

Fathers & Families:
A Critique of the Scientific Basis
for Key Assertions in
“Breaking the Silence: Children’s Stories”

Executive Summary

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Intent of this Review

The producers, Professor Meier, and others have claimed that scholarly research support exists for the key assertions in the PBS documentary “*Breaking the Silence: Children’s Stories.*” The intent of the following review is to examine the research foundations for the key assertions and impressions made by the film.

We do not claim to have reviewed the entire literature on the questions that are raised. To do so would be a massive undertaking. Instead, we have focused more narrowly on the specific publications identified by the producers and the major figures in the film as supporting their claims. In particular, we have reviewed 18 of the most relevant studies, as well as any actual data these publications quote from other sources. Since the key figures in the film are put forward as experts, it is reasonable to rely upon their identification of the most important publications supporting their point of view.

[The end of this document contains Michael Lesher’s critique of our review of Neustein & Lesher’s *From Madness to Mutiny*, along with Ned Holstein’s response to Lesher’s critique.]

Specific Assertions of Concern

This critique responds to the film itself, the Viewer’s Guide, statements made by the producers and/or key figures in interviews, press releases surrounding the film, and communications directly from Connecticut Public Television and Professor Joan Meier to Fathers & Families. The primary emphasis will be on assertions contained in the film itself.

Among other claims, the film and/or its supporting materials allege the following:

- “In custody cases where the mother alleges battery by the father, the father is awarded custody two-thirds of the time.”
- “...Numerous studies have confirmed that approximately 75% [of custody disputes that go to court] involve a history of violence.”
- “Many studies of awards of custody have found that large percentages award sole or joint custody to abusive fathers.”
- “When an advocate raises a claim [of domestic violence], it enrages the court, the equivalent of throwing a bomb. It is seen as outrageous and extreme, and you’re going to have to meet an extremely high burden of proof to prove it’s true.”
- “Gardner’s research [on parental alienation syndrome] has been thoroughly debunked by the American Psychological Association and every other credible scientific expert who’s looked at Gardner’s work has said there’s no scientific validity to it...”
- “Children are in most danger from their fathers.”

Key Findings

- 1) **While the film and those connected to it repeatedly assert that batterers win shared or sole custody approximately 67% of the time, the only data available in the cited publications shows results of 3% (American Psychological Association,**

- p. 39), 9% (Kernic), 16% (Neilson), and 18% (Supreme Judicial Court of Massachusetts).** For various technical reasons, none of these studies is precisely comparable to the figure quoted by the film's advocates, and all of the publications are either faulty in design or reported in insufficient detail to reach conclusions. Nevertheless, the results certainly fail to support the film's contentions, and strongly suggest contrary conclusions.
- 2) **No data whatsoever are presented to support the film's central assertion that 75% of fathers who seek custody of their children over the mother's objections are batterers.** The references cited by the film's supporters in most cases are a round-robin of assertions, in which the same pool of authors repeatedly cites each other's opinions, without supporting data.
 - 3) **"*Breaking the Silence: Children's Stories*" will be harmful to children if it succeeds in its apparent aim of casting doubt on the fitness of fathers who seek to share in the care and upbringing of their children after divorce.** A painstaking review of 18 publications that those connected with the film have most frequently cited in support of their assertions finds a hodgepodge of unsupported and lurid accusations against divorced fathers as a class. If similar unsupported accusations were made against minority ethnic or religious groups, many would consider them inappropriate in a democratic and pluralistic society.
 - 4) **Professor Murray Straus, a noted and widely published domestic violence researcher, has charged in writing that two of his research studies have been misrepresented in the Viewer's Guide that accompanies the film.**
 - 5) **According to Professor Straus, "The evidence from many studies, including Federal statistics on child abuse, shows that mothers physically abuse children at a slightly higher rate than fathers," precisely the reverse of the film's claim that "children are in most danger from their fathers."**
 - 6) **The American Psychological Association has publicly repudiated some of the claims by the film and its supporters about the organization's views on "Parental Alienation Syndrome." While the film asserts that the APA denies the existence of PAS, PAS is in fact controversial within the APA, which has on several occasions produced materials supporting the validity of the Syndrome.** We know of no instance where the APA has denied the existence of parental alienation, as opposed to PAS.
 - 7) **The document alleged to have been written by the American Judges Association was actually written by a different organization, the American Judges Foundation. Only one judge participated in the authorship.** The lead author was Dr. Lenore Walker, a well-known domestic violence activist. A woman described as a marketing consultant from Manasquan, New Jersey is also listed as an author. Like the other publications, this one contains unsupported assertions, not data.

- 8) **A separate investigation revealed that Sadia Loeliger, portrayed in the film as a heroic protective mother, was found by a California Juvenile Court to have committed multiple acts of child abuse, for which both her daughters were adjudged to be dependents of the Juvenile Court.**
- 9) **Professor Joan Meier, a key figure in the film, identifies herself in writing as among those “who start with an advocate’s perspective,” and distinguishes herself from those who start from a “neutral” perspective.** She also describes some of her own proposals as “radical.” This calls into question the film’s balance and objectivity, especially where no opposing point of view is presented.
- 10) **In a separate investigation, Lundy Bancroft, another major figure in the film, is found to have boasted that he was fired by the Massachusetts family courts as a domestic violence educator because of his extreme views.** Again, this calls into question the film’s balance and objectivity, especially where no opposing point of view is presented.
- 11) **The grown daughter of Amy Neustein, an author whose research is repeatedly pointed to by Professor Meier and other figures connected with the film, has written a detailed repudiation of her mother’s persistent and flagrant charges that Ms. Orbach was sexually molested as a child by Neustein’s ex-husband.**
- 12) **The two publications by Bancroft frequently cited by those connected with the film both state, “The project also makes no claim regarding the statistical significance, ability to generalize to a larger population, or the overall extent of the reported problems either in Massachusetts or elsewhere.” Yet the film uses these publications to create the impression that the problem of abusive fathers gaining custody is all pervasive.**
- 13) **Professor Meier repeatedly points for validation to a 2003 article in an alternative newspaper which resulted in \$1 million jury verdict for libel against the publisher.** Not only is an alternative newspaper an inappropriate citation for a scholarly work, but the article itself is simply a participant in the round-robin citations of the same pool of authors.

Specific Publications

Meier, J. S. (2002). “Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions.” *American University Journal of Gender, Social Policy and the Law*, 11, 657-731.

In this article of 74 pages, Prof. Meier self-identifies herself as among those “who start with an advocate’s perspective” (p. 664), as distinguished from those who start from a “neutral” perspective. She also describes some of her own proposals as “radical.”

The article is densely footnoted, but most citations are to secondary and tertiary sources rather than original data sources. Almost all other citations are to individual case histories, newspaper articles, opinion pieces and court decisions about individual cases. Sources of this sort are generally inappropriate for a scholarly article that alleges broad societal patterns.

In this article, Prof. Meier repeatedly states that most batterers win partial or complete custody, as do sexual abusers of children, in her view. She states that most men who contest custody are batterers. She also asserts that "...it is becoming almost normal to see a claim of 'alienation' wherever abuse is alleged in a custody cases." (p. 711)

Unfortunately, no original data are presented in the text or footnotes that support her assertions.

