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From our Summer 2012 Newsletter:

ABA, Judges' Association Say PAS Inadmissible in Court

Importantly, the American Bar Association's Spring 2006 journal article, *Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy* concluded that the supposed disorder is inadmissible in court "given its lack of scientific validity and reliability." Similarly, the National Council of Juvenile and Family Court Judges (NCJFCJ) rejects it and recommends that "under relevant evidentiary standards, the court should not accept this testimony." Their publication, Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judges Guide (2nd edition). Reno.NC:NCJFCJ. finds that:

"The theory positing the existence of "PAS" has been discredited by the scientific community." The guide notes that that Supreme Court ruled that even expert testimony based on the "soft sciences" must meet the standard set in the *Daubert* [54} case. *Daubert*, in which the Court re-examined the standard it had earlier articulated in the *Frye* [55] case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. Any testimony that a party to a custody case suffers from the syndrome or "parental alienation" should therefore be ruled inadmissible and/or stricken from the evaluation report under both the standard established under *Daubert* and the earlier *Frye* standard [56].

From our Summer 2010 Newsletter:

Update form the national Council of Juvenile and family Court Judges

In July 2009 the National Council of Juvenile and Family Court Judges (NCJFC) issued a statement on Parental Alienation Syndrome (PAS) from its Family Violence Dept. publication A Judicial Guide to Child Safety in Custody Cases, which points out that PAS has been scientifically discredited and that allegations of PAS or "parental alienation" may inappropriately divert attention of away from the behaviors of the abusive parent. You may want to use this guide in fighting PAS and "parental alienation" claims in your child custody cases. (See cautionary statement about PAS on pages 12-13.)

http://www.ncjfcj.org/images/stories/dept./fvd./pdf/judicial%20guide.pdf

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The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

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Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations

Final Technical Report Submitted to the

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U.S. Department of Justice

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EXECUTIVE SUMMARY

High rates of domestic violence exist in families referred for child custody evaluations. These evaluations can produce potentially harmful outcomes, including the custody of children being awarded to a violent parent, unsupervised or poorly supervised visitation between violent parents and their children, and mediation sessions that increase danger to domestic violence victims. Past research shows that domestic violence is frequently undetected in custody cases or ignored as a significant factor in custody-visitation determinations. Previous research also indicates that violence—and its harmful effects on victims and children—often continues or increases after separation. Little is known, however, about child custody evaluators' beliefs, background, knowledge about domestic violence, and other factors that may shape their recommendations[1] regarding custody and parent-child visitation arrangements.

The purpose of this study was to further our understanding of what child custody evaluators and other professionals believe regarding allegations of domestic abuse made by parents going through a divorce. The study had several major goals:

- to investigate the extent to which child custody evaluators and other professionals who make court recommendations believe allegations of domestic violence are false;
- to explore the relationship between these beliefs and (a) knowledge of domestic violence and (b) recommendations about custody, supervised visitation, and mediation;
- to examine whether beliefs about false allegations of domestic violence are related to beliefs that false allegations of child abuse are common; abuse of parents should not be a criterion in custody and visitation decisions; and that parents often alienate their children from the other parent;
- to examine the relationships between beliefs about false allegations and beliefs about patriarchal norms, social dominance, and justice in the world.

We also conducted in-depth qualitative interviews with 24 domestic abuse survivors[2] who experienced negative custody-visitation outcomes, such as losing custody of their children. The information gathered helped us interpret our quantitative findings, uncover new areas of concern, and learn of recommendations the survivors had for changing the custody determination process.

[1] The term *recommendation* includes recommendations that professionals actually made or would have made if in a position to make recommendations in custody or visitation cases. In line with some professional standards and the

[2] The term *survivor* is used interchangeably with the term *victim* to refer to those victimized by domestic violence.

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Methods

The study had two major components. In Part 1, we surveyed professionals who had experience with custody cases: child custody evaluators, judges, attorneys, and domestic violence program workers. In Part 2, we conducted qualitative, semi-structured interviews with domestic abuse survivors who had lost child custody or experienced a similar negative outcome during family court proceedings.

We used postal mail, e-mail, and web sites to recruit professionals to participate in the survey. They were asked to share:

- *their demographic characteristics;*
- whether they personally knew survivors of domestic violence;
- how they had acquired knowledge of domestic violence;
- their experiences with custody cases involving domestic violence;
- their beliefs about custody and domestic violence, including beliefs about parental alienation, the importance of domestic violence in custody cases, victims' reluctance to co-parent, and the extent of false domestic violence allegations;
- their responses to a case vignette involving serious, coercive-controlling domestic violence;
- *beliefs about gender norms, justice and equality.*

Respondents to the survey included 465 custody evaluators, 200 judges, 131 legal aid attorneys, 119 private attorneys, and 193 domestic violence program workers. More than one fourth of the custody evaluators worked in county court-based settings, enabling us to compare their responses with those of private custody evaluators. Many custody evaluators were psychologists and social workers, allowing us to compare the responses of these two professional groups.

In Part 2 of the study, we conducted qualitative, semi-structured interviews with 24 domestic abuse survivors in four states. They were recruited through legal clinics and supervised visitation programs. Interviews focused on their experiences with the custody-visitation determination process and their recommendations for changes in policies and practices.

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Findings

We first present findings that compare how the five professional groups acquire knowledge about domestic violence and their beliefs about false domestic violence allegations. We then examine the extent to which each of the professional groups recommended different custody and visitation arrangements. Finally, we focus on findings for the custody evaluators, specifically the relationships between their backgrounds, knowledge, and beliefs, and their custody and visitation recommendations.

Domestic Violence (DV) Knowledge

The most common areas of knowledge across professional groups were children's exposure to domestic violence and prevalence of domestic violence. The least common areas—especially among judges, evaluators, and private attorneys—were knowledge of post-separation violence, screening for domestic violence, and assessing dangerousness (although the majority still acquired knowledge in these areas). Domestic violence workers had the highest rates of knowledge regarding all topics.

Belief in False Allegations of Domestic Violence and Child Abuse

Professionals were asked to estimate what percent of domestic violence allegations by mothers and fathers they believed to be false. Among the major findings:

- Judges, private attorneys, and custody evaluators were more likely than domestic violence workers and legal aid attorneys to believe that mothers make false allegations.
- After we controlled for background (number of custody cases, survivors known, and training) and demographic variables (age and gender), judges did not differ from legal aid attorneys and domestic violence workers regarding their estimate of what percentage of mothers' domestic violence allegations were false.
- Domestic violence workers and legal aid attorneys gave the highest estimates of the percentage of fathers' making false domestic violence allegations, while judges and custody evaluators gave the lowest estimates.
- On average, evaluators estimated that one fourth to one third of child abuse allegations were false.
- On average, evaluators estimated that 26 percent of mothers' domestic violence allegations were false and 31 percent of fathers' allegations were false.

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- Evaluators "supported" the allegations of domestic violence in approximately half of their cases alleging domestic violence.

- Among domestic violence cases, evaluators were more likely to estimate that fathers try to alienate children from mothers than the reverse.

Custody Evaluators' Custody Recommendations

Evaluators were asked to estimate how often they recommended seven different custody arrangements when "one parent was clearly the perpetrator" of domestic violence. Of those surveyed, 65 percent reported recommending sole legal and physical custody to victims "half of the time" to "always." Approximately 40 percent of evaluators recommended joint legal custody, with sole physical custody to victims, at least "half of the time" to "always."

Ten percent of evaluators estimated that at least "half of the time" they recommended joint physical and legal custody to the couple. Another 10 percent estimated they recommended joint physical custody and sole legal custody to the victim at least "half of the time" or more. Legal or physical custody to the perpetrator was rarely recommended: 49 to 70 percent reported "never" making this recommendation and 26 to 41 percent reported "seldom" doing so.

In response to the case vignette of domestic violence, evaluators reported the highest likelihood (47% on average) that the best interests of the child would be served by awarding legal custody to both parents and physical custody to the battered mother. Awarding the mother sole legal and physical custody was chosen almost as often (40% average likelihood). Joint legal and physical custody was chosen at a somewhat lower average likelihood of 30%.

Visitation Recommendations

We asked custody evaluators to report on the visitation recommendations they made in past custody cases that involved domestic violence. Evaluators reported that, when recommending visitation for a parent who was "clearly the perpetrator," they recommended supervision by a professional or paraprofessional in nearly half of the cases, supervision by a friend or relative in one fourth of the cases, and no supervision in nearly one third of the cases.

In response to the case vignette depicting serious domestic violence, unsupervised visitation was recommended the most (47% average likelihood), with supervision of visits by friends and relatives

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(35% average likelihood) and professionals or paraprofessionals (38% average likelihood) being recommended less often.[3]

Belief in False Domestic Violence Allegations Related to Other Custody Beliefs

Among custody evaluators, the belief that allegations of domestic violence (DV) by mothers are false was strongly related to four other beliefs: (1) DV survivors alienate children from the other parent; (2) DV is not an important factor in making custody decisions; (3) children are hurt when survivors are reluctant to co-parent, and (4) DV survivors falsely allege child abuse. Similar results were found among judges.

The belief that fathers falsely allege DV was related to the belief that fathers also falsely allege child physical and sexual abuse and to the belief that fathers alienate children from the other parent.

Evaluator Hypotheses About the Causes and Consequences of DV Related to Custody Beliefs

The vignette case of DV described the wife's reports of her husband's controlling behavior and severe violence and her psychological test results showing anxiety, depression, and paranoia.

When describing the initial hypotheses they would be likely to explore in the vignette, 23% of the evaluators said they would explore coercive/controlling behavior, 17% would explore the mother's psychological symptoms as the result of DV, and 5% would explore the father's alcohol use as a cause of DV. Those who mentioned coercive-controlling behavior were more likely to view DV as the cause of the mother's psychological symptoms.

Evaluators who said they would explore hypotheses about coercive-controlling behavior and mental health consequences of the DV were more likely to believe:

- *DV is important in custody decisions;*
- mothers do not make false DV allegations;
- victims do not alienate the children;
- victims do not hurt the children when they resist co-parenting;
- the father in the vignette will harm his son psychologically;

[3] The percents add to more than 100% because respondents were asked to answer three separate questions about the likelihood of visitation arrangements being in the child's best interest without requiring the three percents equal 100%.

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- the father in the vignette minimized his violence;
- the mother in the vignette did not exaggerate her reports of abuse.

Evaluators who made initial hypotheses about coercive-controlling behavior were more likely to believe fathers make false DV allegations.

Beliefs About Custody Related to Custody Recommendations

Among evaluators, beliefs about custody were related to the two measures of custody recommendations: past case recommendations and the recommendations for the domestic violence case vignette. Favoring the offender over the victim in custody arrangements was significantly related to several beliefs: (1) DV victims alienate children from the other parent; (2) DV allegations are typically false; (3) DV victims hurt children if they resist co-parenting; (4) DV is not important in custody decisions; and (5) coercive-controlling violence in the vignette was not a factor to explore. These same beliefs were related to the belief that the couple in the vignette would benefit from mediation. Recommending supervised parent-child visits for the offender in evaluators' own cases and in the vignette case was related to evaluators' beliefs that DV is important in custody decisions and DV caused the mother's mental health problems in the vignette. Judges were also asked about their responses to the domestic violence vignette case. Findings similar to those for evaluators were found for the judges' beliefs about DV and custody.

Gender Differences

Male evaluators were more likely than female evaluators to believe that DV allegations are false, DV victims alienate their children, DV victims hurt the children when resisting co-parenting, and DV is not an important factor in custody decisions.

Female evaluators were more likely to believe that perpetrators alienate children from their mothers. They were also more likely than male evaluators to believe that supervised visits for the father in the vignette case were in the best interest of the child and mediation would benefit the hypothetical couple.

Knowing or Being a Survivor

If the evaluator's mother was a DV survivor, the evaluator was more likely to have recommended (or would have recommended) that the DV victim receive custody and that visits with the non-custodial parent be supervised. Having any family member who survived DV was related to the belief that domestic violence is an important consideration in custody-visitation determinations and that mothers do *not* make false DV allegations. Being a DV survivor was not related to beliefs or recommendations.

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Knowledge of Domestic Violence Related to Custody-Visitation Recommendations

Possession of specific areas of DV knowledge was related to particular custody and visitation recommendations in evaluators' actual cases and in the case vignette. First, we found that evaluators with knowledge of DV prevalence and DV danger assessment were more likely to recommend sole custody to DV victims. Those who knew about post-separation violence were more likely to believe the mother in the vignette should have sole custody. Finally, knowing about children's exposure to domestic violence was related to recommendations for supervised visits. Most areas of knowledge were also related to the five beliefs about custody: allegations of domestic violence are likely to be true; DV victims do not alienate children from the other parent; victims do not harm children if they resist co-parenting; DV is an important factor in custody decisions; and fathers are likely to make false DV and child abuse allegations. Knowing how to screen for domestic violence and knowing about post-separation violence were the factors most strongly associated with these five beliefs about custody. Knowledge about screening was also related to considering the father's controlling behavior in the vignette as an important factor in the evaluation process.

How Methods of Acquiring DV Knowledge Relate to Custody Recommendations

None of the methods of learning about domestic violence were related to actual custody and visitation recommendations made by evaluators. However, more frequent workshop and lecture attendance were related to recommending custody to the mother-survivor and supervised visits for the father-offender in the vignette. More frequent workshop and lecture attendance were also related to all four beliefs about DV and custody: false DV allegations are uncommon, victims do not alienate the children, domestic violence is an important factor in custody decisions, and children are not harmed if victims do not co-parent.

Professional consultations and reading books and articles were related to the beliefs that DV is important in custody decisions, false DV allegations are uncommon, victims do not alienate the children from the other parent, and the vignette mother's psychological problems may be caused by DV. Learning about domestic violence by reading web sites was associated with the beliefs that DV is an important factor in custody decisions, the vignette offender's visits should be supervised, and DV is a likely cause of the vignette mother's psychological symptoms.

Court Versus Private Settings

Court-based evaluators were less likely than private evaluators to believe that false DV allegations are common, victims alienate children from the other parent, or victims hurt the children by being reluctant to co-parent.

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Professional Degree

Evaluators with degrees in social work and marriage and family therapy were more likely to have recommended custody to the DV victim in their custody cases and the vignette than evaluators who were psychologists and counselors. Social workers were more likely than psychologists to recommend supervised visits, rather than unsupervised visits, for the father in the vignette. Social workers were also more likely than psychologists to believe that DV is important in custody-visitation decisions, false DV allegations are uncommon, victims alienate the children, or victims hurt the children when they resist co-parenting. In addition, counselors were less likely than psychologists to believe that mothers make false DV allegations.

Inquiring and Screening for Domestic Violence

Ninety-four percent of the evaluators reported that they always or almost always directly inquired about domestic violence. However, 38% never used instruments or standard protocols to screen for DV, and another 24% used them only some of the time. Some evaluators (15%) used only a general personality-psychopathology instrument, such as the MMPI, rather than a specific instrument to assess DV. Those who used such general personality-psychopathology instruments were more likely to believe that false DV allegations are common and the father in the vignette should have joint or sole custody. They were less likely to have learned about screening for DV or assessing dangerousness.

Core Beliefs: Patriarchal Norms, Just World, and Social Dominance

Beliefs in patriarchal norms (i.e. women have reached equality with men), a just world (i.e. the world is basically a just place), and social dominance (i.e. social hierarchies are good) were correlated with each other and with custody beliefs and recommendations. For example, patriarchal norms correlated with all of the custody-belief measures: DV is not important in custody decisions; fathers do not make false DV or child abuse allegations; and alleged DV victims make false allegations, alienate the children, and hurt the children because they resist co-parenting. More importantly, patriarchal norms were related to the five outcome measures, specifically: (1) recommendation for sole or joint custody to the perpetrator, (2) recommendations for unsupervised visits, (3) belief that sole or joint custody for the case vignette perpetrator would be in the child's best interest, (4) recommendation for unsupervised visitation for the father in the vignette, and (5) belief that mediation is beneficial for the couple in the vignette.

The belief that the world is basically just was related to the belief that DV is not an important factor in custody decisions, as well as the beliefs that DV allegations by mothers are frequently false and that these mothers alienate the children and harm them if they resist co-parenting. Belief in a just world also was related to evaluators' estimates of how many actual

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recommendations they had made for sole or joint custody to the perpetrator and to belief that mediation would be useful for the couple in the vignette. The belief that social hierarchies are good (social dominance) was not related to custody-visitation recommendations. However, belief in social dominance was related to the beliefs that alleged DV victims make false allegations and alienate their children, and that fathers do not falsely allege abuse.

The Impact of Groups of Variables

The core beliefs (patriarchal norms, just world, social dominance) and the custody beliefs contributed to recommendations independent of each other, although custody beliefs were partially explained by core beliefs. Thus, both types of beliefs are useful in understanding how professionals make custody and visitation recommendations. Overall, demographic and background variables had little effect on the relationship between the sets of core and custody belief variables and the four outcome variables.

Interviews with Survivors of Domestic Violence

Interviews with survivors who had negative experiences during the child custody process revealed several themes: Domestic violence was ignored or minimized in the evaluation; evaluators gave too much weight to survivors' mental health or alleged mental health symptoms; and evaluators performed one-sided and rushed evaluations. Among other negative experiences, survivors mentioned being reprimanded for reporting child abuse. The survivors made recommendations in several areas. They specifically urged (1) fair and thorough custody evaluations, (2) expansion of supervised visitation and exchange programs, (3) thorough enforcement of child protection laws and investigation of all child abuse reports, and (4) mandatory DV training for custody evaluators, court professionals, and guardians ad litem.

Parallels between survivor reports and survey results appeared in a number of areas. For example, the survivors' recommendations for training are consistent with the survey findings on the links between what evaluators know about domestic violence, and their beliefs and recommendations. Some survivors' reports of a double standard regarding mental illness in mothers versus fathers suggest that mothers are being held to a higher standard. These survivor reports may illustrate the significant relationship between endorsing patriarchal norms and making custody recommendations that favor offenders. The survivors also highlighted the need for evaluators to understand the traumatic effects of the emotional abuse they suffered.

Limitations of Study

Limitations of this study include:

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- It is not known the extent to which the samples of professionals are representative of each professional group. Therefore, the group comparison findings need to be interpreted carefully.

- Reports of beliefs about controversial topics, even on anonymous surveys, may be influenced by social desirability response bias or by attempts to prove or disprove hypotheses.

- Some measures were created for this study, and although they showed good construct validity, some internal reliabilities were at the low end of acceptability.

