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IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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In re the Marriage of  
Tatyana Mason,  
Respondent Below & Petitioner, **Pro Se, on Appeal**  
v.  
John Mason  
Petitioner Below & **Respondent on Appeal**

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**Opening Brief**  
**Appeal from Order Denying Motion for Reconsideration**  
**Superior Court of Washington, County of Thurston**  
**Case No. 07-3-00848-0**  
**The Hon. Anne Hirsch**  
**(Protection Order, Custody, Child Support)**

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## INTRODUCTION

Ms. Mason is appealing the Courts Order Re Modification/Adjustment Of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT), the Court's Letter Opinion, and the Court's Order Denying Motion for Reconsideration. No. 07-3-00848-0. The background of this case and proceedings is as follows herein.

The divorce of Ms. Mason and Mr. Mason was finalized in June, 2008. Prior to the divorce and during legal separation, Ms. Mason had primary custodianship of the Mason children, sons Graham and David Mason, and Mr. Mason had visitation rights. The Court placed Domestic Violence charge against Mr. Mason on August, 2007. At the time of the finalized divorce in August, 2008. Ms. Mason and Mr. Mason were each awarded 50% custody of the children through mediation.

On June 2, 2009, Ms. Mason sought a Protection Order against Mr. Mason for Domestic Violence again. The Court denied that Protection Order on June 19, 2009.

In March, 2011 Mr. Mason requested a modification of the Custody Decree, Parenting Plan, and Residential Schedule. For reasons described and refuted below, the Court in April, 2011 ruled that Mr. Mason would have 100% custody of the children, pending an investigation by a court appointed Guardian Ad Litem ("GAL"), Ralph Smith.

The Mason's case went to trial in December 2012, in Thurston County Superior Court, Family and Juvenile Court Division, Olympia, Washington. The Court ruled that it could not make a final decision in the

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case after the trial, based on what she heard during the trial, as detailed below. At that time, Judge Hirsch stated that she was pinning her hopes of making a ruling based on a forthcoming psychological evaluation of both Ms. Mason and Mr. Mason, as well as the Mason children, sons Graham and David. The court agreed to a psychological evaluation by Dr. Loren McCollom, a court approved Ph.D. psychologist.

Due to extenuating circumstances detailed, the psychological evaluation by Dr. McCollom was not available to the Court in a Court-specified timely manner. The trial was finally concluded by the Court on October 7, 2013, almost one year after it initially started. In the absence of Dr. McCollom's Report, the Court ruled on Ms. Mason's Request for Reconsideration based on earlier-presented evidence, the February 2008 report submitted by the first Guardian ad Litem, Mr. Richard Batholomew.

That ruling resulted in the Court's Order Re Modification/Adjustment Of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) of November 25, 2013.

On Dec. 5, 2013, Ms. Mason filed a Motion For Reconsideration of the Order Re Modification/Adjustment Of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) of November 25, 2013.

The Court denied Ms. Mason's Motion for Reconsideration on Dec. 27, 2013, at which time the Court issued an Order Denying Motion for Reconsideration and a Letter Opinion.

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In January, 2014 Ms. Mason filed a timely Notice of Appeal in response to the Court's Order Re Modification/Adjustment Of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) of November 25, 2013, the Order Denying Motion for Reconsideration, and the Letter Opinion.

Ms. Mason is herewith filing an appeal brief to the Washington State Court of Appeals, Division II.

**ASSIGNMENTS OF ERROR**

1. The Court erred in its ruling of 12/27/2013 when it denied Ms. Mason's Motion for Reconsideration and stated that there was no newly discovered evidence and that there was no manifest abuse of discretion.

2. The Court erred in denying Ms. Mason's Motion for Reconsideration of the Court's Order on Modification, Final Parenting Plan and Restraining Order of November 25, 2013, when it concluded that there was no newly discovered evidence.

3. The Court erred in the Order Re Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) by ruling that a substantial change of circumstances had occurred, based on findings of abuse under RCW 26.09.191 by Ms. Mason.

4. The Court erred in the Letter Opinion by relying on questionable comments made by the first Guardian ad Litem, Richard Bartholomew, in his February 2008 report. Letter Opinion Dec, 27, 2013.

**ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. In the 12/27/2013 Order Denying Reconsideration, the Court ordered that the Motion for Reconsideration is denied. The Court reached this conclusion based upon Findings/Conclusions of Law, which included "2. There is no newly discovered evidence." (emphasis added). However, on December 5, 2013, Ms. Mason filed a Motion for

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Reconsideration which was based on a Report of Parenting Evaluation prepared by Dr. Loren McCollom, Ph.D. The Court had requested this report, but had not received it by the October 7, 2013 trial. The submission of the McCollom report constituted new evidence. Accordingly, the Court erroneously concluded “There is no newly discovered evidence,” and therefore erred in denying Ms. Mason’s Motion for Reconsideration. Likewise, the Court abused its discretion by not regarding the McCollom as newly discovered evidence.

2. In the 12/27/2013 Letter Opinion, the Court stated that as of the October 7, 2013 RP 80, “[t]he Court still did not have Dr. McCollum’s (*sic*) report, because Ms. Mason still had not made arrangements to pay for her share.” Ms. Mason acknowledges that she had not made arrangements to pay for her share, but her lack of doing so was due to her inability to secure gainful employment and the funds necessary to do so, as detailed herein.

3. In the Letter Opinion, 12/27/2013, the Court states that Ms. Mason was given “[a] significant amount of time and ability to address all of her concerns and she did not do so until the very eve of the continued trial.” While the Court did give a considerable amount of time, the Court did not take into consideration that the ability to address all of her concerns was dependent upon funds that Ms. Mason did not have, especially because of her inability to land gainful employment, as detailed herein. In addition, Ms. Mason immigrated to the U.S. to marry Mr.

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Mason, and has no family or financial support network in the U.S. Furthermore, Ms. Mason has no extensive family to speak of outside the U.S., as she was the only child in her family and both of her parents are deceased.

4. The Court states in the 12/27/2013 Letter Opinion that to review the matter again and to address the mother's most recent motion for reconsideration, the Court relied on comments made by the first GAL, Richard Bartholomew, in his February, 2008 report. Ms. Mason asserts herein and below that it was not proper to rely on Mr. Bartholomew's report.

5. The Court states in the 12/27/2013 Letter Opinion "as between the two parents, Mr. Mason has continued to provide the boys with the greatest stability." The Court reached this conclusion despite acknowledging that "[t]here remain (as addressed in the Court's earlier rulings) issues regarding both parents."

Ms. Mason respectfully asserts that the Court reached this conclusion based on a questionable report by Mr. Bartholomew, without having an accurate, full record of the facts of the matter. As detailed below, the Court desired to rely on a report by Dr. McCollom, which was not available during the Court's subsequent ruling on 10/07/2013. The McCollom report was unavailable due to Ms. Mason's extenuating financial position, which in turn is tied into the Protective Order, which

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was originally issued in March, 2011 and has been subsequently renewed so as to keep the Protective Order in place.

6. In the 12/27/2013 Letter Opinion, the Court states “[o]ver six years later the undersigned reaches as similar conclusion” based on evidence presented in the early phases of this matter. The Court accordingly reached a decision without consideration of more appropriate and more recent evidence, as detailed herein. Again, such evidence was requested by the court.

7. The 12/27/2013 Letter Opinion states that “Mr. Mason has continued to provide the boys with the greatest stability.” However, the Letter Opinion reaches that conclusion based on dated evidence provided by GAL Mr. Bartholomew in 2008, and does not provide a detailed explanation nor rationale as to why Mr. Mason provided the greatest stability. In other words, the Court has not provided a detailed factual basis as to why Mr. Mason provided the greatest stability, and why Ms. Mason provided a lesser stability. Ms. Mason contends that she would have afforded a better stability and environment for the Mason children than that provided by Mr. Mason, especially given his history of nonstop physical and verbal abuse since 2001. Ms. Mason also respectfully points out that the GAL report by Mr. Bartholomew wrongfully neglected to make any mention or description of Mr. Mason’s documented domestic violence as well as ignored Dr. Wilson-child physiologist. Moreover, for reasons provided herein and below, the credibility of Mr. Bartholomew’s

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GAL report is highly questionable, particularly when his report was not subject to cross-examination in earlier proceedings.

8. In the 12/27/2013 Letter Opinion, the Court states that “[a]t the end of the day, the boys have a new and very skilled counselor,” in reference to the Court approved new counselor, Dr. Luecke. However, that statement was based merely on the Court’s perception of Dr. Luecke based on the credentials provided to the court. To date, there is no evidence to support the effectiveness of Dr. Luecke and his skill as a counselor, especially with regard to the Mason children. Ms. Mason has contended that Dr. Luecke is arguably not a good fit for her children, but to this point has a limited point of contention given her lack of custody. Ms. Mason was trying to remove Dr. Luecke from the case on April, 2014, but because she has no custody, her motion was dismissed.

9. The Court states that the “[m]other has had only very limited contact with the boys (much of that by her choice) for over two years.” This statement by the Court fails to recognize and acknowledge that the lack of contact between Ms. Mason and the boys was not driven by her desire to not contact them, but rather was a function of her inability to pay for sessions with the boys. The sessions with the boys required attendance by Dr. Luecke and Robert Keller, at a significant cost to Ms. Mason (approximately \$300/hour). Unfortunately, Ms. Mason was not able to afford that significant cost, because she has very little to no financial assets, and has been unable to procure gainful employment in light of the

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existing restraining order, as detailed herein. Moreover, she does not have an extended network of resources from which she can obtain such funds.

10. Finally, the 12/27/2013 Letter Opinion states that “[b]oth boys credibly disclosed that their mother was physically and emotionally abusive to them.” This statement is based on testimony delivered by Sandra Hurd, counselor, Richard Bartholomew (1<sup>st</sup> GAL), and Richard Smith (2<sup>nd</sup> GAL). Ms. Mason respectfully submits that the testimonies of Hurd and Smith were found to be lacking credibility and were unprofessional (as acknowledged by the Court in its 12/12/12 ruling, in which the Court which was “pinning it hopes on Dr. McCollom”). Likewise, the credibility of Mr. Bartholomew has been called into question, as detailed herein.

**STATEMENT OF THE CASE**

Tatyana Mason and John Mason married in August, 1999 following having met via an internet dating site. Ms. Mason lived in Odessa, Ukraine and did not speak English. Mr. Mason was (and continues to be) a U.S. citizen residing in Olympia, WA. Mr. Mason first met Ms. Mason in person in Odessa in November 1998, when he visited her for one month. Ms. Mason and Mr. Mason communicated via electronic translators and drawings (pictures the two of them drew) during their courtship. In February, 1999, they met in Warsaw, Poland where Mr. Mason proposed to Ms. Mason. Around June, 1999 they met in Warsaw, Poland, addressed immigration issues, and traveled to the U.S. They subsequently married in August, 1999 (at which time Ms. Mason did not speak English).

Ms. Mason had a previous marriage in Odessa, Ukraine, which lasted for 10 years. She and her husband were unsuccessful in their attempts to have children, which included her undergoing painful fertility-related medical procedures. Ms. Mason believed that she could not conceive a child, based on medical conclusions reached by her attending physician(s), and conveyed that information to Mr. Mason. It therefore came as a surprise to both of them when she became pregnant with their first child, Graham Mason, who was born approximately nine months after their marriage, in May 2000. Subsequently, they had a second child, David, who was born in February 2004.

Given her inability to speak English when she first arrived in the U.S. and was married, Ms. Mason took English as a second language (ESL) courses at South Puget Sound Community College beginning in 1999. Ms. Mason is a bright woman and learned English. However, English remained (and continues to remain) a challenge and barrier to her, particularly given her Ukrainian background (Ms. Mason respectfully submits Ukrainian is structured very differently from English). In addition, Ms. Mason faced personal challenges as a young mother and as someone who was typically understood poorly or misunderstood, given both her strong Ukrainian accent and difficulty in English language construction (in light of her Ukrainian background).

Shortly after Ms. Mason and Mr. Mason were married, Mr. Mason became both physically and verbally abusive toward her, starting about October, 1999. CP 92-95. Ms. Mason performed essentially all of the parenting of their young children, even going so far as to take her children with her while attending college courses. Despite Ms. Mason's requests to stop using foul language, to stop consuming excessive alcohol, and stop physically being aggressive (which commonly occurred in conjunction with his drinking), Mr. Mason continued to engage in such behaviors. In addition, he treated Ms. Mason as if she had no legal rights in the US, given her immigrant status and lack of citizenship. In particular, Mr. Mason threatened Ms. Mason with deportation and to take her children away. His threats are noted in a February 12, 2009 letter from Trisha

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Smith, SafePlace <sup>1</sup> Residential Services Director (who notes that Ms. Mason had been accessing SafePlace services since July of 2001). SafePlace Letter Feb. 12<sup>th</sup>, 2009; *Case No 09-2-30429-4* docket sub.#11; CP supplemental designation requested as of 12/05/14. Ms. Mason notes that in conjunction with the sentiments expressed by Trisha Smith from SafePlace, the publication **The Batterer as Parent**, Sage Publications 2002, Ch.5, states “[a]busers may engage in protracted custody or visitation limitation as a means to control their former immigrant spouse;” “[a] batterer also tends to involve his children in the abuse of the mother. [H]e may require the children to report on the victim’s activities during the day, degrade or humiliate her in the front of them, or persuade them that she deserves to be abused.” “An abuser focuses on being charming and persuasive during a custody dispute that highly misleading to GAL, court mediators, judges, therapists.” **The Batterer as Parent**, Page 17,18 (Exhibit B).

After several years of continual abuse toward Ms. Mason and the children, Mr. Mason chose to file for divorce in July, 2007. Subsequently, the marriage of Ms. Mason and Mr. Mason was dissolved through mediation in June, 2008, with a decree of dissolution from that mediation in the summer of 2008. 12/27/2013 Letter Opinion, CP 225. Prior to the divorce and while legally separated, Ms. Mason was granted primary

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<sup>1</sup> A number of documents will be designated on the date of the submission of this brief. Accordingly, references are made throughout this brief to the case docket number. These case docket numbers will subsequently be designated Clerk’s Papers.

