
Journal of the Task Group on Child Custody Issues

of the National Organization for Men Against Sexism

Volume 5, Number 1, Spring 1993 (Fourth Edition, 2001)
C/o University Studies, Portland State University, Portland, OR, 97207-0751
503-725-5844, 503-725-5977 (FAX), straton@pdx.edu

What is Fair for Children of Abusive Men?

By Jack C. Straton, Ph.D.

Presented at

What About the Kids? *Custody and Visitation Decisions in Families with a History of Violence*

National Training Project of the Duluth Domestic Abuse Project
Thursday, October 8, 1992, Duluth, Minnesota

Introduction

I want to express my deep gratitude to Ellen Pence, Madeline Dupre, Jim Soderberg and the others from the Duluth Domestic Abuse Intervention Project for giving me this opportunity to speak with you. The State of Minnesota should be proud that, quite literally, the world looks to this program for guidance on understanding and ending domestic violence. I also want to acknowledge how much I continually learn from Barbara Hart, of the Pennsylvania Coalition Against Domestic Violence.

I will first critically examine the criterion at the base of all custody laws today, "What is in the best interests of the children?" I will talk about children's choice in these matters. Then I will examine the actual effects of wife-battering on children, and develop an alternative paradigm for custody based on those effects. From this I will examine the question, "Is it ever appropriate to ever give a batter custody of a child?"

In the process, I am going to talk today about the effects of male power and control over children, not

about parental power and control. I know that it is popular these days to de-gender family conflict, to talk about "spouse abuse" and "family violence" rather than "wife beating" and "rape." I know that we want a society in which men nurture children to the same extent that women do. I know that fathers and mothers should both be capable parents. But if you ask "What about the kids?" I want to give you a serious answer. I cannot seriously entertain the myth that our society really is gender neutral, so to consider "What about the kids?" while pretending such neutrality is to engage in denial and cognitive dissonance. I cannot hope to arrive at an answer that will positively affect reality if my underlying assumptions are based on fantasy.

So I am going to talk today about the effects of male power and control over children, not about parental power and control. As I cite examples, some of you may hear your internal voice saying, "But women do that, too." As this happens I would ask you to be aware that such voices are often the voice of guilt that

Continued on Page 2

NOMAS Task Group on Child Custody Issues

Jack Straton

C/o University Studies
Portland State University
Portland, OR, 97207-0751
503-725-5844
503-725-5977 (FAX)
straton @ pdx.edu

The National Organization for Men Against Sexism(NOMAS)

P.O. Box 455, Louisville, CO 80027
303-666-7043, info@nomas.org

Other NOMAS Task Groups

(c. 2001):

Men's Studies

Michael Kimmel, Stonybrook, NY
David Greene, West New York, NJ
Robert Brannon - Brooklyn, NY
Doug Gertner - Denver, CO

Men And Mental Health

Terry Kupers - Oakland, CA

Eliminating Racism

Victor Lewis Oakland, CA
Vernon McClean - Wayne, NJ
Phyllis B. Frank - Nyack, NY

Men & Spirituality

Moshe Rozdzial - Louisville, CO
Ending Men's Violence
Jon Cohen - New City, NY

Sexual Harassment

Barry Shapiro - Oakland, CA

Pornography & Prostitution

Robert Brannon - Brooklyn, NY

Men's Culture

Paul Landen - Milton, VT

Homophobia

Allen Corben - Pasadena, CA

Bisexuality

Sven Bonnicksen - Portland, OR

Men And Prisons

Terry Kupers - Oakland, CA

Adult Supremacy

Sven Bonnicksen - Portland, OR

Continued from Page 1

try to distract us from what we really know about men's violence so that we need not take responsibility for this violence. It is true, for example, that some women do batter men. But the number of severe cases of this type is so low when compared with the virtual war of men's violence against women, that they cannot be seen above the statistical noise. This voice that says "But women do that, too" has as its purpose, not compassion for battered men or lesbians, but a distraction from the noble goal of ending battering of women.

So as you hear this voice today, become consciously aware of it. Let it into your conscious mind for a moment, and then let it drift on. It is just a tape recording that you can always come back to in an hour or two if there is a need. If you find that you just can't contain this voice, that others must hear this tape recording, please do not hesitate to raise a hand or even to shout it out. We will pause to give it some space.

Whose Best Interests?

