Leveling the Family Court Playing Field

BY TOM ALONGI

"To laugh often and much; to win the respect of intelligent people and the affection of children … to leave the world a better place … to know even one life has breathed easier because you have lived. This is to have succeeded."

—Ralph Waldo Emerson

Writing an article about domestic violence litigation in family court feels like navigating a leaky, patched rubber raft through sultry Caribbean waters, with chum dangling from the stern, bare hands for paddles, and a surly porcupine for a first mate. Yet something must be said.

I originally intended a sterile dispatch about Arizona's DV custody laws. The need for level, gender-silent analysis does exist, and it would probably soothe many readers not to delve into the inspiration for our DV laws. But DV is not a soothing subject, and it has *always* been about gender. To pretend otherwise for the sake of political correctness, especially during our annual tribute to Domestic Violence Awareness Month, would show disdain for the suffering (and memory) of countless mothers, sisters and daughters. Furthermore, given the swelling power of a public backlash against DV intervention, it seemed imperative not to rob this article of its soul.

In fact, this contribution to ARIZONA ATTORNEY was inspired by a consistent observation I have made at recent family law seminars and in casual conversation: Whenever a speaker lapses into a war story about a pushy litigant, the butt of the joke or scorn almost always seems to be a woman. The speakers themselves come from all corners of the family law system, including judges, court staff, custody evaluators and attorneys. Indeed, I will frequently hear opposing counsel preemptively mock a DV survivor even at the dawn of a case—when no one has yet developed the facts. This perspective is attributable to subtle biases and misguided expectations that we continue to harbor about women and mothers in general, and DV survivors specifically.

We resist DV intervention theory for many reasons, in part because we do not want to accept that DV happens all that often.[1] We also prefer to believe that men and women equally share the blame when it does occur.[2] Despite these philosophical struggles, several millennia of human history do not lie. Violence against women has plagued us throughout our recorded existence, and even today—despite best efforts to educate the public and hold offenders accountable—the phenomenon naggingly eludes understanding and effective intervention. Family court has proven no different.[3]

Our statutes are necessarily gender-neutral. However, this article focuses on traditional ("classic") domestic violence because it is motivated by impulses that the family court system must learn to reject more consistently if we ever intend to free our children from the cycle of violence. Classic domestic violence is also more pernicious, more resistant to therapeutic intervention, and more ingrained in our culture.

Historically, perpetrators of classic domestic violence have been men. Of course, women do hit men—often criminally. But they rarely do so out of a true expectation that they will consequently control the relationship, or strike fear into their partners' hearts at the repercussions of disobedience. Our society has never suffered the cultural disgrace of "husbands as chattel," nor has any bitter anthology of documents and testimony ever compelled Congress to enact the "Violence Against Men Act." The simple truth is that classic domestic violence is more dangerous, and—in tandem with the misunderstandings that perpetuate it—will more likely defeat proper application of state law and, consequently, our children's best interests.

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For all of these reasons, but *only* because of them, this commentary uses masculine pronouns when referring to offenders. Furthermore, it discusses how to ensure fair adjudication of a DV victim's legal claims—not the obvious duty to prove the existence of DV in the first place. As such, the article first addresses two common misconceptions about DV vis-à-vis children. It then analyzes Arizona's custody and parenting time laws related to DV, and finally offers some means by which a DV survivor may attempt to legally acquire interstate sanctuary while her case remains pending.

Domestic Violence in Family Court

Misconception Number 1

Just because an offender hits his wife doesn't make him a bad father; that has nothing to do with the kids. If the kids didn't see the abuse, then there was no harm.

One frequently encounters the contention that DV does not hurt children if they did not personally see or hear it. But children who witness the aftermath (*e.g.*, injuries, phone cords yanked out of the wall, or the eventual psychological breakdown of their mother) suffer, too:

> [C]hildren are affected not only when they are present at the violent incident, but also when they hear it, see it, or see or feel the aftermath—such as a parent injured or in distress, furniture knocked over, things broken, blood on the wall or floor. They are affected, too, when they are forced to live in an atmosphere of threat and fear created by violence. And they are affected by a parent's use of abusive behaviors that stop short of physical violence, whether those behaviors are directed primarily toward a partner, or characterize the abusive parent's relationships with partner and children alike.[4]

Children depend on their parents to serve as role models. Young boys especially will eventually adopt paternal views on the proper treatment of women in their own dating relationships. In fact, it is common for children to side with an abuser during a custody dispute because they grow to view their mother as weak and incapable of providing for their maturing needs. Like the public in general, children, too, may blame her for not stopping or escaping the violence. They also may not realize that she remained in the relationship for their sake. And if a judge has forbidden the parents to communicate with the minors about the case, she will not be in a position to explain her predicament to the children without violating a court order.

