

NFLR

Nevada Family Law Report

Volume 13, Number 5

Winter Extra, 1998

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Winter Extra, 1998

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Report on Tonopah '99

Thanks to everyone who took the time to fill out your evaluation forms from Tonopah. Your comments and suggestions will be helpful in planning next year's seminars and activities.

The date has been chosen, so mark your calendars—March 18 - 20, 1999. We are hoping to expand our program by running several concurrent sessions, with a special workshop tailored to the needs of the solo family law practitioner, covering areas on law office management and computerization. Nuts & Bolts continues to be a success, and the response to the round table sessions was again very positive. We will offer Nuts & Bolts again for those of you who are new to the practice, and hope to have even more round table choices for all of you next year.

We are looking for dynamic speakers on a variety of topics. If any of you have heard an exceptional speaker on a topic that would be of interest to section members, please give me a call..

Next year will mark our 10th year in Tonopah, and special events will be planned! Watch for more information in the next NFLR. See you in Tonopah!

NEVADA FAMILY LAW REPORT is a quarterly publication of the Family Law Section of the State Bar of Nevada. Subscription price for non-section members is \$35 payable in advance annually from January 1 to December 31. There are no prorations.

The *NEVADA FAMILY LAW REPORT* is intended to provide family law related material and information to the bench and bar with the understanding that neither the State Bar of Nevada, Family Law Section editorial staff nor the authors intend that its content constitutes legal advice. Services of a lawyer should be obtained if assistance is required. Opinions expressed are not necessarily those of the State Bar of Nevada or the editorial staff.

This publication may be cited as Nev. Fam. L. Rep, Winter Extra, 1998 at _____.

Nevada Family Law Report is supported by the Family Law Section of the State Bar of Nevada and NFLR subscriptions.

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ARTICLES, CASE SUMMARIES WANTED

The Nevada Family Law Report seeks to provide interesting and substantive family law material to educate both the bench and the bar. NFLR needs articles for upcoming issues. If you are interested in writing critiques of pertinent cases, reports/opinions of family law legislation or discussions of family law trends and issues, please request authors guidelines from Editor Mary Rose Zingale, 528 Commercial St., Elko, NV 89801.

Articles published in the NFLR are eligible for continuing legal education credits. Contact the MCLE Board, 329-4443, for applications.

The Section's publication needs your input and contributions. Please contact an editor to discuss any article topic, critique or book review.

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Power and Control

Dispelling the Myths Surrounding Domestic Violence

by Linda E. Offner

Reprinted with permission from Arizona Attorney, April 1998

"I didn't mean to hit you."

"You're crazy."

"You really make me mad."

"You never listen to me."

"I'll show you who's boss."

These words are being spoken behind closed doors all over the country. Indeed, the signs and symptoms of domestic violence are classic, and unfortunately the stories we hear victims tell sound much like those we so publicly heard played out in the O.J. Simpson case. Although the Simpson case brought the widespread problem of domestic violence into the limelight, this area continues to be misunderstood not only by the general public, but by clinicians, attorneys, police and the courts who are faced with these issues on a daily basis.

While no one would argue that the statistics show that domestic violence is one of the leading causes of injury among women, there is polarization in the field regarding what constitutes domestic violence, its causes, and appropriate treatment to end that violence. This polarization often acts as an obstacle to understanding, confronting and treating the problem, as illustrated by the following case.

CASE STUDY

Tom, 37 years old, and his wife, Susan, 35, are both professionals who do not fit the stereotypical image still held by many of a

couple caught in the cycle of domestic violence. Or do they? Tom is a charming, bright, well-educated pillar of the community who by all standards appears to be secure and successful. He maintains a public image as a friendly, caring person with a calm demeanor. He is well respected in his job and community. Likewise, Susan is a career woman who is viewed as strong, assertive, independent and self-assured; someone who is able to take care of herself.