I want to begin by instilling in you a healthy skepticism about the "Best interests of the child" criterion that underlies custody laws today. It is important to acknowledge that the term "the best interests of the child" is so vague that some adult must state what constitutes "best interest." In practice courts rely on social and psychological professionals to make this determination. While such individuals are surely skilled and caring individuals, it must be admitted that they operate out of a set of

professional norms that are never openly discussed, and are subject to professional fad. For instance, Irene Thèry of France notes that today "there is a real reversal of traditional models. The stigmatization of remarriage and the prescription of fidelity have given place to the stigmatization of solitude and the prescription of 'remaking one's life,' i.e. finding a new partner."¹ As Martha L. Fineman, of this country, says, "A desire for sole custody has now been labeled 'pathological.'" There are obvious and serious consequences for battered women with the "creation of professional norms which would give custody to . . . the parent most willing to share the child with the other parent."²

In addition, the "best interests" criterion is flawed because of its unpredictability, which presumably "has an impact on the number of cases brought before courts, since there is a stronger reason to have a case tried when the outcome is uncertain. . . . The threat of bringing the case to court, with an uncertain outcome, may easily be used as pressure on the other party in order to obtain advantages in the [out of court] economic settlement," e.g. lower child support payments.³ In this way the "best interests" criterion ironically may lead to the impoverishment of children. This is more serious in cases involving child abuse where the mother's fear of losing custody to the father is extreme.

Finally, Fineman notes that "rules that focus on the performance of nurturing or caretaking have been attacked, not because they are explicitly gender biased, but because in operation they will act to favor women who traditionally perform such tasks,"⁴ though clearly any man can choose to become the primary caretaker. So instead of viewing past behavior as a predictor of future behavior on behalf of the child, the "best interests" criterion

looks at present status, such as income or a new partner (a more frequent occurrence for the fathers). But Sandberg observes that in “consequence, the result of treating people equally when their situation is in fact different is a *de facto* inequality. Fathers have, because of the new legislation, obtained a stronger position in child custody cases than their efforts in the caretaking of children should fairly allow.”⁵

Joint Custody

Joint Custody is clearly a type of “best interests” criterion. It explicitly assumes that joint custody *is* in the child’s best interests. There are severe consequences for battered women subjected to joint custody presumptions.

Joint custody forced upon two hostile parents can create a toxic psychological environment for a child. Because 95% of all joint custody awards are for joint *legal* custody⁶ the living arrangements are exactly the same as under a sole-custody/visitation order. However joint legal custody does expand the right of the non-primary-caretaking parent to impede the ability of the primary-caretaker to make needed and timely decisions.

Some provisions in joint legal custody laws require a minimum visitation period for the noncustodial parent that can be limited only when there is a threat of *physical* harm to the child. This threat is difficult to prove, especially when the accuser is perceived as a litigant with a vested interest in distortion. And such provisions also do not address psychological and emotional abuse. The threat of a joint custody deci-

sion may be used by the husband to bargain out of court for a reduction in child support payments (trading children for money in a throwback to the 19th century laws in which children were considered to be property of the father). The potential for bartering away the child’s financial resources because of a bad faith request for custody is reinforced by (“friendly parent”) provisions that give a preference to the parent requesting joint custody when the alternative of sole custody is considered by the court.

Such “friendly parent” provisions also guarantee an abusive father or husband access to the victim. Men who batter their wives may also sexually abuse their children.⁷ The more fearful a woman is of the father gaining sole custody, the more willing she may be to submit to joint custody or to a reduction in child support.

Children’s right to choose vs. abuser’s manipulation of a child.

I want to talk about the question of children advocating on their own behalf. As one who would like to see the rights of children recognized and affirmed, I am tempted to say that, yes, a child should have some input into a decision about with whom they will live. Yet in the present case we have a man who, though he beats his wife, is often very charismatic to the rest of the world, and perhaps to his kids. And even if he beats his kids as well, it is known that intermittent affection can be a stronger binding agent than consistent affection. We also have a man who has demonstrated his power over another human being through brutality. It is known that older chil-

dren will sometimes join in the abuse of their mother. Since it is the older children to whom we might be tempted to accede some measure of choice, I find this mirroring of the father’s brutality disquieting. I do not ask you to take one side or the other of this question, but to be cautious until someone more wise than I can resolve the knot for you.

The Primary Caretaker Rule

My preference for the primary caretaker criterion will be obvious as I speak today. In Sandberg’s summary: This criterion “would hardly lead to worse decisions than ‘the best interests of the child’, considering all the uncertainty it implies.” “It should only exceptionally result in a worse solution than if the other parent was chosen. . . . That parent has demonstrated a willingness to take care of the child and has practice doing the job. There is also reason to believe that the child is emotionally more attached to her or him. *Besides, during the marriage the parties after all set up the caretaker arrangement together, and would hardly have done this while thinking that the actual primary caretaker was less fit than the other parent*”⁸

For today’s discussion, I will point out that since men are nearly always the batterers in domestic violence and women are nearly always the primary caretakers for the children, adoption of the primary caretaker criterion for custody would enormously relieve both the courts and advocates for battered women of much of their work around custody decisions.