- The study focused on all forms of domestic violence in order to build upon prior research. However, evaluators' responses are likely to vary depending on the type and severity of domestic violence.

Implications for Practice

Despite the limitations described above, the results of this study have important implications for practice.

Knowledge of Specific DV Topics

The majority of professionals responding to the survey reported knowledge of post-separation violence, screening, and assessing dangerousness. However, judges, evaluators, and private attorneys reported the least amount of these forms of knowledge. More DV training for judges, evaluators and private attorneys on these topics would probably be helpful. Respondents who reported more knowledge of these topics were less inclined to believe that allegations of DV are false or that victims alienate the children. Workshop and lecture attendance were the methods of knowledge acquisition most often associated with positive outcomes such as believing DV is important in custody evaluations and recommending custody to the victim and supervised visits for the father in the vignette. Information obtained through web sites, a low-cost means of training, is also related to some positive outcomes, specifically the belief that DV is an important factor to consider when making custody determinations, recommending supervised visits for the violent parent in the vignette, and viewing DV as the likely cause of mental health symptoms of the mother in the vignette. All professional groups involved in custody evaluations need DV training prior to involvement in DV custody cases, as well as yearly continuing education.

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Information on False Allegations of Domestic Violence

On average, the professionals as a whole estimated that 35 percent of fathers and 18 percent of mothers falsely allege DV when the allegations are made in custody disputes. The evaluator sub-group estimated that approximately one fifth of mothers and one fifth of fathers made false allegations of DV in their cases. Future research should investigate and substantiate the actual rates of false allegations in domestic violence cases. One study showed that mothers' claims of DV were substantiated at higher rates than fathers' claims. But the study did not investigate the extent of false allegations (Johnston, Lee, Oleson & Walters, 2005). A possible concern in our findings is the higher estimates of false allegations by custody evaluators and private attorneys, compared to those of the other professional sub-groups.

Information on False Allegations of Child Abuse

Evaluators gave higher estimates of false child abuse allegations than prior research shows (for a review see Johnston, Lee, Oleson, & Walters, 2005), indicating that evaluators need more information on this topic.

Custody Recommendations

Although the most common recommendation was, by far, that sole legal and physical custody be awarded to victims, some evaluators reported that they recommended this option only "occasionally" (19%). Of particular concern was the relatively high percentage of evaluators who recommended that the victim receive physical custody and the parents share legal custody. The potential negative implications of this arrangement need to be explained to evaluators given the likelihood that many abusers will use the arrangement to continue harassment and manipulation through legal channels.

Beliefs About False Allegations of Domestic Violence in Relation to Other Beliefs and Recommendations

Among evaluators, the belief that allegations of domestic violence are usually false was part of a constellation of beliefs, including beliefs that false allegations of child abuse and parental alienation by DV survivors are common. DV educators need to provide accurate information on: the rates and nature of false allegations and alienation; the ways in which survivors are reluctant to co-parent out of fear of future harm; the mental health consequences of DV; and the importance of understanding coercive-controlling forms of violence. In addition, the significant relationships between beliefs about custody and broader beliefs about patriarchal norms, justice, and social dominance suggest links to deeper values. Professional educators can use value awareness exercises that may help change beliefs and behavior. These recommendations apply to

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judges as well, since their beliefs about DV and custody were significantly related to the outcomes recommended in the case vignette.

Professional Degrees, Roles, and Settings

Information emerged from this study regarding differences in beliefs and recommendations based on evaluation settings, professional roles, and evaluators' advanced degrees. If further analysis and research supports the findings of this study, important implications emerge: (1) legal aid attorneys and domestic violence workers hold very similar beliefs and are likely to collaborate well as individual and system advocates; (2) characteristics and methods of social work evaluators need to be studied more carefully to understand the reasons for their strong support of victims; (3) due perhaps to the high proportion of social workers employed in court-based settings, county-court evaluators' beliefs supported survivors more than private evaluators' beliefs. Additional analysis is required to determine whether county-court evaluators' beliefs lead to supportive practices.

Inquiring About and Screening for Domestic Violence

We found it reassuring that almost all evaluators directly inquired about the presence of domestic violence when conducting a custody evaluation. However, only one third of evaluators consistently used a screening instrument or standard screening protocol. A more consistent use of instruments and standard protocols for DV screening is likely to increase the rate of DV detection, as they have in other settings (e.g., Magen, Conroy, Hess, Pandiera, & Simon, 2001).

Of evaluators who reported using an instrument to "assess domestic violence," 15 percent reported using only general measures of personality-psychopathology. Although such measures can detect personality disorders that might help place known abusers into typologies useful for assessment and intervention, they may also lead to false conclusions about the psychopathology of abusers and survivors (Erickson, 2006). Evaluators using general measures of personality-psychopathology were more likely to recommend sole or joint custody to the abusive father in the case vignette.

Selection of Custody Evaluators by Judges

Judges can use the findings of this study as a guide for selecting child custody evaluators. For example, those who believed that domestic violence was an important factor in custody evaluations were characterized by having particular types of domestic violence knowledge. Guidance on selecting custody evaluators with adequate knowledge of domestic violence is available (Dalton, Drozd & Wong, 2006).

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Expanding Supervised Visitation and Exchange Programs

Many evaluators reported never recommending supervised visitation by professionals. A possible reason is that supervised visitation programs are not available in evaluators' communities. Survivors emphasized the need for more supervised visitation programs to help keep them and their children safe, both physically and psychologically.

In conclusion, this study reveals the extent to which evaluators and other professionals differ in their beliefs regarding false allegations, alienation of the children, the importance of DV in custody decisions, and the reasons that victims are reluctant to co-parent. Findings on the training methods and domestic violence topics likely to be most effective will improve the training of professionals. Such trainings are likely to lead to safer custody and visitation arrangements.

BACKGROUND AND LITERATURE REVIEW

Although the prevalence of domestic violence and child maltreatment has decreased over the last three decades, both remain major crime and health problems affecting millions of families (Catalano, 2006; Finkelhor & Jones, 2006; Straus & Gelles, 1990). This violence also seriously affects victims' mental health (Anderson & Saunders, 2007; Campbell & Kendall-Tackett, 2005; Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2004). Early interventions for domestic abuse focused on victims' immediate needs for safety through shelter, restraining orders, and arrest of offenders. Systems advocacy focused primarily on changing the criminal justice system. Today the family law arena is increasingly identified as needing reform to protect battered women and their children (Goodmark, 2011). Research has documented the ongoing and sometimes escalating dangers faced by victims and their children after they leave violent relationships. Homicidal threats, stalking, and harassment affect as many as 25 to 35 percent of survivors who have left a violent relationship (e.g., Bachman & Saltzman, 1995; Hardesty & Chung, 2006; Tjaden & Thoennes, 2000a). In addition, as many as one fourth of battered women report their ex-partners threatened to hurt or kidnap their children (e.g., Liss & Stahly, 1993). Many abusers also use the legal system to maintain contact with and harass their ex-partners (Bancroft & Silverman, 2002).

Domestic abuse survivors and their children may experience serious harm as a result of family court decisions. Offenders may be able to continue their abuse of their ex-partners and children due to unsupervised or poorly supervised visitation arrangements (Neustein & Lesher, 2005; Radford & Hester, 2006); sole or joint custody of children may be awarded to a violent or potentially violent parent rather than a non-violent one; and mediation may be recommended or mandated in a way that compromises victims' rights or places them in more danger. Tragically, in some cases post-separation contacts end in the homicide of a mother and/or her children

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(Saunders, 2009; Sheeran & Hampton, 1999). Ironically, battered mothers' attempts to protect their children may be used against them in custody and visitation decisions.

Despite the potential for negative outcomes, little is known about the extent to which they occur. No representative national or international studies have investigated the rates at which abusers are awarded sole or joint custody. However, some representative studies have been conducted in states and local jurisdictions. For example, a study of (domestic violence) DV survivors involved in child custody mediation in California revealed that only 35 percent of survivors received primary physical custody—lower than the 42 percent of non-victims who were awarded primary custody (Saccuzzo & Johnson, 2004). In contrast, a representative study of case files in Washington state found that, excluding cases awarded joint custody, approximately 90 percent of the DV survivor-mothers received primary custody (Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005). A record review of DV cases in New York City found that 77 percent of mothers and 13 percent of fathers were given residential custody, and 6 percent shared custody (Davis, O'Sullivan, Susser, & Fields, 2010). One study of DV cases across six states found that in 64 percent of cases mothers were granted sole physical custody. In another 24 percent of cases, they were granted primary or shared physical custody (Morrill, Dai, Dunn, Sung, & Smith, 2005); only 39 percent were granted sole legal custody, while 56 percent were granted joint legal custody. Custody evaluators in one survey—primarily psychologists in private practice—indicated that, in half of cases with a single DV perpetrator, they recommended the victim receive sole legal and physical custody. In 39 percent of cases, however, they recommended joint legal custody and primary physical custody for the victim (Bow & Boxer, 2003). One widely cited educational booklet from the American Judges Association states that, "studies show that batterers have been able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases" (American Judges Association, n.d., p. 5). However, the Association did not conduct original research on this topic or provide references to support the statistic.

Research also is needed to help inform debates in the field. For example, victim advocates and family court professionals are often at odds over whether all domestic violence is the same and whether mediation and shared parenting should be allowed in some cases (Salem & Dunford-Jackson, 2008). Researchers and practitioners also continue to debate the extent to which domestic violence is best described as violence against women and the extent to which it is best described as "mutual combat." For some, evidence that different patterns of abuse (mutual combat vs. male-to-female violence) exist in different types of samples (Johnson, 2008) has resolved this fundamental question. But others insist that when evaluators are taught that women are the primary victims, they may produce biased evaluation outcomes (Dutton, 2006). In some portions of the present study we investigate domestic violence against women. We take this approach for several reasons, among them:

MI-NOG

The Need to Carefully Screen for Family Violence When Parental Alienation is Claimed

By Daniel G. Saunders, Ph.D. and Kathleen Coulborn Faller, Ph.D.

When a child does not want to visit or live with a parent after divorce or separation, the public and professionals may assume that the other parent has turned the child against the unwanted parent. This behavior is referred to as parental alienation behavior and the outcome as parental alienation. Although some parents may engage in parental alienating behaviors, one review of the scientific literature concluded that "too often in divorce situations all youngsters resisting visits with a parent are improperly labeled 'alienated' and too frequently parents who question the value of visitation in these situations are labeled 'alienating parents.'"[1] This article presents research on the likelihood that family violence, rather than parental alienation, is very often the explanation for the child's reluctance. It also describes screening procedures for detecting family violence. When family violence is identified, alienation is then considered by social scientists as reasonable on the part of the child and called estrangement. There is also evidence for mixed cases involving both alienation and estrangement.[2] In contrast to the general agreement that some parents may try to alienate children from the other parent, some specific constructs of parental alienation, namely parent alienation syndrome and parental alienation disorder, are not generally recognized in the legal and mental health communities because they lack scientific validity.[3]

Research supports the conclusion that children are reluctant to visit or live with a parent for a wide variety of reasons.[4] For example, the child may be angry at the parent perceived as causing the family to break up, or the child has a normal developmental preference for one parent. An obvious reason, although sometimes difficult to confirm, is the parent's physical, sexual, or emotional abuse of the child. Rates of child maltreatment in the general population are high, with the majority of parents using corporal punishment, a practice shown to have severe consequences for children.[5] Even the number of abuse cases reported to professionals and government agencies are high: an estimated 476,000 children were physically abused and 180,500 children were sexually abused in one year in the U.S.[6] In 2014, the most recent year of national child abuse data available, there were 3.6 million reports to child welfare agencies, representing 6.6 million children.[7] Surveys of adult survivors of child abuse reveal that these rates are underestimates.[8]

Another reason for a child not wanting contact with a parent is the child witnessing a parent's abuse of the other parent. Annually, an estimated 15 million U.S. children are exposed to acts of domestic abuse.[9] Severe emotional harm frequently occurs when the abusive parent exposes the children to violence.[10] Children often experience both child abuse and exposure to abuse of a parent, since half of intimate partner violence (IPV) perpetrators also abuse one of their children.[11] In contrast to the high rates of family violence, rates of narcissistic and borderline personality disorders, considered by some as defining characteristics of the alienating parent, occur in approximately 1% (narcissism) to 5% (borderline) of the general population. Although there is no agreed-upon definition of parental alienation, one proponent estimates the incidence of alienated children at 2-4% of divorcing families or 20,000-40,000 children each year nationally.[12]

Screening and Assessment Procedures

For the detection of family violence, which may rule out the existence of parental alienation, custody evaluators and other professionals need training in methods for screening and assessment of family violence. Needed in particular are greater knowledge of violence during separation, and methods for assessing danger and children's exposure to IPV.[13] Most custody evaluators in one survey said they inquired about IPV;[14] however, many did not use specialized detection and assessment tools.[15] Detection protocols and instruments are likely to increase the odds of detecting IPV.[16] (For a review of measures for detection and assessment, see Saunders, 2015;[17] guidelines for custody evaluators were published earlier this year by the Association of Family and Conciliation Courts).[18] It is important to realize that IPV may remain hidden after initial screening (for reasons given below),[19] and ongoing screening is needed. The Michigan State Court Administrative Office provides the "Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflict" (2014), including brief versions.[20]

Evaluators and mediators also need to assess for behaviors that do not involve physical abuse, but that coerce partners into submission and restrict activities and outside contacts, because the effects of these behaviors on the partner go beyond those of physical abuse alone.[21] Evaluators who attend

to coercive controlling violence in their assessments produce parenting plans with higher levels of safety.[22] They are also more likely to recommend custody for IPV victim-mothers.[23] One measure that contains a subscale of coercive controlling behaviors is the "Mediator's Assessment of Safety Issues and Concerns (MASIC)."[24] This instrument can be used in a variety of settings.

Formal Reporting of Violence Not Likely to Occur

Unfortunately, most family violence remains hidden. Only a minority of domestic abuse survivors seek help, including calling the police or telling their doctors.[25] The abuse often remains undetected in custody cases as well.[26] Professionals may fail to ask about abuse or lack the necessary interviewing skills. Even when asked, survivors may be reluctant to report abuse, often fearing retaliation from their abuser or that the report will be used against them in court.[27] The widespread non-detection of domestic abuse means that a high proportion of divorcing couples labeled high conflict cases are actually cases of domestic abuse.[28]

These and other challenges in assessment are highlighted in the new guidelines for custody evaluations for IPV cases from the Association of Family and Conciliation Courts (2016),[29] as follows:

- A traumatized party may react or respond unexpectedly to evaluator inquiry.
- Coercive controlling behaviors may exist in the absence of past or recent physical violence.
- A child may deny or minimize violence or react in ways not anticipated by an evaluator.
- A parent subjected to intimate partner violence may engage in protective parenting that is only understood in the context of intimate partner violence (AFCC Guidelines, 2016, p.8).[30]

Similarly for child maltreatment, even after investigations by child protection agencies, rates of unsubstantiation are over 60%,[31] which means abuse may still exist but not enough evidence was found. Therefore, a significant information vacuum often exists, presenting a conundrum for decision makers. Thorough attempts to rule out family violence must be made,[32] however, they may not be successful. In the words of the American Professional Society on the Abuse of Children: "Professionals need to be mindful that failure to prove interpersonal violence does not prove that violence has not occurred nor that the child has been indoctrinated by the non-accused parent."[33]

Suspicions about Family Violence Allegations

As with the general public, professionals may have difficulty believing that family violence occurs at high rates in our society. Family violence clashes with our notion of the family as a peaceful, loving haven. Thus, professionals are sometimes too quick to assume that reports of child and domestic abuse are fabricated by parents, especially in custody disputes. In our research on custody evaluation cases that allege child abuse,[34] evaluators estimated much higher rates of false child abuse allegations than research studies show actually exist (for a review of allegations of abuse in custody disputes, see Johnston, Lee, Oleson, & Walters, 2005).[35] In addition, our study of judges and custody evaluators showed a strong link between sexist beliefs and the belief that battered women tend to make false allegations of family violence and are trying to alienate their children from the other parent.[36] Of greatest concern, we found these beliefs to be linked to recommendations that child custody be awarded to perpetrators of domestic abuse. Evaluators need to take steps to mitigate such forms of bias in the evaluation process.[37]

A lack of concern about family violence may arise from the assumption that divorce or separation increases safety and may end abuse. In fact, stalking, harassment, and emotional abuse often continue and may increase after separation.[38] Survivors' fears are realistic because the risk of intimate partner homicide increases for a period of time following separation.[39] Research also shows that many abusers continue harassment and manipulation through legal channels.[40]

Suspicions also arise about the validity of child abuse reports when they are first made around the time of divorce or separation. Such reports might be more likely at this time for a number of reasons. First, the non-abusive parent may become aware of child abuse and decide to leave the marriage and protect the child. Second, the dissolution of the marital relationship may free children to report their sexual, physical, or emotional abuse to the non-abusive parent. Alternatively, parents who have left a problematic marital relationship may be more capable of attending to signs of abuse. Finally, the lack of family structure and emotional distress associated with marital dissolution may increase risk, especially for sexual abuse.[41]

Interventions for Parental Alienation

Due to the difficulty in ruling out family violence and the chance of bias in response to abuse reports, interventions for supposed parental alienation must proceed with extreme caution. Furthermore, despite claims of success, reunification programs for rebuilding the bond between children and the rejected parent thus far have very weak scientific backing.[42] Fewer than 10 programs have been evaluated and weak study designs preclude any firm conclusions about their effectiveness.

Of particular concern are programs that may recommend a change of custody to a supposed rejected or "targeted parent," or prolonged temporary custody to the targeted parent

during reunification programs. The risk of error is extremely serious since the targeted parent may actually be an abuser who is misusing the children in what has been called domestic abuse by proxy. The so-called "alienating parent" may be protecting the children and voicing serious concerns about past and current abuse and about co-parenting with the abusive parent. One study found that IPV abusers were more likely than their partners to engage in alienating behaviors such as demeaning the children's mother; there was no evidence that victims of IPV alienated their children.[43] Abusers usually show no violent traits to professionals, are likely to have personality disorders, and are skilled at hiding emotional and behavioral problems.[44] Their allegations of parental alienation may be designed to negate the reports of abuse coming from the children and their ex-partners.

