

Talking Points

DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY

These talking points were designed for domestic violence advocates and other allies of protective mothers to speak with administrative judges in the hopes of convincing them to use the research contained in the new book to train judges and other court professionals and reform custody practices to improve the safety and potential of children in domestic violence custody cases. Feel free to use any part of the material in any order that makes sense to support your efforts. Use your own knowledge and concerns and focus the discussion based upon the local circumstances and situations the domestic violence community is concerned with. If you have any questions, you are welcome to contact Barry Goldstein at BarryG78@aol.com The information in parenthesis at the end of each paragraph are the authors of chapters in the book that provide the information in the paragraph.

1. In recent years, the court system has developed many practices that are designed to help parents work together. These ideas include mediation, shared parenting, parenting coordinators, parenting classes, friendly parent approaches and programs to promote communication skills and compromise. These may work well in other cases, but are harmful in domestic violence cases (see Zorza, Fields)
2. Over 95% of cases eventually settle more or less amicably. Some of these involve domestic violence and could be handled better with domestic violence knowledge, but the real problem are the less than 5% of the cases that cannot be settled and will require a trial and often much more. Courts usually refer to these as "high conflict" cases and literally they are, but 90% of these cases are actually domestic violence cases that can't be settled because it reflects an abusive father's tactic of using the children as a way to get access to his victim or punish her for leaving. The court system has been very slow to recognize this tactic and instead frequently use approaches that collude with abusers to help them maintain control over their ex-partners. Frequent mistakes in these cases have resulted in thousands of children being sent to live with abusers. (see Zorza, Fields and Goldstein)
3. If there was a scientific basis for the custody evaluations regularly relied on by the custody courts, the evaluators could tell the courts how their recommendations have worked out for children based upon outcome studies. In fact they have no such research. This flaw is obscured in part by the assumption that once a court makes a decision, the findings are confirmed. Many of these decisions have been discredited by later convictions of abusers found to be safe, poor outcomes for children and reports by children of horrific abuse after they age out of court orders giving custody to abusers. This is not surprising because the research demonstrates the custody court system

regularly uses flawed methods that make it difficult for judges to recognize domestic violence and child abuse or understand the consequences proposed orders are likely to have on the children. (see Yeamans, Anderson and Waller)

4. The Truth Commission and the research in the book, recommends that court professionals receive not just generalized training in domestic violence, but specific training in Recognizing Domestic Violence, Gender Bias and The Effects of Domestic Violence on Children. It is hard to imagine any objection to these recommendations. The courts can't protect battered mothers and children if they miss the signs of domestic violence. Gender bias is particularly difficult because professionals acting in good faith often engage in gender bias without realizing they are doing so. The problem is compounded because some good professionals have suffered retaliation for pointing out examples of gender bias. Children who witness domestic violence, including non-physical abuse can face long-term harm as a result, but courts can't protect the children if they don't understand the risk. (see Hannah, Crooks, Jaffe and Bala, Schwaeber, Dragiewicz and THE BATTERER AS PARENT).

5. Judge Mike Brigner writes that when he trains judges about domestic violence he often is asked what to do about women who are lying. When he asks what they mean they refer to women who return to their abuser, withdraw petitions for restraining orders, fail to make police reports or seek hospital treatment and the myth (obviously they don't realize it is a myth) that women frequently make deliberately false allegations of abuse. All of these actions are normal responses by women partnered with abusers for safety and other reasons. In no way do they support the assumption that the woman is lying. Nevertheless the widespread belief by judges, lawyers and inadequately trained mental health professionals that it does, results in thousands of valid claims of abuse to be disbelieved and other evidence ignored. Similarly, unqualified professionals often look only to evidence of physical abuse and in doing so miss a lot of other evidence of controlling behavior courts could use to confirm abuse allegations. (see Araji and Bosek, Brigner, Schwaeber and Goldstein)

