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Abuse, Custody and Patriarchy – A Lethal Combination for Children

I started practicing family law in 1980. Lawyers with much experience in family law told me not to mention that the mother was beaten, or she would lose custody and especially don't mention that child sex abuse existed or she for sure would lose the kids. I was dumb founded. Isn't it obvious that it is not in the best interest of the children to be placed with a violent parent or one who is sexually abusing that child? Oh, how young and naïve was I.

For 18 years, I actively represented battered women and molested children in Phoenix, AZ and found that those lawyers were correct. To debunk the prevailing myth that women always get custody, I did a study of custody cases and found that only in the 1950s did women more often win contested custody cases under the "tender years" doctrine. But they did not get child support. Boys twelve and up always went to the father because they needed them to work. I could find no publisher for my article.

In 2002, Wellesley College studied the phenomena of batterers winning custody and published their report: *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts*. In 2003, at Arizona Coalition Against Domestic Violence, we replicated that study and had the same findings. (Battered Mother's Testimony Project: A Human Rights Approach To Child Custody and Domestic Violence. http://diannepost.com/wp-content/uploads/2017/07/fs_bmtp_report.pdf)

In 2007, I filed a case at the Inter-American Commission on Human Rights against the United States for the policy of family courts giving custody or unsupervised visitation of children to abusers and molesters. Sixteen years later, after the U.S. refused to respond, they have finally moved it to a "merits" decision.

Many mothers who have lost their children have started groups to educate and advocate on this issue. California Protective Parents is one of the most effective. Others include the Battered Mother's Project, Leadership Council, and speakoutloud. The children who are now adults have started their own groups.

Attorney Joan Meier from Georgetown Law has been an ally on this issue for years. She received a grant from the Department of Justice to do analytical analysis of cases to see if what lawyers, domestic violence and child advocate service providers, and the mothers say is true. In a preliminary report, Meier estimates that in up to 58,000 cases per year custody is reversed from a mother to an abusive father. (Meier, Joan S. and Dickson, Sean, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation* (2017). Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 *Law & Ineq.* 311 (2017). ; GWU Law School Public Law

The main problem is the court's focus for decades now on "parental alienation." Richard Gardner invented the idea of "Parental Alienation Syndrome" out of whole cloth. He had no research, no studies, no peer reviewed articles, no scientific or empirical validations – nothing - just the ruminations of his own mind in which he believed sex between grown men and children to be harmless. He killed himself in 2003 and he and his theory have been thoroughly discredited. The theory has been found to be inadmissible in criminal and civil courts because it has no scientific backing. Yet judges still allow it in family court. Gardner invented "Parental Alienation" for the same reason Freud invented "hysteria" - to dismiss valid reports of widespread sexual abuse of women and children.

Using PA the court focuses on whether the mother is lying rather than whether the father is abusive. Even with expert validation of child abuse, judges still refuse to believe it, accuse the mother of lying, and reverse custody. I observed a case in Phoenix in which 13 witnesses, police officers, child protection workers, social workers, therapists, and a teacher testified that the father was sexually abusing the child. In the face of all that, the judge said, "Fathers don't do those things," and granted custody to the man.

Meier's pilot study looked at whether custody cases involving allegations of parental alienation (with or without allegations of abuse) had sex related outcomes. The pilot was to develop reliable measures and methods of analysis for the full study. The authors looked at published opinions about custody, abuse, and alienation between 2002-2013. They only looked at cases where full custody was transferred from one parent to the other. The study did not question the judge's factual findings about whether alienation, domestic violence, child abuse or child sexual abuse occurred. They looked to see how, given what the judge had found to be the facts, the judge decided. A statistical analysis tool facilitated the comparisons of outcomes for mothers versus fathers depending on the different types of abuse allegations found to be true if any.

The study found that fathers brought 82% of the alienation claims. No matter which parent claimed alienation, judges believed it 57% of the time, but that is where the parity ended. When fathers accused mothers of alienating the children, children were switched from mothers to fathers 50% of the time; but when mothers accused fathers, children were switched only 26% of the time. When the judge credited father's alienation claim, he won custody 69% of the time compared to when the mother's alienation claim was credited, she only won 50% of the time. When the judge did not believe father's alienation claims, custody was still switched 25% of the time, but when the judge did not believe the mother's alienation claim, custody was switched only 10% of the time.

Abuse claims by mothers accused of alienation were credited only 25% of the time. Domestic violence claims were credited 59% of the time, child abuse claims 19% of the time, and sexual abuse claims only 6% of the time. Mixed domestic violence and physical child abuse claims were credited 50% of the time. However, the judges seemed to care

more about alienation claims than violence claims. Alienation claims were credited 85% of the time with domestic violence credited 88% and physical child abuse 67%.

When fathers were accused of abuse and they then accused the mother of alienation, the fathers won 72% of the time – even more than when they were not accused of abuse (67%). If mothers alleged domestic violence, fathers won 75% of the time. When mothers alleged child abuse, fathers won 69% of the time. When mothers accused fathers of sexual abuse, fathers won 81% of the time. When the allegations were mixed, fathers won 54% of the time. Abuse, like crime, pays.

Even when the judges credited the abuse, but the mother was accused of alienation, fathers won 38% of the time. Even when abuse was validated and the judge believed the mother had alienated, the father won every time. When abuse was validated but the alienation claim was not, fathers won only 16% (why did they win any?). Apparently to judges, it is in the best interest of the children to be abused physically or sexually rather than for the mothers to try and keep them safely away from the abusers.

Proven child sexual abuse had an even smaller impact. When mothers alleged paternal abuse in general, they lost 52% of the time. When they did not, they lost 48%. When domestic violence alone was alleged, mother's lost custody 29% of the time. But if a mother made a child sexual abuse allegation, fathers received a custody switch 68% of the time. When the mother alleged child abuse alone, children were switched 57% of the time. Fathers were 5.3 times more likely to win custody when the mother alleged child sexual abuse than when she alleged domestic violence. Society still refuses to believe how often fathers sexually abuse their own children.

When fathers alleged alienation, they won almost every time, regardless of whether the mother reported abuse (95%) or not (96%). Fathers won every case in which mixed forms of abuse were alleged and the mother was found to be an alienator. So her legitimate desire to stay away from the violent father is sufficient to take custody from her and put the children in the dangerous situation. When the mother alleged child sexual abuse alone, fathers won 95% of cases; domestic violence allegations alone produced a 93% win rate for fathers; child abuse allegations alone resulted in fathers winning 91% of the time. Most stunningly, as mentioned above, even proving abuse did little to help a protective mother; alienation findings trumped.

When the alienation claim was rejected or not decided, judges still transferred custody of the children to an allegedly abusive father 25–50% of the time. In cases with an alienation claim, women lost their children half of the time regardless of abuse claims. In short, the risk to any mother of losing custody if there is an alienation claim regardless of proven abuse is severe.

So the next time you hear that mothers always win custody, it's a lie. Abusers in fact nearly always win. This is not in the Best Interest of the Child; but neither the child nor the proven facts matter in court. What is most important to the judge is men's right to ownership of women and children. We haven't come far from the dark ages.

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