In conclusion, attorneys and other professionals need to be acquainted with and be able to conduct screening for family violence. Attorneys and judges also need to carefully determine the qualifications of child custody evaluators. Extensive training in IPV is a major criterion. A relative lack of bias is also important,[45] including bias or misinformation shown by evaluators' uncritical use of parent alienation and the assumption that reports of abuse in custody disputes are likely to be false. For the best interests of the children, professionals need to be open to the possibility of many explanations for a child's behavior, to diligently investigate each possibility, and to focus in particular on the widespread, serious problem of family violence.

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Endnotes

1 Janet R. Johnston, "Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child," *Family Law Quarterly* 38, no. 4 (2005): 762.

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2 Barbara Jo Fidler, Nicholas C. Bala, and Michael A. Saini, *Children Who Resist Post-separation Parental Contact: A Differential Approach for Legal and Mental Health Professionals* (New York: Oxford University Press, 2013).

3 Michael Saini et al., "Empirical Studies of Alienation," In Leslie Drozd and Kathryn Kuehnle, eds., *Applied Research for the Family Court Parenting Plan Evaluations* (New York: Oxford University Press 2012), 399-441, doi:10.1093/med:psych/9780199754021.003.0013.

4 Fidler et al., 2012; Joan B. Kelly and Janet R. Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome," *Family Court Review* 39, no. 3 (2005): 249 – 266.

5 Elizabeth T. Gershoff and Andrew Grogan-Kaylor, "Spanking and Child Outcomes: Old Controversies and New Meta-Analyses," *Journal of Family Psychology* (2016), doi:10.1037/fam0000191.

6 U.S. Department of Health and Human Services, Administration for Children and Families, "Fourth National Incidence Study of Child Abuse and Neglect (NIS–4), "by Andrew J. Sedlak, Jane Mettenburg, Monica Basena, Ian Petta, Karla McPherson, Angela Greene, and Spencer Li (Washington, DC.: Report to Congress, 2010).

7 U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, "Child Maltreatment 2014." Accessed April 20, 2016 at *http://www.acf.hhs.gov/programs/cb/resource/child-maltreatment-2014*.

8 John Briere and Dana M. Elliott, "Prevalence and Psychological Sequelae of Self-reported Childhood Physical and Sexual Abuse in a General Population Sample of Men and Women," *Child Abuse & Neglect* 27, no. 10 (2003): 1205-1222, doi:10.1016/j.chiabu.2003.09.008; Lewis R. Goldberg and Jennifer J. Freyd, "Self-reports of Potentially Traumatic Experiences in an Adult Community Sample: Gender Differences and Test-retest Stabilities of the Items in a Brief Betrayal-trauma Survey," *Journal of Trauma & Dissociation*, 7 no. 3 (2006): 39-63, doi:10.1300/J229v07n03_04.

9 Renee McDonald et al., "Estimating the Number of American Children Living in Partner-violent Families," *Journal of Family Psychology* 20, no. 1 (2006): 137.

10 Corrie A. Davies, Sarah E. Evans, and David K. DiLillo, "Exposure to Domestic Violence: A Meta-analysis of Child and Adolescent Outcomes," *Aggression and Violent Behavior* 13, no. 2 (2008): 131-140; Shanta R. Dube et al., "Exposure to Abuse, Neglect, and Household Dysfunction Among Adults who Witnessed Intimate Partner Violence as Children," *Violence and Victims* 17, no. 1 (2002): 3–17.

11 Murray A. Straus, "Ordinary Violence, Child Abuse, and Wife Beating: What Do They Have in Common?," In David Finkelhor et al., eds., *The Dark Side of Families: Current Family Violence Research* (Newbury Park, CA: Sage Publications 1983), 213-234.

12 Richard A. Warshak, "Ten Parental Alienation Fallacies that Compromise Decisions in Court and in Therapy," *Professional Psychology: Research and Practice* 46, no. 4 (2015): 235-249.

13 Clare Dalton, Leslie M. Drozd, and Frances Q. F. Wong, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Reno, NV: National Council of Juvenile and Family Court Judges, 2006); Daniel G. Saunders, Kathleen C. Faller, and Richard M. Tolman, *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations* (Final Technical Report Submitted to the National Institute of Justice, U.S. Department of Justice, 2011), *https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf*.

14 Saunders et al., "Child Custody Evaluators' Beliefs About Domestic Abuse Allegations" (Final Technical Report Submitted to the National Institute of Justice, U.S. Department of Justice October 31, 2011).

15 Saunders et al., 2011; James N. Bow and Paul Boxer, "Assessing Allegations of Domestic Violence in Child Custody Evaluations," *Journal of Interpersonal Violence* 18, no. 12 (2003): 1394–1410.

16 Robin H. Ballard et al., "Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening," *Psychology, Public Policy, and Law* 17, no. 2 (2011): 241–263, doi:10.1037=a0022616; Randy H. Magen et al., "Identifying Domestic Violence in Child Abuse and Neglect Investigations," *Journal of Interpersonal Violence* 16, no. 6 (2001): 580–601, doi:10.1177=088626001016006006.

17 Daniel G. Saunders, "Research Based Recommendations for Child Custody Evaluation Practices and Policies in Cases of Intimate Partner Violence," *Journal of Child Custody* 12, no. 1 (2015):71-92, DOI: 10.1080/15379418.2015.1037052.

18 Association of Family and Conciliation Courts, (2016), *Guidelines for Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation*, *http://www.afccnet.org/Resource-Center/Practice-Guidelines-and-Standards*.

19 Nancy Ver Steegh, Gabrielle Davis, and Loretta Frederick, "Look Before You Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence" *Marquette Law Review* 95, no. 3 (2012): 955–990. Retrieved from *http://scholarship.law.marquette.edu/*mulr/vol95/iss3/11.

20 Office of Dispute Resolution State Court Administrative, Office Michigan Supreme Court, (June 2014), *Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts: Abbreviated Domestic Violence Screening Questionnaires*, *http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol%20%28abbreviated%29.pdf*.

21 AFCC, (2016); Connie J. A. Beck and Chitra Raghavan, "Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control," *Family Court Review* 48, no. 3 (2010): 555–565, doi:10.1111=j.1744-1617.2010.01329.x.

22 Michael S. Davis et al., *Custody Evaluations When There are Allegations of Domestic Violence: Practices, Beliefs and Recommendations of Professional Evaluators* (Final Report submitted to the

National Institute of Justice, November 29, 2010). Available at: https://www.ncjrs.gov/pdffiles1/nij/grants/234465.pdf.

23 Saunders et al., (2011).

24 Amy Holtzworth-Munroe, Connie J. A. Beck, and Amy G. Applegate, "The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain," *Family Court Review* 48, no. 4 (2010): 646–662, doi:10.1111=j.1744-1617.2010.001339.x.

25 Betty Jo Barrett and Melissa St. Pierre, "Variations in Women's Help Seeking in Response to Intimate Partner Violence: Findings from a Canadian Population-based Study," *Violence Against Women* 17, no. 1 (2011): 47-70; Glenda Kaufman Kantor and Murray A. Straus, "Response of Victims and the Police to Assaults on Wives," in *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8, 145 Families,* 473-487 (New Brunswick, NJ: Transaction Publishers, 1990); Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women (*Findings from the National Violence Against Women Survey, NCJ, *183781, 2000).*

26 *See* for example: Davis et al., (2010); Nancy E. Johnson, Dennis P. Saccuzzo, and Wendy J. Koen, "Child Custody Mediation in Cases of Domestic Violence: Empirical Evidence of a Failure to Protect," *Violence Against Women* 11, no. 8 (2005): 1022; Mary A.Kernic et al., "Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence," *Violence Against Women* 11, no. 8 (2005): 991.

27 Chris S. O'Sullivan, "Estimating the Population at Risk for Violence During Child Visitation," *Domestic Violence Report* 5, no. 5 (2000): 65; Dennis P. Saccuzzo and Nancy E. Johnson, "Child Custody Mediation's Failure to Protect: Why Should the Criminal Justice System Care?" *National Institute of Justice Journal* 251, (2004): 1–30; Voices of Women, (2008).

28 Peter G. Jaffe, Claire V. Crooks, and Samantha E. Poisson, "Common Misconceptions in Addressing Domestic Violence *in* Child Custody Disputes," *Juvenile and Family Court Journal* 54, no. 4 (2003): 57-67; Janet R. Johnston, Marjorie Walters, and Nancy W. Olesen, (2005); "The Psychological Functioning of Alienated Children in Custody Disputing Families: An Exploratory Study," *American Journal of Forensic Psychology* 23, no. 3 (2005): 39.

29 AFCC, (2016) *http://www.afccnet.org/Resource-Center/Practice-Guidelines-and-Standards.*

30 AFCC, (2016): 8.

31 U.S. Department of Health and Human Services, (2014), *http://www.acf.hhs.gov/programs/cb/resource/child-maltreatment-2014.*

32 Pamela S. Ludolph and James N. Bow, "Complex Alienation Dynamics and Very Young Children," *Journal of Child Custody* 9, no. 3 (2012): 153-178.

33 American Professional Society on the Abuse of Children, (2016), *APSAC Position Paper on Allegations of Child Maltreatment and Intimate Partner Violence in Divorce/Parental Relationship Dissolution,* p. 9. Available at *http://www.apsac.org/assets/documents/apsac%20position%20paper--revised%2013.pdf.*

34 Saunders et al., (2011).

35 Janet R. Johnston et al., "Allegations and Substantiations of Abuse in Custody Disputing Families," *Family Court Review* 43, no. 2 (2005): 284.

36 Saunders et.al., (2011); Daniel G. Saunders, Richard M. Tolman, and Kathleen C. Faller, "Factors Associated with Child Custody Evaluators' Recommendations in Cases of Intimate Partner Violence," *Journal of Family Psychology* 27, no. 3 (2013): 473.

37 AFCC, (2016); Leslie M. Drozd, Nancy W. Olesen, and Michael A. Saini, *Parenting Plan and Child Custody Evaluations: Increasing Competence and Preventing Avoidable Errors* (Sarasota, FL: Professional Resource Press, 2013).

38 For example: Walter S. DeKeseredy and Martin D. Schwartz, *Dangerous Exits: Escaping Abusive Relationships in Rural America* (New Brunswick, NJ: Rutgers University Press, 2009); Tjaden and Thoennes, 2000; Laurel B. Watson and Julie R. Ancis, "Power and Control in the Legal System from Marriage/Relationship to Divorce and Custody," *Violence Against Women* 19, no. 2 (2013):166-186.

39 Daniel G. Saunders and Angela Browne, "Intimate Partner Homicide," in Robert T. Ammerman and Michel Hersen, eds., *Case Studies in Family Violence,* 2nd Ed., (New York: Plenum, 2000).

40 Jennifer Hardesty and Lawrence H. Ganong. "How Women Make Custody Decisions and Manage Co-parenting with Abusive Former Husbands," *Journal of Social and Personal Relationships* 23, no. 4 (2006): 543; Brittany E. Hayes, "Abusive Men's Indirect Control of Their Partner During the Process of Separation," *Journal of Family Violence* 27 (2012): 333–344, doi:10.1007= s10896-012-9428-2; Peter G. Jaffe, Nancy K. D. Lemon, and Samantha Poisson, *Child Custody and Domestic Violence: A Call for Safety and Accountability* (Thousand Oaks, CA: SAGE Publications, 2003).

41 Kathleen C. Faller, "Sexual Abuse Allegations in Divorce," In K.C. Faller, *Understanding and Assessing Child Sexual Maltreatment,* 2nd Ed. (Thousand Oaks, CA: Sage Publications, 2003), 237-270.

42 Saini et al., (2016).

43 Janet R. Johnston, Marjorie G. Walters, and Nancy W. Olesen, "Is it Alienating Parenting, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes," *Journal of Emotional Abuse* 5, no. 4 (2005): 191-218.

44 Daniel G. Saunders, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns* (Minneapolis, MN: VAWnet: National Resource Center on Domestic Violence, 2007). Retrieved from: *http://new.vawnet.org/category/Main_Doc.php?docid=1134.*

45 Susan L. Keilitz et al., *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers (*Williamsburg, VA: National Center for State Courts, 1997).

Parental Alienation Syndrome and Parental Alienation: A Research Review

Joan S. Meier

The willingness to pathologize capable mothers even extends to mothers' "warm, involved" parenting -- which they assert can powerfully fuel alienation in a child (Johnson et al., 2005, p. 208; Kelly and Johnston, 2001). Such discussions are more than sufficient to ensure that whenever a mother and child have ambivalence about the children's father, and certainly in most cases where mothers allege abuse, virtually any loving parenting by the mother can be labeled a form of "alienation."

Applied Research papers synthesize and interpret current research on violence against women, offering a review of the literature and implications for policy and practice.

VAWnet is a project of the National Resource Center on Domestic Violence.

Parental alienation syndrome (PAS) and parental alienation (PA) are often invoked in legal and legislative contexts addressing the rights of fathers and mothers in custody or visitation litigation. Indeed, alienation claims have become ubiquitous in custody cases where domestic violence or child abuse is alleged, as grounds to reject mothers' requests to limit paternal access to their children. This paper provides a historical and research overview of PAS and PA, identifies strategic issues for advocates working with abused women and children,* and offers guidelines to improve courts' treatment of these issues. While PAS and PA have much in common both as theories and with respect to how they are used in court, they have distinct scientific and research bases and critiques. This paper, therefore, addresses them separately.

Parental Alienation Syndrome

Historical Background

The notion of children's hostility to one parent in the context of divorce was first characterized as a pathology by divorce researchers Wallerstein and Kelly. They theorized that a child's rejection of a noncustodial parent and strong resistance or refusal to visit that parent was sometimes a "pathological" alignment between an angry custodial parent and an older child or adolescent and that this alliance was fueled by the dynamics of marital separation, including a child's reaction to it (Wallerstein & Kelly, 1976, 1980). Although significant, Wallerstein and Kelly's construct did not become a staple of custody evaluations or judicial determinations. Moreover, their early work does not use the phrase "parental alienation," but focuses instead on children's "alignment" with one parent against the other.

* *The use of gender-specific language in this paper to refer to protective and abusive parents is in response to both Richard Gardner's gendered framework for PAS and to relevant research on domestic violence.*

Beginning in the early 1980's, attention to a purported "parental alienation syndrome" exploded as the result of the dedicated efforts of Richard Gardner, a psychiatrist loosely affiliated with Columbia Medical School[1] who ran a clinical practice that focused on counseling divorcing parents.

Based solely on his interpretation of data gathered from his clinical practice, Gardner posited that child sexual abuse allegations were rampant in custody litigation, and that 90% of children in custody litigation suffered from a disorder, which he called "Parental Alienation Syndrome (PAS)." He described PAS as a "syndrome" whereby vengeful mothers employed child abuse allegations as a powerful weapon to punish ex-husbands and ensure custody to themselves (Gardner, 1992a; 1992b). He further theorized that such mothers enlisted the children in their "campaign of denigration" and "vilification" of the father, that they often "brainwashed" or "programmed" the children into believing untrue claims of abuse by the father, and that the children then fabricated and contributed their own stories (Gardner, 1992b, p. 162, 193; 2002, pp. 94-95). He claimed – based solely on his own interpretation of his own clinical experience – that the majority of child sexual abuse claims in custody litigation are false (Gardner, 1991), although he suggested that some mothers' vendettas were the product of pathology rather than intentional malice (Gardner, 1987, 1992b). In short, Gardner claimed that when children reject their father and they or their mother makes abuse allegations, this behavior is most likely the product of PAS rather than actual experiences of abuse. PAS theory is thus premised on the assumption that child abuse claimants' believability and trustworthiness is highly suspect.[2]

While acknowledging that if there was actually abuse which explained a child's hostility there could be no PAS (Gardner, 1992a), Gardner's "diagnostic criteria" focused on various personality characteristics of the accuser, accused, and the child, rather than expert assessments of abuse itself or the other reasons that might explain a child's hostility to a parent (Gardner, 1992b; see also Hoult, 2006). Rather, Gardner's PAS theory presumes that a child's hostility to a father is pathological, which, in turn, encourages courts to suspect that mothers who make such allegations are doing so only to undermine the child's relationship with the father. Indeed, in differentiating between "fabricated" and "bona fide" abuse, Gardner uses "the Presence of the Parental Alienation Syndrome" as itself an "extremely valuable differentiating [criterion]" (Gardner, 1987, p. 109). By PAS, as previously discussed, he means a child's "campaign of denigration" of the father and the mother's supposed "programming" of the child/ren (Gardner, 2002, pp. 95-97). In short, Gardner's PAS theory essentially *presumes* PAS's existence from the mere presence of a child's hostility toward and/or fear of their father based on alleged abuse. This is unfortunately precisely how it has been applied in many courts.

It should be further noted that the "Sexual Abuse Legitimacy Scale," which Gardner invented as a means of quantifying the likelihood that sexual abuse claims were valid, was so excoriated by scientific experts as "garbage" that he withdrew the scale; however, many of the factors it contained continue to be part of his qualitative discussions of how to determine whether child sexual abuse allegations are legitimate (Bruch, 2001; Faller, 1998).

Gardner's Remedies for PAS

Gardner's "remedy" for purportedly severe PAS is extreme - including complete denial of maternal-child contact and "de-programming" the child through a concerted brainwashing effort to change the child's beliefs that they have been abused (Bruch, 2001; Gardner, 1992a; see also www.rachelfoundation.org). After being subjected to these procedures and ordered by the court to live with the father they said abused them, some children became suicidal nd some killed themselves (Bruch, 2001; Hoult, 2006). In other cases, courts have ordered children into jail and juvenile homes as part of Gardner's recommended "threat therapy" which is the stock in trade of strict alienation psychologists

(Hoult, 2006; Johnston & Kelly, 2004a). In one such case, a judge ordered a frail nine-year-old boy seized by three police officers and placed in a juvenile detention facility when he refused to get into his father's car for a scheduled visitation. The son of the father's girlfriend had sexually abused the boy, and he had also witnessed the father's violence against his mother. After three days of abuse by the other boys in the detention facility, the boy agreed to cooperate with the court order. The judge concluded that his "treatment" for "parental alienation" had worked (E. Stark, personal communication, May 2007).

As critiques of PAS have pointed out, PAS is a teflon defense to an accusation of abuse, because all evidence brought to bear to support the abuse claims is simply reframed as further evidence of the "syndrome" (Bruch, 2001). That is, all efforts to gather corroboration of the allegations are simply treated as further evidence of her pathological need to "alienate" the child from the father (Gardner, 1987, 1992a). If the protective parent points to a therapist's opinion that the child has been abused, the therapist is accused of a "folie a trois" (a clinical term from the French for "folly of three") which suggests that all three parties are in a dysfunctional "dance" together (Bruch, 2001). A child's or a protective parent's repetition of claims of abuse is routinely characterized as further evidence of extreme alienation, and punished by court orders prohibiting continued reporting of abuse.

