

MEDIATION AND DOMESTIC VIOLENCE

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What Domestic Violence Looks Like

Domestic violence is a common problem, affecting a large percentage of all heterosexual relationships; up to twenty five percent of women partnered with men are beaten regularly, statistics tell us. Nearly ninety percent of all domestic assaults in heterosexual relationships involve men attacking women. Men are socialized to expect to be in control, especially in their relationships to women. The family is often still seen as a man's private world to control as he sees fit. Abusers use tactics of intimidation, coercion, threats, even terroristic threats and physical assault to maintain their control and their power... because they *can*; it is effective; it gets them what they want.

Domestic violence is a euphemism for abuse. The abuse is a ***pattern of behavior*** in a relationship, as perpetrated by one partner against the other; it often but not always includes physical violence; it almost always encompasses emotional abuse. Other tactics frequently used are economic coercion, isolation, sexual abuse, threats and intimidation, use of the children, verbal abuse, damaging or destroying property, threatening, killing and abusing pets, and other forms of terrorism. Domestic violence is, therefore, *not* any particular, discrete incident or incidents, **nor is it a dispute or conflict**. *It is never not present as a factor*, once a partner has been intimidated, terrified, threatened, coerced, beaten, slapped or otherwise put on notice by the abuser of his intent and capability to control her.

Domestic Violence in Gay and Lesbian Relationships

Abuse is often perpetrated in gay and lesbian intimate partnerships. Many of the same elements are present and many of the same tactics are used, however there are other factors and elements that do not exist in heterosexual relationships. One tactic, for instance, that is frequently used against a gay or lesbian victim of intimate partner abuse is the threat of "outing" the victim to family, friends, employers or others. (A common tactic of heterosexual abusers is to "accuse" his partner of being a lesbian. This is one example of how heterosexism supports sexism and abuse.)

Another factor that is different in gay or lesbian abuse is determining the identity of the abuser or victim. Here, as in heterosexual relationships, the abuser frequently portrays her/himself as the victim, while the victim readily accepts blame or responsibility for the abuser's behavior. A victim will even sometimes call herself or himself an abuser, agreeing to the abuser's portrayal. (It is also true in heterosexual relationships that the abuser is very skilled at portraying the victim as the actual abuser.) When the abuser in any intimate relationship is in a position of power, such as a police officer, lawyer, judge, doctor, or in other positions that afford a person the believability and credibility the clout this provides makes the victim's escape, support, safety, credibility and options very limited. This is especially true within criminal-legal systems, and with most mediation settings.

In addition, elements of heterosexism in system responses make intervention possibilities fraught with more concern or potential frustration, humiliation and danger for victims as well as for perpetrators. We strongly recommend that gay and lesbian victims of intimate partner abuse consult with advocacy programs who are well trained and sensitive to the needs of this community as well as welcoming and affirming of the realities and needs of gay, lesbian, transsexual and transgendered people.

Abuse Patterns

The actual use of force or threat to get what the abuser wants is needed far less often than most might imagine. A simple look or gesture, usually imperceptible to others, is often all it takes when the *pattern* is present to alert the habitually intimidated target/victim that the abuser is exerting a demand or signaling a warning, or "anger". Actual physical abuse is often but a small part of the pattern of control and domination. Some abusers never use physical violence directly against the victim, or use violence only once, relying on that threat to control their partner thereafter (but all physical abusers use many, many other tactics.)

The victim of abuse walks in fear through every day, even when appearing to be calm and safe. The continual threat of the repetition of abuse functions to keep a victim controlled, as do "reminder" incidents, such as smashing a wall, threatening a relative or child, breaking a victim's possessions or talking about suicide. Such tactics are used while constantly invalidating the victim in dozens of subtle and overt ways. Victims often tell advocates that the safest thing they can do is comply with the abuser, and appear as calm as he demands of them, so the abuser remains free of suspicion in the eyes of others.

