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I. ASSIGNMENTS OF ERROR

Assignments of Error

Issue No. 1: The trial court abused its discretion and it denied the Appellant¹ the right to a fair hearing when it denied Bullis's motion for reconsideration.

Issue No. 2: The trial court abused its discretion and it denied Bullis the right to a fair hearing when it denied Bullis's motion for revision.

Issues Pertaining to Assignments of Error

Issue No. 1:

a. Whether the trial court abused its discretion and it denied Bullis the right to a fair hearing when it refused to reconsider that it was inappropriate and prejudicial for the trial court to substitute its opinion with respect to domestic violence perpetrator treatment for that of a State-certified domestic violence perpetrator treatment provider.

b. Whether the trial court abused its discretion and it denied Bullis the right to a fair hearing after it improperly withheld from him the transcript from the hearing date on Bullis' motion for revision, thereby preventing him from timely addressing issues and arguments in support of his motion for reconsideration.

¹ Hereinafter referred to as "Bullis."

Issue No. 2:

Whether the trial court abused its discretion and it denied Bullis a fair hearing because the trial court disapproved of the State-certified domestic violence treatment program Bullis timely submitted to for evaluation that he was ordered to do under the initial order of protection, with the trial court stating that: “...and I recognize STOP² might be different, *and perhaps that's why he went to STOP, because he thought he could get an assessment that didn't require treatment* (emphasis added).”

RP 8.

II. STATEMENT OF THE CASE

An Order of Protection (“the Order”) was entered against Bullis on February 28, 2014. CP 47. The Order required Bullis to submit to a domestic violence treatment and counseling program evaluation within 30 days and to include releases of information to permit the program provider to contact the Respondent, Allyah Ayesh (“Ayesh”). CP 47. The Order also required Bullis to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at a State certified provider that provides current WAC compliant treatment (emphasis added). CP 47.

On March 20, 2014, Bullis timely submitted to a domestic violence evaluation by a State certified provider at Social Treatment Opportunity Programs (“STOP”), a WAC compliant domestic violence treatment program. CP 47.

² Social Treatment Opportunity Programs.

On February 3, 2015, Ayesh filed for a Renewal of Order for Protection. In the petition for a renewal, Ayesh did not allege that there had been any violation whatsoever of the Order. CP 47.

At the hearing on Ayesh's petition for renewal held on February 27, 2015, Commissioner Jonathon Lack found that despite no contact whatsoever from Bullis since the entry of the Order, Ayesh was still in fear of Bullis's "acts of violence" because she testified to that effect without specifying in either her petition for renewal or during her testimony before the Commissioner what "acts of violence" she feared from Bullis. CP 47. The Commissioner further found that Bullis was in violation of the Order as he had not complied with treatment because of, or in addition to, the evaluation that Bullis submitted to the court was not from a State-certified domestic violence provider, and that Bullis had not complied with the release of information to permit the program provider to contact Ayesh. CP 47. Based upon the foregoing, the Commissioner granted Ayesh an Order on Renewal of Order for Protection ("Renewal Order"). CP 47. Bullis timely moved the trial court for revision of the Renewal Order. CP 47.

On May 8, 2015, a hearing was held before the trial court on Bullis's motion for revision. CP 59, RP 3-10. Despite no response brief filed in opposition to Bullis's motion for revision by Ayesh and no oral argument at the hearing from Ayesh's counsel, the trial court denied Bullis's motion for revision on the grounds that Bullis was not in

compliance with the Order because he had not sought treatment from a domestic violence treatment program. CP 55, RP 10. Bullis timely moved the trial court to reconsider its denial of his motion to revise, which the trial court also denied. CP 57, 59, 65.

III. MOTION FOR RECONSIDERATION

A. STANDARD OF REVIEW

An appellate court reviews a trial court's denial of a motion for reconsideration for abuse of discretion. *Meridian Minerals Co. v. King County*, 61 Wn. App. 195, 203, 810 P.2d 31 (1991). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Mayer v. Sto Industries Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

The trial court is presumed to perform its functions regularly and properly without bias or prejudice. *Wolfkill Feed and Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). A judicial proceeding is valid only if it has an appearance of impartiality, that is, that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing. *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995). This appearance of fairness doctrine seeks to prevent the problem of a biased or potentially interested judge. *State v. Carter*, 77 Wn. App. 8, 12, 888 P.2d 1230 (1995). A violation of the appearance of fairness doctrine requires evidence of a judge's actual or potential bias. *Id.* at 11.

B. ARGUMENT

1. Bullis fully complied with the written terms of the Order and it was an abuse of discretion for the trial court to find that he was not in compliance with the Order.

When civil protection orders are properly drafted, they are effective in eliminating or reducing domestic violence. “Their utility may depend on whether they provide the requested relief in specific detail. Each type of relief provided must be fully explained in the order. Providing precise conditions of relief makes the offender aware of the specific behavior prohibited. A high degree of specificity also makes it easier for police officers and other judges to determine later whether the respondent has violated the order.” CP 59. Appendix A to Appellant’s Opening Brief, 8-13.

The Order for Protection entered against the Bullis on February 28, 2014, ordered Bullis to participate in treatment and counseling as follows:

- a. “[D]omestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at [a] State certified provider that provides current WAC compliant treatment (*emphasis added*);” and

- b. “[O]ther: Evaluations must be completed [sic] within 30 days and include releases of information to permit the Provider to contact the Petitioner (*emphasis added*).” CP 59.

RCW 26.50.150 provides in relevant part:

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the

department of social and health services and meet minimum standards for domestic violence treatment purposes. The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including but not limited to: Current and past violence history; a lethality risk assessment; history of treatment from past domestic violence perpetrator treatment programs; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign...releases.

RCW 26.50.150. CP 59.

Pursuant to the Order, on March 20, 2014, Bullis submitted to a domestic violence evaluation at a Social Treatment Opportunity Program (“STOP”) in Tacoma, Washington. CP 47, CP 59. STOP is certified by the Washington State Department of Social and Health Services as a Domestic Violence Perpetrator Treatment Program. CP 47, CP 59. By its own definition, STOP is a:

Nationally and Internationally Accredited Treatment Facility Accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF). **Clinical menus and protocols are “deemed” by the State [of] Washington pursuant to Washington State Administrative Code 388-805-115 as meeting/exceeding state standards of care.** Program[s] included are: a state licensed and certified mental health clinic pursuant to RCW 71.24, a state licensed and certified Chemical Dependency Program pursuant to RCW 70.96A, [and] a state licensed and certified Domestic Violence Program pursuant to WAC 388-60 (emphasis added).

CP 47, CP 59.

In Washington, domestic violence perpetrator treatment “is for rehabilitation, not punishment.” Appendix A to Appellant’s Opening Brief, A-8. CP 59. With respect to treatment assessment/evaluation:

The court’s assessment of the perpetrator’s suitability and amenability for treatment...should then be followed by an assessment by the treatment program regarding the offender’s **ability** and willingness to **benefit from the specific program** (emphasis added). CP 59.

The court may determine that a particular client is appropriate for rehabilitative programs according to its assessment of the individual and the criteria established for sentencing or setting conditions for civil proceedings...*The intervention program must retain control over who is admitted to the treatment phase of the program, since only the staff knows the program well enough to know what will be effective with which kind of client* (emphasis added). CP 59.

Appendix A to Appellant’s Opening Brief, A-8, A-9.

Furthermore, under WAC 388-60-0115, the domestic violence treatment program has the authority to accept or to reject any referral for its program. WAC 388-60-0115 provides:

- (1) A treatment program has the authority to accept or reject any referral for its program.
- (2) The program must base acceptance and rejection of a client on written criteria the program has developed to screen potential participants.
- (3) A treatment program may impose any conditions on participants that the program deems appropriate for the success of treatment.

CP 59.