Gardner's pro-pedophilic and misogynistic beliefs

Gardner's underlying beliefs regarding human sexuality, including adult-child sexual interaction, are so extreme and unfounded that it is hard to believe that courts would have adopted his theory had they known. First, he asserted that the reason women lie about child sexual abuse in custody litigation is because "hell hath no fury like a woman scorned" (Gardner, 1992b, pp. 218-19), and/or because they are "gratifie[d] vicariously" (Gardner, 1991, p. 25; 1992a, p. 126) by imagining their child having sex with the father. There is of course no empirical basis or support for these offensive assertions.

Second, Gardner's views of sexuality were disturbing. He claimed that all human sexual paraphilias, including pedophilia, sadism, rape, necrophilia, zoophilia (sex with animals), coprophilia (sex with feces), and other deviant behaviors "serve the purposes of species survival" by "enhanc[ing] the general level of sexual excitation in society" (Gardner, 1992b, p. 20; see also Hoult, 2006; Dallam, 1998.)

Further, Gardner claimed that women's physiology and conditioning makes them potentially masochistic rape victims who may "gain pleasure from being beaten, bound, and otherwise made to suffer," as "the price they are willing to pay for gaining the gratification of receiving the sperm" (Gardner, 1992b, p. 26).

Regarding pedophilia, Gardner argued expressly that adult-child sex need not be intrinsically harmful to children, and that it is beneficial to the species, insofar as it increases a child's sexualization and increases the likelihood that his or her genes will be transmitted at an early age (Gardner, 1992b). Gardner claimed, "sexual activities between an adult and a child are an ancient tradition" and phenomenon which "has been present in just about every society studied, both past and present" (Gardner, 1992b, pp. 47-48). He viewed Western society as "excessively punitive" in its treatment of pedophilia as a "sickness and a crime" (Gardner, 1991, p. 115), and attributed this "overreaction" to the influence of the Jews (Gardner, 1992b, pp. 47, 49). Gardner opposed mandated reporting of child sexual abuse and specifically described a case in which he successfully persuaded a mother not to report a bus driver who had molested her daughter, because it would "interfere with the natural desensitization process, would be likely to enhance guilt, and would have other untoward psychological effects" (Gardner, 1992b, pp. 611-12; see also Dallam, 1998). Gardner's perspective on adult-child sexual interaction can be summed up in his reference

to Shakespeare's famous quote: "'There is nothing either good or bad, but thinking makes it so'" (Gardner, 1991, p. 115).

Despite his assertions that pedophilia is widespread and harmless, he asserted in a filmed interview that a child who tells his mother he has been sexually molested by his or her father should be told "I don't believe you. I'm going to beat you for saying it. Don't you ever talk that way again about your father" (Waller, 2001).[3] This response – and his beliefs described above – suggest that the animating intention behind the PAS theory's denial of the validity of child sexual abuse reports is not a genuine belief that child sexual abuse is often falsely reported, but rather a belief that such reports should be suppressed.

The Lack of Evidence Base for PAS

While Gardner and PAS have had many adherents, particularly among forensic evaluators and litigants, there is actually no empirical research validating the existence of PAS. And there is extensive empirical proof that the assumptions underlying the theory are false.

Sole empirical study of PAS does not validate the concept. Only one study has been published that purports to empirically verify the existence of PAS. Consistent with scientific standards, this study sought to assess the "inter-rater reliability" of PAS – i.e., the extent to which different observers can consistently identify PAS (Rueda, 2004). The study built directly on Gardner's criteria, taking for granted that those criteria reflect PAS. It then measured the degree to which a small sample of therapists agreed on whether five case scenarios presented to them reflect those PAS criteria or not (Rueda, 2004). The findings were that there was a reasonable degree of agreement about whether these cases indicated PAS. However, the findings do not prove its existence – rather, they prove that a small number of mental health professionals agreed on applying the *label* PAS to cases of estranged ("alienated") children. Many therapists surveyed, however, had refused to fill out the questionnaire and some expressly stated they didn't believe PAS existed. This study thus simply presumed rather than proved the key question: is the concept of PAS actually a disorder caused by a malevolent aligned parent's efforts, or is it simply a reframing of a child's estrangement flowing from abuse, other problematic conduct by the alienated parent, or other normative reasons? The author himself admits that the findings did not "differentiate PAS from parental alienation" (Rueda, 2004, p. 400). Since "parental alienation" is merely a label that does not in itself explain the reason for the child's alienation, this admission essentially negates the study as a validator of PAS.

PAS' empirical bases are false or unsupported. The claims upon which Gardner based his PAS theory are thoroughly contradicted by the empirical research. First, Gardner (1991, 1992b) claimed that child sexual abuse allegations are widespread in custody cases and that the vast majority of such allegations are false. These claims have no empirical basis, other than Gardner's interpretation of his own clinical practice. In contradiction, the largest study of child sexual abuse allegations in custody litigation ever conducted found that child sexual abuse allegations were extremely rare (less than 2% of cases) and of those, approximately 50% of the claims were deemed valid, even when assessed by normally conservative court and agency evaluators (Thoennes & Tjaden, 1990). Other studies have found such allegations to be validated approximately 70% of the time (Faller, 1998). Moreover, leading researchers have found that the dominant problem in child sexual abuse evaluation is not false allegations, but rather, the "high rates of unsubstantiated maltreatment" in "circumstances that indicat[e] that abuse or neglect may have occurred" (Trocme & Bala, 2005, pp. 1342-44).

Indeed, empirical research has found that the PAS theory is built upon an assumption which is the opposite of the truth: Where PAS presumes that protective mothers are vengeful and pathologically "program" their children, it is not women and children – but noncustodial fathers – who are most

likely to fabricate child maltreatment claims. In the largest study of its kind, leading researchers analyzed the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect. They found that only 12% of child abuse or neglect allegations made in the context of litigation over child access were intentionally false (Trocme & Bala, 2005). Notably, they found that the primary source (43%) of these intentionally false reports was noncustodial parents (typically fathers); relatives, neighbors, or acquaintances accounted for another 19% of false reports. Only 14% of knowingly false claims were made by custodial parents (typically mothers), and only two cases (out of 308) fit the alienation paradigm of an intentionally false abuse allegations against a noncustodial father (Trocme & Bala, 2005).

PAS has been rejected as invalid by scientific and professional authorities. The dominant consensus in the scientific community is that there is no scientific evidence of a clinical "syndrome" concerning "parental alienation." Leading researchers, including some who treat "alienation" itself as a real problem, concur, "The scientific status of PAS is, to be blunt, nil" (Emery, Otto, & O'Donohue, 2005, p. 10; see also Gould, 2006; Johnston & Kelly, 2004b; Myers, Berliner, Briere, Hendrix, Jenny, and Reid, 2002; Smith and Coukos, 1997; Wood, 1994). The Presidential Task Force of the American Psychological Association on Violence in the Family stated as early as 1996 that "[a]lthough there are no data to support the phenomenon called parental alienation syndrome, in which mothers are blamed for interfering with their children's attachment to their fathers, the term is still used by some evaluators and Courts to discount children's fears in hostile and psychologically abusive situations" (p. 40). Dr. Paul Fink, past President of the American Psychiatric Association, describes PAS as "junk science" (Talan, 2003, line 9). Nonetheless, defenses of PAS against critiques have led even some respected social scientists to mis-cite and distort the research (Lasseur & Meier, 2005).

Thus, PAS has been rejected multiple times by the American Psychiatric Association as lacking in scientific basis and therefore not worthy of inclusion in the Diagnostic and Statistical Manual of Mental Disorders. The most recent all-out campaign by PAS proponents for inclusion of (the re-named) "Parental Alienation Disorder" (PAD) was flatly rejected by the DSM-V committee in 2012 (Crary, 2012).

Echoing the scientific consensus, a leading judicial body, the National Council of Juvenile and Family Court Judges (NCJFCJ), has published guidelines for custody courts stating:

> [t]he discredited "diagnosis" of "PAS" (or allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the children's responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children's other parent (Dalton, Drozd, & Wong, 2006, p. 24).

The American Prosecutors' Research Institute and National District Attorneys' Association have also rejected PAS (Ragland & Field, 2003).

Court rulings on admissibility. Most family courts accept PAS contained in an opinion offered by an evaluator or Guardian Ad Litem (GAL) (legal representative for the child) without ever questioning its scientific validity or admissibility. Where it has been formally challenged on appeal, appellate courts have also avoided directly ruling on the issue. *See e.g., Hanson v. Spolnik*, 685 N.E.2d 71 (Ind.App. 1997), Chezem, J. dissenting (castigating both trial court and appellate court for reliance on "pop psychology" of PAS). As a result there are as of the date of this writing only three trial-level published opinions actually analyzing and ruling on the legal admissibility of PAS. Each opinion has concluded it lacked sufficient scientific validity to meet admissibility standards (*Snyder v. Cedar*, 2006 Conn.

Super. LEXIS 520, 2009; *People v. Fortin*, 2001; *People v. Loomis*, 1997). Four trial level decisions have ruled it was admissible, but the appeal of each decision resulted in no ruling on the PAS issue. No published decision exists for several of the purportedly favorable trial court opinions (Hoult, 2006).

PAS Continues to Garner Public and Judicial Attention

While the robust critiques and rejections of PAS as a "syndrome" have reduced the use of this label in court and in the research literature, it has continued to garner popular and political recognition. For example, the American Psychological Association and state and local bar associations continued to sponsor workshops on PAS during the first decade of the century. Since approximately 2005, roughly fifteen governors have issued proclamations concerning the purported problem of PAS at the urging of a relatively small group of PAS proponents (Parental Alienation Awareness Organization-United States, n.d.).

Parental Alienation

The many critiques of Gardner's PAS have resulted in a shift among leading researchers and scholars of custody evaluation from support for PAS to support for a reformulation of PAS to be called instead "parental alienation" or "the alienated child" (Johnston, 2005; Steinberger, 2006). Most recently, Johnston and Kelly (2004b) have clearly stated that Gardner's concept of PAS is "overly simplistic" and tautological, and that there are no data to support labeling alienation a "syndrome" (p. 78; 2004a, p. 622). Instead, they speak of "parental alienation" or "the alienated child" as a valid concept that describes a real phenomenon experienced by "a minority" of children in the context of divorce and custody disputes (Johnston, 2005, p. 761; Johnston & Kelly, 2004b. p. 78; see also Drozd & Olesen, 2004).

Johnston (2005) defines an alienated child as one

> who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent. Entrenched alienated children are marked by unambivalent, strident rejection of the parent with no apparent guilt or conflict (p. 762).

What is the difference between PAS and PA? The primary shift appears to be away from Gardner's focus on the purportedly alienating parent and toward a more realistic assessment of the multiple sources of children's hostility or fear of a parent, including behavior by both parents and the child's own vulnerabilities (Johnston, 2005; Johnston & Kelly, 2004b; Kelly & Johnston, 2001). Johnston and Kelly (2004b) state,

> In contrast to PAS theory that views the indoctrinating parent as the principal player in the child's alienation, this study [their own] found that children's rejection of a parent had multiple determinants . . . [another study of theirs also] supported a multi-dimensional explanation of children's rejection of a parent, with both parents as well as vulnerabilities within the child contributing to the problem. Alienating behavior by an emotionally needy aligned parent (mother or father), with whom the child was in role-reversal, were strong predictors of the child's rejection of the other parent. Just as important as contributors were critical incidents of child abuse and/or lack of warm, involved parenting by the rejected parent (pp. 80-81).

Johnston also differentiates her approach from Gardner's by rejecting his draconian "remedies," including custody switching to the "hated" parent. Characterizing Gardner's prescriptions as "a license for tyranny," Johnston and Kelly (2004b, p. 85) call instead for individualized assessments of both the children and the parents' parenting, maintaining focus on the children's needs rather than the parents'

rights. In theory, the goal is a more realistic and healthy relationship with both parents, rather than reconciliation with the hated parent as the only desirable goal (Johnston, 2005). Unfortunately, the common practice in court is far less nuanced and individualized (see below).

The notion that some children are alienated from a parent is both a less scientific and more factual assertion. It is thus easier to raise "alienation" in court without triggering a battle over the admissibility of scientific evidence (Gardner, 2002). However, debate continues to rage in research and advocacy circles over the extent to which parental alienation is something that can be measured, is caused by a parent, and/or has truly harmful effects, or whether it is simply a new less objectionable name for the invalidated PAS. To the extent that PA is widely used almost identically to PAS in court, it may not matter in practice what the theoretical differences are.

Critique of PA - Lack of Evidence Base

Questioning the scientific basis of parental alienation and PAS is challenging because these theories are described and referenced in a substantial social science literature (Turkat, 2002). Many of these materials make assertions about PAS and PA without any citation to scientific literature – yet their "publication" on the Internet and their association with apparently credentialed authors and/or supporters, give them an aura of credibility. Some articles do cite research selectively, but contain numerous unsupported assertions as well, about PAS, PA, and how they operate.

Custody evaluators and psychologists frequently insist as an anecdotal matter that alienation is present and is a terrible thing. However, the only empirical basis for this assumption of alienation's harmfulness at this time is limited to "clinical observation" (Johnston & Kelly, 2004b; see also Ackerman & Dolezal, 2006). Of course clinical observations are subjective, and do not constitute empirical evidence. Moreover, these statements do not indicate whether the relationship breaches between children and parents observed by these clinicians are a healthy or developmental response to their relationship with that parent, or if the "alienation" is wrongfully instigated by a favored ("aligned") parent (Johnston & Kelly, 2004b). Indeed, even if the clinical observers attempted to make the distinction, there would be no objective way of discerning whether their judgment was correct (short of a comprehensive assessment of the child-parent relationship, including any abusive, neglectful or cold, indifferent or hostile parenting by the disliked parent.

In fact, what the empirical evidence Johnston et al. (2005) have amassed indicates both that (i) actual "alienation" of a child is quite rare despite many parents' derogatory conduct or statements about the other parent and (ii) when children are estranged from a parent there are always multiple reasons, some of which are that parent's own conduct. Their widely published research has found that, despite the alienating behaviors of both parents in most of the families participating in their study, only 20% of children were actually "alienated" and only 6% were "severely alienated." Even among the children who rejected a parent, all had multiple reasons for their hostility, including negative behaviors by the hated parent, such as child abuse or inadequate parenting, or the children's own developmental or personality difficulties (Johnston, 2005; Johnston et al., 2005).

The fact that only a small fraction of children subjected to inter-parental hostilities and alienating conduct by their parents have been found to actually become "alienated" suggests that the focus on alienation is a tempest in a teapot – one that continues to distract from and undermine the accurate assessment of abuse and concomitant risks to children.

Lack of Evidence Base for Long-term Impact of Alienation

Johnston and others have acknowledged that "there is very little empirical data to back up their "clinical observations" that alienated children are significantly

undermined in their emotional and psychological development. In fact, Johnston and Kelly (2004b) forthrightly state that "there are no systematic long-term data on the adjustment and well-being of alienated compared to non-alienated children so that long-term prognostications are merely speculative" (p. 84). And, contrary to the common assertions of evaluators and alienation theorists that alienation is a devastating form of emotional abuse of children, Judith Wallerstein, the groundbreaking researcher of divorce who first pointed out the problem of children's sometimes pathological alignment with the custodial parent after divorce, found in her follow-up study that children's hostility toward the other parent after divorce was in every case temporary, and resolved of its own accord, mostly within one or two years (Bruch, 2001; Wallerstein et al., 2000).

Links between PA and Domestic Violence – Reversing the PA Paradigm

Johnston and Kelly's (2004b) research also reveals some interesting evidence about the relationship of domestic violence to alienation:

> While a history of domestic violence did not predict children's rejection of a parent directly . . . [m]en who engaged in alienating behaviors (i.e., demeaning a child's mother) were more likely to have perpetrated domestic violence against their spouses, indicating that this kind of psychological control of their child could be viewed as an extension of their physically abusive and controlling behavior (p. 81).

Coming from researchers who specialize in alienation, this empirical statement – that men who batter are often also men who intentionally demean the mother and teach the children not to respect her – is powerful confirmation of the experiences of many battered women and their advocates. Perhaps just one example from the author's caseload will suffice: In this case, the batterer would call the children out of their rooms where they were cowering, to make them watch him beat their mother while telling them he had to do this because she was a "whore" and a "slut." Other custody experts and researchers have also suggested that batterers are in fact the most expert "alienators" of children from their other parent (Bancroft & Silverman, 2002). The dilemma that this creates for battered women and their advocates with respect to the use of parental alienation as a claim is discussed in the section on "Strategy Issues" below.

Qualitative critique – PA denies abuse and is used, like PAS, in conclusory fashion. By recognizing the many reasons and ways children can become alienated from a parent, the new "alienation" theory is, in principle, more reasonable and realistic than the old PAS theory. Nonetheless, given the shared belief at the root of both theories – that abuse allegations are typically merely evidence of an aligned parent's campaign of alienation – the differences between "alienation" and PAS are, at best, unclear to many lawyers, courts, and evaluators.[4] Indeed, this author was involved in a case in which the court's forensic expert, over time, substituted the label "parental alienation" for her earlier suggestion of PAS, without changing anything else about her analysis. When queried about the differences between PA and PAS, she had little to say. It is not surprising, then, that even while trying to explicitly shift the focus from PAS to PA, proponents of the "new" PA continue to rely on PAS materials (Bruch, 2001; Steinberger, 2006).

Perhaps the most disturbing misuse of PA is seen when PA adherents fail to distinguish between children who are estranged from a non-custodial parent due to abuse or other negative behavior from children who have been wrongly influenced by their favored parent to hate or fear the other. Thus, leading adherents to PA theory including Johnston and colleagues sometimes describe children's symptoms and psychological harms and attribute them to "alienation," while simultaneously acknowledging that their research shows that "alienated" children include those who are *justifiably* estranged due to the disfavored parent's conduct. Cases worked on by this author have shown that abused children display many of the symptoms that are frequently attributed

to "alienation" both in the courts and in the literature (Compare Johnston, Walters, & Olesen, 2005; Johnston & Kelly, 2004b with Kathleen C. Faller, 1999; Righthand, 2003). Such discussions attribute to alienation harms which, in fact, may well be due to the disfavored parent's own behaviors (Meier, 2010).