An abuser's behavior is, despite common misunderstandings to the contrary, very controlled and calculated to get him exactly the results he wants. Abusers behave very differently in their intimate partner relationships from how they appear to others, *and we cannot safely deal with them based upon appearances*. They lie, deny, minimize and hide their abusive behavior very creatively. When we comply with an abuser's manipulation of us, and set up or participate in interventions that assume he is sincere, (and that coerce or urge her to take equal or shared responsibility for the abuse) we can unknowingly endanger her in serious ways.

While abusers can charm us their victims may appear to others to be "too compliant", returning to the abuser when an outsider feels that in the same situation he or she never would, "irrational", stating fear of consequences an outsider believes to be extremely unlikely, or racing through a disjointed and non-sequential series of descriptions of the abuse and her options or lack of options, to have "low self-esteem", "difficult" personalities, even mental health problems; abusers know well how to reinforce judgments and unjust reactions toward their victims. All of these things we observe in a victim are often absolutely normal responses to ongoing abuse and terrorism. She is doing what she must to protect herself and her children and to comply with coercion and threats, or to re-ignite the abuser's momentary approval or rewarding treatment while reassuring and placating him to increase her safety.

The abuser, on the other hand, often exhibits a charming and "rational" appearance, accommodating requests from authority figures with quiet competence, appearing altogether to be the "reasonable and functional" one of the pair. Because she is very familiar with this demeanor she is fully aware of his ability to persuade others of his innocence and of her culpability.

Dangerous Interventions

The most powerful force in the relationship is the victim's fear of the abuser. It is the factor that controls what the victim does, the choices she makes and the responses she exhibits to the abuser, and importantly to systems professionals. *She is always the*

one who fully and best understand the dangers, what he may and may not do and what may trigger more danger to herself.

Unless we understand this rational and life-controlling fear and the *power* it exerts we cannot provide *any* intervention safely or effectively around *any* issue in the relationship. Unless we understand the abuser's behavior as a *choice* he makes for which only he can be held accountable we do a grave injustice to the victim of the abuse. Unless we understand the dynamics of the pattern of his abuse and its effects on her we cannot safely intervene in the situation.

Providing any intervention that gives hope to the victim without *sole* accountability of the abuser is almost certain to re-victimize the target of abuse. Abusers routinely try to convince their victims that they are "trying to change" and that she "must help" him to do it; this is one of the most insidious methods used to maintain control over the victim.

The power and control desires of abusers and their sense of total entitlement to them drive all of their behavior choices toward and about the victim. They coerce, manipulate and invalidate the victim to continue their access to the benefits of the relationship for them. Only interventions that hold the abuser accountable and give them clear consequences for their behavior can address their belief in their right to control and own their partner.

Should We Mediate Domestic Violence?

Is mediation ever appropriate to resolve any of the issues between persons where domestic violence has been perpetrated? There are many who believe that mediation is a viable and reasonable tool for resolving disputes, and who include domestic violence cases as "disputes" which can and should be addressed with mediation. Many practitioners believe that while they cannot mediate the violence that they can mediate other issues, such as custody, visitation and property settlement. Proponents of using mediation say that mediation is "one tool among many" that may be used, that mediation encourages cooperation instead of litigation, community building instead of adversarial proceedings, empowerment instead of being made spectators in a court process.... in short that it is "restorative justice", instead of "retribution justice". Those things are true for much 'conflict resolution'.

All well trained mediators know that we cannot mediate violence. Do we accept the idea that domestic violence is "escalation of conflicts"? Not all of us choose to use violence to address conflict; much violence occurs with no stimulus. The use of violence is always separate from the issue of conflict resolution. *But in addition it is important to understand that mediating any situation between partners where abuse has been perpetrated is mediating violence, because any negotiation between the partners for any reason is a subject of the abuser's terrorism.*

It is important to remain cognizant that it is not only physical violence that defines the relationship, but the *pattern of continual tactics* of abuse that remind the victim that the abuser retains all of the power and that she has none in the relationship. Perhaps it would be helpful to think about mediation in other situations. Would we mediate an issue between a rapist and his 14 year old victim? Between a father and the 10 year old child he sexually abused for several years? *Between a terrorist and a hostage?*

