

**RESEARCH INDICATING THAT THE MAJORITY OF CASES THAT GO TO COURT AS "HIGH CONFLICT"
CONTESTED CUSTODY CASES HAVE A HISTORY OF DOMESTIC VIOLENCE**

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I. Janet Johnston's publications

Janet Johnston is best known as a researcher of high conflict divorce and parental alienation. Not a particular friend of domestic violence advocates or perspectives, she has been one of the first to note that domestic violence issues should be seen as the norm, not the exception, in custody litigation.

Janet R. Johnston et al, "Allegations and Substantiations of Abuse in Custody-Disputing Families," *Family Court Review*, Vol. 43, No. 2, April 2005, 284-294, p. 284.

Janet R. Johnston, "High-Conflict Divorce," *The Future of Children*, Vol. 4, No. 1, Spring 1994, 165-182, p. 167.

Johnston has noted that approximately 80% of divorce cases are settled, either up front, or as the case moves through the process. Studies have found that only approximately 20% of divorcing or separating families take the case to court. Only approximately 4-5% ultimately go to trial, with most cases settling at some point earlier in the process. (Citing large study by Maccoby and Mnookin, *dividing the child: social and legal dilemmas of custody*. Cambridge, MA: Harvard U. Press [1992]).

Johnston cites another study done in California by Depner and colleagues, which found that, among custody litigants referred to mediation, "[p]hysical aggression had occurred between 75% and 70% of the parents . . . even though the couples had been separated. . . [for an average of 30-42 months]". Furthermore, [i]n 35% of the first sample and 48% of the second, [the violence] was denoted as *severe* and involved battering and threatening to use or using a weapon." -Johnston (1994), *supra*, citing Depner et al., "Building a uniform statistical reporting system: A snapshot of California Family Court Services," *Family and Conciliation Courts Review* (1992) 30: 185-206.

After surveying the research, Johnston concludes:

"Taken all together these studies suggest that, in divorces marked by ongoing disputes over the custody and care of children, both inside and outside the court, there is often a history of domestic violence in the family and a likelihood that the violence will continue after the separation." - *Id.* (1994) at p. 169.

It has previously been observed, based on research which predates the domestic violence/parental alienation battles that are now a feature of the field, that "multiple allegations of abuse are a feature of those higher conflict families" whose cases become contested custody litigation. - Johnston (2005), *supra* (citing Maccoby and Mnookin (1992)).

II. Peter Jaffe's compilation of studies

Peter Jaffe is one of the world's leading experts on children, domestic violence, and custody.

- Peter Jaffe, Michelle Zerwer, & Samantha Poisson, (2004), "ACCESS DENIED: The Barriers of Violence and Poverty for Abused Women and their Children After Separation," p. 1.

In "Access Denied", Jaffe states the following:

"Myth: Domestic violence is rarely a problem for divorcing couples involved in a child custody dispute."

Fact: The majority of parents in "high-conflict divorces" involving child custody disputes report a history of domestic violence."

Jaffe et al also lists the following studies (with the following descriptions) as supporting the position that most custody litigants have had a history of domestic violence:

- In a review of parents referred for child custody evaluations by the court, domestic violence was raised in 75% of the cases. - Jaffe, P.G. & Austin, G. (1995). *The Impact of Witnessing Violence on Children in Custody and Visitation Disputes*. Paper presented at the Fourth International Family Violence Research Conference, Durham NH (Rep. No. July 1995)

- Of 2,500 families entering mediation in CA, approximately three quarters of parents indicated that domestic violence had occurred during the relationship. -Hirst, 2002
- Between 70-75% of parents referred by the family court for counseling because of failed mediation or continuing disputes over the care of their children, physical aggression had taken place. - Johnston & Campbell, (1988), *Impasses of Divorce: The dynamics and resolution of family conflict*. New York, NY, US: The Free Press.
- Attempts to leave a violent partner with children, is one of the most significant factors associated with severe domestic violence and death. - Websdale, N. (1999). *Understanding Domestic Homicide*. Boston, MA: University Press.
- A majority of separating parents are able to develop a post-separation parenting plan for their children with minimal intervention of the family court system. However, in 20% of the cases greater intervention was required by lawyers, court-related personnel (such as mediators and evaluators) and judges. In the majority of these cases, which are commonly referred to as "high-conflict," domestic violence is a significant issue. - Johnston, J. R. (1994). "High-conflict divorce." *Future of Children*, 4, 165-182.

III. National Center for State Courts

Studies conducted by the National Center for State Courts (NCSC), looking solely at court records, have found *documented* evidence of domestic violence in 20-55% of contested custody cases.

The NCSC's study, looking only at documented domestic violence in custody court records, found that 24% of court records contained some evidence of domestic violence in Louisville; 27% in Baltimore; and 55% of Las Vegas cases indicated domestic violence. - Susan Keilitz et al, Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers, prepared for the National Center for State Courts; State Justice Institute," NCSC Publication Number R- 202, p. 5.

The same study found that a screening process (utilized by the mediation program) "revealed a much higher incidence of domestic violence than a review of court records alone would have indicated." - *Id.* at 7.

IV. Custody Courts Regularly Fail to Note or Lack Information about history of Domestic Violence

Kernic et al., "Children in the Crossfire: Child Custody Determinations Among Couples With a History of Intimate Partner Violence," *Violence Against Women*, Vol. 11, No. 8, August 2005, 991-1021, 1013,

Kernic et al. from the Harborview Injury Prevention & Research Center in Seattle, studied at divorce cases, including both those with a documented, substantiated, and/or alleged history of domestic violence, and those without. The study found that in 47.6% of cases with a documented, substantiated history, no mention of the abuse was found in the divorce case files. - *Id.* at 1005.

Kernic et al. found that "the court was made aware of less than one fourth of those cases with a substantiated history of intimate partner violence." - *Id.* at 1016.

Further, Kernic et al. found that fathers with a history of committing abuse were denied child visitation in only 17% of cases. Mothers in these cases were no more likely to obtain custody than mothers in non-abuse cases. This study found that mothers were "more likely" than fathers to be awarded sole custody, but does not identify what proportion of cases resulted in equal sharing of physical custody (which is available in Washington even when one parent is designated "primary"). - *Id.* at 1014-1015.

The Virginia Commission on Domestic Violence Prevention commissioned a study of these issues at University of Virginia in 1997-98. The study found that in custody cases where there was also a domestic abuse case in court, only 25% of the custody files referenced the existence of the domestic abuse case. - www.courts.state.va.us/fvp/history.html

Return to Page: [Abuse and Custody Disputes: Scientific and Legal Issues](#)

Web site reference <http://www.leadershipcouncil.org/1/pas/Meier.html>