When Tom and Susan first met, they shared for the most part what appeared to be a warm and loving partnership. However, after marriage, things seemed to change radically. Tom began flying into violent rages and was emotionally and physically unavailable. Susan "walked on eggshells," never knowing when Tom's behavior would become violent. A typical quarrel between Tom and Susan consisted of him yelling at her, dragging or pushing her around, putting her down verbally and threatening to throw her out of "his" house if she ever talked back to him again. Susan's self-esteem plummeted and she couldn't understand how someone who "loved" her could treat her that way. She was too afraid to call the police, too ashamed to tell her friends or family, and thought that if she only tried harder, Tom would change.

Tom refused to acknowledge any wrongdoing on his part and consequently would not seek help. The abuse worsened over time, until one day, after another episode of screaming of obscenities, throwing Susan's property around, and threats to harm her, she finally called the police. When the police arrive Tom was on his best behavior and because there were no eyewitnesses and Tom left no visible bruises (this time),

the police refused to press charges and Tom was let off the hook! Susan was left feeling hopeless and scared.

DEFINING DOMESTIC VIOLENCE

What does the above scenario tell us? For one thing, appearances can be deceptive. And it is all too often these "public" appearances that contribute to a society that protects Tom and colludes with him in allowing the abuse to continue. For another, domestic violence is not only about broken bones and black and blue-marks. It is a cohesive pattern of coercive controls that encompasses verbal and emotional abuse, sexual coercion, psychological manipulation, intimidation, using male privilege, using children, control of economic resources, minimizing, denying, blaming and isolation. The coexistence of these controlling behaviors serve to remind the victim subliminally of the potential for physical abuse and to undermine her independence.

Abusive behaviors are intentional, not the result of uncontrolled rage or impulse. The primary goal of abusive behaviors is to impose one's will upon another. It is a desperate attempt to maintain control of the relationship. For example, one batterer described how he pushed his partner against the wall and pounded the wall on either side of her head. He purposefully wanted to avoid any visible physical injury to her or damage to property, but intended to ensure that she clearly understood his message of intimidation.

When assessing for domestic violence, it is important to not only gain information about the individual abusive incidents, but

to determine the overall patterns of behavior that characterize the relationship. Lenore Walker, an expert in the field, identified the pattern as the “cycle of violence”—a tension-building phase which precedes the acute battering incident, followed by a loving contrition phase. However, in many cases, there does not seem to be a discernible pattern and the abuse occurs without any recognizable warning or pattern.

In summary, violence occurs in the context of continuous intimidation and coercion and is linked to attempts to dominate and control.

THE CLAIM OF SEXUALLY SYMMETRICAL PARTNERSHIP VIOLENCE

Is domestic violence gender-neutral? Some studies have reported that violence by women toward their male partners is as prevalent as violence toward female partners. There is a large body of contradictory evidence from courts, police, women shelters, divorce records, emergency room patients and research which demonstrates that the occurrence of adult violence in the home usually involves males as aggressors toward females. Defenders of the sexual-symmetry-of-violence thesis do not deny these results, but they question their representativeness and contend that data from police, courts, hospitals and social service agencies are suspect because men are reluctant to report violence by their wives. However, criminal victimization surveys using national probability samples similarly indicate that women are much more often victimized than men, even though men were likelier than women to call the police after assaults by intimate partners and more likely to press charges against their spouses. As noted by a group of leading experts in marital violence in their 1992 published report entitled “The Myth of Sexual Symmetry in Marital Violence,” what those who argue that men are reluctant or ashamed to report their wives assault because of shame or chivalry overlook is that women have their own reasons to be reticent, fearing the loss of a jailed or alienated husband’s economic support as well as his vengeance.

Moreover, enormous differences in meaning and consequences exist between a

woman “pummeling” her laughing husband in an attempt to convey strong feelings and a man “pummeling” his weeping wife in an attempt to punish her for not doing what he wants. In addition, men are usually larger in size than women, and the most frequent reason for violence reported by women is self-defense. Consequently, it is necessary to analyze the abusive event in a holistic manner, with attention to the entire sequences of distinct acts as well as associated motives, intentions and consequences, all of which must in turn be situated within the wider context of the relationship.