Moreover, batterers teach children by words, nonverbal cues and actions that it is acceptable to disregard, demean or sabotage a partner. And even when children have not reached that level of disdain for the victim, they still may love the offending parent and miss him when he is denied regular access.[5] That sentiment does not outweigh the court's duty to protect their best interests, or the advocate's obligation to make this point in the first place.

Batterers teach children by words, nonverbal cues and actions that it is acceptable to disregard, demean or sabotage a partner.

Misconception Number 2

The offender and his new girlfriend get along just fine. Obviously, the original problem wasn't with him.

The batterer's new girlfriend or wife often proves the most vigorous and hostile witness against the victim at trial. The reason is obvious: She has emotionally invested in a relationship with the batterer, and is disinclined to believe that he could be all that bad—especially if they themselves are still in the "honeymoon" phase of their relationship. Evidence to the contrary implies that the new girlfriend has poor judgment, so the latter accordingly rejects that evidence from the outset.

The new partner also may believe that the batterer "just needed a little more love," and regards herself as more adept at supplying it. This belief promotes her sense of self-worth. The honeymoon rarely persists, but the new partner will learn the truth of the matter only after the ex-wife's custody litigation has concluded. At that point, her acquired wisdom cannot alter the outcome of the first victim's custody case. DV experts agree:

> In our clinical experience with child custody cases involving domestic violence, the key witness for the father is usually a new wife or female partner who testifies to the kind and gentle manner of the batterer in this new relationship. The message to the judge is that the problem is one of interaction or the difficult mother, rather than any accountability or acknowledgment for past violence.[6]

Arizona's Domestic Violence Custody Laws

A.R.S. § 25-403.03 erects special custody and parenting time rules for litigation involving domestic abusers.

Legal Custody

"Legal custody" implicates a parent's right to make major life decisions about his child, including medical treatment, counseling, school enrollment, religious faith and even where to live.[7] Giving this authority to a domestic abuser arouses concerns recognized by our Legislature. Specifically, A.R.S. § 25-403.03(D) provides:

> If the court determines that a parent who is seeking custody has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of custody to the parent who committed the act of domestic violence is contrary to the child's best interests.

The statute defines "an act" of domestic violence, and then—in subsection (E)—catalogs how an offender may overcome this presumption.

Conversely, A.R.S. § 25-403.03(A) flatly raises the stakes for more serious offenders:

> Notwithstanding subsection D of this section, joint custody shall not be awarded if the court makes a finding of the existence of *significant* domestic violence pursuant to § 13-3601 or if the court finds by a preponderance of the

evidence that there has been a *significant history* of domestic violence.

(emphases supplied) There are no qualifiers in this section, which expressly excludes any application of presumptions, rebuttal evidence or other rules with "wiggle room."

The mandate is clear. One who perpetrates "significant" domestic violence, or who has inflicted a "significant history" of domestic violence, cannot exercise legal custody. This prohibition aligns with the public policy expressed in subsection (B), which requires the trial court to consider evidence of DV as contrary to the child's best interests, and elevate the victim's and children's safety above all other considerations.[8]

Despite the Legislature's effort to segregate "significant" batterers from offenders responsible for one or more "acts" of violence, the Arizona Court of Appeals recently blended the two standards into one.

In *Hurd v. Hurd*,[9] the trial judge awarded custody of three children to their mother after holding their father responsible for "a significant history" of domestic violence. Pursuant to A.R.S. § 25-403.03(A), that should have ended the debate. However, the judge subsequently determined that the father's denials did not "rebut the presumption created by A.R.S. § 25-403.03"—an unnecessary judicial exercise, because the presumption did not apply to significant offenders.

On appeal, the father protested the decision, complaining that the court failed to adequately consider Arizona's general custody statute.[10] The mother countered that A.R.S. § 25-403.03(A) superceded those considerations. She added that, by grafting the legal presumption of A.R.S. § 25-403.03(D) onto that same subsection (A), the trial judge was right for the wrong reason. Ultimately, she asked the appellate court either to (1) affirm the finding of a significant history of domestic violence, and then disregard (as superfluous) any additional findings concerning the presumption, or (2) affirm the necessarily implied finding that at least one "act" of domestic violence had occurred, and then also agree that the father failed to overcome the legal presumption that would apply only in that context.