Based upon Bullis’s clinical intake and interview during his evaluation, he was rejected from the domestic violence perpetrator treatment program because he manifests none of the issues germane to the

etiology of domestic violence. CP 47, CP 59. This means that he was rejected from the treatment program due to his inability to benefit from the program because he possesses none of the issues that cause domestic violence. CP 59. It was an abuse of discretion for the trial court to find that Bullis was not in compliance with the treatment provision of the Order because it elected to substitute its opinion regarding domestic violence perpetrator treatment for that of a State-certified domestic violence perpetrator treatment provider. CP 59. For a court to order treatment for Bullis when he has been found by a State-certified domestic violence perpetrator treatment program provider to be unsuitable for treatment because he has none of the conditions related to domestic violence is not rehabilitative in nature – it is **punitive**. CP 59.

At oral argument, Bullis argued that the Order stated that he was to submit to an evaluation within 30 days, for which he timely complied. RP 5-6. In response, the trial court replied: “Perhaps it’s unfortunate the way this order was drafted, but it ordered him to do the treatment. And then it said, for the evaluation process, he needs to – and it shouldn’t say evaluation, because they don’t do evaluations. They do screenings. So “evaluation” is not even the correct word. The WAC refers to a screening.” RP 6-7.

As the report of proceedings was withheld from Bullis until after the time he filed and served his motion for reconsideration, he did not have an opportunity to address the trial court’s comments with respect to

the drafting of the Order. However, Bullis can only follow the Order as it was drafted and signed by a commissioner of the same family court as the trial judge in this matter. If the Order is incorrectly drafted, then that is an internal administrative matter that the court needs to address with its judicial officers because respondents can only comply with orders when they are given uniform effect within the same court. For a trial court to state that it is “unfortunate” that an order is drafted one way, but to impose conditions not expressed in the order post facto is not only an abuse of discretion, it is also a violation of due process.

The initial Order was specific, unfortunately worded or not. CP 59. It required the Bullis to submit to a treatment evaluation within 30 days from the date of the Order. CP 59. Bullis complied with that provision. CP 59. It required Bullis to sign releases of information to permit the provider to contact Ayesha. CP 59. Bullis complied with that provision. CP 59. Finally, the Order required Bullis to participate in a treatment program approved under RCW 26.50.150 or³ counseling at a State certified provider that provides current WAC compliant treatment. CP 59. The Order clearly gives Bullis the option of participating in a treatment program approved under RCW 26.50.150 or participating in counseling at a State certified provider. STOP is a State certified provider and Bullis was evaluated under the provisions of RCW 26.50.150(1) and WAC 388-60-0165. CP 59. Based upon the clinical intake, Bullis was rejected from the program. CP 59. While it may sound like an oxymoron, no treatment is

³ Subjunctive and not conjunctive.

still treatment. CP 59. RCW 26.50.150(1) expressly provides for a treatment plan that adequately and appropriately addresses the treatment needs of the individual. CP 59. In this case, the treatment plan that adequately and appropriately addresses the treatment needs of Bullis is no treatment because he has none of the issues related to domestic violence. CP 59.

At the hearing on Bullis's motion for revision, the trial court remarked that "...if STOP won't give him treatment, then he should go to a different agency. If he goes to Alternatives here in Thurston County, if he went to Olympia Psychotherapy, they would all take him in and allow him to be part of their program based upon the wording of this order." RP 9-10. What the trial court overlooks is that treatment is based upon a clinical evaluation or assessment based upon State mandated guidelines and not based upon the "wording" of a court order, particularly a court order that was "unfortunately" worded.

2. The trial court denied Bullis the right to a fair hearing after it improperly withheld from him the transcript from the hearing date on Bullis' motion for revision, thereby preventing him from timely addressing issues and arguments in support of his motion for reconsideration.

On May 11, 2015, the Bullis submitted to the court clerk a request for a transcript of the hearing on Bullis's motion for revision. CP 59.

Bullis advised the court clerk that he required the transcript to file a motion for reconsideration within 10 days. CP 59. The court clerk responded that the transcript would be available that same week. CP 59.

On May 15, 2015, the Bullis contacted the court clerk to see if the

transcript was ready for pick up. CP 59. The court clerk advised Bullis that “I gave the ruling to the judge for review (which I’m required to do under our local court rules) and I haven’t gotten it back yet. I am hoping for Monday. I will stay on it and send it ASAP.” CP 59.

It was made clear to the court clerk that time was of the essence. CP 59. In accordance with court rules, Bullis’s motion for reconsideration was to be filed no later than May 18, 2015. CP 59. Bullis intended to review the transcript with his STOP provider and to obtain a declaration from her that addressed all of the trial court’s concerns during the hearing on his motion for revision. CP 59. As the court clerk did not receive the transcript from the trial court in the time frame required by Bullis, he was unable to obtain a declaration from his treatment provider. CP 59. Bullis did not receive the transcript until May 22, 2015.

Bullis could find no local court rule, and upon request, the court clerk did not provide the local court rule she referenced that requires the trial court to “review” the transcript of a hearing and to withhold the transcript from the party that requests them until such “review” has been completed. CP 59.

By not timely receiving a copy of the transcript, the trial court denied Bullis the right to a fair hearing after it improperly withheld from him the transcript from the hearing date on Bullis’ motion for revision, thereby preventing him from timely addressing issues and arguments in support of his motion for reconsideration.

IV. MOTION FOR REVISION

A. STANDARD OF REVIEW

Once the superior court rules on the motion for revision, any appeal is from the superior court's decision. *In re Custody of Osborne*, 119 Wn. App. 133, 140 n.2, 79 P.3d 465 (2003) (citing *State v. Hoffman*, 115 Wn. App. 91, 101, 60 P.3d 1261, *rev'd on other grounds*, 150 Wn.2d 536, 78 P.3d 1289 (2003)). On appeal, we apply an abuse of discretion standard and will not substitute our judgment for that of the superior court unless the superior court's decision rests on untenable grounds. *In re Marriage of Goodell*, 130 Wn. App. 381, 388, 122 P.3d 929 (2005) (citing *In re Marriage of Dodd*, 120 Wn. App. 638, 644, 86 P.3d 801 (2004)).

The trial court is presumed to perform its functions regularly and properly without bias or prejudice. *Wolfkill Feed and Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). A judicial proceeding is valid only if it has an appearance of impartiality, that is, that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing. *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995). This appearance of fairness doctrine seeks to prevent the problem of a biased or potentially interested judge. *State v. Carter*, 77 Wn. App. 8, 12, 888 P.2d 1230 (1995). A violation of the appearance of fairness doctrine requires evidence of a judge's actual or potential bias. *Id.* at 11.

B. ARGUMENT

The trial court abused its discretion and it denied Bullis a fair hearing because the trial court disapproved of the State-certified domestic violence treatment program Bullis timely submitted to for evaluation.

During Bullis's oral argument before the trial court on his motion for revision, Bullis advised the trial court that he was in compliance with the Order because he had timely submitted to a domestic violence perpetrator treatment program evaluation with STOP. RP 5-6. In response, the trial court remarked "...and I recognize STOP might be different, *and perhaps that's why he went to STOP, because he thought he could get an assessment that didn't require treatment* (emphasis added)." RP 8.

Such a comment from the trial court, or from any court for that matter, is highly prejudicial because implicit in that judicial declaration from the bench is that people who use the services of STOP are "gaming" the system; that they seek treatment from this specific program because they know that STOP will not subject them to the burdens associated with treatment. CP 59.

STOP is certified as a domestic violence perpetrator treatment program with the Washington State Department of Social and Health Services. CP 59. Based upon Bullis's clinical intake and interview during his evaluation, he was rejected from the domestic violence perpetrator treatment program because he manifests none of the issues germane to the etiology of domestic violence. CP 47, CP 59. This means that he was rejected from the treatment program due to his inability to benefit from the

program because he possesses none of the issues that cause domestic violence. CP 59. It was an abuse of discretion for the trial court to find that Bullis was not in compliance with the treatment provision of the Order because it elected to substitute its opinion regarding domestic violence perpetrator treatment for that of a State-certified domestic violence perpetrator treatment provider. CP 59.