On page 662, Prof. Meier states that trial courts "appear to be granting custody to alleged batterers more often than not." She cites the following sources for this assertion:

- Kristen Lombardi. This refers to a fevered four-part article that appeared in an alternative newspaper, the Boston Phoenix, in 2003. This article made many of the same assertions as "*Breaking the Silence*," drawing from the same pool of advocates. A jury found the newspaper guilty of libel for this article, and awarded nearly \$1 million to a father accused of abuse in the article. In any case, an alternative newspaper is not a proper citation for a scholarly article.
- Supreme Judicial Court of Massachusetts' Gender Bias Study of 1989, as quoted by Lombardi. Again, Lombardi is not a reputable source. Review of the original document reveals data on pages 87 and 88 gleaned from 465 court records in three Massachusetts counties. The data are limited to the custody orders that accompanied the granting of restraining orders, not custody litigation. The researchers found that "custody was granted [to mothers] in only 68% of the probate court cases in which the petitioner requested custody of minor children and in 89% of district court cases." About 80% of all restraining orders in Massachusetts are granted in the district courts. Weighting the above results accordingly, we find that in about 82% of restraining orders, custody is given to the mother. Thus, fathers receive some form of custody in only 18% of such cases, far less than stated by Prof. Meier.
- American Judges Association. This publication is reviewed below. It does not provide data relative to the assertion, and was not even written or published by the American Judges Association.
- Bancroft and Silverman. Two of their publications are reviewed in this document (one of them is identified below as "Cuthbert, C. et al.") and neither provides data to support the assertion.
- Linda Neilson, "Partner Abuse, Children and Statutory Change: Cautionary Comments on Women's Access to Justice." Neilson reported that in a study of 1,147 randomly selected cases in a Canadian jurisdiction, abusers won joint, split

or full custody in 16% of the cases. This citation, if accurate, directly contradicts Meier's assertion that batterers win "more often than not."

- Meier here refers to "my own...admittedly unscientific survey of many of the United States cases..." First, she here admits that the survey is unscientific. Second, she identifies 38 cases "in which mothers alleged abuse and sought to limit fathers' access to children..." Since approximately one million children per year are subjects of custody decisions, if 38 cases spread out over 10 years represent "many of the United States cases," then the problem Meier writes about, and which "*Breaking the Silence*" reports on, is a miniscule problem. Moreover, all of these 38 cases are appellate cases; appellate cases are a small fraction of all cases, and quite unrepresentative because only those cases in which the evidence of error by the trial court is particularly strong are appealed. Finally, footnote 19 on page 662 again demonstrates Meier's propensity to equate fathers against whom there is an *allegation* of abuse with "batterers."

On page 683, Meier asserts that estimates of the prevalence of domestic violence among couples in conflict over visitation or custody go as high as 75 percent, a claim also made in "*Breaking the Silence*." The only reference for this assertion is Bancroft and Silverman, whose studies, reviewed below, are manifestly inadequate to support such a claim.

Also on page 683, Prof. Meier asserts that fabricated allegations of child sexual abuse are "quite rare." She then quotes the Association of Family and Conciliation Courts, who found that only 50% of such allegations could be validated. Perhaps Prof. Meier is correct that "fabricated" allegations are quite rare, but *untrue* allegations are obviously quite common. She then cites "a more recent exhaustive study" by Kathleen Faller. Unfortunately, she relies on Lombardi's newspaper article account of the Faller study, an unacceptable source for such an important matter.

On page 686, Prof. Meier states that "...it is highly unusual for a battered woman in private litigation to be recognized by a court to be sincerely advocating for her children's safety." Her citations are Lombardi, the Wellesley Battered Mothers Testimony Project (reviewed in this document), and the appellate cases discussed above. Again, the citations fail to establish the assertion.

On page 689, Prof. Meier states, "...women who allege fathers are abusing children are increasingly being subjected to draconian punishments, including complete loss of contact with the children." Here Meier cites "preliminary research" from a California NOW study, as reported by Pamela Burke on a website in 2002. A second-hand report of unpublished "preliminary research" by an advocacy organization is inadequate. She also cites Amy Neustein's report of over 1,000 cases, reviewed in this document. Finally, she again quotes Lombardi's libelous alternative newspaper article. Once again, the citations do not establish the assertion.

On page 697, Prof. Meier refers to "...custody courts which appear to penalize a mother who is suffering from the effects of domestic violence...by awarding custody to the abuser." Here she

cites a long publication by Elizabeth Schneider. If Schneider has data to support Meier's assertions, they are not presented in Meier's article.

Finally, on page 725, Prof. Meier refers to "...the entrenched attitudes of courts that prevent them from taking seriously battered mothers' claims, and that lead them repeatedly and disturbingly to place children (and women) at unnecessary risk. Here again, Meier paints with a broad brush, implying that "entrenched attitudes" are widespread. No citations are offered for this quote.

Prof. Meier also addresses Parental Alienation Syndrome. Here she claims that the American Psychological Association "has rejected it as a clinical phenomenon and states that there is no data to support..." We have already brought to your attention that the APA has stated that "*Breaking the Silence*" misstates its position on parental alienation syndrome, as Meier does here. In footnote 106, Meier states that in over ten years of litigating custody cases involving alleged batterers, she has "...never experienced a client expressing comparable venom about her abuser, the children's father." In other words, she expresses a view so extreme and absolute that it destroys its own credibility. On page 711, she again states that claims of alienation are becoming almost routine in custody cases involving allegations of abuse, but gives no reference.

Meier, J. S. (1993). "Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice." *Hofstra Law Review*, 21, 1295-1366.

In this article, Prof. Meier states, "When a father violently attacks a mother...custody courts routinely reject battered women's claims as fabrications, exaggerations, or irrelevant to the welfare of their children." The only empirical support she offers for this assertion is in footnote 20, in which she describes one case that occurred in which a judge denied a protection order on the basis that he did not believe the woman's claim that she feared her husband. Despite this meager foundation, sweeping generalizations are sprinkled throughout.

Cuthbert, C., Bancroft, L., Silverman, J. et al. (2002). *Battered Mothers Speak Out. A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts*. Wellesley Centers for Women Wellesley, MA

This publication is also known as the Battered Mothers Testimony Project from the Wellesley Center for Women, or BMTP-Wellesley.

This document is a self-published monograph, not a journal article.

Forty self-identified battered mothers participated in four-hour interviews. A criterion for participation was "expressing grievances about family court processes." Thus, battered women who had no grievances against family court processes were excluded from the study. Participants were "recruited through social service agencies and legal providers." And, "battered women's advocates...also contributed significantly to participant recruitment." "Snowball sampling" (recruiting by word-of-mouth) through participant women was also utilized. This

methodology can also be called “cherry-picking,” since it will tend to recruit precisely those subjects who are most likely to confirm the authors’ hypothesis.

On page 8 of the document, the authors state, “The project also makes no claim regarding statistical significance, ability to generalize to a larger population, or the overall extent of the reported problems either in Massachusetts or elsewhere.” Nevertheless, the conclusions and recommendations elsewhere in the document ignore this sensible admonition and are far-reaching, and the film has adopted the view that the experiences of these women are, in fact, typical of society at large.

In the entire 106 page report, only one line is devoted to describing the evidence that violence actually occurred. This is found in footnote 54 and reads in its entirety as follows: “37/40 women reported that they have ‘documented evidence’ of abuse, such as medical records, police reports, and 209A restraining orders and affidavits.” The quality of the documentation is not examined or commented upon in the entire report. It is well known that all of the kinds of documents listed above may state that domestic violence occurred based solely on the claim of the subject.

The women report a wide variety of heinous acts by their ex-partners, and these constitute the main data in the report. 22/40 reported abuse while pregnant; 18/40 reported physical abuse of children; 23/40 reported that their ex-partner violated restraining orders; 29/40 reported being harassed and intimidated; 40/40 reported that the ex-partner abused the children physically post-separation; 16/40 reported that he abused the children sexually post-separation.

Reported outcomes included the following: 26/40 reported that the ex-partner had some form of custody at some point during litigation; 15/40 reported that the partner “retained” sole or joint physical custody after separation, and that all 15 abused both the woman and the children both before and after separation.

The multiplicity and severity of complaints suggest that either 1) this was a very highly selected group who had experienced the most extreme forms of domestic violence, and who do not represent the majority of cases of domestic violence; or 2) the allegations are exaggerated or fabricated, in whole or in part, or of little importance in the overall picture, and were so adjudicated in many cases. Since the latter suggestion, if true, would invalidate the entire report, it is strange that the authors took no steps to authenticate the claims. For instance, they could have examined the alleged documentary evidence. In addition, the report points out that if there is a restraining order in effect, or if there was a prior order, judges in Massachusetts are required to justify an order of shared legal or physical custody by producing written findings of fact. (See page 30). Thus, in the majority of cases, the courts’ findings of fact could have been consulted to help determine whether violence had, in fact, occurred, and why in 15 cases, shared or sole physical custody was retained by the accused partner.

