BEYOND POLITICS AND POSITIONS: A CALL FOR COLLABORATION BETWEEN FAMILY COURT AND DOMESTIC VIOLENCE PROFESSIONALS

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The domestic violence advocacy and family court communities have each grown dramatically over the last three decades. Although these professional communities share many values in common, they often find themselves at odds with one another on a host of issues. This article examines the practical, political, definitional, and ideological differences between the two communities and calls for them to join forces and collaborate on behalf of children and families.

Keywords: domestic violence; family courts; mediation; differentiation; AFCC; NCJFCJ

“I’m just a soul whose intentions are good; oh Lord, please don’t let me be misunderstood.”
— Eric Burden and the Animals

I. INTRODUCTION

The professionals who make up the domestic violence advocacy and family court communities, without a doubt, are passionate and committed, and that is a good thing. However, at times, in their zeal to share their knowledge, some of them may deliver their messages in terms that others perceive to be virtually absolute. For example, some insist that mediation and shared parenting are cure-alls for almost any parental conflict, including those involving domestic violence; others maintain that in such matters an adversarial process and restricted parental access to children are the only answer. We appreciate and depend on this type of passion and commitment; and we also recognize that, in this line of work, there are simply no absolutes. So we want to begin by clearing the decks just a bit. We believe:

- Mediation does not work in all situations and certainly not in all cases involving domestic violence;
- All domestic violence is not the same;
- Shared parenting is not always the best solution;
- Some female victims of domestic violence want their children to have a relationship with their fathers, even if he has been violent;
- Some cases are better off going to court; and
- Women are sometimes the perpetrators of domestic violence.

To some people, these statements are evident; others struggle mightily with their implications. In fact, in our combined 45 years of experience in the family court and domestic

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violence communities, we have seen many colleagues take firm stands contrary to any number of the above statements. We understand that there may be good reasons for taking strong positions; but we believe that, in the end, the presentation and defense of absolute and unassailable “truths” may be inconsistent with people’s realities. If we are to serve children and families effectively, we must work together in a manner that is positive and productive. Our purpose in writing this article is to discuss why this collaboration is so important, why it is so difficult, and what steps we can take to make it successful.

This article attempts to continue in public a difficult conversation that began over dinner in October 2004 in Nashville, Tennessee. Representatives from the Family Violence Department of the National Council of Juvenile and Family Court Judges (FVD/NCJFCJ) and the Association of Family and Conciliation Courts (AFCC) met to discuss the failures of our respective organizations and of professional communities working with families and family courts around issues related to domestic violence (judges, family court professionals, researchers, and domestic violence advocates) to collaborate effectively on one of the most significant problems of our time.\(^1\) Our commentary does not claim to represent the positions of these professions or of the organizations for which we work. However, we believe that we are not alone in our views.

As organizations, the AFCC and FVD/NCJFCJ differ in many ways, including our perspectives and approaches to the issue of domestic violence. The FVD is housed in the NCJFCJ, the oldest, largest judge membership organization in the United States. The NCJFCJ’s various departments create and deliver curricula and products designed to help the organization’s members—and others—do their jobs more effectively and efficiently. In particular, helping courts and related systems deal more effectively with cases involving domestic violence is the FVD/NCJFCJ’s \textit{raison d’être}. Historically, the FVD has focused first and foremost on classic battering\(^2\) (Ganley, 1996); appropriate interventions by the criminal, civil protection order and family courts; and the impact exposure to such violence has on children. Its funding over the years has come from a variety of private foundations and from the federal government. At any given time, it is working on a half-dozen or so large projects, all involving extensive work with the courts and the domestic violence advocacy community, among others.

To do its work effectively, the FVD has for the 20-plus years of its existence been involved closely with the domestic violence field and, partnering with that community, has served as a catalyst for a number of major initiatives that have significantly advanced its cause. Moreover, the FVD’s leaders themselves worked for years on issues of domestic violence in courts and communities, before coming to work at the NCJFCJ. Accordingly, though the FVD and the domestic violence advocacy community are not one and the same, it is entirely appropriate that the FVD/NCJFCJ has partnered with the AFCC to begin the collaboration that is the subject of this article and to bring members of the advocacy community to that table. In the continued work we hope will follow, it will be important to ensure that those whose primary mission is working with victims of domestic violence and their children continue to have their own independent representation.

The AFCC is interdisciplinary, representing more than a dozen professions including judges, lawyers, mediators, custody evaluators, parenting coordinators, parent educators, researchers, and legal scholars. Its members have been at the forefront of developing practices and guidelines in a variety of arenas such as mediation, custody evaluation, parenting coordination, and parent education. Historically, the AFCC has addressed domestic violence in child custody matters primarily in the context of the practices of its members. It has conducted a handful of projects and conferences over the years that have focused on
domestic violence and has published three special issues of *Family Court Review* on domestic violence. During the 1980s and 1990s, the AFCC was a prominent leader in the divorce and child custody mediation movement and a professional home to many mediators at a time when the domestic violence community largely and vociferously opposed mediation in cases involving domestic violence. Policy and practice disagreements around conciliatory dispute resolution processes and their appropriate place in domestic violence cases have created professional tensions and frequently put the two organizations on opposite sides of the fence. In spite of these differences, many professionals are members of, and have participated actively with, both organizations.

