

## **PARENTAL ABDUCTION AND DOMESTIC VIOLENCE**

**By Barbara J. Hart, Esq.**

There has been a change in consciousness about domestic violence over the course of the last ten years. We no longer believe that wife/partner beating is inevitable and private. We believe it is avoidable and criminal. We have all heard statistics that nearly 6 million women will be battered by their husbands in any single year and that that 28% of all the adult women in this country are likely to be the victims of woman abuse during an intimate relationship. We have learned that battery is the single major cause of injury to women in the U. S., more significant than auto accidents, rapes and muggings put together.

In one hour more than 200 women are battered by their husbands across the country; that's one domestic violence assault every 18 seconds. Three of four of these women may be injured in the assaults. During this seminar at least \$6,000 will be paid in medical costs related to spouse/partner abuse. More than 70 adults will face a spouse wielding a knife or gun. Almost 400 children will have witnessed their fathers assaulting their mothers. Between 40 and 100 children will be abused by fathers/mothers/caretakers. More than 40 children will be abducted by a parent. All this in one hour. And in one day as many as four women are killed in this country by their husbands or partners.

### **Children of Domestic Violence.**

Virtually all children living in a home where one parent assaults and terrorizes the other are aware of the violence. The majority of children from violent families actually witness their fathers battering their mothers. In fact, some fathers deliberately arrange for children to witness the violence. Studies show that such role models perpetuate violence into the next generation. Boys who witness their fathers battering their mothers are three times more likely, as adults, to hit their own wives. And sons of the most violent fathers have a rate of wife-beating 1,000 times greater than sons of non-violent fathers. There is some evidence that girls from violent homes are at heightened risk of being battered as adults.

Children who witness abuse frequently evidence behavioral, somatic and emotional problems similar to those experienced by physically abused children. Pre-school children often become intensely fearful, experience insomnia, sleep walking, nightmares and bed-wetting, and suffer a variety of psychosomatic problems such as headaches, stomach aches, diarrhea, ulcers, asthma and enuresis. Older boys tend to become aggressive, fighting with siblings and schoolmates and have temper tantrums. Girls are more likely to become passive, clinging and withdrawn, and to suffer low self-esteem.

Research further reveals that more than half of men who batter their female partners also abuse their children. Child abuse usually begins after a pattern of wife abuse has been firmly established. The abuse inflicted on the child by a battering husband is likely to be serious. Seventy percent of injuries inflicted on children by male perpetrators are severe and eighty percent of child fatalities within the family have been attributed to fathers or father surrogates. The more severe the abuse of the mother, the worse the child abuse.

Older children are frequently assaulted when they intervene to defend or protect their mothers. Female children are at particular risk. Daughters are more likely than sons to become victims of the battering husband, and they are six and one-half times more likely than girls of non-abusive families to be sexually abused as well. When children both observe their mothers' beatings and are abused themselves, the risks of serious and long-lasting harm are accelerated.

While courts and the general public are often impatient with battered women for not leaving the abuser, assuming that the mother and children will be safer after separation, data reveal that leave-taking is fraught with danger. The abuse of children and the mother may sharply escalate at the time of separation and thereafter as the abusing father attempts to reclaim his family. Men, who believe they are entitled to

an on-going relationship with their partners, or that they "own" them, view their partners' departure as ultimate betrayal which justifies retaliation.

"Abuse of children by batterers may be more likely when the marriage is dissolving, the couple has separated, and the husband and father is highly committed to continued dominance and control of the mother and children. Since . . . abuse by husbands and fathers is instrumental, directed at subjugating, controlling and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to . . . dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of . . . control of their mother."

Moreover, research confirms that the post-separation adjustment of children is not facilitated by joint custody or frequent visitation arrangements when there is chronic conflict and violence between the divorced parents. The more frequent the access arrangement between children and the non-custodial parent, the greater the level of physical and emotional abuse and conflict between the parents. The more severe the parental conflict, the greater the child's distress and dysfunctional behavior. Specific parental behavior particularly associated with troubled post-divorce adjustment in children includes: "fighting in front of the children; demeaning the other parent in front of the children; asking the children to carry a hostile message to the other parent; asking intrusive questions about the other parent; and making the children feel the need to hide their feelings or some information about the other parent." On the contrary, the adjustment of children seems to be associated with a warm relationship with a sole custodian who provides a predictable routine and consistent, moderate discipline and who buffers the child against the stresses of divorce.

