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## You May Never See Your Child Again: The Batterer's Visitation Rights To Protect Children From Future Abuse

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# YOU MAY NEVER SEE YOUR CHILD AGAIN:

## ADJUSTING THE BATTERER'S VISITATION RIGHTS TO PROTECT CHILDREN FROM FUTURE ABUSE

PRENTICE L. WHITE\*

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### INTRODUCTION

Shannon<sup>1</sup> was finally leaving the hospital after four hours of surgery and three days of recovery. Her three broken ribs had finally healed to the point that her physician felt comfortable letting her return home. Jimmy, age six, and Karen, age eight, jumped into Shannon's lap while the hospital nurse pushed Shannon down the hallway. Shannon hugged and kissed her children repeatedly. She had not seen them since her accident.<sup>2</sup> As they walked down the hall, the children chanted, "*Mommy's coming home, mommy's coming*

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1. The stories depicted in this Article are, unfortunately, common to many victims of domestic violence. Therefore, as a courtesy to my former clients and their counselors, I will only refer to the victims and their abusers by fictitious names.

2. See Marlene Rapkin, *The Impact of Domestic Violence on Child Custody Decisions*, 19 J. JUV. L. 404, 406 (1998) (asserting that children are harmed even if they do not witness the violence). For example, battered women cannot care for their children when they are hospitalized or bedridden and thus, their children suffer as a result. *Id.*

*home.*” The children’s excitement even encouraged the nurses to join in on the chorus.

Within minutes, Shannon was outside the emergency doors and into the arms of her husband, Bruce, who gently put her into their SUV and buckled her into the passenger seat while she watched her children nestling themselves in the backseat. As she talked to her children about their school activities and what was new at home, Shannon noticed that Jimmy had several bruises on his right leg. As Shannon rubbed Jimmy’s bruised leg, Jimmy looked at her as though she had discovered a secret that he wanted to keep to himself for the rest of his life.<sup>3</sup> Shannon questioned Jimmy about the bruises, but Bruce quickly interjected that Jimmy fell in the front yard while he and Karen were playing. Bruce’s sudden and forceful response<sup>4</sup> to Shannon’s question not only scared her, but also jolted her consciousness, and she remembered why she was really admitted into the hospital.

Her broken ribs were not caused by her fall “supposedly occurring” in the bathroom. The injuries resulted from Bruce punching her in the chest after she told him that she wanted to start teaching again. Of course, she recalled getting up off of the floor after she was punched, but her ribs were broken before the fall. In fact, her ribs were broken many times, and many times she made excuses for her injuries. Shannon then felt ashamed for telling her children that she hurt herself falling in the bathroom. Jimmy was not the original target for Bruce’s rage and control problems—she was the target. Shannon sat in the passenger seat and stared at her helpless son. She could not help but think that she was the reason for her son’s bruises; she was the reason her husband felt it was okay to hit, punch, and slap her children.<sup>5</sup> Shannon then looked at Karen and wondered if Bruce

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3. See U.S. ADVISORY Bd. ON CHILD ABUSE & NEGLECT, U.S. DEP’T OF HEALTH & HUMAN SERVS., U.S. CHILD ABUSE AND NEGLECT: CRITICAL FIRST STEPS IN RESPONSE TO A NATIONAL EMERGENCY 3 (1990) [hereinafter U.S. CHILD ABUSE AND NEGLECT] (estimating that the United States spent billions of dollars on programs that dealt with the repercussions of the nation’s failure to prevent child abuse and neglect). However, regardless of the amount of funding, a solution to this rising epidemic will not materialize until this country recognizes that “substance abuse . . . juvenile delinquency, prostitution, pornography and violent crime . . . all have substantial roots in childhood abuse and neglect.” *Id.*

4. See generally James Garbarino & Joan Vondra, *Psychological Maltreatment: Issues and Perspectives*, in PSYCHOLOGICAL MALTREATMENT OF CHILDREN AND YOUTH 25 (Marla R. Brassard et al. eds., 1987) (claiming that psychological and emotional maltreatment can consist of repeated verbal assaults and manipulations, which can lead to lowered self-esteem in the abused child).

5. See U.S. CHILD ABUSE AND NEGLECT, *supra* note 3, at 5-6, 15-16 (stating that, despite the nation’s goal to protect its children, hundreds of thousands of children are still being starved, abandoned, severely beaten, raped, and sodomized each year). Further, the consequences of this maltreatment will remain with the victims throughout their lives and could result in many children tragically losing their lives.

had assaulted her. What if Bruce raped Karen like he raped her? Tears slowly fell down her face as she replayed the last ten years of her tormented marriage on the ride home.

When Bruce blew his horn at another motorist, Shannon awoke from her trance and decided that if Bruce's abuse of her somehow caused him to abuse her children, then she would be the reason that the violence stopped.<sup>6</sup> Seconds later, Shannon grabbed her ribs and told Bruce that she was having extreme pain in her side. She asked him to take her back to the hospital. Because Bruce was still in his state of contrition, Shannon was able to use Bruce's cell phone to call her mother and tell her to pick up the children from the hospital because she was going to be re-admitted. Bruce quickly turned the vehicle around and drove his ailing wife back to the emergency room.

Once Bruce admitted Shannon into the hospital, he told her that he had to go to the office for a few hours to complete some work that he had neglected to finish since her "accident." Shannon assured Bruce that she would be alright in the doctor's care. Ten minutes after Bruce left, Shannon told the nurses that she needed to check out and that her mother would be along soon to pick her up from the hospital.<sup>7</sup>

Shannon, her mother Ida, Karen, and Jimmy left the hospital within the hour and never returned.<sup>8</sup> Shannon and her children went to a battered woman's shelter in another state, while Ida went to visit an ailing relative on the west coast.<sup>9</sup> A week later, Bruce finally heard from Shannon and the children in the form of a divorce

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*Id.*

6. See Lesley E. Daigle, *Empowering Women to Protect: Improving Intervention with Victims of Domestic Violence in Cases of Child Abuse and Neglect; A Study of Travis County, Texas*, 7 TEX. J. WOMEN & L. 287, 314 (1998) (stating that "[e]mpowering women to protect children requires long-term, continuous support of their efforts to become independent").

7. See Elaine Landau, *Many Factors Contribute to Child Abuse*, in CHILD ABUSE: OPPOSING VIEWPOINTS 118 (David Bender & Bruno Leone eds., 1994) (asserting that a parent in a stressful situation is significantly less likely to abuse a child if that parent can obtain assistance from another person or a social services agency, and that even being relieved of child care duties for a few hours can make a difference).

8. See N. Zoe Hilton, *Battered Women's Concerns About Their Children Witnessing Wife Assault*, 7 J. INTERPERSONAL VIOLENCE 77, 82 (1992) (noting, in a study of battered women, that one factor that influenced a battered woman to leave her abuser was an awareness of the long-term risks the abuse would have on the children).

9. See Maureen Sheeran & Scott Hampton, *Supervised Visitation in Cases of Domestic Violence*, 50 JUV. & FAM. CT. J. 13, 13-21 (1999) (explaining that abusers tend to escalate the violence to another, more dangerous level after the victim moves away to separate from the abuser); see also Daigle, *supra* note 6, at 310-11 (stating that mothers who attempt to leave or leave the batterer often face harassment from the batterer, significant financial insecurity, homelessness, and risk of serious physical harm).

petition. The petition indicated that Shannon wanted not only a divorce but also alimony, child custody, and child support. Fortunately, the divorce and alimony were granted within seven months, but the battle for custody and child support continued because Shannon refused to allow Bruce to have *unsupervised* visitation with either Jimmy or Karen.<sup>10</sup>

The district court heard the evidence, but decided to take the matter under advisement for three hours before issuing its judgment. In its order, the court granted Bruce unsupervised visitation with the children every other weekend and every other holiday. Shannon was infuriated with the court's order. Nevertheless, after a short break in the ladies' restroom, Shannon appeared to accept the court's decision. She walked over to Bruce, and calmly told him that she would deliver the children to him that weekend. Shannon then picked up her purse, shook my hand, and left the courthouse. After leaving the courthouse, Shannon was never seen or heard from again.

While I do not condone Shannon's willful disregard for the court's order, I do understand her actions. An abused mother can become so frustrated with the present legal system that she starts to place her children's physical and emotional well-being over any repercussions she may face from being found in contempt.<sup>11</sup> Unfortunately, the courts frequently misunderstand the abused mother.<sup>12</sup> Her stories of past abuse are usually characterized as just a device she uses to dilute the father's right to visit with the children.<sup>13</sup>

For the mother, the custody proceeding is her only opportunity to show the public (i.e. the court) that the father is unfit, immoral, and violent.<sup>14</sup> But for the father, it is his moment to punish the mother for disclosing his secret behavior to the world.<sup>15</sup> He begins the

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10. See LA. CIV. CODE ANN. art. 103 (West 2004) (permitting Louisiana parties to obtain a no-fault divorce if they have lived separately and apart for at least six continuous months).