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custody of the children, with Mr. Mason being given visitation rights. Temporary DV Order 2007 **Doc. Sub 55**. This custody arrangement occurred in conjunction with Mr. Mason being found guilty of domestic violence in August 2007. Diane K Borden letter CP 10-11. (DV Order, 08/03/2007 CP supplemental designation requested as of 12/05/2014).

Ms. Mason recalls that at the time of final marriage dissolution, Mr. Mason financially threatened to stop paying Ms. Mason spouse maintenance, take her only car away and make her life miserable, unless she agreed, through mediation, to sign 50/50 custody through mediation. During the course of the mediation, Mr. Mason's attorney advocated 50/50 custody, relying on February 2008 GAL report prepared by Mr. Richard Bartholomew. Ms. Mason respectfully submits that the GAL report, while relied upon during mediation and a subsequent Court ruling, was never subjected to cross examination throughout the proceedings between Ms. Mason and Mr. Mason.

Around April 2009, Ms. Mason sought a protective order against Mr. Mason because he was continually nonstop harassing her, and the children. From DV case 09-2-30429-4; motion filed to allow Ms. Mason to designate 12-5-14. "[B]atterer may continue their harassment of the victim for years, through legal channels and other means, causing periodic re-traumatizing of the victim and destroying family financial position" **The Batterer as Parent** Page 18, 21 (Exhibit B). The order was denied, because the Court found the allegations didn't rise to the level of domestic

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violence as defined by RCW 26.50, which quite arguably defines domestic violence very narrowly. 12/04/2012 Closing Argument of Kristen Bishopp RP 7.

Around February, 2010 Mr. Mason successfully changed the child psychologist who was seeing the Mason children, Graham and David. For more than 2.5 years, the children were counseled by Dr. Wilson, who regularly saw the boys for counseling sessions 2 to 3 times per month. During this time, Dr. Wilson noticed several abusive behaviors of Mr. Mason toward Ms. Mason and her children and he wrote about these issues in his early 2009 report. Letter from Stephan T. Wilson, CP 85-87. Around December, 2009, Graham Mason had an incident that occurred inside the Lacey, WA Costco store. During that incident, Graham became very violent to his brother and was uncontrollable. Mr. Mason did not approve of the counseling provided to Graham following the Costco incident; Mr. Mason used this incident to successfully lobby for a change from Dr. Wilson to Sandra Hurd, a marriage counselor. Case No. 07-3-00848-0, Order Appointing Counselor CP 174,175. Sandra Hurd then proceeded to see the children from about February, 2010 until December, 2012 when she was relieved of her duties by court order, which specified that the children would subsequently see Dr. Leuke. 11/25/2013 Parenting Plan CP 211-219.

Initially, Ms. Mason and Mr. Mason saw Sandra Hurd about twice a month. However, Ms. Mason became very dissatisfied with Sandra

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Hurd, and advised Sandra Hurd in an October 14, 2010 letter that she had become disappointed with Ms. Hurd services, felt disrespected, and proposed changes to achieve more desirable outcomes. Testimony of Sandra Hurd. Letter to Ms. Hurd, 11/28/2012 RP 54, Ex. 31. In December, 2010 Ms. Mason stopped seeing Ms. Hurd. Mr. Mason continued to see Ms. Hurd.

In March, 2011, Sandra Hurd submitted to the Court a letter stating that Ms. Mason was physically and verbally abusive to the children Case No 07-3-00848-0 Declaration of Sandra Hurd 03/04/2011, CP 176-179.

In March, 2011, Mr. Mason sought and the Court issued a protective order blocking Ms. Mason from seeing the children. No. 07-3-00848-0, Motion/Declaration for Ex Parte Restraining Order and for Order to Show Cause (MTSC), 03/04/2011, CP 227-230.

In April, 2011, the Court appointed GAL Ralph Smith to investigate the case, and provided that Ms. Mason could visit the children, but only in the presence of a Court-approved supervisor. No. 07-3-00848-0, Order Appointing Guardian Ad Litem 04/14/2011, CP 180-184.

Around February, 2012, GAL Ralph Smith submitted a motion to the Court requesting that Ms. Mason, not be allowed to see her children. No. 07-3-00848-0, Motion to Suspend Visitation, 02/13/2012, CP185-186.

In April, 2012, Dr. Rybicki, a forensic psychologist, submitted his forensic analysis of all Court documents related to the marriage of Ms. Mason and Mr. Mason CP 16-83. Dr. Rybicki-forensic physiologist

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concluded that both GALs, Richard Bartholomew and Ralph Smith, were non credible and unprofessional. CP 24, 34.

On December 12, 2012, the Court provided an oral ruling in the case of In re the Marriage of: *John Mason, Petitioner and Tatyana Mason, Respondent*. 12/12/12 RP 1-23. At that time, the Court stated “I don’t like not making a final decision in a case after trial. I would like to be finished, but we cannot be finished here based on what I heard.” 12/12/12 RP 20. The Court also requested that psychological evaluations be performed on Ms. Mason, Mr. Mason, and the children, Graham and David by Dr. Loren McCollom, a Ph.D. psychologist. The Court went so far as to state “I am pinning my hopes on Dr. McCollum because I think he will - - ... He does a lot of case for many different courts.” 12/12/12 RP 20. The court concluded that “I am going to continue the trial actually until we hear from Dr. McCollom.” 12/12/12 RP 20.

Following delays by the Court and continuances by both parties, the trial was finally concluded on October 7, 2013. 10/07/2013 RP 1-90. At that time, the Court still did not have Dr. McCollom’s report, due to Ms. Mason’s financial situation and inability to pay for Dr. McCollom’s services. 10/07/2013 RP 80-81. The Court therefore relied upon the GAL report by Mr. Bartholomew that was produced in February 2008. Letter Opinion, 12/27/2013, CP 225. In particular, the Court noted that “[o]ver six year later the undersigned reaches a similar conclusion that, although

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there remain (as addressed in the Court's earlier rulings) issues regarding both parents..." Letter Opinion, 12/27/2013, CP 225.

The Court issued an Order Re Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) on November 25, 2013. 07-3-00848-0, 11/25/2013 CP 206-210, CP 211-219.

That order modified the custody decree/parenting plan/residential schedule "because a substantial change of circumstances has occurred in the circumstances of the children or the nonmoving party." 07-3-00848-0 11/25/2013, CP 208. The Court also issued a Restraining Order Final (RSTO) on November 25, 2013. 07-3-00848-0 11/25/2013 CP 220-222.

Ms. Mason filed a Motion for Reconsideration on December 5, 2013, based on the recommendations from the Dr. McCollom's report, which Ms. Mason was able to obtain after negotiating a payment schedule/promissory notes for Dr. McCollom's report. 07-3-00848-0 12/5/2013 Sub. 391. At that point in time (and currently), Ms. Mason did not have the means to pay the balance owed Dr. McCollom for his report.

Following the Court's ruling and Letter Opinion, an Order Denying Motion for Reconsideration was filed with the Clerk on December 27, 2013. 07-3-00848-0 01/07/2014 CP 226. Subsequent to receiving the notice of the ruling and the Letter Opinion, Ms. Mason is hereby appealing the ruling.

**ARGUMENT**

1. THE COURT INCORRECTLY DENIED THE MOTION FOR RECONSIDERATION

In most cases, a Court's rulings on the provisions of a parenting plan are reviewed for abuse of discretion. *In re the marriage of Homer*, 151 Wash.2d 884, 893, 93 P.3d 124 (2004). "Abuse of discretion occurs 'when the trial court's decision is manifestly unreasonable or based upon tenable grounds or reasons.'" *Id.*

In the present case, Ms. Mason asserts that the Court abused its discretion by denying her Motion for Reconsideration. On December 27, 2013, the Court denied Ms. Mason's Motion for Reconsideration, which she filed on December 5, 2013. 07-3-00848-0 01/07/2014 CP 226. The Court's decision was based on Findings/Conclusions of Law that included "2. There is no newly discovered evidence." 07-3-00848-0 01/07/2014, CP 226. However, Ms. Mason's Motion for Reconsideration included submission of a report by Dr. Loren McCollom titled "Report of Parenting Evaluation." CP 110-197. The McCollom report was not available when the Court trial occurred on October 7, 2013. 10/07/2013 RP 80-81. Thus, Ms. Mason's Motion for Reconsideration did in fact contain newly discovered evidence: the McCollom report. As detailed herein, that evidence had been requested by the Court and was considered by the Court to be key to reaching a conclusion, as the Court had stated "I am pinning my hopes on Dr. McCollom." 12/12/12 RP 20. Furthermore, in

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its October 7, 2013 proceedings, the Court stated “(i)f for some reason the mother can obtain in a timely way Dr. McCollom’s findings, then she can file a motion to ask the Court to address any changes that might be noted in his report, but there needs to be some finality.” 10/07/2013 RP 83-84. The Court further stated “I would say if she (Ms. Mason) has that done (submission of the McCollom report) within 60 days she can note something up in front of the Court Commissioner.” 10/07/2013 RP 87. The McCollom report was subsequently submitted in a timely way and well within 60 days, on 11/01/2013. See 07-3-00848-0 docket sub. # 380.99, 11/01/2013, Report Evaluations. Exhibit C. Ms. Mason in turn filed her 12/05/12 Motion for Reconsideration, in response to the Order Re Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) on 11/25/2013. 07-3-00848-0 11/25/2013 CP 206-210, CP 211-219. Accordingly, the Court incorrectly denied the Motion for Reconsideration. Ms. Mason is therefore appealing to and requesting the Appellate Court grant the Motion for Reconsideration.

## 2. THE COURT RULED ON INSUFFICIENT INFORMATION

An appellate court may reverse a trial court when it finds that the factual finding was not supported by substantial evidence. **Marriage of Stern**, 57 Wn. App. 707, 789 P.2d 807 (1990), review denied, 115 Wn.2d 103, 797 P.2d 513 (1990)). Ms. Mason respectfully submits that in its Order Re Modification/Adjustment of Custody Decree/Parenting

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Plan/Residential Schedule (ORMDD/ORDYMT), the court relied on insufficient, dated evidence.

In the ruling of the Court on Dec. 12, 2012, the Court noted “I would like to be finished, but we cannot be finished here based on what I heard.” 12/12/12 RP20 (emphasis added). The Court ordered a new parenting evaluation to be performed by Dr. Loren McCollom, and noted that “I am pinning my hopes on Dr. McCollom,” and “I am going to continue the trial actually until we hear from Dr. McCollom.” 12/12/12 RP 20. Dr. McCollom did in fact evaluate Ms. Mason, Mr. Mason, and their children. Unfortunately, for reasons detailed herein, Dr. McCollom’s report was not available for the Court during the trial conclusion on October 7, 2013. 10/07/2013 RP 80-81. In the absence of Dr. McCollom’s report, the Court relied on comments made by the first Guardian ad Litem, Richard Bartholomew, who concluded that the Mason children should reside primarily with their father. The Court noted that “[o]ver six years later the undersigned reaches a similar conclusion that, although there remain (as addressed in the Court’s earlier rulings) issues regarding both parents, as between the two parents, Mr. Mason has continued to provide the boys with the greatest stability.” 12/27/2013 Letter Opinion, CP 225.

Ms. Mason respectfully disagrees with the Court’s finding that “Mr. Mason has continued to provide the boys with the greatest stability,” and requests that the Appellate Court overturn the Court’s finding.

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12/27/2013 Letter Opinion, CP 225. Moreover, Ms. Mason requests that the Appellate Court grant her primary custody of the Mason children Graham and David.

Examining the Court's rulings, it is evident that the Court did not rely on sufficient information to reach its conclusion, in view of the Court's proceedings. In the ruling of Court, the Court states "[w]hat really struck me most about Mr. Bartholomew's report was that there are seeds in it of what is happening - - well, not now because we don't really have any current information." 12/12/12 RP 12. "But there are seeds from before. The seeds that are very troubling to me are the seeds that both of the parents were highly conflicted." 12/12/12 RP 12. The Court further notes that "Mr. Bartholomew spoke about language issues. He addressed some of the same claims the mother is still making today. He was addressing some of the same claims that Mr. Mason is still making today. I don't think those issues ever really went away, and I also don't think they have ever really been explored by somebody who has the skill set to appropriately explore them." 12/12/12 RP 12(emphasis added). The Court therefore plainly stated that there were clearly issues with both parents, not just Ms. Mason. Furthermore, the Court stated that Mr. Bartholomew did not have the skill set to appropriately explore the issues of Mr. Mason and Ms. Mason. Nonetheless, the Court subsequently relied on Mr. Bartholomew's report to reach its ruling on October 7, 2013. Ms.

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Mason respectfully asserts that the Court erred in relying on Mr. Bartholomew's report.

The Court clearly looked to Dr. Loren McCollom as an expert to help explore the issues of Mr. Mason and Ms. Mason. The Court noted that "I was very impressed with Dr. McCollom's testimony. He is a licensed clinical psychologist.... He figured out pretty early on that he knew enough to know that he needed to know more and that both parents needed to be evaluated. That is still the case. 12/12/12 RP 12-13 (emphasis added). The Court noted that Dr. McCollom indicated "But if you only look at one parent, that parent's strengths and their weaknesses are overemphasized. ... He testified credibly that he had reviewed enough information in this case to not assume that DV could either be ruled in or ruled out with a full evaluation of both parents." 12/12/12 RP 13-14 (emphasis added). "He (Dr. McCollom) also talked about what happens when you just look at one of the parents in a parenting evaluation in family law cases. ... That inherently disadvantages the parent evaluated because their weaknesses are going to be on full display, whereas the other parent's remain unidentified. ... Here, because of the very serious allegations that were made about what Mom was doing to the boys, other issues that are very connected as far as the relationship between the parents and how that has impacted the boys - - none of the other issues have been addressed. The domestic violence issues have been discounted.

