impairments in cognitive development, compromised immune systems, and/or retarded growth (AAP, 2000; Wiggins, Fenichel, & Mann, 2007). This chronic stress in infancy is sometimes referred to as "toxic stress" because of the impairments that have been associated with it (NSCDC, 2005).

Severe emotional trauma in the first two years of life, therefore, is typically not caused by a single incident. It is more likely to be the result of the repetitive and sustained failure of the caregiver to help the infant manage distress (Schore, 2001b). This is sometimes referred to as "cumulative" or "relational" trauma and is linked to lifelong physical, psychological, and *neurological* harm (Glaser, 2000; Schore, 2001b). There are four different conditions in which relational trauma can occur that are particularly relevant to discussions of infant maltreatment: (1) conditions of persistently *unresponsive* caregiving, (2) conditions involving a pattern of *frightening* caregiver behavior, (3) exposure to ongoing domestic violence, and (4) the relational trauma associated with placement disruptions. Each category is described in turn, including examples derived from the authors' clinical practice.

Trauma Associated with Unresponsive Caregiving

As we have discussed, infants are entirely dependent on their caregivers to interpret events in the external world and to regulate their emotional and physiological responses (Shuder & Lyons-Ruth, 2004). By amplifying states of joy or soothing distress in response to the infant's cues, the caregiver and infant work together to synchronize their emotional states (Schore, 2001a; Shuder & Lyons-Ruth, 2004). Many experts characterize a pattern of chronic, sustained unresponsive parent-child interactions as "hidden trauma" because single-point-in-time observations of these interactions can lead the observer to miss the seriousness of the situation for the developing infant. However, compelling research evidence suggests that chronic emotional deprivation in infancy is potentially as or more traumatizing than any other form of maltreatment including childhood physical or sexual abuse (DeBellis, 2005; Macfie, Cicchetti, & Toth, 2001; Manly, Kim, Rogosh, & Cicchetti, 2001; Sroufe et al., 2005; Streeck-Fischer & van der Kolk, 2000). Consider the following example:

> Fifteen-year-old Lola proudly showed off her new baby to her social worker. She woke the baby from a deep sleep causing the baby to become fussy. Lola changed her out of her sleeper and into a lacy and ruffled party dress that appeared scratchy and uncomfortable for the baby. As the baby's distress grew, Lola continued to talk to the social worker about the difficult delivery, her health, and other concerns, placing the baby facing outwards on her lap and jostling the baby absentmindedly with her knee. While the baby continued to cry, Lola remarked that the baby was "doing that on purpose" just to bug her.

This example illustrates a mother who fails to recognize or accurately interpret her child's cues and signals, and as a result, fails to respond to many of the infant's signals; when she does respond, her behavior is inappropriate and she fails to soothe the baby. It is clear that this mother's failure to respond to her baby's distress reflects her inability to attend to the child's cues, instead becoming distracted by other concerns. It is equally clear that the baby is stressed by her mother's lack of response; we know this because the baby's distress intensified throughout the interview rather than resolved. What may not be as apparent is the (potentially permanent) effect of this interchange, if recurrent over long periods, on the infant's developing brain, particularly the parts of the brain responsible for regulating stress (Glaser, 2000). As discussed above, such unregulated distress can be overwhelming for infants, eventually becoming toxic to brain development.

Trauma Associated with Frightening Caregiver Behavior

When an infant or young child's primary attachment figure consistently behaves in ways that are frightening, the child is driven to seek proximity

and comfort from the very person who is causing the distress, leaving the child no recourse for resolving the fearful state; that is, the child has no organized way of regulating their physical and emotional arousal (Hesse & Main, 2006). As expected, maltreated infants are far less likely to develop an organized response to stressful situations than other children (Macfie, Cicchetti, & Toth, 2001; van IJzendoorn et al., 1999). According to Streeck-Fischer and van der Kolk (2000), "when caregivers are extraordinarily inconsistent, frustrating, violent, intrusive or neglectful, children are likely to become intolerably distressed" (p. 907). Over time, parent-child relationships characterized by frightening caregiver behavior can have a profound effect on later adaptive functioning. Indeed, frightening and insensitive caregiver behaviors have been scrutinized by attachment researchers as important predictors of severe attachment disturbances, which in turn, reliably predict later pathology, such as aggression, dissociative symptomatology, hyper-vigilance or hyper-arousal, and school or behavior problems (Caldji et al., 1998; Carlson, 1999; Cassidy & Mohr, 2001; Lyons-Ruth, 2003; Perry, Runyan, & Sturgess, 1998; van IJzendorn et al., 1999).

The following case example describes a parent who, like the previous example, is insensitive to the child's emotions and needs. While the first example illustrated a parent who lacked the capacity to recognize cues of distress and respond sensitively, this example highlights a parent who exhibits frightening caregiver behavior:

> Sara, an eighteen-month-old toddler in foster care, was playing with her father during a supervised visit. He held a small metal box containing pencil crayons, which he opened towards Sara, inviting her to see what was inside. As Sara tentatively approached to look inside the box, her father abruptly slammed it shut, causing Sara to startle at the loud noise and then fall down. Her father then opened the box, smiling as he offered it once again to Sara. When she hesitated to approach him, he said, "What's the matter, you a scaredy-cat?"

This parent at first glance appears moderately insensitive and it may be challenging to make the case that this type of behavior has the potential to traumatize a small child. Once again, it is the *persistent* unpredictability and uncontrollability of these frightening interactions over time that leads to a breakdown in the child's coping strategies, not necessarily any single interaction. Rather than use the caregiver to assist them in regulating their affect, an important step in the development of self-regulation, young children who are consistently exposed to frightening caregiver behaviors such as this start to demonstrate unusual behaviors in the presence of their caregiver when distressed, such as freezing, dissociation, or erratic approach/avoidance behaviors (Hesse & Main, 2006). Analyzing the infant or young child's emotional status and condition when the child has been exposed to persistently frightening caregiver behavior (such as the above example and in cases of ongoing domestic violence as described below) requires a sophisticated and comprehensive evaluation by an infant mental health or pediatric specialist.

Trauma Associated with Ongoing Exposure to Domestic Violence

While most would agree that witnessing violent conflict between parents is traumatizing for children, the most salient questions for family court professionals have to do with whether infants can recall past traumatic events and whether these memories will have a lasting impact on their emotional health and development. Research on traumatic memories suggests that, while very young children do not have the narrative recall to describe trauma from their past, they do retain these experiences in memory–often referred to as "implicit memories" (Paley & Alpert, 2003). The area of the brain responsible for "working memory" that would allow the child to create a narrative memory of the event does not mature until some time in the second or third year. The highly emotional memories of infancy are stored in the more primitive reactive system, the amygdala, or what Daniel Goleman calls "the low road" (2007). These memories are often highly charged emotionally and do not have a cognitive explanation or narrative to temper them. Implicit memories can affect the child's behavior even when the incident itself has escaped their memory. In much the same way as comfort food elicits a general positive response or sense of well-being without necessarily prompting a specific recollection, traumatic triggers can elicit a stress response in children, even if they no longer recall the event itself (Schwarz & Perry, 1994). Trauma symptoms are described

in the literature in children as young as one year (Bogat, DeJonghe, Levendosky, Davidson, & von Eye, 2006) and the effects have endured at least two years (Scheeringa, Zeanah, Myers, & Putnam, 2005). Consider the impact of witnessing domestic violence on the young child in the following example:

> Two-and-a- half-year-old Zoey and her mother were placed in a women's emergency shelter following a series of violent attacks on her mother that Zoey witnessed from her crib. On some occasions Zoey was in her mother's arms during the incidents. Developmental screening revealed that Zoey was at high risk for developmental delays; she used only a few words and had little interest in social interactions. Furthermore, Zoey was difficult for her mother to handle because she whined and cried frequently and her crying only escalated when her mother attempted to console her. When Zoey's mother placed Zoey in her crib, her crying reached a point of near hysteria. The shelter staff were puzzled because, unlike other children, Zoey quieted more quickly when left alone than when cuddled, and she would vigorously resist being placed in a crib.

As illustrated by the previous example, it is important that professionals working with chronic domestic violence understand that a) very young children often do not distinguish between the victim and perpetrator of a violent incident and can develop fearful or traumatic reactions to either parent; and b) while infants and toddlers might not recall specific events, they can be severely traumatized by them nonetheless. Both of these factors need to be considered when planning interventions for adult and child victims of domestic violence.