CHARACTERISTICS OF THE ABUSER

For years, the common belief was that abusers were uneducated brutes from lower socioeconomic classes and suffered from some kind of individual psychopathology. Contrary to this stereotype, many men who abuse their partners are well educated, financially well off, and are very social and outgoing, though they are so only superficially. Batterers do not become emotionally close with others. Most batterers use violence to express a pervasive inner feeling of powerlessness. They generally have no guilt feelings about it, although they may feel shame, fright or anger at being exposed. They are relatively inarticulate about their feelings, impulsive, irritable, explosive and immature, behaving like a child who does not comprehend that he did anything wrong.

David Adams, co-founder and president of Emerge: a Men’s Counseling Service on Domestic Violence, is a nationally known expert on counseling assaultive husbands. Adams has put together a descriptive profile of the “abusive husband” which has implications for those who work in the criminal and civil justice systems. According to Adams, abusers typically present as canny, even-tempered people who are well regarded at their place of employment and in their community. Few, if any, abusive husbands characterize themselves as abusive and have a tendency to deny or minimize their problems, similar to that seen by the alcoholic. While some men rationalize their violence, others merely lie about it or perceive it as self-defense rather than violence. Adams says the most common ma-

nipulation pattern of the abusive man is to project blame for the violence onto his wife, e.g., ‘she drove me to it,’ “she really knows how to push my buttons.” When intervenors get caught up in the abuser’s depiction of himself as the victim and shift the focus onto the partner’s behavior, it prevents the abuser from recognizing that he has choices in how he responds to her. As noted by Adams, the abuser often manipulatively seeks allies in his attempts to monitor and police his wife’s behavior, e.g., his father. One man said “I could never accept her the way she was; I always felt I had to correct her. And it was easy for me to find other people to agree with me.”

Other red flags to recognize include jealousy and possessiveness, and the manipulation of children. The latter rears its ugly head in the form of husbands misusing child visitations as a way of gaining access to their wives or contesting custody or child support agreements as a bargaining tactic designed to coerce their partners to reconcile or drop criminal complaints.

Lenora Greenbaum Ucko, a well-known human resources consultant, notes that while love can have many meanings, batterers often equate it with pride, insecurity, poor self-image, jealousy, shame, threats to masculinity and a reassertion of that masculinity. Nowhere in this definition of “love” is there any connection with concern for his partner’s welfare, dignity, personhood or testimony. Abusive behavior indicates concern only for himself, not love for her.

IMPACT OF ABUSE

Indicators of psychological distress experienced by battered women include fear of repeated abuse, intrusion symptoms including flashbacks and nightmares, avoidance responses including loss of memory or denial/minimization of abuse experience, anxiety, sleep difficulty, hypervigilance, difficulty concentrating, anger, shame and believing one is bad and worthless, lowered self esteem, morbid hatred, and self-medicating behaviors.

Abused women also experience changes in basic core beliefs about the world, themselves and others. Typically there are changes in the assumption of safety and a loss of view of the world as meaningful.

Why do so many abused women seem to remain in the “victim” role and find it so

difficult to leave the relationship? These women commonly develop an attachment and dependency on their abusive partner. While there was “love” and attachment that developed in the initial stages of the relationship, there becomes an increased attachment after abuse because of a decrease in sense of self-worth and increased isolation which creates a greater forced dependency upon the abuser. Women also stay because it is often safer than leaving, they are financially and emotionally strapped, have children, and are ambivalent and unaware of their choices. In addition, because of the intermittent nature of abuse with resulting periods of positive and peaceful interaction between the battered woman and her partner, the woman does come to believe that she has some control and that her partner will change his abusive ways.

