

## VIEWPOINT

# Mother Seeks Courtroom Reform for Sexually Abused Children and Protective Parents

**I**n *Prosecuted but Not Silenced: Courtroom Reform for Sexually Abused Children*, Maralee McLean shares her legal journey to protect her daughter from her ex-husband's alleged sexual abuse. She faced barriers at every turn and her ex-husband ultimately won custody. Her efforts to seek justice produced outcomes that would make many protective mothers question whether to travel her path. Changing the legal landscape motivated her to write her book. *CLP* caught up with Ms. McLean in the following interview.

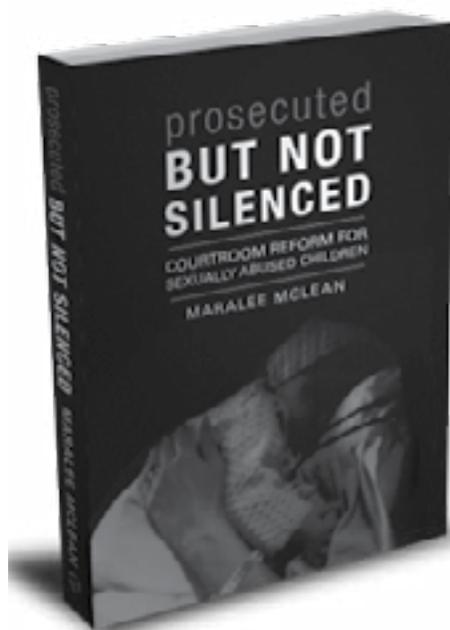
### Why did you decide to write your book?

I wanted to make a difference for those working in the fields of domestic violence, child abuse, or child trauma so that such maltreatment would not continue. I wanted to open the eyes of the legal system to mothers "trapped" in similar situations. I also wanted to make the public aware of the tragedy taking place in our courts and to make a difference in saving other children and protective mothers.

After experiencing the system fail time and time again despite evidence of abuse; hearing my daughter's cries for help hearing after hearing; enduring year after year of the abuse not being heard; and finally becoming financially depleted, I began to realize a main problem was lack of education and training among professionals handling these cases.

### You faced challenges while seeking justice for your daughter. What did you learn?

I learned that my case is not an isolated one. There are thousands of cases in our courts in every state with the same outcome as mine and my daugh-



ter's. When I testified before Congress with 10 other mothers from different states, it was heart wrenching to hear each mother's experience; they all could have been my case.

The failure of various systems when child sexual abuse is reported and how these cases are turned against the protective parent in family court illustrates a Catch-22 situation. Mothers who report sexual abuse nearly always lose custody. Research shows children are placed in full or partial custody of their identified sexual abuser 90% of the time.<sup>1</sup> Unfortunately many judges, attorneys, and mental health professionals do not understand the overlap of domestic violence and child abuse.

When the child resists going with the abuser and the mother asks for protection from family (divorce) court, the mother is labeled dangerous and considered to be alienating the child from the father. The "Parental Alienation Syndrome" is relied on heavily although it isn't approved by the American Medical Association or the

American Psychological Association, and is considered "junk science" that should not be allowed in courts. In my experience, judges ignore or minimize evidence of sexual abuse and do not allow abuse findings in court.

Research shows that in family courts, false allegations of child sexual abuse remain rare. The allegations occur in approximately two percent of custody and visitation disputes, and most are substantiated.<sup>2</sup> Family court judges may not understand evidence that is essential to correct decision making. Incorrect family court decisions will have damaging effects, either by subjecting the child to continued abuse and/or by depriving the child of a relationship with the non-abusive parent.

According to another important study<sup>3</sup> on child custody and domestic violence by Dr. Daniel G. Saunders, "the attitudes and knowledge of evaluators are critical to making decisions in child custody cases involving domestic abuse."

In my view, cases alleging criminal acts do not belong in family court. They should be investigated by law enforcement and adjudicated in specialized family violence criminal courts using the preponderance of the evidence standard of proof, with evidence brought before highly trained and qualified judges.