Footnote 52 acknowledges that “...in some cases, women batter men.” Nevertheless, no effort was made to recruit battered men for this project. It would have been useful to see whether battered men were treated similarly to battered women; if so, the alleged failures of the court

would seem to have more to do with the nature of the complaints than the gender of the complainant.

The text states that interviews of domestic violence advocates confirm the accounts of the 40 battered women. This statement is misleading, since the advocates did not confirm or deny the specific experiences reported by the subject women, but simply commented on their perceptions of how the court system operates in general.

Finally, no mother is reported as having been accused of parental alienation even though a section of the report is devoted to ways in which batterers allegedly manipulate the court system. Thus, this study cannot be used to support the assertion in “Breaking the Silence: Children’s Stories” that accusations of parental alienation are commonly used by batterers to gain custody.

The participants were not asked whether they themselves had committed child abuse or intimate partner violence.

Silverman, J. G., Mesh, C. J., Cuthbert, C. V., Slote, K., and Bancroft, L. (2004). “Child Custody Determinations in Cases Involving Intimate Partner Violence: a Human Rights Analysis.” *American Journal of Public Health, 94(6), 951 – 957.*

This document is a recap of the Battered Mothers Testimony Project – Wellesley, now published in a peer-reviewed journal. The authors are the same, except for one fewer, but only 39 cases are reported, instead of the 40 reported in the original document. No explanation is offered. There seem to be minor differences in the incidence of various kinds of abuse from the original document, but the general import is the same.

There is no mention of parental alienation.

The publication states, “It is important that these data be recognized as documentation of a set of issues based on reports of affected individuals (i.e., battered women referred to the project based on their dissatisfaction with family court outcomes or processes) rather than an attempt at definitive research into the prevalence and nature of the types of cases discussed. Research to answer these critical questions should include a representative sampling of cases, complete review of case files including GAL reports..., judicial findings and transcripts of courtroom statements, and collection of attorney reports.”

Despite the qualifications given above, which are appropriate, other portions of the article use sweeping language in asserting a widely prevalent problem, and the same tone pervades “*Breaking the Silence: Children’s Stories.*” Also, as in the Battered Mothers Speak Out publication, the authors assert that substantiation exists for the claims of domestic violence, yet there is no way for the reader to assess the quality of the alleged substantiation. As mentioned above, because judges in Massachusetts would be required to write specific findings of fact in order to give custody to someone against whom domestic violence has been alleged, it is puzzling that this obvious source of documentation was not presented in the publication.

American Psychological Association, *Violence and the Family. Report of the American Psychological Association Presidential Task Force on Violence and the Family. Published by the American Psychological Association, Washington, D.C., 1996.*

This document is a self-published monograph, not a book or journal article. It is 141 pages in length. It was written by a committee, and it is impossible to know which individual wrote what sections. The committee was co-chaired by Dr. Lenore E. Walker, a well-known domestic violence advocate, and Dr. J. Renae Norton, identified as a clinical psychologist in Cincinnati. No academic affiliation is listed for either of the co-chairs. The document contains no references for its assertions, and does not appear to contain original data.

One page 39, the document reports data that directly contradict a central assertion of “*Breaking the Silence*.” “In a survey of California shelters for battered women, shelter personnel reported the following occurrences among their approximately 100,000 residents and hotline callers during a one-year period in order of magnitude:”

“Batterer receives custody despite physical abuse 2,997 (3%)”

No reference is given for this data. The figure of 3% is dramatically lower than the assertion in “*Breaking the Silence*” that approximately two-thirds of batterers who contest custody prevail.

Later, in direct contradiction of its own data, the report states on page 100, “Reports indicate that judges rarely follow this recommendation and often award custody to batterers.” No reference is provided to support this assertion.

Although the document abounds with recommendations, the only recommendation referring to custody and domestic violence is quite weak, reading, “In matters of custody, preference should be given to the non-violent parent whenever possible...” (p. 99) Similarly, parental alienation apparently is not considered a major issue, since it is discussed only briefly, on pages 40 and 100. Here it is stated that “There are no data to support the phenomenon called Parental Alienation Syndrome...” No references or details are offered.

Interestingly, the “Battered Woman Syndrome” is repeatedly presented as accepted scientific fact, even though it does not appear in DSM-IV, a frequent criticism leveled at “Parental Alienation Syndrome.”

In summary, this monograph is not a scholarly publication. Lacking references and original data, it provides no empirical support for the assertions made in “*Breaking the Silence*.” To the extent the unreferenced data it contains is reliable, it contradicts “*Breaking the Silence*” on the frequency with which batterers obtain custody. Accordingly, it attaches little importance to the alleged need to improve family court procedures to prevent batterers from gaining custody. Parental alienation is barely mentioned in this lengthy document, and is assigned no major importance.

Jaffe, P., Geffner, R. (1998). “Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service and Legal Professionals.” In Holden et al. (Eds.), *Children Exposed to Marital Violence: Theory, Research and Applied Issues*. American Psychological Association, 371 – 396.

This article makes many assertions similar to those made by the film. It states that the most accurate term for domestic violence is “maltreatment of women and children, because women and children represent the vast majority of the victims.” In other words, only men commit real domestic violence. This assertion is not backed up by data, and although many articles in the literature make similar assertions, there are over 100 published articles demonstrating very substantial proportions of domestic violence initiated by women. The Jaffe article also asserts that parental alienation syndrome does not exist and that false allegations of abuse in divorce cases are rare. The authors also assert that the failure of courts to identify domestic violence in divorce proceedings is a pervasive problem.

This paper presents no data to support its assertions. Nor does it give citations to articles in which such data allegedly exists. The statements are based entirely on the authors’ “twenty of years of completing custody and visitation assessments.” While we do not demean the importance of long personal experience, eventually, accusations of pervasive, serious problems in society require data.

Jaffe, P. et al. (2002) *Access Denied: The Barriers of Violence and Poverty for Abused Women and their Children after Separation*. London, Ontario, Centre for Children and Families in the Justice System.

Prof. Meier emailed Dr. Ned Holstein on October 10, 2005 and stated that of the “high conflict cases” that go to court, “numerous studies have confirmed that approximately 75% involve a history of violence. A summary of these studies is contained in Jaffe et al., *Access Denied...*”

Contrary to Meier’s assertions, nowhere in *Access Denied* is there a statement to the effect that, “numerous studies have confirmed that approximately 75% involve a history of violence.” Neither are there any summaries of studies or references in support of the statement.

The only data reported in *Access Denied* suffers from the same “cherry-picking” apparent in many of the other publications reviewed in this critique, such as the Battered Mothers Testimony Project, the Silverman article and others. Here the authors placed ads and posters to attract 62 women who claimed a history of intimate partner violence and who had custody of at least one child. There was no sampling of a population, which is the best way to evaluate a purported society-wide problem. The definition of IPV utilized in this study is very broad, and includes exhibiting jealousy, limiting contact with family and friends, name calling, and controlling access to family income. Less than half of the recruited mothers experienced physical injuries.

In 33 of the 62 cases, the father had sought sole or joint custody of the children. This finding does *not* mean that over half of all fathers who contest custody are batterers, because there was no sampling of a population, but only the “cherry-picking” method by which 62 aggrieved women were recruited for study. For the same reason, it does not even establish that over half of

battered women must go through a custody contest. Moreover, in only 4 of the 33 contested cases did fathers win shared custody. Since a mother had to have won at least shared custody in order to be included in the study, this finding is not easily interpreted.

In summary, the only data presented in *Access Denied* are difficult to interpret, but clearly do not provide support for Meier's assertions.

Johnston, J. R., Lee, S., Olesen, N. W., Walters, M. G. (2005) "Allegations and Substantiations of Abuse in Custody-Disputing Families." *Family Court Review*, 43, 283 – 294.