It is factors other than abuse that explain why some women become less psychologically traumatized or less obstructed in their efforts to escape or protect themselves. These include institutional responses; personal strengths; tangible assets including educational; occupational and economic resources; social supports; and prior victimization.

MEN’S AND WOMEN’S ATTITUDES

Spousal abuse has been endemic for centuries. We do not really know whether there is more or less now than in centuries past. What has changed is now we perceive the problem. In her 1988 book, *Heroes of Their Own Lives; the Politics and History of Family Violence*, Linda Gordon notes that family violence as been historically and politically constructed; the definition of domestic violence, and appropriate responses to it develop and vary according to political moods and the force of certain political movements. Consequently, male and female attitudes play a critical role in shaping the course of their behavior in an abusive situation. Abuse occurs within a social context of male power and female oppression. The actions of the abuser and abused are reflective of social norms and social resources. Attitudes that support male supremacy, the patriarchal social system and inadequate legal protection are significant causal factors of violence against women.

Battering is currently viewed primarily

as a social rather than a psychological problem. It is largely premised on the belief that no woman deserves to be beaten or abused and that the batterer is solely responsible for his actions. Yet, beatings, murder, threats, indignities and psychological torment are routine for women in a large number of partnerships today. What does this prevalence of violence in so many relationships say about our society?

Historically, society has viewed men as deserving of special privileges and condoned them as the final arbiters of women’s behavior. Many men still believe that the world at large, and especially other men, expect them to resort to abusive behaviors to get their own way. “Cultural conditioning” leads men to be, high achievers, emotionally tough, dominant over women, and possessive of people and things. Men who outwardly express their feminine side” or who are perceived as being “too soft” in their relationships are often labeled “wimps,” “weak” and “p—y whipped.”

In short, society does not hold batterers accountable for their behaviors.

Socialization that makes women’s self-esteem dependent on their roles as wives and mothers and creates economic and psychological dependency on their husbands shapes women’s attitudes. Women often interpret the abuse against them as stemming from their own limitations. They internalize their husbands dissatisfaction with them and think that if only they try harder, the violence will cease. Moreover, because society sees women as being valuable only in a relationship, they remain in abusive relationships paying a high cost.

Given the magnitude of the problem, it is unlikely that psychotherapeutic approaches alone can successfully address it. People are microcosms of society. As a social problem, its causes are located in society’s condonation of violence and the reluctance of the police, courts and attorneys to intervene on behalf of victims of domestic violence.

RESPONSE OF LEGAL SYSTEM

What is the proper role of law when dealing with family disputes and violence?

The woman is usually the initial victim. Violence rarely takes place if an individual who is not a family member is present.

When these assaults take place, there are several factors that have historically influenced the response which the woman will take. These include fear of retaliation by her spouse, as well as the availability of local law enforcement officers and the legal system, viable alternative safe houses, ability to survive economically in a separate household, and help from the medical profession.

Availability of educated law enforcement personnel, legal assistance and laws that clearly state that abuse will not be tolerated are basic requirements needed for victims of battering and their families. These services address the victims’ need for safety, as well as the need for information concerning their rights and available civil and criminal protection.

There is an ongoing need for improved response from local law enforcement officers. Historically, law enforcement officers have been critically perceived as either hostile or uncaring toward victims of spouse abuse. Many officers still hold traditional views of women and are reluctant to arrest perpetrators in spousal abuse cases. When policy mandates that an arrest can only be made if there are visible signs of battering or a witness to attest to the abuse, police officers can nevertheless play a critical role in diffusing an intense encounter by sending a clear message to the perpetrator that acts and threats of violence are unacceptable to the community. Police officers who think that violence is precipitated by some recent behavior of one or both of the parties and that prevention is simple may minimize the seriousness of the problem. Over and over, battered women complain that police officers side with the batterer, only talking to him or having him walk him around the block to “cool off.”