Trauma Associated with Placement Disruptions

The infant is uniquely equipped to form a strong preference for familiar caregivers, and these important psychological ties form quickly when very young children are placed in foster care. While children who have experienced a change in primary caregiver at an early age can and do recover from the loss of the attachment figure, it does not come without significant stress and suffering and elevates the child's vulnerability to any further setbacks (Brazelton & Greenspan, 2000; Dozier, Albus, Fisher, & Sepulveda, 2002; Gauthier, Fortin, & Jéliu, 2004; Rubin, O'Reilly, Luan, & Localio, 2007). The following example illustrates the impact of multiple placements on very young children:

> Two-year-old Rose had been removed from her parents' care eighteen months earlier following a hospitalization for dehydration and failure to thrive. At one year of age she was placed in an emergency foster home and then moved to a kinship foster home three weeks later. The kinship placement broke down when Rose was sixteen months old because of conflict with the biological parents who were interfering with Rose's care at the foster home. Rose was briefly placed with another family and then returned to her mother's care. When new concerns about her condition were substantiated, she returned to a new foster placement. Unfortunately, Rose's new foster parents were compelled to relocate shortly afterward and Rose was placed in another temporary foster home before being adopted at the age of two. An early childhood mental health consultation was requested because Rose was not talking and engaged in peculiar behaviors - rocking so persistently that she broke her crib, dissolving into tears at mild provocations, and showing little interest or engagement even when her adoptive mother took her to see a neighbor's new litter of new puppies.

Many professionals unwittingly assume that young children like Rose are not affected by the loss of a caregiver because they lack the capacity to form a conscious memory of the loss. It is important to emphasize that while children do not have conscious recall of early events, they can be nonetheless profoundly affected by them – especially events that involve the abrupt or repeated loss of a primary attachment figure. Such a loss is easily the most traumatic one that a child can endure (Goldsmith, Oppenheim, & Wanlass, 2004), and as illustrated in the above example, this trauma is compounded exponentially with every placement disruption the infant must endure. The American Academy of Pediatrics (2000) advises that "any intervention that separates a child from the primary caregiver who provides psychological support should be cautiously considered and treated as a matter of urgency and profound importance" (p. 1146). Gauthier and

his colleagues (2004) conclude that the trauma of placement disruption plays a significant role in many of the behavior problems seen in young foster children. Specifically, they state:

> We gradually realized that children's best interests lie in the preservation of their attachment ties, and that a rupture of such ties—*especially if it is not the first one*—constitutes a severe trauma, necessarily leading to severe short-term reactions: separation anxiety, sleeping disorders, angry outbursts, destructive behaviors, and denial of affect." (emphasis added; Gauthier et al., 2004, p.386).

Developmental Consequences of Chronic Stress and Trauma

Recognizing symptoms of emotional trauma and attributing causality is perhaps one of the most confusing and controversial aspects of court testimony involving maltreated infants and young children. Judges may hear conflicting views on whether the child's presentation is due to parental maltreatment or is the result of an inborn deficit or natural temperament that the parent has no ability to influence: the "nature-nurture" debate. This type of linear explanation of child development is no longer valid as evidence is clear that it is both genes and environment that interact to shape the child's brain; it is both nature *and* nurture, so in all cases a more complex and nuanced explanation is required (Pally, 2002; Shonkoff & Phillips, 2000).

As described earlier, the stress response system is complex and involves the brain, the nervous system, and the immune system (Glaser, 2000; Perry, 1994; Schore, 2001b). When repetitive and sustained stress causes the response system to be chronically activated, it becomes less effective in three important ways. First, it appears that in some cases the stress response system becomes suppressed or blunted causing the child to be less effective in their response to future potential threats, which is a commonly observed feature in older children with a history of abuse or neglect (Glaser, 2000). Secondly, stress hormones, particularly cortisol, are secreted during these periods of infant distress and are toxic to the developing brain, potentially impairing cognitive development (NSCDC, 2005; Schore, 2001b). Finally, chronic stress is believed to exacerbate the effects of genetic or congenital impairments (Glaser, 2000; Meaney et al, 1996; Schore, 2001b).

Cook, Blaustein, Spinazzola, and van der Kolk (2003) describe the devastating impact of chronic stress or trauma in six areas, including: (1) problems within the attachment relationship, (2) physical or medical problems, (3) problems with managing strong feelings or emotions, including dissociation, (4) behavior problems including aggression and self-harm, (5) cognitive problems including language and attention difficulties, and (6) self-concept issues. Chronic stress beginning early in life predicts more adverse outcomes in each of these domains (Manly et al., 2001). Scheeringa & Zeanah (2001) describe numbing/avoidance symptoms, hyper-arousal, and reenactment of traumatic events through play.

In addition to these stress-related impairments, emotional deprivation in the early years is associated with effects on development in general. As previously discussed, the brain requires a certain amount of stimulation to develop connections between brain cells. In effect, it is the quality of this stimulation that builds the circuits of the brain. If the child is deprived of a warm, nurturing, language-rich environment in the first two years of life, there is an over-pruning of synaptic connections among brain cells that are critical to the development of many cognitive functions, particularly language development (Glaser, 2000).

The devastating impact of emotional deprivation on physical and cognitive development can be clearly demonstrated in studies of institutionally reared children, many of whom received adequate physical care but who were not given the opportunity to interact with a sensitive or responsive caregiver. In a meta-analysis of more than 270 studies involving more than 230,000 children, van IJzendoorn and Juffer (2006) compared the effects of institutional care with the effects of early or late adoption out of an institution. They reported dramatic differences in physical growth, attachment security, cognitive development, and other domains of functioning in direct proportion to the age of discharge from institutional to adoptive care, with early adopted children showing almost no negative effects. It appears that chronic early neglect has the greatest impact on the structural and functional development of the brain, more so than single incidents of abuse, even when the single incident might appear more egregious. In other words, the type of maltreatment

that the young child endures is less relevant to the outcome than the combined effects of early onset, frequency, severity and duration.

The implication of this finding for courts and those advocating for parents, children, or the state is that testimony regarding any maltreatment, but especially emotional deprivation, should include detailed information about the quality of day-to-day, parent-infant interactions rather than focusing solely on a single point in time or one egregious incident. Additionally, testimony regarding the consistent *absence* of responsive or nurturing care to the infant is as relevant as testimony of overtly harmful acts on the part of the caregiver.

Finally, and perhaps most importantly, because of the close connection between mental health and the developmental status of infants, case presentations outlining the impact of trauma on the infant should include the findings from a developmental screening/assessment. This can be problematic, however, since not all developmental impairments are due to trauma, and developmental impairments are frequently underreported in foster children (Canadian Paediatric Society [CPS], 2008). If testimony regarding significant changes in the child's social, emotional, and developmental status following placement in foster care is available, this can help the judge determine the impact of different caregiving environments on the child's functioning. Ideally, the court should hear expert testimony from at least one witness with expertise in maltreatment and infant development.

Accumulating Risk and Trauma

The concept of increasing vulnerability as risks mount up is crucial to understand; that is, as risk factors cluster together, their cumulative impact on the developing child amplifies dramatically. DeKlyen and Greenberg (2008) developed a model of risk factor analysis that could help judges organize testimony from forensic clinicians assessing risk. DeKlyen and Greenberg group risk factors into four broad categories: 1) social environment risks, such as lack of social supports, exposure to neighborhood violence, or poverty; 2) the quality of the attachment relationship; 3) risk factors that capture overall parental characteristics and competence, such as maternal depression, substance abuse, or mental illness--a childhood history of trauma and/or multiple placement disruptions is especially relevant (Éthier, Couture, & Lecharite, 2004); and 4) innate child vulnerabilities or risks, such as prenatal exposure to substances (e.g., alcohol, illicit drugs), developmental delays, low birth weight, and/or illness. What is important to note is that most of these risk factors are visible in early childhood and can be assessed with reasonable accuracy. Judges should expect to hear detailed evidence regarding these risk domains when hearing cases of infant trauma.