Meier claims that in the small percentage of "high-conflict" custody conflicts that actually go to trial, more than half involve domestic violence against the mother. Unfortunately, Johnston's study fails to support this conclusion because it did not sample a representative population of cases described above. This is not a retrospective cohort analysis, as has been claimed. The authors tell us only that these are cases from the top of the conflict pyramid (the most contentious cases), in whom court-ordered mediation had failed. The cases were then referred from the family courts, half for a custody evaluation, and half for custody counseling. Thus, it is clear that these 120 cases are not representative of custody disputes in general, and it even seems highly unlikely that these cases are representative of just those high conflict cases that actually go to trial.

Within this highly selected and unrepresentative sample, the majority of allegations of domestic violence against fathers were substantiated, but the same was true of such allegations against mothers.

With regard to child abuse, the authors conclude, "...it would appear that this hypothesis [that fathers are more likely to be subjected to unsubstantiated allegations] may be supported within the domain of child abuse allegations."

Kernic, M. A. et al. (2005). "Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence." *Violence Against Women*, 11(8), 991-1021.

This is a retrospective cohort analysis of all divorces in Seattle during 1998 and 1999. It is of scholarly quality, in that it is published in a recognized journal, the authors have academic affiliations and research experience, it is adequately referenced, the methodology is explained in some detail, and the results are subjected to statistical analysis.

Unfortunately, it shares several generic faults with most of the domestic violence literature. It refuses to deal with domestic violence perpetrated by females, it equates allegations of domestic violence with actual domestic violence, the definition of domestic violence includes a large but unknown number of incidents that were not violent, and it fails to distinguish between degrees of domestic violence, treating a harmless shove two years earlier the same as a vicious beating yesterday.

In this study, allegations of domestic violence were considered “substantiated” if the mother had taken out a restraining order against the father at any time in the previous few years, or if there had been a police report of a domestic incident any time in the past five years. Unfortunately, the existence of such documents does not substantiate the occurrence of violence. For instance, in Massachusetts, 49% of restraining orders are granted on the basis that the complainant fears that an incident may occur in the future; thus, in half of the restraining orders, no incident of violence has occurred. In the other half, the restraining order is granted because of an allegation that violence occurred. But the issuing court makes no effort to confirm or deny the validity of the complaint. As Elaine Epstein, Esq., former president of the Massachusetts Bar Association wrote in 1993, “The facts have become irrelevant. Everyone knows that restraining orders...are granted to virtually all who apply...In many cases, allegations of abuse are now used for tactical advantage.” Thus, the existence of a restraining order does not substantiate an allegation of domestic violence. Neither does the mere fact of the existence of a police report, since this can be generated simply by making an allegation to the police.

In summary, in a large but unknown percentage of the cases Kernic et al. characterized as “substantiated,” no violence actually occurred.

This study confirms others showing that serious domestic violence is not an “epidemic” at all, but is something that occurs in a small minority of cases. The authors carefully combed 2,374 case records, and found 250 cases of “substantiated” intimate partner violence (IPV). This amounts to 10.5% of all divorce filings in Seattle. (They identified an additional 54 cases in which allegations had been made, but no substantiation existed.) This number is relatively close to the findings of reputable researchers such as Janet Johnston or Murray Straus. Since, as discussed above, these 250 cases would have ranged from no actual violence, to violence long in the past, to throwing an object, to a heated argument, to a vicious beating, it is reasonable to conclude that serious domestic violence occurred in less than 5% of the cases, a finding consistent with other reputable researchers.

Nevertheless, the paper does suggest that, as Meier charges, no mention of abuse is found in the divorce case files in a substantial proportion of cases. Meier claims the proportion is 48%. Examination of Table 2 shows that it is 37%, if, as is doubtful, all the cases of “substantiated” domestic violence were correctly designated. Whatever the actual percentage is, the question remains, why was the court unaware of the allegations of domestic violence? The victims or their attorneys appeared in court for the divorce process, where they could have called the court’s attention to the problem. It is not sensible to assert that they were too intimidated to mention the matter, since they had previously reported the alleged violence to the courts or the police. It is more likely that the matter was not re-visited in the divorce proceedings because it was a passing incident, isolated occurrence, or harmless. Despite these speculations, it is fair to say that this report suggests a need to improve the reporting of domestic violence in the divorce process.

The data in this study contradict other assertions of Prof. Meier. Alleged abusers received primary custody of the children in only 9% of “substantiated intimate partner violence cases known to court.” This is inconsistent with Meier’s repeated assertions that the figure is 67%,

even taking into account that the Kernic article includes all divorce cases with allegations of violence, whereas Meier's assertion applies only to contested cases.

Finally, the data in the Kernic et al. article fails to establish the major conclusion stated by the authors. They state, "We found that mothers with a history of intimate partner violence victimization were no more likely than comparison group mothers to be awarded child custody." (p.1014.) The most likely reason for this result is that the study lacked sufficient power to detect the difference it sought. To attain sufficient power, the sample size would have needed to be considerably larger. This conclusion is reached as follows. In the comparison group without intimate partner violence, mothers received sole custody of children in 86.5% of cases. There were only 137 cases of substantiated IPV known to the court. Therefore, even without the factor of IPV, one would have expected that in 86.5%, or 119 of the 137 cases, the mothers would have received sole physical custody. This number is already so high even without the factor of IPV that there is no "upside room" left to demonstrate a statistically significant effect of IPV. This interpretation is buttressed by the fact that all the other negative outcomes for fathers, such as denial of visitation, restrictions on visitation, court mandated treatment, and restrictions on parental decision-making authority, which occurred in a small percentage of cases in the control group, all showed significant increases when IPV was present. The lone exception is the award of physical custody, and for reasons described above, this is most likely due to insufficient power of the study.

There is an additional reason why mothers claiming to be victims of IPV did not appear to win custody more often than the 86.5% rate of control-group mothers. The authors identified 62 mothers whose case files contained an allegation of IPV, but for which no substantiation existed. This constituted 19% of the total IPV sample. The authors classified these cases as IPV positive. The court may have quite properly discounted the allegations because of the absence of substantiation, so that there would have been no reason for increased awards of custody to the mother. Likewise, the authors classified *substantiated female-perpetrated IPV* as *male-perpetrated IPV* if, in their judgment, the male had been the "primary aggressor." They do not make clear how they made this determination. Again, it may have been perfectly reasonable for the court to have discounted these circumstances as a reason to give custody to the mother. The re-classification of unsubstantiated cases and female perpetrated cases would be an effective way to obtain the results the authors appear to have desired.

Finally, the results in the control group (those without a history of IPV) suggest what fathers' advocates have long claimed – that mothers benefit from gender bias in the courts, such that they receive primary physical custody of children close to 90% of the time.

American Judges Foundation. (2005). Domestic Violence & The Courtroom. Understanding The Problem...Knowing The Victim. Retrieved November 4, 2005 from http://aja.ncsc.dni.us/domviol/publications_domviobooklet.htm and subsequent pages

According to an email from Professor Joan Meier, "The American Judges Association report, 'Domestic Violence and the Courtroom' found that 70% of batterers and child abusers succeed in obtaining joint or sole custody." This statement implies that an association of judges reached the stated conclusion. In fact, the document in question was published by a different organization,

the American Judges Foundation, which is not an association of judges. It is a non-profit whose mission is to provide educational materials to judges. The document was actually written by Dr. Lenore Walker, (a domestic violence activist), an associate of hers, one judge, and a person from a marketing firm in the Manasquan, New Jersey.

The document is self-described as a “booklet.” Its purpose appears to be to alert judges to the problem of domestic violence and to offer them guidelines for dealing with the problem. It contains no original data or research, and none of its assertions are referenced. The booklet makes the statement, “Studies show that batterers have been able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases.” No authority is cited. There is no mention of parental alienation as a reason for the asserted outcome.

In summary, this document was not written by judges, it is not scholarly in nature, and the data it presents is unsupported.