The Arizona Court of Appeals did neither. Instead, it remarked:

> The consequences of surrendering unfettered parenting time to a proven domestic abuser can be severe and irreversible. Yet one notices a tendency in family court to treat shared parenting time as a foregone conclusion.

> The court made a finding in this case "that there was a significant history of domestic violence." Therefore, the family court could only award joint custody if Father rebutted the presumption that an award of joint custody was contrary to the child's best interest, pursuant to section 25-403.03.D. In this case, the family court specifically found that Father had not rebutted the presumption.
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> We hold that when a finding of significant domestic violence or of a history of significant domestic violence precludes an award of joint custody under A.R.S. § 25-403.03.A, *and when the party that committed the act of violence has not rebutted the presumption that awarding custody to that person is contrary to the best interest of the child*, the court need not consider all the other best-interest factors in A.R.S. § 25-403.A.[11]

Hurd's prioritization of A.R.S. § 25-403.03(A) over the general custody statute was appropriate. But its collateral holding suggests that even a thoroughly dangerous abuser, deemed "significant" under subsection (A), can still win custody by overcoming a legal presumption never intended for him—often by resorting to a short counseling program of unproven quality or some other remedy expressly reserved for offenders classified under subsection (D).

This article does not pretend that any act of DV is "insignificant" to a victim. Indeed, many survivors will attest that verbal abuse is more insidious and destructive than bodily injury.[12] And even batterers who commit "acts" of physical violence that do not qualify for subsection (A) are still presumed unfit to serve as legal custodians. But to the extent that the Arizona Legislature plainly intended to eliminate more serious offenders from *any* consideration—by expressly exempting subsection (A) (in its opening clause) from subsection (D)—*Hurd* announces a troubling and confusing precedent.[13]

Parenting Time

Many regard physical access to one's child as no less important than legal custody. In terms of role-modeling, risk of physical injury, and an emotional trauma that may not manifest itself for years, the consequences of surrendering unfettered parenting time to a proven domestic abuser can be severe and irreversible. Yet one notices a tendency from all participants in the family court system (attorneys, judges, custody evaluators and mediators alike) to treat shared parenting time as a foregone conclusion.

It is not supposed to be that way. A.R.S. § 25-403.03(F) requires a parent who has committed "an act of domestic violence" to prove "to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development." The statute does not assume shared parenting time. In fact, it recites a non-exclusive list of nine ways that a court may regulate access time to protect a child. A victim's attorney should not hesitate to invoke these provisions and insist on their enforcement, even though they may meet stiff resistance from opponents or courts who subscribe to an alternate view:

> In some of these cases, it may be appropriate to require supervised visitation or no visitation at all. These cases are a special challenge for judges who, in their compassion for fathers, may compromise safety out of a genuinely held belief that children benefit from a relationship with their parent no matter how abusive they appear. Judges may also hold naive beliefs about how quickly batterers can change their behavior and interactional style. In the absence of overwhelming evidence of abuse or expert testimony about abusive relationships, the courts may be swayed by the passionate pleas and promises by fathers to change their behaviors. Batterers, by their very nature, excel at misrepresenting themselves in this environment.[14]

One cannot assume that a victim will understand these dynamics any better. She may believe that the children "need their father," even at the cost of exposing them to violence inflicted by him on a future partner. Or she may realize that unconditional parenting time poses a threat, but does not want to risk a firmer legal position for fear that a judge will brand her as "unreasonable" or an "alienator."[15]

An attorney must advocate a client's known position within ethical constraints, even if the attorney disagrees with the wisdom of her approach. But an attorney also has the duty to educate and counsel a client when that approach might risk her own or the children's welfare.

This suggestion for best practices may not constitute the easiest—or currently fashionable—path to resolving the issue of parenting time. This is especially true in a family court system striving to maximize efficiency in the face of crushing caseloads. But it is the path required by Arizona law.

Interstate Custody Determinations

Domestic violence survivors face an unhappy "trilemma" when debating the escape from an abusive relationship.