As coauthors, our experiences to some degree mirror those of our respective organizations. Billie Lee Dunford-Jackson practiced family law for 16 years in private practice; helped found a shelter for battered women and their children; represented domestic violence victims in civil and family court; and since 1997 has worked for the FVD/NCJFCJ, where she has served as the department’s co-director since 2004. Peter Salem is a former mediator, court services director, and mediation trainer and educator. He has worked for the AFCC since 1994 and has served as executive director since 2002. Each has received cross-training in the other’s field of expertise.

The conversation that began in Nashville in 2004 resulted in the Wingspread Conference on Domestic Violence and Family Courts in February 2007. The conference was a small think tank of 37 researchers, legal scholars, family court professionals, and advocates who were asked to examine critical issues that affect the ability of members of these communities to work together. In particular, we focused on a topic of considerable controversy: differentiation of domestic violence, the recognition that not all uses of violence in interpersonal relationships are the same, and that, if we can distinguish these uses from one another in a meaningful way, we can better design interventions, allocate resources, and determine outcomes appropriate for each. Even with the leadership of two skilled facilitators working together (one selected by each organization), the conference was difficult. While there was a good deal of open and honest discussion, participants nonetheless did some walking on eggshells. And while there were many agreements, there was not complete consensus and some things remained unsaid. The specific tensions are reported by co-reporters, Nancy Ver Steegh and Clare Dalton (2008) in the Wingspread Report.

The easy route would have been for us not to have written this article and for the other coauthors in this journal issue not to have written together either. *Family Court Review* could simply have published the report that follows and called it a day. It would be easy to discontinue this conversation. After all, we have been avoiding it for a long time; and we have all become pretty good at going about our business without addressing one another’s concerns. We acknowledge that, at some point, the conversation still may become so difficult that we can no longer continue. But as of this writing, we believe that we can no longer, in good conscience, continue to ignore one another. If we are going to improve services to families in our family courts, the time to collaborate is now.

The professional communities addressed by this article are not monolithic. Members within each have different jobs, personal experiences, and beliefs, all of which create different perspectives. The more each community knows about the variables and nuances represented within the other, the easier communicating will be. And it is important to recognize that there are shining examples of jurisdictions where family court professionals and domestic violence advocates have worked in harmony. We believe that organizations such as the AFCC and NCJFCJ are uniquely situated to help acquaint the communities with each other more fully and foster existing collaborations—and that they have a practical, if not a moral, imperative to do so.
Our purpose here is threefold: to offer a substantive analysis of reasons for the divisions among all of our professional communities, to raise awareness of the important related political considerations, and to provide both motivation and constructive ideas on moving beyond politics and positions to collaborate with one another. It is our hope to do so with balance and respect for each other’s professional community. Part II of this article identifies the nature of the domestic violence advocacy and family court communities and their respective impacts on the justice system. Part III sets forth the case for collaboration. Part IV examines the challenges—practical, political, definitional, and ideological—that we confront in our struggle to work together. Part V highlights our current collaborations. Part VI provides some suggestions as to how we might move forward together.

II. COMMON GOALS, DIFFERENT PATHS

It seems as though this interprofessional conversation should not be so difficult. Members of our respective professions often excel at collaborating with others. Importantly, we agree on many principles, including goals of safe and healthy families, empowerment, self-determination, and homes that nurture children. There also appears to be universal agreement that abuse, physical or otherwise, has no place in intimate relationships and that abusers must be held accountable for their actions. Nonetheless, members of the different professional communities bring different perspectives to the problem, perspectives largely, though not exclusively, shaped by professional and personal experience, mandates, and ideology.

Ironically, although the growth of the family court and domestic violence advocacy movements paralleled one another in time, the two traveled divergent paths and ultimately ended up on opposite sides on a host of issues.

DOMESTIC VIOLENCE ADVOCACY COMMUNITY

The domestic violence advocacy community consists largely of shelter-trained and shelter-based advocates; nonlawyer legal advocates; and attorneys representing victims in criminal, protection order, and civil cases arising from violence. The community has close ties to batterer intervention programs and children’s advocacy that often are part of shelter services. While advocates may espouse a spectrum of views on any number of issues, the community as a whole has been remarkably successful at speaking with one voice to achieve national attention and support for victims of domestic violence.

Members of the domestic violence advocacy community focus first on the safety and empowerment of victims, whom they identify for the most part as women and their children, as well as on accountability and rehabilitation of abusers. Over the last three decades, advocates have become an increasingly important and powerful voice, both politically and with respect to imparting information and impacting attitudes in professions ranging from law enforcement to health care. The efforts of the advocacy community have resulted in major shifts in public policy and in attitudes, especially on the criminal side, where the movement first focused its attention. For instance, in that time, approximately 4,700 statutes protecting domestic violence victims and children have been passed by state legislatures (NCJFCJ, Family Violence Legislative Update, 1997–2006). Although it is by no means universal, society now, much more so than in the past, acknowledges domestic abuse, once viewed as family conflict to be smoothed over and settled privately behind closed doors, as
criminal activity that must be met with appropriate sanctions. In the legal system, the advocacy community has focused on increasing and improving legal advocacy for victims and children and has resisted outcomes or approaches that fail to focus on safety and on holding batterers accountable for their actions.

