

**Crisis in Family Court: Lessons From Turned Around Cases.**

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**by**

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## **Introduction**

This paper summarizes the findings and recommendations based on an in depth examination of records from 27 custody cases involving allegations of child abuse which were at first viewed as false and later were judged to be valid. The analysis was part of a DV LEAP-OVW Custody and Abuse TA Project funded by the Office of Violence Against Women of the U.S. Department of Justice. The analysis was conducted by a team of researchers from the Leadership Council on Child Abuse & Interpersonal Violence as part of a contractual arrangement with DV LEAP. The Leadership Council is a not-for-profit independent scientific organization composed of respected scientists, clinicians, educators, legal scholars, and public policy analysts. The Leadership Council's mission is to promote the ethical application of psychological science to human welfare. The Leadership Council is committed to providing professionals and laypersons with accurate, research-based information about a variety of mental health issues and to preserving society's commitment to protect its most vulnerable members.

## **Purpose**

The research was designed to help family court systems better identify, understand, and respond to allegations of child abuse in child custody determinations. It is well established that there are problems in our family court system. Multiple professional and lay articles have documented numerous cases in which abused children are placed in the custody or care of an alleged perpetrator rather than the custody of a nonoffending, protective parent. The problem of protective mothers losing custody to abusive partners has been

documented in a number of books and articles written by experts in the field of child sexual abuse and family violence<sup>1</sup> (see e.g., Bancroft & Silverman, 2002; Brown, Frederico, Hewitt, & Sheehan, 2001; Erickson & O’Sullivan, 2011; Neustein & Goetting, 1999; Rosen & Etlin, 1996; Saunders, Faller & Toman, 2011). The problem has also been discussed in legal journals (see e.g., Bruch, 2001; Dalton, 1999; Hoult, 2006; McDonald, 1998; Meier, 2003; Penfold, 1997; Smith & Coukos, 1997; Wood, 1994; Zarb, 1994). Problems in family court have increasingly come to the attention of the media, with dramatic stories of homicide following judges’ refusal to grant protective orders (e.g., Morse, 2009, Borden, 2013), mothers losing custody to abusers (see e.g., Waller, 2001; 2011), and children fleeing after placement with their alleged abuser (e.g., Silva, 2012). The problem has also been analyzed by the Leadership Council on Child Abuse and Interpersonal Violence (2008), using empirical data to estimate that 58,000 children a year are placed in the custody of an abuser. Despite this robust literature about the failures of our nation's family courts, there is a paucity of literature that documents components of the decision-making process that may lead some custody evaluators and judges to place children in situations that endanger them.

The purpose of this study was to gather information from in-depth case analysis to identify what factors lead judges to put children in harm’s way by granting violent parents unfettered access to their children. The methodology for this analysis was an in-depth analysis of what we term “turned around” cases. A turned around case is one where after initially being placed in the care of an abusive parent, the child’s placement is later changed due to the harmful nature of the initial placement. By focusing on turned around cases, we avoid cases in which there remains doubt as to whether or not the child was really abused. In these cases the evidence for

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<sup>1</sup> An annotated overview of research documenting protective parents losing custody to abusers can be found at <http://www.leadershipcouncil.org/1/pas/dv.html>

abuse has been documented and found to be convincing. At the same time, we are able to go back to the original decision to place the child in the custody of an abuser, and attempt to determine factors associated with the first court's failure to protect the child. By looking at the dynamics involved in these cases, we are able to analyze how errors that endanger children may arise. These cases provide a living laboratory in which to evaluate how judges and evaluators make decisions about children's safety, how these decisions are informed by the types of evidence presented, and how the information is weighed. Through the hindsight of these cases, we seek to provide a window into how judicial decision-making can be improved and future children can be protected from the tragic consequences of being court ordered into abusive placements.

### **Background**

Approximately one in two marriages in the United States end in divorce, affecting approximately a million children per year (U.S. Department of Commerce, 1997). In most cases, conflicts around custody and access are resolved by the parents themselves outside of court. If the parents are unable to reach such an agreement, the court must help to determine the relative allocation of decision making authority and physical contact each parent will have with the child. Research suggests that contested custody cases often represent a high prevalence of family violence compared to the general population of divorcing adults (Bruch, 2001; Johnson & Campbell, 1993). Family violence may take the form of physical, psychological, and/or sexual assault. In a review of five federally funded demonstration projects to resolve child access and visitation problems, researchers reported that, "Nearly half of the access denial cases at every site involve allegations of the child's imperiled safety" (Pearson & Anhalt, 1994).

Surveys of the general populations have shown that almost a fourth of the population have experienced sexual abuse during childhood (Finkelhor, 1994; Timnick, 1985). Adult retrospective studies reveal that most sexual abuse is committed by men (90%) and by persons known to the child (70-90%), with family members constituting up to one-half of the perpetrators against girls and 10-20% of the perpetrators against boys. The peak age of vulnerability is between 7 and 13 years; however, younger children are also frequently victimized.

Violence in families usually remains invisible to those outside the family because family members are reluctant to jeopardize the integrity of the family by reporting it. When the family unit is split up during divorce, there is less incentive for victims of family violence to keep their abuse secret. The non-offending parent may disclose the abuse in an effort to try to protect themselves and their children from further contact with the abuser. When perpetrators are placed at increased risk of exposure, they may intensify efforts to maintain the silence and control of their victims. Although many victimized women end their relationships with the expectation that the abuse will end as well; batterers often continue, or even escalate, their abusive behavior post-separation (Fleury, Sullivan, & Bybee, 2000; Hardesty & Chung, 2006; Jaffe et al., 2003; Rivera, Zeoli, & Sullivan, 2012). Violence against children may also increase at this time. Some battered women report that abusers continue to use their children to exert control over them by threatening the children's lives and mistreating the children to punish mothers (Hardesty & Ganong, 2006; Slote et al., 2005). Moreover, there is evidence to suggest that some batterers use the family court system as a tool for ongoing harassment, retaliation, and intimidation of battered mothers (Slote et al., 2005; Sutherland, 2004). One form of harassment is "paper abuse" which involves the filing of multiple

complaints, mostly false, that bury already vulnerable and victimized women under paper work requirements for responding in court (Miller & Smolter, 2011).

### **Research on Custody Decisions When Domestic Violence is Alleged**

According to the most recent National Intimate Partner and Sexual Violence Survey (NISVS) more than 42 million women in the United States have been physically assaulted, sexually assaulted, and/or stalked by an intimate partner in their lifetime, with a 12-month prevalence rate of nearly seven million women (Black et al., 2011). At the same time, more than 30 studies that have examined the co-occurrence of domestic violence and child abuse found a large overlap. Both forms of violence have been found in 30% to 60% of families studied (Appel & Holden, 1998, Edleson, 1999). Perhaps the most convincing evidence comes from a nationally representative survey of 3,363 American parents. Marital violence was found to be a statistically significant predictor of physical child abuse; the greater the amount of violence against a spouse, the greater the probability of physical child abuse by the physically aggressive spouse. This relationship is stronger for husbands than for wives. The probability of child abuse by a violent husband increases from 5% with one act of marital violence to nearly 100% with 50 or more acts of marital violence (Ross, 1996). Evidence of an overlap between domestic violence and child sexual abuse has also been reported. Paveza (1988) found that daughters of batterers were 6.5 times more likely than other girls to be victims of father-daughter incest. Similar findings were reported by Roy (1988). Roy interviewed 146 children who had been exposed to domestic violence; 31% reported that they had been sexually abused by their fathers and/or had documentation of sexual abuse in their case files.

While the evidence that batterers may pose a risk to their children is compelling, research suggests that battered women often lose custody to their abuser. A study funded by the National Institute of Justice study showed that women who informed custody mediators that they were victims of domestic violence were less likely to be granted primary custody (Saccuzzo & Johnson, 2004). The investigators found that only 35% of mothers who alleged domestic abuse got primary custody, compared to 42% of mothers who did not. Fathers who were accused of domestic violence, on the other hand, suffered no ill effects. They were just as likely to get custody as fathers who had not been accused of violence. In fact, the only time that evidence of domestic violence impacted the alleged abuser was when the mediator noted evidence of violence when the mother *did not* allege domestic violence. When this occurred, mediators recommended protected child exchanges twice as often. Thus women who were forthright with their domestic violence history secured less protection for themselves and their children than those who were not.

A study by the Harborview Injury Prevention & Research Center in Seattle reported similar findings (Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005). The researchers analyzed documentation on more than 800 couples with young children who filed for divorce in 1998 and 1999, including 324 cases with a history of domestic violence. They found that evidence of domestic violence did not appear to change how courts decided custody. In other words, fathers who were violent were just as likely to receive custody when they asked for it as fathers who were not violent. Nor were fathers with a history of committing domestic violence more likely than other fathers to be required to have a third party supervise child visitations. A survey of state court appeals in custody and abuse cases found that of 40 reported cases, 38 trial courts had awarded joint or sole custody to alleged and adjudicated batterers (Meier, 2003). After analyzing the cases, Meier noted that,



Sympathy and concern to an adult battering victim can be transformed into an attitude of disdain and outright hostility when the battered woman seeks to limit the abuser's access to his child. (pp. 667-668)

### **Research on Custody Decisions When Child Abuse is Alleged**

Raising concerns of child abuse can also negatively impact a nonoffending parent's likelihood of receiving custody. Accusing the other parent of abuse can even lead to mothers being sanctioned by the court. Faller and DeVoe (1995) found that family courts often punish mothers who seek to protect their children from sexual abuse. Faller and DeVoe examined 214 allegations of sexual abuse in divorce cases that were evaluated by a multidisciplinary team at a university-based clinic: 72.6% were determined likely, 20% unlikely, and 7.4% uncertain. They also found that 40 concerned parents experienced negative sanctions associated with raising the issue of sexual abuse. These sanctions included being jailed; losing custody to the alleged offender, a relative, or foster care; limitation or loss of visitation; admonitions not to report alleged abuse again to the court, Protective Services or the police; and prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future. *None of the parents experiencing these sanctions were ones who were judged to have made calculated false allegations.* In fact, sanctioned cases tended to score *higher* on a composite scale of likelihood of sexual abuse, and were *more likely* to have medical evidence than cases without sanctions.

Concerns about how family courts are handling cases involving allegations of abuse were also raised by the findings of Neustein and Goetting (1999). They examined judicial responses to protective parents' complaints of child sexual abuse in 300 custody cases with extensive family court records. The investigators found that in only 10% of cases where allegations of child abuse were raised was primary custody given to the protective parent with supervised contact with alleged abuser. Conversely, 20% of these cases resulted in a predominantly

negative outcome where the child was placed in the primary legal and physical custody of the allegedly sexually abusive parent. In the rest of the cases, the judges awarded joint custody with no provisions for supervising visitation with the alleged abuser.

To better understand the problems that protective parents face in the legal system, researchers at California State University, San Bernardino, performed a national survey (Stahly et al., 2013). Almost 400 self-identified protective parents completed the 101-item questionnaire. Prior to divorce, 81% of the protective parents surveyed indicated that they were the primary caretaker of their child. However, as a result of reporting child abuse, only 25% were left with custody after court proceedings. Two-thirds of the protective parents lost custody in proceedings in which there was no court reporter, precluding any possibility of appeal. Ninety percent of the mothers reported that they had been victims of domestic violence and half of the fathers had criminal records. Most cases involved allegations of abuse with the father named as the perpetrator in 75% of cases. In only 9% of cases did the court appointed attorney for the child advocate for the child's safety from abuse. In three-quarters of the cases, the judge's changed custody to the father after the father's abuse was made known to the court. The mothers lost complete access to their children in half of the cases. Sixty-six percent of the mothers continued to believe that their children were being abused; however, 63% said they stopped reporting the abuse for fear that all contact with their children would be terminated. The mothers indicated that their children were suffering from numerous symptoms of distress including: anger, regression, fears/phobias, pain, depression, dissociation, sexual acting out, suicide attempts, bowel problems, learning disabilities, and eating disorders. The mothers had spent an average of \$100,000 fighting to protect their children; 27% of the mothers were forced to file for bankruptcy as a result. In nearly three-quarters of the cases the mother had no money to pay for legal representation while the fathers continued to be presented by attorneys.

### ***Rate of False Allegations in Custody Disputes***

Family courts may fail to take allegations of abuse seriously solely based on the fact that they surfaced during a custody dispute. Myers (1997, p. 133) noted that, “skepticism about allegations of child sexual abuse is nowhere greater than in child custody and visitation litigation in family court.” Research, however, shows no increase in false reporting during custody litigation.