If the trial court believes that STOP is lenient or deficient with respect to how it administers its treatment program to perpetrators or offenders, then that is an issue the trial court should address with STOP and with the Washington State Department of Social and Health Services. CP 59. Furthermore, if the trial court prefers some treatment programs over others, then the trial court is free to include such designations in its Orders. CP 59. Bullis's Order contained no such designation. CP 59.

When a trial court questions Bullis's motives because he merely seeks to comply with the expressed terms of a court order, the court not only appears biased, *it is biased*. For these reasons, the Respondent did not receive a fair hearing before the trial court.

V. CONCLUSION

Bullis sought out and submitted to a domestic violence perpetrator treatment evaluation within 30 days from the entry of the Order, as required in writing by the Order; at a State certified domestic violence perpetrator treatment program that provides current WAC compliant treatment, as required in writing by the Order; and he submitted to all the

program's protocols, which included the signing of releases to permit the provider to contact Ayesh, as required in writing by the Order. Bullis has fully complied with the specific and the expressed terms of the Order.

The fact that Bullis submitted to an evaluation from a treatment program that the trial court apparently disfavors should not be held against Bullis. For a trial court to publicly declare during a motion hearing that maybe Bullis went to a particular treatment program because he knew he would not receive treatment is prejudicial, unfair, and manifests judicial bias against him. Furthermore, it is an abuse of discretion for a trial court to find that Bullis is not in compliance with the Order and therefore grant the Renewal Order when it substitutes its opinion with respect to domestic violence perpetrator treatment for that of a State-certified domestic violence perpetrator treatment provider.

For the foregoing reasons, this Court should find that the trial court abused its discretion and it denied Bullis a fair hearing on his motion for reconsideration and on his motion for revision and reverse the trial court with instructions to terminate the Renewal Order entered against him on February 27, 2015.

RESPECTFULLY SUBMITTED this 24th day of November, 2015.

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CERTIFICATE OF SERVICE

I certify that on November 24, 2015, I caused a true and correct copy of this Opening Brief of Appellant to be served on the following by legal messenger.

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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

/s/ Alana K. Bullis
Alana K. Bullis

No. 47794-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

ALLYAH JASEM SALIM AYESH,

Respondent,

v.

JONATHAN MICHAEL BULLIS,

Appellant.

APPENDIX TO OPENING BRIEF OF APPELLANT

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APPENDIX A

APPENDIX A

COURT MANDATED TREATMENT FOR DOMESTIC VIOLENCE PERPETRATORS^{1 2}

By Anne L. Ganley, Ph.D.

Introduction

This appendix is divided into two sections. The first section provides an overview of court mandated treatment for domestic violence perpetrators based on current expertise in the field of domestic violence.³ It includes the following topics: (1) efficacy of court mandated treatment for domestic violence perpetrators, (2) reservations about the court's use of court mandated perpetrator treatment, (3) considerations before the court orders domestic violence perpetrator treatment, (4) assessing perpetrator's suitability for court ordered treatment, (5) length of treatment period, (6) special conditions to consider when mandating treatment for a domestic violence offender, (7) programs for domestic violence offenders, and (8) an attachment of the Washington State Domestic Violence Perpetrator Treatment Program Standards. Court mandated perpetrator treatment programs refer to programs for perpetrators ordered to treatment with the primary goal of preventing re-occurring violence and as a condition of either criminal or civil court proceedings.

Appendix B addresses some of the issues related to evaluations and assessments of domestic violence perpetrators. There is little direct research on evaluations or assessments. What is presented here is the consensus of experts⁴ in the field and based on seminars that the author has provided for judges on this topic.

¹ Some of this chapter has been adapted from *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases, a National Model for Judicial Education* (1991) and earlier versions of the *Washington State Domestic Violence Manual for Judges* (1997, 2001).

² In this appendix the terms domestic violence perpetrator and batterer are used inter-changeably to denote those persons who use a pattern of abusive tactics against their intimate partner. These individuals may or may not have been legally adjudicated for this behavior.

³ Since this appendix was updated from the 2001 version of the *Washington State Domestic Violence Manual for Judges*, there has continued to be an explosion of information about court practices for responding to domestic violence perpetrators. There are fewer articles on research about treatment or interventions for domestic violence perpetrators. For emerging materials, judges can access <http://www.vavnet.org>, and www.mincava.umn.edu, and follow the links for court responses to domestic violence or for domestic violence perpetrators.

⁴ J. Edleson and O. Williams, *Parenting By Men Who Batter: New Directions for Assessment and Intervention* (New York: Oxford University Press, 2007); L. Bancroft and J. Silverman, "Assessing Risk to Children From Batterers" (2002), available from the Quarterly Newsletter of the ABA online <http://www.abanet.org/domviol/enewsletter.html>.

NOTE: This appendix focuses specifically on perpetrator treatment and assessment issues related to intimate partner violence, the most common type of domestic violence offenders as defined by Washington State. This review does not cover issues related to perpetrators of non-intimate partner violence (e.g., the other household member violence as defined in Washington statutes on domestic violence). Perpetrators of non-intimate partner violence have not been separated out in either treatment programs or in the research. Consequently, little is specifically known about effective interventions for the population who assault adult siblings, parents, in-laws, or non-intimate partner roommates.

I. Court Ordered Treatment for Domestic Violence Perpetrators

A. The Efficacy of Court Ordered Treatment

Recent research^{5 6 7 8 9 10 11} on the efficacy of court ordered treatment for domestic violence perpetrators often raises more questions than it answers. The research identifies some of the significant issues that have been or need to be explored about use of treatment in changing batterers and raises significant issues about the complexity of researching the efficacy issue. Generally, there is small but significant benefit from court mandated treatment that is a part of a coordinated community response to domestic violence. Research¹² indicates that batterers change due to a series of experiences that communicate that they are

⁵ J. C. Babcock and R. Steiner, "The effects of treatment and incarceration on recidivism of battering: A longitudinal study of Seattle's coordinated community response to domestic violence," *Journal of Family Psychology* 13 (1999): 46-59.

⁶ L. Bennet and O. Williams, "Controversies and Recent Studies of Batterer Intervention Program Effectiveness." (National Online Resource Center on Violence Against Women (VAWnet), Applied Research Forum, August 2001).

⁷ J. Babcock, C. Green and C. Robie, "Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment," *Clinical Psychology Review* 23 (Pergamon: 2004): 1023-1053, available online at www.sciencedirect.com.

⁸ S. Jackson, L. Feder, D. Forde, R. Davis, C. Maxwell and B. Taylor, *Batterer Intervention Programs: Where Do We Go from Here?* (National Institute of Justice NIJ Special Report, 2003).

⁹ E. W. Gondolf, "Evaluating batterer counseling programs: A Difficult task showing some effects and implications." *Aggression and Violent Behavior* 9 (2004): 605-631.

¹⁰ L. Feder and D. Wilson, "A Meta-Analytic Review of Court Mandated Batterer Intervention Programs: Can We Affect Abusers' Behavior?" *Journal of Experimental Criminology* 1 (Springer, 2005): 239-262.

¹¹ J. Edleson, *Evidence-Based Practice with Men Who Batter: The Simplicity of Certainty* (presentation at the 49th Annual Washington Judicial Conference, 2006).

¹² E. W. Gondolf, *supra* note 9.

both responsible for their abusive conduct and for changing that behavior. It is not treatment alone that is changing batterers, but treatment embedded in a system of accountability that includes law enforcement, criminal prosecution, adjudicated sanctions, and close court monitoring by a system such as probation for criminal court issues or by a court review process for civil court issues.