11. See Sheeran & Hampton, *supra* note 9, at 14 (noting that a worried mother would rather violate a court order or disappear with the child to protect the child from the battering father rather than comply with certain decisions of the court).

12. See Daigle, *supra* note 6, at 297-98 (illustrating how courts sometimes fail to understand an abused mother's fear in situations of domestic violence, going as far as penalizing the battered mother for not having taken action sooner to protect her children).

13. See Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1085 (1991) (stating that courts tend to believe that battered women are lying about the alleged abuse so as to be vindictive or gain an edge in court proceedings).

14. See *id.* at 1090-91 (arguing that courts should admit all types of evidence indicating abuse because it is the only way for the batterer's voice to be heard in the decision-making process, especially in light of the psychological and economic issues that already place the battered woman at a disadvantage).

15. See Mary E. Asmus et al., *Prosecuting Domestic Abuse in Duluth: Developing*

punishment by taking away the children and teaching her not to *ever* go against him again.<sup>16</sup>

The father begs the court for its sympathy by showing that he just wants to be with his children and to love them, while the mother pleads with the court to remove its blindfold and see the father for whom he really is: a manipulator, a chauvinist, a control freak, and an abuser.<sup>17</sup> Unfortunately, because the batterer intentionally shines the light of embarrassment over his battered mate by attacking her fitness to raise children, courts normally consider the mother to be the culprit.<sup>18</sup>

Normally, the issue of child custody arises during a divorce proceeding where the couple has conceived children during marriage. However, custody disputes can also surface in situations where the mother and father were not married at the time the child was born. Despite the status of the couple at issue, whenever the relationship ends because of domestic abuse, the court proceedings become more complicated for the woman who feels that it is her responsibility to protect her minor children from the batterer. In some rare situations, the mother is the one who has to be quarantined from the children.<sup>19</sup>

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*Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 *HAMLIN L. REV.* 115, 118 (1991) (explaining how batterers retaliate against their victims for pressing charges through increased physical and emotional abuse). Batterers will threaten and intimidate the victim until the victim is too scared to proceed with the court action. *Id.*

16. See Peter Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 *FAM. L.Q.* 43, 45 (1989) (arguing that a batterer who is determined to abuse or even kill his partner will do so despite "a piece of paper ordering him not to").

17. See Barbara J. Hart, *The Legal Road to Freedom*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* 13-28 (Marsali Hansen & Michele Harway eds., 1993) (explaining that the law did not address women's interests and struggles to be free of abuse until the late 1970s). For example, the civil protection order, which protects a woman from her abuser, was first adopted in 1976. *Id.* at 20.

18. See, e.g., *Wiley v. Wiley*, 459 So. 2d 105, 106 (La. Ct. App. 1984) (considering a case where the wife/plaintiff sought a divorce and sole custody of the couple's only child because the defendant/husband had violent tendencies and had beaten the child with a metal welding rod before the divorce pleading was instituted). The plaintiff indicated that she needed hip replacement surgery after the defendant had severely beaten her. *Id.* The defendant admitted to severely injuring his wife, but attempted to thwart the plaintiff's allegations by testifying that his injuring the plaintiff was an accident because it was in response to the wife's adultery. *Id.* at 107. To substantiate his allegations, the defendant had his nephew testify that the nephew and the plaintiff had sexual intercourse during the plaintiff's marriage to the defendant. *Id.* The defendant attempted to introduce the judgment of divorce from the plaintiff's previous marriage on the grounds of adultery. *Id.* The appellate court discredited the husband's attempts to suggest that the wife was predisposed to committing adultery because the prior judgment had little probative value. *Id.*

19. See Rebecca D. Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 *UCLA WOMEN'S L.J.* 99, 115-17 (1997) (citing examples of how a court will take away custody of the children from the non-batterer because it views the non-batterer as mentally unstable and prone to abusive relationships).

In *Evans v. Terrell*,<sup>20</sup> the father filed suit against the mother, requesting sole custody, because he believed she had physically and verbally abused their minor child. Although the father was not married to the mother at the time the custody suit was filed, he was supporting his son financially and he was listed as the father on the child's birth certificate.<sup>21</sup> Prior to instituting this action, the father noticed that his son exhibited several unexplainable marks and bruises on his body.<sup>22</sup> His son explained that his mother had whipped him with a belt because he did not take his medicine.<sup>23</sup> The father also recalled an occasion where he saw the mother push and physically shake his son.<sup>24</sup> The son was later diagnosed with chronic recurrent tonsillitis.<sup>25</sup>

According to the mother's testimony, she terminated the relationship with the father because he exhibited some violent behavior.<sup>26</sup> She also testified that she was afraid to let her son continue visiting with his father.<sup>27</sup> In response to these allegations, the district court established an interim visitation schedule for the father and granted temporary custody to the mother until an evaluation could be conducted on the parties and their minor child.<sup>28</sup> Following a full evaluation, the counselor testified that the mother admitted giving the young child a *severe whipping*.<sup>29</sup> As a result, the counselor recommended a *temporary time-sharing* schedule between the father and the maternal grandparents.<sup>30</sup>

In light of the overwhelming evidence suggesting that someone had abused the child, the district court decided to preserve the relationship between the child and both parents by granting physical custody (i.e. sole custody)<sup>31</sup> to the father and supervised visitation to the mother until the parties could be re-evaluated to ascertain

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20. 665 So. 2d 648, 649 (La. Ct. App. 1995).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *See id.* at 651-52 (clarifying the trial court's judgment by indicating that the maternal grandparents were to supervise the children during the mother's visitation time). The grandparents did not actually have custody of the children during the supervised visitation. *Id.*

31. *See* LA. CIV. CODE ANN. art. 136 (West 2004) (permitting the court to award visitation rights to a parent who is not granted custody or joint custody of a child).

whether the child had actually been abused and by whom.<sup>32</sup>

Generally, it is the father who stands accused of molesting, raping, fondling or physically abusing the children in the household.<sup>33</sup> Of course, this does not mean that it is impossible for women to be abusive.<sup>34</sup> This Article will concentrate on those situations where the mother is attempting to flee the abusive relationship, but the father tries to manipulate and control her by either attacking her fitness to be the custodial parent or by seeking a visitation schedule that would permit him to have liberal visitation with the children and more exposure to the mother.<sup>35</sup>

More specifically, this Article will examine how domestic abuse detrimentally affects the child's home environment, and will emphasize that the batterer's right to visitation should be constantly monitored, critiqued, and, if necessary, modified.<sup>36</sup> Finally, this Article will discuss specific terms and conditions that a court may want to consider when formulating a visitation schedule for a father who has been accused of battering the mother and possibly his children.<sup>37</sup>

#### I. CUSTODY PROCEEDINGS INVOLVING FAMILY VIOLENCE

The average custody battle encompasses a divorced heterosexual couple, standing before a neutral arbiter, each with the goal of convincing the court that they are the best parent to educate and nurture the minor child or children.<sup>38</sup> While the couple may have accepted the idea that their relationship is over, they remain diligent

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32. See *Evans*, 665 So. 2d at 650 (concluding that the court would re-evaluate the custody situation within forty-five days of the final judgment and finalize an award of joint or sole custody depending on the results).

33. See generally Joan S. Meier, *Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657, 672-90 (2003) (discussing the tendency of courts during custody disputes to discount claims by battered women that their children are at risk of abuse or have experienced direct abuse by their father due to the courts' emphasis on "father involvement" in custody matters and great skepticism over the apparent credibility of women accusers; in other words, some courts believe women accusers make these accusations of child abuse purely to receive a favorable custody outcome).

34. See, e.g., *State v. Moore*, 568 So. 2d 612, 614 (La. Ct. App. 1990) (affirming the manslaughter conviction of a wife who shot her husband through a door when the husband, who indicated that he wished to leave the marriage, returned to the apartment and demanded that she open the door so he could retrieve some personal items).