6. One of the ways we know there is a problem in the custody court system is the frequent finding of circumstances that are rare. It is certainly possible for a woman to make a false allegation of abuse, an abuser to commit one act or a few acts and then stop without any intervention or for a mother to suffer from Munchausen by Proxy. Accordingly, we can't tell if an individual case was wrongly decided without substantial investigation, but when researchers look at hundreds and thousands of cases it is easy to see patterns of results that cannot possibly be accurate. The improper practices confirm how courts get so many cases wrong. (see Zorza, Araji and Bosek, Dragiewicz and Goldstein)

7. Most abusers do not beat their victims frequently. Instead they commit one or a few physical assaults and then use other coercive and intimidating tactics to maintain their control. Their purpose is not to enjoy beating their partners but rather to maintain control and exercise what they believe is their right to make the major decisions in the relationship. Inadequately trained professionals fail to see the abuser's use of excessive litigation, strategies that bankrupt his victim and use of the children to gain access to her as a continuation of his pattern of abuse. When a woman seeks to limit contact with her abuser because she understands his tactics she is labeled as uncooperative or unfriendly when better practice would be for courts to use their authority to discourage abusive men from intimidating and scaring their ex-partners. (see Schwaeber, Fields, Goldstein and Araji and Bosek).

8. Many professionals in the custody court system believe they have the ability to determine who is telling the truth just from observing them. There is no research to support this belief and only a very few elite CIA and FBI agents have demonstrated this ability. In the context of domestic violence custody cases this is particularly dangerous because abusers are very manipulative and plan out their tactics to fool the professionals. At the same time women's normal reaction to their partners' abuse tends to be anger and emotion and this is used to discredit their concerns. The false belief by professionals that they can tell who is truthful, just from watching them creates a false sense of confidence in these wrong judgments and favors abusers. (see Schwaeber, Araji and Bosek, Zorza and Washington Post article).

9. Over forty states and many other judicial districts have created court-appointed gender bias commissions. These commissions have found widespread gender bias particularly against women litigants. They have found the courts give women less credibility than men, blame victims for her abuser's actions and create higher standards of proof for women. We see this when courts punish women for seeking to limit contact with abusers instead of pressuring abusers to stop their intimidating tactics. We see it when they expect mothers to provide better care of children but don't reward them for their care or punish women more severely than men for extramarital affairs. (see Dragiewicz, Araji and Bosek and Zorza).

10. In one case, the trial court used a certainty standard for the mother and a probability standard for the father. Even a first year law student would know this was a fundamental violation of due process and equal protection that demands reversal. The use of the higher standard for the mother was in writing in the evaluator's report and the transcript of her testimony. Using a the proper probability standard she admitted the father abused the mother physically, emotionally and verbally throughout the marriage, did so in front of the children and abused her so badly as to cause PTSD. Accordingly the court could not claim the mistake did not affect the outcome. In the two related cases between 15 and 20 different judges reviewed the case but failed to object to the

biased approach. Clearly the judges were smart enough to recognize the mistake and it is not possible they were all corrupt or in favor of abusers. The problem is that for thirty years the court system has been using invalid practices and the often inadequately trained professionals they rely on have reinforced misinformation so that the judges could not imagine a trial judge could be so unfair to a battered mother. They permitted a decision where a safe mother was denied any contact with her children and the abuser received custody. Only in a broken custody court system could so many judges make such an obvious mistake. (see Dragiewicz, Goldstein and Fields)

11. More commonly, the higher standard of proof for mothers is not put in writing, but is demonstrated by the many double standards women face. Frequently protective mothers are punished because they seek to restrict the father's contact because he is abusive. Courts give custody to the alleged abuser on the grounds that he is more likely to encourage the relationship between the mother and children. Once he receives custody, abusive fathers interfere with visitation and take mothers out of their children's lives, but the same courts fail to require the father to facilitate visitation. (see Dragiewicz, Araj and Bosek, Zorza and Hannah)