This failure to distinguish between whether harm to children – or their hostility to their father – is caused by alienation or abuse sets up a paradoxically disastrous dynamic: So long as an abuser can convince a court that the children's attitudes can be labeled "alienation," he can *benefit* from the very impact of his abuse. In *Jordan v. Jordan*, the trial court found (based on two alienation psychologists' testimony) that the older of two children was severely alienated from her father, who had been found to have twice committed intrafamily offenses against the mother. Therefore, the court ruled that the legislative presumption against joint custody to a batterer was rebutted – by the child's alienation, which, the court stated, would cause her emotional damage, and which it was presumed could best be cured by more time with her father (who she adamantly refused to see). The problem with this analysis was that neither the experts nor the judge considered the possibility that the child's "alienation" may have been at least in part a reaction to the father's violence toward the mother and in front of the child, as well as his known manhandling of the child herself. As a result, the father won joint (and eventually, sole) custody, even though the possibility that the child's hostility was a function of *his own abusive behaviors* was *never ruled out* (Jordan, 2010). When this argument was put before the Court of Appeals, that Court also ignored the fact that such reasoning makes *battering a sure path to an award of custody* – so long as the children become alienated as a result. The Court simply affirmed that the alienation label is sufficient grounds to rebut the presumption against custody to batterers, without regard to whether it is the batterer's own abuse which may have caused the child's "alienation" (Jordan, 2011).

It should be noted that, while alienation researchers do not discuss child witnessing of adult domestic violence as a form of emotional child abuse, research has unequivocally found that child witnesses to adult abuse can be profoundly negatively affected and/or traumatized, even if they are not themselves the direct target of physical or sexual violence (Lewis-O'Connor, Sharps, Humphreys, Gary, & Campbell, 2006; Bancroft & Silverman, 2012). Therefore, even where children have not been directly abused themselves, their fear or hostility toward the batterer of their mother may be entirely expected.

The fact that courts are not nuanced in applying alienation theory would not in itself be sufficient to indict the theory itself. However, discussions of PA within the scholarly literature supporting the concept demonstrate that these applications of the theory are quite consistent with the way it is understood by its researchers and theorists. For instance, while on the one hand conveying a more reasonable awareness of the many factors that contribute to a child's alienation from a parent, Johnston and collaborators continue to pathologize mothers whose children are hostile or afraid of their fathers. In some of their earlier work they even go so far as to pathologize the "aligned" parent who "often fervently believes that the rejected parent is dangerous to the child in some way(s): violent, physically or sexually abusive, or neglectful" (p. 258). They go on to describe the pursuit of legal protections and other means of assuring safety as a "campaign to protect the child from the presumed danger [which] is mounted on multiple fronts [including] restraining orders…" (p. 258). Finally, like Gardner, these purported rejectors of PAS continue to assert that a parent can "unconsciously" denigrate the other parent to the child "as a consequence of their own deep psychological issues" which cause them to "harbor deep distrust and fear of the ex-spouse…" (p. 257; see also Meier, 2010). This willingness to pathologize capable mothers even extends to mothers' "warm, involved" parenting – which they assert can powerfully fuel alienation in a child (Johnston et al., 2005, p. 208; Kelly and Johnston, 2001). Such discussions are more than sufficient

to ensure that whenever a mother and child have ambivalence about the children's father, and certainly in most cases where mothers allege abuse, virtually any loving parenting by the mother can be labeled a form of "alienation."

In short, parental alienation as a theory has been built – not by scientific or empirical research, but by repeated assertions – at first more extreme assertions by Gardner, and now less extreme but still distorted assertions by more sophisticated psychological professionals. Unfortunately it has been used virtually identically to PAS in family courts, to simply turn abuse allegations back against the protective parent and children (Meier, 2010). Anecdotal experience is now being confirmed by cutting edge research into "turned around" cases, i.e., those in which a court initially disbelieves a father is dangerous and, after some harm to the children, a second court corrects the error. Preliminary results of this research have identified PA labeling as one of three primary factors leading to erroneous denials of an accused abuser (usually a father)'s dangerousness, and orders subjecting children to ongoing abuse (Silberg, 2013; Silberg & Dallam, 2013). These preliminary results indicate that at least 37% of initial case errors (10 out of 27) were attributable to PA/PAS labeling. If an additional 12 cases in which the protective parent (usually a mother) was pathologized in similar manner (without the PA label) are included ,the percentage becomes 66%. Opinions of evaluators and Guardians Ad Litem (GALs) were a key factor in the court's unprotective erroneous decision in 67% of cases (Silberg, 2013; Silberg & Dallam, 2013).

PA and PAS Labeling by Child Protection Agencies

Despite the mission of child welfare agencies to protect child safety, many such agencies appear to have adopted PAS/PA reasoning. Anecdotal reports from the field suggest that many child welfare agencies are highly skeptical of any abuse claims raised within the context of custody litigations and discount their credibility.[5] Although Gardner asserted that sexual abuse claims raised in the custody litigation context were mostly false, as noted above, the empirical research demonstrates the opposite. Nonetheless, the widespread acceptance of PAS and PA theory has legitimized many child welfare agencies' skepticism toward such allegations when made by mothers in custody or visitation litigation (Lesher & Neustein, 2005; Neustein, A., & Goetting, A., 1999). In fact, in some jurisdictions, the same custody evaluators propounding PAS and PA are working with the child welfare agency.[6] This author has been involved in and learned of numerous cases in which the child welfare agency has refused to believe or even seriously investigate mothers' and children's allegations of a father's abuse, when the case was in custody litigation. It seems that some trainings delivered to caseworkers focus on identifying and weeding out false allegations as much or more than understanding the dynamics of child abuse in the family. In one highly regarded instruction manual, two factors listed as helpful in identifying false allegations are (i) ongoing custody/ visitation litigation and (ii) the accused's denial of the abuse (Pennsylvania Child Welfare Resource Center, 2011).

PA and PAS Labeling by Custody Evaluators

NCJFCJ Guidelines for judges state:

> In contested custody cases, children may indeed express fear of, be concerned about, have distaste for, or be angry at one of their parents. Unfortunately, an all too common practice in such cases is for evaluators to diagnose children who exhibit a very strong bond and alignment with one parent and, simultaneously, a strong rejection of the other parent, as suffering from "parental alienation syndrome" or "PAS." Under relevant evidentiary standards, the court should not accept this testimony. . . (Dalton et al., 2006, p. 24).

In one case with which the author is familiar, the court's forensic evaluator posited alienation as an explanation for the mother's and child's sexual abuse allegations, after observing a single brief visit in the court supervised visitation center, in which the father

and child were observed to be warm and enthusiastic. This evaluator, who was highly regarded by the court as an expert, did not believe that such affectionate interactions would occur if the sexual abuse allegations were true. However, expert research into child sexual abuse indicates the opposite: One cannot assess the veracity of such allegations by observing the parties' interactions. Most abused children continue to love their abusive parents, and crave loving attention from them. Particularly when they know they are in a safe setting, their affection for their parent and the parent for them, may be evident (Anderson, 2005; Bancroft & Silverman, 2002).

Recent major research has now confirmed that many neutral custody evaluators actually lack meaningful knowledge or expertise in domestic violence and abuse (Saunders, Faller & Tolman, 2011). In particular, many (especially private) custody evaluators do not understand the risks to adults and children *after* separation from the abuser, do not use an objective screening instrument and do not apply knowledge from the domestic violence field about assessing dangerousness. Those lacking this information tend also to believe: "(1) DV victims alienate children from the other parent; (2) DV allegations are typically false; (3) DV victims hurt children if they resist co-parenting; (4) DV is not important in custody decisions; and (5) coercive-controlling violence in the vignette was not a factor to explore" (Saunders, Faller & Tolman, 2011). These same evaluators were found to hold "patriarchal" norms (Saunders, Faller & Tolman, 2011). Both this study and other smaller ones have consistently found that custody evaluators fall into two groups: those who understand domestic violence and abuse and believe it is important in the custody context, and those who lack such understanding, are skeptical of abuse allegations and believe they are evidence of alienation (Saunders, Faller & Tolman, 2011; Haselschwerdt and Hardesty, 2010; O'Sullivan, 2011; Erickson and O'Sullivan, 2010). The fallability and ideology of custody evaluators is perhaps best summed up by one of these researchers: "The study showed that what the evaluator brings to the case has more influence on the family's fate than the facts of the case" (O'Sullivan, 2011). Particularly if actual physical violence was not extreme, many such evaluators (and judges) conclude that the perpetrator is not particularly dangerous and that women's and children's fears are overstated or simply fueled by vengeance.

These gaps in evaluators' and judges' appreciation of abuse dynamics and risks are reinforced by the strong emphasis in family courts and mental health training on the importance of children retaining robust relationships with their noncustodial parents after divorce. This leads to a dominant emphasis on "co-parenting" as the prime value by which custody litigants are judged. Thus, the National Council of Juvenile & Family Court Judges in its guide for judges on custody evaluations states, "[e]valuators may ... wrongly determine that the parent is not fostering a positive relationship with the abusive parent and inappropriately suggest giving the abusive parent custody or unsupervised visitation in spite of the history of violence..." (Dalton et al., 2006, p. 25). Alienation theory perfectly and problematically reinforces this emphasis on litigants agreeing to "share" parenting rather than restricting the other parent.

Strategy Issues for Litigants in Specific Cases

Expert Witnesses

The ideal strategy for combating PAS/PA claims leveled against an abuse survivor is the production of an expert to testify that PAS is not valid "science." Such an expert should also explain how PAS and PA are widely used to distract from and undermine an objective assessment of past abuse and future risk. Such expert testimony may be effective in persuading the trial judge to discount PAS or PA claims where there is evidence of abuse. The expert can also help the court understand the dynamics of the particular abuse alleged in the case, including the counter-intuitive aspects of child sexual abuse, or the controlling and coercive tactics used by abusers, which may help a court understand why a lack of severe overt violence does not make abuse

allegations fraudulent. However, even if expert testimony does not result in success at trial, the creation of a strong scientifically based record at trial will increase the chances that a PAS or PA-based ruling can be overturned on appeal.[7] Litigants and their advocates and experts should argue that PA should be treated – at most – as merely a behavior that does not by itself indicate anything other than the need for an individualized assessment of each child, their attitudes toward their parents, and the reasons therefor. Abuse allegations must be thoroughly and independently assessed, regardless of alienation claims (Drozd & Olesen, 2004; Meier, 2010). Ideally, alienation claims should be excluded unless and until abuse is *ruled out*. Otherwise, the alienation label is too easily used to cut short any serious consideration of abuse, and to re-frame true abuse as alienation, a dangerous error, as recent research indicates. For this reason, a popular "decision tree"[8] by leading scholars and forensic psychologists, which invites evaluators to assess *both abuse and alienation* simultaneously, is likely to simply continue the same problems already seen with the misuse of alienation (Meier, 2010).

However, it is the rare custody litigant who can locate and afford to pay a genuine expert on these subjects. Moreover, not all courts are persuaded by such testimony, and PAS and PA claims in custody litigation can be particularly tenacious and difficult to refute. Because PAS theory is so circular – deeming all claims, evidence and corroboration of abuse allegations merely to be further evidence of the "syndrome" – direct rebuttal is virtually impossible. Advocates and survivors in such situations have sometimes concluded that backing off of abuse allegations may be the only way to reduce the courts' focus on purported alienation by the mother. A troubling number of mothers have lost custody and even all contact with their children as a result of seeking to protect them from their fathers' abuse (Lesher & Neustein, 2005; Petition in Accordance, 2006). In this context, painfully tolerating unsupervised visitation or even joint custody with an unsafe father may be seen as the lesser of two evils. However such a resolution may not be permanent, as many abusive parents keep returning to court until they can wrest custody from the protective parent, which is frequently the punishment inflicted on protective parents who continue to report their children's complaints of abuse after being with their other parent.

Alienation by Batterers

Another strategic dilemma arises for victims of domestic violence (typically women) who have observed their abuser (typically men) to be actively alienating the children from their victim-parent. This is most common where the abusive parent is awarded full custody; however, it can also happen to a lesser extent whenever an abuser has unsupervised access to the children. As most advocates for abuse survivors know, what courts call "alienation," i.e., undermining a child's relationship with the other parent for illegitimate reasons, is a common behavior of abusers (Bancroft & Silverman, 2002; Johnston, 2005). In such cases, th esurvivor and her advocate must decide whether to invoke "parental alienation" against the perpetrator. On one hand, to do so would be to validate a concept of dubious validity which has been widely misused against female victims of abuse, and which has been vigorously opposed by domestic violence experts and advocates. One advocate has coined the term "maternal alienation" to distinguish batterer-perpetrated alienation from the much maligned "parental alienation" which is most often used against mothers (Morris, 2004). This term has yet to catch on in the field, and it seems this phrase could also easily be misconstrued as describing mothers who alienate their children. Given many courts' hostility to alleged alienation, as well as the genuine harm that abusers' combination of intimidation and terror with alienating conduct can engender by undermining children's safe relationship with their protective parent, the decision as to whether to allege alienation against an abusive father is not easily made. An alternative term that advocates for abuse victims may wish to use is "Domestic Violence by Proxy," a phrase which captures the way adult batterers may abuse children to hurt the children's mother (Leadership Council, 2009). However it is not clear whether this term captures non-violent alienating conduct.

An Abuse-Sensitive Approach to Adjudicating Parental Alienation Allegations

Given the inherent problems with even the reformulated concept of parental alienation, and given also the facts that (1) alienating behavior is indeed a factual reality, most often engaged in by abusive fathers, and (2) courts and evaluators are unlikely to abandon the concept, this paper seeks to provide an approach to alienation that, if implemented conscientiously, would cabin alienation's use to those cases where it is a legitimate issue. Such a proposal is currently most relevant to forensic evaluators and Guardians Ad Litem, but ideally, it would also become judicial practice to require that abuse be ruled out before alienation is considered. This approach could be adopted through state legislation, court policy, or individual judicial practice. The steps are the following:

1. **Assess abuse first.** Abuse should always be assessed – first – whenever there are allegations of abuse. If abuse claims are verified, or substantial risk exists, the remainder of the evaluation should be guided by safety and protection as the dominant concerns, with relationship preservation as only the secondary concern.

2. **Require evaluators to have genuine expertise in both child abuse and domestic violence.** Evaluators who lack such expertise should be required (as is implied by the APA's ethical custody evaluation guidelines, 1994, 2009) to bring in an outside expert. Real "expertise" requires more than one or two continuing education seminars. It requires in-depth training in abuse and/or in working with abused children and/or adults. The new and extensive research consistently shows that custody evaluators' opinions and recommendations are largely determined by their pre-existing beliefs and biases: in particular, those lacking meaningful domestic violence knowledge cannot be trusted to accurately assess abuse allegations and their implications for child well-being. Rather, the research proves that these evaluators bring inaccurate presumptions to these cases, including an assumption that women's abuse allegations are often false and merely a form of alienation, along with a lack of appreciation of the genuine danger posed by the abuser and the need for objective risk assessment. Precisely because assessments of abuse are empirically demonstrated to be dependent on the assessor's predispositions to believe or not believe such claims, actual training and *experience working with abused populations* should be a necessary pre-requisite for a valid assessment.

3. **Once abuse is found, an abuser's alienation claims against the victim should not be considered.** Virtually every article about alienation and abuse – including Gardner's – gives lip service to the principle that if abuse is real, then alienation is not. However, the current trend propounded by both Johnston and Kelly (2004a, 2004b) and Drozd and Olesen (2004) toward a "multivariate" approach, which evaluates abuse and alienation simultaneously, unavoidably gives too much weight to alienation claims in a manner which inevitably undermines accurate assessment of the validity and impact of real abuse claims (Meier, 2010). Alienating conduct bound up with a batterer's pattern of abuse should be identified as part of the abuse.

4. **A finding of alienation should not be based on unconfirmed abuse allegations or protective measures by the favored parent.** Consider a small thought experiment: When fathers allege that mothers or their new partners are abusing the child, and courts do not confirm the allegation, would it be normal to treat the father as a pernicious alienator from whom the child must be protected? In this author's experience, it is unlikely that experienced family lawyers or evaluators would expect – or advocate for – such treatment. The same standard should hold true for mothers alleging the father is an abuser. In short, alienation should not be linked to abuse allegations at all. If alienation is a

serious concern, then it must be one independent of abuse allegations. To treat abuse allegations as the hallmark of alienation, as is normally done in courts today, is simply to fall into the trap illuminated above – of misusing a claim of alienation to defeat, neutralize, or undermine the seriousness or validity of allegations of abuse. The two concerns should stand or fall – if at all – on their own.

5. **Alienation claims should be considered only under two conditions: If (i) other developmental or understandable causes of the child's hostility are ruled out, and (ii) there is specific concrete behavior by the favored parent which was intended to cause the child to dislike his/her father.** The alienation researchers consistently acknowledge that children may be alienated from a parent for a multiplicity of reasons, almost always including the disfavored parent's own behavior. Therefore it is critical to avoid leaping to the "alienation" label, as a means of attributing blame to the mother, unless and until other explanations for a child's hostility are ruled out. This approach excludes cases where the parent is engaged in some degree of alienating conduct (e.g., remarks) but the child is not in fact alienated (the vast majority of children, according to Johnston's research). It excludes cases where the preferred parent is hostile to the other parent but does not intentionally and concretely seek to alienate the child. It also excludes cases where the child is unreasonably hostile but the preferred parent is not the cause. Finally, it excludes cases where the child's hostility is understandable in light of his or her experiences with the disliked parent. These exclusions follow logically if we are to eliminate the misuse of alienation theory to blame protective parents and/or silence abused children. In short, as noted above, true "alienation" – in the sense of a child's estrangement malevolently or pathologically cultivated by the preferred parent – is at issue in only a tiny fraction of cases, i.e., some fraction of the 6% of severely alienated children Johnston et. al. identified in divorcing/separating families.

   In these rare cases, if a child is found to be unreasonably hostile to the other parent (i.e., the child refuses to visit or is incorrigibly resistant when visiting), the evaluation must seek to determine a cause for the unreasonable hostility. In addition to the above potential reasons (abuse, neglect, batterer-instigated alienation), emotional betrayals by the disliked parent, and developmental and situational cuases, e.g., the divorce itself, must be considered. In seeking to identify parentally-caused estrangement/ alienation, evaluators should be precluded from giving weight to protective measures such as filing court protective petitions or reporting to child protection. Otherwise, the alienation label becomes once again nothing more than a penalty for disbelieved abuse allegations.

