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THE DOMESTIC VIOLENCE COMMITTEE PRESENTS

COERCIVE CONTROL: WHAT FAMILY PRACTITIONERS SHOULD KNOW ABOUT THIS INSIDIOUS FORM OF MENTAL ABUSE

BY ASHISH JOSHI

As many parts of the world progress towards reforming domestic violence law to incorporate elements of coercive control, the United States continues to place emphasis on physical violence as a primary concern. But physical violence is only “one tactic used within a larger campaign of abuse, it is not a necessary condition for coercive control [and] coercive control is the most dangerous form of domestic abuse against men and women and is one of the most predictive factors for fatality in abusive relationships.”¹

The legal definition of coercion is “the intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats.”² Evan Stark, who popularized the term coercive control, defines coercion as “the use of force or threats to compel or dispel a particular response. In addition to causing immediate pain, injury, fear, or death, coercion can have long-term physical, behavioral, or psychological consequences.”³ Control tactics are used by perpetrators in relationships to gain dominance and hold authority over aspects of the victim’s life, stripping them of vital resources and essentially the outside world. Doing this causes the victims to become dependent on the abuser and continues to cause the victims harm even when the abuser is physically absent.⁴

In Michigan, domestic violence is broadly defined to include any of the following acts that were not performed for self-defense:

1. Causing or attempting to cause physical or mental harm to a family or household member.
2. Placing a family or household member in fear of physical or mental harm.
3. Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
4. Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.⁵

While coercive control is not explicitly named in Michigan’s domestic violence statute, it is a form of mental harm designed to terrorize, intimidate, and harass the victim. It is “an ongoing strategy of isolation of the victim from friends, family and children; control of access to resources such as transportation, money and food; and control of access to employment and education.”⁶ Succinctly put, “coercive control is a pattern of micro-regulation of a victim’s daily life and behaviors.”⁷ Coercive control provides an explanation for the insidious nature of domestic violence as a patterned assault on a victim’s autonomy, ultimately, but not always, culminating in acts of physical violence. “Coercive control involves victim-specific tactics used to strip away a sense of self, entrapping the victim in a world of confusion, contradiction, and fear.”⁸ While Michigan case law is scant on labeling coercive control as a form of domestic violence, it is replete with instances of such control, whether or not physical violence has occurred.

The introduction of legislation, focusing on mental and/or emotional abuse is critical because in many cases there is no physical assault. Oftentimes, by the time physical assault takes place, the mental abuse has been experienced by the victim for much longer. Coercive control is used to describe these dynamics of domestic violence that may not have elements of physical abuse. Yet these behaviors leave long lasting damage, trapping the victim in the relationship, and continued trauma in the years to come.⁹

Some professionals have pointed out that coercive control in families can be so harmful and overpowering that the victim does not even want to attempt to escape the situation.¹⁰ Many times, victims do not come forward in fear of retribution. This is especially true in cases involving children where a harmful pattern of coercive influence occurs on children and their attachments, typically after separation of the parents. Children from abusive households can be easily influenced and often replicate behaviors of abuse, whether mental or physical.¹¹

Neither power nor social status offers a shield against coercive control. For instance, even the successful film producer and activist, Tanya Selvaratnam, found herself in an abusive relationship with former New York attorney general,

Eric Schneiderman. Tanya pointed out how alarmingly effortless it is to lose power, even for someone who is strong and independent. She commented that “even fierce women get abused.”¹² Cori Bush, a Congresswoman, told her story about her experience with domestic violence and she hopes to help reshape laws regarding domestic violence in the future. Law enforcement and court officials frequently fail to treat victims of mental abuse and coercive control as victims of domestic abuse due to the difficulty proving coercive control or mental abuse in court. Fortunately, the process of acknowledging coercive control and mental abuse has begun with decisionmakers, who have acknowledged that coercive controlling behaviors not only can lead to physical abuse but are criminal acts themselves.¹³

For instance, the Court in *In re Cage* determined that the victim mother’s evidence regarding domestic violence in general was relevant in terminating father’s parental rights because her testimony spoke to the risk of further harm to the children due to the father’s coercive control of the mother.