I reviewed that evaluation. It was not one that the Court would  
DV. of MR. Mason's

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**accept.**” 12/12/12 RP 14-15 (emphasis added). “This evaluation was done without collateral contacts recommended no treatment for Mr. Mason. ... And by his own self-report there were issues that this Court noted as financial control and other types of controlling behavior.” 12/12/12 RP 16 (emphasis added). The Court further notes that “[t]his is a modification action, but there never was a trial beforehand with findings made by a court. **That is significant here.**” 12/12/12 RP 16 (emphasis added). Thus, by its own admission, the Court significantly did not have appropriate information regarding both parents, Mr. Mason and Ms. Mason. Rather, the Court had very limited information (which is very questionable, as described herein and below), which was one-sided and particularly lacking information with respect to Mr. Mason and his record of domestic violence, and did not offer Ms. Mason a fair opportunity in the Court’s ruling. Nonetheless, the Court made its ruling based on this limited, one-sided, questionable information on Ms. Mason without the full, big picture. The full, big picture importantly required a complete, professional evaluation of Mr. Mason, as well as Ms. Mason.

The Court notes Mr. Mason’s frustration with “Ms. Mason’s lack contact over many months with the boys. I share some of that frustration.” 12/12/12 RP 16. The Court noted that Ms. Mason “did not like the visitation place and that she did not like being observed.” 12/12/12 RP 16. However, the real crux of the matter with regard to Ms. Mason visiting the boys was not adequately addressed. Ms. Mason simply did not have the

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finances necessary to visit the boys in the presence of counselors, which was required by her court-ordered visitation rights. The Court states “[m]y assumption is you could pay \$30 a week to be seeing your kids; I would if I were you pay that. I would pay way more than that even if it resulted in other things that I couldn’t do.” 12/12/12 RP 19. Ms. Mason first notes that the Ruling of the Court contains a typographical error, since in fact it costs approximately \$300/hour for her to visit her children under the terms of the Order, not merely \$30/week.

Moreover, Ms. Mason has been operating under a Restraining Order since March, 2011. That Restraining Order has in effect prevented Ms. Mason from being able to secure gainful employment, especially when coupled with the fact that Ms. Mason was not a U.S. Citizen. The U.S. Department of Immigration has labeled Ms. Mason as someone who has “bad moral character” in view of her Restraining Order. *See* Appendix Ex. A, 12/02/2013 Letter of U.S. Citizenship and Immigration Services. Ms. Mason has been very diligent in her efforts to procure gainful employment, but has been thwarted in her efforts in view of the Restraining Order and being characterized as having “bad moral character.” In particular, more recently she worked part time, including many hours of volunteered, unpaid service or sometimes hourly paid by minimum wage (to demonstrate her diligence and enthusiasm), for the Seattle Vocational Institute from May, 2013 to August, 2013. The Seattle Vocational Institute was impressed with her efforts, and expressed desire

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to hire her full time as an Academic Advisor, in which role she would spearhead Institute recruiting efforts. However, upon review of Ms. Mason's credit history, the Institute noted her restraining order, and chose not to hire her. In fact, the Institute really had no choice, and literally could not hire Ms. Mason. The Institute indicated that because the position was federally funded, she could not be hired due to her being a non-citizen with "bad moral character," according to the U.S. Department of Immigration. Several other employers stated the same. Thus, Ms. Mason has not been able to secure gainful employment, and accordingly has not had the finances necessary to visit the boys under the conditions stipulated by the Order.

Without gainful employment, Ms. Mason simply cannot pay the fees required for visitation with her children. She herself has no financial reserves, and also does not have family or acquaintances from which she can obtain the funds. Ms. Mason in particular takes issue with the fact that the Court stated "I would pay way more than that..." with respect to seeing her children, when in fact she simply did not have the resources to pay any amount, let alone \$300/hour. 12/12/12 RP 19. Given Ms. Mason's lack of income and funds, she in fact is currently residing with an acquaintance and paying no rent. Moreover, she recently lost her automobile due to her inability to make the automobile loan payments. Ms. Mason is hampered in all facets of her life and psychologically injured due to the inability to secure gainful employment. Most painful to

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Ms. Mason is the fact that she simply cannot afford to see her children, despite the fact that she very much desires to do so.

Ms. Mason's lack of funds was the key reason Dr. McCollom's report was unfortunately not available to the Court during the continued trial. The initial trial was on December 12, 2012, and was subsequently continued on October 7, 2013, following a series of Court delays and continuances filed by both parties, Mr. Mason and Ms. Mason. Dr. McCollom's report was indeed completed by the October 7, 2013 trial date, but had not been released because Ms. Mason owed about \$4,500.00 to Dr. McCollom for his report, which she did not have the ability to pay.

In the absence of Dr. McCollom's report, the Court therefore based its ruling on the comments made by the first Guardian ad Litem, Richard Bartholomew, in his February 2008 report, with the Court stating "[o]ver six years later the undersigned reaches a similar conclusion that, although there remain (as addressed in the Court's earlier rulings) issues regarding both parents." 12/27/2013 Letter Opinion, CP 225. Ms. Mason respectfully asserts that the Court erred in ruling on the basis of the dated, questionable report of the GAL Mr. Bartholomew.

This error is particularly evident in light of the Court's own admission that it was "pinning hopes on Dr. McCollom." 12/12/12 RP 20. This error is further supported by the declaration of Daniel J. Rybicki, Psy.D., D.A.B.P.S., a forensic psychologist who concluded that "there appeared to have been several key issues and dynamics which were given

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inadequate investigation in the course of two GAL evaluations” (in reference to the first February 2008 GAL evaluation of Mr. Bartholomew and a second April 2011 GAL evaluation of Ralph Smith) and “With all due respect to Mr. Bartholomew and Mr. Smith, it is hoped that this somewhat brief summary will provide the Court with sufficient understanding of some serious gaps in the data provided over the course of the two attorney conducted Guardian ad Litem studies.” CP 24, 34.

Ms. Mason was able to procure Dr. McCollom’s Report of Parenting Evaluation (“McCollom report”) after conclusion of the trial on October 7, 2013, when she made arrangements to pay Dr. McCollom over a period of time once she obtains gainful employment. The McCollom report was submitted on 11/01/2013. Dr. McCollom’s voluminous 88 page report is thorough and draws several important recommendations. CP 110-197. First, Dr. McCollom recommends that “[i]rrespective of which parent is the primary parent, these two boys have much to gain from having frequent, predictable, and a regular contact with each parent.” CP 195 (emphasis added). In addition, he states “[a] parenting plan that accords each parent substantial time for a substantial relationship with each of the boys is in the boys’ best interests regardless of who is identified as the primary parent.” CP 196 (emphasis added). Finally, Dr. McCollom states “[e]ach of the boys should have open telephonic or internet contact with the other parent at all reasonable times.” CP 196.

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In view of not having sufficient information that the Court requested (and did not receive due to Ms. Mason's extenuating circumstances), the Court erroneously ruled based on prior, insufficient evidence. Ms. Mason presents herewith the evidence requested by the Court, namely, the Report of Dr. McCollom. In addition, Ms. Mason presents further support provided by the Declaration by Dr. Rybicki. The Dr. McCollom Report and Dr. Rybicki Declaration both discredit the Mr. Bartholomew evidence relied upon by the Court and emphasize that Ms. Mason that should have substantial, unencumbered contact with her children, Graham and David Mason.

3. IN VIEW OF THE McCOLLOM REPORT, THE COURT SHOULD OVERTURN THE PREVIOUS RULINGS

As noted above, the Court incorrectly denied Ms. Mason's Motion for Reconsideration. Had the Court allowed the Motion for Reconsideration and taken the McCollom report into consideration, Ms. Mason respectfully submits that the Court would have reached a different outcome. Accordingly, Ms. Mason is requesting the Court of Appeals to overturn the lower Court's rulings.

At the outset, Ms. Mason submits that the Court should not have issued the Final Restraining Order. The Court in its Order stated "the restrained party represents a credible threat to the physical safety of the protected party." 07-3-00848-0 11/25/2013 CP 208. In particular, the

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Court referred to an investigation CPS conducted, from which abuse was said to be “founded.” 07-3-00848-0 Order Re Modification, 11/25/2013 CP 208. The Court stated that it found “the testimony of the children’s therapist, Sandra Hurd, and the GAL (Ralph Smith), regarding the disclosures of abuse by the children to be credible, and ruled findings of abuse under RCW 26.09.191. 07-3-00848-0 Order Re Modification 11/25/2013, CP 208.

However, the McCollom report clearly refutes the validity of the findings of CPS, which were founded on information provided by Sandra Hurd and the GAL Ralph Smith. Dr. McCollom states that “[s]uccinctly, neither the domestic violence nor the child abuse allegations resulted in findings that were consistent across time. Additionally, neither the child abuse nor the domestic violence allegations were withdrawn, although Dr. Rybicki’s declaration reported that Graham (the elder Mason child) had specifically said to counselor Border, “There was no spoon; mom never hits us; my Dad and Charlotte told us to say that.” CP 183. Dr. McCollom reiterates that “Graham was described by Diane Borden as having quietly said there was no wooden spoon used for corporal punishment as had been previously alleged. Diane K.Borden, CP 10,11. This statement by Graham was verified by Ms. Borden to this psychologist on 8-13-13.” CP 193. It is further noted that in the Declaration of Daniel J. Rybicki, Psy.D., D.A.B.P.S., Dr. Rybicki stated with respect to the GAL’s that “neither holds an advanced degree on psychology and neither demonstrated the

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kind of comprehensive and research-driven investigation that this case calls for.” CP 34. In addition, the lower Court questioned the validity of Sandra Hurd, noting among other things, that “it is clear that by the time of trial Ms. Hurd has completely aligned herself with the father and the children. She was very clear that she does not like the mother.” 12/12/2012 RP 8. Mr. Hurd’s demeanor, harsh tone and words she used in the court were unprofessional 12/12/2012 PR 8 In the Court Ms. Hurd called Ms. Mason “Ukrainian thug” is extremely biased against Ms. Mason. Kristen Bishop, Closing Argument 12/04/2012 RP 12. Furthermore, Dr. McCollom states that the accounts of the Mason children “were stated to counselor Sandra Hurd, and played a significant role in Mr. Mason being awarded custody during 2011 wherein Ms. Mason was afforded only supervised visitation.” CP 193. Again, the lower Court relied on Sandra Hurd, who has been discredited in the McCollom report. In total, the evidence relied upon the Court was questionable at best, as acknowledged by the Court, which again, “was pinning its hopes on Dr. McCollom.” 12/12/12 RP 20.

As indicated above, the Court’s rulings were based largely on one-sided evidence against Ms. Mason, with little evidence in support of Mr. Mason. The McCollom report points out that “[a] court’s previous finding that there was domestic violence (by Mr. Mason) **is significant**, although the reasoning by the court was not contained in any of the substantial number of documents provided to this psychologist. The prior court’s

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finding, however, is made more important by Ms. Mason's reports of Mr. Mason having engaged in a pattern of controlling behavior that is routinely associated with domestic violence, and that she sought assistance via the Safe Place domestic violence program." CP 192. Dr. McCollom further states that "(i)t is this psychologist's opinion that what transpired between Mr. and Ms. Mason over both their marriage and subsequent legal process has left Ms, Mason feeling victimized." He further states "she has been seriously outmatched by several factors that include her initial minimal understanding of American society, culture, expectations, language, etc.; ... and an even greater lack of familiarity with how to communicate effectively with attorneys and the courts." CP 193. Dr. McCollom further states "the totality of information does support a view that Ms. Mason clearly felt, and continues to feel, victimized by Mr. Mason in ways that are consistent with overly controlling behavior by a domestic partner." CP 193. Given Dr. McCollom's statements, Ms. Mason respectfully submits that the Court did not fully ascertain her position nor give her position the credibility it was due in reaching its decision against her. Therefore, Ms. Mason requests this Court to fully acknowledge Ms. Mason's position, along with the domestic violence that has been attributed to Mr. Mason, and accordingly overturn the ruling of the lower Court.

4. THE COURT SHOULD REMOVE THE RESTRAINING ORDER AGAINST MS. MASON AND AWARD HER LEGAL FEES.

Ms. Mason is currently in a conundrum: she wishes to see her children, but cannot afford to do so, especially given the standing Restraining Order (which, at the time of this appeal, was presumably renewed, since the Final Order of November 25, 2013 expired in one year). Ms. Mason therefore requests that the Court of Appeals overturn the Court and grant Ms. Mason's Motion for Reconsideration. In particular, Ms. Mason requests that the Court of Appeals removes the Restraining Order, which will assist her in her efforts to procure meaningful employment. Furthermore and equally, if not more important, Ms. Mason requests full custody of the Mason children, Graham and David, along with maintenance for Ms. Mason from Mr. Mason (given her current inability to procure gainful employment) and child support. In addition, Ms. Mason requests that Mr. Mason provide financial support that will allow her to have mother-son facilitated visitation, as well as mother-son reconciliation therapy in a transition period towards being able to have frequent, predictable, and regular contact with her children without supervision.

Ms. Mason has incurred significant costs in filing her appeal, including obtaining the McCollom report and paying transcript fees to the Court Reporter, designation fee and other cost on this appeal. Ms. Mason is therefore requesting fees associated with her appeal per RCW

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26.09.140. Ms. Mason is pro se on appeal, but this Court may still award her fees and costs. *See e.g.*, **Stiles v. Kearney**, 168 Wn. App. 250, 265, 277 P.3d 9 (2012); **Leen v. Demopolis**, 62 Wn. App. 473, 815 P.2d 269 (1991), review denied, 118. Wn.2d 1022, 827 P.2d 1393 (1992). A pro se attorney may recover justifiable fees, because they must spend the time to prepare and appear just like any other lawyer. **Leen**, 62 Wn. App. at 487.