Consequently, measuring efficacy of batterer's intervention programs as distinct from efficacy of other parts of the coordinated community response is a complicated task. Did that batterer change (or not change) because of the program or because of what the judge said in court or what the law enforcement or probation officer did or because of the speed of response to noncompliance? Or did the change occur because of the community provided safety for the adult victim and the children? Or did the change occur because of all those steps?

Furthermore, how is success defined (e.g., Ceasing the violence? Ceasing the terrorist tactics? Ceasing the psychological and economic coercion? Ceasing the controlling tactics, etc.?)? And then, how is success measured (e.g., by recidivism in the legal system; reports to child welfare; reports to family law courts; by adult victim reports; by third party reports)?

Early research¹³ on such specialized treatment programs indicates 60 percent to 80 percent success rates depending on time since completing the program. In these studies, success was defined as either stopping the physical violence or as stopping both the physical and psychological battering. Success was measured by recidivism as reported either in official records or by victims' reports. One early study by Harrel, 1991, questions the efficacy of treatment programs, but the model she evaluated was a 12-week program where there were no consequences for noncompliance. Other challenges to efficacy of such programs have been raised by research using meta analysis of the various studies conducted over several years.¹⁴ Unfortunately, it is unclear whether the finding of little or no impact is actually valid since differences in outcomes often are lost when reviewing research with disparate research designs and when studying programs of differing goals and contexts.

¹³ For further information see M. Shephard, "Predicting Batterer Recidivism Five Years After Community Intervention," *Journal of Family Violence* 7, no. 3 (1992): 167-178, available from Domestic Abuse Intervention Project, Duluth, MN; A. Harrel, *Evaluation of Court-Ordered Treatment for Domestic Violence Offenders* (The Urban Institute, 1991); *Domestic Violence Abuse Project Research Update*, no. 3 (Winter 1991); D. Dutton, *The Domestic Assault of Women: Psychological and Criminal Justice Perspectives* (1988); L. K. Hamberger and J. Hastings, "Recidivism Following Spouse Abuse Abatement Counseling: Treatment Program Implications," *Violence and Victims* 5, no. 3 (1990): 157-170.

¹⁴ Babcock, et al. (2004), *supra* note 7.

Initial research on domestic violence treatment programs has pursued a variety of questions associated with efficacy:¹⁵

- Completers versus non-completers
- Comparison of impact of certain elements in a coordinated domestic violence response
- Comparisons of different treatment modalities

However, the research is still somewhat fragmented and while some trends about efficacy can be deduced, there are many gaps to be addressed before the research can provide comprehensive and definitive answers on the efficacy question.

For the most part, perpetrator treatment not coordinated with the criminal justice system has not been evaluated. While some evaluated programs have included batterers who were ordered into treatment as part of a civil protection order, the participants were either monitored by probation or in rare occasions by a civil court review process. There have been no comparison evaluations of batterers' success in treatment programs when ordered by family court proceedings (where there is little or no court monitoring of the batterer's participation or changes) versus treatment ordered by the criminal justice system (where there is at least the possibility for court monitoring through probation). Furthermore, there has been little research on the effectiveness of various models of probation review (e.g., face to face versus telephone; weekly versus monthly versus every three months). And little attention has been given to the different approaches used in monitoring by probation: individual sessions versus group sessions, etc. Also there has been no research on various models for reviewing compliance by civil courts. Since some research suggests that it may be the effectiveness of the monitoring system that may be one of the greatest influences on successful outcome,¹⁶ there may be a serious gap in a coordinated community response to batterer's treatment if appropriate court monitoring procedures are not in place.

Furthermore, there is growing literature on the "readiness factor" for individuals making significant changes. Successful outcome in treatment may be due in part to the individual's readiness to make changes. There needs to be more attention to the role of the judge, the defense attorney, the prosecutor, and the court

¹⁵ Examples of this research include: A. A. Gerlock, "A Profile of who completes and who drops out of domestic violence rehabilitation," *Issues in Mental Health Nursing* 22 (2001): 379-400; Rondeau, Brodeur, Brochu and Lemire, "Dropout and Completion of Treatment Among Spouse Abusers," *Violence and Victims* 16, no. 2 (April 2001); E. Gondolf, *The Impact of Mandatory Court Review on Batterer Program Compliance: An Evaluation of the Pittsburgh Municipal Courts and Domestic Abuse Counseling Center (DACC)* (1988), available at Mid-Atlantic Addiction Training Institute or website: www.mincava.umn.edu.

¹⁶ A. A. Gerlock, *supra* note 15; E. Gondolf, *supra* note 15.

monitor in contributing to the readiness of the batterer to make changes.¹⁷ Strategies for holding batterers (and not the victims) accountable for both the abuse and for stopping the abuse may go a long way in promoting readiness to change.

In addition, there are issues of race, class, gender, and sexual orientation as they intersect with treatment and change.¹⁸ However, few communities can afford to have multiple specialized programs to reach the diversity found in a population of batterers. Wherever possible specialized domestic violence intervention programs should be implemented and studied. There is much to learn from a consideration of a variety of approaches to implementing the Washington State Standards.

While continued research is also needed to assess which treatment modalities are effective for what types of batterers, it is important to note that the behavior will not be stopped by treatment programs, regardless of their modality, in isolation of a coordinated community response. The material presented in this chapter is based on this understanding of the significant role of a coordinated community response in providing appropriate rehabilitation. Rather than get into premature debates about the efficacy of specific treatment techniques for specific batterers or to prematurely state that the positive effect is too small to warrant court mandated treatment, communities need to use the limited rehabilitation funds to support batterer intervention programs that (1) meet state standards, (2) function effectively within a coordinated community response, and (3) can work with the full diversity of batterers.

¹⁷ For discussion of the impact of the judge's demeanor on victims of domestic violence, see J. Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (Boston: Northeastern University Press, 1999).

¹⁸ E. Aldarondo and F. Mederos, *Men Who Batter: Intervention and Prevention Strategies in a Diverse Society* (Kingston, NJ: Civic Research Institute, 2002); R.V. Almedia and K. Dolan-Delvecchio, "Addressing Culture in Batterers' Intervention: the Asian Indian Community as an Illustrative Example," *Violence Against Women* 5, no. 6 (1999): 654-681; R. Carrillo and J. Tello, eds., *Family Violence and Men of Color: Healing the Wounded Male Spirit* (New York: Springer, 1998); S. S. Doe, "Cultural Factors in Child Maltreatment and Domestic Violence in Korea," *Children and Youth Service Review* 22, no. 3/4 (2000): 231-236; O. J. Williams, "Treatment for African American Men Who Batter," *CURA Reporter* 25, no. 3 (1995): 6-10; O. J. Williams and L. R. Becker, "Partner Abuse Programs and Cultural Competence: The Results of a National Study," *Violence and Victims* 9, no. 3 (1994): 287-296; O. J. Williams, "Group Work With African American Men Who Batter: Toward More Ethnically Sensitive Practice," *Journal of Comparative Family Studies* 25 (1994): 91-103; O. J. Williams, "Ethnically Sensitive Practice to Enhance Treatment Participation of African American Men Who Batter," *Families in Society* 73 (1992): 588-95.

B. Reservations About the Court's Use of Court Mandated Perpetrator Treatment

Not all the reservations about court-ordered treatment for domestic violence perpetrators relate to the efficacy of issues discussed above. Other concerns are that such batterers' treatment programs:

- Are sometimes used as a substitute for court actions needed to protect the safety of the victim and/or children (jail time, no-contact orders, restitutions, etc.);
- Are used as a calendar management tool to relieve overcrowded calendars, to relieve overcrowded jails, to avoid the expense of developing alternative sentences, etc.;
- May have inadequate guidelines regarding the safety of the victim, or the number and content of sessions the offender must attend;¹⁹
- Or (when such program standards exist) courts may avoid referring batterers to certified programs;
- Communicate the message that domestic violence is less serious than crimes against strangers;
- Do not take into account that many perpetrators who appear to be first-time offenders in a criminal case have often committed unreported domestic violence assaults, or have been abusive in other relationships;
- Batterers' programs, probation departments, and courts inadequately monitor batterers' participation and progress; or if ordered by civil court proceedings, batterers are usually not monitored at all by the courts.