In a sense, the advocacy community has helped victims of abuse collectively stand up for themselves and refuse to compromise on the vital issues of safety and self-determination. There can be no doubt that the efforts of domestic abuse advocates over the last 30 years have dramatically improved legal and social remedies for victims and their children.

Along the way, the community has broadened its focus to include the family court, seeking similar successes in that arena. However, family court presents special challenges—different clientele in a different context and a particular tension between safety for the victim and/or children, on the one hand, and preserving a relationship between either or both and the batterer, on the other. Therefore, strategies that worked so well on the criminal side may not transfer seamlessly to family court.

**FAMILY COURT PROFESSIONALS**

Family court professionals are those offering services related to separation, divorce, child custody, and related issues. They make up a diverse interdisciplinary community that includes judges, lawyers, and an increasing number of mental health and dispute resolution professionals who work with families in conflict. These professionals include mediators, custody evaluators, parent educators, parenting coordinators, lawyers who represent children, and best-interest lawyers. However, not all family court professionals are necessarily trained on dealing with cases involving domestic violence. Members within this community often see things from different perspectives. Indeed, there is sometimes a sharp divide between the growing number of professionals supporting conciliatory processes such as mediation and collaborative law and initiatives such as unified family courts, on the one hand, and those favoring more traditional, law-centered, legal systems and processes, on the other.

The family court community is far less identified as having a single voice than is the domestic violence advocacy community. However, to the extent that it can be characterized as a single movement, the family court community has experienced a major transformation in the last quarter-century (O’Connell & DiFonzo, 2006; Schepard & Salem, 2006). While there have been many national and international trends, for example, mediation, parenting coordination, and parent education programs, much of the change the community has experienced has come from the ground up in piecemeal fashion. In many ways, this transformation has moved family courts away from adversarial procedures, fault finding, and requiring the parties to be accountable to the judicial system and has taken them toward private ordering of their disputes. Many within the community largely discourage litigation and adversarial practice for typical divorce and child custody actions and view and encourage conciliatory processes as better ways to meet the needs of the entire family, and especially of children. In view of this trend, and the universal mandate for judges to act in the best interests of children (a term included in every state’s statutory scheme, though often loosely or completely undefined there), family court professionals tend to focus primarily on effective planning for the future.

These efforts have also resulted in major shifts in policy and attitudes. Mandatory mediation, parent education, and other collaborative processes now dominate the family law
landscape; and cooperative parenting and shared custody have become the norm (Schepard, 2004). For many families, these trends have led to children’s increased postseparation contact with both parents, stronger and more effective parenting, and overall better long-term outcomes.

III. THE CASE FOR COLLABORATION

As noted above, it would be easier to leave this alone, in view of the many areas of disagreement, which we will address below. So why do we insist that it is not only wise, but imperative, that those in the family court and domestic violence advocacy communities make the difficult choices? Simply stated, we believe that our common desire to serve children and families and provide appropriate and effective services and outcomes for all family court users should outweigh any differences that we have. If we collaborate effectively, we can eliminate the mixed messages to local professionals that so frequently pit advocates and family court professionals against one another; we can search together for ways to meet the needs of children; we can develop and implement appropriate interventions using the expertise and political will of both communities; and we can make the most effective and efficient use of existing resources. And we should work together because we believe collaboration will help us to achieve our mutual goal of safer, healthier families.

IMPROVING PRACTICE BY ELIMINATING MIXED MESSAGES

Bringing multiple perspectives to a problem can be invaluable, but if these perspectives are allowed to stand alone, they will likely do more harm than good. Families experiencing domestic violence need the best of both worlds. However, the family court and advocacy communities may work with different resources and different colleagues, use different professional terminology, rely on different research, and speak to different constituencies—yet the clientele they serve frequently overlap. These differing perspectives may result in mixed messages sent from national leadership through training programs, conferences, and publications to those at the local level about everything from how to define basic terms such as domestic violence, mediation, or custody evaluation to circumstances under which shared or parallel parenting may or may not be appropriate.

As long as this is the case, effective services and outcomes for victims of domestic violence and their children will suffer. Some will be placed in unsafe situations, unprotected from ongoing abuse. Others may be caught up in overly intrusive interventions and inappropriately restrictive parent–child contact. To make matters worse, these mixed messages have the potential to replicate disagreements at the local level rather than supporting a sorely needed problem-solving approach. If we are to improve services and outcomes, we need to speak with a consistent voice. If we are to do that, we must begin to resolve the tensions between the movements.

MEETING THE NEEDS OF CHILDREN

Our communities share a common belief in the safety and welfare of children and the importance of healthy, nurturing families. We readily acknowledge that we may not define these ideas in the same way. The tension as described by Ver Steegh and Dalton (2008) is
between the safety of children on the one hand and contact and a relationship with parents on the other. There is no doubt that we must place safety first and that children benefit most from healthy relationships with two parents. But the gray area in the middle is fertile ground for the most difficult questions. At what point does contact with a parent become unhealthy or dangerous for a child? What are the dangers of terminating a parent–child relationship? How can one effectively gauge the emotional safety of children? Can a victim be so traumatized as to become such an ineffective parent that the children should be removed? We do not pretend to have concrete answers to these questions, and we are well aware of the emotion and complexity they indulge; but for children from violent homes whose parents are involved in the family court system to stand a chance, family court professionals and domestic violence advocates must search for answers together as colleagues rather than separately as combatants.