The bi-directional influence of the caregiving relationship and accumulating risk factors in complex trauma constitutes an important consideration in predicting outcomes for young maltreated children (Koenen, Moffitt, Poulton, Martin, & Caspi, 2007; Scheeringa & Zeanah, 2001). Research continues to confirm that children are more likely to have diagnosable symptoms following a traumatic event if they also have a disturbed attachment relationship with their caregivers (MacDonald et al., 2008). Consider the following example:

> Fifteen-month-old Donny had recently reunited with his mother after seven months in foster care. Donny entered foster care following an emergency removal by police who were responding to a domestic violence complaint. The family had been well-known to police and child welfare officials due to frequent and violent disputes between the parents. He was reunited with his mother when she separated from her abusive partner and agreed not to have any further contact with him.
>
> Donny's eighteen-year-old mother had a childhood history of abuse and multiple foster care placements. She was expecting a second child and was being evicted from her apartment at the end of the month. During our observation, Donny happened to fall and hurt himself on the edge of a coffee table. He immediately approached the clinician (a stranger to him), crying. He paused, then turned to his mother, stopped crying, and froze for a moment. After about 30 seconds, he resumed crying while frantically tugging his ear. His mother commented that she had asked her family doctor about an ear infection because Donny was always tugging his ears, but her doctor found no concerns. In our view,

> Donny's behavior indicated that he did not have a consistent, organized strategy for handling distress as we would have expected. This was a troubling sign of a disturbed attachment with his mother, and his ear-tugging was most likely a primitive, self-soothing strategy he had adopted.

In this example, Donny's behavior suggests a disturbed attachment relationship with his mother because he was unable to use her as a source of comfort following a minor stressful event (injury). Donny's mother was coping with numerous life stressors and trauma from her own childhood, causing her to be less emotionally available to her infant at a time when he had high needs to be nurtured and reassured. This put him at increased psychological risk. In addition, there were abrupt changes in primary caregivers when Donny entered and then left foster care, further compromising an already stressed attachment relationship. The risk factors burdening this mother and her infant stressed their attachment relationship, and the stressed attachment relationship further increased Donny's vulnerability to those risks. Eventually, Donny and his newborn sibling returned to foster care because the stress on the mother was too great. Had the reunification been planned more carefully, taking into consideration the other risk factors influencing the family, not just the presence or absence of an abusive partner, a different outcome might have been achieved.

Best Practice Guidelines for Family Law Professionals

As discussed in the sections above, infant emotional trauma is complex; the causal chain between trauma and outcomes is non-linear and can have far reaching effects on later development. Additionally, the many complex issues and competing demands of family court often make it difficult to determine what is in the best interest of these children. In our work with family court professionals, we have found that a reliance on the empirical findings from early childhood development and infant trauma research is useful in making decisions that can improve the outcomes for these most vulnerable children. Based on the research reviewed, we offer the following guidelines to those charged with acting in the best interest of the emotionally traumatized infant.

Clinically informed assessment and intervention for traumatized infants is necessary for healthy development, successful family reunification, and permanency planning. This will require close collaboration among health, mental health, and child welfare disciplines.

Evaluations of infant psychological trauma require multiple observations by a qualified infant mental health specialist. Practitioners in communities where infant mental health services are not available should seek guidance from local child development and pediatric specialists. Speech-language pathologists, for example, are an often-overlooked resource for child welfare practitioners.

Intervention cannot be effective unless the caregiver and the infant are physically and psychologically safe. Treatment in the context of ongoing exposure to family violence or in the context of placement instability is unlikely to be effective.

The accumulation of risk factors is an important variable in planning intervention for traumatized infants and their families. The reduction of risk factors to reduce caregiver stress and/or vulnerability should be part of family intervention planning and family reunification efforts (Wekerle, Wall, Leung, & Trocmé, 2007).

Decisions about the child's best interest, in the case of traumatized infants in foster care, should carefully consider who the attachment figure or "psychological parent" is from the child's point of view and give weight to this relationship. Disruptions in this important relationship are detrimental, particularly for young children with other vulnerabilities.

Interventions that aim to improve the attachment between the infant and parents are more likely to succeed when the family is receptive to intervention; when the family is not overwhelmed by other stressful life events; and when parents have the capacity for self-reflection.

The plan for intervention should include the generous offering of support and services within a reasonable but clearly delineated timeframe combined with careful monitoring for compliance and concrete examples of positive change.

Visitation plans should be guided by the needs of the child. The visits should have a clear purpose, such as maintenance of an attachment relationship, assessment of parenting ability, teaching parenting skills, transition to new placement or transition back to parental care.

Exposure to high quality, stable caregiving has been repeatedly shown to substantially improve outcomes for maltreated infants and toddlers. The outcomes for emotionally deprived and traumatized children are associated with age at time of placement (the younger the child when placed with nurturing caregivers, the better the outcomes) and are more enduring with placement stability.

Concluding Remarks

Infant maltreatment poses a special case for family court. Some of the most salient questions for family court professionals have to do with whether infants can recall past traumatic events and whether these memories will have a lasting impact on their emotional health and development. In the above review of literature on infant development and emotional trauma, we have attempted to show that the science of early childhood development has much to offer the child protection workers, legal advocates, and courtroom judges who are charged with the task of protecting abused infants. By providing an overview of infant development, particularly the impact of trauma on the social, emotional, and physical development of young children, we hope that judges, caseworkers, and advocates will be better equipped to ensure that these children have the same opportunity to develop to their full potential as any other child. ◎

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Applying the Realities of Child Development to Legal Representation: A Quick Reference for Lawyers and Judges

by Brian T. Donadio, J.D. and Sondra R. Wilen, M.A.

Introduction

Whether a legal matter involves a delinquency adjudication, an abuse and neglect investigation, or even a child custody dispute, determining whether a child is developing at a normal rate—physically, intellectually, and emotionally—is often[1] an important consideration in ascertaining the best method of vigorously and effectively representing a child client. It is also expected that an attorney will have neither the time nor the expertise to conduct an evaluation of the child client's development that is thorough enough to provide adequate information for effective representation. In many cases, this lack of time and expertise will not be an issue because the child client falls within a normal range of development; thus, developmental concerns would not be an impediment to representation. Often, however, the development of a child—physical, emotional, or otherwise—may play an important role in the case and thus inattention to developmental factors could impede the attorney's ability to represent the child adequately. These concerns apply equally to judges—whether sitting in family court or in a court of general jurisdiction—when a pending case involves the interests of a child. It is therefore important for attorneys and judges alike to recognize when issues of child development arise that significantly impact a case, thus necessitating consultation and assessment by psychological professionals.

Before sketching the basic developmental milestones and important deviations, it is important to highlight the purpose of this article. This article is an attempt to provide attorneys and judges with a rudimentary understanding of developmental issues likely to arise in cases involving children. Consideration of a child's level of development is important because there are such significant "moral, cognitive, and social development" differences between adults and children.[2] These differences can affect a child's culpability in a delinquency matter; the degree of immediacy when considering the need for removal of a child from the home in an abuse and neglect case; and the appropriateness of any given placement in child custody litigation. The study of child development is by no means a novel or unexplored field, but rather it is a science that has been studied widely and thoroughly for many years.[3] Thus, attorneys and judges should give serious consideration to child development issues and make certain to consider professional consultation and evaluation in cases where a child's development appears to deviate from the norm.

Keep in mind that this article is by no means an exhaustive undertaking. In fact, this article endeavors only to be a sort of summary of the summaries, a most pared down coverage of the issues aiming to raise awareness and provide a starting point for what should be a more comprehensive research and education effort by attorneys and judges involved in child-related legal issues. Thus, the information provided here can serve only as the initial reference in what will turn out in many cases to be a series of evaluations in an effort to locate the precise nature of a particular psychological or developmental problem.

