

B.C. Yukon Society of Transition Houses

Safe Custody and Access to Justice:
Creating Safety after Separation in Wife-Assault Cases

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A sense of the unique, specific and concrete circumstances of any situation is the first indispensable step to solving the problems posed by that situation.

Former President of Ireland, David Trimble, 1998

Abuse During & After Separation

Assaultive men:

- More likely to sexually assault children
- Seek custody more than non-assaultive fathers
- More likely to commit murder on/after separation
- Intensely threatening long after separation
- Abuse children to abuse the woman
- Use visitation to abuse the children, woman
- Strategically undermine woman's parenting
- Use professionals to undermine, abuse victims

L. Bancroft, 2002

Social Responses to Victims

Strongest predictor of victim distress after violence

Positive social responses foster recovery, safety

Negative social responses slow recovery, reduce safety

Discrimination based on race, gender, sexuality, class, ability, age, position

Ignoring social responses = misleading analysis

Social Responses to Victims

Mental health settings

Models that blame women & excuse assaultive men
A-contextual focus on individual traits, deficits
(e.g., resiliency, vulnerability)
Inappropriate diagnoses

Law enforcement, judicial settings

Narrow focus on the physical assault
Slow & mitigating responses to perpetrators
Unsafe custody & access decisions
Dual (mutual) charging
Victim blaming: Inattention to victim resistance

Negative Social Responses (cont'd)

- Child protection
 - “Failure to protect”
 - No recording of women’s resistance
 - Failure to address perpetrator
- Family and friends
 - Why don’t you just leave him?
 - Why do you pick these guys?
- Specialized interventions
 - Mutualizing (e.g., custody and access *dispute*)
 - Misuse of psych. tests, diagnoses with victims

Women's Responses to Negative Social Responses

- Stay to protect the children
- Avoid authorities
- Work the system
- Withhold information, disclose partially
- Isolate themselves
- Stay in contact with the perpetrator
- Use self-blaming language
- Covert resistance, appear to comply, obey

Misrepresentation & Negative Social Responses

- Violent crimes & victims' responses are misrepresented:
E.g., sexualized assault, wife-assault, colonialism
- Misrepresentations appear in legal, mental health, public policy, journalism & public discourse
- Prevailing models reflect faulty assumptions
E.g., cycle theory of violence
- All models presume positive social responses

It is a horrible cancer that at times seems incurable, but it can be cured. . . . This is an awakening of our collective conscience. . . . Prosecutors want to bring wife batterers to justice but women are still too often afraid to testify. We are committed to prosecuting the wrongdoers but we need your help. We need witnesses.

Attorney-General Wally Oppal, Vancouver Sun, 2007

Ottawa orders panel to probe TB deaths. A Truth and Reconciliation Commission will look at why Indian Affairs did so little about the safety of native children. (headline)

"It is unimaginable to any parent that your child would go away to school and not return," he told reporters yesterday. "It is one of the saddest chapters in Canadian history. And obviously it will be incumbent on all of us to come to grips with it."

Jim Prentice, Globe & Mail, April 25, 2007

The Interactional and Discursive View

- Social interaction is responsive
- Dignity is central to social life
- Violence is social
- Violence is unilateral
- Victims respond and resist
- Violence is deliberate

Social Interaction is Responsive

Social interaction is conventional and improvised

We orient to one another as social agents with the ability to choose . . . and to change across time and settings

If we did not, social life would be impossible

The use of power presumes choice by both parties

The Active Self

The self is a stance-taking entity, a something that takes up a position somewhere between identification with an organization and opposition to it, and is ready at the slightest pressure to regain its balance by shifting its involvement in either direction. It is thus against something that the self can emerge.

E. Goffman, 1961, p. 320

Effects & Responses

Effect: Whatever is produced by a *cause*; something made to happen by a person or thing; a result.

Originates in the *cause*.

Response: Mental, spiritual or physical activity or cessation of activity pursuant to circumstances or acts of others. A reply or an answer.

Originates in the *person*.

How the Language of Effects Conceals Resistance

Distinguishing between effects & responses

Effects as negative, a-social, a-political, end-states

How the language of effects:

- Conceals resistance and supports victim blaming

- Denudes suffering of its personal, situated meaning

- Treatment of victims is largely effects-based

Dignity is Central to Social Life

Dignity includes:

Physical & psychological integrity,
wholeness

Social & self-worth

Autonomy, freedom, efficacy

Care for others, loved ones

Affronts to dignity incite intense responses

Humiliation may be the primary affront, injury

When affronted, dignity must be restored

Violence is Social

Violent acts involve two parties, perpetrator & victim

Complete accounts must include both parties

Example: Wife-assault scenario

Victims' resistance shows the degree & deliberate nature of violence

To conceal resistance is to conceal violence

To conceal resistance is destroy evidence

Violence is Unilateral

Violence consists of actions by one party against another

Mutual Acts versus Unilateral Acts

Mutualizing:

- Obscures perpetrator responsibility
(associated with shorter sentences)
- Portrays victim as co-agent, co-responsible
- Blames, pathologizes victims

Common Mutualizing Terms

Abusive relationship, domestic dispute

Sexual assault, unwanted intercourse, fondle, kiss

Fight, argument, conflict, war

Custody and access dispute

Conflict resolution, mediation

Reconciliation

Mutualizing Spousal Assault in Courts

- “The appellant & his wife engaged in an argument Mr. X became upset over something said during this argument. He thereupon grabbed his wife’s neck, squeezing it until she nearly lost consciousness. He then let go. This brought the argument to an end.”
- “That the earlier of the two assaults arose spontaneously in the course of an argument is not in dispute. To that extent it can be said to have been unpremeditated.”
- “He was willing to take counselling in reference to his anger & his marital problems. He expressed his deep remorse for what had happened & his desire to improve the marriage.”

Mutualizing Spousal Assault in Courts

- “They went to bed and he said, ‘Jane, I’ll have to screw you one more time’, and he had intercourse with her.”
- “It is obvious difficulties were present in the marriage.”

The partners' characteristics hold them together. . . .
As abused partners adapt and become more compliant .
. . the
partners' characteristics make them increasingly
dependent on one another. After prolonged abuse
they develop complementary characteristics:
aggressive/passive, demanding/compliant,
blaming/accepting guilt.

(Yukon Family Violence Project)

Colonization has always been based upon the existence of need and dependency. Not all people are suitable for being colonized; only those who feel this need are suitable. In almost all cases where Europeans have founded colonies . . . we can say that they were expected, and even desired in the unconscious of their subjects.

(Mannoni, 1947, cited in Macey)

Victims Respond and Resist

The nature of resistance:

Overt, covert; subtle, direct; disguised, open.

A drop of longing says as much about the human spirit as a grand gesture of love or defiance.

Distress signals the victim's orientation to the violence *as adverse*.

What a person *despairs against* points to what that person hopes for: Despair encodes desire.

Aboriginal Resistance to Kidnapping, Genocide

Video clip from Rabbit Proof Fence

During the first stage . . . the batterer engages in minor verbal abuse. . . . The woman tries to calm the abuser and often changes her lifestyle to avoid angering the man. This usually sets a precedent of submissiveness by the woman building the gateway to future abuse. The second stage consists of an “uncontrollable discharge of tensions that have been built up during phase one” During the third stage, the abuser acts remorseful and apologetic, usually promising to change. As a result, many women grant abusers multiple opportunities to repent and thereby fall into a cycle of abuse.

Ciraco, 2001

Violence is Deliberate

Perpetrators anticipate and suppress resistance

Routine property crimes

Wife-assault, sexualized assault

Control, predation

Increased violence for open defiance

Discrediting victim

Misinterpreting victim's responses, distress

Violent Strategies in Colonialism & Wife-Assault

Isolation

res. school, reserves

family, friends

Threats

kidnapping
deny rights

violence
hurt children

Surveillance

child welfare, status

friends

follow,

Parallel Violence in Colonialism & Wife-Assault

Humiliation

savage
public beatings

slut
public insults

Control

Indian Act

give orders

Avoid Responsibility

blame heathens

blame

woman

Parallel Violence in Colonialism & Wife-Assault

Theft

land

money

Use of stereotyping

Indian, lazy

bitch, passive

Use of the law

Indian act

lax enforcement

Effects-based Accounts of Perpetrators

Pathology - biological, psychological

Inner tension - build-up to explosion

Learned behaviour - recipient of social conditioning

Socio-cultural - attitudes compel men to violate others

Effects-based theories:

Conceal control, deliberation, choice

Represent perpetrator as victim of powerful forces

Mitigate responsibility

Fail to account for victims' resistance

“For some time I have been struggling with an illness, although it has taken this most recent incident to bring home to me that I have a problem with alcohol. . . . This has brought shame to me personally and to the office of mayor. I realize that I must now deal with it. . . . The responsible course of action is, for the interim, to step aside as mayor while I seek assistance for this personal matter. . . . I will do whatever is necessary to deal with my problem . . . including any treatment that will help with my recovery. “