Abrams, R., Greaney, J. (1989). *Report of the Gender Bias Study of the Supreme Judicial Court of the Commonwealth of Massachusetts.* Boston, Ma

Pages 62 and 63 of this Study are cited in support of the claim that, “the interests of fathers are given more weight than the interests of mothers and children” in custody and visitation litigation. A review of these pages reveals no statement similar to the quotation. This section of the study acknowledges that, “In the great majority of cases in the Commonwealth, mothers have primary physical custody of children following divorce.” Pages 62 and 63 are primarily dedicated to demonstrating the authors’ view that there are sound reasons for this lopsided outcome such that gender bias against fathers is not a factor. (In a separate document, we have conducted a critical analysis of the citations relied upon in the Study and find that they do not support the assertions on pages 62 and 63. This matter is tangential to “*Breaking the Silence*,” and is therefore not further discussed here.)

Neustein, A., & Goetting, A. (1999). “Judicial Responses to Protective Parents.” *Journal of Child Sexual Abuse*, 4, 103 – 122.

This is another “cherry-picking” type of publication, albeit a fairly large one. Neustein and Goetting identified 300 cases over a period of 10 years in which they claim child sexual abusers received unsupervised visitation or shared custody 70% of the time, and over 20% of cases resulted in the mother who alleged child abuse losing visitation rights altogether. Once again, even if all cases are accepted at face value as inexplicable bias in favor of criminal fathers, an average of 30 cases per year compared to one million or so custody adjudications per year is a small problem, not the large problem implied by “*Breaking the Silence: Children’s Stories*.” As with other publications reviewed in this critique, the authors do not examine the reasons why the court may have awarded sole or partial custody to fathers in such apparently heinous cases.

Please also see the comments below concerning Ms. Neustein’s credibility.

Neustein, A. and Leshner, M. (2005) *From Madness to Mutiny: Why Mothers are Running from the Family Courts – And What Can be Done About It*. Boston, MA. Northeastern University Press.

The same comments apply as in the previous publication, except that in the intervening six years, the authors have identified 700 additional cases, for a total of 1,000, that they claim, but do not substantiate, represent miscarriages of justice that allegedly favored fathers who had molested their children.

It should be noted that Dr. Neustein's first accusation of this sort was against her own ex-husband, who was awarded custody of their daughter about 20 years ago despite Dr. Neustein's allegations. Since then, she has been a tireless activist on this subject.

Within the past year, Dr. Neustein's daughter, Sherry Orbach, now a graduate student in New York City, has broken her silence and written a detailed refutation of her mother's charges. She portrays a mother who persistently attempted to coach her to make sexual abuse and other allegations against her father. Ms. Orbach credits the family courts and her father for ultimately protecting her from this form of emotional abuse. She has now remained out of contact with Dr. Neustein for many years. Ms. Orbach further complained about the media's eagerness to publicize and support her mother's baseless allegations.

If Ms. Orbach has correctly portrayed the events of her childhood, and her article does appear restrained, sober and lacking in malice, then Dr. Neustein's credibility is seriously in doubt. If, as Dr. Neustein claims, Ms. Orbach's mind and childhood memories have been corrupted by her manipulative father, then she is a living demonstration of parental alienation, which "*Breaking the Silence: Children's Stories*" claims does not exist.

Ordinarily, we would not wish to question the character of published authors who treat a serious issue. In this case, however, the allegations by Ms. Orbach go to the heart of Dr. Neustein's credibility on the precise issue at hand.

Arizona Coalition Against Domestic Violence. (2003). *Battered Mothers Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence*. Phoenix, AZ.

This publication explicitly credits the similar Massachusetts publication reviewed above, and is a copycat effort. Similar methodologies were used, and the same criticisms apply. This publication, although "cherry-picking" 57 cases that appear to confirm the assertions under review, fails to provide scientific support for the societal-wide patterns alleged to exist.

Depner et al. (1992). Building a uniform statistical reporting system: A snapshot of California Family Court Services. *Family and Conciliation Courts Review*, 30, 185-206

Summary of reported findings: Review of 1699 mediated cases in family court from June 1991 across 51 counties in California (83% of total). A Family Profile was completed by 92% of all eligible parents. Counselors completed post-session evaluations on 99% of mediations. Mothers and fathers had equal response rates.

Derivative statistics include citation that >50% of mothers in mediation were either unemployed (36%) or earning below the poverty line (number not given, but 12.8% earned <\$700/month), compared with 17% and 6.6% respectively (~25% total). In assessing marital problems, the authors “applied the broadest possible definition of problems, scanning answers to all available questions...(which) encompasses concerns that cannot always be substantiated.” They acknowledged a risk of “overestimation.” Cited incidence statistics included child stealing (6%), child sexual abuse (8%), child physical abuse (18%), child neglect (30%), substance abuse (38%), and “domestic violence” (65%). No definition was offered for domestic violence. With the exception of the last category, virtually none of the other problems occurred in isolation. 30% of “domestic violence” was presented as an isolated problem.

Agreement was reached in 46% of all sessions, and further mediation planned in another 20%. Views of mediation were generally positive by both participants and mediators.

Interpretation:

This cross-sectional study derives its strength in the large number of participants, the absence of obvious sampling bias and the high level of participation, and the development of data across 400 variables for each couple involved. Of great importance is the fact that it concerns only those cases that were referred for mediation after failing to be resolved through preliminary channels. Thus, the data are not representative of all California custody disputes, but only those that are particularly difficult to resolve.

Significant weaknesses of the study include (1) applicability only to California, which has higher rates of joint parenting than other states and possibly unique incentives to cooperate; (2) acknowledgement that they sought to obtain outer limits of domestic violence incidence, and have likely overestimated such incidence; (3) failure to specify just how domestic violence was defined (ie. likely inclusion of “common couple aggression” in this category, in instances where neither partner felt physically threatened); (3) footnote #4 acknowledges a high density of questions involving domestic violence, posing a possible source of upward bias in the incidence of domestic violence; (4) the cross sectional design places undue emphasis on pre-trial hearings and early court proceedings in divorces, at a point in the process where both parties may have an incentive to exaggerate offensive behavior by the other party; and lastly, (5) this preliminary report of data did not distinguish between allegations by one parent, agreed assessments by both parents, or actual findings of fact by guardians ad litem. Additional evaluation of the data might shed significant light on what percentage of allegations turned out to have a basis in fact, within some variance limit resulting from uncertainty in the evaluation process.

Websdale, N. (1999). Understanding Domestic Homicide. Boston, MA, Northeastern University Press.

Meier sites Websdale in support of her statement that attempting to leave a violent partner with children is one of the most significant factors associated with severe domestic violence and death.

We can find no such statement in Websdale, or anything that would support such an assertion. Instead, on p. 82, Table 4.3 in Chapter 4 (The Death of Women in Single Killings), the author lists the major characteristics of the 67 relationships that ended in the killing of a woman. These included a “prior history of battering” in 86.6% of the cases down to “victim obtained restraining order(s) against male perpetrator at some point prior to killing” in 28.4% of the cases. A similar chart (Table 2.5) on p. 33 in Chapter 2 (Men as Perpetrators of Multiple Killings), likewise, had no mention of children being a significant factor associated with severe domestic violence and death. Of course, it is possible that such a statement lies somewhere else in the book – it is difficult to absolutely confirm an absence of a statement. Unfortunately, Meier does not provide any page numbers for her citation.

Straus, M. (1992). Children as witnesses to marital violence: A risk factor for lifelong problems among a nationally representative sample of American men and women. Report of the Twenty-Third Ross Roundtable. Columbus, OH: Ross Laboratories.

The Viewer’s Guide cites Prof. Murray Straus in support of the following assertion:

“Three million to 10 million children witness abuse each year in their homes.”

Prof. Straus comments as follows:

“The statement in bold above is quoted from my 1992 article. However, the research results in that article do NOT demonstrate that men and fathers are the primary source of danger to children, as is implied by quoting this statistic in the context of a document intended to prove that men and fathers are the perpetrators of physical child abuse. On the contrary, the evidence in that article shows that mothers perpetrate violence against their male partners at about the same rate as do fathers. The evidence in another article reporting more results for that same sample shows that the percent who hit the other parent in self-defense is about the same for father and mothers. The evidence from many studies, including Federal statistics on child abuse, shows that mothers physically abuse children at a slightly higher rate than fathers.”

According to the US Department of Health and Human Services, the majority of child abuse, parental murder of children, child neglect, and child endangerment are committed by mothers, not fathers.