Most of these cases involve domestic violence. No child should be placed in unsupervised contact with a domestic violence abuser against the child's will. Children need safe homes and need to have their constitutional rights protected. Giving an abuser control over the mother and the child is the ultimate act of revictimization. The mother is treated as a criminal with the loss of the children she tried to protect. She is often ordered to

receive minimal, supervised visits, sometimes lasting for years (even though she is not the abusive parent), jailed, given gag orders, depleted financially, and ordered to pay child support. Finally she may experience a de facto termination of her parental rights when the court disallows visits.

### **What can the legal community learn from your story?**

My book is a case study. It includes legal documents to educate professionals, along with information on research studies, and my documentation of proof: police reports, doctor reports, hospital reports, judge's orders, etc. My hope is that professionals will seek training and not turn away. Attorney Richard Ducote said it well, "We need to disinfect these trusted institutions." When the system ignores strong proof that the children under its watch are being abused, it punishes those who act responsibly on behalf of child victims.

Many family courts accept and embrace as "infallible" flawed "evidence" and "experts" who would be rejected outright in other courtrooms based on constitutional law, rules of evidence, and judicial procedure. My story tells the breakdown in the judicial system. New measures must be taken. Most important are to: (1) not be so quick to ignore abuse allegations and assume it is a vindictive ex-wife; (2) listen to the children; and (3) educate and understand these cases as domestic violence and child abuse cases, not "high conflict" cases.

Professionals who lack this understanding must remove themselves.

### **Your book offers advice to mothers trying to protect their children in the court system. What is the most important advice?**

Never ever give up. It is crucial to stay in your child's life no matter how you may be prevented from seeing your child. Your child needs to know you are fighting for him or her. If you can't

see your child because of court orders, speak out and seek changes in practice, policies, and legislation. Get help finding a pro bono attorney or educating yourself so you can advocate for yourself in court. It is sad that most mothers are destitute after a few years paying for attorneys, evaluators, litigation, and therapy for themselves and their children.

### **How can the judicial system better handle these cases?**

Many mothers lose custody in ex parte hearings when they are not notified of the court hearing; this practice should be banned. Judges must be trained by child sexual abuse and domestic violence experts, not by other judges. Judges must be trained how to interview the child. There must be effective oversight and accountability for all professionals involved. Court appointees should have no place in these criminal matters; if on the rare occasion they are appointed, there must be a cap placed on the fees charged and paid by the court making the appointment.

### **What policy and legislative changes are needed to better protect child sexual abuse victims?**

- Ensure "safety first" for children who report sexual or physical abuse, or who witness domestic violence.
- Use multidisciplinary teams and a forensic interviewer to interview on videotape all children who report physical or sexual abuse, or witness domestic violence.
- Have the court make specific findings on domestic violence and child abuse or neglect allegations before making further determinations.
- Recognize parents who are acting in good faith to protect their children and do not punish them.
- Discontinue use of alienation theories. Parental Alienation

Syndrome is discredited by the scientific and legal communities.

- Require the court to consider past or present domestic violence and to protect the child from the primary aggressor.
- Reduce unnecessary litigation by implementing custody jury trials in family violence courts
- Build effective oversight, accountability, and transparency for all professionals in these cases, including judges. Consider developing a federal oversight committee.
- Require continuing education for court professionals and judicial officers using a standard online curriculum taught by experts in child sexual abuse and domestic violence. Include an exam.
- Require disclosure of conflicts of interest by statute.
- Develop a system to more easily remove incompetent, poorly trained professionals.

— Interview conducted by Claire Chiamulera, CLP's editor.

**For more information and to order the book** (\$27.99), visit <http://mmclemm.tateauthor.com/>

### **Endnotes**

1. Neustein, A., and Goetting, A. Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse. *Journal of Child Sexual Abuse* 8(4), 1999, 103-122; Steubner, Nancy Marie. "Custody Outcomes for Protective Parents in Cases with Child Sexual Abuse," (Master's Thesis), September 2011.
2. Thoennes, N. and Pearson, J. "Summary of Findings from the Sexual Abuse Allegations Project." In E. B. Nicholson (Ed.), *Sexual Abuse Allegations in Custody and Visitation Cases*, 1988, 1-36. Washington, DC: American Bar Association.
3. Daniel G. Saunders, Ph.D. *Child Custody Evaluators' Beliefs about Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations. Final Technical Report* Submitted to the National Institute of Justice, U.S. Department of Justice, October 31, 2011.