The ability of individual perpetrators to conceal or justify their violence is facilitated by a criminal justice system that has historically ignored or blamed the battered woman. This results in letting the abuser off the hook.

The word “family” is derived from the Roman word familia, signifying the totality of slaves belonging to an individual. Wives were part of this totality and were considered property of and subject to the control of the male head-of-the-household. If a woman attempted to assert herself, it was expected that the husband beat her to keep her in line. This is evident in a series of

North Carolina cases in the late 1800s. In *State v Black* it was stated that a husband is responsible for the acts of his wife. The only limitations placed upon this use of force was that it not cause permanent injury and that he not hit his wife with a switch thicker than his thumb. Common law saw the marriage contract as an incorporation of the legal rights of women into those of their husbands. The very legal existence of the woman was suspended during marriage and became known as the Law of Coverture.

Although the American legal system has progressed to become increasingly more active in the enforcement of criminal and civil laws in domestic violence situations, it nonetheless remains a large problem. Indeed, lawyers play a critical role in providing victims with information concerning their rights, for example, what civil and criminal protections are available to them.

Likewise, standards set by prosecutors for accepting a case for trial are very strict and narrow; evidence problems are critical, as is time and money.

TREATMENT AND SPECIALIZED SERVICES

When translated into treatment methods, working with and teaching men to be non-violent, accompanied by efforts to increase social and legal consequences are favored. Programs that help men change social attitudes that force them into rigid sex roles, and that dictate behavior and limit their freedom of choice and expression are also favored.

With respect to battered women, current approaches favor action-oriented solutions, with a focus on developing emotional and material wherewithal to enable the woman to remove herself from the abusive relationship. Specialized services for battered

women include emergency housing, legal and financial assistance, hotline and referral services, and sensitive and appropriate emergency room and police intervention.

UPDATE ON CASE STUDY

Tom continued to exhibit abusive behaviors toward Susan, such as extraordinary anger, rage, jealousy, threats, and physical and verbal abuse. The more that Susan tried to accommodate him, the more distant and violent he became. Susan pleaded with Tom to seek counseling. Tom was unwilling to examine or change his behavior.

Divorce became the only solution for Tom and Susan. During the divorce proceedings, Tom used inappropriate control of property and the legal process to further harass and intimidate Susan.

It took Susan a long time to recover emotionally and financially. She went back to Tom several times after they separated hoping that he would change. Tom continued to promise Susan the possibility of a future together while minimizing his past behaviors. Susan finally faced the reality of their relationship and recognized the importance of cutting all ties with Tom. She is currently rebuilding her self-esteem and working on defining the elements of a healthy relationship.

Tom moved back into a protective situation where he was shielded from growing and taking responsibility for his actions. He failed to confront these difficult issues and continued to blame his partners for the failure of their relationships. Tom is likely to continue to repeat these patterns of behavior.

SUMMARY

Violence is a system of tactics used to control the victim. The goal of abusive behavior is to impose one's will upon another. Feelings of anger, frustration, hostility and insecurity do not cause a person to be violent. Rigid attitudes about sex roles that define who the man is and who he thinks she "should" be contribute to these feelings. Minimizing, denying and blaming others for one's acts of violence is an attempt to avoid taking responsibility for one's behavior. Although the use of abusive tactics often gets the abuser what he wants, it has negative effects on the woman and relationship. Abusive men do not see the real consequences of their behavior—costs in the lack of intimacy and respect in their relationship. It is possible to achieve nonviolent relationships only when they are based on equality. These relationships are partnerships that involve shared decision-making and mutual respect. Ultimately, we all must determine in our own lives what constitutes acceptable and unacceptable behaviors.

Spousal abuse will disappear only when social attitudes about men and women change and when our culture stops condoning the use of physical or emotional violence as a legitimate way to solve problems.

Linda E. Offner is a psychotherapist trained at Columbia University. She counsels individuals and families experiencing abuse, chemical dependency, relationship and career difficulties. She is also former litigator in California and New York. The author thanks Barbara Spack and Susan Kaylor their valuable comments on an earlier draft. Phone (602) 212-6730.