**CONCLUSION**

For the reasons stated and supported above, Ms. Mason requests that the Court overturn the December 27, 2013 ruling in which the Court issued an Order Denying Motion for Reconsideration. In addition, Ms. Mason requests that the Court overturn the Order Re Modification/ Adjustment of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT) issued November 25, 2013. In particular, Ms. Mason requests that the Court grant her full custody of the Mason children, Graham and David. At a minimum, Ms. Mason requests primary custody of the Mason children, with shared custody with Mr. Mason. Ms. Mason further requests that the Court remove her Restraining Order, which is effectively blocking her from obtaining gainful employment. Given her lack of financial resources, Ms. Mason is also requesting maintenance and child support from Mr. Mason. Finally, Ms. Mason is requesting Fees associated with her appeal per RCW 26.09.140, which provides, in part:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of

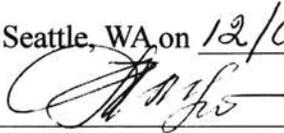
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the proceeding or enforcement or modification proceedings after entry of judgment. Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

An award of attorney fees under RCW 26.09.140 is discretionary and is reviewed for abuse of discretion. In making a determination as to attorney fees, the needs of the requesting party must be balanced against the other party's ability to pay.

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

Signed at Seattle, WA, on 12/08/14 (date).



Tatyana Mason, Signature of Appellant Pro-Se

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APPENDIX

Exhibit A: Letter from U.S. Citizen and Immigration Services, 12/02/2013

Exhibit B: **The Batterer as Parent**, Sage Publications 2002, Chapter 5

Exhibit C: Docket of Case No 07-3-00848-0

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EXHIBIT A



**U.S. Citizenship  
and Immigration  
Services**

Direct all responses by mail to the office listed below:  
**U.S. CITIZENSHIP AND IMMIGRATION SERVICES**  
12500 Tukwila International Blvd  
Seattle WA 98168

**Tatyana Ivanovna Mason**  
~~XXXXXXXXXXXX~~  
~~XXXXXXXXXXXX~~

Refer to this file: ~~XXXXXXXXXXXX~~

Alien Number: ~~XXXXXXXXXXXX~~

Date: December 2, 2013

Officer: EX 57

**CONTINUANCE**

Examination of your N400 application shows that additional information, documents or forms are needed before your application can be acted upon. Please return this letter with the requested information and/or documents by January 1, 2014.

**Failure to do so may result in the denial of your application.**

Submission of this information, however, does not guarantee that this case will be approved. We strongly recommend that you submit all the requested information, documents, or forms as listed on the following pages as soon as possible so that we can resume processing. Any interim benefits that may otherwise stem from the filing of this application or petition will be delayed while this case is in suspense awaiting your response.

If you choose to submit only some or none of the requested information, then the application will be adjudicated on its merits. You may also request, in writing, to the Service that this application be withdrawn. If the district director consents to the withdrawal, the application will be denied without further notice to you and without prejudice to any future application. The withdrawal will constitute a waiver of any review pursuant to Section 336 of the Title 8 Code of Federal Regulations. If the district director does not consent to the withdrawal, then the application shall be adjudicated on its merits.

Please submit the following information, documents, or forms:

**Certified copy of final divorce decree between Tatyana Ivanovna Mason and John Arthur Mason.**  
**certified copy of termination of protection order against Tatyana Ivanovna Mason.**

To be eligible for naturalization, you must demonstrate that you are a person of good moral character. USCIS finds that the unlawful acts for which you have been convicted adversely reflect upon your moral character.

\*XXXXXXXXXXXX\*

Form N-14 (Rev. 9/16/97)

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## EXHIBIT B

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The Batterer as Parent

*ARTICLE*

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1

Lundy Bancroft  
Copyright 2002

(from *Court Review*, Vol. 36, No. 2, 44-49)

## THE PARENTING OF MEN WHO BATTER

*It's Saturday morning in the Franklin home. Breakfast is rushed because Marty, who is 12 years old, and his sister Rhonda, 9, have early soccer games. Their mother Donna is scurrying around while her husband Troy eats and reads the morning paper. Marty grumbles to his mother, "Ma, hurry up! I told you last week, the coach picks the starting players 20 minutes before game time."*

*His mother snaps back, "If you had washed your uniform last night like I asked you to, we wouldn't be in such a hurry." Rhonda pipes in, "I did mine."*

*Marty shoots his sister a dirty look and says, "Oh, I guess I just can't compete with goody two-shoes here. Hey, maybe my soccer suit is dirty, but at least I don't get the Bitch of the Year Award."*

*Donna reacts sternly, saying, "Don't talk that way to your sister, young man!" Troy now glances up from his paper, annoyed. "How the hell do you expect Marty to react? If he's not absolutely perfect, both of you are all over him."*

*"Never mind, Dad." Marty breaks in flippantly, "I'm used to it. If one of them isn't bitching at me, it's the other."*

*Donna's blood begins to boil as Troy returns to reading. "Your son just called me a bitch. You're his father - you have nothing to say about it??" Troy half rises out of his seat. "Yeah, I do have something to say. If you would conduct yourself like an adult, instead of getting all hysterical, things wouldn't get like this with the children. Don't be so damn sensitive. Marty didn't call you a bitch, he said you bitch at him, which is true. You do."*

*Marty laughs. Rhonda does too, then immediately feels ashamed towards her mother and turns red in the face. Their mother yells loudly at Troy, "It's not me! You're the problem here, you're just encouraging his bad attitude!"*

*Troy pounces out of his seat yelling back, "That's enough out of you, you goddamned bitch!," and hurls his newspaper to the floor. He shoves Donna hard towards the kitchen door so that she stumbles and falls. "Get the hell out of here, right now," he screams, "or you'll be sorry!" Donna*

Bancroft - 2

*bursts into tears and runs up to the bedroom. Marty and Rhonda are left trembling, although Marty forces a smile and mumbles to Rhonda, "What the hell does Mom expect?"*

[The above scenario is a fictional account, incorporating dynamics from a number of my cases.]

The published research on children's exposure to domestic violence focuses largely on two aspects of their experience: The trauma of witnessing physical assaults against their mother, and the tension produced by living with a high level of conflict between their parents (e.g. Rossman, Hughes, & Rosenberg, 2000). As important as these factors are, they are in fact only one aspect of many complex problems that typically pervade the children's daily life. The bulk of these difficulties have their roots in the fact that the children are living with a batterer present in their home. The parenting characteristics commonly observed in batterers have implications for the children's emotional and physical well-being, their relationships with their mothers and siblings, and the development of their belief systems. All of these issues need to be examined in making determinations regarding custody and visitation in cases involving histories of domestic violence.

### **The Batterer Profile: Implications for Children**

Batterers have been established to have a profile that distinguishes them from non-battering men. Each of these identified characteristics can have an impact on children's experience and development. Some of the critical areas that court personnel should be aware of include:

*Control:* Coerciveness is widely recognized as a central quality of battering men (Lloyd & Emery, 2000). It is commonly true that one of the spheres of the battered woman's life that is subject to heavy control by the batterer is her parenting. In some cases this control begins even before the children are born, through such behaviors as the batterer refusing to use birth control, requiring or forbidding the woman to terminate a pregnancy, or causing her pregnancy through a sexual assault. (Some history of intimate partner rape is present in 25-40% of domestic violence cases, and statistics that include other kinds of sexual assault to battered women are even higher; see review in Mahoney & Williams, 1998.) Once children are born, the batterer may overrule the mother's parenting decisions, and he may enforce his will by verbally abusing the mother or physically assaulting her when he is angry about the children's behavior or when she does not cede to his parenting directives (Ptacek, 1997), as

we see with Troy in our opening scenario. It is predictable, therefore, that battered women would be far more likely than other women to feel that they have to alter their parenting styles when their partners are present, and researchers have found that this is in fact the case (Holden & Ritchie, 1991). Thus children are being raised in a context where their mother cannot safely use her best judgment about how to care for them.

*Entitlement:* Batterers have been demonstrated to have much higher rates than other men of believing that they are entitled to use violence towards female partners when they deem it to be necessary (Silverman & Williamson, 1997), and to take an overall stance in the relationship of claiming a superior status and expecting catering and deference (Adams, 1991; Edleson & Tolman, 1992). Troy exhibits his entitlement and sense of superiority by, for example, contributing nothing to the work of a very busy morning and actively encouraging his son's negative attitudes towards females.

Clinical observation indicates that the higher a batterer's level of entitlement, the more likely he is to chronically behave in selfish and self-centered ways. He may, for example, become hostile or violent when he feels that his partner is paying more attention to the children than to him, which can make it difficult for the mother to properly meet the children's physical and emotional needs. Similarly, he may treat the mother like an enemy in front of the children, so that they learn to disrespect her and treat her in a similar fashion. In addition, many batterers come *role-reversed* even in their relationships with their children, who feel the children are made to feel responsible to take care of the battering parent and meet his needs. This can create a burden of parentification for the children, in addition to making them more vulnerable to sexual abuse.

*Manipulation:* It is common for a batterer to be manipulative of family members, using such tactics as dishonesty, false promises, and the sowing of divisions to increase his power and escape accountability (Bancroft & Silverman, 2002). Batterers tend, for example, to cultivate a public image of generosity and kindness. When children observe the batterer's popularity in the community, they can become more likely to blame their mother or themselves for the abuse in the home, since other people do not seem to believe that their father has a problem. Manipulation may also involve lying to the children, or drawing them in as agents of the abuse, as exhibited by Troy when he got his children to laugh at inappropriate jokes about their mother. Children who are traumatized by exposure to violent acts can safely be assumed to be at greater risk of being psychologically harmed by such manipulation than children who are less emotionally vulnerable.

**Possessiveness:** It is common for men who batter to perceive their partners as owned objects (Adams, 1991), and this outlook extends to their children in many cases. Many clients of mine have, for example, defended their physical or sexual abuse of the children by insisting that it is their paternal prerogative to treat their children as they see fit. Batterers' possessiveness towards both partners and children can have important post-separation implications; for example, batterers have been found to seek custody at higher rates than non-battering fathers do (APA, 1996), to be at their greatest risk of committing homicide of women or children during and after the break-up of a relationship (Langford, Lane, & Kaloupek, 1999; Webster, 1999). Parents who perceive children as possessions have been observed to have high rates of child abuse in general (Ayoub, Grace, Paradise, & Newberger, 1991), and the link between such attitudes and incest perpetration is widely noted (e.g. Leberg, 1997; Hanson, Gizzarelli, & Scott, 1994; Saizer, 1988).

This is a brief and partial review of the batterer profile. Each of the characteristics commonly found in batterers, including denial and minimization about their abusive and violence actions, battering in multiple relationships, and high level of resistance to change, can have an important impact on children who are exposed to them. (These issues, and several related ones, are discussed in greater detail in Bancroft & Silverman, 2002).

### **Risk of Child Abuse**

The various published studies of physical abuse of children by batterers indicate that roughly half of batterers repeatedly assault children in the home, a rate about 700% that of non-battering men (e.g. Bowler, Archibell, & McFarlan, 1988; Stamus, 1990; Sah & Abel, 1990; and other studies). An equally substantial body of research finds batterers four to more times more likely than other men to sexually abuse their children or step-children, with exposure to domestic violence one of the top risk factors for incest victimization (e.g. McCluskey, Figueroa, & Koss, 1995; Narayan, 1988; Niles & Finkel, 1992; and several other studies). The literature on incest perpetrators describes a profile that is compatible with battering, including a high level of control, entitlement, and manipulativeness, and a tendency to view children as owned objects (e.g. Leberg, 1997; Saizer, 1995).

No evidence currently exists to suggest that the risk of child abuse by a batterer declines post-separation, and in fact there is considerable reason to believe that such risk may *increase*. Batterers tend to be enraged and retaliatory for an extended period after a relationship ends, contributing to

volatility in their behavior, and they sometimes increase their targeting of the children as a way to frighten or upset the mother because the separation causes a loss of access to avenues to abuse the mother directly (Bancroft & Silverman, 2002). The risk to children may also be augmented by the fact that the battered mother is no longer able to monitor the batterer's treatment of the children during his times of contact with them. Clinicians sometimes observe that courts are reluctant to believe reports from battered women regarding mistreatment of their children during court-ordered visitation, which can sometimes leave children vulnerable to ongoing abuse by the batterer.

### **The Batterer's Parenting Style**

Apart from the risk of overt child abuse, batterers often tend toward authoritarian, neglectful, and verbally abusive approaches to child-rearing (Margolin, John, Ghosh, and Gordis, 1996). The effects on the children of these parenting weaknesses may be intensified by their prior traumatic experience of witnessing violence. For example, children whose battering fathers yell or bark orders at them appear to be more shaken by these experiences than children who have not been exposed to violence, as they are aware of his capacity for physical assault whether or not he has ever assaulted them directly. My colleagues and I also often observe that a batterer's authoritarian or intimidating behavior in the child's presence, or towards them directly, can cause traumatic memories to be reawakened in them, with resultant increases in their symptoms and interference in their social and intellectual development. Batterers have also been observed to exhibit neglectful parenting, including unsafe levels of supervision, manipulateness (Patterson & Silverman, 2007). Additional crucial problems in the parenting of men who batter include the use of the children as weapons against the mother and the undermining of the mother's authority, which are discussed further below, with important post-separation implications.

### **The Batterer as Role-Model**

Boys who are exposed to domestic violence show dramatically elevated rates of battering their own partners as adolescents or adults (Silverman & Williamson, 1997), and research suggests that this connection is a product largely of the values and attitudes that boys learn from witnessing battering behavior (Markowitz, 2001; Silverman & Williamson, 1997). Daughters of battered women show increased difficulty in occupying partner roles in their adult relationships (Doyno et al., 1999). Both boys

and girls have been observed to accept various aspects of the batterer's belief-system (Hurley & Jaffe, 1990), including the view that victims of violence are to blame, that women exaggerate hysterically when they report abuse, that males are superior to females, and that the use of violence against women by men is justifiable (Bancroft & Silverman, 2002). Donna and Troy's son Marty exhibits, for example, his absorption of his father's negative and degrading attitudes towards females, which he acts out towards his sister Rhonda and towards his mother.