C. Considerations Before a Court Orders Domestic Violence Perpetrator Treatment

In light of the above concerns, it is important for the court to take a leadership role in the following areas before ordering domestic violence perpetrators to attend treatment:

- Ensuring that the victim's and the children's safety are addressed through development of a safety plan, including issuance of case specific court

¹⁹ See in this appendix the 2001 revision of the *Washington State Domestic Violence Perpetrator Program Standards*, which provides direction and flexibility in programming for diverse clients.

protective orders in all cases where the batterer is ordered to attend domestic violence perpetrator treatment.

- Assessment of the batterer's suitability for court ordered treatment in order to ensure that only those offenders likely to benefit from treatment are referred.
- Determination whether an appropriate (in Washington State this would be a state certified program) domestic violence treatment program exists in the community. These programs specifically are mandated to address the violent behavior in the context of its root causes. These specialized programs view the conduct as being learned in a familial and social context and as being used to maintain power and control over the victim.
- Assurance of adequate monitoring of the batterer's progress during the treatment period by the probation department or a court review process.
- Assurance that criminal (or the appropriate civil court) proceedings are promptly reinstated if the court determines that a new offense has been committed or that the offender is not progressing satisfactorily in the treatment program.

D. Assessing Perpetrator's Suitability for Court Ordered Treatment

1. Determining Perpetrator's Suitability for Treatment

The following checklist is provided to assist the court in determining a domestic violence perpetrator's suitability for court ordered treatment:

- Does the offender meet the statutory requirements for court-mandated treatment?
- Does the victim fear re-assault by the domestic violence perpetrator? How dangerous is this batterer? Is there any danger posed to the adult victim or children by ordering the perpetrator to attend a domestic violence treatment program? Will the victim be safe during the batterer's rehabilitation process?
- Has the batterer previously disregarded court orders?
- Has the perpetrator previously been terminated for unsuccessful completion of a treatment program addressing the violent behavior?

2. Assessing Perpetrator's Amenability to Treatment

Suitability of a case for court ordered treatment is different than that client being amenable to treatment. Ordering an offender to attend treatment is inappropriate and a waste of the limited available treatment resources if the domestic violence perpetrator is unable or unwilling to benefit from such a program.

a. Factors to consider in evaluating a batterer's amenability to treatment:

Those who are most appropriate for treatment are:

- Those who acknowledge their abusive behavior.
- Those who take responsibility for making changes in themselves.
- Those early in their careers as batterers.
- Those who have access to state certified domestic violence treatment programs.
- Those with language and learning abilities necessary to be successful in the available program.

b. If treatment is used primarily as a case management tool by referring those cases which are not strong enough for full prosecution (as sometimes is the case in SOC programs) or as a plea bargain measure, then the courts run the risk of referring mostly individuals who totally deny that they committed the conduct or that they are in any way responsible for making changes. These individuals not only do not benefit from the rehabilitation program, but also undercut the program for those who may be more prepared for treatment.

c. Furthermore, treatment is for rehabilitation, not punishment. It may be an appropriate alternative sentence combined with other sanctions or as a condition in a civil proceeding. It should be used in those cases where the courts believe that a focus on rehabilitation is warranted.

d. The court's assessment of the perpetrator's suitability and amenability for treatment based on the above listed factors should then be followed by an assessment by the treatment program regarding the offender's ability and willingness to benefit from the specific program.

The court may determine that a particular client is appropriate for rehabilitative programs according to its assessment of the

individual and the criteria established for sentencing or setting conditions for civil proceedings. Such a court determination does not guarantee that there are rehabilitative programs available in the community that can provide counseling for all such clients. The intervention program must retain control over who is admitted to the treatment phase of the program, since only the staff knows the program well enough to know what will be effective with which kind of client.²⁰

- e. If the offender is not accepted into the program, it is important that the court be made aware of this rejection, be provided the reasons given by the treatment program for not accepting the perpetrator, and then seriously consider these reasons in evaluating whether the batterer is indeed suitable for any other court ordered treatment. Too often some batterers will resist becoming engaged in treatment and change, and courts simply pass the person from one program to another, consuming both the court's time and the limited rehabilitation program resources. Treatment should be used only with those batterers who can and want to benefit from it.

E. Length of Treatment Period

It is recommended that the maximum period allowed by law be ordered for treatment since it is difficult to predict how long the rehabilitation process will take with a particular batterer. This approach leads to the lowest rate of recidivism.²¹

There continues to be a consensus among domestic violence experts that a minimum of one year is required for treatment to be effective. If the offender successfully completes treatment sooner, the perpetrator can seek early termination of the probation or diversion period. Experts in treating domestic violence perpetrators opine that battering represents a complex, long-term behavior pattern that is not easily changed through six, twelve, sixteen, or twenty-six week programs.²²

²⁰ A. Ganley, "Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client," in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, ed. D. J. Sonkin (1987).

²¹ D. J. Sonkin, "The Assessment of Court-Mandated Male Batterers," in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, ed. D. J. Sonkin (1987).

²² A. R. Klein, *Probation/Parole Supervision Protocol for Spousal Abusers* (1989), 86.

F. Special Conditions to Consider When Mandating Treatment for a Domestic Violence Perpetrator

1. Specialized Domestic Violence Programs for Perpetrators

The court's order for a domestic violence perpetrator to attend treatment should mandate that the batterer attend a treatment program which specifically focuses on ending the violent behavior and not just on stopping co-occurring problems, such as substance abuse, relationship problems, etc.

2. Use of No-Contact Orders and Protection Orders

The court should consider issuing a criminal court no-contact order in cases where the victim appears to be in danger of intimidation or assault from the perpetrator. (See Chapter 4, Section III for discussion of no-contact orders.) Treatment may also be a condition of an order from a civil court proceeding (as part of a protection order or as part of a service plan with Child Protective Services). Criminal no-contact orders and civil protection orders should be time limited with procedures for modification or extension explained to the parties. These can be effective when used in the context of a coordinated community response that responds quickly and decisively to violations of the order.

3. Substance Abuse Issues or Mental Health Issues

Where the batterer appears to also have a substance abuse problem or a mental health issue, the court should consider ordering concurrent treatment for the identified problems (and in these cases the court orders should be specific about concurrent treatment). Domestic violence, substance abuse, and mental health issues are separate problems that require separate solutions.²³ In jurisdictions where substance abuse and domestic violence programs have collaborated to offer conjoint programs, the substance abusing batterer can be ordered to complete that comprehensive program. If the batterer has psychiatric or mental health issues, then rehabilitation should address both issues.

4. Domestic Violence Victims Should Not Be Mandated Into Treatment

As stated in the Washington State Domestic Violence Perpetrator Program Standards, adult victims should not be required to participate in court-mandated treatment programs intended for perpetrators. Victims may be

²³ Kaufman, "The Drunken Bum Theory of Wife Beating." *Social Problems* 34, no. 3 (1987): 224.

encouraged to provide input and to attend specialized victim support services, if available in their community.

5. Clear Consequences for Perpetrator Noncompliance with Court Orders

Any court-ordered treatment should be accompanied by an admonition to the perpetrator that failure to gain admissions, to follow through, and to participate successfully may result in revocation of probation or diversion, and reinstatement of criminal charges, or in civil proceedings, the appropriate consequences for noncompliance. Perpetrators should be given a limited time to gain admission to treatment programs. The courts should be aware that certified programs are required by the state standards to measure the individual's successful participation and not simply attendance or payment of fees in order to determine participant's status in the program. Therefore, programs may terminate an individual for multiple reasons, including lack of progress, as well as re-offense (of criminal and non-criminal abusive conduct), noncompliance with program rules, and non-payment of fees. Courts will then need to decide how to best hold these perpetrators accountable.