DEVELOPING APPROPRIATE INTERVENTIONS

There is a need to develop, disseminate, and implement effective screening tools and appropriate interventions for victims and perpetrators of domestic violence and their children. These tools must both help professionals differentiate and take account of nuances and also be useful across a wide spectrum of cases. There must be an understanding that different types of violence require different interventions and that the stakes for getting it wrong can be enormous. It is not only imperative that victims, perpetrators, and their children receive the appropriate services, it is also critical that interventions and restrictions not be placed on families unnecessarily. It is certainly better to be safe than sorry, but let us not overlook the often devastating impact on families when they must experience intrusive and, at times, dehumanizing interventions.

In order to develop the most effective interventions, the expertise of those in both communities is necessary. Moreover, for interventions to be implemented appropriately there must be buy-in from family court and domestic violence professionals alike, and this is best achieved through a collaborative process.

MAKING THE MOST EFFECTIVE USE OF RESOURCES

Budgets in our family courts are shrinking every year, while caseloads are growing dramatically. Meanwhile, domestic violence—in one form or another—is a constant. Resources are so scarce that working together may not be enough, without more, to develop effective practices and broader bases of agreement. But we know for certain that we will not help matters by continuing to work apart.

Let us be clear that differentiation of domestic violence is already occurring. Every day, victim advocates, judges, lawyers, mediators, custody evaluators, and others make determinations about how best to respond to cases involving allegations and acts of domestic violence. They have no choice but to do so; there are insufficient resources to provide everyone with everything they need, so services are rationed, at best in a thoughtful but somewhat ad hoc manner, based on the perceived severity of the situation. We believe that this situation is not acceptable. Trying to do such a difficult job without the appropriate tools creates potential dangers, and greater support is needed. But we simply cannot accomplish developing, funding, and effectively implementing the necessary instruments and interventions in a vacuum. Getting it right will be a complex task. It requires a united front.
COLLABORATION WORKS

There are multiple examples of local communities where the advocacy and family court communities have worked together to develop screening protocols, coordinated community responses, special domestic violence courts, and other creative and effective interventions. This type of collaboration has happened to a far lesser extent nationally. We hypothesize that, for at least three reasons, there may be more success in collaborating and building trust at the local level than anywhere else. First, the local professionals know each other, are a part of the same community, and interact with one another on a regular basis. Second, they have a common goal of improving specific services; and they serve the same actual families, not abstractions developed for the sake of policy discussions. And third, in their efforts to improve services in their community, they confront the reality that resources are limited—everyone cannot get everything they want, and compromises must be made. Therefore, the discussions concern achieving specific results in actual cases rather than how to achieve political goals.

IV. SO WHY IS THIS CONVERSATION SO HARD?

We believe the case for collaboration is compelling. Yet, we have fallen short. The reasons are numerous and complex, and there is a tendency by many of us to obscure the underlying issues. If we are to overcome these challenges, we must first acknowledge them together. They include: (1) a complex entanglement of ideology, identity, livelihood and turf; (2) differences in defining domestic violence including gender issues; (3) an historic lack of trust; and (4) resistance to moving ahead.

THE ENTANGLEMENT OF IDEOLOGY, IDENTITY, LIVELIHOOD, AND TURF

As the family court and domestic advocacy movements have developed their respective presences over the last 30 years, each has fostered within its ranks a host of professionals who have become passionately dedicated not only to the various disciplines they represent, but also to the ideology out of which their particular discipline developed. So while the principles of safe and healthy families, empowerment, and self-determination remain important to both movements, they are often working with different clientele or the same clientele in different contexts. Therefore, each has carved out a path in some ways exclusive of the other; and their members have often cemented a commitment not only to those principles, but also to their preferred professional methodologies. In the process, a complex entanglement of professional identity and livelihood, ideology, turf, and politics has emerged.

As the domestic violence advocacy and family court communities have been establishing their identities, professional and financial infrastructures have grown up in each, infrastructures that amplify the impulse to protect each side’s professional investment in that community’s way of doing business. The result has been that members of each community may view the protection of its infrastructure as indistinguishable from guarding the community and its values. While understandable, and often laudable, this state of affairs leaves each movement vulnerable to outside criticism that its motivation consists more of turf protection, financial interest, self-preservation, and political currency than of altruistic goals.

For example, the mediation community is composed largely of those committed to consensual dispute resolution. It has often been directly at odds with battered women’s
advocates, who historically have considered mediation inappropriate for cases involving domestic violence (Hart, 1990; Sun & Woods, 1989). Furthermore, some scholars (Bryan, 1992; Grillo, 1991) have suggested that, abused or not, women are inherently disadvantaged in mediation. For professionals who are committed to the importance of mediation services and have spent their careers developing, nurturing, and working in these programs, the potential curtailment, or even extinction, of programs and services represents a multiple threat: rolling back the advances mediation has made in the adversarial system, the end of vitally important mediation services for those who need them, and the potential loss of professional identity and livelihood.