A study of over 9,000 custody/visitation dispute cases found that sexual abuse allegations occurred in 2% of contested cases (Thoennes & Tjadden, 1990). Such cases involve a variety of accused and accusing parties and were no less likely to be "unfounded" than other sexual abuse reports. Only 8 out of 84 unproven allegations were deemed consciously false allegations. These were made by both men and women. Jones and McGraw (1987) reviewed 579 sexual abuse reports made to child protective services in Denver County in 1983, using a team of child abuse experts. Jones and McGraw found a fictitious report rate of 5% arising from adult coaching and 1% from the child's own motivations. In 2000, Oates et al. repeated the study and the rate of false accusations was .02% from adult coaching and 2.5% from children's own motivation. Similar results have been found by other researchers. Schuman (2000) reviewed a number of research studies and found a range of 1-5% for rates of deliberately false allegations, and 14-21% for mistaken allegations. A recent study of national child welfare agencies found that only 0.1% of allegations reported to Child Protective Services (CPS) in the United States were deemed as deliberately false (U.S. Department of Health & Human Services, 2010).

It is also important to note that when false allegations are raised, it is not always mothers accusing fathers. Bala and Schuman (2000) reviewed Canadian judges' written decisions between 1990 and 1998 looking at cases where allegations of either physical or sexual abuse were raised in the context of parental separation. They found that the judges felt that only a third of unproven cases of

child abuse or neglect stemming from custody battles involved someone deliberately lying in court. Also of interest is the finding that most false cases were reports of neglect, not sexual abuse—the type of child maltreatment that is most likely to raise skepticism. Moreover, the judges found that fathers were more likely to fabricate the accusations than mothers. Of female-initiated allegations, just 1.3% were deemed intentionally false by civil courts, compared with 21% of the allegations initiated by fathers. Another study looked at intentionally false allegations of abuse and neglect when parents separate (Trocme & Bala, 2005). The researchers found that noncustodial parents, usually fathers, were much more likely to make false allegations than custodial parents, usually mothers (15% versus 2%, respectively).

### **Factors Influencing Custody Decision-Making that Place Children at Risk**

A number of factors have been mentioned in the literature to explain why children are placed at risk by family courts. These factors include: (1) gender bias and pathologizing mothers reporting abuse; (2) lack of education in domestic violence and child abuse; (3) the strong legal presumption in favor of joint custody and "friendly parent" provisions; and (4) the inappropriate use and interpretation of psychological testing.

#### ***Gender Bias and Pathologizing Mothers who Report Abuse I***

According to survey data collected by Saunders et al. (2011), patriarchal beliefs remain one of the strong influences in evaluators making recommendations that imperil children's safety. Patriarchal beliefs go hand in hand with pathologizing mothers who raise concerns about abuse. For example, a perpetrator's campaign to undermine the credibility of his victims is aided by the fact that judges and custody evaluators often apply different standards of proof regarding the types of allegations raised during disputes.

When mothers allege domestic violence or incest perpetration by the father, officers of the court typically demand a high measure of supporting evidence. Yet an allegation that the mother fabricated an abuse allegation to gain an upper hand in custody litigation may be accepted with little or no factual support (Bancroft & Silverman, 2002). Accordingly, evaluators regularly fail to investigate allegations of abuse, dismissing them on the basis of their impressions of the parties or the results of psychological testing (Bancroft & Silverman, 2002; Caplan & Wilson, 1990). The end result is that custody evaluators may erroneously decide that the alleged abuser is the more stable parent and view the mother as causing rather than reacting to her child's distress. Phyllis Chesler (2013), who has been tracking these trends since the 1980's, stated,

The court system does not want to believe that a well-spoken, charismatic man could really be a savage wife-beater or child abuser. It is easier to believe that his traumatized, sleepless, frightened and rapidly impoverished wife is lying, exaggerating or imagining things.

Perpetrators of family violence tend to be skilled at impression management, are often likeable, and can readily evade detection (Faller, 1988). For example, child molesters are often noted to have "dual personalities"; they can be charming in public and unthinkably vicious behind closed doors (Salter, 2003). Sex offenders also tend to be "practiced liars." Practiced liars are a category of liars that professionals consistently find difficult to detect (Ekman, 1992).

Perpetrators of family violence are not only adept at minimizing and denying their own abusive behaviors and their responsibility for it, they are also skilled at shifting blame onto their victims (American Psychological Association, 1996). Penfold (1997, p. 26) noted that during custody disputes many men minimize their responsibility for the marital breakdown by "pathologizing

their ex-wives and presenting themselves as the rational, reasonable and logical parent.” Recognizing the widespread nature of this problem, the American Bar Association published guidelines on legal practices in the best interest of the child.

Custody litigation frequently becomes a vehicle whereby batterers attempt to extend or maintain their control and authority over the abused parents after separation.... Be aware that many perpetrators of domestic violence are facile manipulators, presenting themselves as caring, cooperative parents and casting the abused parent as a diminished, conflict-inciting, impulsive or over-protective parent. (Goelman et al., 1996)

One of the main pathologies attributed to mothers who raise abuse concerns is that of being an "alienator" (i.e., inducing parental alienation in their children). Many custody evaluators have been schooled in the theory of parental alienation and view custody disputes through this lens. The term "parent alienation" refers to a concept created by psychiatrist Richard Gardner, and proposed by him as a psychiatric syndrome. Gardner (2003) defined PAS as follows:

The parental alienation syndrome (PAS) is a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent.

The proposed syndrome was based on his clinical impressions of cases he believed involved false allegations of child sexual abuse (Gardner, 1985). At the time, Gardner was a frequent expert witness, most often on behalf of fathers accused of molesting their children (Sherman, 1993). Without citing any evidence, Gardner claimed that PAS is responsible for most accusations of child sexual abuse that are raised during custody disputes, and that "in custody litigation ... the vast majority of children who profess sexual abuse are fabricators" (Gardner, 1987, p. 274).<sup>2</sup>

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<sup>2</sup> Yet even if the abuse claims were valid, Gardner (1999) suggested PAS "may be even more detrimental than physically and/or sexually abusing a

The reality of domestic violence and child abuse were largely ignored in Gardner's early writings on his theory. Problems in a child's relationship with one parent were simply blamed on the other parent. There is no indication in Gardner's perspective that children can react to a parent based on their own experiences, feelings and beliefs. In fact, the mental life of the child who is being diagnosed with PAS is ignored in Gardner's theoretical analysis. Gardner self-published numerous books and wrote numerous articles on child custody. He also traveled the country and offered trainings on PAS until his death several years ago. As a result, PAS became very popular with custody evaluators and GALs. PAS also provided a readymade defense for fathers accused of abuse. PAS has frequently been introduced in custody cases in order to discredit allegations of family violence or abuse by parents whose child has rejected them. As Bruch (2001) noted:

Over the years since Gardner first announced his theory, the term PAS has entered into public usage. The media, parents, therapists, lawyers, mediators, and judges now often refer to PAS, many apparently assuming that it is a scientifically established and useful mental health diagnosis. Accordingly, in practice, whenever child sexual abuse allegations or disrupted visitation patterns arise in the United States, one must now be prepared to confront a claim asserting that PAS is at work, not abuse or other difficulties. (p. 536)

PAS is not recognized by any professional associations, including the American Psychiatric Association which has not included PAS in its *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). In addition, Gardner's theory has received much criticism and the criteria he offers to determine alienation have been found to be vague and subjective, illogical, and inconsistent with good child-centered evaluation. Peer-reviewed critiques include: Rotgers and Barrett (1996); Lilienfeld, (1998); Faller, (1998); and Emery, Otto and O'Donahue (2005). In the *Clinical Psychologist*, Lilienfeld (1998) listed PAS as one of many poorly studied and controversial

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child.”

psychiatric labels that are frequently being introduced into courts of law. The ability for PAS to harm children is recognized by the National Council of Juvenile and Family Court Judges, a leading judicial body, in its published guidelines for custody courts noting that PAS diverts attention away from the behaviors of the abusive parent and assumes that child's attitudes toward that parent have no basis in reality (Dalton, Drozd, & Wong, 2006).

Research has refuted most of Gardner's assumptions regarding alienation in children. For example, research by Johnston (2003), based on 214 court-referred children, demonstrated that only a small percentage of children refused visitation due to parental influence. Johnston concluded that, "Resistance to visitation among young children ... is a developmentally expectable divorce-specific separation anxiety, which is made more intense by overt conflict between parents" and is unrelated to emotional disturbance of either parents or children (p. 118). In addition, Johnston found that a rejected parent's own behavior often played a significant role in the children's reactions. Lampel (1996) tested two theories for their relative value in explaining children's rejection of a parent and determined that the rejected parent's level of empathy toward the child was a better predictor of a child's rejection than manipulation by the preferred parent.

In spite of PAS theory's many short-comings, many courts have naively accepted PAS because it appears to describe a well recognized phenomenon within custody battles—the often acrimonious fight between parents for their child's care. Custody evaluators who adopt Gardner's theory may use the fact that a child voices a strong preference for living with one of their parent over the other as evidence that the child is alienated. Under PAS doctrine, this conclusion that a child is "alienated" implies causality. It is reasoned that



when one determines that a child is alienated, the preferred parent *must* be engaged in brainwashing the child against the rejected parent. As Gardner (1992) stated:

Children are not born with genes that program them to reject a father. Such hatred is environmentally induced, and the most likely person to have brought about the alienation is the mother. (p. 75)

The assumption of brainwashing means that anything said by the mother or child is now suspect. For example, custody evaluators schooled in PAS theory are instructed by Gardner to ignore and aggressively contradict any abuse disclosures by a child they believe to be alienated. Gardner (1999) wrote:

The court's therapist must have a thick skin and be able to tolerate the shrieks and claims of impending maltreatment that PAS children often profess.... To take the allegations of maltreatment seriously, is a terrible disservice to PAS children. (pp. 201-202).

The assumption of brainwashing also means that the accused perpetrator is deemed by evaluators to be the only source of "credible" information. Thus if a child rejects their father or accuses him of abuse, the child is considered to be a liar and the mother is assumed to have brainwashed the child into believing they were abused. The mother is then labeled an "alienator". Gardner (2003) suggested a number of other labels are applicable to alienators including: Delusional Disorder, Paranoid Personality Disorder, Borderline Personality Disorder, and Narcissistic Personality Disorder. In addition, PAS was considered by Gardner (2002) to be a form of emotional abuse that can lead to lifelong psychiatric disturbance in the child. Consequently, the alienating parent may also be labeled a child abuser.

The recommended solution to remedy parental alienation involves coercive and punitive treatments for both the mother and the child. Gardner recommended that courts take strong action against the "alienating" parent, "including transfer of custody to the alienated parent, monetary sanctions (when feasible), transfer to a neutral transitional site, and jail sentences, especially house arrest" (Gardner,

1991, p. 17; June 1999; Lee & Olesen, 2001, p. 283). Gardner also recommended coercive and punitive treatment toward recalcitrant “alienated” children. For instance, he recommended incarcerating children who refuse visitation. He has also recommended the imposition of various forms of “threat therapy” where children are court ordered to display a positive attitude and be obedient during visits to the rejected parent and threatened with contempt and jail if they do not cooperate with the court’s orders (Schepard, 2001). It is against this background of draconian recommendations that the current problems in family court have had their origins.

Current proponents of Parental Alienation, including Warshak (2002), Bernet (2006), and Baker (2007), have continued Gardner's approach to evaluation and treatment; however, the concept of Parental Alienation Disorder (PAD) has been introduced to replace PAS. While many of the latest proponents of PAD have attempted to imbue their viewpoints in the mantle of science; the criteria used to determine alienation are the same ones offered by Gardner and thus the same criticisms geared to Gardner’s original writings are applicable (Houchin, Ranseen, Hash, & Bartnicki, 2012).