Murdering one’s wife

Before leaving this section, I want to note just how far the “best interest” criterion can be stretched. A Florida court in 1987 acknowledged⁹ that a “man’s violent and

irrational behavior included throwing his wife to the ground, beating her when she was four months pregnant, and threatening to kill her, her father, and himself, . . . [yet] the court accepted a psychologist's conclusion that the man's 'past violence was related to the deterioration of his relationship with [his wife],' and was presumably unrelated to his fitness as a parent."¹⁰

Incredibly, "[c]ourts often are precluded from considering the actual abusive act of killing the other parent"¹¹ in custody decisions. Moreover, in one case¹² that explicitly considered the domestic violence factor as mandated by Illinois statute, a father who had killed the mother of his children was given not only visitation but custody. The appeals court in 1989 noted that "a single criminal conviction, without more, will not support a finding of unfitness based on depravity." If I may be somewhat flippant, they apparently require multiple murders before they are willing to terminate a man's control over his children.

Moreover, it stated, neither Illinois courts nor the state legislature "has seen fit to set forth a rule of law that the killing of one parent by the other in the presence of the children no matter what the circumstances is sufficient to deprive that parent of his or her children on the basis of unfitness." As with Minnesota law, Illinois only had to consider domestic violence as *one* of many factors.

In contrast we have a case in West Virginia¹³ "in which a mother was accused of firing a rifle at her ex-

husband when he came to visit their child. Although the evidence did not prove conclusively that the incident actually occurred, the court found the woman to be an unfit mother because she had 'demonstrated [a] tendency to be violent . . . when she was upset but not in any way threatened.'"¹⁴

Their extreme cognitive dissonance indicates that courts are clearly loathe to deprive men of a "right" of access to and control over their children, though the same cannot be said of such "rights" for women. The paradigm in which these jurists are trying to stuff reality is left-over from the 19th century notions of men's ownership of both children and women. If the "best interests" criterion can encompass such bizarre rationalization, it is time we moved on to a new paradigm of relationship between men and women and children.

A new paradigm

Since I have cast doubt on the gender-neutrality of professionals' norms in relation to the best interests of children criterion, I will not impose my own norm-based arguments for what constitutes "best interests." I will instead focus on an alternative criterion for custody of children exposed to domestic violence; *what constitutes demonstrable harm*. In particular, I will next argue that it causes demonstrable harm for a child to be given into the power and control of an abuser.

Custody by an Abuser Creates Demonstrable Harm

Our choice, as a society, to give parents control over children is predicated on the idea that parents' love for their children will cause them to act in the child's best inter-

ests (there's that phrase again). Yet a man who violates his love for his wife by assaulting her is demonstrating that his actions *are not* in consonance with his avowals of love. In fact, those who are most remorseful are the ones to whom we might be tempted to give custody, and these are the men whose actions and love are in greatest dissonance. What basis, then, do we have for presuming that he will act in his *children's best* interest simply because he loves them? None. So the sensible thing to do is to look at his actions to see what effect they really do have.

The overlap between wife beating and abuse of children

The most obvious place to begin this examination is to determine how often men who batter their wives and partners abuse their children. We start by noting that 25 to 63% of domestic violence victims are pregnant when beaten.¹⁵ While you may say that it is the woman, not the fetus, who is the target here, there is in any case total disregard for the welfare of the child-to-be.

Lenore Walker and coworkers^{16,17} found that 53% of the batterers associated with their study had sexually or physically abused their children as well. In a longitudinal study of battered children of battered wives, Jean Giles-Sims found that 63% of the men who abused their wives also abused their children.¹⁸ Rosenbaum and O'Leary¹⁹ found that 82% of men who observed inter-parental spouse abuse were themselves victims of child abuse. In the most extensive study to date, of 1000 battered women, Bowker

and coworkers found that 70% of the children were also abused.²⁰ They also noted that daughters of abused women are six and one-half times more likely to be sexually abused as girls from non-abused families. Thus 14% of girls in abusive homes will be *sexually* abused by a family member.² ¹

Furthermore, Bowker found that as the severity of the wife abuse increased, so did the severity of the child abuse. While it is true that women will spank children, Bergman *et al.* determined that men are ten and one-half times more likely than women to inflict serious harm. They found that every known perpetrator of the death of a child in their study was a father or father surrogate.²²

There should now be no question in your minds that access to children by abusive men constitutes serious probable harm to children. Given the serious consequences of physical and sexual abuse to children, which of you is willing to play roulette with a given child's life, hoping that he or she will be one of the 30% or so not physically or sexually abused?

Prevalence of children who witness abuse

Let us consider for a moment that a 70% probability of physical or sexual abuse is deemed an insufficient barrier to deprive a man access to, and control over, a child. To put it most favorably, "But we would be depriving 30% of fathers who have never abused children the love and affection to which they are entitled by" . . . ah, by . . . well,

let's set aside for the moment the issue of entitlement.