MARK YOUR CALENDAR !

TONOPAH – MARCH 18-20, 1999

THE COMMISSION ON DOMESTIC VIOLENCE STATISTICS

PREVALENCE

Domestic violence crosses ethnic, racial, age, national origin, sexual orientation, religious and socioeconomic lines.

* by the most conservative estimate, each year 1 million women suffer nonfatal violence by an intimate. Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 3.

* by other estimates, 4 million American women experience a serious assault by an intimate partner during an average 12-month period. American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

* nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood. American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

* 28% of all annual violence against women is perpetrated by intimates. Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women (NCJ-145325), January 1994.

GENDER

An overwhelming majority of domestic violence victims in heterosexual relationships are women.

* 90 - 95% of domestic violence victims are women. Bureau of Justice Statistics Selected Findings: Violence Between Intimates (NCJ-149259), November 1994.

* as many as 95% of domestic violence

perpetrators are male. A Report of the Violence against Women Research Strategic Planning Workshop sponsored by the National Institute of Justice in cooperation with the U.S. Department of Health and Human Services, 1995.

* much of female violence is committed in self-defense, and inflicts less injury than male violence. Chalk & King, eds., Violence in Families: Assessing Prevention & Treatment Programs, National Resource Council and Institute of Medicine, p. 42 (1998).

* during 1992-1993, women were 6 times more likely to experience violence by an intimate partner than men. Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 1.

* the chance of being victimized by an intimate is 10 times greater for a woman than a man.

Bureau of Justice Statistics Special Report: National Crime Victimization Survey, Violence Against Women, 1994.

SAME-SEX BATTERING

Domestic violence occurs within same-sex relationships with the same statistical frequency as in heterosexual relationships.

* the prevalence of domestic violence among Gay and Lesbian couples is approximately 25 - 33%. Barnes, It's Just a Quarrel', American Bar Association Journal, February 1998, p. 25.

* battering among Lesbians crosses age, race, class, lifestyle and socio-economic lines. Lobel, ed., Naming the Violence: Speaking Out About Lesbian Battering, 183 (1986).

RECIDIVISM

Battering tends to be a pattern of violence rather than a one-time occurrence.

* during the six months following an episode of domestic violence, 32% of battered women are victimized again. Bureau of Justice Statistics: Preventing Domestic Violence Against Women, 1986.

* 47% of men who beat their wives do so at least 3 times per year. AMA Diagnostic & Treatment Guidelines on Domestic Violence, SEC: 94-677:3M:9/94 (1994).

CHILDREN

Domestic violence has immediate and long term detrimental effects on children.

* each year, an estimated 3.3 million children are exposed to violence by family members against their mothers or female caretakers. American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 11.

* in homes where partner abuse occurs, children are 1,500 times more likely to be abused. Department of Justice, Bureau of Justice Assistance, Family Violence: Interventions for the Justice System, 1993.

* 40-60% of men who abuse women also abuse children. American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 80.

* fathers who batter mothers are 2 times more likely to seek sole physical custody of their children than are non-violent fathers. American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 40.

DATING VIOLENCE

Violence against intimates may occur even though the victim does not live with her abuser.

* violence against women occurs in 20% of dating couples. American Psychl. Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996), p. 10.

* an average of 28% of high school and college students experience dating violence at some point. Brustin, S., Legal Response to Teen Dating Violence, Family Law Quar-

terly, vol. 29, no. 2, 331 (Summer 1995) (citing Levy, *In Love & In Danger: a teen's guide to breaking free of an abusive relationship*, 1993).

SELF-DEFENSE

Many battered women attempt to physically defend themselves from abuse.

* marital homicide differs significantly by gender: a large proportion of the killings by women are acts of self-defense, while almost none of the killings by men are acts of self-defense. Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project: Executive Summary, 1997.