Some proponents of parental alienation have dropped the words “Syndrome” or “Disorder”, in the hopes that it can be used as a conceptual paradigm without reference to it as a specific kind of mental illness. However, as pointed out by Meier (2009) simply dropping the word “syndrome” does not affect the reasoning and acceptance of the paradigm that alienation by a parent can result in false allegations of abuse. Such reasoning minimizes the importance of abuse claims while urging the court to assign parental blame to the parent the child prefers for causing the rift between the child and the rejected parent. Thus, the diagnosis of Parental Alienation in all of its forms leads to recommendations of separating children from their preferred parent. While there may be some role for the concept of parental alienation to describe tactics of badmouthing that may affect children during divorce, according to Meier (2013) a

thorough rule out of any abuse and a requirement for clear observable documentable behavior should be a minimum criterion for utilizing this terminology to describe family dynamics.

While parental alienation theory is the most common pathologizing label used in family court, there are others. Another one that is sometimes used is Munchausen by Proxy. In this case, the mother who takes a child to doctors and therapists based on her belief that the child has been abused is identified as mentally ill (Rand, 1990). Ira Daniel Turkat (1997), a psychologist at the University of Florida College of Medicine, created a new syndrome—Divorce-Related Malicious Mother Syndrome. According to Turkat (1997, p. 18), women with this syndrome “not only try to alienate their children from their fathers, but are committed to a broadly based campaign to hurt the father directly.” These mothers chronically interfere with visitation and “are skillful liars, highly manipulative, and quite adapt at recruiting others to participate in the campaign against the father” (p. 19).

Pennington (1993) noted that gender bias lies at the heart of the pathologizing of mothers during custody litigation:

Making an assumption that a mother has "programmed" or "brainwashed" a child to make false allegations of sexual abuse, without substantial proof, is an expression of gender bias when these assumptions are only made about mothers and not fathers. Assuming that mothers would do this presumes that only women are vindictive, emotionally disturbed, or just liars. (pp. 25-26)

Laing (1999, p. 274) reviewed Gardner's work and concluded, “much of Gardner’s writing is strongly anti-woman. He states that the claims of women who refuse joint mediation due to violence are somewhere "between fabrication and delusion". Rivera, Zeoli, and Sullivan (2012) noted how pathologizing women affects their access to the courts. They noted that the fear women have of the bias against them in court often leads them to avoid court processes even when they are fearful of their own or their children’s safety.

### ***Lack of education in domestic violence and child abuse***

While research suggests that custody evaluators' knowledge of domestic violence and/or child abuse is critical to their determinations (Davis, O'Sullivan, Susser, & Fields, 2010), few custody evaluators have formal training in the effects of violence on families (Bow & Quinnell, 2001). In fact, Bow and Quinnell found that the vast majority of child custody evaluators had no graduate school or internship/post-doctoral training in the child custody area. In a survey of custody evaluators, Gourley and Stolberg (2000) found that about three-quarters indicated that their primary child custody training method was reading books and journal articles.

Research has shown that child custody evaluators often do not grasp the basic dynamics of family violence, fail to ask about domestic violence or its effects on children, and do not keep abreast of the professional literature regarding child abuse (Bancroft & Silverman, 2002). An analysis of reports by custody evaluators who evaluated families with allegations of domestic violence found that many reports failed to take into consideration the domestic violence that was present in the cases (Pence, Davis, Beardslee, & Gamache, 2012). They concluded that a variety of factors lead to the court's failures to take note of domestic violence during custody disputes. These include a lack of direction from the court, a focus on single incidents, inattention to coercive control that does not involve overt violence, and paradigms that minimize or re-interpret reported violence through the lens of high conflict or strategic ploys. According to their analysis, custody evaluators were ill-informed about family violence and the impact of violence on parenting skills and their reports often omitted the actual accounts of the parties and seemed to present the information through biased perspectives. Pence et al. concluded that rather than this being isolated issues among poorly trained evaluators, these problems are institutional and endemic within family court.

Saunders, Faller, and Toman (2011) studied child custody and visitation decisions in domestic violence cases and concluded that the most unsafe parenting plans were derived by evaluators who had limited knowledge of domestic violence and the dynamics of abuse. They found that custody evaluator's beliefs related to awareness of domestic violence, patriarchal beliefs, and beliefs in a just world (where people get punishments they deserve) had the most influence on custody decisions. They concluded that more knowledge of domestic violence would aid in judicial decision-making.

Rivera, Zeoli, and Sullivan (2012) found that if an abusive father acts calm, professional, or charming, the woman's allegations are less likely to be believed by the mediator—even if she has a restraining order against him. They opined this may be because mediators will consider their own interactions with the father during mediation more heavily than his criminal or abusive past. For instance, a survey of 201 psychologist custody evaluators from 39 states found that most did not consider domestic violence to be a major factor in making custody determinations. Conversely, three-quarters of the custody evaluators recommended denying sole or joint custody to a parent who "alienates" the child from the other parent by negatively interpreting the other parent's behavior (Ackerman & Ackerman, 1996). Thus it appears that evaluators may be predisposed to attribute abuse allegations to vindictiveness, rather than exploring whether there is a factual basis for the protective parent's concerns.

John E. B. Myers, JD, a law professor and expert in the forensic issues related to child sexual abuse, has estimated "that of all the custody evaluators in the United States, no more than 10% are truly knowledgeable about child sexual abuse." (1997, p. 104). According to the American Psychological Association, providing expert opinions in child abuse cases requires specialized training and

expertise. Guidelines offered by the American Psychological Association ad hoc Committee on Legal and Ethical Issues in the Treatment of Interpersonal Violence (1997) state:

Psychologists who testify in child abuse cases ... must have specific training, continuing education, and experience in working with child abuse cases, issues, research, or assessment. Merely being trained in psychology or being licensed does not automatically qualify a psychologist to testify and provide expert opinions in this area.

Despite the fact that a custody evaluator who lacks expertise on sexual abuse is not competent to perform a psychosocial assessment regarding such abuse, many readily perform such assessments as part of custody evaluations.

***The strong legal presumption in favor of joint custody or the "friendly parent"***

Joint custody presumptions and "friendly parent" statutory provisions are widespread and routinely applied throughout the United States (Zorza, 1992). The friendly parent concept is codified in child custody statutes requiring a court to consider, as a factor for custody, which parent is more likely to allow "frequent and continuing contact" with the child and the other parent, or which parent is more likely to promote the child's contact or relationship with the other parent (Dore, 2004). Evaluators and GALs are trained in this model of equality and shared parenting. In a study of battered women's experience in family court, Rivera, Zeoli, and Sullivan (2012) found that family courts prefer to award joint custody to all divorcing couples and typically give sole custody only in cases where both parents want this arrangement.

Although, the friendly parent concept was developed to keep both parents in children's lives, it can harm children as it can prevent nonoffending parents from being able to protect themselves and their children from abuse, violence, and neglect at the hands of the other parent (Dore, 2004). Charging the other parent with abuse is the epitome of an "unfriendly" behavior. Protective mothers

often object vigorously to their children spending unsupervised time with a violent or pedophilic father. An abusive father, on the other hand, usually has no objections to having the children seeing their mother. Courts tend to punish parents engaging in “unfriendly behavior” by denying them custody or time with their children (Dore, 2001).

Dalton (1999) noted:

[J]udges confusing abuse with conflict may . . . conclude that the parents who oppose shared parenting are acting vindictively and subordinating the interests of the children to their own rather than expressing their legitimate anxieties about their own and their children’s ongoing safety. Ironically, within the friendly parent framework, a mother’s proper concern about her abusive partner’s fitness to parent will negatively affect her chance to win custody, not his. (p. 277)

As the father appears more flexible and reasonable, judges may disregard evidence of past violence and award sole or joint custody to the father based on the friendly parent preference. Thus, children’s needs are subordinated to the court’s mandate to favor the friendlier parent (Dore, 2004).

Most states have statutes that allow or mandate family court officials to address intimate partner violence in child custody determinations (Jaffe, Lemon, & Poisson, 2003). Nonetheless, “friendly parent” provisions often undermine these presumptions. Morrill, Dai, Dunn, Sung, and Smith (2005) examined 393 custody and/or visitation orders across six states where the father perpetrated domestic violence against the mother. They also surveyed 60 judges who decided the cases. With the presumption, more judges gave legal and physical custody to the mother and imposed a structured schedule and restrictive conditions on fathers’ visits, *except* where there was also a “friendly parent” provision and a presumption for joint custody.

Friendly parent provisions are based on a mindset that views family conflict through the lens of equality of power. Yet, domestic violence by its very nature involves an inequity in power. The more powerful abuser—willing to use fabrication, deceit,

violence, and corrupt practices--wields an advantage over the rule-bound victim. Evaluators and guardians are trained in this model of equality and shared parenting, and the paradigm of unequal power is hard to reconcile with this family court philosophy. Pence et al. (2012) analyzed custody evaluation reports produced in family law cases in which domestic violence had been identified. They found viewing domestic violence victims through the lens of equality in family court affects the perception of domestic violence allegations such that they are often viewed as “tactics” or strategic ploys, rather than calls for help.

### ***The inappropriate use and interpretation of psychological testing***

Many custody evaluators use psychological tests to help them determine the best custody arrangement for the child. While this is done in an attempt to increase the objectivity of the evaluator's decisions, there are many critics of this approach. Psychologists have criticized the custody evaluator's test battery as having little scientific validity (see e.g., Tippens & Whittman, 2005). As Levy (1987) points out evaluators are prone to suppress facts that do not fit into preconceived notions, use hard to quantify subjective psychological interpretations that have little scientific base, and impose their own values to derive recommendations. Even well-established psychological measures (e.g., measures of intelligence, personality, psychopathology, and academic achievement) are problematic because of their often limited relevance to the questions before the court (Emery, Otto & O'Donohue, 2005). One of the most important forms of validity for psychological testing instruments is what is called predictive validity. This means that the outcomes predicted by test data have been validated by longitudinal studies that demonstrate accuracy in prediction. Custody evaluations take place in an environment absent of the kind of feedback that would yield predictive validity. According to Kahneman



(2011), an expert in decision-making science, environments that do not provide experts feedback are prone to yield both a false sense of confidence and faulty decision-making.

Another problem with psychological tests is they are not normed on parents involved in custody litigation and may give misleading results when assessing families in which violence has taken place. Assessment of the alleged perpetrator is particularly difficult due to the high degree of denial among offenders, lack of an offender profile, and absence of a typical test profile for offenders (Becker & Murphy, 1998). Similarly, psychological tests are of little value in determining the veracity of a child abuse allegation. There is no psychological test that can determine whether or not a person has abused a child (American Psychological Association Ad Hoc Committee on Legal and Ethical Issues in the Treatment of Interpersonal Violence, 1997). Nor is there any psychological test that can establish whether a mother's concern about abuse is factual (Bancroft & Silverman, 2003).

Moreover, Minnesota Multiphasic Personality Inventory (MMPI-2), one of the most common tests administered during custody evaluations (Medoff, 1999), includes many questions that, if answered accurately by a traumatized mother, will contribute to elevated scale scores (Pope et al., 2000). These include questions such as whether she worries frequently, whether she has trouble sleeping, or whether she believes another individual is responsible for most of her troubles. Because of the absence of serious psychopathology in most perpetrators of family violence, and because of the potent traumatic effects of being a victim of domestic violence and/or having one's child abused, perpetrators may outperform nonoffending mothers in psychological testing. As a result, psychological testing may make a violent parent appear to be the best candidate for custody placing the child in danger of abuse.

Battered women may appear to be suffering from various psychopathologies including paranoia, borderline personality disorder, histrionic personality disorder or even schizophrenia (Erickson, 2005; Rosewater, 1988). As pointed out by Erickson (2005), these types of psychopathologies in battered women are best understood as reactions to their life history rather than signs of mental illness. Erickson notes that the frequency and severity of the abuse appears correlated with MMPI elevations, suggesting that the elevations are caused by the abuse. Moreover, there is evidence that these elevations return to normal when the women leaves and achieves safety. If custody evaluators ignore her history, they may decide that she has personality traits that indicate she would not be a fit parent. Conversely, studies have shown that psychological tests, including both standardized tests such as the MMPI-2 and projective tests such as the Thematic Apperception Test (TAT) and the Rorschach, are poor predictors of parenting capacity (Gottfried, Bathurst, & Gottfried, 2004; Graham, 2000; Otto & Collins, 1995).

Tippens and Whittman (2005) argued that the current ways that psychological test data are used in custody evaluation could be viewed as unethical. They argue that custody evaluators typically extend their conclusions way beyond what the data they generate would merit, as it is impossible for a specific custody schedule to emerge from a psychological test results. Psychologist do better to report on observations and make inferences based on a person's strengths and weaknesses, but custody evaluators typically make extrapolations far beyond what the testing can indicate.

