

# Addressing Domestic Violence and Child Custody Decisions

By Stuart Showalter

No time could be more appropriate for this issue than October which is Domestic Violence Awareness month. I hope to bring about awareness of the realities of Domestic Violence. Domestic Violence is a very real issue with very severe consequences for both the victim and perpetrator. Imagine being barred from ever coming near your house again. Imagine being barred from ever seeing your children again, for life, even as adults and against their wishes. It happens.

You may feel, as many do, that if he hadn't nearly beat her to death he wouldn't be in that situation. Now imagine that all of that happened but the allegation was a lie, that he didn't know it and there was no hearing. That his wife's attorney told her to make the allegation as part of a divorce strategy to gain custody and a high support order and property settlement.

Law is a delicate balancing act that ultimately is going to ensnare a few innocent for the protection of the many. We appreciate the heroics of the soldier who dives on the grenade, sacrificing his life to spare those of his mates in the bunker. As a society we have no appreciation for the many victims of false allegations of domestic violence that get ensnared to protect the few. Children being removed from the custody and care of a loving parent for even short periods of time does psychological damage and should not be condoned as part of a divorce strategy.

Domestic Violence allegations are considered a woman's "silver bullet" by the legal community. This is largely because there are plenty of benefits and no negative repercussions for making a false allegation. The father is jailed or indefinitely ordered away from the house and the children. When it comes time for a custody determination the father is reported by an evaluator to not be interested in the children. He has not visited with them since the mother filed for divorce or even made one single phone call to the house. Both of which he was barred from doing by an order in another court.

Domestic Violence is portrayed as a gender issue with men being the perpetrators and women always the victims. However, this is far from reality. The CDC reports that women actually commit more acts of Domestic Violence while men who reciprocate inflict greater injury. Young females often strike their male partners as a showing of disapproval or anger. This can be seen in schools on a daily basis but in the realm of Domestic Violence it is a non-event and overlooked.

A popular feminist has reported that studies show that about 40% of rape allegations are false. We know that there have been many people put to death for crimes they did not commit. We regularly hear of the latest prisoner being released from prison based on newly discovered DNA evidence. What we don't hear of is the flood of parents being reunited with children after a Protective Order is rescinded that was issued upon a false allegation. Why, because that is not a statutory significant change in one of the eight factors needed to then modify custody. Again, the false accuser wins and children lose a parent and that necessary foundation in life.

The damage to children from witnessing Domestic Violence is significant. The damage to children from being a collateral victim of a false allegation is also significant. While we need to acknowledge Domestic Violence we also need to acknowledge all victims and also the incidents of false allegations.

False reporting is already a misdemeanor crime and in the case of Domestic Violence it goes unpunished except for the children and those falsely accused. Protective Orders issued in Domestic Violence cases should require at least the mid-level standard of proof: by clear and convincing evidence. A false report of Domestic Violence that results in a deprivation of liberty should be a felony and prosecuted as such.

I do not want to minimize the tragedy of Domestic Violence as I was a victim. I endured the punches, kicks, hits and having items thrown at me. Many nights I feared going to sleep knowing that my child or I may get a bullet in the head. I was held prisoner by my love for my child. I witnessed her pointing a gun at my young son and threatening to kill him if I didn't do as she wished. Yet I stayed, lost contact with my friends and became a prisoner in my own home.

I was also the victim of a false allegation of rape in a Petition for an Order of Protection filed by a stalker who said she was going to make me her husband and get her pregnant. She even moved into the second house up the street from me a year after the Protective Order was issued. With no evidence I was subjected for 2 ½ years to the limitations of a Protective Order. Yet, a police officer had to warn her to leave me alone, a neighbor chased her away from my house one night and she still broke in and took property of mine. That Protective Order was dismissed on the day of the hearing I had demanded. Still, another judge denied my Petition for an Order of Protection from her.

The reality is that a Protective Order can't really protect. Take a shot at one and you will clearly see that it gets pierced by a bullet. Then you decide if it really protects. What Protective Orders can do is keep loving parents separated from their children for indefinite periods of time. Although Domestic Violence does occur in some divorce cases, where it clearly can and should be the reason for the divorce, it is often being abused in many others. I believe greater steps need to be taken to ensure that the abuse of this legal tool, which is a pandemic problem, is eliminated.

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