6. **A parent may be called an alienator only where the parent consciously intends the alienation and specific behaviors can be identified.** In one case described earlier, the court explicitly found that the mother was not coaching the child, but posited that her own personal hostility to the father (due to his abuse) was unconsciously causing the child to invent sexual abuse scenarios (W v F, 2007). (Of course, this theory would be sufficient to negate all children's reports of abuse – since inter-parental hostility can be inferred in most custody battles.) Such unfounded judicial or evaluator theorizing has been legitimized by the widespread acceptance of the pop psychology attached to the PAS theory and propounded by Gardner and other PAS proponents. The best cure is a clean one: Psychoanalyzing should be prohibited; only identifiable behaviors should be considered in assessing for alienation.

7. **Remedies for confirmed alienation are limited to healing the child's relationship with the estranged parent.** Under this proposal, in the rare cases where problematic alienation is found

(again, after neglect, abuse, batterer-instigated alienation, and other descructive behaviors are ruled out), evaluators should not seek to undercut the child's relationship with the preferred parent, but rather, to strengthen the child's relationship with the parent from whom s/he is estranged. Thus, family therapy between the child and the estranged parent, therapy for the child, and/or therapy for the preferred parent, might be appropriate. Orders to both parents to cease any derogatory discussion of the other parent may be appropriate. Forced change of custody is not appropriate, unless the child's relationship with the estranged parent is sufficiently healed to make the child comfortable with such a prospect (Johnston, 2004b, 86-87).

Despite the problems in some of Johnston's writings, her research also confirms what many in the field already knew: Children are resilient, and they are not easily brainwashed into rejecting another parent, at least not without active abuse, coercion and terrorizing. Courts and evaluators should operate from a healthy appreciation for the range of imperfect parenting that children everywhere survive, and for the strength of children's hard-wired love for both parents. They should ensure that safe and loving relationships are made available and invited to flourish, and should trust that children will discern the truth about their loving parents so long as they are able to experience them directly. This is especially true given that courts' over-reaction to alleged alienation is resulting in widespread disbelief of abuse claims, many of which are valid, and subjection of children to the parents they fear, who are in many cases their or their mothers' abusers. The risks and harms to children from this extreme reaction to alienation concerns – now being scientifically documented – far outweigh the risks of inaction, even when a child hates or fears a parent for illegitimate reasons.

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Endnotes

1. Gardner was "an unpaid volunteer" who taught at times in the Columbia Medical School's division of child and adolescent psychiatry. The New York Times (June 14, 2003, correction), http://query.nytimes.com/gst/fullpage.html?res=9F05E0DB1539F93AA35755C0A9659C8B63

2. Over time, Gardner expanded the theory to address any case where a child has been "programmed" by one parent to be "alienated from the other parent" – and even stated that sexual abuse claims arise in only a minority of PAS cases (Gardner, 2002, p. 106).

3. Gardner's mental instability was tragically revealed when he committed suicide in 2003 by stabbing himself to death. The New York Times (June 14, 2003) http://query.nytimes.com/gst/fullpage.html?res=9F05E0DB1539F93AA35755C0A9659C8B63; http://en.wikipedia.org/wiki/Richard_A._Gardner

4. One lawyer's website says "PAS--sometimes called Parental Alienation (PA)—is a disorder that arises primarily in the context of child-custody disputes." (The Custody Center, n.d., line 1-2). Gardner himself acknowledged that many evaluators use "parental alienation" in court to avoid the evidentiary attacks that use of "PAS" would invite (Gardner, 2002). In practice, then, it seems that many practitioners conflate the two concepts.

5. One agency is known to treat Sunday nights as "custody night" because of the bump up in hotline calls that are received when children return from visits with their noncustodial fathers. Child welfare agencies' discounting of child abuse claims in the context of custody litigation is hard to find in written policy documents, but it is common experience among litigants, lawyers, and child welfare workers, that the credibility of such claims are discounted and that investigations are often declined in deference to the custody court.

6. This was true in one of the author's cases: *Oates v. Oates*, 2008 (documents on file with author). No matter how many reports were made of the children's abuse, the child welfare agency consistently rebuffed them. Not until after the litigation was it discovered that the custody evaluator who had "diagnosed" PAS, was also a primary advisor to the child welfare agency.

7. Surveys have indicated that appeals in domestic violence cases are surprisingly successful: an unscientific survey by this author of appeals in custody cases where

domestic violence was alleged found that 2/3 of awards to accused or adjudicated batterers were reversed on appeal (Meier, 2003). This is a staggering reversal rate, given the deference that appellate courts normally give to trial courts in custody cases.

8. Access the "decision tree" in: Drozd, L.M. & Olesen, N.W. (2004). Is it abuse, alienation, and /or estrangement? A decision tree. *Journal of Child Custody, 1*(3), 65-106. Available at: http://www.drdrozd.com/articles/DrozdOlesenJCC1(3)2004.pdf

References

Ackerman, M.J., & Dolezal, S. (2006). Experienced Custody Evaluators' Views of Controversial Issues. *American Journal of Family Law, 5*, 200-205.

Alford, N.M. (2003). Report of Court-Ordered Observations, dated Jun 16, 2003, in *Wilkins v. Ferguson*, DR-757-01 (on file with author).

American Psychological Association. (1996). Report of the American Psychological Association Presidential Task Force on Violence and the Family. Washington, DC: APA.

Anderson, C. (2005). Report in Wilkins v. Ferguson, DR-757-01 (on file with author).

Bancroft, L., & Silverman, J. (2012). *The Batterer as Parent 2: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, CA: Sage Publications.

Bruch, C.S. (2001). Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases. *Family Law Quarterly, 35*, 527-552.

Childress, S. (2006, September 25). Fighting Over the Kids: Battered Spouses Take Aim at a Controversial Custody Strategy. *Newsweek*.

The Custody Center. (n.d.). What is Parental Alienation Syndrome (PAS)? Retrieved May 15, 2007, from www.custodycenter.com/PAS

Crary, D. (2012). Parental alienation not a disorder, American Psychiatric Association says, available at http://www.huffingtonpost.com/2012/09/21/parental-alienation-is-no_n_1904310.html

Dallam, S. (1998). Dr. Richard Gardner: A Review of his Theories and Opinions on Atypical Sexuality, Pedophilia, and Treatment Issues. *Treating Abuse Today, 8*(1), 15-22.

Dalton, C., Drozd, L., & Wong, F. (2006). *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Rev. ed.). Reno, NV: National Council of Juvenile & Family Court Judges.

Drozd, L., & Olesen, N. (2004). Is it Abuse, Alienation, and/or Estrangement? A Decision Tree. *Journal of Child Custody, 1*(3), 65-106.

Emery, R.E., Otto R.K., & O'Donohue, W.T. (2005). A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System. *Psychological Science in the Public Interest, 6*(1), 1-29.

Erickson, N. (2007). Electronic message from Nancy Erickson (May 16, 2007), containing message from William Narrow, M.D., M.P.H., Research Director, DSM-V Task Force (March 13, 2007) (on file with author).

Erickson, N. and O'Sullivan C. (2011) Doing our Best for New York's Children: Custody Evaluations when Domestic Violence is Alleged, *NYS Psychologist, 23*: 2.

Faller, K.D. (1998). The Parental Alienation Syndrome: What Is It and What Data Support It? *Child Maltreatment, 3*(2), 100-115.

Faller, K.D. (2000). *Maltreatment in Early Childhood: Tools for Research Based Intervention*. NY: Routledge.

Gardner, R.A. (1987). *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (1992a). *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (1992b). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (2002). Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child Custody Disputes? *The American Journal of Family Therapy, 30*(2), 93-115.

Gould, J.W. (2006). *Conducting Scientifically Crafted Child Custody Evaluations* (2nd ed.). Sarasota, FL: Professional Resource Press.

Haselschwerdt, M. L., Hardesty, J. L., & Hans, J. D. (2011). Custody evaluators' beliefs about domestic violence allegations during divorce: Feminist and family violence perspectives. *Journal of Interpersonal Violence, 26*(8), 1694-1719.

Hoult, J. (2006). The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy. *Children's Legal Rights Journal, 26*(1), 1-61.

Johnston, J.R. (2005). Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child. *Family Law Quarterly, 38*, 757-775.

Johnston, J.R., & Kelly, J.B. (2004a). Rejoinder to Gardner's 'Commentary on Kelly and Johnston's 'The Alienated Child: A Reformulation of Parental Alienation Syndrome.' *Family Court Review, 42*(4), 622-628.

Johnston, J.R., & Kelly, J.B. (2004b). Commentary on Walker, Brantley, and Rigsbee's (2004) 'A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court.' *Journal of Child Custody, 1*(4), 77-89.

Johnston, J.R., Walters, M.G., & Olesen, N.W. (2005). Is It Alienating Parenting, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes. *Journal of Child Custody, 5*, 191-218.

Jordan v. Jordan, 14 A.3d 1136 (D.C. 2011).

Jordan v. Jordan, Brief of Appellant, FM - 10-FM-375 (2010)(on file with author)

Kelly, J., & Johnston, J. (2001). The Alienated Child: A Reformulation of Parental Alienation Syndrome. *Family Court Review, 39*(3), 249-266.

Lasseur, D., & Meier, J. (2005). Response to the Father and Families "Critique of the Scientific Basis for Key Assertions in Breaking the Silence: Children's Stories" (on file with the author).

Lesher, M., & Neustein, A. (2005). *From Madness to Mutiny: Why Mothers Are Running from the Family Courts – and What Can Be Done about It*. Lebanon, NH: University Press of New England. Lewis-O'Connor, A., Sharps, P.W., Humphreys, J.,

Gary, F.A., & Campbell, J. (2006). Children Exposed to Intimate Partner Violence. In M.M. Feerick & G.B. Silverman (Eds.), *Children Exposed to Violence* (pp. 3-28). Baltimore: Paul H. Brookes Publishing Co.

Licata v. Licata (2003). Brief and Appendix for Defendant-Respondent, Docket No. A-00660-02T3, Superior Court of New Jersey Appellate Division, June 1, 2003.

Meier, J. (2010). Getting Real about Abuse and Alienation: A Response to Drozd and Olesen. *Journal of Child Custody, 7*:4, 219-252.

Meier, J. (2003). Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions. *American University Journal of Gender, Social Policy & the Law, 11*(2), 657-731.

Morris, A. (2004, September). The Story of Naming Maternal Alienation: New Research Enters Policy and Practice. Paper presented at Home Truths Conference, Melbourne, Australia. Retrieved November 26, 2008, from www.thelizlibrary.org/liz/maternalalienation.doc

Myers, J., Berliner, L., Briere, J., Hendrix, C.T., Jenny, C., & Reid, T.A. (Eds.). (2002). *The APSAC Handbook on Child Maltreatment* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Neustein, A., & Goetting, A. (1999). Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse. *Journal of Child Sexual Abuse 8*(4),103-122.

Martine "Tina" Oates v Michael "Micky" Oates, 2010 Ark. App. 345

O'Sullivan, C. S. (2010). *Custody Evaluations when There Are Allegations of Domestic Violence: Findings and Implications for the Court*. AFCC Ninth Symposium on Child Custody Evaluations, October 28-30, 2010, Cambridge, MA.

Parental Alienation Awareness Organization. (n.d.). Parental Alienation Awareness. Retrieved November 26, 2008, from http://www.parental-alienationawareness.com/awarness-articles.asp

Parental Alienation Awareness Organization-United States. (n.d.). What's new. Retrieved November26, 2008, from http://www.paao-us.com/whats_new.html

Pearson, J. (1993). Ten Myths about Family Law. *Family Law Quarterly, 27*(2), 279-299.

Pennsylvania Child Welfare Resource Center. (2011). Curriculum and Handouts, Retrieved August 13, 2013 from http://www.pacwcbt.pitt.edu/Curriculum/204%20Intake%20and%20Investigation/Handouts/HO%2011%20Knowingly%20False%20Reports.pdf

People v. Fortin, 289 A.2d 590 (N.Y. App. Div. 2001).

People v. Loomis, 658 N.Y.S.2d 787 (N.Y.Ct.Ct. 1997).

Petition in Accordance with Inter-American Commission on Human Rights, Retrieved November 26, 2008, from http://www.stopfamilyviolence.org/ocean/host.php?folder=133&page=468&T=

Ragland, E.R., & Field, H. (2003). Parental Alienation Syndrome: What Professionals Need to Know. *Update Newsletter, 16*(6). Alexandria, VA: National District Attorneys Association's American Prosecutors Research Institute. Retrieved October 30, 2005, from www.ndaa.org/publications/newsletters/ update_volume_16_number_6_2003.html

Righthand, S., Kerr, B., & Drach, K. (2003). *Child Maltreatment Risk Assessments: An Evaluation Guide. NY: Routledge.*

Rueda, C.A. (2004). An Inter-Rater Reliability Study of Parental Alienation Syndrome. *The American Journal of Family Therapy, 32,* 391-403.

Smith, R., & Coukos, P. (1997). Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations. *The Judges' Journal*, *36*(4), 38-42, 54-56.

Saunders, D., Faller, K. & Toman, R. (2011). *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*, Final Technical Report submitted to the National Institutes of Justice.

Silberg, J. (2013). *When Allegations of Abuse Intersect with Intimate Partner Violence, Divorce and Separation*, Presentation to Child Welfare Agency of Montgomery County (on file with author)

Silberg, J., Dallam, S. & Samson, E. (2013). *Crisis in a Family Court: A Look at Turned-Around Cases*. Final report submitted to the Office on Violence Against Women, Department of Justice.

Snyder v. Cedars, 2006 Conn. Super. LEXIS 520 (2009)

Steinberger, C. (2006). Father? What Father? Parental Alienation and its Effect on Children. *Law Guardian Reporter, 22*(3). Published by the Appellate Divisions of the Supreme Court of the State of New York August, 2006 Volume XXII, Issue III. Retrieved November 26, 2008, from http:// www.drhavlicek.com/Parent%20Alienation%20Effects%20on%20Children.htm

Talan, J. (2003). The debate rages on . . . In Death, Can He Survive? Newsday.com July 1, 2003. Retrieved November 12, 2008, from www.leadershipcouncil.org/1/pas/talan.html

Thoennes, N., & Tjaden, P. (1990). The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes. *Child Abuse and Neglect, 14*, 151-163.

Trocme, N., & Bala, N. (2005). False Allegations of Abuse and Neglect When Parents Separate. *Child Abuse & Neglect, 29*(12), 1333-1345.

Waller, G. (Producer). (2001). *Small Justice: Little Justice in America's Family Courts* [Motion picture]. Seattle, WA: Intermedia Inc.

Wallerstein, J.S., & Kelly, J.B. (1976). The Effects of Parental Divorce: Experiences of the Child in Early Latency. *American Journal of Orthopsychiatry, 46*(1), 20-32.

Wallerstein, J.S., & Kelly, J.B. (1980). *Surviving the Breakup: How Children and Parents Cope with Divorce*. New York: Basic Books.

Wallerstein, J.S., Lewis, J.M., & Blakeslee, S. (2000). *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*. New York: Hyperion Books.

Wilkins v. Furguson, 928 A.2d 655 (D.C. 2007) (Litigation file in possession of author)

Wood, C. (1994). The Parental Alienation Syndrome: A Dangerous Aura of Reliability. *Loyola of Los Angeles Law Review, 27*, 1367-1415.

Zorza, J. (1992). 'Friendly Parent' Provisions in Custody Determinations. *Clearinghouse Review, 29*, 921-925.

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- Successful completion of an abuser intervention program does not substantially reduce the risk of re-abuse. Special parenting programs for men who batter are growing in number but remain untested.
- A high percentage of couples labeled "high conflict" are experiencing domestic violence, and thus attempts to detect domestic violence within "high conflict" families are crucial. Unfortunately, domestic violence is often not detected or not documented in custody/visitation proceedings.
- Contrary to common belief, allegations of domestic violence are *not* generally more common in disputed custody cases. When allegations are made, one study found that mothers are more likely to have their abuse allegations substantiated than fathers.
- Evaluators and judges may need more information on the continued safety risks to children from abusive fathers, the likelihood of post-separation violence, risks of mediation, the inadmissibility of Parent Alienation Syndrome, and the limitations of criminal justice and treatment interventions.
- The past and potential behavior of men who batter means that awarding joint custody or sole custody to them is rarely the best option for the safety and well-being of the children.
- Visitation should be granted to the perpetrator only if adequate safety provisions for the child and adult victim can be made. Orders of visitation can specify, among other things, the exchange of the child in a protected setting, supervised visitation by a specific person or agency, and completion of an intervention program for perpetrators.
- Visitation should be suspended if there are repeated violations of the terms of visitation, the child is severely distressed in response to visitation, or there are clear indications that the violent parent has threatened to harm or flee with the child.
- Some professional standards developed for supervised visitation/exchange programs contain a section on domestic violence that requires policies and procedures designed to increase safety for domestic abuse survivors and their children. In addition, the U.S. government is providing technical assistance to increase the awareness of visitation/exchange programs and their community collaborators of the special needs of battered women and their children.

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In Brief:
Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns

- Approximately half of all state laws make a presumption that it is harmful to the child and *not* in the best interest of the child to be placed in sole custody or joint physical or legal custody with the perpetrator of domestic violence. In the remaining states, domestic violence is merely one factor in a list of factors that must be considered in custody and visitation decisions.
- States have increasingly provided protections for battered women in the divorce process, for example exempting them from mandated mediation, protecting them from charges of "child abandonment" if they flee for safety without their children, and making it easier for them to relocate if they are in danger.
- Despite a reasonable reluctance to co-parent out of fear of harm to themselves or their children, battered women may end up being labeled "unfriendly," thereby increasing the risk of losing their children because there may be a "friendly parent" statute that favors the "cooperative" parent.
- A recent trend is the use of "parenting coordinators" or "special masters," a mental health or legal professional with mediation training who focuses on the children's needs and helps the parents resolve disputes. They can make decisions within the bounds of the court order but it is important that they have training on domestic violence and realize when they need to act primarily as an enforcer of the court order.
- Another recent trend is the use of "virtual visitation." Web cams and videoconferencing can supplement face-to-face visits or replace face-to-face visits in more dangerous cases.
- When parents believe the legal system has failed them, they sometimes form grassroots support and advocacy groups. They may conduct court watches and help parents share common court experiences, especially when they lose custody when trying to protect children and themselves from abuse.
- Half the men who batter their wives also abuse their children, a rate twice as high as that of battered women.
- Emotional abuse of children by men who batter almost always occurs because nearly all of these men exposed their children to domestic violence, and such exposure often has traumatic and lasting effects.
- Mothers may be unjustly blamed for harming their children through "failure to protect," since mothers are supposedly capable of protecting their children from the physical and emotional abuse of their partners.
- Parental separation does not prevent abuse to children or their mothers. Indeed, physical abuse, harassment, and stalking of women continue at fairly high rates after separation and divorce and the risk of homicide increases. Attempts to undermine the mothers' authority and to disparage her in front of the children also increase.
- Men who batter often have chronic but well hidden psychological disorders and problems stemming from childhood traumas that are often not apparent to evaluators and judges; on the other hand, battered woman's psychological problems, primarily depression and posttraumatic stress disorder, appear to be reactions to the violence.