The lack of validity and consensus in the meaning of scores can lead to evaluator bias to predominate. Schafran (2003) noted a case that was heard by the North Dakota Supreme Court in which bias was the basis for appeal. The court appointed a psychologist to conduct a custody evaluation and he gave both parents the MMPI. They scored similar results, but he interpreted their elevated scores

very differently. He described the father as appropriately guarded and dismissed his considerable anger and resentment as understandable given the circumstances. Yet his interpretation of a similar evaluation in the mother's test was quite different. Her anger was not attributed to the stress of the custody dispute or the break-up of the marriage. Rather she was labeled with "hysteria" suggesting she was not credible. Nor did the psychologist factor in her report that her ex-husband was harassing and stalking her. The psychologist accepted the father's denials of these activities and labeled the mother both paranoid and delusional. She lost custody and appealed the decision. The North Dakota Supreme Court found notable evidence of gender bias in the psychologist's report. However, they affirmed the case assuming that the trial judge factored in this bias in his custody ruling (*Severson v. Hansen*, 1995).

### **Summary**

The reasons family courts frequently fail to protect abused women and children are multi-faceted but appear to be systemic. A lack of education in domestic violence and child abuse; legal presumptions in favor of joint custody and "friendly parent" provisions; the inappropriate use and interpretation of psychological testing, and gender bias all appear to play a role. In the absence of feedback regarding the long-term effects of their decision-making, custody evaluators and judges often operate in the dark, overlooking the effects of violence on families.

### **Method**

This research employed an exploratory, multi-case study design. Case study is an ideal methodology when a holistic, in-depth investigation is needed (Feagin, Orum, & Sjoberg, 1991). The multiple-case design permits the researcher to make generalizations

based on the observations of patterns or replications among the cases (Yin, 2013). In addition, multiple data sources were used allowing triangulation of data—a method recognized as enhancing confidence in the ensuing findings (O'Donoghue, & Punch, 2003).

The goal of this study was to determine whether there are any patterns that can shed light on why family courts often place children with a parent that the child alleges abused them rather than with the nonoffending parent. To evaluate this problem we needed to locate cases in which we could determine that the abuse had actually occurred and the court failed to protect the child. Consequently, we focused on what we have termed "turned around" cases. A turned-around case is a child custody case in which a child is originally court ordered into unsupervised custody or visitation with a parent who is alleged to have abused the child. We termed this first decision not to protect the child "Time 1". Later, the ruling is reversed, a new settlement is reached, or other factors result in a modification of custody or visitation such that the child is no longer ordered into unsupervised contact with the alleged abuser. We termed the decision that led to the child being protected "Time 2". By focusing on turned around cases, we sought to avoid cases in which there remains doubt as to whether or not the child was actually abused. In most turned around cases, the evidence for abuse has been documented by the court or other professionals and judged to be convincing. We then obtained legal documents for the two decisions which provided data to determine the factors associated with each court's ruling.

### **Specific Inclusion and Exclusion Criteria**

Cases were included based on the following criteria:

1. Parents were at some point involved in custody litigation.
2. The case was heard in the United States.
3. One parent sought to protect his or her child or children from abuse by the other parent.

4. Evidence of abuse was provided to family court during the course of the custody case.
5. The judge presiding over the case did not protect the child and ordered the child to spend unsupervised time with a parent alleged to have abused the child, or a settlement was reached despite the presentation of abuse related information based on threats from a judge or guardian on loss of time to the protective parent if settlement is not agreed on.
6. At a later point in time, the first decision was modified and the child was protected from further abuse;
7. The judges' decisions and/or other documents supporting the change were available for analysis.

### **Case Finding**

We were not able to locate a central repository with custody data that would allow us to pick random cases, as our criteria were too specific to be included in data bases of custody cases. As a result, relevant custody cases were identified using a variety of methods. These included sending out a letter to professionals who work with custody litigation involving abuse claims, letters to organizations who advocate for protective parents involved in custody litigation, and review of on-line and newspaper articles. Once a case was identified, we sought to obtain the legal records associated with the case. In some cases the current custodial parent provided the public records after being informed and consenting to participate. In other cases, records were obtained from attorneys involved in the cases after they obtained permission to share them with us. In a few cases the information was found in public documents available online.

### **Sample Size**

The sample size was limited by the rigor of our inclusion criteria. The inclusion criteria were set to ensure that cases represented children who were actually abused and thus required two separate court actions—one in which the child was not protected and one in which the child was. Few cases meet these criteria and those that do are not easily identified. We have currently identified

55 cases meeting our inclusion criteria. We have obtained and analyzed the necessary documentation for about half of the cases (N=27). Because so little is known about factors influencing judicial decision making in custody cases in which abuse is alleged, any study must start by establishing some basic facts about the phenomenon. We believe that the 27 cases we have analyzed provide a starting point.

### **Coding**

Once court documents were obtained, the principal investigator reviewed the materials to select relevant documents for coding. Documents selected included judicial decisions and opinions, transcripts of judicial decisions during hearings, motions which included abuse evidence, depositions of mental health evaluators that included abuse evidence, transcripts of professionals that presented evidence of abuse, and social service reports documenting findings. An effort was made to locate documents that contained the professionals' reasoning at both decision points. Many of these cases went through multiple custodial changes through the life of the case and narrowing the choice points down to two periods of time was often difficult. The main guideline we used was to determine Time 1 was the point in time that the safe parent had the least access to the child and the unsafe parent had maximum access. Time 2 was based on the point in time where the safe parent had primary access and the unsafe parent had little or no contact with the child.

Some dates were picked based on the availability of documents that described the information. So, for example, in several cases the loss of custody occurred during an ex-parte hearing. In these cases there was no information before the judge regarding the abusive behaviors of the unsafe parent. Because there was no data to analyze, we did not use ex-parte hearings as Time 1. Instead, we used a later hearing where evidence was actually presented. A limitation inherent in this method was that we were left with only a

snapshot of what was occurring at two contrasting points in the life of the case. In the future we hope to analyze the number of changes in custodial arrangements before the child is finally protected along with data documenting the long circuitous route towards eventual safety. This study, however, was limited to looking at these complex cases at only two points in time.

We used a coding sheet we developed to extract relevant data from court records. The instrument consisted of 108 items divided into three sections. The first section documented basic information about the child and the family. The second section documented information about the first court case in which the child was not protected and the evidence presented at the time, including disclosures and child symptoms. The third section documented information from a later court decision in which the child was protected. In the second and third sections we coded the type of hearing involved, the type of abuse allegations raised, sources of information presented to the court, the court personnel and mental health professionals involved, and the outcomes. We also included child symptoms and perpetrator behaviors mentioned in court records. The coding sheet is provided in Appendix A.

Two researchers did the coding, the second and third authors, after selected documents were provided by the first author. Inter-rater reliability was established by having both researchers code the first four cases and disagreements were resolved by consensus. The fifth case was coded separately and answers were tabulated. The percent of agreement was 97.2%.

### **Analysis**

Because this is an exploratory study with a small sample size, analysis mainly took the form of comparisons using percentages and frequency tables.

## Results

The 27 cases were drawn from 13 different states representing all regions of the United States. The cases included 11 (41%) boys and 16 (59%) girls. The mean age of the children when the family court first failed to protect them was 6.5 years with a range of 3-15 years. The average time a child spent in the court ordered custody of an abusive parent was 3.2 years (range: 4 months to 9.25 years). All of the protective parents were female and all of the abusers were male (our extended data set includes two cases where a father was the protective parent and a mother the abusive parent so while all the protective parents in our sample were mothers, we recognize that this is not always the case). The majority (92%) of the parents had been married. The sample size was largely (93%) from middle and upper socioeconomic groups as a result of our solicitations from private lawyers. The sample of mothers was 81% Caucasian. The balance included one African American, two Korean immigrant mothers, one Indian-American immigrant, and one Asian-American. The fathers were 93% Caucasian with one African-American and one Indian-American father in the sample.

### **Type of Abuse Reported to the Court**

In all of the cases the children disclosed abuse perpetrated by their father. At Time 1, 78% of children disclosed more than one type of abuse. The most common type of abuse reported to the court was sexual abuse. Seventy percent of children were reported to have been sexual abused, and 52% were reported to have experienced physical abuse. Seven children (26%) disclosed both physical and sexual abuse. In addition, almost 60% of the mothers reported experiencing domestic violence as part of the marriage (see Table 1). At Time 1, most (84%) of the protective parents who experienced domestic violence applied for a protection order. Of those who applied, the order was granted 94% of the time. (It should be noted, that in a number of cases, the protective order was granted by one



court and then vacated by the family court judge hearing the custody case so the order was only in effect briefly). In most cases (88%) the protection order was to protect the safety of the mother. In 31% of cases it was to safeguard the child.

Abuse did not stop after having been brought to the attention of authorities at Time 1 (first court hearing in which the child was not protected). After failing to be protected at Time 1, 88% of children reported new incidents of abuse prior to Time 2 (the court decision in which children were protected). Of those experiencing new incidents of abuse, most (77%) experienced more than one type of abuse. For many children, the abuse became increasingly severe. After being placed in the custody or unsupervised visitation with their abuser, children's mental and physical health frequently deteriorated. As a result, medical neglect became a prominent type of abuse reported at Time 2. Twenty-seven percent of the children were alleged to have experienced medical neglect. This often took the form of the perpetrator failing to seek medical attention after having harmed the child. For example, several of the children experienced broken bones for which the perpetrator failed to seek medical treatment. It also took the form of the perpetrator denying very distressed children access to therapy. For example, in some cases the children were suicidal yet the perpetrator refused to allow them to see a therapist. In another case, an abusive father purposefully gave the child a known allergen causing the child to get sick.

Table 1

Abuse Reported to Court N=27						
	CSA	Physical Abuse	Emotional Abuse	Neglect	Medical Neglect	DV against PP*
Time 1	19 (70.4%)	14 (52%)	11 (41%)	2 (7.4%)	3 (11.1%)	16 (59.3%)
Time 2	14 (54%)	15 (58%)	10 (38%)	3 (12%)	7 (27%)	2 (8%)
*Note: PP stands for protective parent						

## To Whom Children Disclosed

At Time 1, all children disclosed their abuse to their protective parent – which in the cases studied ended up being their mother. Many disclosed to other people as well—especially to professionals who were evaluating the child. At Time 2, only 71% disclosed to the protective parent. This may be due to the fact that most children were no longer in the custody of the protective parent and were restricted from seeing her. In addition, in a number of cases the protective parent had been threatened by the court not to report any further abuse or face losing all contact with their child. This also may have discouraged children from confiding in their mother.

**Table 2**

<b>To Whom Children Disclosed (n=25)*</b>		
	<b>Time 1</b>	<b>Time 2 (n=24)</b>
Protective Parent	100%	71%
Other Family Member	20%	25%
School Official**	8%	21%
Therapist	44%	46%
Other Professional (e.g., CPS, Police, Evaluator, etc)	60%	50%
Judge	0	17%
Other (e.g., babysitter, friend's parent, etc.)	8%	21%
*Note: data missing in 2 cases; **Note: At Time 1, some children were too young to be in school.		

## Reports to Child Welfare Agencies

At Time 1, 93% of suspected abuse was reported to a Child Welfare Agency (although states call their child welfare agency by different names, for convenience we use the term Child Protective Services [CPS] to refer to all child welfare agencies that investigate abuse allegations). The abuse was judged unfounded or was ruled out by CPS in 63% of cases. Abuse was founded in 22% of cases. One case was mixed, as some of the alleged abuse was founded and other alleged abuse was unfounded. At Time 2, only 73% of the abuse was reported to CPS, and only 20% of the allegations were judged to be founded (see Table 3). This is despite the fact that children had gotten older, were providing clearer disclosures, and evidence of the abuse was mounting. It appeared that once CPS determined the abuse was unfounded or ruled out, they failed to adequately investigate subsequent reports. In addition, CPS often seemed biased against finding abuse due to the fact that the abuse first surfaced during custody litigation. Some of the agencies picked up on the custody evaluator's concern with “alienation” and therefore opted not to assess the abuse thoroughly.

**Table 3**

<b>CPS Findings</b>		
	Time 1(n=27)	Time 2(n=15)*
Reported to CPS	92.6%	73%
-Founded	22%	20%
-Unfounded or ruled out	63%	13%
-Mixed	4%	0
-Data Missing	11%	46%**
*For Time 2, data was only available for 14 of the 27 cases.		
** Documents failed to mention what CPS's determination was.		