35. See discussion *infra* Part I.

36. See *id.*

37. See discussion *infra* Part II.

38. See, e.g., *Howze v. Howze*, 735 So. 2d 619, 621 (La. 1999) (considering a custody dispute between parents over two sons, and articulating the importance of keeping siblings together upon divorce so that the children benefit from each other's companionship and affection).

in persuading the court that they can be model parents to their children, even though they are still wrestling over who should receive the house, vehicle, alimony, and various other assets.<sup>39</sup> Although both parents promote fairness and equality in each of their arguments to the court, the mother continues to ask the court to appoint her as the domiciliary parent and to give the father only visitation rights.<sup>40</sup> Despite their unwillingness to remain in a loving relationship together, neither parent wants to isolate the other from the children.<sup>41</sup>

Unfortunately, this is not the perception in a typical custody proceeding where domestic abuse is involved.<sup>42</sup> Relationships terminated by family abuse have different and unique characteristics that require the courts to implement different and unique resolutions. Unlike the parents in the previous paragraph, the father in a domestic violence case has not willingly accepted, nor will he ever accept, the idea that the relationship is over.<sup>43</sup> He believes that he is the reigning king of the family and that only he can announce the end of the relationship.<sup>44</sup> Therefore, the father's only goal is to depict the mother as unfit, immoral, and incapable of having *his* children.

The mother, on the other hand, is not in search of equality or fairness. She refuses to allow the court to be impartial or neutral in her situation. She wants justice. She wants protection.<sup>45</sup> She wants her children to be safe and totally isolated from their abusive father. To her, the idea that the father has consistently abused her in this

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39. See LA. CIV. CODE ANN. art. 134 (West 2004) (enumerating factors that a court must consider in determining the best interests of the child regarding child custody following a divorce, such as which parent would provide love, affection, spiritual guidance, food, clothing, and the best permanent home).

40. See, e.g., *Howze*, 735 So. 2d at 621 (demonstrating that the mother felt the court could serve the best interests of the two children by placing them together to create family solidarity).

41. See LA. CIV. CODE ANN. art. 136 (West 2004) (permitting the parent not awarded custody visitation rights unless the court finds that visitation is not in the child's best interests).

42. See Meier, *supra* note 33, at 679 (finding that most statutes which prefer joint custody of the children contain an exception for situations of domestic violence to try to protect the children from the batterer).

43. See *id.* at 695-96 (explaining that the batterer uses violence as a means of ongoing control in the relationship and that this control can remain for years after the last violent episode).

44. See *id.* at 679 (claiming that a "batterer with maximum access to his children may only further his abuse by increasing his control over and harassment of the mother").

45. See Finn, *supra* note 16, at 43 (explaining that a woman who has been battered by her husband generally desires to have immediate relief from harm, and this relief is usually in the form of a civil protection order which prevents further violence and grants further protection).

relationship should overshadow the court's desire for neutrality.<sup>46</sup> It should convince the court that the father is not only incapable of respecting her, but he is also unfit to have any sort of custody over *her* children. The abused mother may escalate her aggression against the father's request for visitation if she knows that the children also witnessed her abuse. She would gladly surrender her rights to all of the family's financial assets to be assured that her children will never be in their father's presence again.<sup>47</sup>

Usually the mother's request for sole custody is regarded with a hint of skepticism.<sup>48</sup> Most courts perceive the mother's allegations of domestic abuse as her opportunity to abuse the father because the father no longer wants a relationship with her.<sup>49</sup> In this instance, the court does not see her as a loving, caring, and nurturing parent. Instead, it defines her as a vindictive, emotionally disturbed woman who only wants sole custody of her children because it will either make the father return to the relationship or give her more control over when and where the father will see his children.<sup>50</sup> In the court's perception, nothing would give this mother more pleasure than for the court to terminate the father's parental rights over her children.<sup>51</sup>

While the court seems to be content with labeling the mother as a vindictive parent who is seeking leverage over the father, it still overlooks the reality that abuse (whether physical, verbal, or mental) has infiltrated the family.<sup>52</sup> Family abuse—regardless of what form it

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46. See Asmus et al., *supra* note 15, at 117 (explaining that many battered women advocates believe that most family court judges carry the ideology that the sanctity of marriage and the family supersedes the safety and autonomy of women—the primary victims of domestic violence).

47. See Linda G. Mills, *Intuition and Insight: A New Job Description for the Battered Woman's Prosecutor and Other More Modest Proposals*, 7 UCLA WOMEN'S L.J. 183, 185 (1997) (arguing that mandatory prosecution of batterers is not appropriate in some domestic abuse cases because this policy is more concerned with punishment as opposed to protection).

48. See Meier, *supra* note 33, at 669 (reiterating a case where the judge found a battered woman's "stories" to be "puffed up," "exaggerated," and "bizarre").

49. See *id.* at 686 (arguing that it is quite common for judges to discount battered women's claims that their children are at risk, partially because they see the children as a "stake" in a control game between the parents).

50. See *id.* at 696 (stating that the mother's character flaws are often the product of battering and not a sign of hatred or vindictiveness towards the father).

51. See Mary E. Becker, *Double Binds Facing Mothers in Abusive Families: Social Support Systems, Custody Outcomes, and Liability for Acts of Others*, 2 U. CHI. L. SCH. ROUNDTABLE 13, 25 (1995) (indicating that judges and mental health professionals tend to see mothers as either saintly good mothers, like a Madonna, who have no interests apart from perfect service to their children; or as demonic bad mothers who, at best, are wholly indifferent to their children and, at worst, delight in hurting their children).

52. See *id.* at 15 (arguing that courts should avoid demonizing mothers who make allegations of abuse during divorce proceedings and instead should adopt a presumption that a father who has abused a mother is not a fit custodian).

takes—still hurts the children if not immediately addressed.<sup>53</sup>

In 2002, I represented a woman named Margaret who was seeking a protective order against her abusive husband, Mark. Margaret was twenty-five-years-old and had three children (two girls and a boy) during her four-year marriage to Mark. When I initially met Margaret, she told me that she wanted a protective order against her husband because he pressured her to quit school, constantly criticized her about her weight, and told her repeatedly about the many sexual advances he would receive at his job from other women. He also would not *let* her get a babysitter so that she could attend school.<sup>54</sup>

The day that she decided to separate from her husband and file for a protective order, Margaret came home and noticed Mark's car in the driveway.<sup>55</sup> This surprised her because Mark rarely came home in the middle of the workday. As Margaret and her three children walked passed the vehicle, she noticed a woman's handbag in the front passenger seat. She went inside the house, took the children to their room, and proceeded to go to the main bedroom. When she opened the door to their bedroom, she saw Mark having sex with another woman. The woman immediately got out of the bed and ran past her. Margaret then proceeded to look for Mark's gun that he kept in the top dresser drawer. Partially nude and totally upset by the intrusion, Mark got out of the bed, ran towards Margaret, and pushed her head against the wall.<sup>56</sup> By this time, the children came out of their room, wondering what was causing the commotion.

Margaret tried to break Mark's hold on her arms, but the more she struggled, the more he pushed her head against the wall.<sup>57</sup> Mark finally released her, got dressed, and told his children that their

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53. See *id.* at 19 (maintaining that children are hurt, even if the abuse is not directed at them, because that abuse will follow them into future relationships).

54. See Shannon Selden, *The Practice of Domestic Violence*, 12 UCLA WOMEN'S L.J. 1, 29 (2001) (stating that the battering man seeks to restrict his victim from contact with other men, friends, and even her family, and when she attempts contact without his permission, he responds with violence so as to attack the woman's autonomy).

55. See LA. REV. STAT. ANN § 46:2136 (West 2004) (allowing for a court in Louisiana to issue a protective order to stop the abuse of a party or minor children).

56. See *Ramphrey v. Ramphrey*, 749 So. 2d 835, 839 (La. Ct. App. 1999) (detailing facts remarkably similar to Margaret's case, in that Mr. Ramphrey admitted to once attempting to "get back" at his wife by preventing her from picking up their child to attend a Christmas play). Mr. Ramphrey also admitted pleading guilty to simple battery when he shoved his wife during an argument. *Id.*

57. See Brandt F. Steele, *Psychodynamic Factors in Child Abuse*, in CLASSIC PAPERS IN CHILD ABUSE 241 (Anne Cohn Donnelly & Kim Oates eds., 2000) (stating that "[a]busive, neglectful behavior is not considered to be purely haphazard or impulsive, but rather to be understood as a particular constellation of emotional states and specific adaptive responses which have their roots in the earliest months" of the abuser's life).

mother was throwing him out of the house. The children started crying and looked at their mother for an explanation.<sup>58</sup> After he finished dressing, Mark leaned down and told his little son—not his little girls—he would be back to take him to the theme park that weekend. Later that day, Margaret took her children to her mother's house, and the next day she filed for a temporary restraining order ("TRO").<sup>59</sup>

After filing for the TRO, Margaret believed that her husband only wanted visitation privileges so that he could see their son, not their two daughters. She believed that if the judge granted Mark unsupervised visitation with all three of the children, Mark would isolate the girls in favor of spending more time with his son. She also believed that Mark would abuse the girls the same way he had abused her.<sup>60</sup> With so many unanswered questions still in her mind about her estranged husband, Margaret was against letting Mark have unsupervised visitation with her children.<sup>61</sup>

Despite my best efforts to inform the court of our position, the district judge granted Mark unsupervised visitation with all three children because there was no evidence that Mark had abused the children in the past. Furthermore, no evidence existed to prove that Mark would isolate the girls during his visitation time or that he would endanger the children in any way. To the judge, our position about future abuse towards Margaret's daughters was pure speculation.