Criteria For Help

Helpful and safe domestic violence interventions look to *expand* the victim's base of control. Any imposed or authoritative intervention that keeps a victim powerless or even increases their powerlessness is a travesty of justice. When we find creative ways to transfer knowledge, skills or resources to the victim we give them back some control; we give them ownership of the course of action. When we impose a course of action that *we* own, be it mediation, couples counseling or other endangering interventions that collude with the abuser we contribute to their abuse and danger.

The limits of our approaches and helping skills, and the harms we perpetrate by insisting upon some of them in the face of evidence we should do otherwise is an area that deserves honest scrutiny. One test of interventions is to ask whose position will be strengthened by them and whose resources or options will be limited or increased by them.

Why Mediation Is Not Appropriate

To use mediation is to subscribe to the mistaken idea that abuse is related to "misunderstandings" or lack of communication. If discussion and compromise, the mainstay of mediation, could help in any way most domestic violence situations would be long ago resolved because victims of abuse "discuss and compromise" *constantly*. Mediation assumes both parties will cooperate to make agreements work; the victim has always 'cooperated' with the abuser; abusers never cooperate, (yet are often very skilled at making others believe they are cooperative, and that the victim is not.).

Mediation can be and is ordered by judges/courts, as can counseling and mental health evaluations. They are tools in the abuser's arsenal to be used against the victim as often as the abuser chooses. In order for mediation to work and to *not* make situations worse the parties involved must have equal power and must share some common vision of resolution. This is clearly not present when domestic violence has taken place in a relationship.

Mediation practitioners must be alert to the need to interview partners separately with specially designed questions in order to determine if abuse is or has been present. Many domestic violence professionals can train others to screen safely for domestic violence. *To not do so risks unsuccessful mediations, at best, and increases the victim's danger by colluding with the abuser, at worst.* It also perpetuates a gross miscarriage of justice; by rewarding the abuser and punishing the victim by coerced "compliance" with mediation agreements the victim is further abused by the abuser's manipulations.

A person who has been terrorized by an abuser is *not* free to participate in a mediation process with the abuser, even if the mediator(s) assume or believe that they "understand". Being truthful about any of a victim's needs or experiences in the abuser's presence or proximity practically *ensures* that the victim is in more danger later.

The mediator is left with a no win: either the victim's danger is increased, or s/he is not fully or truthfully participating, or both. The well meaning mediator may actually encourage the victim to feel safe enough to share information that could seriously compromise the victim's safety. In any case the whole intent of mediation is lost.

To engage an abuser and a victim in a process that *implies equal responsibility* is damaging to both. The victim is once again made to feel responsible for the abuser's behavior, (or even held responsible), and the abuser is allowed to continue to not accept full responsibility for his behavior choices, while successfully manipulating others to his ends.

What Mediators Must Know

Mediation practitioners should seek guidance and training from domestic violence professionals in handling any cases where abuse is a factor, and should be accountable to victim/survivors and domestic violence advocates to ensure the safety of victims and the efficacy of mediation programs in making proper decisions and referrals in cases where domestic violence is an issue.

Mediated agreements can be incorporated into a court order in some states, and are often considered legal contracts. Parties may participate voluntarily in mediation, or they may be ordered by the court to participate. Mediation saves criminal legal systems great amounts of money; in systems where burgeoning case loads are backed up for weeks and months awaiting court action mediation may be seen as a panacea, especially for domestic violence cases which continually clog the system. Prosecutors and judges routinely refer domestic violence cases to mediation in many areas. Mediation can also save litigation costs for the parties involved.... another attractive feature that lures many to agree to mediation. Mediation, however, not only fails to provide safety for victims, but can and does help to perpetuate their victimization, their lack of safety and reduces the options for victims to receive equal justice.

