

Allen M. Bailey

Family & Intimate Partner Violence

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Restricting Contact With Toxic Fathers

by Allen M. Bailey, J.D.*

Editor's Note: Should children have ongoing contact with their abusive fathers after their parents have separated? That question is the focus of this article. The research indicates that contact with abusive fathers harms children, whether they abuse the children or their former partners. Yet judges will often rule in favor of supervised custody. The author argues that minimizing, or even completely eliminating, contact is actually in children's best interest when their fathers are abusive.

How can our courts protect the children of abusive and controlling fathers after their parents separate? In at least some cases, all contact with such fathers can be ended and the court can be confident that the children will not be harmed.

For years, most mental health professionals have told lawyers and judges involved in child custody litigation that children must have post-divorce relationships with even some of the most abusive fathers (Jaffe, Lemon & Poisson, 2003, p. 59). They do so despite research that has shown, to an increasing degree over the past 30 years, that children are harmed by exposure to violence between their parents (Bancroft & Silverman, 2004). They do so despite research findings that children of violent parents are themselves more often physically abused (*Id.*; Holden *et al.*, 1998). They do so despite research that has demonstrated that controlling and abusive men are likely to repeat their

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use of violence in successive intimate relationships (Jaffe, Lemon, & Poisson, 2003). These men, who use coercive control as their dynamic, perpetrate the majority of domestic violence in the United States (*Id.*). The atmosphere in their homes is aptly described by Rossman and Ho (2000):

Children growing up in spouse abusive families live in a type of war zone. Sometimes they feel they can predict the "attacks" and sometimes the aggression is unexpected. This leaves them with a sense of danger and uncertainty.

Why would any thinking judge leave a child in such a "war zone?"

Although the American Psychological Association and the National Council of Juvenile and Family Court Judges have told us that children should not be in the legal or physical custody of parents who batter, they

Why would any thinking judge leave a child in such a "war zone?"

did not specify what the alternative should be (*Violence and the Family; Report of the American Psychological Association Presidential Task Force on Violence and the Family*, APA, 1996; *Family Vi-*

olence: A Model State Code, National Council of Juvenile & Family Court Judges, 1994). Supervised visitation has been recommended for some of these cases (Hardesty & Campbell, 2004). Other courts simply award the abusive parent less time with the children than the protective parent receives, disregarding the sometimes overwhelming safety concerns (Jaffe, Poisson, & Cunningham, 2001). Are either of these methods adequate to protect these vulnerable members of dissolving families? We know that men who batter generally do not stop this behavior when a relationship ends and that such men are much more likely than other men to directly inflict physical and sexual abuse on children in their care (Shepard, 1992; Williams, Boggess, & Carter, 2001; Jaffe, Poisson, & Cunningham, 2001, p. 192). So why not simply *end all contacts between these abusers and their children*, at least until the children are old enough to protect themselves?

The authors of two chapters of *Parenting by Men Who Batter; New Directions for Assessment and Intervention*, Jeffrey L. Edleson and Oliver J. Williams, Eds., Oxford University Press (2007), remind us that research reported over the past 20 years has already given us the information we need to make the appropriate protective rulings in cases where intractable and abusive fathers are involved. In their chapter on "Shared Parenting After Abuse," *Id.* at 41, Carolyn Y. Tubbs and Oliver J. Williams state that ". . . children benefit from less, rather than more, contact with abusive or neglectful parents [citation omitted]." More significant, in their excellent chapter on "Assessing the Best Interests of the Child," Peter G. Jaffe and Clair V. Crooks urge their colleagues in the field of psychology to expand research into outcomes

of particular visitation arrangements in the context of domestic violence, saying:

For example, a recent study looking at behavioral and emotional outcomes with preschool-aged children following separation in the context of domestic violence identified a potential catch-22 (Smith Stover, Van Horn, Turner, Cooper, & Lieberman, 2003). On the one hand, children who did not see their fathers at all were more likely to have internalizing problems independent of the extent of the violence they had witnessed. On the other hand, children who did see their fathers exhibited externalizing behavior problems, predicted in part by the extent of the violence experienced by their mothers. *Overall, the effect size of children's problems if they had been exposed to severe violence was larger than the negative effects of being deprived of contact with their father. (Id. at 59, emphasis added.)*

While Jaffe and Crooks do not necessarily recommend the "no contact" option, they do list it as one of the options available to courts dealing with these violent parents (*Id.* at 56).