The Initial Assessment by the Attorney

A Guideline to Recognizing Basic Developmental Milestones

Because time and resources are at a premium in most cases involving a child's interest—again, most attorneys typically have neither the time nor the

training to complete an effective battery of evaluative measures—there is a need for an abbreviated, easy-to-use method of evaluation. To that end, a summary of child developmental milestones and deviations from the norm may prove helpful. Several categories of development have been included here as an initial reference; however, the information provided here is far from complete—it is intended only to suggest the types of developmental milestones children are expected to attain. It is important to keep in mind, therefore, that there often exists the need for *careful, intensive* interviews when deviations from the norm are discovered; this is particularly so when dealing with juvenile delinquency clients or children in abuse and neglect cases.[4] Thus, it is recommended that any "positive" results in a "checklist" evaluation be followed up, preferably either through a complete evaluation, such as a *pro bono* or court-mandated assessment by a psychological/psychiatric professional.[5]

When assessing the child for deviations from normal development, consider the following techniques:

- Whenever possible, conduct interviews with the child client and parents, as well as others who may have additional information, such as teachers, day care providers, neighbors, parents of friends, close relatives, or even alleged abusers in abuse/neglect cases. Teachers and day care providers are especially important sources of information because they observe the child on a regular basis, have a large number of children against which to compare development, and may be less likely to have an interest in minimizing concerns than parents or others who may fear blame for developmental problems.
- Ask questions[6] and make observations about issues such as, but not limited to the following: prenatal medical care; motor skills, including mobility and physical coordination; medical problems (including untreated daily concerns such as regular headaches); school performance; relations with friends and family members; home environment (e.g., parental employment, parental physical or psychological problems, who and how many caregivers); hobbies and interests; general temperament (e.g., cranky, outgoing, calm, timid), mood or feelings; fears or worries; self-concept (e.g., what the child likes best and worst about herself, how the child views herself in relation to others); memories or fantasies; future goals; assessments or diagnoses by other professionals (including educational assessments at school or placement in special classes); and involvement with the legal system, protective services, or mental health agencies.[7]
- Pay special attention to signs such as aggressive antisocial actions, pervasive isolation, self-harm, precocious sexual activity, age-inappropriate problems with reality (e.g., hearing voices or paranoia), substance use, delayed language and physical development, low self-esteem, lack of trust, inept interpersonal relationships, learning difficulties, phobias, nightmares, and excessive clinging or avoidance of closeness.[8]
- Diligently collect and review records, such as medical, school, employment and mental health.

Important Milestones of Cognitive/Language and Social/Emotional Development[9]

Birth–12 Months[10]

Cognitive/Language[11]

Imitation of adult expressions and repetition of unintentional actions leads to purposeful, causal behaviors; recognition of people, places, objects begins; object permanence (understanding that objects continue to exist when removed from sight) transitions to ability to find hidden objects (but only in the first place hidden); cooing and babbling followed by imitation of language sounds; development of communication of dependency, exploration, pleasure, anger, fear, and anxiety through nonverbal gestures (e.g., pointing, facial expressions).

Emotional/Social[12]

Basic emotions apparent (happiness, anger, fear, surprise, sadness), focused first on internal needs (hunger) and later toward external cues (parental ability to make hungry child smile); emergence of fear of stranger and anxiety about separation from the primary caregiver; engagement and interactive

relationship with caregivers and others, including intentional, social smiles and laughter (rather than spontaneous smiles caused by physiological factors such as gas); appears bonded/attached to primary caregivers; shows interest in exploring while looking to caregiver for support and encouragement (as a "secure base").

12–24 months

Cognitive/Language

Shows interest in trial and error experimentation with objects and problem solving; looks in additional places when hidden object not found in first hiding place; able to find object moved when outside the child's field of vision; categorizes objects (e.g., cat, drinking cup); begins make-believe play; first words spoken, with vocabulary gradually increasing to about 200 words.

Emotional/Social

Begins playing with siblings and same age children; recognizes images of self; security and curiosity replace clinginess and apprehension about novel situations; signs of empathy, shame, and embarrassment emerge; recognizes age/sex categorizations and begins to choose toys based on gender stereotypes; compliance with requests leads to improved self-control; begins to organize opposing emotions in singular situations (e.g., when playing, "the doll is bad, gets spanked, and then is hugged").

Age 2

Cognitive/Language

Recognition memory developed; able to take perspective of others in simple situations; cognizant of difference between inner mental and outer physical events; rapid vocabulary increase leads to understanding of simple sentences, ability to name many objects, and use of simple sentences following proper grammatical order; conversational abilities grow to include taking turns in dialogue and maintaining singular topic.

Social/Emotional

Self-esteem begins to develop; understands intentional versus unintentional behavior; cooperation emerges; understanding of causes and consequences of emotions begins to develop; ability to deal with anxiety through fantasy appears (e.g., thoughts that things will change for the better in the future); continued development of empathy and gender stereotyped behaviors and preferences; themes of "power" emerge (e.g., fear of monsters, desire to be a superhero).

Age 3-4

Cognitive/Language

Begins to understand the concept of causation in relation to action; speaks to self to guide complex actions; understanding of fantasy and false belief emerges; able to speak in more complex sentences (e.g., using "but" and "because" to qualify or explain actions or events); counting and numerical skills begin to emerge; begins to grasp grammar rules and the existence of exceptions; able in many instances to adjust speech for age, sex, and social standing (e.g., parent/adult versus sibling) of the listener.

Social/Emotional

Continued growth of self-consciousness (shame and pride) and ability to regulate emotions, including reactions to frustration. Social interactions increase with corresponding decrease of isolated play; emergence of "normal" levels of hostile physical and verbal aggression (occasional aggressive exchange between young children, even where the intention is to harm another child, so long as aggressive episodes are far outweighed by friendly interactions), as well as jealousy and envy; continued increase of gender-stereotypical preferences, including playmates; anxiety about being hurt or kidnapped is common, but child usually is able to recognize such thoughts as fantasy.

Age 5-6

Cognitive/Language

Understanding of difference between reality and mere appearance improves; attention capacity enhanced; begins to understand basic phonics; vocabulary grows to approximately 10,000 words; shows complex grammar mastery; counting improves and expands to basic addition and subtraction.

Social/Emotional

Increasing comprehension of intentions underlying actions of others; shows ability to predict and interpret and provoke actions and emotions of others; exhibits fears such as thunder and lightning, dark, bodily injury, loss of love, and the supernatural (e.g., ghosts); uses language to express empathy; understands moral

basis of many rules and behaviors; strong ability to regulate both concentration/attention and emotion tempered by continuing need for external support with such efforts; able to fear loss of self-esteem (e.g., "I am bad"); triangular patterns of relationships present (i.e., feeling left out or wanting to leave others out of situations).

Age 6-11

Cognitive/Language

Logical thought improves but remains connected to concrete, rather than abstract situations; improved understanding of spatial concepts such as time, distance, and speed; ability to maintain attention and focus improves (and is very well established by age 8 or 9), thus enhancing understanding of the role of memory, attentiveness, and motivation to the successful performance of tasks; long-term memory and knowledge accumulation grows; rapid addition of vocabulary; complex grammar application steadily improves, especially around age 10 or 11 (e.g., "I did this because she said that, and she said that because something else happened that I did not see); use of synonyms/word categories and double word meanings present (e.g., metaphors and humor).

Social/Emotional

Self-esteem becomes more realistic and gradually rises, while understanding of personality traits of self and others grows; fears of the dark, thunder/lightening, bodily injury, loss of love, and the supernatural continue, with the last dissipating and being replaced by anxiety about shame in contests such as tests and grades in school and physical appearance; ability to differentiate between luck and skill emerges; able to grasp the need for effort, self control, and frustration tolerance in task performance; understands that individuals have different perspectives on events based on differing knowledge; concept of justice changes from equality to merit (ability to earn benefits) to benevolence (willingness to bestow benefit out of the goodness of one's heart); physical aggression declines as social interaction increases, leading to the formation of peer groups and a growing interest in "roles" (self-definition such as "I am a football player" or "I am good at this"); associates pride and guilt with personal responsibility (and experiences a growing fear of guilt); recognizes connection between morality and social norms but sense of morality remains unstable; begins to temper spontaneous curiosity with growing sense of order, including order necessary for appropriate interactions with others (e.g., playing games with rules); academic interests and personality traits become gender-stereotyped and focused on role models (adult stereotypes); by age 9 or 10, special relationship with same sex parent is strong (parent used as a role model).

Age 11-14

Cognitive/Language

Abstract/hypothetical thought emerges; self-consciousness continues to grow; critical and idealistic thought grow substantially; begins to consider long-term vocational goals based on present interests; abstract vocabulary appears; irony and sarcasm understood; understanding of the need to manipulate speech patterns and style based on individual situations grows.

Social/Emotional

Parent-child conflict increases commensurate with moodiness and further transition from family social interaction to focus on peer involvement; intimacy and loyalty begin to define friendships; "membership" in cliques becomes more standard, with self-definition focused increasingly on reputation and stereotypes; need to conform to peer pressure is prominent.