Too many prosecutors and courts, uninformed about family violence and the danger it poses to adult and child victims, consider the abuse of wives or mothers by male partners as largely irrelevant to parenting, concluding either that men who are violent toward their partners may, nonetheless, be very good fathers or that domestic violence has little effect on the children or that even if the father was violent during cohabitation, he will cease beating and terrorizing the mother upon separation. All of these conclusions are erroneous.\*

### **Parental Abduction and Domestic Violence.**

The research literature on parental abduction is limited. The most illuminating recent study suggests that in about half of the instances of parental abduction, the abducting parent made prior threats of abduction. Only about 15% of the abductors used force or violence in abduction; yet almost 40% of the abductions by fathers involved force or violence as contrasted with 10% when the abducting parent was a mother. About 54% of the sample identified domestic violence as occurring during or after the marriage or relationship. This is substantially larger than the general population of divorcing couples. Approximately 55% of the parents abducting children were fathers and about 55% of the children abducted were boys. Another study reveals that about 69% of parental abductors are fathers or their agents.

Mothers are more likely to abduct children to protect themselves or a child from abuse or battering than are fathers; 20% of the women abductors and only 6% of the male abductors identified flight to avoid abuse as the reason for parental abduction. It appears to be generally true that men abduct out of revenge while women do so out of a desire to be with their children.

There are also differences between non-abducting mothers and fathers. Mothers whose children were abducted were more likely to have sole custody of the children, had fewer resources to seek return of the children, were less educated, were more apt to be unemployed or employed in lower status jobs and were earning significantly less than fathers whose children were abducted. Non-abducting mothers are more likely to be the victims of domestic violence perpetrated by the abductor than were men and were more likely to identify domestic violence as the reason for the divorce than were non-abducting men.

## **Strategies to Protect Children and Prevent Parental Abduction.**

Having identified the jeopardy to which children and battered women may be exposed in the context of domestic violence, it is imperative that professionals, including prosecutors and judges, identify strategies to safeguard against these risks.

1. **Risk identification and safety planning.** A critical strategy for child protection is risk identification. Once battered women have recognized the abuse inflicted on them and the risk for child abuse and abduction, they can then design strategic plans to avert violence or abduction whether they elect to remain in residence with the batterer or separate from him. To accomplish this, criminal justice system personnel must consistently identify domestic violence and talk about safety planning with battered women. Most domestic violence programs will assist battered women with safety planning; referrals should thus be made to local shelters and domestic violence advocacy programs.\*

2. **Supervised visitation centers.** A practical and feasible strategy in most communities is the establishment of supervised visitation centers. These facilities can offer supervised exchange, on-site and monitored visits, protections against parental abduction, as well as education and counseling for abusing fathers on parenting and the impact of domestic violence on children.

3. **Custody law reform.** The Louisiana Code, amended in the summer of 1992, is likely to serve as a model for legal reform efforts. The statute is an extensive articulation of safeguards for abused parents and children. The Louisiana legislature set forth its intent as follows:

"The legislature . . . finds that the problems of family violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power and that such parents act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of family violence. Consequently, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of family violence."

The new statute creates a rebuttable presumption against an award of sole or joint custody of children to a parent who has perpetrated physical or sexual abuse or other "offenses against persons " upon the other parent or against any of the children. The statute directs courts to award only supervised visitation with the abusing parent and conditions that visitation on the offending parent's participation in and completion of a treatment program specifically designed for perpetrators of domestic violence.

The code further states that the presumption against sole or joint custody awards to the perpetrating parent can only be overcome by successful completion of the treatment program, by refraining from abuse of alcohol or illegal drugs and by demonstrating that the absence or incapacity of the abused parent, or other circumstances, are such that it is in the best interest of the children to award custody to the abusing parent. The code also directs that unsupervised visitation is only permissible if the abusing parent has "successfully completed (the) treatment program, is not abusing alcohol or psychoactive drugs, poses no danger to the child, and that such visitation is in the child's best interest."

The statute provides that the court must deny any visitation or contact of a parent who has sexually abused his or her child or children with the children until the offending parent has successfully completed a program particularly designed for sexual abusers and the court subsequently concludes that supervised visitation is in the child's best interest. Beyond this, where a parent is being prosecuted for any crime against a child or the other parent, if the state or the abused parent requests, the court must prohibit all contact between the accused and the other parent and all children of the family, except that supervised visitation may be authorized if the court concludes that it is in the best interest of the child.