On the other side of the coin, for years, victim advocates have used the term domestic violence to refer exclusively to classic battering, that is, a complex of violent activity and coercive behaviors motivated by a batterer’s intent to control the victim and children. By staying on this message, the advocacy community has built a powerful infrastructure that supports victims and children subjected to the coercive tactics of batterers. Its response to the growing awareness of multiple types of violence in intimate relationships, all with adverse impact on children, has often and understandably been to resist both a diffusion of its message and the concomitant risk of shifting resources away from the female victims and children. This threat is evidenced by challenges to federal funding for battered women’s shelters by men’s rights groups (Anderson, 2002). Such a development would, of course, also undermine the advocacy movement’s very self-definition and undercut the structure it has so laboriously put in place. Again, the purest of motivations and deeply held values related to professional identity have become inextricably entangled with turf and financial issues, thereby opening the community to external criticism.

Based on our experience, we are comfortable asserting that these examples are real, not theoretical. And they demonstrate natural and appropriate tendencies to protect the values, programs, and infrastructures that the communities have taken decades to establish and that without question serve important human needs. At the same time, if left unacknowledged, a rigid adherence to orthodoxy and the entanglement of multiple motivations may create distrust and an unwillingness of either to engage in collaboration with the other.

DIFFERENCES IN DEFINING DOMESTIC VIOLENCE

While the definitional issues are a part of the entanglement described above, it is important that they be addressed separately. As noted, the growing number of ways in which the advocacy and legal and social science communities define intimate partner violence creates challenges in forming a solid basis for discussion. One concept, supported by a considerable number of researchers and scholars, and adopted by many in the advocacy community, is based on the premise of a patriarchal society where men use violence and other abusive methods to maintain power and control over women and where social institutions such as the family court support this gender bias (Stark & Flitcraft, 1996; Marin & Russo, 1999). Under this definition, males are viewed overwhelmingly as the primary aggressor. Strong legal advocacy and a traditional adversarial process are typically viewed as the most effective route for victims and their children who need to be protected from a battering spouse or father. It follows from this viewpoint that female victims who are involved in divorce-related parenting disputes should avoid mediation, cooperative parenting, and other processes involving ongoing interaction with an abusive partner.

Another definition contends that all domestic violence is not the same—that it ranges from the chronic and systematic battering defined in the paragraph above to isolated,
divorce-related physical aggression and that such a wide range of types of events requires a corresponding menu of interventions from which to choose those that best serve victims and their children in any given case. A growing number of researchers and scholars support this perspective (Anderson, 2002; Jaffe, Johnston, Crooks, & Bala, 2008; Johnson & Ferraro, 2000; Johnston & Campbell, 1993; Ver Steegh, 2005). This view takes the position that parents’ capacity to participate in mediation and counseling varies, as does the appropriateness of children having contact with a violent offender who is also their parent.

Gender Issues

These historically competing definitions have had professionals talking past one another for years, with the gender issue often serving as a flashpoint. The discussion about gender and domestic violence may well be the most difficult in this entire arena. It taps directly into issues of gender equity; fairness; neutrality of courts and court personnel; and fundamental, conflicting, and often unarticulated values and assumptions that form our society’s underpinnings.

Procedural Fairness. One issue related to gender is the perceived notion from the family court side that advocates believe research supporting the overwhelming prevalence of males as perpetrators in classic battering should be considered probative in the individual case and that women must routinely be given the benefit of the doubt when conflicting allegations exist. Because a classic batterer minimizes, denies, and blames the victim when violence is alleged, it follows that any male doing so is exhibiting behaviors that confirm his guilt. This catch-22, however, does not allow for the possibility of a false accusation.

Many advocates contend that this is a misperception of their community’s belief and agree that this characterization offends the sensibilities of all of those, from the advocacy and family court communities alike, who are committed to a fair and impartial justice system. Just as we all agree that intimate partner violence of any kind is harmful and unacceptable, we also believe there should be consensus that each case must stand on its own facts and meet whatever is the appropriate burden of proof.

Apples and Oranges. The second gender landmine, of more recent vintage, has to do with how to define those types of violence which most professionals, advocates included, understand that women perpetrate in roughly equal proportions to men. There is general agreement that these uses of violence are distinguishable, both in intent and outcome, from the classic battering referred to above. However, there is no current consensus among either researchers or practitioners as to how to classify their various types. Many outside the domestic violence advocacy community believe that violence, apart from classic battering, has received neither appropriate attention nor a fair allocation of resources.

Contrary to the common perception of those on the outside, many in the domestic violence advocacy community have moved in recent years toward accepting the view that not all uses of violence in interpersonal relationships are the same. Many in the community now subscribe to the view that, although physical violence used as one strategy among a range of other coercive tactics to obtain and maintain control over an adult partner and children is largely a male-on-female phenomenon, for other uses of violence, women perpetrate in percentages roughly equivalent to men.