Age 14-18

Cognitive/Language

Problem solving increasingly based on complex rules of thought; abstract/hypothetical reasoning improves substantially; self-consciousness subsides; planning and decision making enhanced; long-term vocation goals now based on abilities and values in addition to interests; verbal skills advanced to ability to comprehend adult literature.

Social/Emotional

Search for a personal identity/self-definition commences; self-esteem continues to rise and differentiate with regard to different situations; growing understanding of the societal perspective and the importance of laws and rules to the maintenance of relationships and societal order; dating often begins.

Deviations from Normal Development

When considering whether a child has attained an age-appropriate level of development, the attorney or judge must look not only to the apparent indications of normal development, but also to certain reliable indicators of abnormal development. Factors associated with a deviation from normal development include negative life events, such as physical or sexual abuse; chronic stress caused by domestic violence or marital discord; parental psychopathology/mental illness, such as depression or substance abuse; and the availability of parental "resources," including friendships and extended family relations.[13] There exists a large number of possible psychological problems resulting from or appearing as deviation from normal development. Included here is a brief description of some of the more common problems (Attention Deficit-Hyperactivity Disorder; Conduct Disorder; Mood Disorders, such as Major Depression; and Anxiety Disorders) and some representative deviations from normal development.

Attention Deficit-Hyperactivity Disorder (ADHD)[14]

ADHD is often evidenced by some combination of the following signs:

- Persistent inattention to school work, tasks at home, or play;
- Failure to listen when spoken to directly;
- Disorganization, persistently losing things such as toys or school books, or forgetfulness;
- Easily distracted or excessive movement/ restlessness that is not age-appropriate;[15]
- Excessive talking;
- Inability to await turn or participate in games or conversations without interrupting.

Conduct Disorder[16]

Conduct disorder holds a close relationship to juvenile delinquency and is evidenced in part by a repetitive and persistent pattern of behaviors, such as the following:

- Aggression toward people or animals, including physical cruelty or threats and intimidation;
- Deliberate destruction of property;
- Deceitfulness or theft;
- *Serious* violations of rules, such as curfews or school attendance.

Mood Disorders (including Major Depression and bipolar disorder)[17]

Signs of Major Depression[18] include the following:

- Subjective reports of sadness or feelings of emptiness;
- (note that this factor is not necessary for children and adolescents because chronic; irritability may be another manner in which they present depression);
- Objective observations by others of persistent tearfulness;
- Changes in weight, appetite, or sleep patterns;
- Fatigue or loss of energy/interest in activities;
- Reoccurring thoughts of death or self-harm.

Anxiety Disorders (including Generalized Anxiety and Obsessive-Compulsive Disorder)[19]

Certain deviations from normal development may indicate that the child suffers from a psychological problem that falls within the category of Anxiety Disorders. Such deviations include the following:

- Excessive anxiety concerning separation from the home or from caregivers;[20]
- Excessive fear and avoidance of social situations;[21]
- Excessive concerns about performance or competence;[22]
- Excessive generalized or specific fears or worry.[23]

Conclusion

The possible impact of a child client's development on the outcome of a case cannot be overstated. Deviations from normal development can be either the cause or the effect of the subject matter of a particular case: the "delinquent" child's slow development may lead him to act in some way because he does not completely understand the consequences of his actions; abuse or neglect might result in some abnormality in development; a child's proper custodial placement may rely on the relative capacities of the contending caregivers to administer to a child's need;

the comparison of a child client's development with "normal" milestones may even assist a trier of fact in determining the damages at issue in tort litigation.

The importance of child development in so many areas of law suggests that attorneys, whether in a representative capacity or sitting on the bench, must be aware of the basic milestones and common deviations from those norms. Hopefully, this article not only will provide a bare bones reference for child development norms, but also will motivate the reader to pursue more comprehensive treatment of this subject matter elsewhere. ◎

About the Authors

Brian Donadio graduated cum laude from the University of Michigan Law School in December 1998. Brian will be a law clerk for the Honorable Jay C. Waldman of the United States District Court for the Eastern District of Pennsylvania during the 1999-2000 term and will then join the Philadelphia office of Dechert, Price & Rhoads. Brian is a 1994 honors graduate of the University of Pennsylvania (B.A. political science). Before attending law school he worked in Lansing, Michigan as a recruitment coordinator for a literacy agency and an English as a Second Language instructor for Cuban refugees. While in law school, Brian served as Symposium Editor for the University of Michigan Journal of Law Reform and began studying and working with child law issues at the University of Michigan Child Advocacy Law Clinic, the Michigan Child Welfare Law Resource Center, and the Washtenaw County Prosecutor's Office.

Sondra Wilen is currently a doctoral student in child and family clinical psychology at Michigan State University. Sondra earned her master's degree in clinical psychology in December 1997. She also graduated summa cum laude and Phi Beta Kappa with undergraduate degrees in psychology and business from the University of Pennsylvania and Penn's Wharton School of Business. Sondra's research and clinical practice is concentrated on child and family therapy issues, particularly attachment theory and adolescent depression and suicidality. Before attending graduate school, Sondra worked at a Pennsylvania/VA Medical Center Addiction Treatment Research Center. Sondra has previously presented research posters at the Annual Meeting of the Society for Research in Adolescence and the Annual Convention of the American Psychological Association.

Endnotes

1 At least, it certainly should be.

2 *See* Elizabeth S. Scott & Thomas Grisso, *The Evolutions of Adolescence: A Developmental Perspective on Juvenile Justice Reform,* 88 J. CRIM. L. & CRIMINOLOGY 137, 174 (1997).

3 This is especially so with regards to the impact of developmental issues on older children and adults. There is, however, a continually growing focus on young child development, as well as a corresponding increase in interest in early diagnosis and intervention in cases of developmental deviance or disability. *See* Jan L. Culbertson & Diane J. Willis, *Introduction to Testing Young Children, in* TESTING YOUNG CHILDREN: A REFERENCE GUIDE FOR DEVELOPMENTAL, PSYCHO-EDUCATIONAL, AND PSYCHOSOCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diance J. Willis eds., 1993).

The Product of such study has been the emergence of two primary perspectives regarding the nature of child development. *See* Mary L. Perry & Cecil R. Reynolds, *Developmental Theory and Concerns in Personality and Social Assessment of Young Children, in* TESTING YOUNG CHILDREN: A REFERENCE GUIDE FOR DEVELOPMENTAL, PSHCHO-EDUCATIONAL, AND PSYCHOSOCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diance J. Willis eds., 1993) (noting the conflicting concepts of continuous and discontinuous development); LAURA E. BERK, INFANTS, CHILDREN AND ADOLESCENTS 6-7 (2d ed. 1996) (same). For a more in-depth but introductory level discussion of competing theories on child development, it is best to turn to one of the many texts on the subject. *See, e.g.,* HELEN BEE, THE DEVELOPING CHILD 3-27 (6th ed. 1992) BERK, *supra* note 3, at 2-32; HOWARD GARDNER, DEVELOPMENTAL PSYCHOLOGY 493 92d ed. 1982) (summarizing theory labels and directing to relevant portions of text); JEROME M. SATTLER, ASSESSMENT OF CHILDREN 37-59 (3D ED. 1992). One perspective considers child development to be a discontinuous series of step-like changes in the child. These changes are often referred to as stages. *See* Perry & Reynolds, *supra* note 3, at 31-38 (discussing Jean Piaget's cognitive development stages, Sigmund Freud's psychosexual stages, and Erik Erikson's psychosocial stages of ego development). The contrary foundational theory on development is that a child grows and matures in a continuous, "ever-evolving" manner. *See* Perry & Reynolds, *supra* note 3, at 38-41 (discussing Bandura and social learning theory, life-span perspectives, and interactional systems approach).

The primary categories of child development have been labeled variously as physical, motor skills/ coordination, educational, intellectual, language, social, emotional, and moral. *See* Culbertson & Willis, *supra* note 3, at 7; *See generally* BERK*, supra* note 3. This article will focus on the combined areas of development known as cognitive/language and social/ emotional. However, it is also worth taking some time to become acquainted with the physical and sensorimotor areas of development. *See*, e.g., STANLEY I. GREENSPAN, THE CLINICAL INTERVIEW OF THE CHILD 61-77 (2d ed. 1991); Nancy Bayley, *The Development of Motor Abilities During the First Three Years,* 1 MONOGRAPHS OF THE SOCIETY OF RESEARCH IN CHILD DEVELOPMENT (1935).