### Outcome at Time 1

At Time 1, 59% of perpetrators were given sole custody and protective parents were given only limited contact with the abused child. Two protective parents lost all contact. Twenty-six percent of protective parents were given primary custody but the abuser was allowed unsupervised visitation. In 15% of cases, the protective parent was forced to share custody with the abuser (see Table 4).

**Table 4**

<b>Outcomes at Time 1</b>		
	<b>N</b>	<b>% of total</b>
Sole Custody to Perpetrator	17	59%
-PP Unsupervised Visits*	6	22%
-PP Supervised Visits	6	22%
-PP No Contact	2	7%
-Missing Data	3	11%
Joint Custody	3	11%
Custody to PP; Unsupervised Visits with Perpetrator	7	26%
*PP refers to the protective parent		

### Type of Hearing in Which Custody or Unsupervised Access Was Given to the Perpetrator

The majority of perpetrators (52%) gained custody or visitation at a hearing to modify custody (see Table 5). Another 18.5% gained custody or visitation at a final custody hearing. Although a number of mothers first lost custody in ex parte hearings (hearings

where they were not present), we did not use these hearings for Time 1 because no evidence was heard. Instead we coded Time 1 as the next hearing where data regarding abuse was presented so that the judge's reasoning in response to evidence could be examined.

**Table 5**

<b>Type of Hearing at Time 1</b>		
	N	% of total
Custody Modification	14	52%
Final Custody Hearing	5	19%
Pendente Lite	2	8%
Emergency Motion	2	8%
Contempt Hearing	2	8%
Settlement Agreement	2	8%
other	1	4%

### **The judge's Rationale for Not Protecting Abused Children in First Custody Decision**

Family courts were highly suspicious of mother's motives for being concerned with abuse. Two-thirds (67%) of the mother's were pathologized for advocating for the safety of their children. The main people who pathologized the mother were professionals whom the courts relied on for guidance. In 67% of decisions, the judge cited the opinion of a custody evaluator or GAL who did not believe child was abused. Custody evaluators and GALs frequently accused mothers of attempting to alienate their children from the father. Mothers were also frequently accused of having coached the child to report abuse. In 78% of cases there were references in the judicial decision that called the mother's credibility into question.

Mothers were often punished for reporting abuse and courts often set up systems to make it more difficult for them to protect their children. For example, a report by a custody evaluator claimed that the fact that the mother believed that her former husband abused her son was in itself a form of child abuse. He stated:

She appears to lack insight into the strong feelings and motivations that are driving her behavior and casting dad as a child abuser and unfit parent. She has become obsessed and fixated upon her negative campaign to denigrate the father, regardless of the negative impact her behavior is having upon her son and her son's relationship with his father.... *This falsely held belief on her part and her false accusations against Father is in and of itself abuse of the child.* [emphasis added]

The mother lost custody and the child continued to be abused. Several years later the father was arrested for raping his son.

In several other cases mothers not only lost custody due to reporting abuse, but were also ordered not to speak abuse abuse with their child or risk losing all contact. In some cases, mothers were ordered not to report any abuse to their state's child protection agency. Instead, they were ordered to only report abuse to a special master or parenting coordinator appointed by the court. Abuse reported to these officers of the court was never investigated or referred to CPS.

**Table 6**

<b>Judge's rationale for not protecting at Time 1</b>		
	<b>N</b>	<b>% of total*</b>
Pathology of the Protective Parent*	18	67%
-Parental Alienation	10	37%
-Mother and child viewed as enmeshed	2	7%
-Brainwashing or coaching	9	33%
-Obsessive	1	4%
Protective Parent not credible	14	52%
Accepts opinion of professional or GAL who does not believe child was abused	18	67%
-Professional	12	44%
-GAL	8	30%
Insufficient evidence of abuse	10	37%
Recantation of child	1	4%
Equality of problems on both sides	4	15%
Perpetrator provides more stable home	4	15%
Other (e.g., perpetrator more likely to comply with court orders, more "friendly" parent, etc.)	3	11%
* In most cases judges offered more than one rationale.		

## Outcome at Time 2

At Time 2, children were protected from further unsupervised contact with the abuser. Most protective parents (81%) were awarded sole custody (see Table 7). In 11% of cases, the protective parent was forced to share custody with the abuser but children were given the choice whether or not to visit with their perpetrator. In one case, the child escaped sole custody of their abuser by getting married and becoming emancipated. In another case, the child was placed in the custody of a safe family member and had access to the protective parent.

**Table 7**

<b>Outcomes at Time 2</b>	<b>N</b>	
Sole Custody to protective parent	22	81%
-Unsupervised to perpetrator	1	4%
-Supervised Visits with perpetrator	5	19%
-No Contact with perpetrator	9	33%
-Child's Choice Whether to Visit	4	15%
-Missing data	3	11%
Joint Custody (child older or given choice whether to visit)	3	11%
Minor Emancipated	1	4%
Custody to Safe Family Member	1	4%



### **Type of Hearing in Which Children Were Protected from Further Abuse**

Regaining custody was difficult for protective parents and children were finally protected through numerous different types of court procedures (see Table 8). One of the ways protective parents regained custody was through an appeal. Eight protective parents appealed their case to a higher court. Five decisions (19%) from Time 1 were reversed by a higher court ruling. Some appeals, though successful, did not change the child's custody status as the case was remanded back to the trial court. Three appeals were unsuccessful, yet the mothers eventually had the children returned to them through other methods. Thus appeals, while helpful in some cases, were not helpful in others. Fifteen percent of children were protected at a final custody hearings and another 15% of children were protected at a hearing to modify custody. The remaining cases involved a number of other types of hearings including status conferences, protective orders, mediation agreements, or emergency motions

**Table 8**

<b>Type of Hearing at Time 2</b>		
	<b>N</b>	<b>% of total</b>
Appeal	5	19%
Final Hearing	4	15%
Modification of Custody	4	15%
Status Conference	3	11%
Protective Order	2	8%
Mediation Agreement	2	8%
Emergency Motion	1	4%
Settlement	1	4%
Other	5	19%

## **Main Reasons That Children Were Protected at Time 2**

As with Time 1, judges at Time 2 tended to rely on the judgment of professionals when modifying custody determinations (see Table 9). Seventy-eight percent of custody cases included testimony by a professional. No custody evaluations were done at Time 2. Instead, the professionals were almost all therapists (89%) or involved in specialized abuse evaluations (11%).

The main reason that cases turned around was because protective parents were able to present evidence of the abuse and back the evidence up with reports by professionals who were able to dispel the misinformation and myths promulgated at Time 1. At Time 1, few of the professionals who testified had any expertise in abuse. At Time 2 over half (57%) of those who testified about the child had specific expertise in abuse. In 63% of decisions at Time 2, judges cited reports and testimony from professionals who supported the child's claims of abuse. In 30% of cases the judge noted that the child's mental health was deteriorating in the care of the father. Much of the evidence for this deterioration was found in the reports and testimony of professionals.

In many cases, the judge was persuaded by the convergence of evidence from a number of different sources. For example, one judge at Time 2 was persuaded by forensic evaluation of child with disclosures, medical evidence of sexual abuse, along with the testimony of a neutral witness about the child's behavior at school. A particularly compelling reason that cases turned around was that the perpetrator was arrested or was under the threat of being arrested. In three cases the perpetrator lost custody due to being arrested. In a fourth case, a perpetrator relinquished his rights to prevent being arrested for sexually abusing his daughter.

Eight (30%) of the cases were appealed, but only 5 of the appeals were won and the children protected. In three cases, the protective parent lost the appeal but was able to protect the child at a later court proceeding. In the cases in which the protective parent

won her appeal, it was often because the lower court had violated the protective parent's rights or disregarded important evidence of abuse. For example, in two appeal cases there was ample evidence of abuse provided by a number of professionals. However, the judges questioned the children about abuse in chambers and both cases were reversed because the judge relied on their own interview instead of the ones done by trained professionals. In one of these in chamber interviews, the young child made a partial recantation and the judge based her decision on this, rather than the medical and psychological evidence presented.

The self-advocacy of older children was another important factor resulting in children finally being protected. For example, some children continually ran away, reported their abuse to CPS, or refused all attempts at visitation and could not be coerced to participate in reunification therapy.

**Table 9**

<b>Main Reasons Why Case Turned Around Based at Time 2</b>		
	<b>N</b>	<b>%</b>
Reports from Professionals	17	63%
Child's Mental Health is Deteriorating	8	30%
Persuasiveness of Child's Disclosure	6	22%
Child's Continued Refusal to Visit	6	22%
Appeal	5	19%
Perpetrator Arrested or About to Be Arrested	4	15%
Rejection of PAS	3	11%
Compelling Medical Evidence of Abuse	3	11%
GAL Recommendation	3	11%
Testimony of Neutral Witnesses	2	7%
Perpetrator's Bad Behavior in Court	1	4%
Other: (e.g., settlement, mediation, emancipation of minor, relinquishment)	4	15%

**Role of Mental Health Professionals in Judge's Decision at Time 1 and Time 2**

At Time 1, a mental health evaluation was done of the child in 91% of the custody cases. Most evaluations were done by therapists (43%) or custody evaluators (38%); in 14% of cases reports were submitted by both a therapist and custody evaluator (see Table 10). Although abuse allegations were at the heart of the custody disagreement, at Time 1 less than 11% of these professionals who evaluated the children had any expertise in assessing abuse. Eighty-five percent of mental health professionals advising the judge

either failed to believe the child and the protective parent or believed them and still recommended that the child be forced into custody or unsupervised visitation with the perpetrator. When judges received reports from professionals who differed on their view of the credibility of the child's allegations, judges tended to accept the recommendations of a professional who did not believe the child, even when hearing testimony from other professionals who had more expertise in the matter or who had examined the child more contemporaneously to the abuse. In another case, a therapist testified that she did not believe the child was abused, and therefore the judge ignored the child's disclosure of abuse in chambers even though it was specific and accompanied by suicidal ideation.

**Table 10**

<b>Mental Health Evaluations of Children</b>		
	Time 1	Time 2 (n=23)
Mental Health Evaluation Done	91%	78%
By Therapist	44%	89%
Specialized Abuse Evaluation	15%	11%
Custody Evaluation	41%	0
Professional Was a Specialist in Abuse	10%	57%

### **The Role of GALs**

Judges presiding over child custody disputes often appointed a Guardian Ad Litem, commonly referred to as a GAL, for minors in order to ensure that children's interests are adequately protected. Although the role of the GAL is to protect the interests of children, the involvement of GALs in the cases studied often contributed to children not being believed or protected from abuse. In

73% of cases in which we had data, the GAL sided with the abuse perpetrator against the child. Even at Time 2, when the abuse had been better documented, GALs sided with the perpetrator 38% of the time.

For example, in one case in which a child disclosed abuse, the GAL referred the child to an expert in parental alienation who then testified against the child's claims. In several cases we studied, the GAL was instrumental in making certain that the abuse was not investigated. For example, one case involved over 10 abuse reports--including allegations of sexual abuse along with broken bones and human bite marks. The GAL recommended that the father receive sole custody and the judge complied. The child became increasingly suicidal and ran away. Ultimately, a different judge reviewed all the evidence in the case and returned the boy to his mother's custody. In other cases, it is clear that the GAL was more concerned with pleasing the judge, than representing the interests of the child. For example, in one case, the GAL failed to turn in a report. When the judge asked about his report, the GAL explained to the judge that since the judge was new, he did not write a report because he did not know what the judge wanted him to say.

### **The Role of Specialized Attorneys**

Attorneys play an important role in custody litigation. We examined the two different types of attorneys that protective parents utilized at Time 1 and Time 2 (see Table 11). Most (95%) protective parents hired private attorneys at Time 1. At Time 2, 59% had hired an attorney who specialized in family cases involving allegations of violence. The data suggest that having an attorney familiar with abuse and with presenting evidence of abuse to family courts may be an important factor in helping to turn these cases around.