Mediation asks parties to agree on behavior they will honor and practice in the *future*. Every abuse victim and every domestic violence advocate knows, perhaps better than they know anything else, that an abuser will promise or agree to anything to retain control and power over the victim, but will honor agreements only when it suits their purposes. Mediation becomes just one more tool to use against the victim; they use the system against the victim at every turn, and do it very effectively.

To ask and expect the victim to modify personal behavior in response to the abuser's tactics around *any* issue in their relationship puts equal responsibility for the abuse on her, and it is an extension of a victim's daily life with an abuser, where the victim is expected to modify their behavior to avoid being abused. It ignores the reality that rarely does any change the victim makes have any effect on the abuser's behavior.

It is often said with any intervention that "this is what abuse victims want/ask for". The truth is that abuse victims are often compliant and are nearly always full of hope. They want the abuse to stop and they trust interveners and systems to know better than they do what may help or "fix" the abuse. They are socialized, as are all of us, to trust that there are professionals and systems who know better than the average person how to best address a problem. They are taught along with the rest of us to believe that the abuse is a problem caused by some individual pathology or failure rather than a symptom of male privilege and institutionalized sexism and societal acceptance that men can and should have power over their female partners. These attitudes and beliefs about privilege and domination and the resulting patterns of behavior in relationships are also often carried out in same sex relationships.

Moving To Understanding

Professionals addressing domestic violence understand, after over 35 years of practice, service, and research that the only safe and effective approach to abuse is to hold the abuser totally accountable, with every part of the system which touches them giving the clear and nonnegotiable message that only the abuser is solely responsible for the abuse they commit, and they will be held accountable. We must consistently show that society will not tolerate their abuse. The safety of the victim must be the first priority in every in-

tervention from any part of the system. This means addressing this concern in all immediate interactions as well as understanding the long term impact on a victim's safety as a result of anything we do now. It should also mean that all blame of the victim must be suspended, at least until s/he is completely safe and free of the abuser's control. (And only the victim can judge if and when that is the case.)

It seems clear that those who advocate the use of mediation for any aspect of domestic violence situations do not see abuse as a very serious crime, at least not as serious as assault between strangers, and that they see partner abuse as simply a "symptom" of a "problem relationship". In fact abusers use their physical strength and position of perceived authority as "the man" (or the dominant partner) to control and dominate their partners and to perpetuate their pattern of abuse. (This frequently escalates to more and more dangerous levels of violence, and even to murder; three women, one man even children are murdered in domestic violence every single day in the U.S.). This kind of abuse exists within cultural and societal attitudes that see many tactics of abuse as "normal" in romantic relationships, and don't see many of the most alarming and dangerous signs in a relationship for what they are.

Who Should Judge Safety?

Who then should make the decision regarding whether mediation should be used in any given situation? *Only the victim* can really know how frightened or powerless s/he feels in the presence of the abuser. While some may not articulate this sense it is often because no one has ever given them the language or the right to do so! Domestic violence advocates are vital links in the process of these decisions and assessments.

While mediation appears to be a safe, humanitarian, non-adversarial, inexpensive way to intervene in many situations, the best way to protect the rights of victims who are in unequal and dangerous relationships to their abusers is to engage in *adversarial* proceedings which can punish or deter criminal conduct. Until recently these proceedings were largely unavailable to victims of intimate partner abuse; increasingly states and local jurisdictions are recognizing the importance of *coordinated community responses* to domestic violence. Abusers are then held accountable across the spectrum of system interventions, while the safety of victims is protected. It is simple to see that *mediation does not fit this criteria*.

The goals of mediation, which include reaching agreement, reconciling the parties, recognizing mutual responsibility for the problem, and keeping cases from the court system, are at the core incompatible with the goal of stopping abuse. Mediation allows abusers to continue to blame the victim for the abuse, and contributes to victims blaming themselves, rather than empowering them to access their rights and options for safety and justice. Mediation can also prevent formal charges or justice system interventions that are entirely appropriate in many cases serious enough to warrant criminal charges.