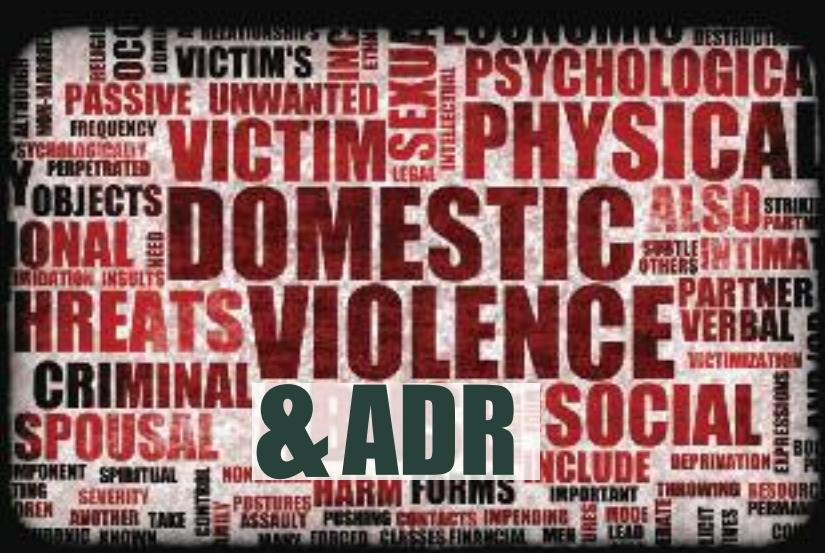
If they remain in the marital home, we scorn them as "stupid," and CPS may threaten legal action for their supposed "failure to protect the children." If they depart alone but leave the children behind, we rebuke their abandonment, and the batterer will gain an unquestioned advantage in subsequent custody proceedings obsessed with the victim's "stability." If victims flee *with* their children—especially across state lines—we label them as "abductors" who do not respect the other parent's rights. To compound this problem, the second and third alternatives pose the threat of pursuit and post-separation violence, a danger constantly underestimated by the public despite routine media reports of murder–suicides and other serious assaults.[16]

This section addresses the final scenario: when a survivor takes her children and runs.

Arizona law broadly protects such survivors. For example, A.R.S. § 13-1302(C) shields abuse victims from criminal prosecution for custodial interference. Family courts are supposed to offer reasonable options to survivors in two additional respects: (a) deciding the more convenient forum under A.R.S. § 25-1037(A)(1); and (b) exercising temporary emergency jurisdiction under A.R.S. § 25-1034.[17] No published Arizona opinion has analyzed either of these provisions, but they are critical for any family court practitioner who strives to protect her client in custody litigation across state lines.

Inconvenient Forum

A parent may ask a state otherwise possessed of jurisdiction ("Trump State") to cede it to a venue ("Proposed State") where the victim has fled because the latter con-



Alternative dispute resolution (ADR) has grown into a popular and effective means of resolving family law cases. However, DV changes the landscape, often in ways that impatient or well-meaning arbiters do not appreciate. This is because mediation depends on two parties equipped with comparable bargaining power and free of intimidation. For some DV survivors, this poses no problem. Aided by therapy, support networks, passage of time or sheer inner strength, they have reached the point in their recovery where they can withstand ADR. Indeed, some survivors thrive. It may be the first time they ever have stood up to their abusers and demanded fair consideration in a bargaining process. The experience can truly empower a victim.

Unfortunately, a great many victims do not share that good fortune. For them, ADR is a nightmare. By definition, a domestic abuser wants to subjugate his partner by the most effective method. In the privacy of one's home, this effort usually manifests itself as threats, demeaning comments, isolation or violence. In ADR, however, most batterers are smart enough not to beat or threaten their partners publicly. They will resort to more subtle behavior. One might strum his fingers on the table, or engage in other nonverbal cues that the victim recognizes as the precursor to an eventual assault back in the home, but that would never startle a judicial officer. Or he may exploit a victim's overwrought demeanor by projecting the contrasting image of bewildered calm and stability. This naturally appeals to the arbiter, who wants ADR to work and cannot understand why the victim must be so emotional and "unreasonable."

In such cases, the posting of a burly security guard does not help, nor do vehicle escorts and staggered departure times. Such physical shields are not inherently bad; they simply do not remove the coercive atmosphere existing inside the room. The batterer does not want to inflict bodily harm at ADR. He wants to ensure the rapid acceptance of bargaining terms that will allow him a continuing, undue influence on his victim's daily life years after the judge signs the final decree.