After the district judge rendered its decision, Margaret looked across the room and yelled, "*If you ever abuse my children, you will have to answer to me!*" Mark just smiled and sat in the audience until the minute clerk made him a copy of the court's judgment. The bailiff attempted to subdue my client, but I quickly escorted her out of the courtroom. While we waited in the lobby, Margaret's entire face was filled with anxiety. She started pacing the floor, looking for a way to stop her children from seeing Mark on the weekends. I tried to calm her down, but she became more frantic every time she thought about Mark with her children.

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58. See Rapkin, *supra* note 2, at 404 (finding that approximately sixty-five percent of the children who witness domestic violence or abuse attempt suicide).

59. See Finn, *supra* note 16, at 43 (reiterating the importance of a temporary restraining order because it provides immediate protection for a victim of family violence).

60. See Asmus et al., *supra* note 15, at 133 (stating that battered women are exposed to not only physical violence, but also to "intricate systems of controlling behaviors").

61. See Tulin D. Acikalin, *Debunking the Dichotomy of Nonintervention: The Role of the State in Regulating Domestic Violence*, 74 TUL. L. REV. 1045, 1054 (2000) (arguing that by failing to enact regulations that prevent and punish domestic violence, the government is, in effect, supporting domestic violence).

Was Margaret being vengeful because her husband was caught having an affair and did not care about being married to her anymore? Or, was she just a concerned parent who feared that her children might become victims of family violence like she was? The court determined that the children did not carry any scars from family abuse—or did they?<sup>62</sup>

A child who is awakened by his father beating, slapping, or punching his mother is truly a victim of family violence.<sup>63</sup> A son who witnesses his father kicking his mother and is told by his father's example that this is what a *man* does is a victim of family violence.<sup>64</sup> A child who is accustomed to raising the sound on the television in order to drown out the screams of her mother who is being beaten in the bedroom by her father will carry the scars of family violence forever.<sup>65</sup> And finally, a child who is continuously pressured to submit to the abusive parent or else face the same repressions as the battered woman is—you guessed it—a victim of family violence. An abused mother who decides not to seek custody of her children because the father is too strong, too politically connected, or too financially savvy for her to defeat in court has made her children hostages to family violence.<sup>66</sup>

Just like Margaret's situation, relationships fail for various reasons, namely, unfaithfulness, felony convictions of one party, extended periods of separation, or simply irreconcilable differences.<sup>67</sup> Court systems across this country are then burdened with the obligation of

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62. See Margaret G. Smith & Rowena Fong, *THE CHILDREN OF NEGLECT: WHEN NO ONE CARES 11* (2004) (stating that the "absence of a clear definition" for "child neglect" provides "inadequate direction for family courts in deciding cases of neglect, insufficient guidance for social workers in providing effective interventions, and lack of consistency in empirical studies regarding this issue" (citing Catherine Foster Alter, *Decision-Making Factors in Cases of Child Neglect*, in *CHILD WELFARE* 64, 99-111 (1985))).

63. See Rapkin, *supra* note 2, at 406 (finding that children who witness domestic violence "suffer similar emotional effects of psychological trauma" that a victim of child abuse faces).

64. See *id.* at 408 (arguing that violent tendencies are often passed from one generation to another).

65. See Kalyani Robbins, *No-Drop Prosecution of Domestic Violence: Just Good Policy or Equal Protection Mandate?*, 52 *STAN. L. REV.* 205, 207 (1999) (arguing that "[e]ach time a man hits a woman and gets away with it, all women" and their children "suffer, both from the risk of harm that has not been prevented, and from the retardation of the movement toward societal equality").

66. See Becker, *supra* note 51, at 19-20 (stating that many young boys who witness domestic violence grow up to be abusers themselves and that young girls who witness domestic violence grow up and accept abusive relationships because they believe violence is an expression of love).

67. See LA. CIV. CODE ANN. art. 103 (West 2004) (setting forth the various grounds for divorce in the state of Louisiana, including fault-based grounds and no-fault grounds). The reason for the divorce can often impact the distribution of assets. *Id.*

reaching a *happy medium* between disgruntled parties regarding asset distribution. In granting child custody, courts often emphasize the parents' financial situations over the child's interest in being with the parent best able to nurture and rear the confused and helpless child.<sup>68</sup> Unless the child becomes the paramount concern to the parents engaged in a divorce case, immeasurable damage could result from the child being overlooked and placed with a wrong parent.<sup>69</sup>

In those instances where domestic abuse has caused the relationship to end, the courts should implement special methods and procedures to insure that the child is not exposed, either directly or indirectly, to future abuse and neglect. Very often, the battered woman comes to court embarrassed, emotionally and physically bruised, and severely muzzled.<sup>70</sup> She is ordered to discuss these most private events in a room filled with unsympathetic strangers.<sup>71</sup> However, when she does speak of those awful occurrences in the midst of a packed courtroom, she is loud, emotional, and aggressive.<sup>72</sup> She then becomes indignant and territorial when her experiences of being battered involve her children.<sup>73</sup> When her children are at issue, she becomes extremely protective and unrelenting because now the court wants her to willingly turn over her children to the same person who hit, raped, slapped, punched, stabbed, kicked, shot, and bruised her.<sup>74</sup>

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68. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 45 (1991) (asserting that courts devalue factors that would give preference to a woman, such as past care and experience, and instead rely on factors that inherently favor men, such as finances).

69. See *id.* at 19-20 (arguing that both parties in a custody dispute need to pay attention to the needs of the children, for if a parent, particularly the mother, is harmed either physically or psychologically throughout the proceeding, the child will be harmed as well).

70. See Cornia, *supra* note 19, at 110 (explaining that Battered Woman Syndrome is a legal doctrine that helps severely abused women defend their actions against criminal charges, and stating that the credibility of a battered woman is challenged by experts who believe that these victims are incapable of telling the truth because of the type and duration of the abuse the woman has endured).

71. See Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 569 (1999) (asserting that it is the woman's emotional relationship to the battering experience that requires protection, not the privacy of the crime itself).

72. See Sarah M. Buel, *Violence Against Women: Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217, 264 (2003) (indicating that victims often portray themselves poorly in court, thus victims' attorneys need to explain to the jury or court the reason for their clients angry or aggressive behavior so that they can understand their clients' outbursts).

73. See Roberta Thyfault et al., *Battered Women in Court: Jury Trial Consultants and Expert Witnesses*, in DOMESTIC VIOLENCE ON TRIAL 55 (Daniel Jay Sonkin ed., 1987) (arguing the importance of jury consultants in domestic violence cases, partially because of the behavior of the victim in court).

74. See Donna Wills, *Domestic Violence: The Case for Aggressive Prosecution*, 7 UCLA WOMEN'S L.J. 173, 179 (1997) (explaining that harm can continue to occur to

Most district judges, who are ignorant of the circumstances surrounding the battered woman, interpret the woman's demeanor as indicative of her general behavior behind closed doors.<sup>75</sup> She is stigmatized by the tone of her voice and held in contempt for her constant outbursts.<sup>76</sup> The fathers, on the other hand, are usually granted unsupervised visitation because the mothers cannot produce any evidence to support their claims of child abuse.<sup>77</sup>

For instance, if Shannon were arrested in Georgia for willfully violating a court order after taking her children out of Louisiana, she would be held in contempt for violating the order.<sup>78</sup> She would also run the risk of losing legal custody of her children to the father.<sup>79</sup> Likewise, if Margaret had requested supervised visitation for the father, instead of the normal unsupervised visitation, her request for sole custody would probably be denied—regardless of her reservations about what the father has done to her or what he may do to the children. According to the court, Margaret's belief that her daughters would be victims of future abuse during the unsupervised visitation period was just an exercise of the mother's control issues with the father.<sup>80</sup>

What should advocates do to protect women like Shannon and Margaret? Should we persuade them to wait until their children have actually been abused, or should we educate them on the finer points of custody and visitation law in an attempt to convince them that the court's decision for joint custody is fair and reasonable given the

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children during the proceedings because the children can witness the abuse or can be abused by the batterer).