Other Problems With Mediation

Mediation is conducted in *private* where there can be no assurance of accountability around what occurs there. Mediators, often volunteers, are not monitored in any public way and the integrity and consistency with which they handle cases cannot be insured. (As a practiced mediator I saw some co-mediators whose biases and misjudgments regarding victims were stunning in their potential for unjust outcomes.)

Mediation is a short intervention, usually limited to one session to each case; even if the intervention *were* appropriate the abuse would have to be handled so superficially as to be totally meaningless. Often no private hearing occurs for the parties, with the case heard entirely in the presence of the other party. Advocates are not present for the parties, and sometimes victims are even prohibited from having an attorney present. (A trained domestic violence advocate would be more likely than the victim to identify and stop inappropriate mediation of abuse-related issues.)

Any mediated agreement that addresses abuse or other issues when abuse is also present risks supporting abuse. If a contract is predicated upon an abuser's agreement to not abuse or control it must be countered against the victim's agreement to do or not do something. If the victim "fails" to live up to the agreement the abuser then, in effect, has *permission* to abuse the victim. When we recognize that even strongly worded court orders fail to stop abusers from re-offending, and even killing victims it becomes readily apparent that any agreement or discussion by a mediator about *any issue in their relationship* can only aggravate an already very dangerous situation, at worst, or cover the efforts of an abuser to control and coerce at best.

Justice and Accountability

Domestic violence must be prosecuted *in public*, as the public offense that it is. To relegate any aspect of it to a private process like mediation is to silence the victim as seriously as has been done for generations prior to the current understandings, laws and interventions. Justice must be an overriding concern; the criminal legal system can mete out justice. Mediation cannot. Because most mediation programs are funded on an annually renewed basis and must prove effective to retain financial and court support there will be much temptation to judge interventions effective that are in fact damaging. This is exactly the opposite of justice. This is not representative of accountability to victims or fairness. This is one more way that safety is further compromised and danger is potentially escalated.

Conclusion

Mediation can only work if a change in attitudes or perceptions can solve the issue, if the issue is truly a disagreement or conflict, if power is equal between the parties, if no punishment or legal consequence is needed, and if both parties are capable of carrying out the agreement.

Relationships between abusers and victims are full of power imbalances. In general, men have economic power, physical power, and societal power. These facts further erode the ability for victims to negotiate on equal footing with their abusers.

Mediation is not enforceable and engenders no follow-up. Mediation is private; domestic violence is a public issue requiring public prosecution by public officials.

The mediation or dispute resolution program that cares about justice, fairness and safety will carefully avoid mediating any issue between parties where domestic violence has been perpetrated. Any remaining questions may be addressed to your state coalition against domestic violence; many have position papers and other materials available on this issue, and many train court administrators and dispute resolution administrators to identify and respond safely and appropriately to domestic violence.

Book recommendation:

While there are a great many books that can help in understanding the issue of domestic violence, for those reading this it is important to look at the responding systems and their lack of efficacy as well as how to make systems more effective. Barry Goldstein has written a wonderful book that looks at these issues. Please read [The Quincy Solution: Stop Domestic Violence and Save \\$500 Billion.](#)

Author Rose Garrity has been a domestic violence advocate and trainer for over thirty five years. She is the former Executive Director (28 years) of a domestic violence and rape crisis center in a rural county of New York State. She is also an experienced mediator, having worked closely for a number of years with a court- system- sponsored dispute resolution center. She has written widely on the issues of domestic violence and sexual assault, and is a trainer and activist around issues of oppression and cultural diversity. Please note that this paper is not one individual's thoughts or philosophy, but is based upon knowledge gleaned by the battered women's movement over a course of more than thirty five years. Babara Hart in particular has been at the "cutting edge" of issues like mediation, and has helped to articulate these concerns for all of us. I wish also to acknowledge the leadership and influence of Susan Schechter, Beth Richie, Ellen Pence and other foremothers of the movement on the process of learning and furthering understanding of battered women's realities.

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