



Advocating for Battered Mothers: The Least You Need to Know

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By Stephanie Avalon

The Battered Women's Justice Project is deeply committed to reform in the arena of custody litigation. Much of this effort involves analysis of structure and training of practitioners. It's clearly a long term project. Meanwhile, battered mothers continue to face disbelieving judges, expensive legal fees, and unending litigation as they struggle to keep custody of the children they have borne. The least we, as advocates, can do for these mothers is to listen and validate their experience, supporting them as they fight to protect themselves and their children. To do this well requires an understanding of the legal landscape in Family Courts, not always immediately apparent to advocates funded to assist with civil or criminal matters. The civil protection order, usually a streamlined process, and the criminal courts proceed in a straight forward linear manner with a recognizable beginning and end. Custody litigation, on the other hand, proceeds in anything but a linear manner and doesn't necessarily end with divorce.

I was called to work as a battered woman's advocate following my own experience being battered and utilizing the criminal and civil remedies, with varying success, to improve my own situation. The abuser in my life was arrested many, many times but not prevented from continuing his abuse despite numerous convictions for assaults and violations of my Order for Protection. Through all the various criminal prosecutions he continued to threaten my custody of our two young children. This challenge, and my own attorney's assurance that he would eventually gain access without supervision, frightened me more than any threat he posed to my own safety. While I knew my children needed protection from this man, and despite the many criminal charges and convictions, the family court continued to view his application for custody as perfectly legitimate. Thankfully, I had the assistance of advocates who validated my fears, and supported me throughout the family court process. I did not lose custody, as it turned out, but nothing before or since has caused me such panic as battling for my right to remain my children's mother, for that is really what was at stake. Men who batter know and often resent the special bond mothers have with their children. And they use this to continue their abuse. This is perhaps number one on the list of things advocates need to know when working with battered women who also are mothers.

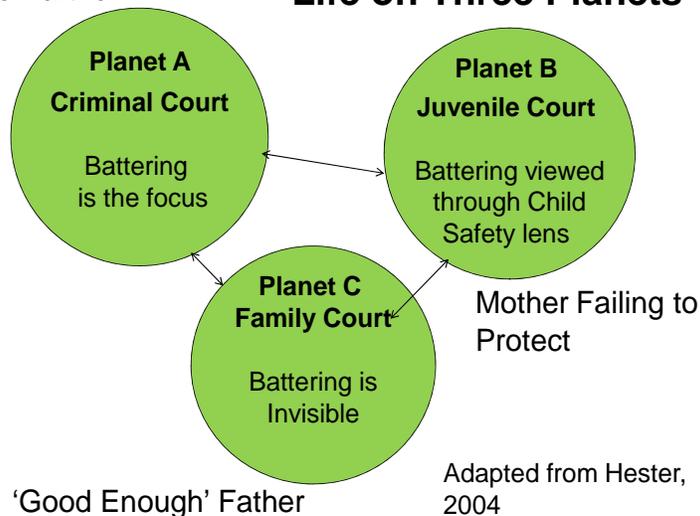
My personal experience informed my work with battered women, especially women involved in custody disputes. I could certainly understand their fears and frustrations. I tried to anticipate some of the barriers and prepare women for the process. But despite my best efforts, many women faced multiple court hearings with their attendant expenses, and judges who seldom questioned the right of an abusive father to seek custody. It seemed to me that in the courts where I worked the father's right to access always trumped the mother and/or child's right to safety.

So that's another thing to know about custody and battered mothers. Batterers not only seek custody, [they often win](#)¹. Although this seems counter-intuitive, allegations of physical or sexual abuse, whether of the father to the mother, father to the children, or both, increase the risk for losing custody. Obviously this poses an immediate dilemma, whether to name the abuse or not. This is in stark contrast to the usual approach in criminal matters where gathering evidence of abuse serves to prove the case. In a custody dispute, allegations of abuse may easily backfire on the mother. Often, however, the evidence of abuse is either unknown or disregarded. Failure to identify domestic violence in divorce cases is a prevalent and problematic issue. Findings of a Washington State Study substantiate this assertion. Almost half of the cases with a police or court history of intimate partner violence had no mention of it in the dissolution case file. Battered and non-battered women did not differ on custody awards. Restricted visitation was more likely to be imposed on identified abusers, but only when the court was aware of it. A great deal of documented evidence was unknown to the court².