What are the consequences for the children in violent homes who witness their fathers abusing their mothers?²³ Studies of battered women's reports of child witnesses range from 68%²⁴ (to 76%,²⁵ to 80%²⁶) to 87%.²⁷ "However, from interviews with children [Jaffe, Wolf and Wilson found] that almost all can describe detailed accounts of violent behavior that their mother or father never realized they had witnessed."²⁸ Wallerstein and Blakeslee report that even if there is only one violent incident, children will remember it.²⁹

Behavioral and health effects on children who witness abuse

Pagelow has observed "children as young as one year begin to regress into states later diagnosed as 'mental retardation' when they were exposed to parental hostilities that never went beyond the verbal abuse level."³⁰ It is important to note for the question of contact with the abuser that the symptoms of retardation quickly disappeared after the parents separated. If even verbal abuse can be so traumatic, consider the cases in which women are sexually brutalized in front of their children.³¹

If we look at children who have chronically witnessed abuse we find reactions similar to the reactions of children who have been physically abused; "disruptions of normal developmental patterns that result in disturbed patterns of cognitive, emotional, and/or behavioral adjustment. . . . Infants who witness

violence are often characterized by poor health, poor sleeping habits, and excessive screaming (all of which may contribute to further violence toward their mother)."³²

"Among preschoolers, [Davidson³³ and Alessi and Hearn³⁴] found signs of terror, as evidenced by the children's yelling, irritable behavior, hiding, shaking, and stuttering."³² They often experience insomnia, sleepwalking, nightmares, and bed wetting. They suffer psychosomatic problems such as headaches, stomach aches, diarrhea, ulcers, asthma,³¹ as well as regression to earlier stages of functioning.³³

Adolescent boys exposed to domestic violence may use aggression as a predominant form of problem solving, may project blame onto others, and may exhibit a high degree of anxiety. Girls are more likely to be withdrawn and turn blame inward.³³ "Sadly, both boys and girls have been known to participate in the beating of their mother after having witnessed such behavior over many years."³³

Jaffe and co-authors state in sum that "clinical and empirical data . . . suggest that children exposed to wife abuse may be similar to those children described as suffering from Post-traumatic stress disorder (PTSD)."³⁵

Effects on children's relationships when they witness abuse

Children exposed to wife abuse³⁶ often have "difficulties with school, including poor academic perfor-

mance, school phobia, and difficulties in concentration. . . . They are constantly fighting with peers, rebelling against instruction and authority, and [are] unwilling to do school work.³⁷ 38

Children who live in abusive homes are at higher risk of juvenile delinquency, including crimes such as burglary, arson, prostitution, running away, drug use, and assaults.³⁹ Heath and coworkers compared 48 inmates incarcerated for violent crimes and 45 nonviolent incarcerated males and found exposure to television violence at ages 8-12 and maternal or paternal abuse was highly related to violent crime.⁴⁰ Lewis *et al.* found that 79% of violent children in institutions reported that they had witnessed extreme violence between their parents, whereas only 20% of the nonviolent offenders did so.⁴¹ Longitudinal studies⁴² have shown that ongoing marital violence in childhood was significantly predictive of perpetration of serious crimes in adulthood — assault, attempted rape, attempted murder, kidnapping, and completed murder.

The next generation of batterers

Studies show that boys who witness their fathers beating their mothers are three times more likely to abuse their own wives. Sons of the most violent families have a wife beating rate that is 1000 times larger than of sons of non-violent parents.⁴³ This finding is not only significant from the point of view of a society that wants to protect its future members from violence. If we look at the transition from child to abuser with greatest compassion,

it is a testimonial to the very great trauma that these boys endure. Which of us would trade places with them. Of course there must be some (at least imagined) benefits these abusers gain from their behavior because there is no data suggesting that girls who witness abuse grow up to be abusers.

Finally, we noted earlier that daughters of abused women are six and one-half times more likely to be sexually abused as girls from non-abused families. Not all of this behavior is likely to be attributable to direct actions of the father or father figure.⁴⁴ “Just as there is a high statistical incidence of boys who witness their fathers battering their mothers growing up to become batterers themselves, so there is a high incidence of fathers and brothers [perpetrating sexual abuse against] female children in those families where the father is a batterer.”⁴⁵

But aren't things different after the parents separate?

In almost three-fourths of spouse-on-spouse assaults, the perpetrator and survivor were separated or divorced at the time of the incident.⁴⁶ More than 1/4 of the women killed by a man with whom they had resided were separated or divorced at the time they were killed, according to one study in Philadelphia and Chicago. 29% of the women were attempting to end the relationship when they were killed.⁴⁷ In one study of spousal homicide, over half of the male defendants were separated from their victims.⁴⁸

Also, let me stress that the effects of witnessing violence on children

are more severe the longer the exposure continues.⁴⁹ Pett⁵⁰ found that the most important predictor of a child's social adjustment in recovery from violence was the quality of the relationship with the custodial parent, a relationship severely hampered by ongoing conflict.

Retaliation by Kidnapping

After “separation, batterers frequently abduct children as a way to retaliate against their mothers. Each year, more than 350,000 children are kidnapped in this country, most of them by fathers. More than half of these abductions occur in the context of domestic violence.⁵¹ The impact of abduction by an abusive parent can be severe. Studies⁵² have shown that this event alone can result in a Post-traumatic stress disorder.”⁵³

So you are going to take away a father's rights?