The code defines supervised visitation as "face to face contact between a parent and a child which occurs in the immediate presence of a supervising person approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction, or humiliation of either the abused parent or the child. The supervising person shall not be any relative, friend, therapist, or associate of the parent perpetrating family violence. With the consent of the abused parent, the supervising person may be a family member or friend of the abused parent. At the request of the abused parent, the court may order that the supervising person shall be a police officer or other competent professional... In no case shall supervised visitation be overnight, or in the home of the violent parent." The offending parent is required to pay any and all costs associated with the supervised visitation.

The code requires that an injunction against family violence be included in all divorce, separation, custody and visitation orders or judgments where family violence has been identified. The injunction must prohibit "the violent parent from in any way contacting the abused parent or the children except for specific purposes set forth in the injunction, which shall be limited to communications expressly dealing with the education, health, and welfare of the children, or for any other purpose expressly agreed to by the abused parent." It also must contain language prohibiting "the violent parent, without the express consent of the abused parent, from intentionally going within fifty yards of the home, school, place of employment, or person of the abused parent and the children, or within fifty feet of any of their automobiles, except as may otherwise be necessary for court ordered visitation or except as otherwise necessitated by circumstances considering the proximity of the parties' residence or places of employment."

Codes in about one-third of the states specifically direct the courts to protect the child and/or the abused parent from further harm in crafting custody or visitation awards.

In Pennsylvania, the courts may not award custody or visitation to a parent who has been convicted of kidnapping, unlawful restraint, and enumerated acts of child abuse or endangering the welfare of children until the court has appointed a qualified professional to provide specialized counseling to the offending parent and has taken testimony from that professional regarding provision of counseling. Furthermore, if the court does award custody or visitation to the offending parent, it may "require subsequent periodic counseling and reports on the rehabilitation of the offending parent and the well-being of the child . . . (and) if . . . the court determines that the offending parent causes a threat of harm to the child, the court may schedule a hearing and modify the order of custody or visitation to protect the well-being of the child." In Pennsylvania's protection order statute, a court may not grant an abuser custody or unsupervised visitation when it finds that the perpetrator of domestic violence has abused the minor children or has been convicted of interference with the custody of children within two calendar years prior to the application for the protection order. The court must consider and may impose conditions on custodial access to assure the safety of the abused parent and minor children.

Certainly, even rigorous adherence to these protective custody codes will not immunize abused parents and children from parental abduction, but they are prevention strategies that merit implementation and evaluation.

**4. Child protective service reforms.** At the present time, state child abuse prevention and protection statutes do not authorize the exclusion of a child-abusing parent or a perpetrator of adult domestic violence from the family residence as one of the enumerated remedies that may be imposed to protect children. Furthermore, few squarely address parental abduction or the threat thereof as child abuse. A minority of codes direct that the abusing parent may only be given access to an abused child or a child at risk in secure and supervised visitation programs.

Child protective services agencies and prosecutors should begin to identify domestic violence against mothers as a significant risk marker for child abuse and parental abduction. They must also recognize that protection of the battered mother is an effective remedy for protecting the abused child and preventing abduction. Therefore, child abuse intervention plans (in child protection proceedings) and conditions imposed on release and in sentencing (in criminal cases) should be routinely constructed to protect battered mothers so that they can more effectively protect children and prevent abuse and abduction. Abused mothers are frequently held accountable for the violence perpetrated by batterers and child abusers. They may be held responsible for the violence perpetrated by the father, yet are not provided with the power to avert the risks posed to children in the context of domestic violence. Research reveals that when battered women apprehend that the abuser is also violent to the children or poses a risk of abduction, they increase help-seeking efforts to escape the abuse and protect their children. In fact, there is strong evidence that battered women's efforts to utilize community resources to end the violence are greater when child abuse is present, demonstrating that battered women may be most motivated to change their circumstances when they conclude that it is critical to protect their children from the risks of abuse. Research further reveals that child abuse, whether by fathers or mothers, is likely to diminish once the battered mother has been able to access safety services and achieve separation from the violent father.

### **Conclusion.**

Parental abduction can be prevented. Early intervention by justice system personnel can avert the risks posed to children and their mothers in the context of domestic violence, can erect barriers to parental abduction, and can assist battered women in establishing stable and secure households independent of battering men. Prevention efforts may offer children the best hope for violence-free, stable and loving families.

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