* defensive action by battered women to protect themselves or their children is often interpreted by law enforcement as an act of domestic violence. the number of battered women arrested for committing acts of violence against their partners has disproportionately increased in communities that overuse "dual arrest." Promising Practices Initiatives Report on the Expert Panels on Domestic Violence, Sexual Assault and Stalking Technical Assistance Project, U.S. Department of Justice, 1997.

LAW ENFORCEMENT

Intervention of the police and the court system can be improved in domestic violence cases.

* every state allows its police to arrest perpetrators of misdemeanor domestic violence incidents upon probable cause, and more than half of the states and the district of columbia have laws requiring police to arrest on probable cause for at least some domestic violence crimes. Zorza, *Mandatory Arrest for Domestic Violence: Why it may prove the best first step in curbing repeat abuse*, *Criminal Justice*, vol. 10, no. 3, p. 66 (Fall 1995).

* only about one-seventh of all domestic assaults come to the attention of the police. Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 3.

* female victims of domestic violence are 6 times less likely to report crime to law enforcement as female victims of stranger violence. American Psychl. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), p. 10.

PROTECTION ORDERS

Protection orders decrease, but do not eliminate, the risk of continuing abuse or homicide.

* a protection order issued by one U.S. state or indian tribe is valid and enforceable in any other U.S. state or Indian tribe. Violence Against Women Act of 1994, 18 U.S.C. 2265.

* in cases of marital or dating violence, which accounted for 82% of all protection order cases, 90% of defendants were male. Adams & Powell, *Tragedies of Domestic Violence: A qualitative analysis of civil restraining orders in Massachusetts*, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 9 (1995).

SEPARATION VIOLENCE

When a woman leaves her batterer, her risk of serious violence or death increases dramatically.

* separated/divorced women are 14 times more likely than married women to report having been a victim of violence by their spouse or ex-spouse. Bureau of Justice Statistics: *Female Victims of Violent Crime*, 1991.

* women separated from their husbands were 3 times more likely to be victimized by spouses than divorced women, and 25 times more likely to be victimized by spouses than married women. Bureau of Justice Statistics Special Report: *Violence Against Women: Estimates from the Redesignated Survey (NCJ-154348)*, August 1995, p. 4.

* 65% of intimate homicide victims physically separated from the perpetrator prior to their death. Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.47, table 17.

This excerpt is taken from the ABA's Web site at www.abanet.org. The complete report is a detailed look at statistics on domestic violence. American Bar Association 750 N. Lake Shore Dr., Chicago, IL 60611 312/988-5000 info@abanet.org.

CASE SUMMARIES

Prepared by Marshal S. Willick

The Doctrine of "Equitable Adoption" is not to be Used in Custody Proceedings; No Automatic Changes of Name for Children to Reflect Father's Name

Russo v. Gardner, 114 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 34, Apr. 2, 1998) Cohabitants met in 1989; the man moved in and out of the woman's home "several times before 1991." During one time that the man was not living there, the woman became pregnant during a "one night stand." The child (son) was born while the man did not live with the woman, but two weeks later he moved in, although they "broke up and reunited" at least three times during the next three years. In 1994, the woman gave birth to a child (daughter) for whom the man was the natural father.

The man was physically abusive and threatening to both the woman and the son. A TPO was issued in June, 1995, and in August the man was convicted of domestic violence against the woman. The woman had sought welfare benefits, and a blood test confirmed that the man was not related to the son. In December, 1995, the man hit the woman and tried to choke her; she went to the hospital, and he was arrested.

At some point, the man petitioned for joint legal and primary physical custody of both the son and the daughter. In January, 1996, the district court (Fine) awarded joint legal custody, and primary physical custody to the mother. Six months later, the man "physically intimidated and became verbally abusive" to the "court-recognized third party" who transported the children to and from the man's time-share. Apparently, the son was in surgery and could not be present, causing the man to scream profanity at the worker, and finally grab her by the arm and continue shouting at her. She filed a complaint for battery and refused to be further involved with the man.