G. Programs for Domestic Violence Perpetrators: Standards for Referral

For a current list of Washington State Certified Domestic Violence Intervention Programs, please contact the following on line resource and follow the links to list of programs by city:

<http://www1.dshs.wa.gov/ca/dvservices/dvvicsservbut1.asp>.

1. Statutory Requirements for Criminal Cases

The Statutory Requirements are discussed in Chapter 7, Section VI.

2. Certified Domestic Violence Perpetrator Programs

a. *The courts should refer identified batterers to certified domestic violence programs.* Washington established standards for certified batterers' treatment programs, primarily because of the lethal nature of domestic violence. There has been some resistance from some judges to referring identified batterers to the certified programs. While there are multiple sources of this resistance, it is important for judges to review carefully their position on this issue. Holding batterers accountable for their domestic violence and for changing their behavior is the hallmark of effective perpetrator intervention. People do not change problems they do not think they have. Batterers are always seeking others who will collude with their denial of their responsibility so they do not have

to stop their violence and their abusive control of the victims. See Chapter 7, Section VI and Attachment I of this Appendix for full discussion of the standards for Washington Certified Domestic Violence Perpetrator Programs.

- b. *The court should play a leadership role in ensuring that domestic violence perpetrators are referred only to state certified domestic violence perpetrator programs. Anger Management, Couples Counseling, and Family Counseling are not recommended because of their ineffectiveness in stopping the abusive conduct and their potential for increasing the danger to the victim, their children, and community.*
- c. *Washington State Standards for Domestic Violence Perpetrator Programs are not a "one size fits all" approach. There is re-occurring criticism of the so-called "one size fits all" approach to batterer's intervention. A careful read of the Washington State Standards reveals that the standards allow for a wide variety of treatment approaches and for individualizing treatment for this diverse population within the general framework. Due to the lethal nature of domestic violence the state legislature felt it was imperative that guidance be given to ensure public safety. As written, the state standards do not create a system of "one size fits all" but rather provides that basic framework where victim safety, victim autonomy, perpetrator accountability, as well as treatment program accountability, are central to effective treatment. The Washington State Standards for Domestic Violence Perpetrator Programs recognize that there are other interventions that may need to be used in lieu of, or in addition to, treatment (e.g., jail, close probation, fines, etc.). The Washington State Standards only covers one of the interventions, and that is treatment.*

H. National Guidance in Developing State Standards

Experts in treating domestic violence offenders have identified the following standards for batterer's treatment programs.²⁴ Much of this information was used in guiding the development of the Washington State Standards for Domestic Violence Perpetrator Programs.

²⁴ This list was adapted from the County of Los Angeles Domestic Violence Council's publication, *Batterer's Treatment Program Guidelines* (June 1988).

1. The program's philosophy should:
 - a. Define violence as part of a pattern of coercive control that may include physical, emotional, sexual, economic abuse, and/or use of children to control adult victim.
 - b. Clearly define domestic violence as a pattern of assaultive and coercive conduct which includes both criminal and non-criminal acts (see discussion of behavioral and legal definitions in Chapter 2), rather than merely as a symptom of an individual's pathology, a mental disorder, or relationship dysfunction.
 - c. Define domestic violence as a learned and socially sanctioned set of behaviors, which can be changed by the batterer.
 - d. Hold the perpetrator accountable for the violence in a manner that does not collude with the perpetrator in blaming the victim's behavior for the violence, or the batterer's use of alcohol or drugs as the cause.
 - e. Make stopping the violence the primary goal of the program, taking priority over keeping the couple together or resolving other relationship issues.
2. The program components should include:
 - a. Clear requirement that assessments for and admission to the program occurs only when the appropriate releases of information forms have been completed.
 - b. Initial and on-going assessments of the danger posed to the adult victim and children by the offender, and procedures for alerting both the victim and appropriate authorities should the victim's safety become a concern.
 - c. Adequate initial assessment of significant factors that may influence the perpetrator's ability to benefit from treatment (e.g., substance abuse, psychosis, organic impairment, etc.).
 - d. A minimum of one year (e.g., minimum of six months of weekly sessions followed by a minimum of six months of once a month sessions) accountability to the treatment program, with additional sessions available within the program or through referrals when indicated.

- e. The use of group counseling as the treatment of choice. This approach decreases the batterer's isolation and dependency on the partner and ensures that the perpetrator is accountable to the group as well as to the community.
- f. Procedures for conducting an ongoing assessment of the batterer's violent propensities throughout the course of treatment, such as informing the perpetrator at the beginning of the program that the victim and others will be contacted periodically to assess whether the violence has stopped.
- g. Require batterers with substance abuse problems to attend domestic violence group treatment substance-free, and to seek concurrent treatment for substance abuse.
- h. Demonstrated ability to submit progress reports to the probation department or the courts once a month.
- i. Procedures for reporting any new offense or violations of court orders committed by a court-mandated client during treatment to appropriate court authorities.
- j. Language capabilities sufficient to treat a monolingual non-English speaking offender.
- k. A "limited confidentiality" policy whereby the adult victim is entitled to information from the program regarding the acceptance or rejection of the perpetrator into the program, whether the offender is attending the program, perpetrator progress, termination, cause for termination, and warnings about risk of future violence. Any information provided by the victim to the program must be held in confidence, unless the victim provides written permission to release the information.

For complete listing of the Washington State requirements, please review attached standards.

II. Domestic Violence Evaluations and Assessments

Just as there has been growing judicial interest in court-mandated treatment for domestic violence, there also has been an increasing desire to have domestic violence evaluations and/or assessments in criminal and civil court proceedings involving domestic violence. The request for the domestic violence evaluations comes sometimes from the parties (or the lawyers) in the case, and sometimes from the judicial officer. Domestic Violence Assessments are sought to address a wide variety of questions:

- Whether or not specific conduct is domestic violence.
- If domestic violence, then who is the adult victim and who is the perpetrator?
- If domestic violence, what is the risk of future danger to whom by whom (assessment of lethality and dangerousness)?
- What has been the impact of domestic violence on the adult victim?
- What has been the impact of domestic violence on the children?
- What risk does the domestic violence perpetrator pose to children?
- How does the domestic violence impact the parenting of the adult victim of the perpetrator?
- Is the perpetrator amenable to treatment?
- Are there co-occurring issues for the perpetrator that may impact treatment?
- has the domestic violence stopped the abusive behavior?

This appendix focuses on domestic violence assessments of the perpetrator; although, some of the comments and examples are relevant to assessments for domestic violence adult victims or their children. It is beyond the scope of this appendix to handle this topic in an exhaustive manner. It should be taken only as a primer, which highlights some of the dilemmas surrounding such evaluations. See Chapter 2 for coverage of lethality assessments. The detail will not be repeated here in this appendix; although, lethality assessment is always part of the domestic violence assessment. I will limit my comments to domestic violence evaluations only and will not address issues related to other types of non-domestic violence forensic evaluations, except where they specifically intersect with domestic violence evaluations. For this discussion, I will use the terms evaluation and assessment interchangeably.

Making sense out of domestic violence evaluations/assessments (whether presented to the court in writing or in testimony) often requires the judicial officer to keep clear about the following:

1. What are the legal questions before the court in this case?
2. What is the purpose of the domestic violence evaluation? How can a domestic violence evaluation be helpful to the court in responding to the specific legal questions before it?
3. What does domestic violence assessment entail? What can a domestic violence evaluation tell the court and what it cannot say?
4. What qualifications or experience are necessary for a competent evaluator?

A. Domestic Violence Evaluations: Which Court? What is the Legal Question?

To be useful, a Domestic Violence Evaluation should be focused on the specific legal questions before a specific court.