I want to pause and acknowledge that I have just taken you through a morass of horrible statistics surrounding the effects of wife beating on children. Having passed through, scratched and shaken but alive, it will seem incredible to you that, by and large, courts in this country have declared wife beating to be unrelated to a man's relationship to his child — no less than declaring a man's murder of the children's mother as irrelevant. In my role as an advocate for children, I ask you, how can you give custody of children to an abusive man when you now know what effects that choice will have on those children?

There are those who will have you focus on this issue from the perspective contained in the phrase

“But that would be taking away a man’s rights!” One could certainly play the game from this perspective and insist that if a man has a right to access and control his children, he loses it the minute he abuses a woman. There is precedent. A man who commits any other violent crime can lose his “right” to vote and to run for public office. This is a part our system of deterrents to crime. Minnesota showed the world that arresting batterers decreases the recidivism rate. Don’t you think that if fathers knew that they would *automatically* lose custody of their children if they brutalize their wife, they would stop this abuse? If they didn’t stop even though they knew of this consequence, what does that say about their concern for their children and for their relationship with their children?

But I don’t even want to begin from a diversionary discussion of taking rights from men. I want to begin from the demonstrable fact that children exposed to woman abuse are harmed by the experience. As Michelle Etlin says, “When a child comes into a hospital with gangrene, we don’t ask about how amputating the leg will affect his father’s right to play baseball with him. We operate to save the child’s life.”⁵⁴ Children of abusive men are at high risk, are we going to cut the disease from their life or are we going to worry about the rights of the disease?

But don’t children need their fathers?

But aren’t we also depriving children of their father if we deny them

custody and possibly visitation? In answer, there can be no denying that children of abusive men may feel love for them and feel pain at separation, but an amputation is expected to be a painful but necessary act to avert foreseeable harm.

What are the long-term consequences? A study done in 1987 by Furstenberg, Morgan, and Allison,⁵⁵ found that children who had not seen their father in 5 years did significantly better than those who had spent 1 through 13 days with their father in the previous year. Another study by Zill⁵⁶ found that the well-being of children following divorce is not related to father-child contact.

I must qualify this assertion by noting that wherever the father rather than a mother is the primary caregiver for the children, there would likely be severe consequences to terminating the relationship.⁴⁹ As much as we might wish it, such a role is seldom adopted by men today.

But what about visitation?

You will note that my remarks imply that demonstrable harm to children has as its rational consequence not just termination of custody, not just requiring supervised visitation, but termination of visitation. I want to acknowledge that this is really what I mean to say.

[If a child wishes to visit with the father, an affirmative attitude toward children’s rights would lead one to allow this contact, even knowing the harm it may cause, and even knowing that further contact on the part of a male child might increase his indoctrination into abusive behavior himself. However, knowing of abuser’s abilities to manipulate children’s attitudes it would be prudent to enforce a cooling-off period of 6 months or so, after which time the

child might find that he or she is happier without visitation.

I also want to acknowledge that it is a political reality of today that visitation between an abusive father and his children will not often be severed, even when the child is unwilling to go. In particular, although a judge would be in the right to establish a “no-visitiation” policy in an *ex parte* hearing for an order of protection for the abused mother, it is unlikely that a permanent “no-visitiation” order based solely on the statistical likelihood of harm to the child would survive appeal. It follows that we must develop protocols for determining actual harm to the children in question during the time between the *ex parte* hearing and the final custody decision. In any case, if we are to order visitation despite the realities of probable demonstrable harm to children, it is essential that we consciously acknowledge that we are disregarding the rational conclusion that follows from the harm.]

Of course if the abuser ever really changes his beliefs in male supremacy and ends all psychological and physical abuse, it may be a productive healing experience for a child to hear his apology. It is conceivable that a positive relationship could follow from this. Unfortunately, very few men ever really make the necessary changes.⁵⁷

Barring such a radical conversion, even supervised visitation will harm children. Lenore Walker summarizes the plight of children who witness wife battering eloquently:

Children who live in a battering relationship experience the most insidious form of child abuse. Whether or not they are physically abused is less important than the psychological scars they bear from watching their fathers

beat their mothers. They learn to become part of a dishonest conspiracy of silence. They learn to lie to prevent inappropriate behavior, and they learn to suspend fulfillment of their needs rather than risk another confrontation. They do extend a lot of energy avoiding problems. They live in a world of make-believe.⁵⁸

Consider the supervised visit in light of her remarks. Consider first the 14% of girls in abusive homes who have been sexually abused by a family member.²¹ I would like to quote from Michelle Etlin:⁵⁹

What, then, can be expected from supervised visitation with a molester who does not admit what he has done, and thus wants his victim's revelations to be disbelieved? First of all, supervised visitation sets up a paradigm for the child to follow. In the past, contact between the abuser and victim was unsupervised, and the abuser did something he made the child feel **part of**. The primary thought in a child's mind when she is being molested is — **how should she act?** Then she must carefully design how she should act **every single minute after being molested, because she never feels normal and natural again**. Mark these words: nothing, nothing, ever feels normal and natural again for a child who has been molested. So, when a supervised visit occurs, the supervisor is seen as a powerful, authoritative figure defining — **not how the abuser should act but how the child must act**.