So what's going on here? For starters, courts determining access to children operate on different assumptions. So different, in fact, that each court can be considered one of "three planets". British researcher Marianne Hester first described this situation in an article entitled "Future Trends"³. She elaborated on this theme in an excellent short book co-authored with Lorraine Radford called [Mothering Through Domestic Violence](#).⁴ Below is a diagram of the three planets model Hester developed showing the focus of each of three courts, criminal, juvenile, and family, when addressing access to children by abusive fathers.

Coercively Controlling
Male Partner

Life on Three Planets



¹ Meier, Joan, American Rates At Which Batterers Get Custody"

<http://www.gather.com/viewArticle.action?articleId=281474977920596>

² See VIOLENCE AGAINST WOMEN, Volume 11, Number 8, August 2005.

³ VIOLENCE AGAINST WOMEN, Vol. 10 No. 12, December 2004 1431-1448, DOI: 10.1177/1077801204270559 © 2004 Sage Publications

⁴ Radford, Lorraine and Hester, Marianne, *Mothering Through Domestic Violence*, Jessica Kingsley Publishers, London, UK 2006.

The Battered Women’s Justice Project used Hester’s three planets model to examine more thoroughly both the court’s perspective on certain questions and BWJP’s analysis of what’s missing or problematic in cases involving battered mothers. For example, we asked what, from the system’s perspective, is in each court’s goal and what is missing or problematic about those goals when cases involve domestic violence:

Answers from the systems’ point of view in larger type. <i>Italicized comments represent BWJP critique</i>	Criminal Court Domestic Violence	Juvenile Court Child Protection	Family Court/Custody Parental Access
1. Goal: <i>What’s missing or problematic?</i>	Justice; enforcement of criminal laws <i>Batterer accountability</i>	Child safety and protection from maltreatment <i>Reflective of biases in what constitutes safety i.e. whose parenting standards applied. Fails to recognize the inter-relationship of the safety of mothers and children</i>	“Best Interest of the Child” Relationships with both parents so highly valued that best outcome is assumed to be shared access. <i>Value of both relationships often overrides considerations of safety for mother & child and ignores the batterers’ undermining of the</i>

While criminal court does recognize battered women as victims, having certain rights and protections guaranteed by law, its stated *goal* falls short of the purpose we as advocates would voice as justification for using the criminal system. Child Protection’s child safety lens obscures the inter-connected relationship between mothers’ safety and that of their children. And, while family court’s “best interest of the child” sounds lofty it often ignores safety considerations and the effects of abuse on mothers and children. The link to the entire chart in a PDF document can be viewed on BWJP’s webpage called [Advocating for Battered Mothers](#).

BWJP has used this chart as an exercise in advocacy trainings, with the critique part left out. We ask advocates at tables to think about each example (like what is the stated goal of each court?) and try to provide their own examples of the unintended consequence for battered mothers. Thinking of these possible consequences in advance can prepare advocates working with women who have cases in multiple courts. This is often a sort of cost/benefit analysis.

For example, an advocate who assists women filing for civil protection orders could raise the possible custody implications as part of a larger discussion of the pros and cons of taking this particular action. Civil protection orders are supposed to focus on the safety of the petitioner and her children. But being served with a protection order may prompt some abusers to initiate divorce proceedings where custody would be litigated with the more problematic “best interests of the child” standard. Or, if the battered mother is already enmeshed in a divorce action with contested custody, filing a protection order may be viewed unfavorably by a family court judge who thinks the mother is using the system to elevate her status in the divorce case. A no contact order issued by a criminal court (if there is a charge pending) might sometimes be less risky. Still, the risk of alienating a family court judge must be weighed against

the loss of autonomy for the battered mother and the more limited relief provided through criminal no contact orders compared to civil protection orders. No remedy exists without pitfalls. Sometimes the best a woman can do is the least bad option.