Straus, Murray A., Gelles Richard J., and Smith, Christine. 1990. Physical Violence in American Families; Risk Factors and Adaptations to Violence in 8,145 Families. New Brunswick: Transaction Publishers.

The Viewer’s Guide cites Prof. Murray Straus in support of the following assertion:

“In a national survey of more than 6,000 American families, 50 percent of the men who frequently assaulted their wives also frequently abused their children.”

Prof. Straus comments as follows:

This is another example of a statement taken out of context to imply that it is only or predominantly violent men who physically abuse children. On the contrary, the research results presented in the cited book (and in a more sophisticated analysis of the same data in an article by Susan Ross (Ross 1996)), shows that the focus on just men in the quote is contradicted by the evidence. The evidence shows that (1) Relatively few fathers “frequently assault” their partners – less than five percent. (2) The percent of mothers who frequently assault their partners is about the same. (3) The link between violence against a partner and physically abusing a child applies to mothers as well as fathers.

Reference: Ross, Susan M. (1996). "Risk of Physical Abuse to Children of Spouse Abusing Parents." *Child Abuse & Neglect* 20:589-598.

Conclusions

“*Breaking the Silence: Children’s Stories*” is exactly the kind of inflated and sensationalistic presentation that has created an environment in which loving fathers seeking to share in the upbringing of their children are regarded with suspicion and even hostility. In our view, this film, if given credence, will have the effect of creating an environment in which judges are fearful of allowing perfectly good men from participating in the care of their children, and of creating the impression among the general public, custody evaluators, the legal community, legislators and others that it is dangerous to award any form of custody to fathers.

The Fathers & Families’ Mission

Fathers & Families’ mission is to protect the child’s right to the love and care of both parents after separation or divorce, with equal rights and responsibilities for fathers and mothers.

We believe that 20 years of child-centered research has demonstrated that children are suffering under the present legal custom of awarding custody to only one parent, usually the mother. Surveys of grown children show that what hurt them the most about their parents’ divorce was the loss of an intimate relationship with their fathers. This sense of loss persists well into adulthood, and affects their adult relationships.

Even worse, divorce and the accompanying loss of close connection between fathers and children in the majority of cases have dramatically increased the frequency of seriously negative

outcomes for children. Even in intact families, about 10% of children suffer serious negative developmental difficulties, including depression, suicide, educational failure, substance abuse, gang involvement, arrest, teenage pregnancy, and even total mortality. All of these seriously negative outcomes are increased two-to-threefold in children raised with little contact with their fathers. Children in families headed by single mothers also have increased rates of sexual and physical child abuse, as well as neglect.

When one examines the reasons for the loss of contact with fathers after separation or divorce of the parents, one finds death from a thousand cuts. While some fathers may take little interest in their children, the main causes include failure of the courts to award joint physical custody, failure to award significant parenting time (“visitation”), failure to enforce the parenting time that has been ordered, readiness to curtail contact between fathers and children when estranged wives make any allegation, child support orders that require fathers to work two or three jobs, thus leaving no time for parenting, moveaways, and other factors.

Domestic Violence

Fathers & Families abhors domestic violence, and believes that children who witness domestic violence in many cases are harmed by the experience. We are eager to become part of the solution of the domestic violence problem, but find that mainstream domestic violence advocates are reluctant to include fathers’ organizations. Moreover, we find that many of these organizations actively resist even our most innocuous legislative proposals. One example is that in Massachusetts, domestic violence advocates have succeeded in passing a law that requires *all non-custodial parents* to obtain annual approval of the courts before they can receive their child’s report cards and other school records. Similarly, our experience has been that domestic violence advocates inflate and exaggerate both the prevalence and severity of domestic violence, to create an atmosphere in which oppressive measures are enacted restricting the ability of fit fathers to provide loving and competent parenting to their children after separation or divorce.

Parental Alienation

We are also concerned about the matter of parental alienation. For the purposes of this dialogue, we are not concerned with the arcane and technical debate as to whether there is such a thing as Parental Alienation *Syndrome*. What is absolutely beyond doubt is the large number of children who previously had a close and loving relationship with a parent but who subsequently reject the parent, usually their father, after separation or divorce. This phenomenon is a real one, and when considered in its full clinical spectrum, an extremely common one. In some, but not all, cases, the rejection is actively cultivated, fostered and encouraged by the custodial parent. In other cases, there are other dynamics at work, including some cases in which the father’s own parental shortcomings are the primary cause. There is much about this subject that is unknown. But it is important that when credible evidence is raised that a child has become seriously alienated from a parent with whom he/she previously had a normal relationship, the court must be free to evaluate this circumstance and act on it appropriately.

The Future

Fathers & Families believes that this critique, as well as those by the Ombudsmen for PBS and the Corporation for Public Broadcasting respectively, cast severe doubt on the quality of the reporting in *“Breaking the Silence: Children’s Stories.”* We believe that PBS and its affiliates owe the public a more thoughtful examination of the proper role of non-custodial parents after separation or divorce. The approach taken in this film is not helpful to children who are caught up in their parents’ divorce, and they will actually be harmed by it if the one-sided views expressed in this film are widely adopted.

From the beginning our sole request of PBS has been that fatherhood advocates be provided a meaningful opportunity to present our side of this issue. We do suggest, however, that PBS consider: ceasing further airings of this film, removing the Viewer’s Guide and other website material pertaining to this film, ceasing efforts to distribute the film to schools and any other institutions, and issuing a public statement of error in having aired this film. We would also welcome the opportunity for Fathers & Families and similar organizations to work with PBS to fund, produce and air a film that examines the issues of non-custodial parents in a more thoughtful manner.

Breaking the Silence Reviewers

The documents reviewed above were critiqued by one or more of the following reviewers:

Ned Holstein, M.D., M.S. (Principal Author)

Dr. Ned Holstein is President of Fathers & Families. A Harvard undergraduate, Dr. Holstein has a medical degree from Mt. Sinai School of Medicine and a Master's degree in Psychology from MIT. He is the author of 11 peer-reviewed articles and was Associate Editor of a medical journal for ten years. Previously, Dr. Holstein has been a full-time researcher and is now a clinical assistant professor at Mt. Sinai School of Medicine. He has taught epidemiology to medical professionals.

Daniel B. Hogan, J.D., Ph.D.

Dr. Dan Hogan is Managing Director of Fathers & Families. He is a graduate of Harvard Law School and has his doctorate from Harvard's Department of Psychology. He has served on the faculty at Harvard University in the Psychology Department and at Harvard Medical School. He is the author of 4 seminal books on the regulation of the professions and is the author of numerous peer-reviewed articles on the impact of the social sciences on public policy. As well as conducting his own original research, he has been a book reviewer for *Contemporary Psychology*, the American Psychological Association's journal of book reviews.

Murray A. Straus, Ph.D.

Prof. Straus is considered one of the top researchers and experts on domestic violence in the United States. Since 1968, Prof. Straus has been the founder and Co-Director of the Family Research Laboratory at the University of New Hampshire, where he is Professor of Sociology. He is the author or co-author of over 200 articles and fifteen books including *Understanding Partner Violence*. (National Council on Family Relations, 1995) and *Stress, Culture, and Aggression* (Yale University Press, 1995).

Donald Thea, M.D., M.Sc.

Dr. Donald Thea, M.D., MSc. is a Professor of International Health at the Boston University School of Public Health where he conducts field epidemiology research and teaches Masters and Doctoral level graduate students in infectious diseases, clinical research methodology and critical appraisal of the scientific literature. Dr. Thea is the Director of the Clinical Research Group at the Center for International Health and Development where he oversees a portfolio of 20 current research studies in over a dozen countries. He has conducted epidemiologic research for over 15 years and has more than 70 publications in peer-reviewed biomedical journals. He has been a peer reviewer for the New England Journal of Medicine, Lancet and Journal of Infectious Diseases among other prestigious journals.

John Patrick Whelan, M.D., Ph.D.

