

CRISIS IN THE CUSTODY COURT SYSTEM

The crisis in the custody court system is responsible for thousands of children being forced to live with abusers and denied meaningful relationships with safe protective parents. Society will pay a steep price with higher crime, reduced economic prosperity as the victims fail to reach their potential and higher levels of domestic violence as a result of the court system's failure to recognize domestic violence cases and protect the children and their protective mothers. Worst of all is the unbearable pain caused by the courts' avoidable mistakes.

HOW DO WE KNOW COURT ORDERED CUSTODY TO ABUSERS IS SO COMMON?

1. Reports by protective mothers: Although not a scientific study, there has been a steady increase in credible reports by safe, protective mothers that their children have been forced to live with abusers and they have been limited to at most supervised visitation. Apologists for the court system have sought to minimize the significance of these complaints by labeling the protective mothers as "disgruntled litigants." Most of these cases however include compelling evidence of the father's abuse and a lack of any evidence suggesting the mother is unsafe. Similarly there is usually nothing in the record based upon up-to-date scientific research that weighs the harm to the children of losing a mother who is the primary attachment figure to the child with whatever harm a continued relationship would allegedly create. Even when a custody court believes a father has sexually abused his child, he will typically receive at least supervised visitation. It is the only situation I know

of in which a person is required to regularly spend time with their rapist. In these Custody-Visitation Scandal Cases, mothers often enjoy less contact with their children than convicted rapists. These extreme penalties are generally in response to the mother's attempt to protect her child from an abuser and the court's decision to punish and retaliate against her for complaining about her ex-partner's abuse.

2. Review of these extreme cases: When someone looks at an individual case, it is often hard to tell if the outcome is wrong, even when the outcome is extreme because it is possible there was something extremely wrong with the mother. The common abuser tactic of demonizing the victim exacerbates the problem. When an expert looks at hundreds or thousands of these cases, however it is easy to see the pattern of mistakes made in these cases. This pattern of mistakes exposes the systemic problem in the way the custody court system responds to domestic violence and child abuse.
3. Studies of these extreme cases: Studies of a significant number of domestic violence custody cases have been conducted in Massachusetts, Arizona, Pennsylvania, California, Alaska and New York City. The studies support each other and demonstrate widespread mishandling of these cases by the custody court systems in each state. In the forthcoming book co-edited by Dr. Maureen Hannah and Barry Goldstein, Sharon Araji and Rebecca Bosek wrote an article in which they compare the five statewide studies. Not only are the state studies consistent with each other, but they also support the academic research on the subject. In other words they provide multiple

confirmations of the crisis in the custody court system that has resulted in so many children being sent to live with abusers.

4. **Courageous Kids Network:** If there were a benefit to the widespread use of custody evaluators, the reports would be able to provide information of how various types of recommendations by evaluators have worked out in particular circumstances. Thus, for instance, there is well-established research that children do better living with their primary attachment figure and do worse living with abusers. I have never seen an evaluator who could tell me how his or her recommendations worked out because there is no follow-up. The closest thing we have to such research is the Courageous Kids Network. These are children who were forced to live with abusers and now are adults and are speaking out about their experiences. In every case the court claimed to be acting in the child's best interest by sending the child to live with their abuser (of course the courts often failed to recognize his abuse) and now that they are away from their abusers, they have made it clear the approach used by the courts was a disaster.
5. **Scientific research:** Domestic violence only became a public issue in the mid to late 1970s. Accordingly most of the research is very recent. Many of the assumptions made earlier have been disproved, but many professionals in the custody courts continue to use myths, stereotypes and outdated theories instead of up-to-date research. Male supremacists often cite the fact that more mothers than fathers receive custody as "proof" the court system favors women. As much as we would like to believe our society has changed,

mothers continue to do most of the child-care because of sexism. When a couple separates under circumstances other than domestic violence, the father loves his child, understands the mother is the primary parent and better able to care for the child. Therefore he agrees to custody for the mother and regular visitation for the father. The main problem in the custody court system is the worst of the worst contested cases that go to trial and beyond. The vast majority of these cases involve abusive fathers. The male supremacist movement has encouraged its members to seek custody as a tactic to pressure the mother to return or punish her for leaving. Approximately five percent of all custody cases are contested until the end. The cases are not settled because the purpose of most of these fathers is to hurt the mother and the best way to do so is to hurt the children. It is an unspeakably cruel tactic. Incredibly, mothers are often blamed for not settling with their abuser despite the unreasonableness of his demands. The professionals in the court system do not have the training to recognize and respond to these tactics. As a result in 70% of these cases the father receives custody or joint custody. It is from this small group of cases that the extreme outcomes occur.

CAUSES OF CUSTODY-VISITATION SCANDAL CASES

1. Lack of training: Although most judges and attorneys for children now receive some training in “domestic violence,” courts continue to suffer from a fundamental lack of understanding of basic domestic violence information. There is widespread use of myths and stereotypes and a failure to use up-to-date research. I have had a

unique opportunity to work regularly with judges and court professionals as an attorney and with batterers when I instruct in a New York Model batterer classes ordered by the courts. Both groups use a similar process in trying to understand domestic violence. Most people have had some experience with domestic violence as a victim or perpetrator or hearing stories from a friend or relative. Often the information from these stories is not objective and incomplete. Nevertheless they take what they think they learned to draw general conclusions they apply to all cases. The process is often done in good faith, but the conclusions are usually wrong or incomplete. Experts in domestic violence look for patterns to understand what happens most of the time instead of concentrating on exceptions that abusers often want to discuss.