4 For example, when preparing a delinquency defense, it is "vital when evaluating violent children…to obtain a comprehensive history of perinatal difficulties, accidents, injuries and illnesses." Pavlos Hatzitaskos et al., *The Documentation of Central Nervous System Insults in Violent Offenders,* JUV. & FAM. CT. J. 29, 30 (1994).

5 For an authoritative discussion of clinical assessment models and methods likely to be used by the psychological professional conducting a child client's psychological/developmental assessment, See SATTLER, supra note 3. See also MICHAEL J. BREEN & THOMAS S. ALTEPETER, DISPRUPTIVE BEHAVIOR DISORDERS IN CHILDREN 65-163 (1990) (discussing questionnaires, measurement devices, observation techniques, and treatments for behavior disorders such as, attention deficit hyperactivity disorder, conduct disorder, and oppositional defiant disorder); TESTING YOUNG CHILDREN: A REFERENCE GUID FOR DEVELOPMENTAL, PSYCHOLEDUCATIONAL, AND PSYCHOLOSCIAL ASSESSMENTS 1 (Jan L. Culbertson & Diance J. Willis eds., 1993)

6 Make certain to inquire about the past in addition to the current state of each category.

7 *See, e.g.,* GREEN & ALTEPETER*, supra* note 5, at 221-225; GREENSPAN, *supra* note 3, 229-230; SATTLER*, supra* note 3, at 418-19, 426-27, 440-41; Joel Nigg, What to Consider in a Child Assessment (March 1, 1997) (unpublished assessment guide, on file with authors).

8 *See* Brandt F. Steele, *The Psychology of Child Abuse*, 17 W"TR FAM. ADVOC. 19, 22 (1995).

9 Consider also a thorough chart compiled by Dr. Greenspan illustrating age-appropriate physical functioning (neurological, sensory, and motor), relationship patterns, emotional states, and affects/ expressions for children ages birth through ten years. *See* GREENSPAN*, supra* note 3, at 61-77.

10 For a more elaborate discussion of prenatal and infant development, *See*, for example, George W. Hynd & Margaret Semrud-Clikeman, *Developmental Considerations in Cognitive Assessment of Young Children, in* TESTING YOUNG CHILDREN: A REFERENCE GUIDE FOR DEVELOPMENTAL, PSHCYO-EDUCATIONAL, AND PSYCHOSOCOAL ASSESSMENTS 1 (Jan L. Culbertson & Diance J. Willis eds., 1993).

11 The information compiled in the cognitive/language section is a mere fraction of that found in a number of authoritative texts. *See e.g.,* BEE, *supra* note 3, at 205-336; BERK, *supra* note 3, at 208-245, 312-351, 420-463, 546-581; GARDNER*, supra* note 3, at 67, 167; GREENSPAN*, supra* note 3, at 61-77.

12 The information compiled in this list of emotional/ social milestones is also a small, but representative portion of that found in a number of texts. *See e.g.,* BERK*, supra* note 3, at 246-283, 352-393, 464-507, 582-623; BEE, *supra* note 3, at 337-488; GARDNER, *supra* note 3, at 462, 568, 523 (addressing, among other theories, Damon's authority and obedience recognition and Kohlber's moral reasoning); GREENSPAN, *supra* note 3, at 61-77.

13 *See* Perry & Reynolds, *supra* note 3, at 43-48.

14 *See* AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 83-85 (4th ed. 1994) (hereinafter DSM-IV). ADHD is found in approximately three to five percent of school-age children. *See* id. at 82. For a discussion of the etiology and developmental course of attention deficit hyperactivity disorder, *See* BREEN & ALTEPETER, *supra* note 5, at 11-23.

15 For example, it would be age-appropriate for a two year-old child to become restless or attempt to move around when asked to sit still for hours at a time.

16 *See* DSM-IV, *supra* note 14, at 90-91. Conduct disorder is found in six to sixteen percent of boys and two to nine percent of girls. *Id.* For a discussion of the etiology and developmental course of conduct disorder, including associated aggression and delinquency, *See* BREE & ALTEPETER, *supra* note 5, at 23, 33-37.

17 Twenty to 35 percent of adolescents experience a mild level of depression, while twelve to fifteen percent become moderately depressed, and five percent endure a severe bout of depression. *See* BERK, *supra* note 2, at 610.

18 *See* DSM-IV, *supra* note 14, at 327.

19 Approximately twenty percent of children develop an extreme anxiety. *See* BERK, *supra* note 2, at 496.

20 *See* DSM-IV, *supra* note 14, at 110.

21 *See* DSV-IM, *supra* note 14, at 413.

22 *See* DSV-IM, *supra* note 14, at 434.

23 *See* DSM-IV, *supra* note 14, at 407, 435.

The *Michigan Child Welfare Law Journal* Call for Papers

The editorial board of *The Michigan Child Welfare Law Journal* invites manuscripts regarding current issues in the field of child welfare. The *Journal* takes an interdisciplinary approach to child welfare, as broadly defined to encompass those areas of law that directly affect the interests of children. The editorial board's goal is to ensure that the *Journal* is of interest and value to all professionals working in the field of child welfare, including social workers, attorneys, psychologists, and medical professionals. The *Journal's* content focuses on practice issues and the editorial board especially encourages contributions from active practitioners in the field of child welfare. All submissions must include a discussion of practice implications for legal practitioners.

The main text of the manuscripts must not exceed 20 double-spaced pages (approximately 5000 words). The deadline for submission is July 1, 2010. Manuscripts should be submitted electronically to *kozakiew@msu.edu*. Inquiries should be directed to:

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Domestic Violence in Child Custody and Parenting Time Disputes – Part I: Impacts on Victims and the Litigation Process

by Lundy Bancroft

This article is the first of a three-part series designed to promote readers' understanding of the impact of domestic violence in child custody and parenting time cases. It describes how commonly-observed attitudes and behaviors of domestic violence perpetrators affect victims and the litigation process. Its content has been adapted from the book The Batterer as Parent. Subsequent articles will address the following topics:

- *The effects of domestic violence on parenting*
- *Assessing the risk that exposure to a domestic violence perpetrator presents to children.*

Introduction

A sophisticated understanding of the attitudes and perceptions of domestic violence perpetrators (whom I will also call "abusers" or "batterers"), their style as parents, and the tactics they most commonly employ during separation and divorce, is essential to custody and parenting time arrangements that are safe for the children and the abused parent.[1] Contrary to popular belief, children of batterers can be at just as much risk psychologically, sexually, and even physically after the couple splits up as they were when the family was still together. In fact, many children experience the most damaging victimization from the abuser at the time of their parents' separation. A genuine batterer can convincingly play at being unfairly accused, and those batterers who will be a grave risk to their children during unsupervised parenting time can be hard to separate from those who can visit safely. Custody and parenting time battles amidst allegations of domestic violence require policies and interveners (judges, mediators, evaluators and guardians ad litem) grounded in the most detailed knowledge, experience, sensitivity, and integrity. The stakes for children are very high.

This article is drawn largely from my fifteen years of experience working as a counselor and supervisor in programs for abusive men, involving contact with some1500 abusers, and hundreds of their victims, over that period. During the first few years of this period I worked almost exclusively with voluntary clients, and during the latter period worked primarily with court-mandated ones. The characteristics of the clients changed remarkably little during that shift. In the late 1980's, professionals working in programs designed for batterers began paying particular attention to the behavior of clients with respect to domestic relations processes, and we began asking victims more questions about batterers' conduct with respect to parenting time and custody. Since leaving direct work with batterers, I have served on dozens of cases as a custody evaluator (guardian ad litem) or child abuse investigator, and have worked closely with child protective services.

I also have drawn from numerous published studies, several of which are listed in the footnotes to this article. I have chosen for reasons of ease to refer to the abuser as "he" and the victim as "she," but I am aware that there is a small percentage of cases of domestic violence to which this language does not apply.

Profile of the Domestic Violence Perpetrator

Generalizations about batterers have to be made with caution. Batterers come from all socioeconomic

backgrounds and levels of education. They have the full range of personality types, from mild-mannered (in public) and socially uncomfortable to arrogant and overtly aggressive. They are difficult to profile psychologically; they frequently fare well in psychological testing, often better than their victims do due to the ill effects of traumatization that the battering has on the women. People outside of a batterer's partner and children do not generally perceive him as an abusive person, or even as an especially angry one. Batterers are as likely to be very popular as they are to be social "losers," and they may be visible in their communities for their professional success and civic involvement. Most friends, relatives, and associates in a batterer's life find it jarring when they hear what he has done, and may deny that he is capable of those acts.