75. See Sarah M. Buel, *Domestic Violence and the Law: An Impassioned Exploration for Family Peace*, 33 FAM. L.Q. 719, 723 (1999) (finding that many advocates promote the need to incorporate the study of domestic violence into the law school curriculum so that this social problem can receive more exposure and so that effective intervention models can be introduced and implanted much quicker).

76. See Thyfault et al., *supra* note 73, at 58 (claiming that often the mother's excited demeanor is used against her during court proceedings).

77. See *Petsch v. Petsch*, 809 So. 2d 222, 223 (La. Ct. App. 2001) (holding that one possible incident of family violence, which did not result in serious bodily injury, was insufficient to support a finding of a history of family violence or to frustrate the father's request for joint custody).

78. See *Miller v. Miller*, 799 So. 2d 753, 759 (La. Ct. App. 2001) (affirming a lower court's finding that the wife was in contempt of court by preventing her ex-husband from seeing his children, even though the wife believed she was protecting the children from his abuse).

79. See LA. REV. STAT. ANN. § 9:346 (West 2004) (stating that a pattern of willful and intentional violation of a court's custody order can result in a modification of the current custody or visitation arrangement).

80. *But see* Debra Whitcomb, *Prosecutors, Kids and Domestic Violence Cases*, 36 PROSECUTOR 32, 33 (2002) (commenting that violence against women and children often co-exist in families and that the rate of child abuse escalates when the abuse against the mother becomes more frequent and severe).

circumstances?

Rather than suggest that the mother swallow her natural urges to nurture and protect her children from abuse, this Article recommends placing the obligation to protect defenseless children on the appropriate party—the court. The terms and conditions recommended in this Article are in addition to the ones proposed by the Post-Separation Family Violence Relief Act (“Domestic Violence Relief Act”).<sup>81</sup>

## II. THE PROPOSAL

The Louisiana legislature enacted the Domestic Violence Relief Act for the purpose of protecting non-abusive spouses and their children from the parent most likely to perpetrate violence.<sup>82</sup> The legislature, in essence, prohibited the abusive parent from having unsupervised visitation with the child.<sup>83</sup> Considering the pervasiveness of family violence in American culture, the legislature furthermore insisted that the abusive parent actively participate in a domestic violence treatment program before becoming eligible to visit with the child without supervision.<sup>84</sup>

This statute was enacted so that the abusive parent, male or female, would understand that the state of Louisiana does not tolerate or condone violence in any fashion.<sup>85</sup> Attending a domestic violence program is definitely a good beginning towards rehabilitation, but it cannot be the sole requirement that an abusive parent has to fulfill in order to become eligible for unsupervised visitation.<sup>86</sup> More is

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81. See § 9:361 (indicating that the purpose of the Post-Separation Family Violence Relief Act is to combat the inequalities that exist under current child custody and visitation laws and to provide more protection for both the children and the abused spouse).

82. See 1992 La. Acts 1091 (explaining that the statute was created upon the recognition that children were still in need of protection from family violence even where the batterer was removed from the home or a judgment of divorce was rendered).

83. See § 9:331 (allowing for the court to order a mental evaluation of a party if good cause has been shown).

84. See *generally* State v. Payne, 833 So. 2d 927, 930-32 (La. 2002) (demonstrating a case where efforts should be made to screen foster parents with whom the child would be residing in the event that the child would be removed from the home). The case involved a foster mother charged with the first degree murder of a two-year-old girl who died of a blood clot in the brain as a result of severe head injury from a recent beating. *Id.*

85. See § 9:364 (creating a presumption that no parent with a history of perpetuating family violence will be awarded sole or joint custody and only will be granted supervised visitation).

86. See Morrison v. Morrison, 699 So. 2d 1124, 1127 (La. Ct. App. 1997) (finding that the requirement of supervised visitation is to prevent the occurrence of further spousal violence in front of children).

definitely needed, but we must not let our desire to *do something* short circuit the need for having long-term results to this most urgent problem.<sup>87</sup>

Many of my former clients were women who were pregnant or who recently gave birth.<sup>88</sup> Fortunately, their abusers did not contest the mothers' requests to be appointed the custodial parent because of the age of the child involved. But my clients with older children would become enraged when the fathers did request free, open, and unsupervised visitation with the children.<sup>89</sup> Watching their reactions to the father's request for liberal visitation would make me wonder whether this ordeal had affected them psychologically as well as emotionally.<sup>90</sup>

For instance, I acted as co-counsel for a woman named Barbara who filed for a protective order after her estranged husband was arrested for simple battery.<sup>91</sup> Barbara was employed as an administrative assistant at a local bank before she became pregnant with the couple's second child. Barbara's husband, James, was a sales representative at a small department store. Barbara indicated that James was a perfect husband before her second pregnancy, but when Barbara announced that she was pregnant again, James became so upset with her that she believed he actually wanted to abort their child the very moment she made the announcement.<sup>92</sup>

James began to intentionally push her out of his way when he

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87. See generally Roy C. Herrenkohl, *Research Directions Related to Child Abuse and Neglect*, in CHILDREN AT RISK: AN EVALUATION OF FACTORS CONTRIBUTING TO CHILD ABUSE AND NEGLECT 85 (Robert T. Ammerman & Michael Hersen eds., 1990) (arguing that the appropriate focus in the area of child abuse and neglect is on research because this is the only way to improve the general understanding of the situation).

88. See Amy Haddix, *Unseen Victims: Acknowledging the Effects of Domestic Violence on Children Through Statutory Termination of Parental Rights*, 84 CAL. L. REV. 757, 762 (1996) (demonstrating that, in many cases, mothers who were pregnant attempted to hide their pregnancy from the abusive father while seeking adoptive placement for the child). District judges are less inclined to terminate the father's parental rights in favor of adoption when the mother's attempts to "thwart" the father's parental involvement with the child have been exposed. *Id.*

89. See Ellen K. Solender, *Report on Miscommunication Problems Between the Family Courts and Domestic Violence Victims*, 19 WOMEN'S RTS. L. REP. 155, 156 (1998) (asserting that violence against women is a learned method of control that society has condoned or reinforced and which many judges have yet to realize).

90. See Mills, *supra* note 71, at 573 ("Images of trauma penetrate the victim's memory at unexpected times and in unusual ways. Traumatic memory is often inarticulate. It may even be silent. Yet it penetrates to the survivor's bone.").

91. See LA. REV. STAT. ANN. § 14:33 (West 2004) (defining the crime of battery as the intentional use of force or violence upon another person).

92. See Thomas L. Kirsch II, *Problems in Domestic Violence: Should Victims be Forced to Participate in the Prosecution of Their Abusers?*, 7 WM. & MARY J. WOMEN & L. 383, 385-86 (2001) (maintaining that twenty-two to thirty-five percent of female medical emergency patients have injuries stemming from domestic abuse).

walked down the hall. He threw objects at her if she did not cook or if she did not clean the house the way he wanted.<sup>93</sup> In the eighth month of her pregnancy, James forced her to have sex with him even though Barbara complained of having severe cramps during intercourse.<sup>94</sup> The incident that caused Barbara to leave happened when James slapped her in the face after she told him that she invited her mother to cook and clean the house during the last few weeks of her pregnancy.<sup>95</sup>

On the date of the hearing for her protective order, Barbara walked to the witness stand carrying her brown leather briefcase and wearing one of her many business suits. Everyone in the courtroom that day knew that Barbara was very educated and intelligent. However, her demeanor changed when her husband's attorney began to cross-examine her. After the defense attorney asked the first question, Barbara appeared disoriented and confused. She could not recall correctly some of the details of the events that seemed to be so vivid in her mind during her direct examination.<sup>96</sup>

I knew that she was nervous and that she had been through an enormous amount of stress and abuse after filing this protective order.<sup>97</sup> The district judge, however, did not understand her sudden change in behavior.<sup>98</sup> Barbara's lead counsel and I objected as many times as we could, but we did not want the judge to get the impression that we were being less than honest about the abuse that our client suffered. Barbara began stuttering, and eventually she started talking directly to James when answering the defense attorney's questions. Finally, being so overwhelmed with the amount of questions she was

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93. See generally *State v. Farhood*, 844 So. 2d 217, 220-22 (La. Ct. App. 2003) (discussing a similar spousal abuse case where the defendant was convicted of attempted manslaughter for hitting the victim's head with his fists and repeatedly striking the victim's head against the wall and television while telling her to shut up).