For all of these reasons, and in addition to conducting a thorough screening of the victim to determine her readiness for ADR, an attorney should not hesitate to invoke any one of several provisions in the Arizona Rules of Family Law Procedure designed to help such victims. For example, one might cite Rule 67(B)(3)(a) or 68(B)(2)(a) to request physical separation during the conference. Alternatively, an advocate might ask for separate sessions on different dates (or at different times), or even a waiver of the entire process. In fact, Rules 67(B)(3)(b) and 68(B)(2)(b) guarantee notice to the parties (either in writing or in open court) of the right to request protective measures or an outright ADR waiver before that process is imposed.

stitutes a more convenient forum. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) further provides a non-exclusive list of criteria for the court's consideration on this point.[18] No one can force Trump State to surrender jurisdiction on the basis of forum *non conveniens*. However, the Arizona Court of Appeals has held that a trial court abuses its discretion by failing to consult with a sister state when it has reason to know or believe that Arizona might become an inconvenient forum.[19] It is also error for a court to refuse to consider the factors relevant to forum *non conveniens*, or to fail to allow the parties to present evidence and argument on that point before ruling.[20]

The leading DV case on forum *non conveniens* is *Stoneman v. Drollinger*.[21] In *Drollinger*, the biological mother unsuccessfully asked a Montana trial court to decline jurisdiction during a custody dispute with her former husband. On appeal, she argued that the district court wrongfully failed to consider her physical safety and protection.

Stoneman, the father, countered with the argument that his children had a closer connection with Montana, where they had resided most of their lives. He also contended that the Montana court should retain jurisdiction because it knew the case. Stoneman claimed that his last act of reported DV had occurred three years earlier, and that there had been "no apparent problem" in the interim. Finally, he complained that Drollinger's effort to transfer jurisdiction constituted an ill-disguised ploy to hinder his access to the children, and that she "only wanted to obtain a more 'sympathetic judge' by seeking the transfer of the remanded child custody proceedings to a court in Washington."[22]

The Montana Supreme Court rejected his strategy:

> Given the high propensity for recidivism in domestic violence, we hold that when a court finds intimate partner violence or abuse of a child has occurred[,] or that a party has fled Montana to avoid further violence or abuse, the court is authorized to consider whether the partner and the child might be better protected if further custody proceedings were held in another state. *While this factor alone is not dispositive under [state law], we urge district courts to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA.*
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> . . .
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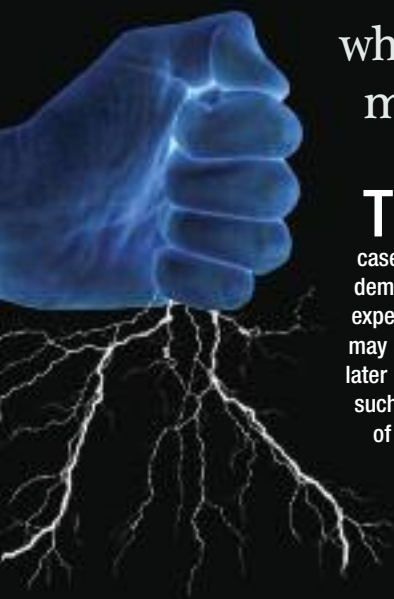
> We conclude that the district court abused its discretion when it acknowledged the well-documented history of domestic violence presented by this case, yet neglected to consider which forum could best protect Drollinger and the children from further abuse.[23]

Temporary Emergency Jurisdiction

Even a victim who intends to litigate custody in Trump State may seek temporary, emergency orders in a venue not otherwise entitled to full jurisdiction ("Lifeboat State"), but she should always remember the words "temporary" and "emergency." A.R.S. § 25-1034(A) guards a child, sibling or parent from abuse, or protects a child abandoned in Lifeboat State, *only* until Trump State can safely intervene. If Trump State previously entered a child custody determination, then Lifeboat



what's wrong with anger management counseling?

This question derives from the common belief that DV would not occur if the victim refrained from "provoking" the offender. In cases of classic DV, an abuser batters his partner because she has demonstrated some sign of independence, or deviated from his expectations—not because she "pushed his buttons." The trigger may amount to something as innocuous as arriving home from work later than he expected, or a more significant act of independence, such as resisting his will over child discipline, family finances, choice of friends or her decision to terminate the relationship.