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Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns (Revised 2007)

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In consultation with Karen Oehme

It may be hard to believe that an abusive partner can ever make good on his threat to gain custody of the children from his victim. After all, he has a history of violent behavior and she almost never does. Unfortunately, a surprising number of battered women lose custody of their children (e.g., Saccuzzo & Johnson, 2004). This document describes how this can happen through uninformed and biased courts, court staff, evaluators, and attorneys and how the very act of protecting ones' children can lead to their loss. It also describes the major legal and social trends surrounding custody and visitation decisions and the social science evidence supporting the need to consider domestic violence in these decisions. It ends with some recommendations for custody and visitation in domestic violence cases.

Legal Trends

Over the past 200 years, the bases for child custody decisions have changed considerably. The patriarchal doctrine of fathers' ownership of children gave way in the 1920s and '30s to little formal preference for one parent or the other to obtain custody. When given such broad discretion, judges tended to award custody to mothers, especially of young children. The mother-child bond during the early, "tender years" was considered essential for children's development. In the 1970s, "the best interests of the children" became the predominant guideline, although it remains somewhat ambiguous (Fine & Fine, 1994). It was presumably neutral regarding parental rights. Little was known then about the negative impact of domestic violence on women and children, and domestic violence was not originally included in the list of factors used to determine the child's best interest.

States more recently came to recognize that domestic violence needs to be considered in custody decisions (Dunford-Jackson, 2004; Cahn, 1991; Hart, 1992; for legislative updates from 1995 through 2005, see NCJFCJ, http://www.ncjfcj.org/content/blogcategory/256/302/). Every state now lists domestic violence as a factor to be considered, but does not necessarily give it special weight. However, since the mid-1990s, states have increasingly adopted the custody/visitation section of the Model Code on Domestic and Family Violence developed by the National Council of Juvenile and Family Court Judges (NCJFCJ, 1994), increasing from 10 states using the code in 1995 to 24 in 2006 (NCJFCJ, 1995a; 2007). These statutes use the model's wording, or similar wording, that there is a "rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence" (p. 33).[1] Although statutes have become increasingly precise regarding definitions of domestic violence, they may leave children vulnerable to psychological abuse when it is not included in the definition (Dunford-Jackson, 2004).

Statutes also address other issues about custody and visitation, such as standards for supervised

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visitation and similar safeguards (Girdner & Hoff, 1996; Hart, 1990; Jaffe, Lemon, & Poisson, 2003), exempting battered women from mandated mediation (Dunford-Jackson, 2004; Girdner, 1996),[2] protecting battered women from charges of "child abandonment" if they flee for safety without their children (Cahn, 1991), and enabling a parent to learn if a person involved in a custody proceeding has been charged with certain crimes (see Pennsylvania's Jen & Dave Program on the Web at http://www.jendaveprogram.us/). Some recent statutes make it easier for victims to relocate if needed for safety reasons (Jaffe, et al., 2003; NCJFCJ, 1995a; 1999; see Zorza, 2000).

Other legal protections are also available. For example, in one state (Tennessee), if a parent alleges that a child is exposed to domestic violence, such allegations cannot be used against the parent bringing the allegation (NCJFCJ, 2004). In another state (Texas), a mediated agreement can be declined by the court if domestic violence affected the victim's ability to make the agreement (NCJFCJ, 2005). Some states (Massachusetts, Ohio) now make the presumption that custody or visitation should not be granted to anyone who is found guilty of murdering the other parent (for a more complete review of the above trends, including legal reforms in Australia, Canada, and New Zealand, see Jaffe, et al. 2003).

Unfortunately, courts and the mental health professionals advising them (Johnson, Saccuzzo, & Koen, 2005; Fields, in press) and lawyers (Fields, 2006) may pressure women to stay tied to their abusers. In addition, "friendly parent" provisions in statutes or policies create another factor for courts to assess in custody decisions, favoring the parent who will encourage frequent and continuing contact with the other parent or foster a better relationship between the child and the other parent (Zorza, 1992). Despite a reasonable reluctance to co-parent out of fear of harm to themselves or their children, battered women may end up being labeled "unfriendly," thereby increasing the risk of losing their children (APA, 1996).

Along with legal changes, training and resource manuals for judges and court managers are available, including guidelines for selecting custody evaluators and guardian ad litems (Dalton, Drozd, & Wong, 2006; Maxwell & Oehme, 2001; Goelman, Lehrman, & Valente, 1996; Lemon, Jaffe, & Ganley, 1995; NCJFCJ, 1995b; NCJFCJ, 2006; National Center for State Courts, 1997). One benchbook covers cultural considerations for diverse populations (Ramos & Runner, 1999). A recent trend is the use of "parenting coordinators" or "special masters," a mental health or legal professional with mediation training who focuses on the children's needs and helps the parents resolve disputes. With the approval of the parties and/or the court, they can make decisions within the bounds of the court order. The Association of Family and Conciliation Courts provide guidelines for parenting coordinators and a discussion of implementation issues (AFCC, 2006; Coates, et al., 2004). The guidelines require that parenting coordinators have training on domestic violence and caution that "the parenting coordinator's role may be inappropriate and potentially exploited by perpetrators of domestic violence who have exhibited patterns of violence, threat, intimidation, and coercive control over their co-parent" (AFCC, 2006, p. 165). When one parent seeks to maintain dominance over another, the parenting coordinator may need to act primarily as an enforcer of the court order.

Another legal trend is the ordering of "virtual visitation" (Flango, 2003; Shefts, 2002). Web cams and videoconferencing can supplement face-to-face visits or replace face-to-face visits in more dangerous cases. Parents can read and play games with their children and help them with homework. The practice may loosen restrictions on parents moving to different communities. In one court case, the judge ordered each parent to purchase and install computer equipment that would allow video-conferencing (Flango, 2003). In 2004, Utah passed a law stating that virtual visitation should be permitted and encouraged if available. In some states, prisons provide virtual visitation services (Pennsylvania Department of Corrections, http://www.cor.state.pa.us/dallas/site/default.asp). Virtual

visits are untested in domestic violence cases and are likely to require the same type of monitoring that occurs with telephone and in-person visits.

Despite the above trends for improved protections, some parents and children believe the legal system has failed them. They may form grassroots support and advocacy groups, such as networks in Arizona (http://www.azppn.com/) and California (http://www.protectiveparents.com/), that conduct court watches and help parents share common court experiences, especially when they lose custody when trying to protect children and themselves from abuse. The Courageous Kids Network in California makes suggestions to other children who are forced to live with an abuser or molester when professionals do not believe them. They describe themselves as "a growing group of young people whose childhood was shattered by biased and inhumane court rulings, which forced us to live with our abusive parents while restricting or sometimes completely eliminating contact with our loving and protective parent. We know how horrible it is to be forced into the arms of an abuser" (http://www.courageouskids.net/). A national organization, Kourts for Kids, works to better protect abused children in the family courts by increasing awareness and education for judges, attorneys, guardians ad litem, social workers, officers of the law, legislators, and advocates (http://www.kourtsforkids.org/index.php?option=com_frontpage&Itemid=1). In 2007, 10 mothers and a victimized child (now an adult) and national and state organizations filed suit against the United States with the Inter-American Commission on Human Rights. They claimed that the human rights of abused mothers and children were not protected because custody was awarded to abusers and child molesters (Klein, 2007; Stop Family Violence: http://www.stopfamilyviolence.org/ocean/host.php?folder=3).

In summary, courts in all states must now consider domestic violence in custody and visitation decisions, but only about half of them make it the primary consideration. Legal innovations include protections for survivors who need to relocate due to safety concerns and exemptions from mandated mediation. Many states still have "friendly parent" statutes that do not recognize battered women's realistic reluctance to co-parent. Domestic violence training materials and guidelines are increasingly available for judges, court managers, custody evaluators and parenting coordinators. Recent trends include the use of "virtual visitation" and the development of grass roots protective parent and advocacy organizations.

Parent Most at Risk for Physically and Emotionally Abusing the Children

Social science evidence can help establish which parent is most at risk to harm their children. The most convincing evidence that men who batter their partners are also likely to batter their children comes from a nationally representative survey (Straus, 1983). Half the men who battered their wives also abused their children. Abuse was defined as violence more severe than a slap or a spanking. Battered women were half as likely as men to abuse their children. Several non-representative surveys show similar results (reviewed in Saunders, 1994, and Edleson, 2001). When battered women are not in a violent relationship, there is some evidence that they are much less likely to direct anger toward their children (Walker, 1984). As expected, time away from the abuser seems to benefit battered mothers and their children (Rossman, 2001).

Emotional abuse of children by men who batter is even more likely than physical abuse because nearly all of these men's children are exposed to domestic violence (Wolfe, Crooks, McIntyre-Smith, & Jaffe, 2004). This exposure to domestic abuse by their fathers often constitutes a severe form of child abuse. The serious problems associated with witnessing abuse are now clearly documented (e.g., Edleson, 1999; Graham-Bermann & Edleson, 2002; Kitzmann, Gaylord, Holt, & Kenny, 2003; Wolfe, Crooks, McIntyre-Smith, & Jaffe, 2004). These include short- and long-term negative emotional and behavioral consequences for both boys and girls. However, one must be cautious about generalizing these findings to most or all

children since many children find resources that buffer the ill effects of the violence (Edleson, 2006). Parents may not realize that their children can be affected, even if they do not see the violence. For example, children may be hiding in their bedrooms listening to repeated threats, blows, and breaking objects. They may be afraid their mother will be injured or killed and in many cases they intervene physically (Edleson, Mbilinyi, Beeman, & Hagemeister, 2003). However, they may have other reactions, such as divided loyalties toward their parents, guilt about not being able to intervene effectively, and anger at their mothers for not leaving (Margolin, 1998; Saunders, 1994). If mothers cannot find safety, their fears and depression may reduce their ability to nurture and support their children as they normally would (Jaffe & Crooks, 2005).

As a result of children's exposure to domestic violence, mothers may be unjustly blamed for harming their children in cases where evaluators and practitioners do not understand the dynamics of abuse (Edleson, 1999). Cases are sometimes labeled as a "failure to protect" since mothers are supposedly capable of protecting their children from the physical and emotional abuse of their partners (Enos, 1996). Battered women may even face criminal charges (Kaufman Kantor & Little, 2003; Sierra, 1997) or removal of their children into foster care (Edleson, Gassman-Pines, & Hill, 2006). However, battered women's actions usually come from their desire to care for and protect their children. They may not leave because of financial needs, family pressures, believing the children need a father, or the fear that he will make good on threats to harm the children or gain custody (Hardesty & Chung, 2006; Hardesty & Ganong, 2006). They often leave the relationship when they recognize the impact of violence on their children, only to return when threatened with even greater violence or out of economic necessity (Anderson & Saunders, 2003, 2007). Innovative programs have been developed to address these concerns by helping to coordinate the actions of child protection, domestic violence, and family court systems. The "Greenbook Initiative" sponsored by the federal government is a notable example (Dunford-Jackson, 2004; for information see: http://www.thegreenbook.info/). On a policy level, a few states allow evidence to show that the non-abusive spouse feared retaliation from her partner and thus could not reasonably prevent abuse to the child. However, most of these states impose restrictions on how quickly the protective parent must provide this evidence and how it must be done (Jaffe, et al., 2003).

Factors Related to Risk to the Children

In a given custody case, a number of factors may correctly or incorrectly be attributed to the risk of child abuse and exposure to domestic violence. Several of these factors — parental separation, childhood victimization of the parents, the parents' psychological characteristics, and abuser interventions — are discussed next.

Parental Separation

Parental separation or divorce does not prevent abuse to children or their mothers. On the contrary, physical abuse, harassment, and stalking of women continue at fairly high rates after separation and divorce and sometimes only begin or greatly escalate after separation (Hardesty & Chung, 2006). Homicidal threats, stalking, and harassment affect as many as 25%-35% of survivors (e.g., Bachman & Saltzman, 1995; Leighton, 1989; Thoennes & Tjaden, 2000). In addition, up to a fourth of battered women report that their ex-partner threatened to hurt the children or kidnap them (e.g., Liss & Stahly, 1993), and children may witness violence more often after separation than before (Hardesty & Chung, 2006). Separation is a time of increased risk of homicide for battered women (Saunders & Browne, 2000), and these homicides sometimes occur in relation to custody hearings and visitation exchanges.

Many abusers appear to use the legal system to maintain contact and harass their ex-partners (Bancroft & Silverman, 2002; Hardesty & Ganong, 2006), at times using extensive and lengthy litigation

(Jaffe, et al., 2003). Children may also be harmed if the abuser undermines their mothers' authority, disparages her character in front of the children, and attempts to use the children to control the mother (Bancroft & Silverman, 2004); this appears to occur more often after separation by the most severe abusers (Beeble, Bybee, & Sullivan, 2007). Children are also likely to be exposed to renewed violence if their fathers become involved with another woman. Over half of men who batter go on to abuse another woman (Wofford, Elliot, & Menard, 1994). As a result, judges should not necessarily consider the remarriage of the father as a sign of stability and maturity.

Parents' Characteristics

Evaluators may look to childhood risk factors of each parent to assess their child abuse potential. The link between being abused in childhood and becoming a child abuser is not as strong as was once thought, with about 30% of child abuse victims becoming child abusers (Kaufman & Zigler, 1987). Some evidence suggests that this link with child abuse is stronger in men than in women (Miller & Challas, 1981). Neither parent is likely to have severe and chronic mental disorders (e.g., schizophrenia, or bipolar disorder) (Gleason, 1997; Golding, 1999). Personality disorders, as distinct from mental disorders, are much more likely to appear on the psychological tests of the parents. However, the parents' personality traits and psychological disorders are generally poor predictors of child abuse (Wolfe, 1985). In addition, great care must be taken when interpreting parents' behaviors and psychological tests. Men who batter often have the types of personality disorders—such as anti-social, dependent, and narcissistic (Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000)—that may keep childhood traumas and other problems hidden from evaluators and judges.

To the extent that psychological disorders continue to be used to describe battered women, they can be placed at a serious disadvantage. Compared with the chronic problems of her partner, a battered woman's psychological problems, primarily depression and posttraumatic stress disorder, appear to be reactions to the violence. These problems seem to decrease as victims become safer (Erickson, 2006). Many battered women may seem very unstable, nervous, and angry (APA, 1996; Erickson, 2006; Crites & Coker, 1988). Others may speak with a flat affect and appear indifferent to the violence they describe (Meier, 1993). These women probably suffer from the numbing symptoms of traumatic stress. The psychological test scores of some battered women may appear to indicate severe personality disorders and mental illness. However, their behaviors and test scores must be interpreted in the context of the traumas they faced or continue to face (Dalton, Drozd, & Wong, 2006; Dutton, 1992; Rosewater, 1987). For example, psychological test findings of borderline and paranoid traits can be misleading when the impact of domestic violence is not considered (Erickson, 2006). The psychological tactics used by abusers parallel those used against prisoners of war (Golding, 1999) and include threats of violence, forced isolation, degradation, attempts to distort reality, and methods to increase psychological dependence (Stark, 2007). Severe depression and traumatic stress symptoms are the likely results (Golding, 1999). When women fear losing custody of children to an abusive partner, the stress can be overwhelming (Erickson, 2006; Bancroft & Silverman, 2004).

Interventions for the Abuser

Although there are numerous treatment programs around the country for abusive partners and parents, successful completion of a batterer intervention program does not mean that the risks of child and woman abuse are eliminated. The evaluation of programs for men who batter is in its infancy, including programs for men of color (Gondolf, in press; Saunders & Hammill, 2003). A substantial proportion of women (35% on average across a number of studies) report that physical abuse by their partners recurs within 6-12 months after treatment and psychological abuse often

remains at high levels. In controlled studies, the recidivism rates average only 5% lower for the "treated" groups than the control groups (Babcock, Green, & Robie, 2004). These results are less optimistic than those implied in the section of the Model State Statute on Domestic and Family Violence (NCJFCJ, 1994) that recommends the successful completion of abuser treatment as a condition for visitation.

Only two studies of programs for men who batter investigated the reduction of actual or potential violence toward the children (Myers, 1984; Stacey & Shupe, 1984). Both of these studies showed promising results but did not specifically focus on parenting issues. Special parenting programs for men who batter have developed in recent years, either as modules within existing intervention programs or as stand-alone programs (Edleson, Mbilinyi, & Shetty, 2003; Edleson & Williams, 2007).

In summary, contrary to what one would expect, separation is a time of increased risk of violence, abusers' chronic problems may not be apparent, and the trauma from violence and continuing, intense fears may make battered women appear "crazy." Furthermore, successful completion of an abuser intervention program does substantially reduce the risk of re-abuse on average.

Factors that Compromise Safety of Children and Survivors

Negative outcomes for domestic violence victims and their children include (1) dangerous offenders in contact with ex-partners and children due to unsupervised or poorly supervised visitation; (2) sole or joint custody of children awarded to a violent parent, rather than a non-violent one; and (3) urging or mandating mediation that compromises victims' rights or places them in more danger. Such negative outcomes are likely to be compounded for women of color, lesbian mothers, survivors whose English is not proficient, and/or immigrant women with little or no knowledge of the U.S. legal system (Barnsley, Goldsmith, Taylor, 1996; Ramos & Runner, 1999).