The destructive influence that batterers can have on children's belief-systems, and therefore on their future behavior, has not received adequate attention in most professional publications, and appears to be largely overlooked in crafting custody and visitation determinations. It should be further noted that children who are traumatized may be particularly easy to influence, due to their elevated needs for belonging, security, and self-esteem, and therefore decisions to place children in unsupervised contact with a batterer should be made with great care.

### **Undermining of the Mother's Authority**

Battering is inherently destructive to maternal authority. As we saw with Troy in the opening scenario, the batterer's behavior provides a model for children of contemptuous and aggressive behavior towards their mother. The predictable result, confirmed by many studies, is that children of battered women have increased rates of violence and disobedience towards their mothers (Jaffe & Geffner, 1993). These inherent effects are aggravated in many cases by the batterer's deliberate weakening of the mother's ability to set limits, which may be accompanied by violence towards her regarding issues about the children (Pinsock, 1997). We saw Troy, for example, give explicit approval to his son's disrespectful language towards Donna. Troy is able in this way to culminate his own power in the family and ensure that his wife will appear to be an ineffective or volatile parent. Troy then goes on to assault Donna to retaliate against her for her efforts to stand up for herself and for her daughter.

### **Impact on Family Dynamics**

Many other behaviors that are commonly observed in batterers can distort family functioning. Some common examples include:

*Interfering with a mother's parenting.* Partners of my battering clients make frequent reports of being prevented from picking up a crying infant or from assisting a frightened or injured child, of being

barred from providing other basic physical or emotional care, and even of being forbidden to take children to medical appointments. Interference of this kind can cause the children to perceive their mother as uncaring or unreliable, feelings which the batterer may reinforce by verbally conditioning the children through statements such as, "Your mother doesn't love you." or, "Mommy only cares about herself." The trauma caused to the mother by domestic violence can also sometimes make it more difficult to be fully present and attentive for her children (review in Levendosky & Graham-Bermann, 2000), which ironically the batterer may then use to his advantage in a custody or visitation dispute.

*Sowing divisions with the family:* In our opening scenario, Troy uses favoritism to build a special relationship with one of his children (Marty), demonstrating a dynamic that occurs frequently in the parenting of men who batter. As other researchers have noted, the favored child is particularly likely to be a boy, and the batterer may bond with him partly through encouraging a sense of superiority to females (Johnston & Campbell, 1993).<sup>1</sup> Batterers may also sow divisions through deliberate creating or feeding of familial tensions. These behaviors are a likely factor in the high rate of intersibling conflict, including violence, observed in families exposed to battering behavior (Hurley & Jaffe, 1990). Descriptions of division-sowing behaviors in incest perpetrators (Lebow, 1997) are remarkably similar to clinical observations of these behaviors in men who batter (Bancroft & Silverman, 2002).

*Use of the children as weapons:* Many batterers use children as a vehicle to harm or control the mother (Erickson & Henderson, 1998), through such tactics as destroying the children's belongings to punish the mother, requiring the children to monitor and report on their mother's activities, or threatening to kidnap or take custody of the children if the mother attempts to end the relationship. These behaviors draw the children into the abuser's behavior pattern. Post-separation, many batterers use unsupervised visitation as an opportunity to abuse the mother through the children by alienating them from the mother, encouraging them to behave in destructive or defiant ways when they return home, or by returning them dirty, unfed, or sleep-deprived from visitation (Bancroft & Silverman, 2002). This important dynamics rarely appears to be taken into account in crafting custody and visitation plans.

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<sup>1</sup> Although Johnston and Campbell make observations that are very similar to mine regarding family functioning in domestic violence cases, they reach almost opposite conclusions, greatly minimizing the risk to children from unsupervised contact with most batterers. For a detailed critique of their formulations, see Bancroft & Silverman, 2002.

*Retaliation for the mother's efforts to protect the children:* A mother may find that she is assaulted or intimidated if she attempts to prevent the batterer from mistreating the children, or may find that he harms the children more seriously to punish her for standing up for them, and therefore may be forced over time to stop intervening on her children's behalf (e.g. see the extended case description in Jones, 1994). In our opening scenario, Troy's assault on Donna was a direct result of her efforts to protect her daughter from psychological harm, and may have the effect of intimidating her the next time she would like to protect her children from him. This dynamic can lead children to believe that their mother doesn't care about the ways in which the batterer is hurting them because she sometimes maintains a frightened silence in the face of his behavior. This perception in children can be exacerbated in cases where a court requires a battered woman to send her children on visitation with their father over their objections. It therefore becomes critically important for children who have been exposed to domestic violence not to be required to see or speak with the perpetrator when they are voicing or demonstrating a preference not to do so.

### **Post-Separation Implications**

Custody and visitation determinations in the context of domestic violence need to be informed by an awareness of the destructive parenting behaviors exhibited by many batterers, and in particular the ways in which these behaviors may damage or eliminate the potential for children to heal psychologically and socially from the traumatic experiences they have endured. Exposure to a batterer's inappropriate parenting has especially important implications for children who are struggling with two sets of psychological injuries, one from previous witnessing of domestic violence and the other from their parents' divorce. (The great majority of children who live with a batterer directly see or hear one or more acts of violence, research that is reviewed in Kolko, Blakely, & Engleman, 1996, and a substantial number witness sexual assaults against their mother, as discussed in Wolak & Finkelhor, 1998).

In evaluating custody and visitation and crafting appropriate parenting plans, the following elements require close examination:

*The children's healing needs.* There is a wide consensus that children's recovery from exposure to domestic violence and from divorce depends largely on the quality of their relationship with the non-battering parent and with their siblings (reviews in Heller, Laniel, D'Ignazio, & Boris, 1998, and in

Graham-Bermann, 1998). Therefore, visitation plans should take into account whether the batterer is likely, based on his past and current behavior, to continue (or begin) to undermine the mother's authority, interfere with mother-child relationships, or cause tensions between siblings, all of which can interfere significantly with children's healing. Children also need a sense of safety in order to heal well (van der Kolk & McFarlane, 1996), which may not be fostered by leaving them in the unsupervised care of a man whose violent tendencies they have witnessed, even if they feel a strong bond of affection for him. (It should also be noted that both children and adults can become strongly bonded in an unhealthy way to a perpetrator of abuse through a process known as *traumatic bonding*, elucidated in Dutton & Painter 1993, 1983, and in James, 1994. I have observed that evaluators who assess the strength of children's bonds with their battering fathers rarely address the role of traumatic bonding.)

*The need for detailed assessment. A batterer's history of parenting behaviors needs to be investigated carefully, to assess for the presence of any of the common problems described above, with particular attention to the risk that he may use children as a vehicle for continued abuse of the mother.* Such an assessment cannot be properly performed through reliance on clinical evaluation of the father, mother, or children, as it must involve extensive collecting of evidence from other sources of information such as school personnel, witnesses to important events, police and medical reports, child protective records, telephone and mail communications, and other sources. Courts need further to ensure that custody evaluators have extensive training on the multiple sources of risk to children from unsupervised contact with batterers, such as the ones discussed above. (A detailed guide to performing proper custody and visitation evaluations in the context of domestic violence allegations can be found in Bancroft & Silverman, 2002).

*Safely fostering father-child relationships.* Except in cases where a batterer has been terrifyingly violent or threatening to the mother in the presence of the children, or has abused the children directly in a severe and repeated form, it is common for children to request some degree of ongoing contact with their battering fathers. In many cases they may benefit from such contact as long as safety measures are provided, the contact is not overly extensive, and the abuser is not permitted to cause set-backs to the children's healing process.

One way to foster these goals is to increase the use of professionally-supervised visitation, ideally based in a visitation center. A future transition to unsupervised visitation should not be assumed, but should instead be conditioned on the batterer completing a high-quality batterer intervention

program, dealing seriously with any substance abuse issues he has, and showing other indications of being serious about changing his abusive behavior and accepting responsibility for his past actions. (It should be noted that batterer programs that are run on a "power and control" model have been found to be quite a bit more effective than was previously believed, especially if any attendant drug and alcohol issues are also properly addressed - see Gondolf, 2001.)

Where careful assessment leads to the conclusion that unsupervised visitation is physically and emotionally safe for the children, visits that are kept relatively short in duration and that do not include overnight stays can help to reduce the batterer's ability to damage children's critical healing relationship with their mother. Such restricted contact can allow the children to meet their need to have an ongoing bond with their father and to share key life events, while simultaneously limiting his influence as a destructive role-model, which has been shown to put them at very high risk for future involvement in domestic violence (discussed above). A plan of this kind also helps to ensure that children feel securely and safely attached to their primary home, and to feel that the court system is empowering their mother to protect them, elements which are indispensable to recovery in traumatized children.

### **Conclusion**

Children who are exposed to domestic violence have multiple potential sources of emotional and physical injury from the batterer's behavior, well beyond the witnessing of assaults alone, and their potential for recovery from past domestic violence can be compromised by ongoing unsupervised contact with their father. Additionally, children are at risk to develop destructive attitudes and values that can contribute to behavioral and developmental problems. Abused mothers face many obstacles in attempting to protect their children from a batterer, and can benefit when their protective efforts receive strong support from courts and child protective services. Family and juvenile court personnel, as well as those working in child protection agencies, can increase the quality of their interventions on behalf of children by deepening their understanding of the common patterns that may appear in the parenting of men who batter, including ways in which a batterer may damage mother-child and sibling relationships and make it difficult for a mother to parent her children. Courts can increase their effectiveness in domestic violence cases involving children by focusing on maternal and child safety, and by seeking ways to reduce the batterer's influence as a role model, particularly for his sons.

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## UNDERSTANDING THE BATTERER IN CUSTODY AND VISITATION DISPUTES

By R. Lundy Bancroft  
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A sophisticated understanding of the mind of the abuser, his style as a parent, and of the tactics that he most commonly employs during separation and divorce, are essential to anyone making custody recommendations or working to design visitation plans that are safe for the children and their mother. Contrary to popular belief, children of batterers can be at just as much risk psychologically, sexually, and even physically after the couple splits up as they were when the family was still together. In fact, many children experience the most damaging victimization from the abuser at this point. A genuine batterer can be convincingly play the part of a man who has been unfairly accused, and batterers who will be a grave risk to their children during unsupervised visitation can be hard to separate from those who can visit safely. The insights and expertise of those service providers who have extensive experience working directly with abusers needs to be drawn from, and the level of contribution from victims themselves to policy design also need to be greatly increased. Custody and visitation battles amidst allegations of domestic violence require policies and interveners (judges, mediators, and Guardians Ad Litem) based in the most detailed knowledge, experience, sensitivity, and integrity. The stakes for children are very high.

This article is drawn largely from the author's ten years of experience working as a counselor and supervisor in programs for abusive men, involving contact with some 1500 abusers, and hundreds of their victims, over that period. During the first few years of this period, I worked almost exclusively with voluntary clients, and during the latter period worked primarily with court-mandated ones. The characteristics of the clients changed remarkably little during that shift. In the late 1980's, professionals in batterer programs began paying particular attention to the behavior of clients with respect to probate processes, and we began asking victims more questions about the man's conduct with respect to visitation and custody. Since leaving direct work with batterers, I have served with increasing frequency as a custody evaluator (both as Guardian ad Litem and as Care and Protection Investigator), and have worked closely with child protective services.

I also have drawn from numerous published studies, several of which are listed in the back of this article. [I have chosen for reasons of ease to refer to the abuser as "he" and the victim as "she," but I am aware that there is a small percentage of cases of domestic violence to which this language does not apply.]

### PROFILE OF THE BATTERER

Generalizations about batterers have to be made with caution. Batterers come from all socioeconomic backgrounds and levels of education. They have the full range of personality types, from mild and mousy to loud and aggressive. They are difficult to profile psychologically; they frequently fare well in psychological testing, often better than their victims do. People outside of a batterer's immediate family do not generally perceive him as an abusive person, or even as an especially angry one. They are as likely to be very popular as they are to be "losers," and they may be visible in their communities for their professional success and for their civic involvement. Most friends, family, and associates in a batterer's life find it jarring when they hear what he has done, and may deny that he is capable of those acts.

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The partner and children of a batterer will, however, experience generalizable characteristics, though he may conceal these aspects of his attitude and behavior when other people are present:

The batterer is controlling; he insists on having the last word in arguments and decision-making, he may control how the family's money is spent, and he may make rules for the victim about her movements and personal contacts, such as forbidding her to use the telephone or to see certain friends.

He is manipulative; he misleads people inside and outside of the family about his abusiveness, he twists arguments around to make other people feel at fault, and he turns into a sweet, sensitive person for extended periods of time when he feels that it is in his best interest to do so. His public image usually contrasts sharply with the private reality.

He is entitled; he considers himself to have special rights and privileges not applicable to other family members. He believes that his needs should be at the center of the family's agenda, and that everyone should focus on keeping him happy. He typically believes that it is his sole prerogative to determine when and how sexual relations will take place, and denies his partner the right to refuse (or to initiate) sex. He usually believes that housework and childcare should be done for him, and that any contributions he makes to those efforts should earn him special appreciation and deference. He is highly demanding.

He is disrespectful; he considers his partner less competent, sensitive, and intelligent than he is, often treating her as though she were an inanimate object. He communicates his sense of superiority around the house in various ways.

The unifying principle is his attitude of ownership. The batterer believes that once you are in a committed relationship with him, you belong to him. This possessiveness in batterers is the reason why killings of battered women so commonly happen when victims are attempting to leave the relationship; a batterer does not believe that his partner has the right to end a relationship until he is ready to end it.

Most abusers do not express these beliefs explicitly; they are more likely to deny having them, or even to claim to have opposite convictions that are humane and egalitarian. An experienced batterers' counselor may have to spend several hours with the abuser before the underlying attitudes begin to show. These attitudes are generally evident to victims, however, who often feel frustrated at the batterer's ability to present a markedly different face to the outside world. This dual aspect to his personality also helps to keep the victim confused about what he is really like, and can contribute to her blaming herself for his abusive behaviors.