Dr. Patrick Whelan, M.D., Ph.D. is a graduate of Harvard University, with graduate degrees from Baylor College of Medicine in Houston. He is on the Pediatrics faculty at Harvard Medical School, a reviewer for the New England Journal of Medicine, and a staff pediatric specialist at the Massachusetts General Hospital for Children. He is a former president of a four-county chapter of Mothers Against Drunk Driving, with significant public advocacy for women and children in the context of alcohol abuse.

Email - Thursday, December 15th, 2005

Dear Sirs/Mesdames:

Although I do not know who wrote the "Executive Summary" on the PBS documentary *Breaking the Silence* dated December 12, 2005, I am constrained to point out some serious and defamatory errors it contains with respect to my colleague Dr. Amy Neustein -- and to send my response to your organization as the one apparently responsible.

First, I would like to stress that I have no connection whatever to *Breaking the Silence*. I was not consulted by the filmmakers, I did not appear in the film, and to the best of my knowledge my work was not relied upon for any statement made in the film. The same, I believe, is true of Dr. Neustein. (Our work is described in our respective web sites, www.AmyNeustein.com and www.MichaelLeshner.com.) Accordingly, I am not responding to comments made about the documentary, or about other publications, in your "Executive Summary." I am, however, responding to comments made about Dr. Neustein and the book I co-wrote with her, *From Madness to Mutiny: Why Mothers Are Running from the Family Courts -- and What Can Be Done about It*.

First of all, the book has two authors, not one. Your summary repeatedly implies that the entire book is challenged if Dr. Neustein's credibility is impugned. This argument would be disingenuous even if Dr. Neustein had written the book herself, since in fact not a single a statement made in the book has been successfully challenged -- a point I will emphasize again below. But in fact, you misrepresent the truth by ignoring my own role as a co-author. I stand behind the book's claims; I have reviewed the facts in detail on which all its claims are based. Has my credibility been challenged? Clearly you know it has not -- so you duck the issue by ignoring me. This is a dishonest tactic on your part. Either you must demonstrate that *both* authors are unworthy of the reader's trust, or you must retract your statement.

Second, the author you refer to as "Ms. Neustein" is *Dr.* Neustein. Her Ph.D. is from Boston University and was earned when she was 23 years old. If you were paying attention to the facts, you would have correctly identified her.

Now to your specific claims:

"In the intervening six years, Ms. Neustein has identified 700 additional cases, for a total of 1,000..."

This is false. The study authored by Dr. Neustein with Anne Goetting dealt with 300 cases that had ended with certain results. Our book relied on evidence derived from 1,000 cases that met our research criteria. Since the two works dealt with different issues, they did not rely on the identical body of cases. No one ever claimed that 700 of the 1,000 cases arose after the Neustein-Goetting study.

"...that she claims, but does not substantiate, represent miscarriages of justice that allegedly favored fathers who had molested their children."

False again. Our book never claimed that all of these cases favored fathers who had molested their children. As for substantiation of the charges we did make, one need only consult the book. Your failure to find fault with it -- except when you are misrepresenting it -- is an implicit admission that the authors *did* substantiate their claims.

"Ms. Neustein's first accusation of this sort was against her own ex-husband..."

Dr. Neustein did not make the accusation. It was made by her mother, who was an eyewitness to an act of alleged sexual abuse. This abuse report was corroborated by the child and by mental health experts including Dr. Anne Meltzer, one of New York's leading experts on child sexual abuse.

"Within the past year, Ms. Neustein's daughter, Sherry Orbach, now a graduate student in New York City, has broken her silence and written a detailed refutation of her mother's charges."

To the extent her "refutation" is detailed, the details are nearly always inaccurate. Ms. Orbach describes being "coached" in a summer house; in fact, she was not there when the "coaching" would have necessarily taken place, if at all. She describes the house as having plastic covers on the furniture; there were none. She claims she did not live with her mother at the time; court records prove the opposite. She also ignores the fact that she herself confirmed having been abused to evaluators and to a supervisor of the CPS agency that investigated the case.

Perhaps more important, the detailed "charges" about the case -- which I have summarized in a fact sheet about the case that is widely available via Internet -- have *never* been refuted, neither by Ms. Orbach nor by anyone else.

"...[Ms. Orbach's] article does appear restrained, sober and lacking in malice..."

Perhaps such things are in the eye of the beholder. However, since -- as noted already -- Ms. Orbach's account is seriously inaccurate and incomplete, it is hard to credit the claim of benign sobriety. I also note that Ms. Orbach sneeringly described her mother brushing her hair with "an antique silver hair brush" (I interviewed the Neustein family in 1996 when researching her case for *The Village Voice*; to the best of my knowledge, Dr. Neustein never owned an antique silver brush) and wondering aloud if she were beautiful enough to be famous. I have no doubt that Ms. Orbach carries deep scars, and I suppose her column (it was not an "article") gave expression to them. But "sober, restrained and lacking in malice" is a poor description."

"The allegations by Ms. Orbach go to the heart of Ms. Neustein's credibility on the precise issue at hand."

This is absolutely untrue. And you know it. *From Madness to Mutiny* is a detailed study of a large number of family court cases. The book never so much as mentions the Neustein case by name. What is more, not one single fact stated in the book has been refuted -- not here, not by

Ms. Orbach, and not by anyone else. How, then, can you claim that the "issue at hand" involves Ms. Orbach's statement that she was not abused 19 years ago (contradicting her early reports that she was)? Either point to statements in the book with which you take issue -- if any -- or retract your false and defamatory attack on our book.

Ms. Orbach's statements -- assuming she actually wrote the column attributed to her -- only show that she does not remember being abused when she was five or six years old. You yourself acknowledge the possibility that Ms. Orbach could have been the victim of parental alienation, which could have turned her against her mother. (Incidentally, there is a world of difference between parental alienation and "Parental Alienation Syndrome," but that is a separate topic.) Therefore, it is impossible to believe that you yourselves credited this slander against Dr. Neustein. Your attacks are particularly unconscionable because Dr. Neustein had nothing to do with the making of *Breaking the Silence*, and is not quoted or cited in the film.

Your attacks on Dr. Neustein, in a word, amount to mere irresponsible mudslinging. They are highly inaccurate, misleading and defamatory. In addition, you have made no effort to ensure accuracy by contacting either author for more information before printing your charges. If you accept your own professed standards of accuracy, you owe Dr. Neustein an apology.

I await your response.

Michael Leshner, Esq.

Michael Leshner
mlesher@att.net
(973) 470-0212

Email – Friday, December 16th, 2005

Dear Mr. Leshner:

Thank you for your thoughtful email of December 15, 2005. I am glad that PBS has forwarded our critique of *“Breaking the Silence: Children’s Stories”* to interested parties such as yourself, and given them the opportunity to respond.

Let me respond to the points you have made.

“Although I do not know who wrote the ‘Executive Summary’ on the PBS documentary...”

We identified the authors at the end of the Critique. I agree it would have been useful to have indicated that I am the principal author of the document.

“...I have no connection whatever to *“Breaking the Silence”*...the same, I believe, is true of Dr. Neustein.”

You are correct, as far as I am able to know, and I did not assert or imply otherwise anywhere in the Critique. Rather, I tried to make it clear that we were undertaking a critical review of those publications frequently cited by the key figures connected with the film, including your book.

“First of all, the book [*From Madness to Mutiny*] has two authors, not one.”

I apologize for having omitted your name as one of the authors.

“...Ms. Neustein is Dr. Neustein.”

I apologize for omitting Dr. Neustein’s professional credential of a Ph.D., apparently in sociology.

“The study authored by Dr. Neustein with Anne Goetting dealt with 300 cases that had ended with certain results. Our book relied on evidence derived from 1,000 cases that met our research criteria. Since the two works dealt with different issues, they did not rely on the identical body of cases.”

In truth, the research methods employed in the book are so vaguely described that one cannot really tell whether the two sets of cases overlap or not, or even whether the book recounts 1,000 cases. There is not a single table of data. I was unable to find the number 1,000 anywhere in the book. Since the book is only about 230 pages in length, there would need to be about four to five cases presented per page to have 1,000 cases, and there do not seem to be nearly that many. I was unable to discern what your “research criteria” were. It is stated that cases were investigated by reviewing trial transcripts, affidavits, news articles, pleadings and other documents, as well as interviewing mothers (but apparently not fathers), but there is no accounting of how many cases had each kind of data available, how the documents were evaluated, or how you handled conflicting evidence.