94. See Kirsch, *supra* note 92, at 385 (noting that one out of every four pregnant women has experienced domestic abuse).

95. See Buel, *supra* note 75, at 722 (explaining that isolation of the abused woman from family and friends is a necessary part of the batterer's *modus operandi*); see also Asmus et al., *supra* note 15, at 121 (stating that the "appearance of women from diverse racial, cultural, class, and religious backgrounds at the doors of women's shelters demonstrate to even a casual observer that domestic violence occurs in all socio-economic and racial groups").

96. See Selden, *supra* note 54, at 37 (suggesting that an abused woman may be wary of testifying, and may recant or confuse her testimony because of her attorney, the abuser, or the abuser's attorney).

97. See Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will It Work This Time?*, 31 PEPP. L. REV. 709, 747 (2004) (explaining that Louisiana enacted a statute that enables persons to obtain a protective order as a way to end domestic violence).

98. See Solender, *supra* note 89, at 159 (arguing that some judges do not fully understand the process behind protective orders and, therefore, are unable to comprehend the struggles and anxiety that victims suffer).

being asked about her humiliating relationship with James, Barbara got up from the witness stand and walked directly out of the courtroom before the defense attorney finished his cross examination.

We persuaded her to go back into the courtroom and encouraged her to ask the court to forgive her for her actions, but it did not help. The court eventually granted the protective order because James did not contest the order.<sup>99</sup> Although Barbara was appointed the custodial parent for both children, her request for supervised visitation for the father was denied. The court's judgment was interlocutory, therefore, to modify the custody arrangement, we had to show a material change in the financial or emotional aspects of each parent or to show that James was an unfit parent to have unsupervised visitation with both children.<sup>100</sup>

Barbara's children, of course, were not present at the hearing to see the display of emotion or to hear some of the awful things that were said by each party.<sup>101</sup> Although Barbara was relieved to be awarded domiciliary custody, she feared that James' unsupervised visitation privileges were not in the best interest of her children.<sup>102</sup>

Normally, children at the center of these custody disputes are extremely sensitive to their parents' emotions.<sup>103</sup> They believe that they caused their parent's relationship to fail and they ultimately learn to associate violence with an everyday method of resolving conflict.<sup>104</sup> Like the children, the mother senses the impact and devastation that violence wreaks on her family, and consequently, she refuses to bring

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99. See LA. REV. STAT. ANN. § 46:2136(B) (West 2004) (stating that a protective order can be granted if (1) "[t]he parties enter into a consent agreement," or (2) if "[r]easonable notice and opportunity to be heard is given to the" abusing party).

100. See LA. CIV. CODE. ANN. arts. 134, 136 (West 2004) (requiring the court to base its custody decision on "all relevant factors in determining the best interest of the child," such as the emotional ties between the parent and child, the ability to provide material needs to the child, and the moral fitness of the parent); *cf.* *Michelli v. Michelli*, 655 So. 2d 1352, 1354 (La. Ct. App. 1995) (demonstrating that the court does not grant unsupervised visitation where it would not be in the best interests of the child, emotionally or physically, based on the father's alcoholism and erratic visitation schedule).

101. See *generally* Rapkin, *supra* note 2 (explaining that children in families with domestic violence often suffer from a lack of healthy neurological development because they grow up feeling unsafe and unprotected).

102. See Haddix, *supra* note 88, at 788 (indicating that various studies have shown that children of all ages who were exposed to domestic abuse exhibit aggravated behavioral problems).

103. See Rapkin, *supra* note 2, at 407 (finding that children often experience self-blame and guilt for not being able to stop the abuse and help their abused parent).

104. See Haddix, *supra* note 88, at 790 (stating that young children primarily look towards their parents as role models and if they are in a home with domestic violence, these children, especially young boys, learn that violence is an acceptable way to deal with a situation).

her children to court with her, fearing that her children may see and hear some dreadful things about their parents.

It is for this reason that the judicial system ought to impose more conditions or restrictions on the visitation schedules of any father or parent who has been accused or convicted of domestic abuse—even if this abusive parent has completed a domestic violence treatment program.<sup>105</sup> Undoubtedly, children reared in an abusive environment are affected by the enormous amount of yelling, screaming, and physical violence between their mother and father.<sup>106</sup> This is why the judicial system needs to be acutely aware of the probability that the batterer who is awarded unsupervised visitation may continue to perpetrate the same or a similar type of violence on the children—even though the previous violence was not originally directed towards the children.<sup>107</sup>

Ideally, the Domestic Violence Relief Act<sup>108</sup> was drafted to provide protection for the non-abusive parent and to shelter the children from future abuse by this violent parent.<sup>109</sup> The statute also allows the district court to recommend mediation for the parents while the abusive parent is participating in the treatment program.<sup>110</sup>

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105. See LA. REV. STAT. ANN. § 9:364(A) (West 2004) (finding that once an abusing parent has completed a treatment program, unsupervised visitation, and possibly custody, may be granted by the court).

106. See Joseph J. Alessi & Kristin Hearn, *Group Treatment of Children in Shelters for Battered Women*, in *BATTERED WOMEN AND THEIR FAMILIES* 159, 162 (Albert R. Roberts ed., 1984) (stating that infants exposed to violence tend to exhibit poor health, weight problems, eating problems, periods of sleeplessness, decreased responsiveness, and excessive screaming). See generally Meier, *supra* note 33 (demonstrating that prolonged spousal abuse places children at risk of harm, both physical and emotional, from the abuse and the situation).

107. See Landau, *supra* note 7, at 115 (explaining that parental authority and power are misused when they are employed to damage the child either physically or emotionally, or administered in any manner that reduces or limits that child's opportunity for normal growth and development); see also Meier, *supra* note 33, at 661 (stating that a child's safety and well-being are often just as much at stake during divorce and custody proceedings because these proceedings determine the amount of time children need to spend with the abusing parent).

108. See §§ 9:361-367 (noting that the official name for this Act is the Post-Separation Family Violence Relief Act, but in practice is called the Domestic Violence Relief Act).

109. See § 9:361 (finding that during divorce proceedings, violence often escalates and child custody and visitation become the new forum for the continuation of abuse).

110. See generally *Hicks v. Hicks*, 733 So. 2d 1261, 1262 (La. Ct. App. 1999) (explaining that the wife in a divorce lawsuit appealed the judgment of the district court that appointed the husband as primary custodial parent of their three children where the reason she left the family was to seek refuge from his abusiveness). The appellate court awarded her sole custody of the children and suspended the father's visitation rights until he completed a court-approved domestic violence treatment program. *Id.* at 1266. Unfortunately, once the court was satisfied that the father had completed the treatment, it awarded him sole custody. *Id.* The mother, on the other hand, failed to foster a relationship between the children and their father, and she

Mediation, while appropriate for generic custody and child visitation cases, is strictly prohibited in cases involving domestic abuse.<sup>111</sup> It is not difficult to understand that a batterer who frequently hides his behavior from the public's eye would use mediation to further exploit the mother's faults and frailties.<sup>112</sup> After all, he has learned how to *play nice* before police officers, judges, and friends in the past, so how could one mediator be any more strenuous to deceive than the rest of these state actors?

The Domestic Violence Relief Act further authorizes the court to use the services of a qualified mental health professional ("MHP") to conduct a custody evaluation.<sup>113</sup> However, there is no indication in the statute as to what type of custody evaluation the MHP will conduct.<sup>114</sup> The Act also does not mention the duration of this evaluation or whether the court will have any supervision over how the evaluation will be performed.

The district court's option to appoint a qualified MHP to conduct a thorough custody evaluation has been applauded by the legislature, but the specifics of this appointment remain a mystery.<sup>115</sup> District courts have slowly begun to understand the correlation between domestic abuse and custody. However, these courts still have some difficulty giving substantial weight to the evidence of domestic abuse in a custody proceeding involving the same parties.<sup>116</sup> Sometimes the evidence of domestic violence is considered totally irrelevant.<sup>117</sup>

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refused to comply with the court's order to return the children to their father. *Id.*

111. See § 9:332 (stating that parties may select a mediator or have the court appoint one for them in a custody or visitation proceeding).

112. See Brian Jory et al., *Intimate Justice: Confronting Issues of Accountability, Respect, and Freedom in Treatment for Abuse and Violence*, 23 J. MARITAL & FAM. THERAPY 399, 400 (1997) (emphasizing how a female victim of abuse can only be further emotionally damaged when an abusive man takes advantage of open discussions as a way to deceptively argue that he would cease to abuse the victim if she changed her ways).