Navigating the three planets can prove challenging and even contradictory for women caught up in more than one “planet”. This was, in fact, my experience, which is why the three planets analysis resonated so well with me two decades later. Adding to the problem, well intentioned practitioners with all or most of their experience on only one “planet” may give devastatingly bad advice to battered mothers about what to do on another “planet”, assuming that the presence of domestic violence would favor custody for the protective battered mother, or, on the other hand, that it was irrelevant. Too often family courts disregard evidence of domestic violence in determining custody, or worse, punish the mother for alleging abuse by giving custody or unsupervised access to the batterer.

Other articles that compare and contrast best practices in domestic violence cases to the assumptions underlying practices in family court include, “[Creating Justice Through Balance: Integrating Domestic Violence Law into Family Court Practice](#)⁵” by Andrea C. Farney and Roberta Valente. The website for The Women’s Justice Center of Santa Rosa, CA has another analysis, “[Beware Family Court](#)⁶,” focusing on major differences between family courts and criminal courts and offering some strategies to avoid the risks of family court.

Mothers can lose custody for a [variety of reasons](#).⁷ But is there any way to *predict* cases where mothers are in danger of losing custody? A number of years ago I raised this question with Denise Eng, a Minnesota advocate (now the Safety and Accountability Manager for Praxis International) who had much experience with battered mothers fighting for custody. I asked her if she could create a list of risk factors for losing custody to serve as red flags for advocates. With the caveat that this is not a scientifically developed list but rather the result of observation and experience working with battered mothers, here’s the list Denise came up with:

1. The mother alleges abuse of the child by the father, whether physical or sexual
2. The mother alleges domestic or sexual abuse of the mother by the father
3. The mother has a history of substance abuse
4. The mother has a documented history of violence, i.e. arrests for assault
5. The mother has a history of mental health problems (or she is being labeled with same)
6. The mother has a history of relationships with abusive men
7. The mother has been threatened by the abuser that he would get the kids
8. Alienation of the *mother* by the child
9. The child has significant developmental issues or health problems

⁵ Farney, Andrea C. and Valente, Roberta, [Creating Justice Through Balance: Integrating Domestic Violence Law into Family Court Practice](#) Juvenile and Family Court Journal Fall 2003 (http://www.ncdsv.org/images/Creating_Justice_Balance_Fall03.pdf)

⁶ http://www.justicewomen.com/help_family_law.html

⁷ Ludicrous Reasons Why Good & Fit Moms Have Lost Custody on the website Custody Prep for Moms (<http://www.custodyprepformoms.org/lrflc.php>)

10. The mother is viewed as uncooperative or noncompliant by the court personnel

While these factors are common in cases where batterers are seeking custody, it's easy to assume they have no bearing on whether a mother may lose custody. In the case of allegations of abuse where the children do not want contact with the father, batterers often charge the mother with alienating behavior using Richard Gardner's Parental Alienation Syndrome⁸. And why would a good mother who has a child with a disability she devotedly cares for be at greater risk of losing a custody battle? One reason is that often mothers with special needs children have to move heaven and earth to get appropriate treatment or school resources to address the special needs. This can make the mother look overly involved or obsessed with the child. A batterer can manipulate the situation to suggest the mother is fabricating the special needs for her own twisted psychological satisfaction. The label "Munchausen Syndrome by Proxy" might then reframe every caring action the mother has taken as part of a sick, deviant syndrome. All too often the problem is simply that the mother's allegations are not believed and/or she is held to a different standard, evaluated on what she has done or not done, while the father's mere intention to take up the reins of parenting are deemed sufficient for judges to award them custody.

This list of factors increasing risk of losing custody should alert advocates when listening to battered mothers and help them strategize with them about how best to proceed. Battered mothers need good representation as well as competent, informed advocates. Unrepresented women need advocacy even more. Sadly, many programs that assist women in obtaining civil protection orders are unable or unwilling to accompany the same women undergoing custody litigation. As [A Domestic Violence Victim's Guide to Getting a Good Attorney](#)⁹ clearly states, advocates and attorneys have different roles. Battered mothers need both.