For these voices, the remaining sticking points tend to be that the most deadly violence generally results from classic battering and that having chosen that problem as the focus of
their remarkably successful efforts over the last three decades, they feel as though they are being criticized for not working on other problems as well.

The contentious debate around gender issues has, for the most part, been counter-productive and divisive. This may be an inevitable outcome, because it strikes at the very self-definition and core values of the domestic violence advocacy movement and can appear to pit those values against the core values of the justice system and the family court community. We do not pretend that we can make this easier to talk about or that we have a way to put the issue to rest; however, we suggest that gender issues may serve less as a lightning rod if we look at them as part of a larger and clearly growing discussion on types of violence.

**Linking Definition, Methodology, and Ideology**

Ver Steegh and Dalton (2008) note that research employing differing definitions and methodologies offers a variety of findings, some of which are directly contrary to one another. Some researchers examine classic battering (Ganley, 1996); some assert that intimate partner violence is perpetrated more by women than by men, including the severe form (Dutton, 2006); and other research suggests that, except in classic battering, there is more mutual abuse and female abuse of men than is generally acknowledged (Johnson & Ferraro, 2000). Most researchers and scholars acknowledge that negative psychological and physical consequences of abuse are greater for women than for men (Anderson, 2002; Kelly, 2003).

The definitional challenges and their link to ideology, methodology, and perspective are best summed up by Professors Nancy Ver Steegh and Murray Straus, whom Ver Steegh cites. She notes:

Researchers from different perspectives have engaged in a 30-year disagreement concerning annual assault rates and the male to female ratio of assaults. The controversy is rooted in the fact that “family conflict studies” favored by family violence researchers show higher annual assault rates and more nearly equal male to female initiation ratios than the so-called “crime” studies cited by feminists. These inconsistent findings are attributed to differences in definition and method stemming from contrasting professional viewpoints (2005, p. 5).

Indeed, it appears that research on domestic violence exists in support of just about any proposition and that, often, as soon as findings are published, efforts quickly follow to discredit them through methodological or other critiques that are at times informed by underlying political agendas. Our purpose here is not to analyze or critique competing methodologies. Rather, we suggest that most researchers have something of value to offer and that openness to dialogue is likely to be the surest and most productive route to consensus. As Murray A. Straus concludes:

I argue that neither side can give up their position because it would be tantamount to giving up deeply held moral commitments and professional roles. I conclude that society needs both perspectives. Neither side should give up their perspective. Rather they should recognize the circumstances to which each applies (1999, p. 18).

This observation affirms the intricate and complex connection between ideology and methodology, on the one hand, and professional identity, on the other. We agree with Straus
that multiple perspectives are necessary, and we also believe that all of us must become more open to understanding the viewpoints of others.

LACK OF TRUST

There is, at times, a profound lack of trust between the family court and domestic violence advocacy communities. Writing around the same time as Straus, Dalton identified the conflicting paradigms of advocates and family court professionals and how this situation impedes trust. Dalton notes the cognitive dissonance or discomfort humans usually experience when confronted with new information inconsistent with beliefs they already hold and the tendency for people to fill gaps in their knowledge with information derived from their own experience and education. This tendency supports the self-perpetuation of contrasting ideologies and drives professionals further apart. Dalton states:

In this charged atmosphere, it is easy for the different constituencies to take sides, for each side to accuse the other of bad faith, and for neither side to listen with an open mind to what the other has to say. Unaddressed, this dynamic can result in each constituency talking only to itself because the risks of being mischaracterized or ignored by the other are too great and the chances of genuine communication across party lines too small (1999, p. 290).

Why Our Communities Do Not Trust Each Other

Trust is lacking for many reasons. On the one hand, we do not know each other. On the other, some of us think we know each other all too well. Over the years, our views have been publicly misrepresented, our words taken out of context, our organizations and colleagues stereotyped, and individuals among us publicly disparaged. Some claim that advocates care only about female victims, even at the expense of children’s well-being and certainly at the expense of the father–child relationship. Some tell family court professionals that they do not understand domestic violence and that they are more concerned with processing cases and getting agreements than with the safety of women and children. In other words, it is politics as usual. It is hard to imagine any context in which these types of allegations could do anything other than erode existing relationships and impede the building of new ones.

Politics and Trust

Politics and trust are words rarely linked to one another. As Professor Mary O’Connell writes, “[t]he battered women’s movement is many faceted, but it is surely political in the original sense of that term” (1999, p. 269). According to O’Connell, the original sense of politics as defined by Webster is “the science and art of civil government;” but removing the s (from politics) changes the definition to “prudent, crafty, or scheming.” “The political need not be tawdry,” O’Connell states, “but somehow the distrust remains” (1999, p. 270).

It seems safe to agree with O’Connell that the domestic violence advocacy community clearly is political, that is, accomplished in the science and art of civil government. The family court community, though perhaps not as purposefully so, also has its political aspects. The myriad advocacy groups representing fathers, mothers, children’s rights, alienated parents, and others that pummel the community, courts, and media with contradictory messages serve only to exacerbate the distrust that inevitably arises out of political motivation. These
groups often deliver important messages, although some seem to have personal axes to grind. But successful political advocacy depends upon staying on message, which is typically delivered in 30-second sound bites. Thirty seconds leaves little time for nuance, making it challenging to identify and account for underlying interests. Groups seeking to get their message out are not necessarily looking to build bridges, it is true, but we believe that this has to be a highly nuanced discussion. Understanding one another’s interests is the key to success, and that cannot happen so long as we speak only in slogans.