The partners and children of batterers will, however, experience the offenders' generalizable characteristic attitudes and behaviors, which may be concealed when other people are present:

- The batterer is controlling: he insists on having the last word in arguments and decision-making, he may control how the family's money is spent, and he may make rules for the victim about her movements and personal contacts, such as forbidding her to use the telephone or to see friends or relatives.
- He is manipulative: he misleads people inside and outside of the family about his abusiveness, he twists arguments around to make other people feel at fault, and he turns into a sweet, sensitive person for extended periods of time when he feels that it is in his best interest to do so. His public image usually contrasts sharply with the private reality of his behaviors and attitudes.
- He is entitled: he considers himself to have special rights and privileges not applicable to other family members. He believes that his needs should be at the center of the family's agenda, and that everyone should focus on keeping him happy. He typically believes that it is his sole prerogative to determine when and how sexual relations will take place, and denies his partner the right to refuse (or to initiate) sex. He usually believes that housework and childcare should be done for him, and that any contributions he makes to those efforts should earn him special appreciation and deference. He is highly demanding.
- He is disrespectful: he considers his partner less competent, sensitive, and intelligent than he is, often treating her as though she were an inanimate object. He communicates his sense of superiority around the house in various ways.

The unifying principle of the above characteristics is an attitude of ownership. The batterer believes that once a woman is in a committed relationship with him, she belongs to him. This possessiveness in batterers is one of the critical reasons why killings of battered women so commonly happen when victims are attempting to leave the relationship; a batterer does not believe that his partner has the right to end a relationship until he is ready to end it himself. Most abusers do not express these beliefs explicitly; they are more likely to deny having them, or even to claim to have opposite convictions that are humane and egalitarian. An experienced batterers' counselor may have to spend several hours with the abuser before the underlying attitudes begin to show. These attitudes are generally evident to victims, however, who often feel frustrated at the batterer's ability to present a markedly different face to the outside world. This dual aspect to his personality also helps to keep the victim confused about what he is really like, and can contribute to her blaming herself for his abusive behaviors.

Spectrum of Violence and Other Forms of Abuse

The level of physical violence used by batterers is on a wide spectrum. Some use violence as much as a few times per month, while others do so once or twice a year or less. A significant proportion of batterers required to attend counseling because of a criminal conviction have been violent only one to five times in the history of their relationship, even by the victim's account. Nonetheless, the victims in these cases report that the violence has had serious effects on them and on their children, and that the accompanying pattern of controlling and disrespectful behaviors are serving to deny the rights of family members and are causing trauma.

Thus the nature of the pattern of cruelty, intimidation, and manipulation is the crucial factor in evaluating the level of abuse, not just the intensity and frequency of physical violence. Batterer program personnel almost never encounter a batterer

whose violence is not accompanied by a pattern of psychological abusiveness.

The Perceptual System of Domestic Violence Perpetrators

Because of the distorted perceptions that the abuser has of rights and responsibilities in relationships, he considers himself to be the victim. Acts of self-defense on the part of the battered woman or the children, or efforts they make to stand up for their rights, he defines as aggression against him. He is often highly skilled at twisting his descriptions of events to create the convincing impression that he has been victimized. He thus accumulates grievances over the course of the relationship to the same extent that the victim does, which can lead professionals to decide that the members of the couple "abuse each other" and that the relationship has been "mutually hurtful."

Although a percentage of batterers have psychological problems, the majority do not. They are often thought to have low self-esteem, high insecurity, dependent personalities, or other results from childhood wounds, but in fact batterers are a cross-section of the population with respect to their emotional make-up. Certain labels such as "control freak" or "self-centered" have the appearance of accuracy, but even these overlook the fact that the battering problem is very context-specific; in other words, most batterers do not have an inordinate need for control, but rather feel an inordinate right to control under family and partnership circumstances. Many batterers are "in touch with" their feelings and skilled in the language of therapy and recovery, which throws evaluators off the track. They may use their childhoods and emotions as an excuse, and thereby divert attention from their entitled and possessive attitudes.

Battering is a learned behavior, with its roots in attitudes and belief-systems that are reinforced by the batterer's social world. The problem is specifically linked to how the abuser formulates the concepts of relationship and family; in other words, within those realms he believes in his right to have his needs come first, and to be in control of the conduct (and often even of the feelings) of others. One research study showed that two factors, the belief that battering is justified and the presence of peers who support abusiveness, are the single greatest predictors of which men will batter; these two had an even greater impact than whether or not the man was exposed to domestic violence as a child.[2] A majority of men who batter have no discernible mental health problems.[3]

Each batterer has a unique mix of controlling and entitlement. Some monitor every move their partners make like prison guards, but at the same time are somewhat lower in entitlement, contributing more to housework and childcare than other batterers (though still less than non-batterers). Other batterers don't control their partners' freedom as severely, but become irate or violent when they are not fully catered to, or when victims remind them of responsibilities that they are shirking. The levels of manipulativeness and overt disrespect also vary, so that each batterer has a particular style.

Because batterers are typically charming and persuasive, and are often kind and attentive early in relationships, they do not necessarily need to seek out a special kind of woman to victimize. Efforts to find common ground among battered women from the point of view of background or personality type have been largely unsuccessful just as they have been with batterers.[4] Service providers who assume that the victim must have had pre-existing problems of her own can make counterproductive interventions, as pathologizing of the victim can lead to re-injury.

Batterers' Style During Separation and Divorce

An abuser's desire for control often intensifies as he senses the relationship slipping away from him. He tends to focus on the debt he feels his victim owes him, and his outrage at her growing independence. He is likely to increase his level of intimidation and manipulation at this point; he may, for example, promise to change while simultaneously frightening his victim, including using threats to take custody of the children legally or by kidnapping.

Those abusers who accept the end of the relationship can still be dangerous to their victims and children, because of their determination to maintain control over their children and to punish their victims for perceived transgressions. The propensity of a batterer to see his partner as a personal possession commonly extends to his children, helping to explain the overlap between battering and child abuse. As will be detailed in a subsequent article, a large array of studies has found batterers far more likely than non-battering men to abuse children physically or sexually. Specific additional concerns arise in the post-separation context. For example, a batterer tends

to have an exaggerated reaction when his ex-partner begins a new relationship, refusing to accept that a new man is going to develop a bond with "his" children; this theme is a common one in batterer groups. He may threaten or attack the new partner, make unfounded accusations that the new partner is abusing the children, cut off child support, or file abruptly for custody in order to protect his sole province over his children.

Batterers' Advantages in Custody Disputes

Batterers can cause severe stress for their former partners through the use of court actions. Repeated motions for increased parenting time, decreased child support, or other demands can cause victims both emotional distress and financial hardship, including potential job loss due to repeated absences from work for court dates. Batterers frequently prevail in litigation, as they have numerous advantages over their partners:

- Batterers tend to have more financial resources than do their former partners, especially in the period immediately following separation.
- There is a shortage of properly trained attorneys, particularly for litigants with low to moderate incomes.[5]
- Because of the absence of serious psychopathology in most batterers and because of the traumatic effects of domestic violence on victims, batterers often outperform their victims in psychological testing.
- As will be discussed in more detail in Part Two of this series of articles, battering tends to undermine a mother's parental authority and to create multiple tensions between mothers and children. The difficulty that battered mothers may have in controlling their children's behavior can be exacerbated in the immediate aftermath of a separation by the father's absence from the home; children may target the mother for their anger regarding the parental separation, and they may feel free to behave as they choose now that the batterer's authoritarian presence is gone. Custody evaluators may observe that the mother has trouble controlling her children and may conclude that she lacks parenting skills. At the same time, batterers often can perform well under observation, and children may appear relaxed and comfortable with the batterer in the presence of the evaluator.
- Children's statements to professionals may sometimes obscure the family history or their own present feelings and wishes. For example, it is not uncommon for a batterer to succeed in persuading the children that he is the victim in the adult relationship or that the mother's behavior causes the abusive incidents.