1. In criminal court proceedings, a domestic violence evaluation may be offered to assist the court to determine whether or not an individual committed a crime:
 - Did this defendant engage in this behavior or commit these acts? Was this behavior a crime or not (e.g., self defense)? Accident?
 - Even when criminal nature of the conduct has been established, there may be other questions to be answered by a domestic violence evaluation: Whether or not the criminal behavior was committed under duress? Whether there are other mitigating circumstances?

For the most part, domestic violence evaluations alone cannot determine whether or not someone engaged in certain behaviors. The evaluator is rarely a witness to the events and often is interviewing only one party and has to rely on input from other parties. Occasionally, in the course of an evaluation by a skilled domestic violence evaluator, the perpetrator will volunteer descriptions of events that confirm that indeed domestic violence occurred. But the lack of such reports or denial of such behaviors to the evaluator does not guarantee that the person did not commit domestic violence. The court usually has to look at other information to determine whether or not behaviors occurred.

Skilled domestic violence evaluators can render professional opinions on the motivation and meaning of the identified conduct which may be useful to the court.

2. In criminal court proceedings, domestic violence evaluations may also assist in determining appropriate sentencing:
 - Is the criminal conduct actually domestic violence or not? (does it fit the behavior definition of domestic violence)?
 - How lethal is the domestic violence? Future risk?
 - Would the offender benefit from a batterer's treatment program?
 - Is the domestic violence perpetrator amenable to treatment?

While domestic violence evaluations may not determine whether or not the criminal act took place, the domestic violence evaluation can render an opinion as to whether or not this behavior constitutes domestic violence. Domestic violence is a pattern of behavior, not an isolated individual

event. So knowing whether or not the assault is part of a pattern called domestic violence or not is important to determining the most effective intervention, court orders, and sentence. For example, the facts of the case may clearly establish that the person did push the other person against a wall (e.g., committed assault), but unless this is part of a pattern of assaultive or coercive behaviors, the offender would not do well in a domestic violence treatment program. The court would sentence on the assault issue, but not call it domestic violence invoking domestic violence intervention strategies.

3. In civil court proceedings (family court, dependency court, juvenile court, and tort cases) a domestic violence evaluation may be relevant to a variety of questions before the court:
 - Is there domestic violence in this case? If so, who is the perpetrator? Who is the adult victim?
 - Assessing lethality and safety issues for the adult victim, children, community, and court?
 - Custody issues?
 - Parenting plans?
 - Impact of domestic violence on the adult victim?
 - Impact of domestic violence on the children?
 - Impact on the victim's or perpetrator's parenting?
 - Damage assessment for tort cases?

B. What is the Purpose of the Domestic Violence Evaluation?

How can a Domestic Violence evaluation be helpful to the court in responding to the specific legal questions? A domestic violence evaluation conducted by a skilled evaluator can provide invaluable information to the court faced with making complicated decisions with far reaching implications in the lives of family members. In spite of education, there continues to be far too little understanding of the dynamics of domestic violence and its varying impacts on the parties. As lawyers, health professionals, and evaluators better understand domestic violence, how to gather information about it, and how to weigh it in light of the other issues in the case, there will be less need for a specialized domestic violence evaluation. Until then, the courts for some cases will need the additional input provided by a competent domestic violence assessment.

C. Elements of a Domestic Violence Assessment

1. Purpose of the evaluation: List of questions before the court to be addressed by the evaluator
2. Interviews conducted: Date and time spent
3. Materials read
4. Tests administered and interpreted

Caution on Testing: Psychological testing is NOT useful in the following:

- Determining whether or not domestic violence occurred
- Determining who is or is not a perpetrator (or victim)
- Determining future risk to adult victim
- Determining future risk to children posed by domestic violence

Many of the tests appearing in evaluations are psychological tests regarding personality. Domestic violence is a behavior problem, not a personality problem, exhibited by individuals from a wide variety of personality types, including those who test clinically normal. It is impossible to determine whether or not someone is domestically violent by looking at a personality test. Being a victim of domestic violence is due to the behavior of another, and victims of domestic violence can have any personality type. Some victims may test with clinically significant characteristics, as a result of living with domestic violence, and these so-called personality traits disappeared when victim is free of the abuse and coercion. Often the tests need to be interpreted in light of the information about the perpetrator's domestic violence tactics.

Psychological tests cannot rule out risk to adult victims posed by domestic violence perpetrators. The current risk assessments involve interviewing and gathering information about the behavioral pattern, information about the offender, and the current context—not about their personality profiles of either party.

Psychological tests cannot determine risk to children from domestic violence. There has been some progress in developing instruments to measure risk of child maltreatment. However, these tools were not designed to measure risk to children posed by intimate partner violence. Whenever psychological tests are used in domestic violence evaluations, or in other evaluations used for custody evaluations, or for parenting plans, they have to be interpreted in the context of a detailed assessment of the domestic violence.

Psychological tests may be helpful for treatment purposes. Understanding how a person functions or their personality style may suggest which approaches may need to be used. Alone, they just are not helpful in identifying whether or not there is domestic violence and whether or not there is future risk.

5. Definition of domestic violence used by the evaluator should be stated in report or testimony

Most of the questions needing to be addressed by a domestic violence assessment require the use of the behavioral definition of domestic violence (see Chapter 2), in connection with legal definitions. Because domestic violence is a pattern of behavior with a range of effects and posing a range of risks, any assessment that determines yes or no domestic violence, based on a limited legal definition of domestic violence applied to one incident (see Chapter 2) is not useful to the court. Evaluators have a wide range of definitions for domestic violence. For example, some think there is no domestic violence unless there has been significant documented physical injury to adult victim or child and therefore claim there is no domestic violence in the case. They base their determination on outcome rather than on behavior engaged in by the offender, and in doing so, may place individuals at risk for future harm. Others think there is no domestic violence unless there has been an arrest or conviction for domestic violence. Or they focus solely on the physical assaults. At a minimum the evaluator should state the definition of domestic violence used in the evaluation.

6. Domestic violence report or testimony would vary according to case, but should cover the following basic topics
 - a. Whether or not there is domestic violence? If there is, who is the adult victim and who is the domestic violence perpetrator? This should be clearly stated for the court.
 - b. If there is no domestic violence, then the evaluator would state the basis for the no domestic violence conclusion. The domestic violence assessment would stop there.
 - c. If there is domestic violence, then the domestic violence assessment should include the following:
 - Detailed description of the pattern of abuse over the course of the time: physical, sexual, and psychological attacks (threats, emotional abuse, isolation, controlling tactics, etc.), economic coercion, and use of children against adult victim.
 - A description of the time period assessed: throughout the course of the relationship including the time period between the end of the

relationship up to the date of the evaluation. Oftentimes evaluators only consider behavior during the relationship and ignore the behavior that continues after the relationship is supposedly ended. Domestic violence does not occur only in marriages or cohabitating relationships.

- Impact of domestic violence on adult victim: health, employment, housing, social/family/community relationships, autonomy, etc.
- Impact of domestic violence on children (including but not limited to impact on parenting of adult victim, and on parenting of perpetrator),²⁵ safety, health, housing, education, social networks, etc.
- Lethality assessment (see lethality section in Chapter 2)
- Co-occurring issues: substance abuse, mental illness, sexual deviancy, poverty, etc.
- Protective factors in adult victim, children, perpetrator, and community including cultural issues as related to protective factors.

Some of the evaluations will need to do certain sections in more detail, because the decisions are being considered in civil courts rather than in criminal court.

D. What Qualifications are Necessary for a Competent Domestic Violence Evaluator?

1. To do a competent domestic violence evaluation, the evaluator must have specialized education in domestic violence dynamics, domestic violence screening protocols, and assessment protocols, as well as experience in working with domestic violence perpetrators, victims, and their children.

A professional can be a highly skilled forensic expert, custody evaluator, mental health expert, or child welfare expert, but not be able to do a competent domestic violence evaluation. For the most part, psychiatry, psychology, and social work graduate education provide little, if any, education in the area of domestic violence. Consequently, to do a domestic violence evaluation, and to integrate that information into their assessments, professionals need to take continuing education seminars in specific domestic violence related topics, as well as have direct experience working with domestic violence perpetrators, adult victims, and their children in order to conduct competent evaluations.