In pursuing the idea that psychologists, custody evaluators, judges, and custody lawyers may be choosing the more harmful alternative for children of an abusive father, one must first examine the work of those who have dealt with it already. In Stover et al. (2003), the authors stated:

A recent review of the literature on father visitation examined 38 studies published since 1990 . . . [t]his review did not yield strong support for the relationship between father visitation and child well-being. Only 42% of the studies reviewed showed that father contact predicted any aspect of child well-being.

Some studies (Furstenberg, Morgan, & Allison, 1987; King 1994) indicate that despite the feelings of loss and anger children experience over the termination of contact with their fathers, this may be the appropriate decision when considering the overall outcomes for the children.

The authors discuss a study by King and Heard (1999) that found (based on mothers' reports) that frequent contact with fathers did not benefit children more than infrequent contact. On the other hand, children who had frequent visits with fathers and whose mothers were dissatisfied with the visitation scheme were *less well adjusted and had lower indices of global well-being*. A more concrete statement came from another of the studies King and Heard reference: in Furstenberg *et al* (1987), in a study involving a statistically significant sample of children, the authors state:

It is apparent that these results provide little, if any, support for the hypothesis that paternal contact is beneficial to the child. . . . [a]n examination of the coefficients . . . revealed an implausible pattern: children who had not seen their father in five years did significantly better than those who spent between 0 and 13 days with their father in the previous year. . . .

In sum, we find that paternal contact is unrelated to a variety of well-being measures in the 1981 data. . . . Apparently, children in maritally disrupted families were not doing better if they saw their fathers more regularly than if they saw them occasionally or not at all.

It bears noting here that the sample used in Furstenberg's study did not focus on children whose parents had experienced domestic violence. (In contrast, the authors conclude that children's relationships with their mothers *are* important to the children's well-being.) The authors continued:

The general absence of effects of paternal participation on children's well-being is surprising in view of the widespread belief that children benefit from maintaining contact with their fathers. In addition, the effects of father's participation did not depend on the sex of the child or the presence of a stepfather. . . .

The policy implications of findings reported here are unsettling because they clash with prevailing practice that attempts to increase paternal involvement. On the basis of our study, we see no strong evidence that children will benefit from the judicial or legislative interventions that have been designed to promote paternal participation, apart from providing economic support. . . .

While the authors speculate that mothers may benefit from fathers' sharing responsibilities related to the children and that fathers might receive emotional benefit from contact, they said their data only suggested that continued contact with fathers *does not result in uniformly positive outcomes for children*. Their conclusion, published *two decades ago*:

This topic surely merits more careful attention by researchers and policy makers. It is disconcerting to discover weak evidence for an almost commonplace assumption in popular and professional thinking—that children in disrupted families will do better when they maintain frequent contact with their fathers. In the absence of better and more convincing evidence, policy makers rely on conventional wisdom that is, unfortunately, an unreliable guide for social reform.

Among the few writers to address this issue in the context of control and abuse were King and Heard (1999). Their study dealt with the interrelationship of father visitation, mothers' satisfaction with the visitation schedule, and how these matters affected the children's well-being. They reported overall satisfaction with father-child contacts *except in those cases where the mother was unhappy with continued involvement by the father*. As for the latter group, the authors came to the following conclusion:

Finally, not only is father visitation not positively associated with child well-being, as previous research based on national surveys has found,

but in families in which mothers are dissatisfied with high levels of father contact, children appear to be the worst off. The presence of conflict does not alter these results.