One often can determine whether the offender's violence is really attributable to poor "anger control" simply by asking whether he treats *everyone* (*i.e.,* family, friends and strangers) with the same disdain and violence. If not, then he probably controls his anger just fine. He knows exactly when and where to channel it for optimum results, while still dodging public exposure and condemnation.

In cases such as these, "anger management" therapy is useless. It begins from the premise that the offender "can't help himself," and suggests that external triggers (*e.g.,* victim "provocation") instigated a domestic assault. A therapist who accommodates this fiction will swiftly find herself conducting multiple sessions devoted to how the victim makes the abuser miserable, and whether he effectively coped with her combative behavior. Very little focus will dwell on the batterer's notion that he is entitled to his victim's swift obedience.

Anger management therapy should never be allowed as a substitute for batterer's intervention.[1] Indeed, Arizona law forbids an emphasis on anger management and couples counseling in any treatment program for misdemeanor domestic violence offenders.[2] Reality often negates theory, and programs are difficult to assess from the outside, so a practitioner always should demand strict compliance with Family Law Rule 49(B)(2), which requires disclosure of "the name and address of each treatment provider and period of treatment involving any party for … domestic violence, for the period beginning five years prior to the filing of the petition." Counsel should follow that disclosure with a request for production of documents that includes: (1) a complete set of the treatment records; and (2) signed authorizations that permit each treatment provider to send the same records directly to the victim's attorney.[3] If the offender delays compliance, counsel should apply to the court for a HIPAA order.[4]

1. *See* State Justice Institute and National Council of Juvenile & Family Court Judges, *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* 26 (2006) ("Anger management, pastoral counseling, couples counseling, and parenting programs are not appropriate forms of intervention in cases with domestic violence").
2. *See* Ariz. Admin. Code, Title 9, Ch. 20, § 1101(A)(2)(b).
3. This refers to the federal Health Insurance Portability and Accountability Act of 1996, and its associated Privacy Rule, which took effect on April 14, 2003. *See* 45 C.F.R. §§ 164.502 *et seq.*
4. *See* 45 C.F.R. § 164.512(e).

State's emergency decree must specify when it will expire out of deference to Trump State. The UCCJEA also requires Trump State and Lifeboat State to immediately communicate with each other to facilitate Trump State's re-inheritance of the case.[24]

Again, the emergency custody exception requires (1) the minor's presence within the state, and (2) either child abandonment or domestic abuse.[25] However, A.R.S. § 25-1034 does not require the child's return to his original home before that venue can conduct further hearings. This is an important and overlooked point, because a domestic abuser will almost always ask the trial court to order the immediate return of the child, even before it confers with Lifeboat State or takes telephonic testimony from the fleeing parent in a due process hearing. Family courts and attorneys should resist this knee-jerk (and potentially dangerous) reaction to an interstate flight, as well as the all-too-common assumption that if a parent crossed state lines with a child, she did so nefariously.

Conclusion

These statutory tools provide a critical reprieve for domestic violence victims who seek to protect their children, and whose survival networks may lie hundreds of miles away. They do not excuse the duty of proving claims with evidence. But they do give victims a level playing field and—more important—safe shelter for children whose best interests we must prioritize.