#### Spectrum of Violence and Other Forms of Abuse

The level of physical violence used by batterers is on a wide spectrum. Some use violence as much as a few times per month, while others do so once or twice a year or less. A significant proportion of batterers required to attend counseling because of a criminal conviction have been violent only one to five times in the history of their relationship, even by the victim's account. Nonetheless, the victims in these cases report that the violence has had serious effects on them and on their children, and that the accompanying pattern of controlling and disrespectful behaviors are serving to deny the rights of family members and are causing trauma.

Thus, the nature of the pattern of cruelty, intimidation, and manipulation is the crucial factor in evaluating the level of abuse, not just the intensity and frequency of physical violence. In my decade of working with abusers, involving over a thousand cases, I have almost never encountered a client whose violence was not accompanied by a pattern of psychological abusiveness.

### The Perceptual System of Men Who Batter

Because of the distorted perceptions that the abuser has of rights and responsibilities in relationships, he considers himself the victim. Acts of self-defense on the part of the battered woman or the children, or efforts they make to stand up for their rights, he defines as aggression against him. He is often highly skilled at twisting his descriptions of events to create the convincing impression that he has been victimized. He thus accumulates grievances over the course of the relationship to the same extent that the victim does, which can lead professionals to decide that the members of the couple "abuse each other" and that the relationship has been "mutually hurtful."

Although a percentage of batterers have psychological problems, the majority do not. They are often thought to have low self-esteem, high insecurity, dependent personalities, or other results from childhood wounds, but in fact, batterers are a cross-section of the population with respect to their emotional make-up. Certain labels such as "control freak" or "self-centered" have the appearance of accuracy, but even these overlook the fact that the battering problem is very context-specific; in other words, most batterers do not have an inordinate need for control, but rather feel an inordinate right to control under family and partnership circumstances. Thus unlike other problems with violence, battering behavior is mostly driven by culture rather than by individual psychology. Many batterers are "in touch with" their feelings and skilled in the language of therapy and recovery, which throws evaluators off the track. They may use their childhoods and emotions as an excuse, to divert attention from their entitled and possessive attitudes.

Battering is a learned behavior, with its roots in attitudes and belief-systems that are reinforced by the batterer's social world. The problem is specifically linked to how the abuser formulates the concepts of relationship and family; in other words, within those realms he believes in his right to have his needs come first, and to be in control of the conduct (and often even of the feelings) of others. A recent research study showed that two factors, the belief that battering is justified and the presence of peers who support abusiveness, are the single greatest predictors of which men will batter; these two had a considerably greater impact than whether or not the man was exposed to domestic violence as a child (Silverman and Williamson).

Each batterer has his own mix of controlling and entitlement. Some monitor every move their partners make like a prison guard, but at the same time are somewhat lower in entitlement, contributing more to housework and childcare than other batterers (though still less than non-batterers). Other batterers do not control their partner's freedom as severely, but become irate or violent when they are not fully catered to, or when victims remind them of responsibilities that they are shirking. The levels of manipulateness and overt disrespect also vary, so that each batterer has a particular style.

Because batterers are typically charming and persuasive, and are often kind and attentive early in relationships, he does not necessarily need to seek out a special kind of woman to

victimize. Efforts to find common ground among battered women from the point of view of background or personality type have been largely unsuccessful (Hotaling and Sugarman), just as they have been with batterers. Service providers who assume that the victim must have had pre-existing problems of her own can make counterproductive interventions. as pathologizing of the victim can lead to re-injury.

#### BATTERERS' STYLE DURING SEPARATION AND DIVORCE

An abuser's desire for control often intensifies as he senses the relationship slipping away from him. He tends to focus on the debt he feels his victim owes him, and his outrage at her growing independence. (This dynamic is often misread as evidence that batterers have an inordinate "fear of abandonment.") He is likely to increase his level of intimidation and manipulation at this point; he may, for example, promise to change while simultaneously frightening his victim, including using threats to take custody of the children legally or by kidnapping.

Those abusers who accept the end of the relationship can still be dangerous to their victims and children, because of their determination to maintain control over their children and to punish their victims for perceived transgressions. They are also, as we will see later, much more likely than non-batterers to be abusive physically, sexually, and psychologically to their children.

The propensity of a batterer to see his partner as a personal possession commonly extends to his children, helping to explain the overlap between battering and child abuse. He tends, for example, to have an exaggerated reaction when his ex-partner begins a new relationship, refusing to accept that a new man is going to develop a bond with "his" children; this theme is a common one in batterer groups. He may threaten or attack the new partner, make unfounded accusations that the new partner is abusing the children, cut off child support, or file abruptly for custody in order to protect his sole province over his children.

#### Batterers' Advantages in Custody Disputes

A batterer who does file for custody will frequently win, as he has numerous advantages over his partner in custody litigation. These include, 1) his typical ability to afford better representation (often while simultaneously insisting that he has no money with which to pay child support), 2) his marked advantage over his victim in psychological testing, since she is the one who has been traumatized by the abuse, 3) his ability to manipulate custody evaluators to be sympathetic to him, and 4) his ability to manipulate and intimidate the children regarding their statements to the custody evaluator. There is also evidence that gender bias in family courts works to the batterer's advantage. (Massachusetts Supreme Judicial Court Gender Bias Study) Even if the batterer does not win custody, his attempt can be among the most intimidating acts possible from the victim's perspective, and can lead to financial ruin for her and her children.

After a break-up, the abuser sometimes becomes quickly involved with a new partner whom he treats relatively well. Abusers are not out of control, and therefore can be on "good" behavior for extended periods of time - even a year or two - if they consider it in their best interest to do so. The new partner may insist, based on her experience with him, that the man is wonderful to her, and that any problems reported from the previous relationship must have been fabricated, or must result from bad relationship dynamics for which the two

parents are mutually responsible. The abuser can thus use his new partner to create the impression that he is not a risk.

#### Creation of a Positive Public Image

An abuser focuses on being charming and persuasive during a custody dispute, with an effect that can be highly misleading to Guardians ad Litem, court mediators, judges, police officers, therapists, family members, and friends. He can be skilled at discussing his hurt feelings and at characterizing the relationship as mutually destructive. He will often admit to some milder acts of violence, such as shoving or throwing things, in order to increase his own credibility and create the impression that the victim is exaggerating. He may discuss errors he has made in the past and emphasize the efforts he is making to change, in order to make his partner seem vindictive and unwilling to let go of the past.

#### Harassment and Intimidation Tactics

Where manipulation and charm do not work, the abuser may switch to intimidation, threatening or attacking those whom he perceives as being supportive to his partner. In the most extreme cases, the abuser may attempt to kill the woman, her lawyer, or the children, and sometimes will succeed. In some cases custody evaluators have been afraid to release their recommendations because of their fear of the batterer's retaliation.

Batterers may continue their harassment of the victim for years, through legal channels and other means, causing periodic re-traumatizing of the victim and children and destroying the family's financial position. Motions by abusers for custody or for increases in visitation are common forms of retaliation for things that he is angry about. (They are also used to confuse the court; for example, lawyers who represent abusers encourage clients who are accused of sexual abuse to file for custody immediately; this move will cause the court to treat the allegation as "occurring in the context of a custody dispute.") If the abuser meets with periodic success in court, he may continue his pattern of abuse through the legal system until the children reach majority.

#### BATTERERS' STYLE IN MEDIATION OR CUSTODY EVALUATION

Batterers naturally strive to turn mediation and GAL processes to their advantage, using various tactics. Perhaps the most common is to adopt the role of a hurt, sensitive man who does not understand how things got so bad and just wants to work it all out "for the good of the children." He may cry in front of the mediator or GAL and use language that demonstrates considerable insight into his own feelings. He is likely to be skilled at explaining how other people have turned the victim against him, and how she is denying him access to the children as a form of revenge, "even though she knows full well that I would never do anything to hurt them." He commonly accuses her of having mental health problems, and may state that her family and friends agree with him. The two most common negative characterizations he will use are that she is hysterical and that she is promiscuous. The abuser tends to be comfortable lying, having years of practice, and so can sound believable when making baseless statements. The abuser benefits to the detriment of his children if the court representative fails to look closely at the evidence - or ignores it - because of his charm. He also benefits when professionals believe that they can "just tell" who is lying and who is telling the truth, and so fail to adequately investigate.

Because of the effects of trauma, the victim of battering will often seem hostile, disjointed, and agitated, while the abuser appears friendly, articulate, and calm. Evaluators are thus tempted to conclude that the victim is the source of the problems in the relationship.

Abusers increasingly use a tactic I call "preemptive strike," where he accuses the victim of doing all the things that he has done. He will say that she was violent towards him and the children, that she was extremely "controlling" (adopting the language of domestic violence experts), and that she was unfaithful. If he has been denying her phone access to the children during their weekend visits with him, he will likely complain to the court that she is preventing him from calling the children during the week. If he has been highly inflexible about the visitation schedule, he will accuse her of inflexibility. These tactics can succeed in distracting attention from his pattern of abusiveness; in the midst of crossfire of accusations, court representatives are tempted to throw up their hands and declare the couple equally abusive and unreasonable.

Mediators and GAL's tend to have a bias in favor of communication, believing that the more the two parents speak to each other, the better things will go for the children. In domestic violence cases, the truth is often the opposite, as the abuser uses communication to intimidate or psychologically abuse, and to keep pressuring the victim for a reunion. Victims who refuse to have any contact with their abusers may be doing the best thing both for themselves and for their children, but the evaluator may then characterize her as being the one who won't let go of the past or who can't focus on what is good for the children. This superficial analysis works to the batterer's advantage.

Abusers are likely to begin the mediation process with an unreasonable set of demands, and then offer compromises from those positions. This strategy can make the victim look inflexible, as she refuses to "meet him in the middle." She may relent under these circumstances out of fear that the mediator will describe her negatively to the judge. These compromises may then be used against the victim later. For example, she may agree to unsupervised day visits in order to avoid the risk that the judge will award overnight visitation, and then months later she is asked by a lawyer, mediator, or GAL, "If he is so dangerous, why did you voluntarily allow him unsupervised visitation?" On the other hand, if she is inflexible from the beginning, the abuser will accuse her of being on a campaign to get revenge by cutting him off from the children. There is, in other words, no path she can take to avoid criticism and suspicion, and the abuser capitalizes on her dilemma.

Finally, mediation sessions and the time spent waiting for them to begin are opportunities for the abuser to re-victimize the battered woman with scary looks, threatening comments muttered in passing, degrading accusations made about her to the mediator, and intimidating or ridiculing comments made to her by his lawyer.

#### WHY DOMESTIC VIOLENCE MAY BE REPORTED AT SEPARATION/DIVORCE FOR THE FIRST TIME

Court personnel and other service providers look skeptically at allegations of abuse that arise during custody and visitation battles. Batterers try to feed these doubts by saying, "She never said I was abusive before; she's just using this accusation to get the upper hand." In fact, there is no evidence that false allegations rise substantially at this time, and there are many reasons why an abused woman may not have made prior reports. Judges, mediators, and court investigators need to take each allegation on its own terms and examine the evidence without assumptions about the timing.

It is not at all uncommon for a battered woman to tell no one about the abuse prior to separation because of her shame, fear, and desire to help the abuser change. Many victims quietly hope that ending the relationship will solve the problem, a myth that most professionals share; when she discovers that his abuse is continuing or even escalating after separation, she finds herself forced to discuss the history of abuse in hopes of protecting herself and her children. It is not uncommon for an abuser to be more frightening after separation than he was before, and to increase his manipulation and psychological abuse of the children, for reasons covered above.

A victim's decision to separate from an abuser is often the last step in a gradual process of realization that she has been undergoing. Because of increased support from friends, a helpful book that she has read, or a series of discussions with a helpful advocate or support group, she may have come to understand that she has options to get free from the abuse. She is taking the leap of openly discussing domestic violence for the first time precisely because she is healing. Some influential psychologists, such as Janet Johnston (see below) interpret the woman's reevaluation of the history of the relationship as evidence of vindictiveness or scapegoating on her part, when it may actually indicate growing health.

The separation itself may have resulted from an escalation in the man's level of violence or verbally degrading behavior. During two years that I handled all the intakes to a batterer program, approximately 30% of the clients had been separated from the victim since the time of their arrest, demonstrating how frequently an escalation in violence leads immediately to a break-up. Unfortunately, these abusers may be labeled less dangerous by evaluators, on the grounds that their violence was a response to the stress of separation and divorce, an analysis that reverses cause and effect.

Finally, because an abuser creates a pervasive atmosphere of crisis in his home, victims and children have difficulty naming or describing what is happening to them until they get respite from the fear and anxiety. A period of separation may be a victim's first opportunity to reflect on what has been happening to her, and to begin to analyze and articulate her experience. Batterers can use any misunderstanding of this process to gain sympathy from evaluators.

#### WHY CHILD ABUSE MAY BE REPORTED AT SEPARATION/DIVORCE FOR THE FIRST TIME

Allegations of child abuse that arise during custody and visitation conflicts are treated with similar skepticism by court personnel and service providers. A large-scale national study found that the rate of false child sexual abuse allegations does not increase at this time, contrary to popular belief (Thoennes and Tjaden). As with domestic violence allegations, there is no substitute for careful and unbiased examination of the evidence. Batterers who do abuse their children can be convincing at portraying themselves as victims of a deliberate strategy on the part of the victim in order to derail proper investigating.

There are two salient reasons why child abuse reports may first arise at separation or divorce. First, children may disclose abuse at this time that is longstanding. The awareness of the custody battle can make the children afraid of being placed in the abuser's custody, or of being forced to spend increased time with him without the protective presence of the other parent. This fear can lead children to make the frightening leap involved in discussing the abuse. After separation, children may begin spending extended unsupervised time with the abuser for the first time ever, so that the abuse escalates or they fear that it will. Increased visitation may cause panic in a victim of child abuse; a case of mine illustrated

this point, with a child disclosing a detailed history of sexual abuse immediately after her visitation with her father was increased from one night every other weekend to two. Finally, children are known to be more likely to disclose abuse in the midst of any disruption or major change in their lives. (See MacFarlane et. al. on the above points.)