12. In a typical domestic violence case, the protective mother claims to be the primary attachment figure to the children and that the father abused her and/or the children. The father claims alienation. Primary attachment refers to the parent who provided most of the child care for the first couple of years of the child's life. Children who lose their primary attachment figure are significantly more likely to commit suicide, suffer depression, low-self-esteem and other problems. Accordingly it doesn't make sense to separate a child from their primary attachment figure unless the parent is unsafe. Children affected by domestic violence are as likely as children directly abused to engage in a wide range of dysfunctional behavior. There is no research that children who hear negative remarks about the other parent (as occurs in most intact families) or have mothers who seek to protect them by limiting contact with an allegedly abusive father experience any long-term harm as a result. At the same time almost all children have a primary attachment figure which is usually the mother because in this still sexist society, mothers continue to perform most of the child care. Despite the myths, mothers rarely (1-2% of the time) make deliberately false allegations of abuse. False or exaggerated complaints of alienation by fathers are very common and is taught by male supremacist groups as a tactic to obtain custody. Although the mothers' complaints are more likely to be true and significantly affect the safety and potential of the children, courts are granting custody or joint custody to the fathers in these cases between 70 and 83% of the time. (see Sussman, Erickson, Crooks, Jaffe and Bala, Araj and Bosek).

13. Courts tend to emphasize the belief that children do better with both parents in their lives. This belief is supported by research, but not if one of the parents is abusive.

"Fathers' rights" groups have sought to promote and courts have accepted the idea that when the parents come to court they should have equal rights to the children. On the surface this sounds reasonable, but only if their history of parenting supports this practice. There is no reason to treat the parents the same if one has performed significantly more child care, has better parenting skills or if one parent has been abusive. The best predictor of future parenting is past parenting, but courts often treat mothers based on past parenting and fathers on expectations of future parenting. These kinds of gender biased practices place an unfair burden on mothers and more importantly result in decisions harmful to children. (see Zorza, Erickson, Araji and Bosek)

14. The widespread use of mental health professionals for evaluations and expertise developed at a time when it was widely believed domestic violence was caused by mental illness, substance abuse or the victim's behavior. Courts assumed that the mental health professionals had expertise in domestic violence. At the time there was no specialized body of knowledge about domestic violence. Mental health professionals can help custody courts understand the circumstances when there is credible information that one of the parties or the children suffer from a mental impairment that significantly affects the ability to parent. There are a few mental health professionals who also have substantial knowledge and experience in domestic violence and are familiar with up-to-date research. The problem is that most mental health professionals relied on by custody courts have at most a few hours of domestic violence training and are unfamiliar with the up-to-date research. The research demonstrates they often fail to recognize domestic violence because they don't know what to look for and tend to minimize its significance. This is particularly harmful because they provide a false confidence that there is a scientific basis for their recommendations. (see Yeaman, Erickson, Araji and Bosek, Zorza and Fields)

15. Best practices are for mental health professionals to consult with domestic violence experts when handling a case involving allegations of domestic violence. There have been several demonstration projects including Rockland County, New York where child protective agencies work with the local domestic violence shelter on cases involving suspected domestic violence. The agencies cross-train each other and when caseworkers have a potential domestic violence case they consult with a domestic violence advocate. This practice has proven effective in helping caseworkers recognize and respond appropriately to domestic violence cases. Psychologists and psychiatrists are ethically required to consult with experts when they are handling a case that involves a subject they are not expert in. It should be a standard practice for evaluators to consult with domestic violence experts when they respond to domestic violence cases. Unfortunately, these professionals, often with only a couple of hours of training in domestic violence and unfamiliar with the specialized body of research about

domestic violence wrongly believe they don't need to consult with a genuine expert. Many lawyers don't know to raise this issue when questioning evaluators, but even when the issue is raised, judges rarely discredit an evaluator's testimony for failing to consult a domestic violence expert or have familiarity with up-to-date research. (see Zorza, Fields, Goldstein and Hannah)

16. The use of psychological tests increases costs, delays cases and creates a false assumption that there is a scientific basis for recommendations. Psychological tests were developed for populations very different than those engaged in custody disputes. They cannot determine issues like domestic violence or parenting skills. They were designed to determine mental illness. Psychologists rarely tell the courts that the findings are based on probabilities and most tests reach conclusions accurate in 55 to 65% of the cases. Other factors such as not being part of the intended population for the test, domestic violence or the stress of litigation further reduce the percentage of accuracy. Mothers' normal response to their partners' domestic violence is often misinterpreted as paranoia or delusion. This is particularly a problem where inadequately trained evaluators fail to recognize domestic violence and then pathologize the victim for believing she was abused. (see Yeamans, Zorza, Erickson and Fields)