This is the case because a child is not accustomed to anyone defining adult behavior . . . — she's used to adults defining children's behavior. Therefore, a visitation supervisor is perceived by a child as someone who lets her know what interactions are acceptable and valid — for her. Since the supervisor does not discuss the parent's abusive actions with him and the child, the child learns they are not to be discussed. Since the supervisor does not display outrage and anger toward the adult, the child learns they are not acceptable. Since the supervisor covers over the reality of this enforced access, and pretends things are normal, the child's reality is altered and her need to "pretend normal" is insidiously reinforced. Since the supervisor facilitates the availability of the child for the pleasant pastime of the adult, the child's belief in her own status as a commodity — as a prostitute, really — is sealed.

* * *

Supervised visits with a molester also set up a clear preference for the **pretend good visit** interaction and the fake smile, something that causes rapid psychological deterioration in any child who has already suffered child sexual abuse. During visits, the supervisor acts as if nothing had happened wrong between father and child, and as if the father loves the child and the extra person is there to enforce a certain kind of protocol upon, and to bless, the interaction. The protocol is cool, dishonest, fraudu-

lent and deadly. The supervisor invariably acts in a polite and **accommodating manner** to the father, setting an example for the child as to what is socially acceptable in the circumstances. What this does to the child's fragile psyche is to remove permission from the child to be angry, withdrawn, afraid or honest about her feelings. She is supposed to, and does, act as if the offense had not occurred — returning her to the condition she suffered during the abuse. At worst, every supervised visit is an emotional replay of the dissociative feelings of being molested; at best, every supervised visit tells the child, very clearly:

ACCOMMODATE THE ABUSE! You are to pretend nothing happened because Daddy pretends nothing happened and even this stranger who has authority agrees that **we all pretend nothing happened**. This is the correct way for everyone to behave.

Yes, supervised visitation, in its own subtle psycho-tyrannical manner, is **more invalidating to the child victim** than any other form of coercion.

Not all children we are considering today have been sexually abused by their father, but the principle of accommodation of the father's abuse through the act of providing a neutral supervisor carries over into visits with any of the kids from violent homes. At the very least, supervised visitation should not be

automatically assumed.

Conclusion

Let me sum up what I have shared with you. I have criticized the “Best interests of the child” criterion as being so vague that it requires us to rely upon the opinions of adults as to what “best interest” means. And the norms behind these opinions are seldom acknowledged, and thus not refutable. I then showed that courts who apply this criterion have disregarded the severe effects of domestic violence on children, even to the extent of saying that killing a child’s mother is not a sufficiently depraved act so as to deny a man custody. If it is possible for a custodial criterion to allow such twisted result to result from a jurists value system, that criterion *itself* is severely flawed.

We then looked at the flaws inherent in presuming joint custody to be in children’s best interests. I then described the primary caretaker criterion and showed that for violent families it will almost automatically remove a child from harm’s way.

Finally I presented an alternative criterion based on demonstrable and foreseeable harm to children, and applied it to cases of domestic violence. We found that some 70% of men who batter will also abuse their children, with 1/5 of these children being subjected to sexual abuse. We found that virtually all children witness or are aware of domestic abuse, even those children who do not experience it themselves. It was dem-

onstrated that the psychological and somatic effects of chronically witnessing abuse are very similar to the effects of being physically abused, a Post-traumatic stress disorder.

We found that children who witness wife beating have difficulty in school and are much more prone to juvenile delinquency and, ultimately, violent crime than children from non-abusive families. They have poor relationships with peers and siblings, learn to despise their mother for her abuse, and learn to emulate their father in his expressions of aggression.

We found that the longer the abuse witnessed, the more severe the resultant disorder. Given that assaults on women actually increase after separation and divorce, we would expect that children have more traumas associated with this phase. I was able to find only one rational conclusion from this cascade of phenomena; that a cessation of contact with the abuser is the only way to minimize demonstrable and foreseeable harm to these children.

When I look at the possibilities this society has to offer the word today, and the generations unborn, I mourn the tragedy of generation upon generation of children who are brutalized themselves, or psychologically scarred as they witness their mothers being brutalized by their fathers. How can these children, who will become adults, ever find the mental peace with which to create the miracle of justice and prosperity that is the eventual destiny of a conscious and loving species, if they

are entangled in fears and anxieties from childhood? How can we hope to bring true civilization into our lives when each day children are taught aggression and brutality as the means to power? How can we face future generations of our kind and say that we knew about the abuse and did nothing to help? Join with me; take your place at the front of our march toward freedom; let it never be said that our generation was too afraid of male violence to stand up for the lives and hearts of children.

