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Courts Awarding Custody to Abusers and Domestic Violence Homicides Is There a Connection?



By Barry Goldstein

The research establishing that the custody court system is broken and has a pattern of mishandling domestic violence cases is now overwhelming. The new book, DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY, I co-edited with Dr. Mo Therese Hannah brings all the most up-to-date research together in one place. It includes a multi-disciplinary review of the relevant professional fields by the leading experts in the US and Canada. The meticulous citations provide overwhelming proof that common mistakes and the use of myths, stereotypes and gender bias have resulted in thousands of children being sent to live with abusers. At the same time recent statistics about domestic violence homicide confirm an increase in the murder rate after many years of reductions. Many have been quick to assume the increase is caused by the poor economy, but in this article, I want to look at what, if any role the problems in the custody court system are having on domestic violence homicides.

Lack of Research on Success of Court Outcomes

The court system operates upon the assumption that once a case is decided, the facts are established and the outcome is accurate. This assumption may have contributed to the failure to seek research on the validity of court decisions in domestic violence custody cases. It certainly has contributed to a common problem we see that once a court makes a mistake in a domestic violence case there is a pattern of courts failing to use new information to correct the initial errors made by judges and other court professionals.

The criminal court system has received substantial criticism as an increasing number of defendants convicted of murder, some of whom were sentenced to death were later found to be innocent. The improvement of scientific tests for DNA and other new evidence has helped courts correct errors after homicide

convictions. In context, such wrong convictions appear to be very rare, but are extremely serious because it results in adults losing the rest of their lives.

In contrast, a large majority of domestic violence custody cases are wrongly decided with abusive fathers receiving custody or joint custody at least 70% of the time in contested custody cases. Even when the safe parent receives custody, the court usually fails to protect the children from unsupervised visitation with the abuser. In contrast to murder convictions that affect defendant's adult lives, the wrong decisions in custody cases often destroy or damage children's entire lives.

Courts started relying on mental health professionals in domestic violence custody cases at a time when there was no research and many believed domestic violence was caused by mental health problems, substance abuse and the victim's behavior. Although all of these assumptions proved wrong, the courts continue to rely on mental health professionals even when there are no legitimate mental health issues in the case. These professionals rarely are familiar with up-to-date research and often substitute their personal beliefs, biases, myths and stereotypes for the scientific research now available. Many use a family systems approach which is totally inappropriate in domestic violence cases. These mistakes lead to the minimization of the importance of domestic violence and unsafe outcomes.

If evaluations had any validity, the "experts" would be able to tell the court how the approaches used in a particular case had worked in other cases. In fact there is virtually no such research. Only in the custody courts can "experts" routinely give their opinions when there is no research to support them. In contrast we have solid research about the harm of taking children from their primary attachment figure or forcing them to live with abusers. There is no such research about "alienation" which courts tend to pay much more attention to even though the effects on children are minimal or non-existent. The closest thing we have to research about custody outcomes are the Courageous Kids. These are children who were sent to live with alleged abusers and have now aged out of the custody order. The children are now young adults and describe disastrous experiences as a result of the common practices used in the custody courts.

Similarly, the court has not commissioned studies to see how its decisions in domestic violence custody cases have worked out. Anecdotally we have seen many cases in which fathers courts found safe were later convicted or otherwise proven to have engaged in physical assault and sexual abuse. We have also seen many bad outcomes for children forced to live with alleged abusers. I strongly recommend systematic studies of the outcomes of child custody decisions.

Failure to Make Children's Safety the First Priority

Abusers tend to be extremely manipulative and they have had great success in misleading the courts, legislatures and media. The men who control "fathers' rights groups are extremists whose goals include eliminating child support, repealing domestic violence laws and in some cases permitting sex between adults and children. Obviously, if they said this to courts, they would get nowhere. Instead they disguise their goals by seeking seemingly fair objectives

like "shared custody" "friendly parent" protections and equal treatment of parents. Who could object to such reasonable requests?

The abusers are saying that when parents come to court for custody and visitation the parents should be treated equally **regardless of the past parenting, parenting skills or history of abuse**. Of course they don't mention the last part. Imagine if a group demanded that everyone receive equal income regardless of their contributions to increasing society's resources. Liberals and Conservatives would deride such a demand as communism. If we would not be willing to divide money without consideration of contribution, why would anyone take seriously a proposal to divide something so much more precious, our children, without consideration of the contributions the parents made to the well-being of the children before coming to court?