In July, 1996, the Family Mediation and Assessment Center (FMAC) submitted a report which addressed the man's allegations that the woman "attempted to impede

his relationship with the children” as well as the issue of the man’s temper. Remarkably, FMAC reported “no issues” between the man and the children, despite the history of physical abuse. FMAC found no deliberate attempts by the woman to impede the man’s relationship with the children.

In August, Judge Fine conducted a three-day hearing and found that the woman’s testimony “was motivated by animus toward [the man] and that [the man’s] testimony was credible.” Finding that the son called the man “daddy,” the lower court found the woman’s corrections of the child to be “further indicia of both [the woman’s] animus and of [the man’s] position as a father.” The lower court found that the man had “equitably and constructively adopted” the son, supporting this decision by a finding that the man had placed himself in *loco parentis* and that it would be “devastating” to the son to have the man treat him any differently than the daughter. Instead of any statutory authority, the lower court cited *Frye v. Frye*, 103 Nev. 301, 738 P.2d 505 (1987), *McGlone v. McGlone*, 86 Nev. 14, 464 P.2d 27 (1970), and *Murphy v. Murphy*, 84 Nev. 710, 447 P.2d 664 (1968). The lower court ordered the daughter’s name changed to include the man’s last name.

The mother appealed, shortly before finding out that the actual identity of the son’s father, with whom the child had formed a “strong relationship.”

The mother argued that Judge Fine should

not have excluded psychiatric evidence, but since she never filed an NRAP 10(c) motion to supplement the record, the Court declined to consider the evidence outside the record.

The mother argued that the Nevada Uniform Parentage Act, NRS 126.011 and the parental preference doctrine, should have precluded the lower court’s award of joint legal custody to the man.

The Court started with the statement that the “trial court’s determination in a child custody proceeding will not be disturbed absent an abuse of discretion, but this court must be satisfied that the trial court applied the appropriate reasoning,” citing *Litz v. Bennum*, 111 Nev. 35, 888 P.2d 438 (1995). The Court then noted its opinion in *Hermanson v. Hermanson*, 110 Nev. 1400, 887 P.2d 1241 (1994), and its holding therein that “the doctrine of equitable adoption enunciated in [*Frye*], and the myriad of other psychological theories of parentage that the parties mention in order to determine paternity are inapplicable.” In other words, “*Frye* was rejected by *Hermanson* as inapplicable for determining legal parentage in a custody proceeding.” Although the man here claims that he never knew he was not the biological father, he was not listed on the birth certificate and the woman claims that she told him he was not the son’s father while she was pregnant.

Distinguishing the doctrine of equitable adoption as used in *Frye* for child support from its use in establishing legal custody,

the Court reversed and held that “for purposes of determining legal parentage in a custody dispute between biological and non-biological parents, *Hermanson* holds that NRS 126.051 is the applicable statute.”

Next, the Court turned to the woman’s claim that there was no substantial evidence to support the lower court’s decision that making the man the joint legal custodian of the son would serve his best interest. The Court noted the NRS 125.480 presumption against granting legal custody to a person guilty of domestic violence, and recited that the man was not the son’s biological father, nor ever married to the woman, was not listed on the birth certificate, ceased his relationship with the woman when the child was three years old, had committed domestic violence against the son and the woman, and had moved in and out six times. Finding that the criminal conviction “by definition” met the “clear and convincing evidence” standard, the Court noted the statutory presumption that it would not be in the child’s best interest to be placed in the man’s custody, and found an abuse of discretion.

Finally, the Court reversed the lower court’s change of name of the daughter, citing *Magiera v. Luera*, 106 Nev. 775, 802 P.2d 6 (1990), and reiterating that the “burden is on the party seeking the name change to prove by clear and compelling evidence, that the substantial welfare of the child necessitates a name change.”