In summary, almost the entire book is anecdotal in nature, and it is impossible to tell how many cases it treats.

“Our book never claimed that all of these cases favored fathers who had molested their children.”

Since composite data are not presented anywhere in the book, it is impossible to determine whether your statement is correct or not. Certainly, our characterization correctly applies to the majority of anecdotes presented in the book. It would be useful if you could direct us to any cases in the book that fail to favor a molesting father.

“As for substantiation of the charges we did make, one need only consult the book.”

In my opinion, many of the cases are not adequately substantiated in the book. Quotations from court personnel almost all appear outrageous in the context in which the book places them; almost nowhere is information presented as to how court personnel might reasonably have arrived at the conclusions they did. Conflicting evidence is not presented, except when, in the context of your book, it strikes the reader as absurd. This leaves the reader with a choice between accepting the proposition that there is “madness” in the courts, or questioning whether you have recounted the evidence fully and impartially. The book offers no fact-based method to resolve this dilemma.

Even if every case were substantiated, the main point in our Critique is that the book does not provide statistical support for the statistical assertions made in *“Breaking the Silence: Children’s Stories.”* Our criticism of the film stands. The method is what we characterize as “cherry-picking.” Moreover, the book states that these cases occurred over a span of 20 years, for an average of 50 cases per year. Even if one credits every case in *“From Madness to Mutiny,”* and even if there really are 1,000 of them, an average of 50 cases per year throughout the country does not add up to pervasive and predictable maltreatment of “protective mothers.”

“Dr. Neustein did not make the accusation [that her daughter was sexually abused by her ex-husband].”

Dr. Neustein did not make the *initial* accusation, but certainly adopted it and promoted it in subsequent legal proceedings.

The chronology of events, according to an article in the Jewish Voice and Opinion in June, 2005, was as follows. Dr. Neustein was awarded sole physical custody of her daughter, Sherry Orbach. Three years later, in May, 1986, another individual allegedly observed Sherry being molested by her father, Dr. Ozzie Orbach. As far as I can tell, no reports to police or other authorities were made at the time. In August, 1986, Dr. Ozzie Orbach filed papers seeking a change of physical custody. It was only then that the allegations of sexual abuse were leveled. The person who allegedly observed the sexual abuse was...Dr. Neustein’s mother.

Incidentally, for what it is worth, Dr. Neustein's family did not universally support her in her custody battle. Her sister and brother-in-law have both sided with the father in the custody dispute.

It is not unusual for accusations of secret sexual abuse to arise only after it becomes apparent that custody is going to be disputed. It is not surprising that some judges, whether rightly or wrongly, respond to this pattern cynically.

“To the extent [Sherry Orbach’s] ‘refutation’ is detailed, the details are nearly always inaccurate.”

Here you take Ms. Orbach, now 24, to task for alleged errors in her memory of places and events that occurred when she was 5 years old. I would be greatly surprised if any adult could recall highly stressful times from when they were 5 years old with complete accuracy. Moreover, whether Ms. Orbach's childhood recollections were perfectly accurate or not, the court found, after painstaking investigation, that the allegations of sexual abuse were not credible, and that Sherry would be better off in the care of her father.

“...the detailed ‘charges’ about the case...have never been refuted...”

Clearly both Sherry Orbach and the court have found otherwise.

“But ‘sober, restrained and lacking in malice’ is a poor description [of Sherry Orbach’s written denial of her mother’s charges].”

Sherry Orbach's article appeared in the Jewish Press on May 27, 2005, page 4. I am no longer able to find a link to the original publication, but have provided a link below to a secondary source which has re-printed the article. I believe our characterization of the piece is a fair one; any readers who wish to judge the matter for themselves may do so by clicking below.

http://nhcustody.org/My_Homepage_Files/Page36.html

“The book never so much as mentions the Neustein case by name.”

The case is described by name on page xv of the Introduction.

“Ms. Orbach’s statements – assuming she actually wrote the column attributed to her...”

I believe it is irresponsible to imply that Ms. Orbach did not write the article in question unless you can produce evidence, other than alleged inconsistencies in her childhood memories. The same insinuation is made in an article that is very sympathetic to Dr. Neustein in the Jewish Voice and Opinion of June, 2005. Again, evidence for the insinuation is lacking, other than the allegations about inconsistent childhood memories.

“Incidentally, there is a world of difference between parental alienation and ‘Parental Alienation Syndrome.’”

I totally agree. This was one of the major points we made in our Critique.

“Your attacks on Dr. Neustein, in a word, amount to mere irresponsible mudslinging...in addition, you have made no effort to ensure accuracy...”

I reported what appear to be facts in a measured way. Before writing, I undertook reasonable measures to assure accuracy. I read Ms. Orbach’s article carefully. I then read the hostile response published in the Jewish Voice and Opinion in June, 2005, signed only by the initials S. L. R. Your challenges in this email to Ms. Orbach’s childhood recollections are extremely similar to those in the Jewish Voice and Opinion. Finally, I consulted with Mr. Glenn Sacks, Los Angeles newspaper columnist, who informed me that he had personally contacted Ms. Orbach and satisfied himself that she was, in fact, Dr. Neustein’s daughter, and the author of the article in the Jewish Press on May 27, 2005. Mr. Sacks has written, “I have been in contact with Orbach and offered her the chance to come on HisSide [Mr. Sacks’ radio show] but she told me she longed to put the whole thing behind her and wanted her Jewish Press piece to be her only public statement on the issue.”

I implicitly acknowledged the possibility that Ms. Orbach may have been manipulated by her father instead of her mother, leading to the estrangement between her and her mother. My point was that, if so, “she is a living demonstration of parental alienation, which *‘Breaking the Silence: Children’s Stories’* claims does not exist.” But if Ms. Orbach’s description of her mother’s behavior are correct, Dr. Neustein’s credibility as an authority on how the courts handle accusations of sexual abuse in custody conflicts would be considered by many to be impaired. Either way, “*Breaking the Silence: Children’s Stories*” suffers from journalistic inadequacies, in the one case for denying the existence of parental alienation, or in the other case for blithely accepting the assurances of the producers and others that Dr. Neustein's book is authoritative.

My comments questioning Dr. Neustein’s credibility are relevant to whether PBS did or did not fulfill its journalistic obligation to provide balanced reporting in controversial areas. Because prudent people might reasonably conclude that Dr. Neustein’s credibility may be subject to reasonable doubt, the journalistic obligation to seek alternative points of view is all the greater, given that the film's proponents rely in part on her work with you.

The Neustein/Orbach case demonstrates how difficult it is to find the truth in complex he-said-she-said cases. I happen to find Ms. Orbach quite credible, but others may feel differently. Because this area of law is so difficult, journalists must be doubly careful to present a balanced view, something “*Breaking the Silence*” did not do.

Finally, Mr. Leshner, I believe you have confused criticism of your book with criticism of the film. My point was that your book fails to provide evidence that courts routinely, pervasively, and in the majority of cases maltreat mothers who are trying to protect their children from sexual or physical abuse at the hands of the fathers. It seems likely that this must happen in some cases, because finding truth in these difficult adjudications is so hard, but to the extent your book reaches sweeping conclusions from a small number of cases (relative to the total number of

custody adjudications in twenty years), it too merits criticism. It may well have other value, but it does not provide an adequate foundation for the film to make broad generalizations.

Thank you for communicating your concerns to me. I believe we share some views in common. We both are concerned that the family courts often operate in shoddy, ill-informed ways. We both would like to see improvements in how family courts adjudicate complex matters. We both would like to see more professionalism in the family courts. I believe it would be fruitful to build on our areas of agreement rather than to attack each other for our areas of disagreement.

I hope you will forward this response to your comments to all those who receive your objections, in the spirit of constructive dialogue. When we post our critique of the film, we will also post your critical comments.

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