**Table 11**

<b>The Effect of Specialized Attorneys on Custody Outcome</b>		
<b>Type of Attorney</b>	<b>Time 1: Child Not Protected (n =19)</b>	<b>Time 2: Child Protected (n=22)</b>
<b>Not specialized</b>	<b>18</b>	<b>9</b>
<b>Specialized</b>	<b>1</b>	<b>13</b>

### **Gender of the Judge**

Twenty out of 25 (80%) of the judges at Time 1 were male (data missing in two cases n=25). At Time 2, only 57% (12 out of 21, data missing on 6 cases) of the judges were male (OR=2.7 [n= 21; p=.15]).<sup>3</sup> Although not statistically significant with such a small sample size, this analysis suggests protective parents in our study were more than twice as likely to get a favorable outcome with a female judge as compared to a male judge.

### **Symptoms Reported in Children**

The children in these cases tended to have multiple symptoms of distress (see Table 12). It should be noted that the symptoms documented are from court records. Symptoms in these children were not systematically investigated and measured. Therefore, we believe that these likely represent an underestimation of the true rate of symptoms in these children.

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<sup>3</sup> Odds ratios are used to compare the relative odds of the occurrence of the outcome of interest (e.g. poor custody outcome), given exposure to the variable of interest (e.g. gender of judge). The odds ratio can also be used to determine whether a particular exposure is a risk factor for a particular outcome, and to compare the magnitude of various risk factors for that outcome.

Symptoms of distress were often discounted at Time 1 and attributed to the pathology of the mother or to the stress of the custody litigation. For example, sexualized behavior was one of the most commonly reported symptoms in children who disclosed sexual abuse. Sexual behavior, which is considered highly correlated with sexual abuse (Everson & Faller, 2012; Frederich et al., 2001), tended to be dismissed by custody evaluators as either meaningless or a sign of stress. For example, a custody evaluator wrote the following in a case where the child disclosed sexual abuse, was having bowel problems, and had been observed to be acting out sexually:

The [child's] therapist...could address any encopresis problems, sexual self-touching, parental boundary issues, or other problems raised by (the mother). In my opinion, these problems, to the extent they may exist, are more a result of the parental separation than due to the conduct of (the father).

Although professionals frequently attributed children's symptoms to the stress of parental separation and custody litigation, symptoms did not improve after custody was settled. In fact, depression in children doubled and suicidality and self-harm increased almost threefold in the sample. So while 13% of children were suicidal at Time 1, by Time 2, 33% of the children were suicidal.



**Table 12**

<b>Child Symptoms Mentioned in Court Records</b>		
<b>Child Behaviors</b>	<b>Time 1 (n = 23)</b>	<b>Time 2 (n = 24)</b>
Sexual Behaviors	11 (46%)	5 (21%)
Depression	4 (17%)	8 (33%)
Anxiety	11 (46%)	17 (71%)
Self Harm	1 (4%)	3 (13%)
Suicidal	3 (13%)	8 (33%)
School Problems	3 (13%)	6 (25%)
Anger	9 (38%)	5 (21%)
Regressive Behaviors	10 (42%)	8 (33%)
Reluctance to Visit Perpetrator	14 (61%)	17 (71%)
Nightmares	9 (38%)	9 (38%)
Other (e.g., problems sleeping, running away, eating disorders, etc.)	9 (38%)	10 (42%)

### **Perpetrator Behaviors at Time 1 and Time 2**

We examined court records for behaviors in perpetrators that might have provided support for claims by the mother and child that the father was abusive. The two main behaviors that we found mentioned were anger (63%) and projection (63%) in which the perpetrator blamed the protective parent for the child's problems (see Table 13). The following is a quote from a custody evaluator's report at Time 1: "Father can become angry and argumentative and justify it as someone else's inappropriate behavior.... Parenting

hindered by a pattern of self-centeredness and narcissism that can be made worse by a tendency to deny his contribution to problems." Despite recognizing this behavior in the father, the custody evaluator recommended the father receive custody.

The third most common behavior mentioned in court documents was boundary violations by the perpetrator. This usually entailed the father insisting on sleeping in the same bed as the child or bathing with the child. Another common behavior found was implausible rationalizations particularly about their children's symptoms. In one case previously mentioned a boy would kneel over with his bottom up and cry, "It's going to hurt." When brought to the father's attention, he stated that this was how the child passed gas. In 33% of cases, there was evidence that the father had substance abuse problems. Sometimes these problems were severe with multiple drunken driving arrests. There was evidence of the father possessing child pornography in 21% of cases. Other behaviors included fabricating documents that were presented to the court to counter allegations of abuse, and falsely reporting the mother to child welfare for child abuse.

Many of these behaviors remained constant or increased after the perpetrator gained sole custody or unsupervised access to the child. For example, the perpetrator's difficulties managing anger, his use of projection, minimizing of evidence and offering implausible rationalizations increased slightly between Time 1 and Time 2. The most notable behavior that increased was the perpetrator's failure to adequately address the child's physical or mental needs. Whereas failure to address the child's needs was mentioned in 17% of cases at Time 1, it was noted in almost half (46%) of cases by Time 2. The most common presentation of this behavior was the perpetrator failing to take the child to a doctor after having physically hurt the child, or refusing to take the child to see a therapist when the child was displaying symptoms of severe distress. There was also an increase in isolating behaviors. For

example, after gaining custody, some perpetrators would attempt to isolate the child from other people and controlled the child's access to a phone--in essence holding their victim hostage. Perpetrators also displayed numerous other behaviors which were combined under "other". These mainly took the form of threats against the child and the mother, controlling behaviors, and criminal behaviors not previously mentioned.

**Table 13**

<b>Perpetrator Behaviors Mentioned in Court Records (N=24)*</b>		
	Time 1	Time 2
Anger	15 (63%)	17 (71%)
Projection (blames PP for child's problems)	15 (63%)	16 (67%)
Boundary Violations	11 (46%)	7 (29%)
Minimizing evidence or implausible rationalizations	10 (42%)	12 (50%)
Substance Abuse	8 (33%)	5 (21%)
Child Pornography	5 (21%)	6 (25%)
Failure to appropriately address child's needs	4 (17%)	11 (46%)
Fabrication of documents	3 (13%)	1 (4%)
False report of PP to child welfare	3 (13%)	1 (4%)
Isolating	1 (4%)	3 (13%)
Daily functioning problems	1 (4%)	3 (13%)
Other (e.g., threats, controlling behaviors, false claims about the mother, criminal behavior, etc.)	16 (67%)	14 (58%)
*Note: data missing from three cases		

## Discussion

Our research confirms numerous prior observations about the danger that family courts pose for abused children and protective parents. The majority of the children in our sample had been sexually and/or physically abused. Rather than protect them, the courts ordered them into the custody of their perpetrator, placing their physical and mental health at risk. Child abuse and neglect have known detrimental effects on the physical, psychological, cognitive, and behavioral development of children (National Research Council, 1993). These consequences range from minor to severe and include physical injuries, brain damage, chronic low self-esteem, problems with bonding and forming relationships, developmental delays, learning disorders, and aggressive behavior. Clinical conditions associated with abuse and neglect include: depression, post-traumatic stress disorder, and conduct disorders. Beyond the trauma inflicted on individual children, child maltreatment also has been linked with long-term, negative societal consequences. For example, studies associate child maltreatment with increased risk of low academic achievement, drug use, teen pregnancy, juvenile delinquency, and adult criminality. Kelley, Thornberry, & Smith, 1997; Maniglio 2009, 2011; Widom, 1992).

In our sample, 100% of children for which we had data<sup>4</sup> disclosed to their protective parent – which was the mother in all of our 27 cases.<sup>5</sup> Mothers then brought the abuse to the attention of the court seeking to protect their children from further abuse. Yet consistent with prior studies (e.g., Saccuzzo & Johnson, 2004; Faller & DeVoe, 1995; Kernic et al., 2005; Neustein & Goetting, 1999), mothers who raised issues of violence were often treated poorly and often received less than favorable custody rulings. Fifty-nine

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<sup>4</sup> We did not have data on to whom two of the children disclosed their abuse.

<sup>5</sup> As noted previously, we have identified over 60 turned around cases and in two of these cases the protective parent was the father. We do not mean to suggest that mothers cannot be perpetrators and fathers cannot be protective parents.

percent of the mothers in our sample lost complete custody to the perpetrator and some were given only supervised visitation. Similar to the findings of Faller and DeVoe (1995), a number of the women in our sample were sanctioned for reporting abuse. Some mothers were threatened that if they reported abuse again they would lose all visitation rights. One was ordered to pay her ex-husband's considerable legal expenses and was denied visitation with her child when she was unable to come up with the money necessary to do so.

Courts were highly suspicious of mother's motives for being concerned with abuse. Two-thirds (66%) of the mother's were pathologized for advocating for the safety of their children. The main people who pathologized the mother were professionals that the courts relied on for guidance. In 67% of decisions, the judge cited the opinion of a custody evaluator or GAL who did not believe child was abused. Custody evaluators and GALs frequently accused mothers of attempting to alienate their children from the father. Mothers were also frequently accused of having coached the child to report abuse.

In 78% of cases a primary reason the judge gave custody to the perpetrator was the mother was not viewed as credible and the child's allegations were dismissed as fabrications or exaggerations. While state agencies mandated to investigate abuse were often involved in 93% of the cases, CPS agencies initially erroneously unfounded or ruled out abuse 63% of the time. Although we have strong evidence that all the children in our sample were actually abused, CPS only founded abuse in 20% of cases. In addition, they were quick to close cases without an investigation apparently taking their cues from family court officials that the abuse allegations were false. Thus, CPS, a supposedly independent agency, would often close a case without an investigation based on the fact that the family was involved in custody litigation. An analysis by McGraw and Smith (1992) illustrated how the presence of a custody dispute

may impact the decision-making process in child abuse investigations. McGraw and Smith re-examined 18 cases referred to Boulder County Protective Services involving sexual abuse allegations in the context of divorce in which all but one of the allegations had been unfounded after CPS investigation. The results of this re-examination were that eight cases (44.4%) were founded, seven cases (39%) had insufficient information or were based on an unsubstantiated suspicion, and three (16.5%) were fictitious (one from a child and two from adults). The authors admonished investigators and clinicians to keep an open mind when investigating such cases, rather than assuming that they will be false.

One of our primary findings is that the conclusions and recommendations in the custody evaluator's report often have a determining influence on the case outcome. The judges' decisions were heavily influenced by the faulty conclusions of custody evaluators and GALs who had been appointed by the court. Consequently, when a custody case ended up in court, the fate of the abused child most often depended on the quality of the evaluator. A second finding is that the outcome had little to do with the evidence presented. Instead, outcomes were largely based on the evaluator's beliefs and biases. Poor custody evaluations that ignored previous histories of violence and minimized overt signs of abuse were a major problem. Moreover, the investigations by child welfare agencies were largely irrelevant to the decisions; whether they founded the abuse or not, it was the custody evaluator and GAL whose reports determined custody. Reports by child welfare agencies rarely influenced decisions even when they determined that abuse was founded. If custody evaluators and GALs disagreed with them, the child welfare agency's findings were ignored. Our finding that evidence of abuse tended to be ignored, replicate the findings of Davis et al. (2010). Davis et al. studied custody

evaluators' recommendations in cases of domestic violence. They found that the facts of the case had less influence on the final custody and visitation arrangements than the custody evaluator's personal beliefs about domestic violence and professional biases.

GALs did little to safeguard the welfare of their clients. In fact they were key players in making decisions that imperiled children. Both GALs and custody evaluators tended to be highly suspicious of abuse allegations and biased in favor of the accused parent. At Time 1, 85% of mental health professionals advising the judge either failed to believe the child and the protective parent, or believed them and still recommended that the child be forced into custody or unsupervised visitation with the alleged perpetrator. The fact that GALs sided with the alleged perpetrator over the child in 73% of cases, is of particular concern. A guardian ad litem is a unique type of guardian in a relationship created by a court order only for the duration of a legal action. Courts appoint these special representatives for infants, minors, and mentally incompetent persons. GALs are specifically appointed to safeguard the child's welfare during the litigation process. However, rather than protecting the child, many were instrumental in causing children in their care to needlessly suffer years of abuse.

The evaluators in the cases were analyzed appeared blind to abuse in any form. They not only ignored claims of sexual and physical abuse suffered by the child, they also ignored the history of battering that was often present in these cases. Two-thirds of the mothers in this sample reported having experienced domestic violence at the hands of their husband prior to separating. Of these women, 88% applied for and received a protection order. Yet in all of these cases, the father's history of interpersonal violence was not viewed as relevant to the child's disclosures of abuse or in formulating recommendations for custody. This is of particular concern given that over 30 studies have found a strong correlation between partner violence and child abuse (Appel & Holden, 1998, Edleson, 1999). As a report by the American

Psychological Association pointed out, fathers who batter their children's mothers can be expected to use abusive power techniques to control the children also (American Psychological Association, 1996).