In the new book, we present our information based upon our belief that safety of children should be the first priority and arrangements that give children the best chance to reach their potential should be the next priority. The public would be shocked that this is not the priority in the present custody court system. Most states use the best interest of the child standard for custody and visitation decisions, but this tends to be extremely subjective. Even when legislation favors safety issues, we have found courts often pay more attention to less important factors like parties' income, remarriage and "friendly parent" provisions. In fact in states that have mandated friendly parent consideration, children are even more likely to be sent to live with abusers.

Compounding the failure of legislatures and courts to demand safety be the highest priority in custody cases, judges and the professionals they rely on rarely have the training they need to recognize domestic violence or child abuse. Judge Mike Brigner frequently trains other judges about domestic violence. In his chapter for the book, he describes how judges often ask him what to do about women who are lying. When asked what they mean, they refer to women who return to their abuser, withdraw petitions for a protective order, fail to make police complaints or have hospital records. In fact none of this is probative as battered women often act this way for safety and other reasons particularly when they are still living with their abuser. Similarly many professionals observe fathers and children interact and if the children show no fear they believe this proves the allegations of abuse are false. What the children understand is that their father will not hurt them with witnesses present, particularly ones he is trying to impress. In fact they could be punished if they showed fear.

Male supremacist groups often refer to sexual abuse allegations as the "atomic bomb" of child custody. In reality when sexual abuse is alleged, even when strong evidence supports the allegation, the alleged abuser usually wins custody. In research unrelated to custody, it is well established that by the time children reach the age of 18, one-third of the girls and one-sixth of the boys have been sexually abused. Although the stereotypical rapist is a stranger in a raincoat, most rape and sexual abuse is committed by someone the victim knows, often the father. Furthermore children rarely lie about sexual abuse because it is so painful and embarrassing. Nevertheless, custody courts have proven to be so hostile to allegations of sexual abuse that attorneys regularly

discourage these charges because they usually work against the protective mother. Courts are reluctant to believe a father could do something so heinous, particularly if the father is successful in other parts of his life.

With courts relying on inadequately trained professionals who quickly discount valid abuse complaints based on information that is not probative, there is little chance for them to recognize abuse and therefore be able to protect children. The research bears this out with courts mishandling contested custody cases (most of which involve abusive fathers) and sending thousands of children to live with abusers.



Connection Between Court Mistakes and Increased Homicide Rate

The media has done a poor job of covering the crisis in the custody court system and particularly the pattern of mistakes that result in thousands of children forced to live with abusers. Local media cover tragedies involving murders and murder-suicides of family members, but little effort is made to look at the patterns of these tragedies. On February 11, 2010, the National Coalition Against Domestic Violence and Center for Judicial Excellence issued a press release about two crimes in California where divorcing dads killed eight and nine-month-old babies after the courts ordered visitation despite concerns for the babies' safety. Those who follow this issue see frequent stories of abusive fathers killing children, partners and themselves. Most of the time there is a connection to custody and divorce proceedings, but the media usually fails to emphasize these causes. The Dastardly Dads blog chronicles these painful cases and in doing so makes it easy to see the patterns of court practices that lead to these tragedies. Judges and the court professionals they rely on are very aware of research that children do better with both parents in their lives, but often give less consideration to the research that this is not true if one of the parents is abusive.

I want to be careful here because a lot of misinformation has entered the

public debate out of ignorance and bias. We have seen numerous flawed studies reported in the media purporting to find women abuse men with similar frequency as men abuse women. Closer review of these studies demonstrate a failure to consider the severity of the assault, seriousness of injury, purpose such as self-defense, context (as part of a pattern of controlling behavior) and sexual abuse which is overwhelmingly committed by men. We don't have definitive research to determine what percentage of domestic violence homicides and child murders are caused by the crisis in the custody court system, but there is research beyond the anecdotal evidence of individual murders and murder-suicides.

Although we know there have been many fathers who used access provided by court orders or the failure of courts to restrain his access, how do we know they would not have killed anyway? This is similar to issues surrounding protective orders. Some people say they are only a piece of paper and cannot protect the victim. This view is supported by too many cases where a woman with a protective order was murdered by her ex-partner. The research, however demonstrates that although protective orders do not prevent all homicides, women with protective orders are safer than those without this protection.

