

Frequently Asked Questions

What is the problem in the custody court system?

Thousands of children are being sent by the courts to live with abusers. At the same time safe, protective mothers are being denied any meaningful relationship with their children. In favoring abusive fathers, the courts are undermining the laws and policy against domestic violence and have contributed to the recent increase in domestic violence homicides after years of reductions in the murder rate.

Why are the courts making these mistakes?

Thirty years ago when domestic violence first became a public issue there was no research available about the best ways to respond. The custody court system like other agencies developed practices and approaches to domestic violence cases. At the time many believed domestic violence was caused by mental illness, substance abuse or the victim's behavior. We now know this was wrong and it is caused by a man's belief system that he is entitled to control his partner and make the major decisions in the relationship. Thirty years ago domestic violence was believed to be only about physical abuse and many thought children were not harmed unless directly assaulted. Research has demonstrated that these and many other assumptions used by the court system are wrong. The problem is that after thirty years of relying on professionals who are unfamiliar with up-to-date research, but create the false belief there is a scientific basis for their recommendations, the mistaken approaches and information are deeply

ingrained in the judges and other professionals working in the custody court system. Even when an attorney or witness presents the correct information, it is often dismissed because the research contradicts the misinformation the courts have heard so frequently.

What does the new book, DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY: Legal Strategies and Policy Issues provide?

The book includes chapters by over 25 of the leading experts in the U.S. and Canada on domestic violence and custody. The book has a multidisciplinary approach and includes chapters by judges, lawyers, psychiatrists, psychologists, sociologists, journalists and domestic violence advocates. The book is meticulously footnoted and is based on the most up-to-date research available. It is a book by professionals for professionals, but deals with an important public issue that has not received the coverage it deserves.

What makes this book different from other books or articles?

There are certainly other wonderful books and articles that support the conclusion that the custody court system is broken and sends thousands of children to live with abusers every year. There is much research about common mistakes the courts make in domestic violence cases. What this book does is bring together in one place the most up-to-date research and information about domestic violence, child abuse and custody. Some people could argue about when the research and evidence became so overwhelming about the failures of the custody court system that its dysfunction was established, but whenever that

point was reached, with the publication of this book, no informed professional can pretend the system is working properly. Now that we know the problem, responsible professionals in the custody court system can only work to correct the frequent errors rather than trying to defend the obvious mistakes.

Can you provide some examples of the kinds of mistakes custody courts frequently make?

In his chapter for the book, Judge Mike Brigner wrote that when he trains judges in domestic violence they often ask him what to do about the women lying. When asked what they mean, they speak about women going back to their abusers, withdrawing petitions for protective orders, failure to make police reports or seek medical assistance after an alleged attack. In reality victims of domestic violence often act as the judges said for safety and other reasons and in no way does it suggest their allegations were false. Another example is inadequately trained professionals often conclude there was no abuse after observing children interacting with their father without any apparent fear. What the children understand, but the "experts" don't is that their father is not going to hurt them in front of a witness, particularly someone he is trying to impress. Unqualified professionals often rely on the myth that women frequently make false allegations of abuse in order to gain an advantage in litigation. In fact research shows deliberate false allegations by women is only about 1-2%, but fathers in contested custody cases make false allegations 16 times more often than mothers. When judges routinely dismiss abuse allegations based on information

that is not probative and then don't know what to look for to confirm allegations of abuse, inevitably their mistakes are frequent.

How has the problems in the custody court system affected children?

If there was a scientific basis for the mental health evaluations relied on by the custody courts, the evaluators would be able to tell the courts how the children's lives worked out when the approaches and recommendations of the evaluator were followed under similar circumstances. Unfortunately there is no such research and the evaluators have been able to make recommendations based on their personal belief systems and biases. We know that children who are denied a meaningful relationship with their primary attachment figure are more likely to commit suicide, suffer depression, low self-esteem and other problems. Children impacted by domestic violence are more likely to engage in a wide range of dysfunctional behavior. Nevertheless, the courts, in contested domestic violence cases frequently take children from their primary attachment figure and give custody to abusive fathers. The closest we have to research are the Courageous Kids. These are children who were forced to live with abusers, but have aged out of the custody order and are now speaking out about their experiences in hopes to reform the courts and in some cases to protect younger siblings. Even though the abuser had custody and control of the children, they describe awful childhoods in terms that bring audiences of professionals to tears.

Why has this problem lasted so long?

One of the chapters was written by Garland Waller, Professor of Communications at Boston University and producer of award winning documentaries. Her chapter describes the failure of the media to expose the pattern of mistakes in domestic violence custody court cases. Journalists, like other professionals have little or no training in domestic violence and often don't know who the experts are. The media has been unwilling to spend the resources needed to investigate cases or particularly look for patterns to these cases. The media has trouble understanding the cases and does not want to risk lawsuits. The public would never tolerate the widespread and avoidable abuse of children, but they can't react until the media informs the public of the ongoing scandal. It will be interesting to watch the media response now that the research has established the court system is broken.

Aren't psychologists and other mental health professionals the experts in domestic violence?

That was the assumption the custody court system made thirty years ago when many believed domestic violence was caused by mental health problems, substance abuse and the victims behavior. Although each of those beliefs has proven wrong, the courts still use mental health professionals as if they were the experts. Until recently psychiatrists, psychologists and social workers could complete their academic career without any domestic violence training. Even today most mental health professionals relied on by the custody courts have at most a few hours of training in domestic violence. They rarely have familiarity with up-to-date research on domestic violence and don't treat it as the important

issue the research and laws demand. They often use a family systems approach which is totally inappropriate for domestic violence cases. Ethical requirements say mental health professionals should consult with an expert when their case involves issues in which they don't have expertise, but this requirement is routinely ignored on the false belief that they understand the issue. The courts continue to accept evaluator's recommendations despite all the problems with their lack of knowledge. The only profession that works full time on domestic violence issues are domestic violence advocates. They are treated as partisans even though they have extensive training and knowledge of up-to-date research and the law and policy of every state and court is to prevent domestic violence. Mental health professionals can play a proper role in custody cases in which there is substantial evidence that one of the parents or children has a mental condition that significantly affects the care of the children. Limiting their role to subjects in which they have expertise would save the courts and litigants a lot of time and money and most important give the courts a better chance of making the right decision.

What can the courts do to better protect children?

Judges and other court professionals should receive extensive training not just generally in domestic violence, but specifically about Recognizing Domestic Violence, Gender Bias and The Effects of Domestic Violence on Children. They should use the most up-to-date research to understand the cases and what arrangements work best for children. They need to be open to the fact that the present system is not working and many of the past assumptions and decisions

have been spectacularly wrong. They need to stop using harmful approaches like parental alienation syndrome, friendly parent or shared parenting. Domestic violence cases should be treated differently than other cases and practices that might work in other cases are harmful in domestic violence cases. They should understand that in domestic violence cases one of the best things we can do FOR CHILDREN is to help the mother heal. Courts need to look for and recognize abuser tactics like excessive litigation, seeking custody to control the mother, attempting to bankrupt the mother, using access from custody or visitation to harass the mother or seek to pressure her to return and isolating her from friends, family or professionals trying to help her. Courts should be pressuring the alleged abuser to stop using coercive tactics instead of pressuring the victim to "get over it." Domestic violence advocates should be viewed as community resources rather than partisans. Their expertise should be used in the training of judges and other professionals.