endnotes

1. *See* David Frazee, Ann M. Noel & Andrea Brenneke, Violence Against Women, Law and Litigation § 1:35 (1998).
2. For an effective rejoinder to this "symmetry" claim and its ill-founded reliance on Conflict Tactics Scale methodology, *see id.* at § 1:50.
3. At a recent seminar, a local judge opined that DV was "over-alleged and under-proven." To the extent that *pro se* victims often fail to develop persuasive cases at their custody trials, he was right. But his argument concerning "over-alleging" was just as wrong. "*Belatedly* alleged" might have struck closer to the mark. Spousal abuse, like other crimes committed in the seclusion of a family home, has always been acutely underreported. *See* Peter G. Jaffe, Nancy K. D. Lemon & Samantha Poisson, Child Custody & Domestic Violence: A Call for Safety and Accountability 16-21 (2003).
4. State Justice Institute and National Council of Juvenile & Family Court Judges, *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* 9-10 (2006), *citing* Jaffe et al., *supra* note 3, at 30-31, 21-28, and Lundy Bancroft & Jay G. Silverman, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics (2002).
5. *See* Jaffe et al., *supra* note 3, at at 55-56.
6. *See id.* at 32. *See also* S. Woffordt, D. E. Mihalic, & S. Menard, *Continuities in Marital Violence*. 9 J. Family Violence 195-225 (1994) ("58% of male offenders perpetrated violence against their new partners after dissolution of a previously abusive relationship").
7. *Cf.* A.R.S. § 8-531(5) (defining "legal custody" in the context of parental severance).
8. Many of the Maricopa County Superior Court's Self-Service Center forms require a party to disclose the occurrence of "significant" domestic violence.
9. No. 1 CA-CV 07-0342 (Ariz. Ct. App. July 23, 2009).
10. *See* A.R.S. §§ 25-403(A)(1) through (10).
11. No. 1 CA-CV 07-0342, at ¶¶ 12-13 (emphasis supplied).
12. Bancroft & Silverman, *supra* note 4, at 5, *citing* D. R. Follingstad et al., *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J. Family Violence 107-120 (1990).
13. The author's law firm represented the mother as appellate counsel, and has petitioned the Arizona Court of Appeals for modification of its holding.
14. Jaffe et al., *supra* note 3, at 16.
15. *See* A.R.S. § 25-403(A)(6), which requires the court to consider which parent will more likely "allow the child frequent and meaningful continuing contact with the other parent." Senate Bill 1106, which passed into law during the recent legislative session and takes effect on Sept. 30, 2009, amends this statute by exempting parents who advocate restricted child access out of domestic violence concerns.
16. Separated women are assaulted three times more often by a male ex-partner than divorced women, and almost 25 times more than married women. Walter S. DeKeseredy, McKenzie Rogness & Martin D. Schwartz, *Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge*, 9 Aggressive & Violent Behav. 676 (2004), *citing* R. Bachman & L. E. Saltzman, *Violence Against Women: Estimates From the Redesigned Survey*, U.S. Department of Justice Special Report NCJ-154348, Office of Justice Programs, Bureau of Justice Statistics (1995). In 1990, the U.S. Justice Department reported in its *Crime Survey* that more than 75 percent of the most serious injuries and death to battered women occur after they leave their abusers.
17. Both appear in Arizona's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *See* A.R.S. §§ 25-1001, *et seq.*
18. *See* A.R.S. §§ 25-1037(B)(1)-(8). The following cases all discuss a child's "significant connections" with a new, prospective venue: *In re Forlenza*, 140 S.W.3d 373 (Tex. 2004); *Ruth v. Ruth*, 83 P.3d 1248 (Kan. Ct. App. 2004); *King v. King*, 790 N.Y.S.2d 339 (App. Div. 2005); *In re A.C.S.*, 157 S.W.3d 9 (Tex. Ct. App. 2004); *Fish v. Fish*, 596 S.E.2d 654 (Ga. Ct. App. 2004).
19. *See Loper v. Cochise County Superior Court*, 612 P.2d 65 (Ariz. Ct. App. 1980).
20. *Cole v. Cushman*, 946 A.2d 430, 435 (Me. 2008). *Cf.* A.R.S. §§ 25-1010(B) and 25-1037(B) (requiring the court to give each party the opportunity to present facts and legal arguments before deciding jurisdiction).
21. 64 P.3d 997 (Mont. 2003).
22. *Id.* at 1003.
23. *Id.* at 1002, 1004 (emphasis supplied). *See also Hector G. v. Josefina P.*, 771 N.Y.S.2d 316, 323 (App. Div. 2003) (domestic violence "very much on the minds" of UCCJEA drafters; while earlier laws presumed that party fleeing jurisdiction was wrongdoer, experience showed it was often domestic violence victim who sought protection elsewhere).

    At least three other appellate courts have cited *Drollinger* in this context. *See Miller v. Miller*, 965 A.2d 524, 532 n. 8 (Vt. 2008); *Foster v. Foster*, 664 S.E.2d 525 (Va. Ct. App. 2008); *In re Parentage of ARK*, 174 P.3d 160 (Wash. Ct. App. 2007).
24. A.R.S. § 25-1034(D).
25. *See*, *e.g.*, *J.B. v. A.B.*, 888 So.2d 528 (Ala. Civ. App. 2004) (Alabama juvenile court could not enter emergency custody decree on behalf of minor child who resided in Missouri, where Missouri constituted Home State and child was not "present" in Alabama when juvenile court acted on case).