Globe and Mail, Saturday, April 14, 2007, p. A18

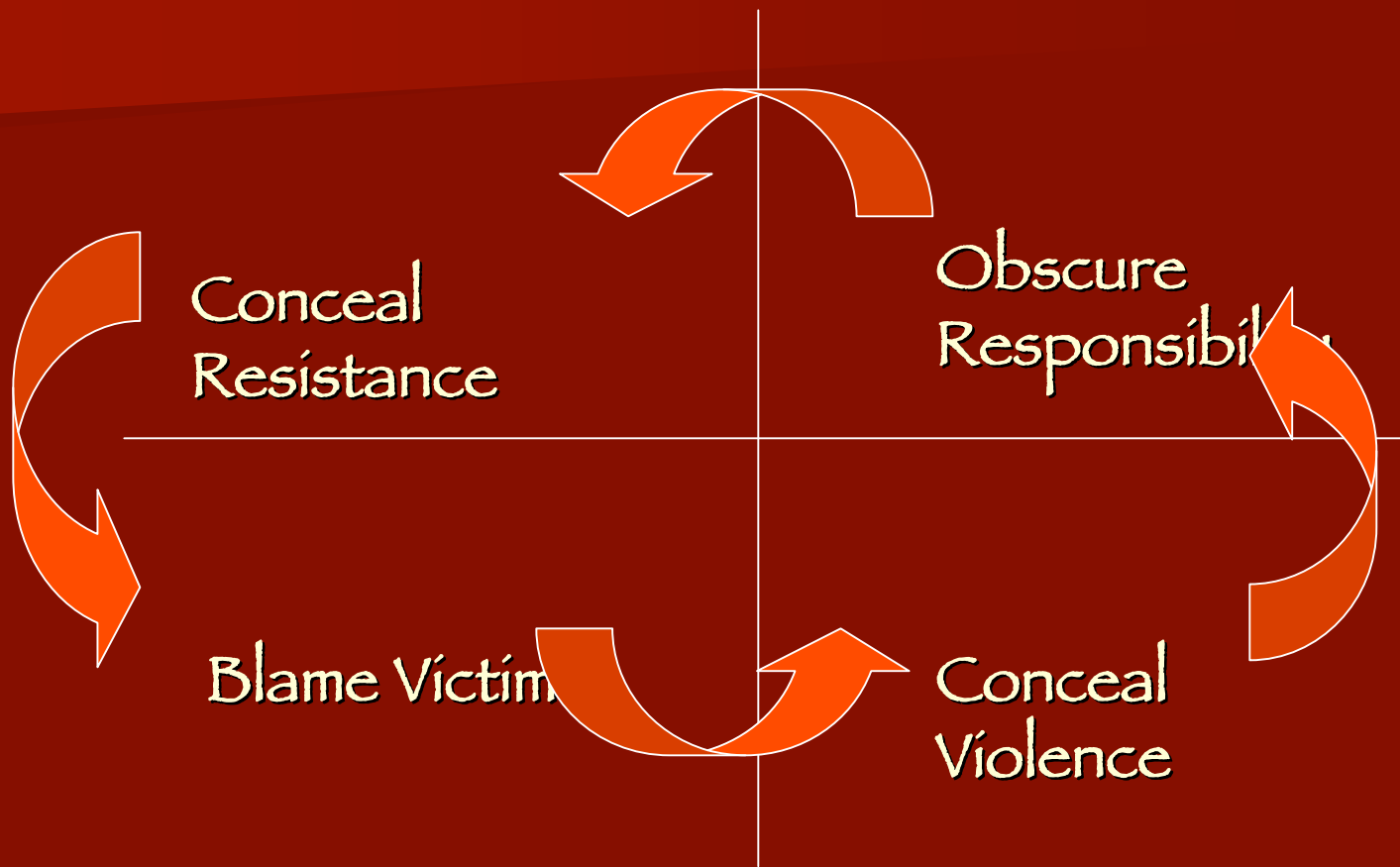
A stay of proceedings was granted . . . in the case of Port Coquitlam Mayor Scott Young, who was charged with assaulting his wife. Judge Spence stayed the charge after Crown and defense agreed that was the best way to resolve the matter. Young, who agreed to counseling, said in a brief statement that he and his wife are glad the matter is over and that they are trying to resolve their difficulties. . . . “I think most people are aware of the challenges facing busy working couples with young families,” said Young. “We can, at times, miscommunicate and even over react to situations. What occurred between my wife and I was a misunderstanding which we both find most regrettable”.

Victoria Times-Colonist, April 26, 2002

For Don, control meant turning Martha into a puppet, stifling her independence, taking away any life she may have had apart from him. He was tortured by the fear that she would abandon him, and no matter how hard he tried to squelch that fear by asserting control, the fear never left him. This helps explain why Don was battering Martha practically every other day rather than episodically. He felt constantly vulnerable to losing her, and he released the demons of his vulnerability through violence.