“...Mother’s statement about domestic violence, was also relevant. On numerous occasions, petitioner asked Mother why she did not leave or try to escape the violence that respondent inflicted on her. Mother was apparently trying to contextualize why abused women have difficulty leaving an abusive relationship due to the coercive control abusive spouses and partners have over them. This testimony was relevant to show the further risk to the children if respondent were allowed to continue parenting them because it demonstrates that regardless of the level of violence suffered by Mother, she faced various barriers in removing herself—and the children—from exposure to a volatile relationship.”¹⁴

In *People v. Railer*,¹⁵ the court describes the treacherous tactics used by the assailant as a form of control over his victim: “This is a case about control. ... Defendant was jobless, without a car, and completely reliant on Nichols for his transportation. In Nichols’ words, defendant “did what he wanted to do,”¹⁶ and while defendant left her ignorant about his activities, “[her] business was his business.”¹⁷ In *People v. Rickert*,¹⁸ the defendant “used such threats, the jury heard, to gain compliance with his wishes and control his domestic partners. He also used physical intimidation and threats to coerce sex. The jury heard that Rickert was very jealous of other men and tried to control the women in his life by monitoring their communications and movements. He would also stalk them out of fear that his domestic partners were with other men—even to the point of quitting his job and driving six hours to confront his girlfriend and determine whether she was with another man. The jury heard that he went to such extreme lengths because his girlfriend did not timely answer his communications.”¹⁹

In *Brown v. Brown*,²⁰ the Michigan Court of Appeals stated that “domestic violence” unambiguously includes the infliction of mental harm²¹ The court further reasoned that while animal abuse did not constitute domestic violence per se, the “harmful or abusive conduct toward a pet can constitute domestic violence under either MCL 400.1501(d)(i) or MCL 400.1501(d)(iv), if done for the purpose of distressing or coercing a person emotionally bonded to that pet.”²²

Other states have more fully incorporated the idea of coercive control as a form of domestic violence. For instance, in Massachusetts, the court in *Schechter v. Schechter*²³ opined “in relationships in which there is domestic violence, the victim is often economically dependent on the perpetrator... Experts in the field of domestic violence describe economic or financial abuse as an element of the perpetrator’s coercive control of the victim.”²⁴ *Schechter* incorporated the CDC’s definition of coercive control:

“The CDC [Centers for Disease Control and Prevention] defines coercive control as a form of psychological aggression that includes ‘behaviors that are intended to monitor, control, or threaten an intimate partner.’ ... [O]ne type of coercive control behavior includes economic abuse, defined as ‘behaviors that control a woman’s ability to acquire, use, and maintain economic resources.’ ”²⁵

The Massachusetts court further defined economic abuse as “[m]aking or attempting to make a person financially dependent, e.g., maintaining total control over financial resources, withholding access to money, forbidding attendance at school or employment.”²⁶

In Alaska, the court in *Joy B. v. Everett B.*²⁷ described as coercive control an abuser’s use of “intimate partner stalking behaviors which [are] a form of domestic violence”²⁸ as well as “ongoing harassment behaviors”²⁹ that were “accusatory, blaming, insulting, shaming, belittling, and threat[en]ing.”³⁰ The court agreed with the investigator’s conclusion that Joy exercised “a form of coercive control” over Everett that “amounted to mental and emotional abuse” of both Everett and the child and that this made Joy a “perpetrator of domestic violence.”³¹

In 2017, a Delaware court addressed coercive control for the first time, explaining that “although the problem of coercive control in an intimate relationship has not been addressed in Delaware case law I can find, it is a subject recognized and addressed in other jurisdictions, and that attention is instructive here.”³²

In Illinois, the Appellate Court, 5th Dist., found that coercive control, a psychological process that unfolds overtime, can support the tort of intentional infliction of emotional distress. “The process by which a spouse exerts coercive control is based upon a ‘systematic, repetitive infliction of psychological trauma’ designed to ‘instill terror and helplessness.”³³

Connecticut courts also provide instruction regarding coercive control. The Court in *In re Joseph L*³⁴ explained,

“many parts of a pattern of coercive control don’t always arise to the level of arrestable offense, but could be part of terrorizing somebody, making them scared, and would be of concern as it relates to the safety and well-being of an adult or a child in a family.”³⁵

In Delaware, in cases involving custody, courts have considered the impact coercive control has. For instance, on a determination “that best interests of two children supported award of sole custody to mother and primary residential placement with her was supported by the record” where the court “weighed domestic violence between the couple heavily in mother’s favor, given father’s acts of emotional and physical abuse, noting that mother was victim of pattern of coercive control by father. 13 Del. Code § 722.”³⁶

A New York court likened coercive control to the control sex traffickers have over their victims:

“The grooming process used by sex traffickers is a mixture of reward and punishment which is used to produce intense loyalty and trauma bonding to the trafficker. According to the author, these tactics, similar to those associated with domestic abusers, are designed to keep the victims in physical and psychological bondage that becomes so ingrained that the minor will continue to return, defend, and cover for the abuser until the trauma bond is severed.”³⁷