Advocates who accompany women to family court proceedings are able to provide support and critical evaluation for women while attorneys speak to each other and/or consult with the judge. Advocates can also explain court proceedings from a lay person's perspective. But one of the biggest reasons for accompanying women to these hearings is learning firsthand what can happen in family court, for it is not the predictable linear process advocates are often used to. I recently accompanied a woman to a family court hearing that was scheduled after months of fruitless attempts to negotiate with the children's father. The judge, who clearly hadn't read the woman's affidavit, spent close to half an hour lecturing the parties on the value of coming to agreements and then ordered the couple to mediation. Mediation, of course, has long been known to be not only difficult but also dangerous for battered

⁸ Bruch, Carol [Parental Alienation Syndrome and Alienated Children: getting it wrong in child custody cases](#). Originally published in the Fall 2001 issue of the American Bar Association's Family Law Quarterly. PDF file available at <http://www.thelizlibrary.org/bruch/bruch.pdf>

⁹ <http://www.mnbar.org/sections/family-law/9-8-07%20DV%20Attorney%20Brochure%20May%202007.pdf>

women.¹⁰ Family court is like a minefield, full of hidden processes that may be triggered by any given court appearance. In addition to mediation, these processes may include appointment of law guardians or parenting coordinators, or order for custody evaluations, to name a few.

During the three years of my own contested custody case, my attorney told me several times that she had never had a divorce case where the file got so big. (It required a hand truck to carry the several boxes to court.) When I began hearing from battered mothers accessing BWJP's 800 number I sometimes inquired if their attorney had remarked about the size of the file or how long the case had lasted. Women responded with astonishment, saying "how did you know?" Of course it was only an educated guess. But domestic violence is the advocate's specialty. Attorneys may typically represent lots of routine divorce cases in addition to the handful of contested or difficult cases they litigate. By telling their client that they have never had a case so overwhelming, however, attorneys can make the battered woman feel even more isolated. In my experience, battered mothers in contested custody cases are enormously relieved to learn that their problems in family court are NOT unique but, indeed, part of a systemic problem of national, even global, proportions. Advocates can often provide that perspective.

Just as identifying domestic violence relieves the isolation for battered women, acknowledging the structural problems in family court validates battered mothers' sense that they've fallen down a rabbit hole to another dimension. While there are bad judges, incompetent attorneys and biased law guardians, the problems with family court are greater than the sum of their parts. As the [Native Women's Research Project](#)¹¹ discovered in their safety audit of native women's experience in the courts, the reality of being a woman and a mother in a community is essentially ignored in our system. The project identified four values absent in our courts essential to native women: respect for women, holism, integrity, and respect for relationships. These absences render our courts anathema to native women, the audit concluded.

Brought up in an era of "post-feminism," believing in fairness and equality, many custody challenged mothers are unprepared for the hostile environment of custody litigation. The Battered Women's Justice Project urges all advocates to inform themselves about custody issues, regardless of the main arena in which they usually advocate, for outcomes in criminal or juvenile court may impact mothers later, when they face custody litigation. Advocacy programs must find ways to support these mothers, not just during litigation, but for as long as the abuse continues. While today this area of work is often beyond the scope of many advocacy agencies, closing this gap can start to effectively redress what is currently a huge injustice.

¹⁰ Nancye E. Johnson, Dennis P. Saccuzzo and Wendy J. Koen "[Child Custody Mediation in Cases of Domestic Violence: Empirical Evidence of a Failure to Protect](#)", Violence Against Women, Vol. 11 No. 8, August 2005 1022-1053 DOI: 10.1177/1077801205278043 © 2005 Sage Publications 1022

¹¹ Peacock, Thomas; George, Lila, Wilson, Alex, Bergstrom, Amy and Pence, Ellen, Community-Based Analysis of the U.S. Legal System's Intervention in Domestic Abuse Cases Involving Indigenous Women, <http://www.ncjrs.gov/pdffiles1/nij/grants/199358.pdf>