RESISTANCE TO MOVING AHEAD

We have already discussed a number of built-in incentives for both the family court and the domestic violence advocacy communities to stand where they are. Each has carved out a niche and has built a strong infrastructure around attracting resources and developing methodologies for serving its chosen clientele. Each has enjoyed considerable success in changing the culture in which it operates—as noted, the advocacy community has effected widespread change in legislation and built solid national political backing to protect the safety and other interests of women battered by their partners and of their children exposed to the violence. On the family court side, we have noted the transformation of family court proceedings away from litigation toward private ordering. For at least three additional, interrelated reasons, moving ahead is hard.

No Margin for Error

Even acknowledging that there are differences in uses of violence in interpersonal relationships, there may be reluctance to enter that relatively uncharted territory, especially for the domestic violence advocacy community. If we are going to define typologies, categorize each case as belonging to one or the other among them, and develop interventions deemed appropriate according to the diagnosis of the case, then several issues must be addressed. Who will define these typologies and how much nuanced understanding of classic battering and other forms of violence will these definers have? There are enormous challenges in distinguishing a classic batterer who uses violence only once (because that is all it takes to establish power and control) and then maintains the status quo by means of nonviolent coercive strategies, from a person who is under tremendous stress and uncharacteristically lashes out in a moment of poor impulse control. As hard as the road has been to today’s relative success, there may be limited incentive for the domestic violence advocacy community to open itself to trying to get clear about, educate about, and rely on the ability of police; courts; prosecutors; and dispute resolution, mental health, and domestic violence specialists to engage competently in the detailed and nuanced analysis that would accurately interpret every case, without getting it wrong. Even without these added complexities, interveners make mistakes, sometimes with deadly consequences. The benefit of moving ahead with differentiation is the potential for individual cases to receive the interventions that best fit their needs. The risk is that, in getting where we want to be, the added complexities may also mean getting it wrong more often than we do now.

The Law of Unintended Consequences

On a related note, the advocacy community may be cautious about embracing with open arms the idea of moving ahead, when at times in the past a step forward has actually meant
a step back. For example, in the days when the community was trying to get across the concept that assaulting one’s partner is or should be considered criminal behavior and treated accordingly, it often found the police reluctant to arrest in a situation where, if the same events occurred between two strangers, an arrest certainly would have resulted. So advocates lobbied for, and in many states succeeded in getting passed, mandatory arrest laws. Arrest rates of victims defending themselves from their assailing partners promptly skyrocketed in a number of mandatory arrest jurisdictions. Or when advocates—concerned that so many judges believed a batterer could be a good father as long as he did not abuse the children—educated the community about the impact on children of being in a violent household, anticipating greater restrictions on batterers’ inappropriate and unsafe access to their children, victims instead found themselves losing their children to child protective services for failing to protect them from their fathers’ violence.

These experiences raise the concern that further unintended consequences may lie in wait for domestic violence victims if the advocacy community steps into this unexplored territory.

Scarcity of Resources

We have several times alluded to the success the domestic violence community has had with identifying its primary concern, defining that concern succinctly, publicizing its message, and garnering support nationally, in terms of both legislation and allocation of resources. Now the family court community and some researchers come to the advocates with the message that, although the problem they have cared passionately about for years is, in fact, a bona fide problem, it is not the only problem. There are other related problems they should care about, too; and they should be willing to use some of their hard-earned resources to address these other problems as well.

In fact, these other problems—uses of violence in families in forms other than male power-and-control–motivated battering—are real, and in fact, they do tear families apart and cause harm to children. So, there are good reasons for the domestic violence community to care and to engage, but it is important to acknowledge as well the many good reasons why this situation presents a difficult choice.

V. WHAT WE HAVE ACCOMPLISHED

The AFCC–FVD/NCJFCJ collaboration is a time-consuming project; and as of this writing, it lacks financial support from foundation or federal grants. But we have made a commitment to move ahead, and we have dedicated our resources, as have many individuals involved with both organizations. While it is our hope to fund this effort fully, we are moving ahead together in the meantime in order to maintain progress and further develop relationships between the organizations and those who have traditionally worked on opposite sides of the fence.

- AFCC and NCJFCJ representatives presented jointly at conference sessions on the subject of differentiation and domestic violence at the AFCC 44th Annual Conference (May–June 2007).
- Wingspread conference participants co-presented sessions at a regional training conference cosponsored by the NCJFCJ Family Law and Juvenile Department and AFCC in September 2007.

This issue of *Family Court Review* features several articles coauthored by writers whose previous work is viewed as coming from very different perspectives.

Growing out of Wingspread and the articles now in process, working groups have been established focusing on the language and terminology of domestic violence, types of violence and related parenting plans, screening and assessment, and culture.

Future conferences and publications are anticipated through the NCJFCJ and AFCC that will highlight the collaborative work of our organizations.