Also, a batterer who was previously neglectful of the children may abruptly make his children a high priority as a result of his desire to seek custody. I have observed that this change can have a powerful emotional effect on children who have been craving more attention from a batterer. Some children may have difficulty disclosing domestic violence because of their fear of repercussions for themselves or for their mothers.[6] Finally, I have observed cases in which batterers appeared to be pressuring or rehearsing their children's statements to the evaluator.

Batterers' Tactics in Custody & Parenting Time Disputes

After a break-up, the abuser sometimes becomes quickly involved with a new partner whom he treats relatively well. Abusers are not out of control, and therefore can be on "good" behavior for extended periods of time - even a year or two - if they consider it in their best interest to do so. The new partner may insist, based on her experience with him, that the man is wonderful to her, and that any problems reported from the previous relationship must have been fabricated, or must result from bad relationship dynamics for which the two parents are mutually responsible. The abuser can thus use his new partner to create the impression that he is not a risk.

An abuser may also focus on being charming and persuasive during a custody dispute, with an effect that can be highly misleading to guardians ad litem, court mediators, judges, police officers, therapists, family members, and friends. He can be skilled at discussing his hurt feelings and at characterizing the relationship as mutually destructive. He will often admit to some milder acts of violence, such as shoving or throwing things, in order to increase his own credibility and create the impression that the victim is exaggerating. He may discuss errors he has made in the past and emphasize the efforts he is making to

change, in order to make his partner seem vindictive and unwilling to let go of the past.

Where manipulation and charm do not work, the abuser may switch to intimidation, threatening or physically attacking those whom he perceives as being supportive to his partner, including his partner's lawyer. In the most extreme cases the abuser may attempt to kill the woman, her lawyer, or the children, and sometimes will succeed. In some cases custody evaluators have been afraid to release their recommendations because of their fear of the batterer's retaliation. Batterers may use parenting time as a way to create opportunities for contact with their former partners, so that they can pressure them for reconciliation, harass or intimidate them verbally, or physically assault them. Some batterers use parenting time to gain information from the children about the mother's address, place of employment, or routines. Assaults and murders sometimes occur during exchanges for parenting time.

Batterers may also continue with other forms of harassment for years after separation. As noted above, abusers' repeated court filings can periodically re-traumatize victims and children, destroying families' financial stability. Motions for custody or for increases in parenting time are common forms of retaliation for things that abusers are angry about. Such motions may also be used to confuse the court. For example, lawyers representing abusers sometimes encourage clients accused of sexual abuse to file for custody immediately; this move may cause the court to treat the sexual abuse allegations as lacking credibility because they are occurring in the context of a custody dispute, even where the allegation predates the custody dispute. Abusers who meet with periodic success in court may continue their patterns of abuse through the legal system until the children reach majority.

Batterers are less likely than non-batterers to pay child support fully and consistently.[7] Some abused individuals may be afraid to press for child support because of the danger of physical assault by batterers who explicitly threaten to hurt them if they pursue payment. Others may fear retaliation by the batterer if they seek child support, either through physical violence[8] or through actions for custody or increased parenting time.[9]

Why Domestic Violence May Be Reported at Separation/Divorce for the First Time

Court personnel and other service providers look skeptically at allegations of abuse that arise during custody and parenting time battles. Batterers try to feed these doubts by saying, "She never said I was abusive before; she's just using this accusation to get the upper hand." In fact, there is no evidence that false allegations rise substantially at this time, and there are many reasons why an abused woman may not have made prior reports. Judges, mediators, and court investigators need to take each allegation on its own merits and examine the evidence without assumptions about the timing.

It is common for a battered woman to tell no one about the abuse prior to separation because of her shame, fear, and desire to help the abuser change. Many victims quietly hope that ending the relationship will solve the problem, a myth that most professionals share; however, when a victim discovers that the abuse is continuing or even escalating after separation, she finds herself forced to discuss the history of abuse in hopes of protecting herself and her children. It is not uncommon for an abuser to become more frightening after separation than he was before, and to increase his manipulation and psychological abuse of the children, for the reasons covered above.

A victim's decision to separate from an abuser is often the last step in a gradual process of realization. Because of increased support from friends, a helpful book that she has read, or a series of discussions with a helpful advocate or support group, she may have come to understand that she has options to get free from the abuse. She is taking the leap of openly discussing domestic violence for the first time precisely because she is healing. Although some influential psychologists interpret the woman's reevaluation of the history of the relationship as evidence of vindictiveness or scapegoating on her part, it may actually indicate growing health.

The separation itself may have resulted from an escalation in the man's level of violence or verbally degrading behavior. During the two years that I handled all of the intakes to a batterer program, approximately 30% of the clients had been separated from the victim since the time of their arrest, demonstrating how frequently an escalation in violence leads immediately to a break-

up. Unfortunately, these abusers may be labeled less dangerous by evaluators, on the grounds that their violence was a response to the stress of separation and divorce, an analysis that reverses cause and effect.

Finally, because abusers create a pervasive atmosphere of crisis in their homes, victims and children have difficulty naming or describing what is happening to them until they get respite from the fear and anxiety. A period of separation may be a victim's first opportunity to reflect on what has been happening to her, and to begin to analyze and articulate her experience. Batterers can use any misunderstanding of this process to gain sympathy from evaluators. Clearly, the attitudes and behaviors described in this article have a profound effect on the litigation process, as well as on the physical and emotional safety of a batterer's intimate partner. What is less obvious to outside observers is the profound effect that these attitudes and behaviors have on the abused partner's relationships with the children, and on the safety of the children. These topics will be the subject of subsequent articles. ◎

For additional reading and an extensive bibliography, see Bancroft, L., & Silverman, J. (2002). The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics. Thousand Oaks, CA: Sage Publications.

About the Author

Lundy Bancroft has twenty years of experience specializing in interventions for abusive men and the children that are exposed to them. He has presented to over 300 audiences across the US and Canada, and appears frequently as a trainer for judges, probation officers, attorneys, and other professionals in the legal system. Lundy was featured in the PBS documentary "Breaking the Silence." He has worked as counselor and clinical supervisor on 2000 domestic violence cases. He is the author of two books in the field, including *Why Does He Do That?*, *When Dad Hurts Mom*, and co-author with Jay Silverman of the national prize-winner *The Batterer as Parent*.

Endnotes

1. For purposes of this article, "domestic violence" means a pattern of controlling behaviors, some of which are criminal, that include but are not limited to physical and/or sexual assault, emotional abuse, isolation, economic coercion, threats, stalking, and intimidation. These behaviors are used in an effort to control an intimate partner and may be directed at pets, property or others with the effect of controlling the intimate partner. See Batterer Intervention Standards for the State of Michigan, Sec. 4.1 (Jan. 20, 1999) at http://www.michigan.gov/documents/DVBISCStandards_24600_7.pdf.

2. Silverman, J., and Williamson, G. (1997). Social ecology and entitlements involved in battering by heterosexual college males: Contributions of family and peers. Violence and Victims, 12(2). Entitlement to use violence against a partner was the best predictor of which men would batter in this study of 193 college psychology students; over 20% of the sample justified beating a woman for being sexually unfaithful, and over 10% justified beating a woman for refusing to have sex; 20% admitted to having used violence against a girlfriend already, although the average age was just 20.5.
3. Gondolf, E. (1999). MCMI-III results for batterer program participants in four cities: Less "pathological" than expected. Journal of Family Violence, 14(1), 1-17.
4. Hotaling, G.T., and Sugarman, D.B. (1986). An analysis of risk markers in husband to wife violence: The current state of knowledge. Violence and Victims, 1(2). A large review of research studies found no consistent support for any of 97 generalizations about battered women except one: they appear to have an increased rate of coming from homes where there was domestic violence.
5. Family Violence Project of the National Council of Juvenile & Family Court Judges (1995). Family violence in child custody statutes: An analysis of state codes and legal practice. Family Law Quarterly, 19(2), 197-227.
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7. Tishler, C.L., Bartholomae, S., Katz, B.L., & Landry-Meyer, L. (2004). Is domestic violence relevant? An exploratory analysis of couples referred for mediation in family court. Journal of Interpersonal Violence, 19(9),1042-1062.
8. Ptacek, J. (1997). The tactics and strategies of men who batter: Testimony from women seeking restraining orders. In A Cardarelli (Ed.), Violence between intimate partners: Patterns, causes and effects (pp. 104-123). Boston: Allyn & Bacon.
9. Kirkwood, C. (1993), Leaving abusive partners. Newbury Park, CA: Sage.

Notes

Notes

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