References

- ¹ Child Custody and the Politics of Gender, Carol Smart and Selma Sevenhuijsen (Eds.) (Routledge, New York, 1989), p.90.
- ² *Ibid.*, p.43
- ³ Kirstin Sanberg (Norway) in *Ibid.*, p.105.
- ⁴ *Ibid.*, p 34.
- ⁵ *Ibid.*, p 109.
- ⁶ Levy & Chambers, The Folly of Joint Custody, 3 Fam. Adv. 6, 10 (Summer 1981).
- ⁷ Diana Russell’s random sample of 930 females from the natural population of women in San Francisco found a rate of 4.5%, and Gail Wyatt’s study of 248 women in Los Angeles, also statistically sound, found a rate of 8.1% [*The Secret Trauma: Incest in the Lives of Girls and Women* (Basic Books, 1986), p. 72].
- ⁸ *Supra* note 1, p.115 and 114, respectively, emphasis mine.
- ⁹ *Collinsworth v. O’Connell*, 508 So.2d 744 (Fla. Dist. Ct. App. 1987).
- ¹⁰ Naomi R. Cahn Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions, *Vanderbilt Law Review* **44**, 1041-1097 (1991), p.1073. This article is an excellent resource on these issues.
- ¹¹ *Ibid.*, p 1080.
- ¹² *In re Lutgen*, 177 Ill. App. 3d 954, 532 N.E.2d 976 (1988), *appeal denied*, 125 Ill. 2d 565, 537 N.E.2d 811 (1989).
- ¹³ *Collins v. Collins*, 297 S.E.2d 901, 902 (W. Va 1982).
- ¹⁴ Naomi R. Cahn, *supra* note 10, p 1073, citation No. 174..
- ¹⁵ Helton, McFarlane, and Anderson, Battered and Pregnant: A Prevalence Study, *American J. of Public Health* **77**, 1337 (1987).
- ¹⁶ Lenore E. Walker, Roberta K. Thyfault, and