(Jacobson & Gottman, 1998, p. 75)

Four Operations of Discourse



The Four Operations of Language in Practice

Widely used in professional and public domains
Form the basis of current models, assumptions

Invariably attack victims and benefit perpetrators

Justify and call for a host of negative social responses

- prejudicial views of victims
- inappropriate legal decisions and public policy
- ineffective, harmful interventions at all points

Complete and Accurate Accounts

The actions of perpetrators & victims in specific interactions, social settings & social context
-violent act itself, before, after

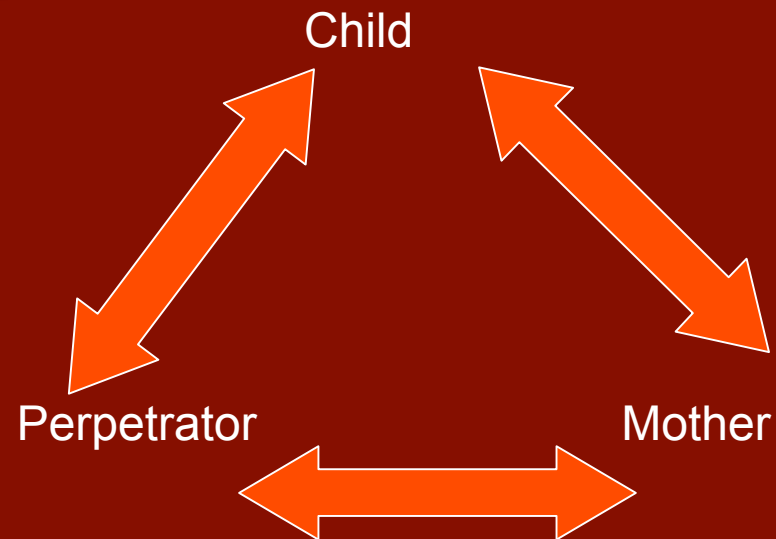
Provide the Court with a fact pattern that necessitates safety-centred decisions

- Expose violence
- Clarify perpetrators' responsibility
- Elucidate victims' responses and resistance
- Contest the blaming and pathologizing of victims

Children's Responses: Getting Interactional Information (Scenario 1)

- “Their daughter knocked on the door, and he left the suite to placate the daughter, and to get her to go back upstairs to bed. . . . After the daughter returned upstairs...”

Children's Responses: Getting Interactional Information (Scenario 2)



Moment-by-moment actions of one person and responses to that action by all the others

Children's Responses: Getting Interactional Information (Scenario 2)

"Their daughter knocked on the door . . ."

Possible response of :

--child

--mother to child

--perpetrator to child

--child to perpetrator's actions

--mother to child's actions

--child to mother's action

--perpetrator to child

--mother to perpetrator

--child to perpetrator

" . . . and he left the suite to placate the daughter . . ."

" . . . and to get her to go back upstairs to bed."

Expose Violence

- Who did what to whom
- Accurate use of unilateral-violent terms
 - non-mutualizing context
- Include detailed descriptions of actions against children

Clarify Perpetrators' Responsibility

- The deliberate nature of the violent acts
 - The suppression or overwhelming of resistance
- How the perpetrator responds to and uses social responses
- Include how the perpetrator responded to the children's resistance
- Represent as a responsive, agentive human being (not effected)
- Engage quickly, decisively, respectfully with violent partners
- Highlight deliberation, control, pre-existing ability

Elucidate Victims' Responses And Resistance

- Uncover the mental, physical, and spiritual resistance of victims
 - Overt or covert
 - Direct or subtle
- How victims (including children) respond to social responses
 - Negative or positive
- Include the responses and resistance of children
- Represent as responsive, agentic human beings

Contest The Blaming And Pathologizing Of Victims

- Identify negative social responses to all victims including children
 - Four Operations of language
- Orient to the wrongness of negative social responses
 - Contest pathologizing
- Contest the creation and placing of the problem within the victim
- Represent victim as a responding and resisting agent
 - Actions understood in context

Critical Analysis of Professional Practice

Psychological tests and trauma scales:

Conceal victims' responses & resistance

Presume a passive, submissive victim

Do not examine social responses to victims

Ignore victims' responses to social responses

Collapse very different forms of trauma

Recast a social problem as a psychological one

Statements of Responses & Resistance

Instead of *Victim Impact Statements* . . .

Confine victims to speaking pain

Outlaw the speaking of suffering as resistance

Perpetuate stereotype of passive victim

Supports paternalism & contempt

. . . *Victims' Statements of Responses*

Acknowledges despair as dissent

Restores dignity, status of pre-existing wellness

Contests victim blaming, pathologizing

Fully exposes the violence

Georgie porgie puddin' and pie
Kissed the girls and made them cry
When the boys came out to play
Georgie porgie ran away

Georgie porgie chose the places
To force his mouth onto the girls' faces
The girls resisted with shoves and cries
And tried to alert the other guys
When the guys came out to play
Georgie turned and ran away

Georgie knew that he was wrong
There's so much more to the same old song

(Kate MacLeod, 2007)

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