While some of the information provided at trainings is very useful, many trainings include misinformation or discuss issues out of context. The Truth Commission recommended that judges and others be trained in specific aspects of domestic violence including Recognizing Domestic Violence, Gender Bias and The Effects of Domestic Violence on Children.

In our book, Judge Mike Brigner writes that when he trains judges they often complain about “liars” who complain about her partner’s abuse. They reach this mistaken conclusion when women withdraw their petitions or recant charges; fail to make police reports or seek

medical treatment at the time of his abuse or because of the myth that women frequently make false allegations of abuse to obtain an advantage in litigation. In reality none of these circumstances support the belief the women are lying, but rather demonstrate the judge doesn't know what to look for to determine domestic violence. Often professionals look only at physical abuse instead of the pattern of controlling behavior by the abuser. Professionals often assume a father seeks custody out of love for his children despite this being a common tactic abusers use to control their partners. Courts rarely look at why a father who had little involvement with the children prior to separation suddenly wants custody, but are interested in why a protective mother did not file charges before the separation (when it might not have been safe to do so). In the Shockome case, highlighted in Newsweek, the abuser stated directly that he brought his wife here (from Russia) so she had no right to leave him. He admitted telling her she would never get away. The judge, not knowing what to look for in determining domestic violence, ignored these admissions.

In my book, *SCARED TO LEAVE AFRAID TO STAY*, one chapter concerns an abusive husband who told the family court judge his wife was seeking to deceive the court by staying in a shelter for battered women. Judge Sondra Miller responded by saying in her experience women don't go to shelters unless it is necessary. This is the kind of common sense response that would be made more often if judges were

properly trained. Domestic violence agencies have very limited funds and screen potential clients for domestic violence in part because they can't afford to provide services women don't need. Furthermore the domestic violence advocates work full time on domestic violence issues and have more and better training in domestic violence than the professionals relied on by the courts. The chances of a woman who is not a victim of domestic violence seeking services and passing the screening are slim to none. This is exactly the kind of common sense court professionals should use to recognize domestic violence.

2. Gender Bias: There have been court sponsored gender bias committees in approximately forty states. They have all found widespread gender bias and this is particularly true in custody cases. The New York State Committee on Women in the Courts is typical in finding that women litigants face a higher burden of proof than their abusers, are given less credibility and are blamed for their normal response to his abuse. In the Shockome case this bias was demonstrated when the evaluator used a certainty standard against the mother while using the proper probability standard for the father. Neither the trial judge, nor the Appellate Division responded to objections to this obvious example of gender bias. Similarly when the mother sought to protect her children from the father's abuse, they blamed her for her normal and appropriate reaction to his abuse, gave custody to the abuser and denied her any contact with her children.

3. Unqualified professionals: Although lawyers, judges, psychologists, child protective caseworkers and other professionals relied on by the courts receive little or no academic training in domestic violence while in school and limited training thereafter, the courts regularly use such unqualified professionals in domestic violence cases. It is impossible to understand the family dynamics if you don't understand the domestic violence in the family. *THE BATTERER AS PARENT*, by Lundy Bancroft and Dr. Jay Silverman is the leading authority regarding domestic violence and parenting. The book recommends that if an evaluator does not work for a domestic violence agency, someone who does should be consulted. The American Psychological Association similarly recommends consulting with an expert in an area the psychologist does not have such expertise. Courts have been slow to demand such expertise as a condition to testifying in a case with domestic violence allegations. The result is that unqualified professionals often rely on the same kinds of myths and stereotypes non-experts use and fail to take advantage of up-to-date research.
4. Male Supremacist Groups: After the passage of VAWA and other laws designed to increase the collection of child support, male supremacist groups have intensified their efforts to maintain what they believe is male privilege to control their partners. These are extremists whose agenda is to minimize society's response to domestic violence, reduce or eliminate child support and discourage laws against incest.

Obviously if they expressed their goals honestly they would get nowhere so they seek to manipulate the courts, legislatures and media with fair sounding requests such as shared parenting, friendly parent and cooperation between the parents in the best interests of the child. In reality abusers to gain access to their victim and punish her for leaving easily exploit each of these good sounding goals. They have encouraged abusive fathers who had limited involvement with the children to threaten to take the children if their victim leaves and to seek custody if she does. This is an unspeakably cruel tactic that the court system has been slow to recognize and respond to. As a result thousands of children have lost their safe, protective mothers and are forced to endure unspeakable cruelty.

5. Parental Alienation Syndrome (PAS): This is a bogus theory developed by Richard Gardner (a pedophile supporter) that is not approved by the American Psychological Association or any reputable professional organization. It is not in the DSM !V which is used to characterize mental health disorders. It is not used in any part of treatment or society except for custody purposes. The theory was self-published and never peer reviewed. The idea is that if a child doesn't like the father or doesn't want visitation, the only possible reason is that the mother is alienating the child and the remedy is to send the child to the abuser and keep the mother away. Male Supremacists love this theory because it serves to prevent or limit investigations into the

father's abuse. As PAS has become ever more discredited, abusers have sought to use it by another name such as parental alienation. For more information see the chapter in our book by Dr. Paul Fink on PAS and many other articles.