Secondly, child abuse may begin or intensify after separation. Once a relationship is over, the children may be the last avenue the abuser has to punish or harass his victim, or to force her into reuniting. Some victims report that they have been forced to get back together with the abuser in order to protect their children, because he was abusing, neglecting, or threatening the children during unsupervised visitation. Many abusers are aware that hurting the children is perhaps the single most painful way in which they can hurt their ex-partner. Even if he does not physically or sexually abuse the children, psychological abuse is present in the unsupervised visitation of most batterers, following predictably from their characteristic entitled attitudes, controlling behaviors, selfishness, and desire to punish. Where there are credible reports of a history of domestic abuse, even one involving relatively low levels of physical violence, allegations of child abuse have to be evaluated with care and without bias, regardless of when they arise.

#### THE CONNECTION BETWEEN BATTERING AND CHILD ABUSE

Batterers are several times as likely as non-batterers to abuse children, and this risk appears to increase rather than decrease when the couple separates. Multiple studies have shown that 50% to 70% of men who use violence against their intimate partners are physically abusive to their children as well. A batterer is seven times more likely than a non-batterer to frequently beat his children (Straus). A batterer is at least four times more likely than a non-batterer to be an incest perpetrator. (Herman 1991, McCloskey et. al.) Psychological abuse to the children is almost always present where there is domestic violence; in fact, the abuse towards their primary caretaker is itself a form of emotional abuse of the children, as numerous studies now document. It is true that battered women are also more likely to abuse children than non-battered women are, but unlike with batterers, those levels decline rapidly once the relationship separates (Edleson and Schechter).

\*A batterer also tends to involve his children in the abuse of the mother. He may require the children to report on the victim's activities during the day, degrade or humiliate her in front of them, or persuade them that she deserves to be abused. He may even involve them directly in abusing her; for example, a client of mine taught his two-year-old to call the mother "Mommy bitch." He may be cruel to the children as a way of getting at her; one of my clients had cut up his daughter's prom dress with scissors one night while angry at his wife. He may do them special favors after abusing the mother, to get the children on his side. He may tell them that their mother does not love them. He may threaten to take the children away from her, legally or illegally.

These types of tactics usually increase at separation and are joined by new ones, such as telling young children "You are going to come live with Daddy now" and other forms of terrorization. If the mother has a new partner to whom the children are developing an attachment, the batterer may try to frighten the children about him or make them feel guilty for their connection to him.

Children of batterers are at particular risk for sexual abuse (Herman 1991; McCloskey et. al.; Paveza; Sirls; Truesdell et. al.). The profile of an incest perpetrator is similar in many respects to that of a batterer. The incest perpetrator typically has a good public image,

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making it hard for people know him to believe him capable of sexual abuse. He is self-centered and believes that the child is responsible to meet his needs. He is controlling and often harshly disciplinarian as a parent, while at other times giving the children - particularly the incest victim - special attention and privileges. He often prepares the child for months or years in a "grooming" process, akin to the charming and attentive behavior used by batterers early in relationships. He usually will have no diagnosable mental health condition. He will tend to confuse love and abuse; just as a batterer may say, "I hit her because of how much I love her," the incest perpetrator believes that his times of sexually abusing the child have actually been moments of special intimacy. Incest perpetrators define themselves as having been provoked, just as batterers do; for example, he may say that a four-year old child "came on to" him. He often sees the child as a personal possession, feeling that "no one has any right to tell me what I can do with my child." This list of similarities continues, making the high statistical overlap between battering and child sexual abuse unsurprising. (See Groth; Herman 1981; Herman 1988; Leberg)

It is important to note that the level of violence used by a batterer is only one measure of his risk to the children. His level of entitlement, his degree of self-centeredness, the extent of his manipulateness, his capacity for cruelty, and other aspects of his profile give important information about his likelihood to abuse the children. We will return to these assessment questions below.

#### JANET JOHNSTON'S TYPOLOGY OF BATTERERS AND THE AFCC RISK ASSESSMENT: THE QUEST FOR SIMPLE SOLUTIONS

Efforts are underway nationally to ease the complexity of assessing risk to children from visitation with batterers by placing batterers into distinct types, based largely on the work of Janet Johnston. For example, a risk assessment distributed nationally by the Association of Family and Conciliation Courts (AFCC) draws heavily from Johnston's work. The types Johnston posits are as follows:

Type A: "Ongoing or Episodic Male Battering"

Type B: "Female-Initiated Violence"

Type C: "Male Controlled Interactive Violence"

Type D: "Separation and Postdivorce Violence"

Type E: "Psychotic and Paranoid Reactions"

(These types are called by slightly different names in the AFCC risk assessment, but are exactly the same in other respects.)

Type A is considered the real batterer; he is very frequently and severely violent, and he uses violence to control his partner. Type B is violence that is initiated by the victim; she

gets hurt because she is smaller, but her behavior is the problem. Type C is violence caused by "mutual verbal provocations," and again the woman is the victim only because she is physically smaller; she is considered equally abusive. Type D is violence that results from the stress of separation and is completely uncharacteristic for the abuser. Type E is violence resulting from a mental health problem.

This typology contains more problems that can be covered here. The types were pre-conceived, with researchers instructed to assign each case to one of the categories. The research has little external validity; her types have no relationship to any patterns observed by domestic violence professionals in the clinical setting. Relying on these categories leads to serious errors in crafting visitation plans. Risk to children can be assessed, as we will see, but not by this approach.

The great majority of batterers do not fit any of Johnston's types, because they exert "chronic pervasive control," but it is not accompanied by the most severe or frequent violence. The most common batterer is one who uses violence two or three times a year, whose partner has never been hospitalized with injuries, and who shows no evidence of sadism. Nevertheless, his partner and children exhibit trauma symptoms due to their fear of the abuser, the repeated denial of their basic rights, and the pattern of psychological attack. Assessing the risk to these children from unsupervised visitation is a complex process, and the danger varies greatly from case to case.

These categories encourage us to assess the victim rather than the abuser. The "A" type of batterer is considered the only real batterer; he is described as having a victim who is severely traumatized, who is passive and withdrawn, and who rarely starts arguments or challenges the batterer. A woman who is stronger, angrier, or generally more unpleasant to interact with, would be likely under Johnston's approach to be seen as mutually abusive and provocative, the "C" type of relationship; she would thus be considered largely responsible for the man's violence. In reality, most abused women, even those who are terrified, do not give up all forms of fighting back, and continue attempting to protect their rights and the rights of their children. The more that the victim refuses to submit to the abuser's control, the more likely he is to escalate his violence. Under Johnston's typology, the more courageously a woman attempts to defend herself and her children, the less responsibility the abuser has for his actions. Using this approach serves the batterer's interests well, but endangers the children. The result of this approach is that some of the most dangerous abusers, those who are the most determined to dominate at all costs, are ironically declared to be the lowest risk to their children.

Studies of trauma survivors also demonstrate that symptoms will vary greatly from person to person. Some battered women may become passive and withdrawn, but others are more likely to show hostility, disjointed thinking, or extreme mistrust, precisely as a response to the severity of the abuse they have endured; the second group is the most likely to be labeled "provocative." Women in this group run the greatest risk of having their abuser win custody or extended unsupervised visitation, which he can then use to continue terrorizing her and the children.

Abusers almost always characterize their relationships as mutually abusive, if they acknowledge any behavior problems of their own at all. Under close investigation, however, most domestic abusers, even those who use relatively low levels of physical violence, are revealed to involve extensive patterns of verbal degradation, psychological abuse, and other

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types of cruelty on the abuser's part, and to involve a marked imbalance of power. There is no substitute for careful evaluation to see if this is the case.

The concept of "violence resulting from mutual verbal provocations" is in itself a disturbing one. What kind of arguing is a woman permitted to do before she is defined as provoking violence? A woman who is being abused is likely to have multiple sources of resentment: the unrelieved burden of childcare, the insults and name-calling, the degrading sexual comments, the affairs, the neglect, the violence. If she periodically becomes enraged and confronts her abuser about these things angrily, is she provoking violence? Is there any way in which she can forcefully defend her own interests, or her children's, without being labeled provocative? This characterization can only serve the interests of the abuser. In fact, it appears to be an adopting of the batterer's view, endorsing his way of characterizing his victim as holding responsibility for his actions. Johnston even goes so far as to say that if a woman "tried to leave or refused to communicate with him," the abuser's violent response should be considered part of a mutual provocation (Johnston, pg.196).

In sum, the danger that a domestic abuser represents to his children can only be assessed by examining him (as common sense would dictate), not by examining his victim.

The "stress of separation" category, (type "E") is also a risky one. As discussed above, separation may occur as the result of an escalating pattern of abusiveness, with the physical attack being the last straw. Such an escalation would be likely to continue post-separation, with important implications for the children. The formation of this type also raises an important clinical question; if Johnston suggesting that there is no significant difference between men who use violence in response to the stress of separation and those who do not? In fact, most men do not use violence towards intimate partners, even during an acrimonious divorce; those who do so are likely to have the other characteristics typical of batterers. Their risk to children then has to be properly evaluated.

A few other problems are high priorities to mention. First, this approach is based on the assumption that the risk to children from visitation comes primarily from exposure to new acts of physical violence. As serious as this risk is, it is not in fact the greatest one; the far greater danger is of physical, sexual, and psychological abuse by the batterer during the visits. Children from domestic violence are particularly vulnerable psychologically because they are already scarred by the violence they have been exposed to. Johnston's typology does nothing to identify those batterers who are most likely to abuse their children post-separation, does not examine what kind of atmosphere assists children to recover from the trauma of divorce and domestic violence, and does not discuss any other indicators of a batterer's risk to children other than his level of physical violence.

Second, this typology does nothing to help assess the risk that an abuser will batter in his next relationship. Although abusers blame their violence on their current victim and on the specific relationship dynamics, both research studies and clinical experience make clear that the problem lies within the abuser. Abusers have a high rate, regardless of their level of physical violence, of battering in their next long-term relationship. Children of batterers are therefore at risk of exposure to domestic violence in their father's new relationship.

Johnston sometimes accepts abusers' explanations of their actions at face value. She writes, for example, about men who she says slap their partners "in a misguided effort to quell her 'hysteria'" (pg. 196). Batterers are known for their violent punishment of partners who attempt to express anger, which Johnston is apparently unaware of. She is actually

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describing a batter who is highly intolerant of his victim's efforts to have a voice, which has far-reaching implications for both her and her children.

Johnston appears to have no awareness of the overlap between battering and incest perpetration. In one of her articles (Johnston, July 1993), a striking passage describes the relationship between girls younger than seven or eight years old and their batterer fathers:

In general, there were poor boundaries between these men and their daughters, especially among the substance-abusing men, with mutual seductiveness and provocation of his aggression. These fathers needed validation of their masculinity and attractiveness; they pulled for this affirmation from their little daughters.."

Johnston shows no sign of recognizing this as incest, although it reads like a description from a training course on sexual abuse. It is also important to note that she is holding these girls equally responsible for the dynamics of their relationships with their fathers, which certainly raises questions about her judgment in assigning responsibility for abuse in adult relationships.

In cases where a batterer does have a mental illness (Type E), the disorder cannot be assumed to be the cause of his battering. Most mentally ill batterers also have the typical attitudes and behaviors of batterers, and therefore addressing the mental health problem alone will not necessarily reduce the domestic violence. Johnston appears unaware that a person can simultaneously have a mental health problem and a battering problem, neither of which is reducible to the other.

Type B, where the victim initiates the violence, needs to also be treated with care. The question of which person strikes first is of limited value in assessing domestic violence; the more relevant questions are which party is in fear, which party is being systematically torn down or controlled, and which party is suffering the long-term psychological damage. Careful evaluation sometimes reveals a picture quite different from the initial impression.

#### ASSESSMENT OF RISK TO CHILDREN FROM VISITATION WITH A BATTERER

Assessing the safety of children with batterers during unsupervised visitation requires careful examination of all available evidence, with as few preconceptions as possible about the credibility of either party. Even a highly skilled service provider cannot "just tell" that an alleged abuser is telling the truth or is not dangerous, even after several hours of interviews and even with the assistance of psychological testing. These can be important sources of information, but careful assessment of the alleged victim's version of events, comparison with outside sources (to assess credibility), examination of court records, and confrontation of the alleged abuser to assess his reactions are all essential to an evaluation.

Where persuasive evidence of a history of domestic abuse is present, risk to the children from unsupervised visitation can be best assessed by examining:

- \* The abuser's history of directly abusive or irresponsible behavior towards the children
- \* His level of psychological cruelty towards the victim
- \* his level of willingness to hurt the children as a deliberate or incidental aspect of hurting the mother (such as throwing things at her with the children nearby, being mean or

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deliberately risk-taking to the children when angry at her, failing to pay child support that he has resources for)

- \* His level of manipulateness towards family members
- \* His level of selfishness and self-centeredness towards family members, including expectations that the children should meet his needs
- \* Whether he has been violent or physically frightening in front of the children
- \* Whether he has been verbally degrading to his partner in front of the children
- \* The severity or frequency of his physical violence and threats, including threats to hurt himself
- \* His history of sexual assaults against the mother, which are linked to increased risk of sexual abuse of the children and increased physical danger
- \* His history of boundary violations towards the children
- \* His substance abuse history
- \* The level of coercive control he exercises over his partner and children
- \* His level of entitlement (attitude that his violence was justified, expectation that his needs should always be catered to, seeing the children as personal possessions)
- \* the extent of his past under-involvement with the children (e.g. failing to know basic information such as the child's birth date, names of pediatricians or school teachers, or basic routines of the children's daily care)
- \* His level of refusal to accept the end of the relationship
- \* His level of refusal to accept mother's new partner being in the children's lives
- \* his level of refusal to accept responsibility for past abusive actions (including continued insistence that relationship was more or less equally and mutually destructive, continued insistence that his violence was provoked, continued minimization)
- \* His level of escalation
- \* His level of inability to put the children's needs ahead of his own and to leave them out of conflicts with his partner
- \* The ages and genders of the children (younger children may be more vulnerable to physical or psychological abuse, female children are at somewhat higher risk for sexual abuse)

Notice that the level of the abuser's physical violence and the pervasiveness of his control are important factors, but are only two among many that have to be evaluated. Risk of sexual abuse, for example, is better predicted through entitlement and self-centeredness, history of boundary violations, level of manipulateness, and sexual assaults against the

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partner. Information from psychological evaluations or testing is limited in its ability to assess danger, but can point to additional issues that need to be addressed.