The portion of these cases involving "conflict," as King and Heard refer to it, was a small minority of cases, according to the authors. It is likely that a substantial portion of them involved abuse. There is only limited knowledge and skill on the part of many professionals who try to detect the interpersonal violence dynamic by interviewing victims (Jaffe & Crooks, 2007, pp. 50-51). In fact, women are often traumatized by the physical abuse they encounter in their relationships, leaving them reluctant to disclose to others the facts of the abuse (Levendosky & Graham-Bermann, 2003). Consequently, one could perhaps speculate that *many* of the cases the authors believed were non-violent actually do involve a history of coercive control. See, e.g., Jaffe, Lemon, and Poisson (2003) at p. 5.

Because of the frequent failure of professionals who deal with child custody disputes to make safe decisions regarding placement of children, particularly the children of controlling and abusive men, an entire new generation of children who were exposed to domestic violence in their families has been sentenced to years of further mental abuse and, in many cases, physical abuse, *where a safer alternative was known all along*. The adverse effects Jaffe and others wrote about before 1987 were bland compared to what is now known

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about how exposure to domestic violence affects children. (See, e.g., Wolfe, Jaffe, Wilson, & Zak (1985), Rossman & Ho (2000), and Rossman (1998).) Children are affected directly and indirectly (Holden *et al*, 1998).

And the list grows: in recent years, neuroscientists have found that very young children who are traumatized by seeing their father assaulting their mother may undergo physiological changes that can have lifelong effects on their behavior (*Excessive Stress Disrupts the Architecture of the Developing Brain*, National Scientific Council on the Developing Child (2005), Working Paper No. 3, retrieved 6-23-06 from <http://developingchild.net/reports.shtml>).

The harm to children does not end with divorce or separation of the parents, either, and the severity of abuse during the relationship is related to the adverse effects the children experience after separation (Stover *et al*, 2003, at 1160 ff). In fact, women tend to be at a higher risk for more extreme abuse

following separation, especially in connection with visitation; that exposure of the mother to continuing physical or mental abuse resulted in *increased* behavioral problems in the children (*Id.* at 1162).

The further research suggested 20 years ago by Furstenberg and his cohorts, which has been *again* suggested by Jaffe and Crooks (2007), might give the civil legal system the solution sought by Joan S. Meier in her "Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions" at 11 *Journal of Gender, Social Policy and the Law* 657 (2003), p. 716. That is, if judges who make child custody decisions could actually be educated about the dangers awaiting children of controlling and abusive men, as well as the fact that children *may not even be further harmed by removing the abusive parent from their lives entirely*, those judges could truly be free to focus on *the safest* alternatives (if there are any) for children after parents end a violent relationship. That would include elimination of all contact between father and child in appropriate cases.

This is not a neat little package with a set of "safe and approved" selections for judges and others in the system to use in these high-risk cases. With sub-headings of "Fathering Intervention With Men Who Batter Can Be Problematic and Even Dangerous" contrasting with "Fathering Intervention With Men Who Batter Is Justified and Important," Peled and Perel (2007) suggest establishment of a comprehensive program to treat men who batter; unfortunately, they also state it should only be used with a type of abuser whom experienced professionals know is seldom seen in child custody litigation—"men who batter who have acknowledged and taken responsibility for their abusive behavior, as well as made significant progress in stopping it" (*Id.*). The majority of batterers are the ones who will not change their abusive and controlling behaviors, and their children warrant more discriminating treatment from our courts.

The rational inference from a judicial system that (a) should be aware that most batterers don't change, and (b) that children may not be harmed by ending contacts with abusive fathers, where the system still does not end contact between the children and these toxic parents, is that the court's decision is driven by gender politics and not the best interests of the children involved.

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