Research shows that interfamilial abuse is very common and that sexual offenders can be cunning, manipulative individuals who can convincingly deny the allegations (Lanning, 2010). However, it seemed that the court appointed evaluators were quick to believe fathers and to blame mothers when a child disclosed abuse and named the father as the perpetrator. The custody evaluators and GALs in this sample tended to view mothers who alleged that their child was being abused as fabricating or exaggerating incidents of violence as a way of manipulating the courts to gain a tactical advantage. Many of the GALs and evaluators believed that the abuse disclosures were there result of coaching on the part of the mothers, despite the lack of any evidence suggesting that she had done so. Unfortunately, the majority of evaluators and guardians in the cases we analyzed adhered to the popular myth that women seeking to win custody of their children frequently falsely accuse their spouses of child sexual abuse (e.g., Blush & Ross, 1987; Gardner, 1987).

Thirty-three percent of the mothers in our study were believed by the family court to be coaching their children to report abuse. Fifty-two percent of the mothers were not considered credible. However, our study did not uncover any evidence of coaching by protective parents. In none of the cases where coaching was alleged was *any* evidence of coaching presented. This finding is in accord with the available research, which suggests that coaching children to report abuse is uncommon. After reviewing the literature on coaching, Faller (2007) concluded,

... on balance, research findings from studies of sexual abuse cases, from analogue research, from high certainty sexual abuse cases, from adult survivors of sexual abuse, and from national child protection data suggest that children falsely claiming abuse



or being coached to state they have been abused, when they have not, should not be a primary preoccupation of child abuse professionals. (p. 949)<sup>6</sup>

The pathologizing of mothers for their concerns about abuse had long lasting negative consequences on the relationship between the mother and child. Not only was she denied the ability to protect her child from further abuse, but she also often lost custody. After being labeled as having some type of mental pathology, this label stuck to her. In some cases, mothers were denied custody even when their concerns about abuse were later found to be valid. For example, in one case the father was arrested for sexual assault of his son. This placed the court in an awkward position as a previous judge had given the father sole custody after ruling (based on a report by a professional appointed by the court to evaluate the family) that the mother was obsessed with abuse and had coached the child into making false allegations. Based on his report, the mother was given supervised visits and ordered not to discuss abuse with her son. Four years later, the police had enough evidence to arrest the father for sexual assaulting his son. A new judge placed the father on supervised visitation and awarded custody to the mother's sister rather than return custody to the mother. In another case, custody was awarded to a father's girlfriend after the father was deemed unsafe. Thus, once a court had made a finding against the mother for coaching or alienation, the children did not easily resume custody with that parent—there were often many interim steps even after abuse from the father was substantiated.

Also of concern is the blind eye that judges and evaluators turned to evidence of fathers possessing child pornography. Research has shown that 22% of child pornography is produced by a parent or guardian. In fact, six times as many children in a

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<sup>6</sup> The only literature that was discrepant from this finding involved analogue studies where light touches to the genitals or buttocks were used in experimental conditions that may not accurately simulate what happens in real abuse cases where a known perpetrator abuses a child.

nationwide child-pornography database compiled by the National Center for Missing and Exploited Children were photographed by their parents as by strangers (Silvestrini, 2013). Yet a father's possession of child pornography tended to be ignored by the family courts. In one case a mother had lost custody for believing her child's disclosure of sexual abuse and was accused of parental alienation. She later found naked pictures of her child in some of her ex-husband's things. She turned the pictures over to the family court and asked for custody as the pornographic pictures appeared to corroborate the child's abuse disclosures. The father claimed that his ex-wife took the pictures to frame him. Remarkably the court considered both claims to be equally likely despite abundant evidence of sexual abuse presented to the court including medical evidence and clear disclosures.

By accepting the abuser's assertion that the word of their child and ex-spouse cannot be trusted, family courts can be expected to embolden the abuser. According to Dr. Anna Salter, "Sex offenders who have been 'caught' abusing a child ... without any meaningful consequences often feel emboldened, giving them a sense of invincibility." As a result the abuse may escalate (National Child Protection Training Center, 2012). This concern was borne out by our research. Eighty-eight percent of the children made new allegations of abuse after being court ordered into the custody or unsupervised care of their abusers. The abuse tended to become more severe and the children tended to become increasingly despondent.

The children in the 27 cases we analyzed tended to have multiple symptoms of distress (see Table 10). It should be noted that the symptoms documented are from court records. Symptoms in these children were not systematically investigated and measured. Therefore, we believe that these likely represent an underestimate of the true rate of symptoms in these children. It is important for family court personnel to understand the devastating long-term effects that their decision-making can have on vulnerable children. The children studied in these cases

showed increases over time in depression, anxiety and suicidal ideation, with one child attempting a nearly lethal hanging. According to court records almost a third of the children threatened to commit suicide, one nearly succeeded. Also significant were the enduring symptoms of dissociation, regressive behaviors, sexual behaviors, school problems and nightmares. Some ran away from their father's home while others ended up on psychiatric medication to manage their distress. The profound effect on these children's quality of life cannot be overemphasized. Although they were finally protected, the children spent an average of over three years in the custody of their abuser. These children were robbed of our society's promise of protection from maltreatment and it is likely that they will continue to suffer from the long term effects that maltreatment can have on their physical and emotional well-being.

A robust body of research dating back 30 years establishes the enduring effects of multiple forms of maltreatment on children. Sexual abuse, reported in 70% of the children in our sample, has been associated with numerous deleterious effects including sexualized behavior, sexual risk-taking behavior, depression, eating disorders, self-harm, drug and alcohol abuse and risk of re-victimization (Putnam, 2003; Trickett, Noll & Putnam, 2011). Physical abuse, found in 58% of our sample at Time 2, is known to have long-lasting effects on development including lowering children's academic achievement, and creating significant psychological effects such as increased anger, anxiety, depression and suicidal ideation (Kolko, 2002; Silverman, Reinherz & Giaconia, 1996). Exposure to domestic violence, found in 59% of the families in our sample, can also have long term negative effects on physical and mental health including post-traumatic stress and increased aggression (Kitzmann, Gaylord, Holt & Kenny, 2003). Perry (2000) found that many forms of childhood trauma can result in long-term changes in the functioning of the children's nervous systems. Even

emotional abuse, reported in 41% of children at Time 1, can have long-term negative effects on a vulnerable child's developing brain (Teicher, Samson, Polcari, & McGreenery, 2006).

Multiple abusive experiences, particularly when the trauma begins during childhood, can also have long lasting negative effects on victims' sense of self-worth. Experts in the field have noted that children abused by a caretaker often blame themselves for the abuse and grow up feeling fundamentally flawed and unworthy of being cared for by others (Chu, 1998). One of the most acute and long-lasting sequela of abuse by a caregiver is feelings of betrayal (Birell & Freyd, 2006), and a child may lose trust in everyone (Bacon & Lein, 1996).

The callous way these children were treated by the family court system can be expected to compound the harm associated with abuse. Professional responses to disclosures can have a significant impact on the well-being of abuse victims. Unsupportive responses, such as those where professionals minimize, blame, or disbelieve victims' allegations of abuse can intensify the victim's distress. Such responses have been shown to hinder recovery in rape victims (Ullman, 1996; Campbell, Ahrens, Sefl, Wasco, & Barnes, 2001) and are related to greater post-traumatic symptom severity (Ullman & Filipas, 2001). Reports in court records revealed that many children experienced extreme demoralization and a sense of betrayal when judges refused to believe them and ordered them into their abuser's custody. This fundamental sense of betrayal may last a lifetime, as these children can be expected to develop a sense of cynicism about the workings of government and a lack of trust in authority figures who claim to have their best interests at heart.

## **Conclusion**

Determining which parent should have primary custody when parents cannot agree is not easy. Family courts frequently rely on the expertise of mental health professionals to assess allegations of abuse within the context of child custody evaluations. Although

there is no empirical basis for treating abuse allegations that occur in the context of custody litigation any less seriously than abuse allegations that arise at any other point in time, officers of the court—including judges, custody evaluators, and GALs—have often been trained to be suspicious of abuse allegations during custody litigation. In the context of a child custody evaluation, without compelling evidence to support their allegations, women rarely come across as credible when alleging sexual abuse of themselves or their children. Custody evaluators and GALs often failed to properly investigate abuse allegations and were quick to blame allegations on malfeasance on the part of the mother. Protective mothers were frequently treated with open hostility, inappropriately pathologized, and sanctioned for reporting abuse. The end result is that custody evaluators frequently fail to substantiate abuse even when it is likely to have occurred and children were court ordered into the custody of their abuser.

### **Limitations**

The cases that came to our attention were a limited sample from lawyers and litigants who responded to our solicitation inquiries and thus may not be representative of the full range of cases in which children have been placed in the custody or care of perpetrators. More representative studies with a more diverse socioeconomic sample are needed that look at the outcomes to children in custody cases involving violence. In addition, using publicly available data to examine how courts deal with abuse has clear limitations. In our analysis of judicial decisions, there were multiple instances in which judges referenced data that was not available to us. In addition, we were unable to document the circuitous twists and turns that characterized the path of many of these complex cases as our design allowed us only a glimpse of the case at two distinct points in time. Interviews with the families could have helped

us make more definitive findings concerning the level of harm these families were exposed to and other aspects of the cases that may have eluded us by our reliance on the public records.

Future studies are needed that compare children who are placed with safe parents initially with those placed with their alleged perpetrators. Such a study would add significantly to our ability to draw definitive conclusions about the magnitude of harm that children experience as a result of erroneous judicial decisions. For example, it would be very helpful to do a large prospective study that followed families in which there are allegations of violence on their journey through the family court system. This would allow for measuring symptoms in the affected children over time and would allow for the correlation of child symptoms with custody placements. Another methodology that could be used would be to match children from families that have allegations of abuse with a control group of cases in which no violence is alleged to compare how family court system responses may differ between the two types of families. In our future work, we hope to expand our data pool and attempt to gain access to a larger number of court records in order to expand our ability to understand abused children's experiences in family court.

## **Recommendations**

It is our hope that state and federal agencies can work together in crafting new solutions that will help protect vulnerable children from the types of harm revealed in this study. Based on our analysis we offer the following recommendations to improve outcomes for children who have the misfortune to be both abused and entangled in a custody dispute:

### **1. Abuse reports should be thoroughly investigated**

When a child alleged that they have been sexually or physically assaulted by a parent, courts should deal with the allegation in the same manner that they would had the child alleged assault by a stranger. Allowing an alleged perpetrator to have continued access to a child is considered inappropriate in this context. Judges should err on the side of a child's right to safety rather than on the side of a parent's right to unfettered access to their child. If the judge allows the alleged abuser continued access, not only is the child placed at risk of additional harm, the judge's action also sends the strong message to the child that his or her allegations are not believed. Allowing the abuser unsupervised access also allows him or her to threaten, manipulate and intimidate the child. Family courts should not be as hesitant to coordinate work with law enforcement agencies and findings between criminal and family court should be shared. Once such abuse is disclosed, it becomes the responsibility of each and every family court employee, officer of the court, and court-appointed professional to do everything in their power to ensure the safety of the alleged victim from further potential abuse.

### **2. Specialists in abuse should play a larger role in the protection of abused children in family court**

Family Court cannot itself do a proper investigation of child abuse. The Family Court is not an investigative body, unlike the

Juvenile Court, which has Child Protective Services as well as independent investigators it can assign to examine an allegation of abuse. Dedicated courts that specialize in abuse and domestic violence may be one possible solution. In addition, experts in abuse and domestic violence should be given a larger role in family court decisions. Research is needed to determine whether custody evaluations offer more harm than benefit to children who have been victims of abuse. It is inappropriate to have a custody evaluator with no background in investigating abuse and no access to the tools of law enforcement to make a determination on whether or not abuse occurred. In addition, a standard custody evaluation with psychological testing should not be undertaken until any allegations of abuse have been thoroughly investigated. For instance, which parent has the most favorable psychological profile on the MMPI is not relevant for determining custody if one of them is raping the child.