17. Mental health professionals relied on in custody cases often use a family systems approach which is not appropriate and in fact is dangerous in domestic violence cases. The approach seeks to have the parties forget past problems and develop new ways to work together in the future. This does nothing to change the belief system of abusers who are skilled at manipulating professionals who use such an approach. The professionals are usually unfamiliar with scientific research including the fact that only accountability and monitoring have been shown to change abusers' behavior. At the same time protective mothers are punished because they couldn't overcome their fear caused by a long history of their partner's abuse. This is another example of blaming the victim for her normal reaction to the father's abuse. (see Fields, Zorza and Crooks, Jaffe and Bala).

18. Context is particularly important in understanding and recognizing domestic violence. Repeatedly we have seen cases in which the court initially determines a mother's domestic violence allegations are false. When the father commits new abusive tactics (such as limiting contact between the mother and children after he gets custody or using the visitation exchanges to harass his victim, the courts usually refuse to consider the new information in the context of prior evidence of abuse on the ground that the court already denied the abuse. Courts often miss that the same acts should be treated very differently depending on motivation. There may be evidence that each party hit the other, but they may not be equivalent. One party may hit harder, one party may hit in self defense or to stop his abuse and the other to maintain control, and particularly important only one party may fear the other. Both parties may file

complaints about professionals in the case. While they both would claim they have valid objections it is important to see the context of whether one of the parties had previously sought to isolate their partner from friends and family. (see Dragiewicz, Goldstein and Zorza)

19. Not all children react the same to domestic violence and child abuse. Inadequately trained professionals expect abused children to have serious social or academic problems as a result of the abuse. Some children react by taking on adult roles, being the good child or zoning out. On the surface it appears the children are doing well, but the problems play out years later. Such unexpected reactions often lead to courts assuming valid abuse complaints are false. (see Crooks, Jaffe and Bala, Araj and Bosek)

20. We are particularly concerned with cases involving retaliation against protective mothers and extreme results that give custody to alleged abusers and supervised visits or no contact with children to the mothers. Unless the mother is unsafe (drug addict, beats the children) such extreme results are virtually always harmful to children. Many mothers have been punished for continuing to believe the father is dangerous after the court fails to find he committed abuse. Fathers are not similarly punished when they continue to deny their abuse after the court finds against him. Given the frequency in which courts fail to confirm valid claims of abuse, courts should be extremely reluctant to penalize mothers who continue to complain of their partner's abuse. (see Zorza, Araj and Bosek)

21. Surprisingly there have been some judges who object to training about up-to-date research in domestic violence based on the belief that somehow neutrality requires judges to stay ignorant of this information. In reality such ignorance is not neutral as the myths, stereotypes and misinformation used instead of scientific research strongly favors abusive fathers.

The training of judges and other court personnel in domestic violence should be conducted by domestic violence advocates and other experts familiar with the kind of up-to-date research contained in this book. It is important that administrative judges foster an attitude that the present system has resulted in thousands of children being sent to live with abusers so judges must be open to the likelihood that many of the beliefs and practices they have long used have been wrong. Courts should consider holding an evidentiary hearing about domestic violence early in custody proceedings. If the allegations of domestic violence are true and the other parent is safe (alienation allegations are not about safety), the non-abusive parent should receive custody and the abusive parent held accountable. This procedure would save courts time and money while achieving results that benefit children. Courts should consider not appointing an evaluator unless there is substantial reason to believe one of the parties

or the children have a mental condition that would significantly interfere with parenting. If an evaluator is used judges should seek experts with substantial domestic violence training or at least have the evaluator consult with such an expert. Mediation and joint counseling are always inappropriate in cases with abuse allegations. The safety of the parties and the children must always be the first priority. Research demonstrates that the best way to prevent domestic violence is to hold the abuser accountable and monitor his behavior. Abusers tend to be extremely manipulative and court professionals must be careful to avoid colluding with an abuser. Most important, we are not seeking to challenge or criticize judges, but rather to work together to support the policy and laws of every state which is to prevent domestic violence.