The court explained that “Defendant continued to exert control over Jill J. in that she at first denied receiving more than 400 calls from defendant since his incarceration, testifying instead that she had received only 2 or 3 calls. Thus, his continued ‘coercive control’ over her was demonstrated by her willingness to lie under oath to protect him. That defendant called her up to 10 times a day demonstrated the intense pressure he was putting on her. His making these phone calls, despite an order of protection, demonstrated his implicit threat to Jill J., because it showed that he was not going to obey the law. Hence, according to Prof. Burgess, defendant had ‘control’ over Jill J. because of his long history of domestic abuse, his subsequent behavior where he refused to allow her to obtain medical attention and his more than 400 calls to her from prison in violation of an order of protection.”³⁸

In *L.M.L. v. H.T.N.*,³⁹ the New York court described the phenomenon of coercive control when it explained that “even minimal levels of domestic discord impact children living in a besieged household. Recent research indicates that even ‘petty harassments’—name-calling and verbal ‘put downs,’ isolating a partner from family and friends, withholding money and preventing a partner from being alone with their children—when aggregated during the time a divorcing couple share a residence can easily compound into what experts would clearly characterize as a form of violence.”⁴⁰

The court further described coercive control as “including restricting daily activities, manipulating or destroying family

relationships, stifling a parties’ independence, controlling access to information and services, extreme jealousy, excessive punishments for violations of rules, and other inter-personal conduct. These forms of abuse can also include the monitoring and/or regulation of commonplace activities of daily living, particularly those associated with women’s default roles as mothers, homemakers and sexual partners and run the gamut from their access to money, food and transport to how they dress, clean, cook or perform sexually.”⁴¹

California recently passed a law in September 2020, that allows proof of coercive controlling behaviors to be introduced in court as evidence against the abuser. It defined those behaviors as, “instances in which one party deprived, threatened, or intimidated another; or controlled, regulated or monitored their movements, communications, daily behavior, finances, economic resources, or access to services.”⁴² In Hawaii, the definition of domestic violence was simply expanded to incorporate coercive control and its behaviors.⁴³

Judy Harris Kluger, a retired New York Judge, stated she agreed that bringing attention to coercive control is important but would like to see the criminal justice system focus on laws that already exist. Fortunately, many states, like Michigan, include mental abuse in their law criminalizing domestic violence. Under the Domestic Violence Prevention and Treatment Act, MCL 400.1501, *et seq.*, “causing or attempting to cause physical or mental harm”, is included in the law.⁴⁴ It becomes problematic because there isn’t always sufficient knowledge concerning the term “coercive control,” which leads to professionals seeing domestic violence laws purely from the prism of bodily harm. Consequently, coercive control, in which common low-level violence is followed with the aid of alternative strategies, often goes unacknowledged.⁴⁵

Control issues existing in a relationship can set the stage for physical violence. Understanding, acknowledging, and containing coercive control behaviors could result in interference before the abuse escalates further.⁴⁶ This is especially true in many cases of sexual assault. An example of coercive control in sexual assault is “stealthing”, which involves a perpetrator removing a condom in the middle of the consensual sex without consent of the victim. California became the first state to outlaw stealthing, although its anti-stealthing legislation only makes the practice a civil offense (empowering victims to sue their assailants for damages), but not a crime that could lead to jail time.⁴⁷

Stark expresses that, “the first step to giving coercive control more attention in the criminal justice system, is to give coercive control a name there. By doing this, a new class of abusive behaviors are brought to light, along with victims, which instigates a corresponding reallocation of justice and other resources.”⁴⁸ Recognizing coercive control as a form of domestic violence is long overdue and fortunately, we are seeing many states begin to encompass coercive control provisions into their legal guidelines.⁴⁹ In addition to California

and Hawaii, New York and South Carolina are two states that are presently working to introduce legislation that would criminalize coercive controlling behaviors.⁵⁰ It's time to bring coercive control out of the shadows and train our professionals on understanding this insidious form of mental harm and effectively represent the victims of this abuse.

About the Author

Ashish Joshi is the owner of the law firm, *Joshi: Attorneys + Counselors*. Mr. Joshi's work focuses on complex family law matters including severe parental alienation, pathological child enmeshment, child abuse, and international child kidnapping. Mr. Joshi is the author of *Litigating Parental Alienation: Evaluating and Presenting an Effective Case in Court* (ABA, 2021). He serves as a senior editor for *Litigation*, the journal of the American Bar Association's Section of Litigation, on the Advisory Board for *Champion*, the journal published by the National Association of Criminal Defense Lawyers, and on the board of directors of the Parental Alienation Study Group.

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