

## CONFIRMED: PROTECTIVE MOTHERS WERE RIGHT

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By Barry Goldstein

For many years, protective mothers have complained about a broken custody court system giving custody to abusive fathers. The courts dismissed the complaints by saying they came from disgruntled litigants. Now, a new book based on multi-disciplinary research has confirmed that common mistakes in the custody courts have resulted in thousands of children being forced to live with abusers. *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*, co-edited by Dr. Mo Therese Hannah and Barry Goldstein includes chapters by over 25 of the leading experts in domestic violence and custody in the U.S. and Canada including judges, lawyers, psychiatrists, psychologists, sociologists, journalists and domestic violence advocates. Although the writers come from different disciplines and professional experience, there is remarkable agreement that the courts' failure to use up-to-date research is responsible for placing children at risk and undermining laws designed to prevent domestic violence.

The custody court system developed practices to respond to domestic violence allegations over thirty years ago at a time when there was no research. The courts relied on popular assumptions such as the belief domestic violence was caused by mental illness, substance abuse and the victims' behavior. They assumed domestic violence only involved physical abuse and children were unaffected unless directly assaulted. All of these and many other assumptions relied on by the courts have proven wrong, but the court continues to use outdated and discredited practices. Even worse, after hearing misinformation constantly repeated for over thirty years the myths and stereotypes are so deeply ingrained that courts often don't believe accurate information based upon up-to-date research because it is so different from what they have heard repeated their entire professional careers. Hopefully by putting all the research together in one volume, the book will force the courts to take a fresh look at practices that have worked so poorly for children.

Most cases are settled more or less amicably. The problem is with the 3.8% of contested custody cases that continue to trial and usually far beyond. The courts think of these as "high conflict" cases and literally they are, but 90% of these cases involve abusive fathers which is why they can't be settled. Male supremacist groups have developed an unspeakably cruel tactic of encouraging abusers to go after the children as a way to pressure the mother to return, punish her for leaving and avoid child support. As a result, the courts repeatedly see cases in which fathers who had little involvement with the children before the separation suddenly seeking custody, but the court system has been slow to recognize the tactic or

respond to it. Judges have constantly been told that children do better with both parents in their lives but not that this is untrue if one of the parents is abusive.

In the typical case, the mother is the primary parent. She complains about the father's abuse and he counters by claiming alienation. Primary attachment refers to the parent who does most of the child care in the first couple of years of a child's life. If the child is separated from their primary attachment figure, the child is more likely to commit suicide, suffer depression, have low self-esteem and other harmful attributes. Children who witness domestic violence are more likely to engage in a wide range of dysfunctional behaviors when they are older and their developmental progress is interfered with. On the other hand, it is common even in intact families for parents to make negative statements about the other parent and there is no research that alienation causes long-term harm to children.

At the same time, in our still sexist society, mothers continue to do most of the child care so claims of primary attachment are virtually always true and often not contested by the father. Contrary to popular myths, women rarely make false allegations of abuse so that at least 98% of a mother's allegations of abuse in custody cases are accurate. Fathers on the other hand, are 16 times more likely to make false allegations in contested custody cases than mothers. This is not because women are so much more honest, but that most fathers in custody cases are abusers using the children to maintain control of their ex-partner and they seem to believe they are entitled to use any tactics to win custody.

Accordingly most allegations of alienation by fathers in custody cases are false. In other words the allegations by the mothers have the most consequences for the children and are most likely to be true, but the courts are paying more attention to the allegations by the fathers that are likely to be false and of little consequence to the children.

The book can be used by mothers and their attorneys to challenge the common mistakes made in domestic violence cases. One of the big problems is that because of the original mistaken assumption that domestic violence is caused by mental health or substance abuse issues, the courts have relied on mental health professionals who have little or no understanding or training in domestic violence. They rarely have any familiarity with up-to-date research and instead frequently rely on myths and stereotypes.

Although professional ethics require psychologists and psychiatrists to consult with an expert if they are handling a case involving an issue in which they lack expertise, evaluators and other court professionals routinely ignore this requirement by pretending they have expertise even with only an hour or two of training.

Evaluators often rely on psychological tests to create the illusion of a

scientific basis for their opinions. These tests were developed for a population very different from the parents seen in custody court. When advocates for mothers tell courts that most abusers tend to be manipulative or mothers rarely make deliberately false allegations they respond by saying they are judging THIS case and cannot rely on probabilities. Under the best of circumstances the psychological tests are accurate between 55-65% of the time. So what happens if the mother is part of the 35-45% for which it is not accurate? Even worse factors like domestic violence or the pressure of going through a contested custody case reduce the accuracy significantly.

Furthermore, many of the tests are gender biased and criticize women but not men for the same responses. Of course the evaluators rarely inform courts of this information and most attorneys don't know enough to raise these issues.

A critical problem that does not receive the attention it deserves is that judges and the professionals they rely on repeatedly fail to recognize domestic violence because they don't know what to look for. Judge Mike Brigner wrote a chapter for the book in which he discusses his training of judges about domestic violence. They constantly ask him what to do about women who are lying. When he asks what they mean they refer to women who return to their abuser, seek protective orders, but don't follow-up or don't have police or medical reports after alleged assaults. In reality battered mothers do all these things for safety and other good reasons, but when ignorant professionals use this to discredit allegations of abuse, they have no chance to get it right.