²⁵ Appendix B.

2. If an evaluator does not have this specialized training and experience, then the evaluator should consult with a domestic violence specialist and incorporate that information into their assessment of the case. The consultation should be done prior to interviewing the parties in order to select the most appropriate evaluation protocols and then again when coming to conclusions and or recommendations.

This is especially important in custody and other family law cases. Mental health professionals too often do not screen for domestic violence, even though the standard of care has moved toward routine screening for domestic violence victimization for all patients, and there is a growing trend in health care to screen for domestic violence perpetration as well.²⁶ Consequently, some professionals do not know whether or not their clients have experienced domestic violence as a victim or perpetrator, because they do not do routine screening. The professional mistakenly thinks clients will bring up these issues on their own. And assume that if it was not brought up, then it did not happen. Or too often, in family law and child welfare cases when adult victims raise domestic violence concerns, professionals mistakenly assume that the adult victims are only doing this to merely have the advantage in a divorce or custody case.

3. Therapists should not be used to conduct domestic violence evaluations for their own clients.

The role of the evaluator and the therapist is very different. While therapists can provide some useful information to evaluators or to the court (especially if they routinely gather behavioral information from their clients), their therapeutic role with the client may compromise their objectivity or may be undermined when they are used as an evaluator.

4. While all domestic violence perpetrator programs are willing to provide the court information about program admissions and participation, they may take a policy position not to do domestic violence evaluations for the courts on their own clients.

There are multiple reasons why the programs may take this or a modified position:

- Competent evaluations/assessments, as well as reports or testimony for courts, take a lot of time, and many programs have limited staff. It is difficult to do the kind of assessment needed for treatment, maintain the active treatment program, and do outside domestic violence

²⁶ K. McCloskey and N. Grigsby, "The Ubiquitous Clinical Problem of Adult Intimate Partner Violence: The Need for Routine Assessment," *Professional Psychology: Research and Practice* 36, no. 3 (2005): 264-275.

evaluations on individuals who often do not want to participate in or are not appropriate for the treatment phase of the program.

- Sometimes there is actual, or the appearance of, conflict of interest.
- Other times it results in a situation where clients are more focused on the evaluation than on their participation in rehabilitation.

III. Conclusion

While evaluations and treatment for domestic violence perpetrators are important tools, they are just two of the multiple interventions needed to address domestic violence perpetrators. Domestic violence evaluations, done well, can increase the safety of adult victims and their children. They can address the specific issues of specific batterers in specific circumstances. They can contribute to the efficacy of the court response by considering the individual issues. And done poorly they endanger adult victims, their children, and the community. Treatment is not a panacea for stopping domestic violence, and it will not work for some individual perpetrators. For treatment programs to be effective they must be embedded in a coordinated community response. The courts need to have a variety of interventions, including sanctions and careful monitoring, to create readiness for change in individual batterers. Since treatment is basically a rehabilitation program for those already engaged in being abusive, it alone will not alter this widespread social problem. And, the courts must join with all community institutions to communicate new community norms of respect and equality in intimate relationships.

APPENDIX A: ATTACHMENT 1

Washington State Domestic Violence Perpetrator Treatment Program Standards Summary

Authority

RCW 26.50.150 provides that the Department of Social and Health Services (DSHS) shall adopt rules for domestic violence perpetrator treatment (DVPT) programs. The rules adopted by DSHS for DVPT programs are set forth in Washington Administrative Code (WAC) 388-60.

Scope

WAC 388-60 applies to any program that:

- Advertises that it provides domestic violence perpetrator treatment; or
- Defines its services as meeting court orders that require enrollment in and/or completion of domestic violence perpetrator treatment.

Certification/Recertification

DSHS certifies programs, not individuals. Requirements for obtaining initial certification are provided for in WAC 388-60-0435 through WAC 388-60-0495. Certified programs are required to apply for recertification every two years. Requirements for recertification are provided for in WAC 388-60-0505 through 388-60-0545.

DVPT Staff Requirements

DVPT Staff requirements are provided for in WAC 388-60-0315 through 388-60-0425. Before a counselor can provide DVPT services for a certified program, the certified program must submit documentation to DSHS that verifies that the counselor meets the standards contained in WAC 388-60-0315 through 388-60-0425.

Clinical Intake

RCW 26.50.150 (1) provides that all treatment must be based upon a full, complete clinical intake including: Current and past violence history; a lethality risk assessment; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

Treatment Focus

RCW 26.50.150 (4) requires DVPT programs to focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior.

Group Treatment Required

RCW 26.50.150 (3) requires participants to participate in group sessions unless there is a documented, clinical reason for another modality.

Substitute Treatment Prohibited

RCW 26.50.150 (3) prohibits substituting other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews; however, some of the above may occur concurrently with the weekly group treatment sessions. WAC 388-60-0095 (5) prohibits marriage or couples therapy during the first six months of DVPT and allows such therapy only where the victim has reported that participant has ceased engaging in violent and/or controlling behavior.

Impact of Domestic Violence on Families

WAC 388-60-0245 (5) requires DVPT programs to include an educational component that informs participants on the impact of domestic violence on children and the incompatibility of domestic violence and abuse with responsible parenting.

Participant Contract

WAC 388-60-0225 (2) requires DVPT programs to have program participants enter into a contract in which the participant agrees to:

- Cooperate with all program rules;
- Stop violent and threatening behaviors;
- Be nonabusive and noncontrolling in relationships;
- Comply with all court orders;
- Sign all required releases of information; and
- Develop and adhere to a responsibility plan.

Violation of contract rules may be grounds for the DVPT program to terminate the participant. If a DVPT program chooses not to terminate the participant, the DVPT program must note

noncompliance in the client's progress notes and report the noncompliance to the court and the victim. See WAC 388-60-0295 (4)

Required Releases of Information

To facilitate communication necessary for periodic safety checks and case monitoring, RCW 26.50.150 (2) requires DVPT programs to require the perpetrator to sign the following releases:

- A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;
- A release to prior and current treatment agencies to provide information on the perpetrator to the program; and
- A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

Victim Safety

WAC 388-60-0065 and WAC 388-60-0155 require DVPT programs to:

- Have written policies and procedures that assess the safety of the victims of program participants;
- Treat all information the victim provides to the DVPT program as confidential; and
- Inform victims of outreach, advocacy, emergency and safety planning services offered by a domestic violence victim program in the victim's community.

Minimum Treatment Period

WAC 388-60-0255 (3) requires DVPT programs to require participants to attend a minimum of twenty-six consecutive weekly same gender group sessions, followed by monthly sessions until twelve months are complete.

Satisfactory Completion

WAC 388-60-0265 (1) requires DVPT programs to have written criteria for satisfactory completion. WAC 388-60-0255 (1) provides that satisfactory completion of treatment is not based solely on participating in treatment for a certain period of time or a number of sessions, but is based on the participant fulfilling all conditions set by the DVPT program.

After successful completion by a program participant, WAC 388-60-0275 (1) requires the DVPT program to notify:

- Courts having jurisdiction, if the participant is court-mandated to attend DVPT; and
- The victim of the program participant.

Discharge of Participants who do not Complete Treatment

WAC 388-60-0295 (1) requires DVPT programs to have guidelines for discharging participants who do not satisfactorily complete the program. WAC 388-60-0295 (2) provides that a DVPT program may terminate a participant from treatment for non conformance to the participant contract. After discharge of a participant who does not complete DVPT, WAC 388-60-0305 (4) requires DVPT programs to notify the following parties within three days of termination of the participant:

- Courts having jurisdiction, if the participant is court-mandated to attend DVPT;
- The participant's probation officer, if any; and
- The victim of the program participant.

This summary was prepared on June 4, 2007 by:
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