- Angela Browne, Beyond the Batterer's Ken: Battered Women, Vermont Law Review 7, 1 (1982).
- 17 Lenore E. Walker, *The Battered Woman Syndrome* (1984), p. 27, 59.
- 18 Jean Giles-Sims, A Longitudinal Study of battered Children of Battered Wives, Family Relations 34, 205 (1985)
- 19 Alan Rosenbaum and K. Daniel O'Leary, Children: The Unintended Victims of Marital Violence, Amer. J. Orthopsychiatry 51, 692 (1981).
- 20 Bowker, Arbitell, and McFerron, On the Relationship Between Wife Beating and Child Abuse, in *Feminist Perspectives on Wife Abuse*, K. Yllo and M. Bograd, eds. (1988), p. 158, 162.
- 21 $14\% = 16\% \times [6.5/(6.5+1)]$ where the 16% figure is the rate of familial sexual victimization of all girls before age 18 as given by Diana Russell's statistically sound survey, *The Secret Trauma: Incest in the Lives of Girls and Women* (Basic Books, 1986), pp. 60-61.
- 22 Abraham B. Bergman, Rosanne M. Larsen, and Beth A. Mueller, Changing Spectrum of Child Abuse, Pediatrics 77, 113 (1986).
- 23 R. E. Dobash and R. P. Dobash, *Violence Against Wives: A Case Against the Patriarchy* (1979), p. 112; M. Bard, The Study and Modification of Intra-familial Violence, in *The Control of Aggression*, J. Singer, ed. (Academic Press, 1971).
- 24 L. G. Leighton, *Spousal Abuse in Toronto: Research Report on the Response of the Criminal Justice System* (Report No. 1989-02) Ottawa: Solicitor General of Canada (1989), 68% of 2,910 cases..
- 25 Mildred D. Pagelow, Children in Violent Families: Direct and Indirect Victims, in *Young Children and Their Families*, Shirley Hill and B. J. Barnes, eds. (Lexington Books, 1982), p. 55.
- 26 D. Sinclair, *Understanding Wife Assault: A Training Manual for Counselors and Advocates* (Ontario Government Bookstore, Toronto, 1985).
- 27 L. Walker, *supra* note 17, p.59.
- 28 Peter G. Jaffe, David A. Wolf, and Susan K. Wilson, *Children of Battered Women* (Sage, 1990), p. 21. See also M. S. Rosenberg, Inter-generational Family Violence: A Critique and Implications for Witnessing Children. Paper presented to the 92nd annual convention of the American Psychological Association, Toronto (1984).
- 29 J. Wallerstein and S. Blakeslee, *Second Chances* 121 (1989).
- 30 M. Pagelow *supra* note 25, p. 53.
- 31 Elaine Hilberman and Kit Munson, Sixty Battered Women, Victimology 2, 460 (1977-78).
- 32 Jaffe *et al. supra* note 28, p. 39-41.
- 33 T. Davidson, *Conjugal Crime: Understanding and Changing the Wife Beating Pattern* (Hawthorn, New York, 1978)
- 34 J. J. Alessi and K. Hearn Group Treatment of Children in Shelters for Battered Women, in *Battered Women and their Families*, A. R. Roberts, ed. (Springer, New York, 1984).
- 35 Jaffe *et al. supra* note 28, p. 72.
- 36 H. M. Hughes, Research With Children in Shelters: Implications for Clinical Services, Children Today (1986) pp. 21-25 .
- 37 E. J. McKay, *Children of Battered Women*. Paper presented at the Third National Family Violence Researcher's Conference, Durham, NC (1987).
- 38 Jaffe *et al., supra* note 28, p. 50.
- 39 Lenore E. Walker, *Eliminating Sexism to End Battering Relationships*. Paper presented to the American Psychological Association, Toronto (1984) pp. 2-3.
- 40 C. Heath, C. Kruttschnitt, and D. Ward, Television and Violent Criminal Behavior: Beyond the Bobo Doll, Violence and Victims 1, 177-190 (1986).
- 41 D. O. Lewis, S. S. Shanok, J. H. Pincus, and G. H. Glaser Violent Juvenile Delinquents: Psychiatric, Neurological, Psychological, and Abuse Factors. Journal of the American Academy of Child Psychiatry 18, 307-319 (1979).
- 42 J. McCord, A Forty Year Perspective on Effects of Child Abuse and Neglect, Child Abuse and Neglect 7, 265-270 (1983).
- 43 Stark and Flitcraft, Woman-battering, Child Abuse and Social Heredity: What is the Relationship?, in *Marital Violence*, N. Johnson, ed. (1985).
- 44 Russell, *supra* note 7, found that 4.5% of all women had been sexually abused by their father (biological, step-, foster, or adoptive). She also found that 2.0% of all women had been sexually abused by their brother (biological or half), p. 217. These rates are lower bounds on sexual abuse by batterers and batterer's sons, respectively, with 14% being the upper bound on the sexual abuse rate for "either batterer or son," as given in *supra* note 21.
- 45 Lenore E. Walker, *Terrifying Love* (Harper & Row, 1989), p. 152.
- 46 U.S. Department of Justice, Bureau of Justice Statistics, Reports to the Nation on Crime and Justice, October 1983, p. 21.
- 47 N. A. Cazenave and M. A. Zahn, "Women, Murder sand Male Domination: Police Reports of Domestic Homicide in Chicago and Philadelphia." in *Intimate Violence: Interdisciplinary Perspectives*, E. C. Viano (ed.) (Hemisphere, Washington, 1992), pp.83-97.
- 48 Bernard, G.W., Vera, H., Vera M.I., and Newman, G.,. Till Death Do Us Part: A Study of Spouse Murder. Bulletin of the American Academy of Psychiatry and the Law, 10 (1982).
- 49 Jaffe *et al. , supra* note 28.
- 50 M. Pett, Correlates of Children's Social Adjustment Following Divorce, J. of Divorce 5, 25-39 (1982).
- 51 G. Grieg and R. Heger, *When Parents Kidnap* (1992).
- 52 Neil Senior, Toba Gladstone, and Barry Nurcomb, Childsnatching: A Case Report, J. of the American Academy of Child Psychiatry 21, 579-583 (1982); Terr, Psychic Trauma in Children and Adolescents, Psychiatric Clinics of North America 8, 815-835 (1985); Palmer and Palmer, The Painful Phenomena of Child Snatching, Social Casework 65, 330-336 (1984); and Susan E. Spangler, Snatching Legislative Power: The Justice Department's Refusal to Enforce the Parental Kidnapping Prevention Act, J. of Criminal Law and Criminology 73, 1176-1203 (1982).
- 53 Barbara J. Hart and Margaret Klaw, *Brief Amici Curiae in Valentini v. Montgomery*, No 1615 Pittsburgh 1991.
- 54 Michelle Etlin, *Mother's Day Rally for Childre's Rights*, Washington, D.C., 1992.
- 55 Frank F. Furstenberg, S. Philip Morgan, and Paul D. Allison, *Am. Soc. Rev.* 52, 695 (1987).
- 56 Nicholas Zill, in *The Impact of Divorce, Single-parenting, and Stepparenting on Children*, E. M. Hetherington and J. Arasteh (eds.) (Lawrence Erlbaum Associates, Hillsdale, NJ, 1988).
- 57 Tolman and Bennet, A Review of Quantitative Research on Men Who Batter, Journal of Interpersonal Violence 5, 107 (1990); Edelson and Grusznski, Treating Men Who Batter: Four Years of Outcome Data from Domestic Abuse Project, Journal of Social Service Research 12 (1988); and Hamberger and Hastings, Skills Training for Treatment of Spouse Abusers: An Outcome Study, Journal of Family Violence 3 (1988).
- 58 Lenore E. Walker, *Battered Women* (1979), p. 46.
- 59 Michelle Etlin, What is Visitation, Journal of the Child Custody Task Group of the National Organization for Men Against Sexism (San Francisco) 4, 14 (1992).