113. See § 9:365 (stating that courts may appoint mental health professionals to conduct a custody evaluation in cases involving family violence).

114. Cf. CAL. RULES OF CT. R. 5.225 (2004) (defining child custody evaluation as "an expert investigation and analysis of the health, safety, welfare, and best interest of a child with regard to disputed custody and visitation issues").

115. See § 9:365 (requiring that a mental health professional "have current and demonstrable training and experience working with perpetrators and victims of family violence," though the statute fails to include any additional language regarding duration, type, or procedure).

116. See Cahn, *supra* note 13, at 1044 (discussing how courts have begun to integrate the impact of domestic violence on a child with the "best interest of the child" doctrine to determine custody).

117. See *id.* (declaring that few state courts and statutes recognize domestic violence as a factor in custody decision-making and those that do are unable to see how the application of domestic violence provisions may complicate existing custody standards).

Hence, the judicial system needs to specify what constitutes participation in these domestic violence programs if the threat of violence is ever to leave the family structure.<sup>118</sup> Surely, the batterer's attendance in a domestic violence program for a few weeks cannot be the true antidote to family violence. How can the abusive parent prove that they have been rehabilitated if all that is counted towards rehabilitation is the fact that they occupied a seat during the program?<sup>119</sup> District courts need to impose more restrictions on the batterer's time so that they can discern whether this violent parent is sincere about rehabilitation.<sup>120</sup> Of course, the process of rehabilitation is slow and cumbersome, but saving future generations from the pain and emotional trauma that family violence causes to the mentality of a defenseless child overrides all inconveniences that this parent may have to endure.<sup>121</sup>

The appointment of a MHP, while still very vague in the statute, may indeed prove to be very useful.<sup>122</sup> A MHP is better equipped to isolate those emotional patterns that generally dominate the behaviors of many domestic batterers.<sup>123</sup> The goal with this type of intervention will not be to punish or discipline the batterer or to set a schedule for visitation.<sup>124</sup> Rather, the goal will be to establish a

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118. See generally Julia C. Babcock & Jaslean J. La Taillade, *Evaluating Interventions for Men Who Batter*, in DOMESTIC VIOLENCE: GUIDELINES FOR RESEARCH-INFORMED PRACTICE 37, 54 (John P. Vincent & Ernest N. Jouriles eds., 2000) (maintaining that although there has been a large increase in treatment programs that strive to reduce or stop domestic violence recidivism, these programs have been plagued with difficulties because only forty to sixty percent of the batterers who attend these programs actually complete the full treatment regimen).

119. See Haddix, *supra* note 88, at 809 (stating that Louisiana requires a parent to prove his or her rehabilitation by a preponderance of the evidence, and arguing that raising the standard of proof to clear and convincing evidence could expose the child to a less significant risk of returning to a hostile environment).

120. See Heesuk Chang & Daniel G. Saunders, *Predictors of Attrition in Two Types of Group Programs for Men Who Batter*, 17 J. FAM. VIOLENCE 273, 274 (2002) (listing young, unemployed men who are financially unstable, abuse alcohol, or have a criminal history as most likely to drop out of domestic violence programs).

121. See Pamela M. McMahon, *The Public Health Approach to the Prevention of Domestic Violence*, 47 LOY. L. REV. 471, 476-77 (2001) (concluding that even though rehabilitation is a "slow and laborious process," it should continue so that future generations may reap its benefit of preventing the furtherance of domestic violence in families).

122. See, e.g., Landau, *supra* note 7, at 120 (inferring that abusive parents have their own emotional problems that should be recognized in a domestic violence situation for they are often incapable of addressing their needs as well as their children's needs and have failed to learn competent parenting skills).

123. See McMahon, *supra* note 121, at 471 (asserting that those who research and practice in public health play a vital role in ending domestic violence because their work focuses on preventing the occurrence of violence, as opposed to treating abusers who already have engaged in violent behavior).

124. See *id.* at 472 (arguing that criminal punishments for batterers are not enough to fix the problem and that efforts to end domestic violence should include

healthy, nurturing, and non-violent relationship between the batterer and his children during a *year and one-half* evaluation.<sup>125</sup> The MHP will stress to the batterer that his actions will be continuously monitored and that any recommendation as to custody or visitation will be based on such actions and will be promptly reported to the presiding judge.<sup>126</sup>

The abused woman will be an integral part of the batterer's rehabilitation, and her opinions as to the batterer's progress during this evaluation process will also be included in the recommendation report.<sup>127</sup> Unless the abused parent's opinions and responses are given top priority during this evaluation, disaster could result to her and her children.<sup>128</sup>

For example, Sandy was a witness in her mother's protective order lawsuit when she was eleven. Sandy later became a very important witness in her mother's divorce action when she was thirteen. Despite Sandy's importance in her mother's cases, her mother never thought that Sandy would have any emotional or psychological affects from testifying as a witness against her father in a family violence case.

At the age of twenty-seven, Sandy's live-in boyfriend, Joseph, accused her of abusing him after she slapped him in the face and cut him with a kitchen knife.<sup>129</sup> Both Sandy and Joseph testified that Joseph's injuries happened after the couple engaged in a heated argument minutes earlier. Sandy testified that she found an entry on Joseph's credit card statement for a room in an out-of-town hotel. She stated that she became very angry with Joseph because he could

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an awareness of the problem and affirmative steps towards prevention).

125. See Cahn, *supra* note 13, at 1068 (stating that joint custody is a dangerous arrangement when there has been abuse because the ongoing communication between the batterer and the victim provides continuous, yet legally required, opportunities for the batterer to continue his abuse).

126. See *generally id.* at 1087 (explaining that litigators attempt to implement various strategies to protect children from an abusive parent, including restrictions on visitation rights).

127. See Cornia, *supra* note 19, at 116 (noting how courts and relevant agencies sometimes expect the battered woman to be an integral part of the batterer's rehabilitation program but then may penalize the woman if she fails to participate).

128. See, e.g., *Folse v. Folse*, 738 So. 2d 1040, 1052 (La. Ct. App. 1999) (noting the lower court's finding that the four-year-old girl's reports of her father's sexual abuse were consistent until the girl became concerned about the effects her reports might have on her father).

129. See Andrea D. Lyon, *Be Careful What You Wish for: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases in Two Cities in Michigan*, 5 MICH. J. GENDER & L. 257-58 (1999) (providing that "a woman may typically slap a partner or pound on his chest as an expression of outrage or in frustration because of his having turned a deaf ear to repeated attempts to discuss some critical issue" (citing Murray A. Straus, *Physical Assaults by Wives: A Major Social Problem*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 67, 80 (Richard J. Gelles & Donileen R. Loseke eds., 1993))).

not adequately explain the hotel charge since the entry was for a one-night stay on a Saturday evening. Joseph, on the other hand, testified that the argument concerned the amount of time he was spending away from Sandy because of his job. According to Joseph, the argument had nothing to do with the hotel charge.<sup>130</sup> Needless to say, the argument escalated until Sandy slapped Joseph in the face. After Joseph was cut on the arm with the kitchen knife, he quickly grabbed the knife out of Sandy's hands.

Three days later, Joseph filed for a protective order. Sandy did not challenge the protective order because she considered the relationship over after discovering Joseph's infidelity. But when the issue turned to the custody of the couple's five-year-old daughter, Sandy was uncompromising.<sup>131</sup> Joseph wanted free and liberal visitation, but Sandy feared that Joseph would take out his frustrations on their daughter because their relationship had been terminated. Furthermore, Sandy feared that Joseph would not honor the protective order by returning their daughter at the scheduled time.

Following a brief hearing, the district judge granted Joseph's protective order and awarded him unsupervised visitation with his daughter on every other weekend. Seeing that Sandy was visibly upset with the judgment, the district judge explained to her that all she presented to him was what she *thought* might happen to her daughter while in the father's care. She could not present any incidents where the Joseph verbally or physically abused their daughter, nor could she present incidents where Joseph verbally or physically abused Sandy in their daughter's presence.<sup>132</sup> In fact, the district judge indicated that it was Sandy's violence that concerned him—not Joseph's. The district judge then politely leaned back in his chair and said, "Without something a little more concrete, I can't help

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130. See Lundy Bancroft, *WHY DOES HE DO THAT?: INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN* 13, 20 (2002) (explaining how there are two perceptions in an abusive situation and the abuser most likely believes he is being reasonable and logical).

131. See, e.g., *Ramphrey*, 749 So. 2d at 839 (discussing how parents can become unreasonable and unwilling to cooperate when custody is at stake; for instance, by not allowing the other parent to pick up their child for a visit out of revenge).