Another common example is when judges, lawyers or evaluators watch fathers interact with the children. If the children show no fear, it convinces these professionals that the abuse allegations must be false. What the children understand is that their father would never hurt them in front of witnesses, especially someone he is trying to impress and in fact they could be punished if they showed fear. At the same time the mental health professionals are discrediting valid allegations based on information that is not probative, they tend to look only for physical abuse and miss many other domestic violence tactics that demonstrate the control and coercion he practices.

The mistaken practices give the courts little chance to recognize the father's abuse, but it is even worse than that. The mental health professionals often use their failure to recognize domestic violence as an excuse to pathologize the mother. She is often called delusional or paranoid because she believes something they missed. This or the assumption she is deliberately trying to interfere with the father's relationship with the children often results in extreme outcomes in which the mother is given supervised or no visitation based on the court's mistakes.

In her chapter on retaliation and manipulation, Joan Zorza says that in

light of the frequency in which courts fail to recognize domestic violence they should avoid retaliating or penalizing mothers who continue to believe the allegations of abuse after the court finds against them. This recommendation can be used to ask courts to modify orders with extreme results when there is no proof the mother is unsafe.

Some child protective agencies have participated in programs in which they work with the local domestic violence agency. They train each other and when there is a case with possible domestic violence issues, the child protective caseworkers consult with domestic violence advocates. This helps them recognize and respond more appropriately to domestic violence cases. This should be considered best practices and needs to be expanded to the custody courts.

The custody courts do a particularly bad job of responding to allegations of sexual abuse. By the time a child reaches the age of 18, one-third of the girls and one-sixth of the boys have been sexually abused. The myth is that rape and sexual abuse are mostly committed by strangers but in fact 83% of the time it is someone they know, often the father. Courts don't want to believe a father could do something so heinous especially if he is successful in other parts of his life. Accordingly a very high percentage of sexual abuse allegations result in custody to the alleged abuser.

One of the problems is that sexual abuse of children is very hard to prove. Often there is no physical evidence particularly if the child does not reveal it immediately. Younger children may not have the language to describe what was done to them and older children may have been threatened or don't want someone they love to get in trouble. Few of the evaluators relied on by courts have expertise in child sexual abuse. What is a mother supposed to do when the child's behavior or other clues suggest sexual abuse? If she does nothing she is placing the safety and well-being of her child at risk, but if she asks for an investigation she can lose custody.

We have seen many cases in which a child acts out because the father violated the child's boundaries such as by sleeping with the child. The father did not inappropriately touch the child. The issue could easily be handled by instructing the father to change his routine and it would be totally safe for the father to continue with normal visitation. This would be a win-win situation, but instead courts and the unqualified professionals they rely on assume the mother is making deliberately false allegations and so separate the child from their primary attachment figure and deny the child a relationship with her.

The book also takes on Parental Alienation Syndrome (PAS) which is one of the major reasons courts get so many cases wrong. Dr. Paul Fink past president of the American Psychiatric Association wrote a chapter about PAS and Nancy Erickson who is an attorney and law professor who went back to school to become a psychologist wrote about how to challenge false

allegations of PAS. Richard Gardner concocted PAS based on his belief system which included many statements to the effect that sex between adults and children is appropriate. Many of his quotations are in the chapter and can be cited to judges who presumably will not want to be associated with such behavior.

There is no scientific basis to PAS and it is not recognized by any reputable professional organization. It is based on the myth that most allegations of abuse are false. Psychologists are starting to lose their licenses for using PAS because they are in effect diagnosing something that does not exist. As PAS has become more discredited, abusers and the professionals they pay to support them have started using PAS by other names such as parental alienation or just alienation. It the idea is to assume allegations of abuse must be wrong or to justify giving custody to the alleged abuser and supervised or no visitation to the protective mothers they are using the discredited PAS by another name.

Professor Garland Waller wrote a chapter about the failure of the media to cover the crisis in the custody court system. She writes about the tipping point when enough information reaches the public so that they will no longer tolerate frequent court mistakes that place children in jeopardy. It is believed this book can move us towards the tipping point and hope those committed to ending the injustice in the custody court system will consider some of the following actions to help us reach the tipping point.

1. Inform the courts in your area about this book. They can find additional information at [www.domesticviolenceabuseandchildcustody.com](http://www.domesticviolenceabuseandchildcustody.com) Ask the courts to use the research in the book to train judges and other court personnel and to reform practices that the research demonstrates are working poorly for children.
2. Contact your local media to cover the crisis in the custody court system by using the research in the book to understand the harm the courts are doing to children. If you want to seek publicity for your case use the book to show the context and national problem and then your case illustrates how it played out in a local case. When there are local domestic violence stories bring the information in the book to the reporters.
3. If you have local colleges, universities or law schools in the area, ask them to incorporate the research from the book into the curriculum and to sponsor programs about the custody courts based on this research.
4. Ask local and college libraries to obtain a copy of the book. This would be particularly helpful for protective mothers who cannot afford to purchase the book.
5. Cite the book in court cases and appeals. Use the research to challenge unqualified evaluators and other court professionals and to obtain experts

who can put this research into evidence.

6. Use the book to inform legislators of the problems in the court. Ask them to hold hearings and sponsor legislation to protect children and prevent abuse. We will soon have legislative proposals available based on the research in the book.

7. Work together with domestic violence agencies, women's groups and anyone else sympathetic to the cause.

8. Come up with your own ideas. We cannot tolerate a system that continues to place children in jeopardy because they fail to use the up-to-date research now available.