These projects, and those we hope will follow, not only create greater substantive knowledge for all of us, but build trust that will allow relationships to flourish, which will in turn produce even greater progress in the future. Between the completion of this writing and the publication date of this issue of the journal, we hope that much more will be in the works. We know that a lot of difficult work lies ahead.

**VI. TWO STEPS FORWARD, ONE STEP BACK**

If efforts at collaboration are to succeed, they must spread well beyond the participants at Wingspread, members of the NCJFCJ and AFCC, and readers of this journal. There must be collaboration at all levels. We encourage all of our colleagues to find ways to collaborate and to consider some of the lessons we have learned (and are learning) in this process.

- **Take your time:** If it were easy, we would be finished by now. The process of building trust and tackling extraordinarily difficult substantive issues takes time and effort. Think long term (years, or at least months, but not days or weeks) and start small but think big.
- **Have lunch (or dinner, breakfast, or coffee):** Invest some time in getting to know your colleagues before engaging in substantive matters. Get away from the office, the shelter, or the courthouse and break bread in a relaxed environment.
- **Look in the mirror:** Reflect upon past experiences; identify your triggers; articulate what has helped in difficult conversations as well as what has made things more challenging.
- **Communicate better and more often:** It seems obvious, but simply communicating with respect is important. Return calls and answer e-mails quickly, even if just in acknowledgment.
- **Listen carefully and learn:** Another seemingly obvious one, but often overlooked.
- **Cross-train one another:** Take the opportunity to share new ideas or interventions with one another. It need not be a formal training program. It could be brown bag lunches with advocates, judges, the local bar, family court committee, or mediation association. This approach helps build bridges and make better practitioners.
- **Develop joint projects:** Start with small projects demanding fewer people, such as cosponsoring a presentation or discussion roundtable, or coauthoring an article for a local newsletter. Develop a working rhythm and slowly, but surely, expand your reach.
• **Structure processes inclusively**: Be as inclusive as possible. Everyone may not be at the table at all times, but try to make certain that everyone is accounted for.

• **Focus on potential, but never forget risks**: Every step forward jointly is a step away from previous comfort zones. Remember that moving out of one’s comfort zone too quickly can have negative repercussions.

**VII. CONCLUSION**

We cannot help but notice that the section, “So Why is This Conversation So Hard?” takes up most of the space in this article. While this was not necessarily our intent when we started writing, it is perhaps a reflection of the reality we face. We have noted a number of political agendas and raised the potential damage they may inflict. But we must acknowledge that we have a political agenda of our own. We believe collaboration is not simply desirable or fashionable, it is absolutely necessary and it must endure if we are to address with effectiveness the challenges that we face. For this cause, we truly are advocates.

We have taken the first steps. We are confident that others in our organizations and other colleagues have taken steps independently to advance this discussion; and we are hopeful that we will not only continue taking these steps, but will as well expand our ranks and continue to include others in this journey.

**NOTES**

* We would like to extend our heartfelt thanks to our colleagues at the AFCC and NCJFCJ for their wisdom and insight, collaborative actions and spirit, and hard work on this project. We thank the Johnson Foundation and Program Officer Chris Beem for supporting the Wingspread Conference on Domestic Violence and Family Courts. We would especially like to thank the Hon. Susan Carbon, Loretta Frederick, Janet Johnston, Andrew Schepard, Maureen Sheeran, and Nancy Ver Steegh for reviewing previous drafts of this article.

1. Participants were Billie Lee Dunford-Jackson, co-director, FVD/NCJFCJ; Peter Salem, executive director, AFCC; Hon. William Jones (ret.), former NCJFCJ Board member; Leslye Hunter, then AFCC President; and Hon. Hugh Starnes, then AFCC President Elect.

2. The FVD uses as a working definition for classic battering a pattern of assaultive and coercive behaviors that operate at a variety of levels—physical, psychological, emotional, financial, and/or sexual—that perpetrators use against their intimate partners, a definition derived from Ganley & Schechter (1996), as cited in *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge’s Guide*, NCJFCJ (2004, Revised 2006), p. 8.

3. A few of these include Honolulu, HI; Louisville, KY; Steuben County, IN; Plymouth, NH; Portland, OR; and Reno, NV.

**REFERENCES**


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**Peter Salem** is executive director of the Association of Family and Conciliation Courts and is an adjunct professor of law at Marquette University Law School where he teaches mediation. He is former director and mediator with Rock County Mediation and Family Court Services, and has worked in the dispute resolution field since 1986. He has provided training and technical assistance for court service agencies throughout the United States and is co-editor of the book *Divorce and Family Mediation: Models, Techniques and Applications*. In 1990 he co-founded a mediation and domestic violence working group in southern Wisconsin and has worked on local efforts to build bridges between the domestic violence and family court communities.

**Billie Lee Dunford-Jackson** is the co-director of the Family Violence Department of the National Council of Juvenile and Family Court Judges. She works on law and policy issues pertaining to child custody and child protection in the context of domestic violence and provides training and technical assistance to practitioners seeking new approaches to working with families where both mothers and children are abused. She was instrumental in developing and launching the National Judicial Institute on Domestic Violence and continues to play an active role in the Department’s expanding educational programs for judges and court personnel handling domestic violence caseloads.