The government has used a lot of scarce resources to determine the effectiveness of batterer programs, anger management and therapy to prevent domestic violence. None of these programs has been shown to reduce men's abuse of women, but unsupported claims continue to be made by those who have a financial stake in these programs. The only response research has demonstrated to reduce domestic violence is accountability and monitoring. Custody courts emphasize the promotion of a father's relationship with the child rather than holding him accountable for his abuse. They sometimes send abusers to some form of program or therapy. If this was used for accountability it might be useful, but generally they use the false assumption that completion of the program means he is then safe. In other words custody courts are using approaches that the research demonstrates work against the safety of women and children.

The modern movement to end domestic violence has resulted in making it easier for women to obtain criminal prosecution, protective orders, divorce, financial support, shelter and community support. As women had access to these resources and particularly after communities adopted policies to hold men accountable, the domestic violence homicide rate was reduced. Significantly, those communities that were stricter in enforcing accountability benefitted with even more dramatic reductions in domestic violence homicide. Although murders of men and women by their intimate partners went down, surprisingly, the number of men's lives saved was much higher than for the lives of women. Why would laws and practices designed to protect women have a bigger affect in saving men's lives? Before the reforms, some women believed the only way to get away from his abuse was to kill him. The added resources gave her other ways of leaving him. This conclusion is supported by research that demonstrates men and women kill their intimate partners for different reasons. Men kill to maintain control and so no one else can have her and women kill in self-defense

and to stop his abuse (there are of course exceptions). This is supported by the fact that 75% of men who kill their partners do so after she has left or is trying to leave.

Abusive men, who believe she has no right to leave were upset at the reforms that made it easier for victims to leave their abusers. These male supremacists developed tactics to maintain what they believe is their right to control their partners and make the major decisions in the relationship. The cruelest tactic has been to hurt the children. We see this in the murder or abuse of children by their fathers, but more frequently in fathers who had little involvement with the children during the relationship suddenly seeking custody when she tries to leave. The courts have been slow to recognize or respond to this tactic and instead pressure mothers to keep the father in the children's lives regardless of his abusiveness. Instead of pressuring the father to stop his abuse, courts routinely punish mothers for trying to protect the children. Ironically, in an attempt to keep both parents in the children's lives, courts often deny children a meaningful relationship with their mother when she continues to believe the father is harming her children. In almost all of these cases the mother was the primary parent and the safe parent. As mothers and domestic violence advocates have recognized the harm and unfairness in the present custody court system, more and more mothers are staying with their abusers and accepting his beatings in order to be near their children so they can protect them. Inevitably, some of these mothers do not survive this decision.

In the batterer classes I teach, we often talk about how boys are taught it is ok for men to abuse women. The men often object and say they were told not to hit girls. They are right that boys are not told to abuse women. Instead they see their father mistreat their mother with no consequences to the father and this gives them the message that society allows men to abuse women. Children know much more about the father's abuse in the home than we think they observe so when the custody courts ignore the father's abuse to give him custody or unsupervised visitation, this reinforces harmful messages. Children pay much more attention to the behavior they see than what they are told. In minimizing and failing to recognize the father's abuse, courts are encouraging men to continue their abuse. This is especially harmful when abusers successfully manipulate the courts to abuse the mother. The research demonstrates that abusive men use a cost-benefit analysis in deciding whether to abuse their partners. By seeking to support fathers' involvement with their children REGARDLESS OF THEIR HARMFUL BEHAVIOR, the courts are reinforcing harmful attitudes and behaviors.

The flawed and outdated practices used in the custody courts are causing tremendous harm to children and society. If the bad decisions in these courts did not result in any deaths of mothers and children they should still be reformed. We have significant anecdotal evidence and research on related issues that makes it likely some of the murders and murder-suicides could be prevented if the custody courts made better use of the up-to-date research now available. No one wants to be known as the judge who hurts children or receive publicity when an abuser the judge protected kills the mother and/or children. I would urge that

research be started to determine how often custody court mistakes result in the deaths of the children they are supposed to protect. In the meantime, I hope judges will stop sending children to live with abusers.

Barry Goldstein is a domestic violence speaker, writer and advocate. He is co-editor with Mo Therese Hannah of DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY.

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