132. See Byron Egeland, *A History of Abuse Is a Major Risk Factor for Abusing the Next Generation*, in *CURRENT CONTROVERSIES ON FAMILY VIOLENCE* 197-208 (Richard J. Gelles et al. eds., 1993) (citing statistics demonstrating that abusers and juvenile delinquents often come from abusive families, suggesting that violence is a vicious cycle); see also Jennifer Langhinrichsen-Rohling et al., *The Relationship Behavior Networks of Young Adults: A Test of the Intergenerational Transmission of Violence Hypothesis*, 19 J. FAM. VIOLENCE 139, 139 (2004) (claiming that one of the most heavily researched areas in domestic violence is how the current abuser is likely to have previously experienced or witnessed violence in their family). This consistency between witnessing or experiencing violence in the past and subsequently committing violence is called the "intergenerational transmission of violence theory." *Id.*

you.”<sup>133</sup> The judge then banged his gavel and took a brief recess.

Under my proposal, Sandy would be the appropriate party for a domestic violence treatment program. Normally, domestic violence by men against women is more common than violence committed by women against men.<sup>134</sup> Here, Sandy was in need of intervention since her mother failed to get her evaluated after she testified against her father in her mother’s domestic violence case.

Under this proposal, an MHP would evaluate both Sandy and Joseph. The MHP would schedule weekly meetings with both parents and the child immediately following Sandy’s weekly domestic violence treatment sessions. The meetings would be conducive to both parent’s schedules, and attendance would be mandatory. The MHP would meet with both parents and would meet with the child separately in order to determine the child’s needs when making a decision concerning custody. Generally, each session would be no longer than one hour and the parents would have an opportunity to list the areas of interest that they would like to discuss during each session.<sup>135</sup> Although the MHP’s evaluation would not include the individual topics covered during these sessions, it would include an observation of each parent’s demeanor and their communication with each other about issues that concern the child.<sup>136</sup>

Following the first six months of the program, the MHP may schedule the first one-day unsupervised visit for the abusive parent if the abusive parent has shown some visible progress. After each visit, the non-violent parent and the minor child would complete an evaluation form concerning the previous visit.<sup>137</sup> These forms would

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133. See Cornia, *supra* note 19, at 107 (theorizing that courts tend to ignore evidence indicating spousal abuse outside the context of a defense theory for women who have attacked their batterers).

134. See Kirsch, *supra* note 92, at 388 (stating that ninety to ninety-five percent of domestic violence is perpetrated by men against women); see also White, *supra* note 97, at 714 (asserting that nearly every adult American has witnessed at least one form of violence perpetrated against a close female friend, family member, or acquaintance).

135. See Chang & Saunders, *supra* note 120, at 275 (arguing that less educated men have a higher risk of dropping out of domestic violence programs than more educated men, and that this could be attributed to the educational level of the written materials that are used in the programs).

136. See P.D. Brown, *Dropout in a Treatment Program for Self-Referring Wife Abusing Men*, 12 J. FAM. VIOLENCE 365, 384 (1997) (arguing that abusive men would be less likely to drop out of the program if they perceived a correlation between their own goals for attending the sessions and the objective of treatment).

137. Cf. Lynne M. Kenney & Diana Vigil, *A Lawyer’s Guide to Therapeutic Interventions in Domestic Relations Court*, 28 ARIZ. ST. L.J. 629, 650 (1996) (discussing a similar treatment plan, entitled “therapeutic reunification intervention,” aimed at reunifying a parent and caretaker, especially where violence may have been involved). This plan focuses on “rebalancing the perceptions of the alleging parent” and “monitoring the reactions of the children.” *Id.*

be completed outside the presence of the abusive parent, but before the scheduled session.<sup>138</sup> Questions would involve: (1) the parent's promptness in starting the visitation; (2) the activities the parent scheduled; (3) the amount of time (quality and quantity) the parent spent with the child; (4) the child's physical and emotional condition following the visit; and (5) the parent's promptness in returning the child.<sup>139</sup> This cycle would continue for approximately one year after the first scheduled unsupervised visit—even if the mediator believes that the batterer has successfully suppressed all of his violent tendencies.<sup>140</sup>

Because the overall goal is the safety and welfare of the affected child, the MHP would be less concerned with reunification and more concentrated on preventing the batterer from transmitting his aggression and control issues to the innocent child.<sup>141</sup>

Generally speaking, the Domestic Violence Relief Act is a great tool to use for rehabilitating the batterer while at the same time protecting the innocent child and the abused parent.<sup>142</sup> However, the lack of specificity by the Louisiana legislature may deemphasize the importance of this intervention model because the statute does not identify how a batterer must participate in the court-mandated domestic violence treatment programs.<sup>143</sup>

#### CONCLUSION

Lately, many battered women advocates have been concerned about the decreasing participation level of batterers in domestic

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138. See Edward W. Gondolf et al., *Nonphysical Abuse Among Batterer Program Participants*, 17 J. OF FAM. VIOLENCE 293, 294 (2002) (maintaining that batterer-counseling programs have linked verbal and physical abuse as part of a "broader pattern of men's effort to exert power and control over their female partners").

139. See Jory et al., *supra* note 112, at 407-15 (discussing how the concepts of "accountability, respect, and freedom" can be used to form the foundation of any therapy treatment program designed to hold abusers accountable for their actions and protect those they have injured).

140. See Gondolf et al., *supra* note 138, at 295 (declaring that there is a causal effect between the reduction of physical abuse and the length of a batterer's participation in a counseling program).

141. See *id.* at 274 (maintaining that counseling programs have found a link between men's physical and emotional abuse with their needs to maintain authority over their victims).

142. See Sheeran & Hampton, *supra* note 9, at 16 (demonstrating how Louisiana's statutes have commendable restrictions in place for a batterer's visitation rights by permitting only supervised visitations conditioned on the batterer's successful completion of a treatment program).

143. See Chang & Saunders, *supra* note 120, at 289 (suggesting that drop-out rates may be connected to the low level of supervision and judicial intervention of a batterer's participation in a court mandated treatment program and thus, there should be specific policies such as the close monitoring of batterers to prevent them from discontinuing treatment).

violence programs.<sup>144</sup> Of course, every advocate recognizes the importance of developing a program that addresses the batterer's violent tendencies, their emotional baggage from their childhood, and their inability to adequately express their anger without exhibiting violence.<sup>145</sup> However, more concern should be placed on the innocent children who have no insight into how they should protect themselves from the rage, anger, and manipulation to which their parents may expose them.<sup>146</sup>

Children are lovable. They add years of life to a parent and they bring unending joy and exhilaration to a family. But if they are abused, their innocence is overshadowed by shame. Instead of adding years of life, they themselves become victims of a short life span due to the abuse and neglect.<sup>147</sup> With this in mind, *every* caring adult who crosses the path of an abused child should intervene into that child's life and report the visible, and not so visible, signs of violence.<sup>148</sup>

Our intervention needs to be immediate, meticulous, specific, consistent, and relentless. After all, if we neglect to implement the *most appropriate* intervention in these cases, many children who have been affected by family violence will continue to be starved, burned, beaten, abandoned, manipulated, and threatened by those parents whom we have *assumed* will honor the privilege of rearing and nurturing these beautiful, yet defenseless angels.

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144. See *id.* at 273 (citing a national survey in which staff members of violence treatment programs considered high attrition levels to be the primary problem in maintaining such programs).

145. See Bancroft, *supra* note 130, at 20 (contending that it is vital for the battered spouse to understand what is going on in the batterer's mind).

146. See Majority D. Fields, *The Impact of Spousal Abuse on Children and Its Relevance in Custody and Visitation Decisions in New York State*, 3 CORNELL J.L. & PUB. POL'Y 221, 228 (1994) (explaining that children raised in violent households have significantly more stress disorders, and emotional and behavioral problems than do children from non-violent homes because they are unable to cope with their parents' behaviors).

147. See, e.g., *State v. Sepulvado*, 655 So. 2d 623, 625-26 (La. Ct. App. 1995) (stating how a six-year-old boy died of heart and lung failure due to third degree burns and beatings inflicted by his mother's abusive husband who forced the child into hot water for defecating in his pants).

148. See, e.g., *Hollingsworth v. Semerad*, 799 So. 2d 658, 663-65 (La. Ct. App. 2001) (providing an example of how a mother's dutiful intervention in a situation where the father was abusing the child and the child's stepmother, resulted in a court order granting the mother's request that the father only be allowed supervised visitations with the child if he was accompanied by someone other than the father's friends or family members).