### **3. State agencies mandated to protect children need to play a more significant role when abuse allegations are contested in family court cases**

Child welfare agencies should be required to investigate abuse allegations in the same manner no matter their timing in the life of a child. State guidelines need to be evaluated to examine who CPS handles abuse allegations that surface during custody disputes. It is important to determine whether a high percentage of abuse cases are being ruled out by CPS due to erroneous assumptions about the prevalence of false reports during custody litigation. Continuing education to state child welfare workers should be provided to counter popular myths that discredit mothers who seek to protect their children from abuse. Child welfare departments need to train their clinicians based on the latest scientific research on coaching, sexualized behaviors, and prevalence of interfamily sexual and physical abuse. One possible solution is to make child welfare funding contingent on reliance on gender neutral approaches to



evaluation of abuse evidence and avoidance of pathologizing reporters of abuse.

**4. Mental health professionals and judges need to recognize the faulty logic in pathologizing a parent who reports abuse to the court**

Theories that pathologize reporters of abuse, like parental alienation theory, need to be looked at with extreme skepticism.

While legal and psychological literature already has debunked parental alienation syndrome and associated theories (e.g., Dalton, Drozd & Wong, 2006), custody evaluators, GALs and judges continue to rely on these theories in dismissing evidence of abuse. There is a need for increased education for judges, GALs and custody evaluators in this area. Family courts need to train their clinicians and judges based on the latest scientific research on coaching, sexualized behaviors, and prevalence of interfamily sexual and physical abuse. Educational efforts also need to focus on what is known about perpetrator behaviors.

**5. The friendly parent custodial preference should not be applied in cases where there are allegations of domestic violence or child abuse**

States provide lists of best interest factors but often do not provide information on how to weight the relative importance of the best interest factors. State legislation and guidelines are needed that clarifies that statutory preference for the "friendly" parent is not applicable in families in which violence has occurred.

**6. The Guardian Ad Litem system needs to be reevaluated**

When GALs are appointed, they should be required to act as vigorous advocates for their client's position. In addition, GALs should be specifically trained in working with child victims of domestic violence and abuse and should be held to the highest

standards of professional conduct, as they represent the most vulnerable members of our society. Older children should be able to fire attorneys who are not representing their interests. In addition, GALs should not have judicial immunity. Those guilty of gross negligence should be held accountable under the law. A move to exempt child attorneys from immunity has been successful in Maryland through the legal decision of *Fox v. Wills*, 2006.

#### **7. The custody evaluator system needs to be reevaluated**

Each state should set standards for who may be a custody evaluator and mandate training in domestic violence and child abuse. In addition, research is needed to determine the utility of custody evaluations by monitoring case outcomes. Some have argued that the current custody evaluation tools are so fraught with scientific flaws that its use in custody decision making should be suspended completely (e.g., Tippens & Whittman, 2006).

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Appendix A

Coding Sheet

<b>Protective Parent's initials</b> _____			<b>Number of children:</b>		
<b>Gender of Protective parent:</b> M / F			<b>DOB of abused child:</b>		
<b>Gender of alleged perpetrator:</b> M / F			<b>Sex of child:</b> M / F		
<b>Parents ever married?</b> Y/N					
<b>Decision 1</b>			<b>Decision 2</b>		
<b>Date:</b>			<b>Date:</b>		
<b>State:</b>		<b>County:</b>	<b>State:</b>		<b>County:</b>
<b>Age of Child:</b>			<b>Age of Child:</b>		
			<b>New abuse allegations?</b> Y / N / unclear		
<b>Type of Abuse suspected (mark all that apply)</b>	physical		<b>Type of Abuse suspected (mark all that apply)</b>	physical	
	sexual			sexual	
	emotional			emotional	
	neglect			neglect	
	medical neglect			medical neglect	
	DV against PP			DV against PP	
<b>When was abuse first suspected?</b> <b>Date first lost custody?</b> <b>How: ex parte, other (explain)</b>			<b>New allegations since last Decision 1?</b>		
<b>History of previous protective or restraining order?</b>	Y / N unknown	Type Protection of child Protection of adult	<b>History of new order since Decision 1?</b>	Y / N unknown	Type Protection of child Protection of adult
<b>Type of hearing</b>	Final custody hearing		<b>Type of hearing</b>	Final custody hearing	
	Protective order			Protective order	
	Pendente lite			Pendente lite	
	Settlement agreement --Judged entered			Settlement agreement --Judged entered	
	Modification/change of custody			Modification/change of custody	
	Status conference/hearing			Status conference/hearing	
	Emergency motion			Emergency motion	
	Contempt hearing			Contempt hearing	

	Exparte hearing		Exparte hearing
	Status conference/hearing		Appeal
	Other		other
<b>EVIDENCE</b>			
<b>Evidentiary hearing held?</b>	Y/ N Exparte	<b>Evidentiary hearing held?</b>	Y/ N Exparte
<b>Evidence sources</b>	1. Custody evaluation of child	<b>Evidence sources</b> <i>(indicate if new or previous source)</i>	1. Custody evaluation of child
	2. GAL Report		2. GAL Report
	3. Therapist findings		3. Therapist findings
	4. Medical records		4. Medical records
	5. Protective services reports or videotape		5. Protective services reports or videotape
	Child advocacy center		Child advocacy center
	6. Police report		6. Police report
	7. Family or friend observers		7. Family or friend observers
	8. Third party observers		8. Third party observers
	9. Mental health evaluation of parent		9. Mental health evaluation of parent
	10. Mental health evaluation of child		10. Mental health evaluation of child
	-Hired by party / Court appointed		-Hired by party / Court appointed
	11. Expert Witness PP / perp.		11. Expert Witness PP / perp.
12. Judge interviewed child	12. Judge interviewed child		
13. Other	13. Other		
<b>Child Disclosures</b>	<b>Type of abuse disclosed:</b>	<b>Child Disclosures</b>	<b>Type of abuse disclosed:</b> Old / new disclosure
<b>Quote from child:</b>			
<b>Disclosed to who?</b>	Protective Parent	<b>Disclosed to who?</b>	Protective Parent
	Other family member		Other family member
	School official		School official
	Therapist		Therapist
	Other professional		Other professional



	Other (list)		Court evaluator Other (list)
<b>Reported to SS?</b>	Y / N - Founded /unfounded /unable to determine	<b>Reported to SS?</b>	Y / N - Founded /unfounded /unable to determine
	Child's age when first reported Number of reports before T1		
<b>Physical Injuries (if evaluated by doctor)</b>	Definitive for abuse	<b>Physical Injuries (if evaluated by doctor)</b>	Definitive for abuse
	Consistent with abuse		Consistent with abuse
	Unable to determine cause		Unable to determine cause
<b>Child behaviors</b>	1. Sexualized behaviors	<b>Child behaviors</b>	1. Sexualized behaviors
	2. Depression		2. Depression
	3. Anxiety		3. Anxiety
	4. Self harm		4. Self harm
	5. Suicidal		5. Suicidal
	6. School problems		6. School problems
	7. Anger issues		7. Anger issues
	8. Regressive behaviors (bed wetting, return to diapers, etc)		8. Regressive behaviors (bed wetting, return to diapers, etc)
	9. Reluctance to visit alleged abuser		9. Reluctance to visit alleged abuser
	10. Nightmares		10. Nightmares
	11. Other (list)		11. Other (list)
<b>Diagnoses of child</b>			
<b>Perpetrator behaviors</b>	1. Minimizing evidence and/or implausible rationalizations	<b>Perpetrator behaviors</b>	1. Minimizing evidence and/or implausible rationalizations
	2. Boundary violations (sleeping in the same bed)		2. Boundary violations (sleeping in the same bed)
	3. Isolating behaviors		3. Isolating behaviors
	4. Daily functioning (loss of job, relationships)		4. Daily functioning (loss of job, relationships)
	5. Use of pornography (some evidence of child)		5. Use of pornography (some evidence of child)
	6. Anger outbursts		6. Anger outbursts
	7. Failure to appropriately address child's physical or mental health needs		7. Failure to appropriately address child's physical or mental health needs

	8. Substance abuse		8. Substance abuse
	9. Fabrication of documents		9. Fabrication of documents
	10. False report of pp to child welfare		10. False report of pp to child welfare
	11. Projection: Blames mother for child's problems		11. Projection: Blames mother for child's problems
	12. Other (list)		12. Other
<b>ATTORNEYS</b>			
<b>Attorneys for protective parent</b>			
<b>Decision 1</b>		<b>Decision 2</b>	
<b>Pro se?</b>	Y / N	<b>Pro se?</b>	Y / N
<b>Att. Name(s)</b>		<b>Att. Name(s)</b>	
<b>Gender</b>	M / F	<b>Gender</b>	M / F
<b>Type of attorney</b>	Private / public interest / pro bono/ specialized	<b>Type of attorney</b>	Private / public interest / pro bono/ specialized
<b>Attorneys for alleged perpetrator</b>			
<b>Pro se?</b>	Y/N	<b>Pro se?</b>	Y/N
<b>Att. Name(s)</b>		<b>Att. Name(s)</b>	
<b>Gender</b>	M/F	<b>Gender</b>	M/F
<b>Type of attorney</b>	Private / public interest / pro bono/ specialized	<b>Type of attorney</b>	Private / public interest / pro bono/ specialized
<b>Attorney for child</b>			
<b>Att. Name</b>		<b>Att. Name</b>	
<b>JUDGE</b>			
<b>Type</b>	Judge / master / magistrate	<b>Type</b>	Judge / master / magistrate
<b>Visiting?</b>	Y / N ; Why?	<b>Visiting?</b>	Y / N ; Why?
<b>Name</b>		<b>Name</b>	
<b>Gender</b>	M / F	<b>Gender</b>	M / F
<b>Reason for failing to protect child (circle all that apply)</b>	1. Pathology of the PP	<b>Reason for protecting child (circle all that apply)</b>	1. Persuasiveness of disclosure
	a. PA or PAS		2. Rejection of PA or PAS
	b. Folie a deux		3. Medical evidence for abuse
	c. Encapsulated delusions		4. Severity of child's mental health issues
	d. Enmeshment		5. Persuasiveness of neutral witness
	e. Munchausen by proxy		6. Persuasiveness of professionals
	f. Brainwashing		7. Perpetrator arrested
	g. OCD		8. Inability to force child to comply with previous

	<ul style="list-style-type: none"> <li>h. Coaching</li> <li>2. PP alleged to have made false reports to authorities</li> <li>3. PP not viewed as credible</li> <li>4. Accepts report by professional who disbelieves abuse</li> <li>5. GAL or Best Interest recommendation</li> <li>6. Accepts perp's explanation for deviant behavior</li> <li>7. Insufficient evidence of abuse presented</li> <li>8. Recantation of child</li> <li>9. Child appears to be OK</li> <li>10. Child bonded – needs both parents</li> <li>11. Equality of problems of both sides</li> <li>12. Perp. Provides more stable/structured home</li> <li>13. Other</li> </ul>		<ul style="list-style-type: none"> <li>custody order</li> <li>9. Child's expressed refusal or reluctance to visit</li> <li>10. GAL or Best Interest recommendation</li> <li>11. Child is deteriorating or not improving in parent's care</li> <li>11. Appeals: Evidence does not support finding of trial court</li> <li>12. Other:</li> <li><b>Rationale for overturning opinion:</b></li> </ul>
<b>Rationale for Ruling:</b>			
<p><b>Was a custody or other mental health eval. done? Y / N</b></p> <p><b>Type:</b> Therapist report, protection evaluation, custody evaluation  <b>--Which if any did judge rely on?</b></p> <p><b>Was professional a specialist in abuse? Y / N</b>  -Did judge support this recommendation and refer to it? Y / N</p>		<p><b>Was a custody or other mental health eval. done? Y / N</b></p> <p><b>Type:</b> Therapist report, protection evaluation, custody evaluation  <b>--Which if any did judge rely on?</b></p> <p><b>Was professional a specialist in abuse? Y / N</b>  -Did judge support this recommendation and refer to it? Y / N</p>	
<p><b>Was there a GAL or BIA? Y / N</b>  <b>--Did he or she make a recommendation? Y/ N</b>  -Did judge support their recommendation and refer to it? Y / N</p>		<p><b>Was there a GAL or BIA? Y/N</b>  <b>--Did he or she make a recommendation? Y/ N</b>  -Did judge support this recommendation and refer to it? Y/ N</p>	
<b>Outcome regarding custody</b>		<b>Outcome regarding custody</b>	
<b>Standard of proof</b>		<b>Standard of proof</b>	