With a list of factors this long and complex to consider, it is evident that formulaic approaches to declaring some batterers safe for visits and others unsafe are impossible. Mediators, Guardians ad Litem, and judges need to be prepared to spend some extra time (which is understandably hard to come by). Extensive training on domestic violence by those with experience with both victims and abusers is essential.

Statements by children about their view of the situation need to be approached with great caution. Children of an abuser may side with him in order to protect themselves, or because he has successfully persuaded them through his words and actions that their mother is not worthy of respect. Young children should not be asked their preferences about custody or visitation, and the wisdom of asking even older children is in dispute.

Because of the complexities involved in assessing risk to children from visitation, a state-certified batterer program is a valuable and underutilized tool in making evaluations. The program has the familiarity with patterns of behavior and thinking common to abusers, and therefore can help sort out the more dangerous clients. Batterers' counselors have far more knowledge and experience than others regarding this particular population, regardless of professional degree. The program spends many more hours over a period of weeks or months than any court representative can, and thus gains an important body of information and insight. Using the batterer program as a condition of visitation, whether supervised or unsupervised, could assist mediators, GAL's, and judges in making their longer-term determinations. Uncertified or newer batterer programs should be avoided for these delicate cases, where the potential consequences of errors in judgment are high.

Family courts need to become a stronger link in the community response to domestic violence, as custody and visitation disputes are one of the arenas where the greatest re-victimizing of battered women and their children occurs (and often continues for years). The most careful discussions and painstaking, rigorous research are required in the months and years ahead, with a greatly elevated participation of specialists in battered women and batterers. Probate court personnel, Guardians Ad Litem, and other service providers also need to participate in community roundtables on domestic violence, to become part of the community safety net. Through multidisciplinary task forces, knowledge and perspectives are shared, mutual learning occurs from the accumulated experience and expertise of police officers, prosecutors, battered women's advocates (including formerly battered women), batterers' counselors, domestic violence lawyers, concerned therapists, and others. The potential for healing among children traumatized by domestic violence depends on these types of community efforts, in order to increase the sophistication of our responses.

No 45835-7-II

## EXHIBIT C

## -----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
-	04/15/2013	ACTION NTSC	WEEK BEGINNING - 1/2 DAY NOTICE OF STATUS CONFERENCE 8:30	07-03-2013
359	05/22/2013	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
359	06/21/2013	NTIS	NOTICE OF ISSUE	06-28-2013M
360	06/21/2013	ACTION MTC	PAYMENT OF FEES/CONTINUE TRIAL MOTION TO CONTINUE	
361	06/26/2013	RSP	RESPONSE OBJECTION TRIAL CONTINUANC	
362	06/28/2013	MTHRG JDG09	MOTION HEARING JUDGE ANNE HIRSCH CC HARTMAN RECORDED	
363	06/28/2013	ORCNT ACTION	ORDER OF CONTINUANCE TRIAL WEEK OF 9/1/13	09-01-2013U
-	06/28/2013	NOTE	PARENTING EVALUATOR FEES	07-26-2013M
364	06/28/2013	NTTD	NOTICE OF TRIAL DATE	10-07-2013U
365	07/03/2013	ACTION AFSR	TRIAL 9:00 AFFIDAVIT/DCLR/CERT OF SERVICE	
366	07/19/2013	ST	STATEMENTS, EMAILS, FEE AGREEMENTS	
367	07/24/2013	SEALPHC	SEALED PRSNL HEALTH RCDS CVR SHEET	
367.99	07/24/2013	MDR	MEDICAL REPORT	
368	07/24/2013	RSP	RESPONSE JOHN ARTHUR MASON	
369	07/26/2013	MTHRG JDG09	MOTION HEARING JUDGE ANNE HIRSCH CC PIER RECORDED	
370	07/26/2013	ORDYMT	ORDER DENYING MOTION/PETITION	
371	08/05/2013	MTRC	MOTION FOR RECONSIDERATION	
372	08/05/2013	DCLR	DECLARATION TATYANA MASON	
373	08/05/2013	NTIS	NOTICE OF ISSUE	08-23-2013M
374	08/23/2013	ACTION HSTKNA	RECONSIDERATION HEARING STRICKEN:IN COURT NONAPPEAR HIRSCH CC BURKE RECORDED	
375	10/07/2013	NJTRIAL ACTION APT JDG09	NON-JURY TRIAL PRESENTATION ACTUAL PROCEEDING TIME JUDGE ANNE HIRSCH CC VESSEY RECORDED	11-01-2013M
376	10/24/2013	STPORE	STIP&OR RET EXHBT5 UNOPNED DEPOSTNS	
377	10/24/2013	EXLST	EXHIBIT LIST	
378	11/01/2013	HSTKDA	HEARING CANCELLED:DEF/RESP REQUEST HIRSCH CC BURKE RECORDED	
379	11/01/2013	NTIS	NOTICE OF ISSUE	11-25-2013M
380	11/01/2013	ACTION SEALRPT	PRESENTATION SEALED CONFIDENTIAL RPTS CVR SHEET	
* 380.99	11/01/2013	RPT	REPORT EVALUATIONS	
381	11/05/2013	DCLR	DECLARATION STACY SIMPSON	
382	11/15/2013	VOID	VOID-SUB NUMBER VOIDED	
383	11/15/2013	DCLR	DECLARATION TATYANA MASON	
384	11/21/2013	RPT	REPORT COVERAGE RATES	
385	11/25/2013	MTHRG JDG09	MOTION HEARING JUDGE ANNE HIRSCH CC PIER RECORDED	
386	11/25/2013	ORS	ORDER FOR SUPPORT	
387	11/25/2013	OR/MD	ORDER ON MODIFICATION	
388	11/25/2013	PP	PARENTING PLAN (FINAL ORDER)	

## -----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
388	11/25/2013	RSTO	RESTRAINING ORDER	
390	12/05/2013	NTIS ACTION	NOTICE OF ISSUE RECONSIDERATION	12-13-2013M
391	12/05/2013	NTRC	MOTION FOR RECONSIDERATION	
392	12/05/2013	DCLR	DECLARATION TATYANA MASON	
393	12/13/2013	HSTKCC	HEARING CANCELLED: COURT'S REQUEST HIRSCH CC VESSEY	
394	12/16/2013	AT	ATTACHMENT TO MOTION	
395	12/16/2013	OB	OBJECTION / OPPOSITION	
396	12/16/2013	DCLR	DECLARATION JOHN MASON	
397	12/16/2013	PROR	PROPOSED ORDER/FINDINGS	
398	12/23/2013	DCLR	DECLARATION TATYANA MASON	
399	01/07/2014	CTD	COURT'S DECISION	
400	01/07/2014	ORMRC	ORDER ON MTN FOR RECONSIDERATION	
-	01/07/2014	EXWACT	EX-PARTE ACTION WITH ORDER	
401	01/07/2014	ORTR	ORDER OF TRANSFER	
-	01/07/2014	EXWACT	EX-PARTE ACTION WITH ORDER	
402	01/29/2014	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
403	01/30/2014	TRLC	TRANSMITTAL LETTER - COPY FILED	
404	02/05/2014	NT	NOTICE FROM COURT OF APPEALS	
405	02/05/2014	MTIND	MOTION FOR INDIGENCY	
406	02/05/2014	AFIND	AFFIDAVIT OF INDIGENCY	
407	02/05/2014	FNIND	FINDING OF INDIGENCY	
-	02/05/2014	EXWACT	EX-PARTE ACTION WITH ORDER	
408	02/06/2014	LTR	LETTER TO SUPREME CT W/FINDINGS	
409	02/06/2014	CRRSP	CORRESPONDENCE FROM SUPREME COURT	
410	02/11/2014	LTR	LETTER FROM SUPREME COURT	
411	02/18/2014	MT	MOTION MODIFY FINAL ORDER	
412	03/04/2014	SEALPHC	SEALED PRSNL HEALTH RCDS CVR SHEET	
412.99	03/04/2014	MDR	MEDICAL REPORT	
413	03/19/2014	MT	MOTION REMOVE DR LUCKI	
414	03/19/2014	NTIS ACTION	NOTICE OF ISSUE NOT NOTED	04-04-2014M
415	03/28/2014	MT	MOTION TO REMOVE COUNSELOR	
416	04/02/2014	NTIS ACTION	NOTICE OF ISSUE REMOVE COUNSEL	04-10-2014MD
417	04/03/2014	NT	NOTICE TO TARYANA MASON CR CT APP	
418	04/04/2014	HSTKU	HEARING CANCELLED: UNKNOWN PARTY WICKHAM CC VESSEY RECORDED	
419	04/08/2014	DCLR	DECLARATION DR LUECKE	
420	04/08/2014	RSP	RESPONSE/OBJECTION CHANGE COUNSELOR	
421	04/09/2014	DCLR	DECLARATION TATYANA MASON	
422	04/10/2014	MTHRG COM12	MOTION HEARING COMMISSIONER JONATHAN H. LACK CC WELCHER RECORDED	
423	04/10/2014	APPS	APPEARANCE PRO SE	
424	04/10/2014	MTIWD	NOTICE OF INTENT TO WITHDRAW	
425	04/10/2014	APPS	APPEARANCE PRO SE	
425	04/10/2014	ORDYMT	ORDER DENYING MOTION/PETITION	
427	04/16/2014	FNIND	FINDING OF INDIGENCY	
-	04/16/2014	EXWACT	EX-PARTE ACTION WITH ORDER	
428	04/16/2014	AFIND	AFFIDAVIT OF INDIGENCY	
429	04/16/2014	MTIND	MOTION FOR INDIGENCY	

## -----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
430	04/16/2014	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
431	04/17/2014	LTR	LETTER TO SUPREME W/INDIGENCY	
432	04/17/2014	CRRSP	CORRESPONDENCE WITH SUPREME CT	
433	04/17/2014	DCLR	DECLARATION TATYANA MASON	
434	04/17/2014	MTIND	MOTION FOR INDIGENCY	
435	04/22/2014	NT	NOTICE FROM SUPREME COURT	
436	04/28/2014	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
437	06/03/2014	OR	ORDER DISCHARGING CASE COORDINATOR	
-	06/03/2014	EXWACT	EX-PARTE ACTION WITH ORDER	
438	06/11/2014	LTR	LETTER FROM SUPREME CT TO TATYANA	
439	06/17/2014	PNCA	PERFECTION NOTICE FROM CT OF APPLS	
440	07/09/2014	MTIND	MOTION FOR INDIGENCY	
441	07/14/2014	MTIND	MOTION FOR INDIGENCY	
442	07/15/2014	ORDYMT	ORDER DENYING MOTION/PETITION	
-	07/15/2014	EXWACT	EX-PARTE ACTION WITH ORDER	
442.1	08/08/2014	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
443	08/11/2014	CLP	CLERK'S PAPERS P 1-83	
444	08/11/2014	CLP	CLERK'S PAPERS P 84-87	
445	08/11/2014	LTR	LETTER TO TATAYAN MASON W/ CLP INDE	
446	08/11/2014	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
447	08/11/2014	CLP	CLERK'S PAPERS P 88-106	
448	08/11/2014	LTR	LETTER TO TATYANA MASON W/ CLP INDE	
449	08/11/2014	TRLC	TRANSMITTAL LETTER - COPY FILED	
450	08/11/2014	TRLC	TRANSMITTAL LETTER - COPY FILED	
451	08/11/2014	TRLC	TRANSMITTAL LETTER - COPY FILED	
452	08/12/2014	CLP	CLERK'S PAPERS EXHIBIT INDEX	
453	08/12/2014	LTR	LETTER TO TATYANA MASON W/ INDEX	
454	08/12/2014	LTTEAC	LTR OF TRANSMITTAL/XHIBITS TO APP CRT	
455	08/14/2014	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
456	08/14/2014	CLP	CLERK'S PAPERS P 107-108	
457	08/14/2014	LTR	LETTER TO PARTIES W/ CLP INDEX	
458	08/14/2014	TRLC	TRANSMITTAL LETTER - COPY FILED	
-	10/10/2014	VRPT	VERBATIM RPT TRANSMITTED 4 VOL OR DAVIDSON 11-27-12 11-28-12 12-4-12 12-12-12	
459	10/13/2014	LTR	LETTER TO CT APPEAL W/ 4 VOL TRAN	

=====END=====

COURT OF APPEAL OF WASHINGTON STATE  
DEVISION II

In Re: Marriage:

**John A Mason**

Petitioner/Respondent

**Tatyana I. Mason,**

Respondent/Appellant. (Pro-Se).

**NO. 45835-7-II**

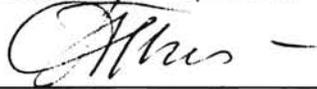
**Proof of Service**

*[(Clerks Action Required)]*

*I am Tatyana Mason the Appellant Pre-Se swears under penalty and perjury of Washington State, that I sent to the opposite party a copy of my legal opening brief and designation to the address:*

*1218 3<sup>rd</sup> Ave Ste 500  
Seattle, WA 98101*

DATED December 9, 2014



Tatyana Mason the Appellant Pro-Se