Joint custody can be quite beneficial for children of non-violent, low-conflict couples.[3] However, joint custody—in particular, joint physical custody or "shared parenting"—can obviously increase the opportunities for abusers to maintain control and to continue or to escalate abuse toward both women and children. Enthusiasm for joint custody[4] in the early 1980s was fueled by studies of couples who were highly motivated to "make it work" (Johnston, 1995). This enthusiasm has waned in recent years, in part because of social science findings. Solid evidence about the impact of divorce and custody arrangements is difficult to find because most data are gathered at one point in time, and thus statements about cause and effect are not possible (e.g., Bender, 1994). There is increasing evidence, however, that children of divorce have more problems because of the conflict between the parents *before* the divorce and not because of the divorce itself (e.g., Kelly, 1993). Johnston (1995) concluded from her review of research that "highly conflictual parents" (not necessarily violent) had a poor prognosis for becoming cooperative parents. In a study by Kelly (1993), more frequent transitions between high-conflict parents were related to more emotional and behavioral problems of the children. If exposure to "high conflict" parents is damaging to children, then they are even more likely to be damaged by exposure to domestic violence. We now have evidence that a high percentage of couples labeled "high conflict" are experiencing domestic violence, and thus attempts to detect domestic violence within "high conflict" families are crucial (for further review, see Jaffe & Crooks, 2007).

In general, domestic violence is often not detected or not documented in custody/visitation proceedings (Johnson, Saccuzzo & Koen, 2005; Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005). In one study that interviewed survivors with documented abuse, there were frequent failures to consider documentation of domestic abuse and/or child abuse in the custody decision; unsupervised visitation or custody was often recommended or granted to men who used violence against their partners and/or children (Silverman, Mesh,

Cuthbert, Slote, & Bancroft, 2004). One study found that battered and non-battered women were equally likely to be awarded custody; in addition, offenders were just as likely as non-offenders to be ordered to supervised visits (Kernic, et al., 2005). Similarly, in a random sample of court cases, only minor differences existed between the custody evaluation process and custody recommendations for domestic violence versus non-domestic violence cases (Logan, Walker, Jordan, & Horvath, 2002). Most fathers with protection orders against them were not awarded custody (Rosen & O'Sullivan, 2005); however, this was not the case when mothers withdrew their petitions, which may have been from pressure from their abusers. Mediators in one study were about equally likely to recommend joint legal and physical custody for both domestic violence and non-domestic violence cases; rates of supervised and unsupervised visitation also did not differ between violent and non-violent cases (Johnson et al., 2005). Similarly, O'Sullivan and her colleagues report two studies showing that a history of domestic violence has little impact on courts' decisions regarding visitation (O'Sullivan, 2000; O'Sullivan, King, Levin-Russell, & Horowitz, 2006). (For further review, see Jaffe & Crooks, 2007.)

A number of reports from state and local commissions on gender bias in the courts have documented negative outcomes. For example, negative stereotypes about women, especially about their credibility, seem to encourage judges to disbelieve women's allegations about child abuse (Danforth & Welling, 1996; Meier, 2003; Zorza, 1996). A lack of understanding about domestic violence leads to accusations of lying, blaming the victim for the violence, and trivializing the violence (e.g., Abrams & Greaney, 1989). When the abuse is properly taken into account, court decisions that awarded abusive fathers custody are often reversed on appeal (Meier, 2003). Research evidence is now growing that allegations of domestic violence are generally not more common in disputed custody cases; and one study shows that mothers are more likely to have their abuse allegations substantiated than fathers (Johnston, Lee, Oleson, & Walters, 2005).

The influence of fathers' rights groups on evaluators and judges is unknown, but some groups tend to lobby for the presumption of joint custody and co-parenting and doubt the validity of domestic violence allegations (Williams, Boggess, & Carter, 2004). For example, the National Fathers' Resource Center and Fathers for Equal Rights "demands that society acknowledge that false claims of Domestic Violence" are used to "gain unfair advantage in custody and divorce cases" (NFRC, 2007). They state, "Fathers' organizations now estimate that up to 80% of domestic violence allegations against men are false allegations." Consistent with what might be expected from the gender bias reports, female judges in one study showed more knowledge of domestic violence and greater support for victim protections (Morrill, Dai, Dunn, Sung, & Smith, 2005). Women of color and immigrant women can expect to be placed in "double jeopardy," as many states report racial and ethnic bias in the courts, in addition to gender bias (Ramos & Runner, 1999).

Research is also illuminating the negative impact of "friendly parent" provisions. Zorza (1996; in press) notes that "friendly parent" statutes and policies work against battered women because any concerns they voice about father-child contact or safety for themselves are usually interpreted as a lack of cooperation and thus the father is more likely to gain custody. A woman might refuse to give her address or consent to unsupervised visitation (APA, 1996). Parents who raise concerns about child sexual abuse can be severely sanctioned for doing so. The sanctions include loss of custody to the alleged offender, restricted visitation, and being told not to report further abuse or take the child to a therapist (Faller & DeVoe, 1995; Neustein & Goetting, 1999; Neustein & Lesher, 2005). Even in jurisdictions with a presumption that custody should be awarded to the non-abusive parent, a "friendly parent" provision tends to override this presumption (Morrill, et al., 2005). At least 32 states have statutes with "friendly parent" provisions (Zorza, in

press). "Unfriendly behaviors" generally include only those of the custodial parents and not behaviors of noncustodial parents, like nonpayment of child support (Zorza, in press).

The beliefs and training of custody evaluators and judges in relation to outcomes have received very little attention. Evaluators and judges may need more information on the continued safety risks to children from abusive fathers, the likelihood of post-separation violence, risks of mediation, the inadmissibility of Parent Alienation Syndrome (Dalton, Drozd, & Wong, 2006), false allegations, and the limits of criminal justice and treatment interventions (Jaffe, Lemon, & Poisson, 2003; Saunders, 1994). Ackerman and Ackerman (1996) found that psychologists who conducted child custody evaluations did not consider domestic violence to be a major factor in making a recommendation. However, three-fourths of them recommended against sole or joint custody to a parent who "alienates the child from the other parent by negatively interpreting the other parent's behavior." In a more recent study of evaluators, Bow and Boxer (2003) found that many sources of information were used in evaluations, but evaluators did not tend to use domestic violence screening instruments — only 30% administered specialized questionnaires, instruments, or tests pertaining to domestic violence. When domestic violence was detected, it weighed heavily in their recommendations. In one study of judges, those with domestic violence education and more knowledge of domestic violence were more likely to grant sole custody to abused mothers (Morrill, et al., 2005). Some states require initial and/or continuing domestic violence education for judges,[5] custody evaluators, and mediators, which is essential to close the gap between professional standards and their implementation (Jaffe & Crooks, 2005).

Recommendations for Custody and Visitation

Some recommendations can be made based on practice experience and the growing body of research reviewed above. The past and potential behavior of men who batter means that joint custody or sole custody to him is rarely the best option for the safety and well-being of the children. In addition to their propensity for continued violence toward children and adult partners, these men are likely to abuse alcohol (Bennett & Williams, 2003), be poor role models (Jaffe, Lemon, & Poisson, 2003), and communicate in a hostile, manipulative manner (Holtzworth-Munroe, et al., 2000). As noted earlier, the Model Code State Statute of the National Council of Juvenile and Family Court Judges states that there should be a presumption that it is detrimental to the child to be placed in sole or joint custody with a perpetrator of family violence (NCJFCJ, 1994). The model statute emphasizes that the safety and well-being of the child and the parent-survivor must be primary. In addition, states should repeal friendly parent provisions or, at a minimum, say that they have no weight in cases where domestic or family violence has occurred.

The perpetrator's history of causing fear and physical harm, as well as the potential for future harm to the mother or child, should be considered. A parent's relocation in an attempt to escape violence should not be used as a factor to determine custody. Courts sometimes label battered women as "impulsive" or "uncooperative" if they leave suddenly to find safety in another city or state. The model statute specifies that it is in the best interest of the child to reside with the non-violent parent and that this parent should be able to choose the location of the residence, even if it is in another state. The non-custodial parent may also be denied access to the child's medical and educational records if such information could be used to locate the custodial parent.

The model statute (NCJFCJ, 1994) states that visitation should be granted to the perpetrator only if adequate safety provisions for the child and adult victim can be made. Orders of visitation can specify, among other things, the exchange of the child in a protected setting, supervised visitation by a specific person or agency, completion by the perpetrator of a program of intervention for perpetrators, and no overnight visitation (NCJFCJ, 1994). If the court

allows a family member to supervise the visitation, the court must set the conditions to be followed during visitation (O'Sullivan, et al., 2006). For example, an order might specify that the father not use alcohol prior to or during a visit and that the child be allowed to call the mother at any time (see Bancroft & Silverman, 2002, for a description of different levels of supervision).

Unsupervised visitation should be allowed only after the abuser completes a specialized program for men who batter (APA, 1996) and does not threaten or become violent for a substantial period of time. Practitioners need to be aware of the strong likelihood that men who batter will become violent in a new relationship and that they often use non-violent tactics that can harm the children. Visitation should be suspended if there are repeated violations of the terms of visitation, the child is severely distressed in response to visitation, or there are clear indications that the violent parent has threatened to harm or flee with the child. Even with unsupervised visitation, it is best to have telephone contact between parents only at scheduled times, to maintain restraining orders to keep the offender away from the victim, and to transfer the child in a neutral, safe place with the help of a third party (Johnston, 1992). Hart (1990) describes a number of safety planning strategies that can be taught to children in these situations.

In response to the need for safe visitation, supervised visitation and exchange programs are expanding rapidly across North America. Many programs follow the standards of the Supervised Visitation Network, an international organization. The standards include a special section on domestic violence that requires policies and procedures designed to increase safety for domestic abuse survivors and their children (http://www.svnetwork.net/Standards.html). In addition, a number of authors and programs have described the special features needed at these programs to increase the safety of domestic abuse survivors, including heightened security, staff knowledge of domestic violence, and special court reviews (Maxwell & Oehme, 2001; Sheeran & Hampton, 1999). Close coordination with family courts, lethality assessment prior to referral, and recognition of common abuser behaviors are some of the ingredients needed for effective operation of these programs (Maxwell & Oehme, 2001). Programs also need to be aware of the risks of keeping detailed intake, observation, and other records because currently they cannot be kept confidential in family court proceedings (Stern & Oehme, 2002, 2007). The evaluation of visitation programs has occurred only on a small scale thus far (e.g., Tutty, Weaver-Dunlop, Barlow, & Jesso, 2006). Finding promising practices is complicated by the growing recognition that not all men who batter are alike and that interventions need to be tailored to different types of abusers, with variations occurring by levels of dangerousness and the motivation to control. A "think tank" of advocates and legal and mental health professionals met in 2007 to explore the implications of such differences for custody and visitation decisions (Dunford-Jackson & Salem, 2007).

In 2003 the Office on Violence Against Women of the U.S. Department of Justice began the Safe Havens program in order to increase awareness of visitation/exchange programs and their community collaborators of the special needs of domestic violence cases. "Safety audit" reports from four demonstration sites are available, covering the role of visitation/exchange centers in domestic violence cases, how to increase culturally sensitive practices, centers' relationships with courts, and many other topics related to the infusion of domestic violence knowledge and awareness into programming (http://www.usdoj.gov/ovw/safehavens.htm).

Finally, termination of access needs to be considered more seriously than in the past. Those with a history of severe abuse and who have engaged in high levels of antisocial behavior may never be able to provide the safety and nurturing that their children need (Jaffe & Crooks, 2005; Stover, Van Horn, Turner, Cooper, & Lieberman, 2003).

In conclusion, although there is a need for much more practice experience and research, our current

knowledge of risk factors for continued abuse of women and children means that decision-makers must exercise great caution in awarding custody or visitation to perpetrators of domestic violence. If visitation is granted, coordination with the courts, careful safety planning, and specific conditions attached to the court order are crucial for lowering the risk of harm to children and their mothers.

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Endnotes

[1] A few states set specific standards for meeting the definition of "domestic violence"; for example, "conviction of domestic abuse" and "convicted of a felony of the third degree or higher involving domestic violence."

[2] The term "mediation" can cover many different practices and is not easily defined. Although many regard it as always unsafe for battered women, this view is not universally held, especially if risk assessment is done properly (e.g., Ellis & Stuckless, 2006).

[3] Recently, however, concerns have been raised about how well joint custody works in general (e.g., Wallerstein, 2000).

[4] Generally, joint physical custody is being referred to here rather than joint legal custody. There is a trend toward the term "shared parental rights" instead of "joint custody."

[5] As of October 2006, 18 states required education on domestic violence for judges (from a document obtained from the National Council of Juvenile and Family Court Judges: "State Legislation: Mandatory Domestic Violence Training for Judges").

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References

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

Ackerman, M. J., & Ackerman, M. C. (1996). Child custody evaluation practices: A 1996 survey of psychologists. *Family Law Quarterly, 30,* 565-586.

AFCC. (2006). Guidelines for parenting coordination: Developed by the AFCC task force on parenting coordination. *Family Court Review, 44*, 164-181.

American Psychological Association (APA). (1996). *Violence and the family: Report of the American Psychological Association Presidential Task Force on Violence and the Family*. Washington, DC: American Psychological Association.

Anderson, D. K., & Saunders, D. G. (2003). Leaving an abusive partner: An empirical review of predictors, the process of leaving, and psychological well-being. *Trauma, Violence, and Abuse, 4,* 163-191.

Anderson, D. K., & Saunders, D. G. (2007). The postseparation psychological recovery of domestic abuse survivors. In K. Kendall-Tackett & S. Giacomoni (Eds.), *Intimate partner violence.* Kingston, NJ: Civic Research Institute, Inc.

Babcock, J. C., Green, C. E., & Robie, C. (2004). Does batterers' treatment work? A meta-analytic review of domestic violence treatment. *Clinical Psychology Review, 23,* 1023-1053.

Bachman, R., & Saltzman, L. (1995). *Violence against women: Estimates from the redesigned survey.* Washington DC: U.S. Department of Justice.

Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.

Bancroft, L., & Silverman, J. (2004). Assessing abusers' risk to children. In P. G. Jaffe, L. L. Baker, & A. J. Cunningham (Eds.), *Protecting children from domestic violence: Strategies for community interventions.* NY: Guildford.

Barnsley, J., Goldsmith, P., & Taylor, G. (1996). Women and children last: Custody disputes and the family "justice" system. *Vancouver, BC:* Vancouver Custody & Access Support & Advocacy Association. Available from: Vancouver Status of Women, #309-877 E. Hastings St., Vancouver, BC, V6A 3Y1 ph: 604-255-6554.

Beeble, M. L., Bybee, D., & Sullivan, C. M. (2007). Abusive men's use of children to control their partners and ex-partners. *European Psychologist, 12*(1), 54-61.

Bender, W. N. (1994). Joint custody: The option of choice. *Journal of Divorce and Remarriage, 21,* 115-131.

Bennett, L., & Williams, O. J. (2003). Substance abuse and men who batter. *Violence Against Women, 9,* 558-575.

Bow, J., & Boxer, P. (2003). Assessing allegations of domestic violence in child custody evaluations. *Journal of Interpersonal Violence, 18,* 1394-1410.

Cahn, N. R. (1991). Civil images of battered women: The impact of domestic violence on child custody decisions. *Vanderbilt Law Review, 44,* 1041.

Coates, C. A., Jones, W., Bushard, P., Deutsch, R., Hicks, B., Stahl, P., Sullivan, M. J., Sydlik, B., & Wistner, R. (2004). Parenting coordination for high-conflict families. *Family Court Review, 42,* 246–262.

Crites, L., & Coker, D. (1988). What therapists see that judges might miss: A unique guide to custody decisions when spouse abuse is charged. *The Judges' Journal, 27*(2), 9-13, 40-43.

Dalton, C., Drozd, L., & Wong, F. (2006). Navigating custody and visitation evaluations in cases with domestic violence: A judge's guide. Available at http://www.afccnet.org/pdfs/BenchGuide.pdf

Danforth, G., & Welling, B. (Eds.). (1996). Achieving equal justice for women and men in the California courts: Final report. Judicial Council of California Advisory Committee on Gender Bias in the Courts. San Francisco, CA: Judicial Council of California. Available at http://www.courtinfo.ca.gov/programs/access/documents/f-report.pdf

Dunford-Jackson, B. L. (2004). The role of family courts in domestic violence: The U.S. experience. In P. G. Jaffe, L. L. Baker, & A. J. Cunningham (Eds.), *Protecting children from domestic violence: Strategies for community interventions.* New York, NY: Guildford.

Dunford-Jackson, B. L., & Salem, P. (2007). AFCC and NCJFCJ cosponsor wingspread think tank on domestic violence and family courts. Madison, WI: Association of Family and Conciliation Courts. Retrieved August 3, 2007, from http://afccnet.org/members/2007jun-Domestic_Violence_and_Family_Courts_Think_Tank.asp

Dutton, M. A. (1992). *Empowering and healing the battered woman: A model for assessment and intervention.* New York, NY: Springer.

Edleson, J. L. (1999). Children's witnessing of adult domestic violence. *Journal of Interpersonal Violence, 14*(8), 839-870.

Edleson, J. L. (2001). Studying the co-occurrence of child maltreatment and domestic violence in families. In S. A. Graham-Bermann & J. L. Edleson (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy.* Washington, DC: American Psychological Association.

Edleson, J. L. (2006). Emerging responses to children exposed to domestic violence. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Available at http://new.vawnet.org/category/Main_Doc.php?docid=585

Edleson, J. L., Gassman-Pines, J., & Hill, M. B. (2006). Defining child exposure to domestic violence as neglect: Minnesota's difficult experience. *Social Work, 51,* 167- 174.

Edleson, J. L., Mbilinyi, L. F., & Shetty, S. (2003). Parenting in the context of domestic violence. San Francisco: Judicial Council of California, Administrative Office of the Courts, Center for Families, Children & the Courts. Available at http//www.courtinfo.ca.gov/programs/cfcc/resources/publications

Edleson, J. L., Mbilinyi, L. F., Beeman, S. K., & Hagemeister, A. K. (2003). How children are involved in adult domestic violence: Results from a four city telephone survey. *Journal of Interpersonal Violence, 18*(1), 18-32.

Edleson, J. L., & Williams, O. J. (2007). *Parenting by men who batter women: New directions for assessment and intervention.* New York, NY: Oxford University Press.

Ellis, D., & Stuckless, N. (2006). Domestic violence, DOVE, and divorce mediation. *Family Court Review 44,* 658–671.

Enos, P. (1996). Prosecuting battered mothers: State laws failure to protect battered women and abused children. *Harvard Women's Law Journal, 19,* 229.

Erickson, N. S. (2006). Use of the MMPI-2 in child custody evaluations involving battered women: What does psychological research tell us? *Family Law Quarterly, 39*(1), 87-108.

Faller, K., & DeVoe, E. (1995). Allegations of sexual abuse in divorce. *Journal of Child Sexual Abuse, 4*(4), 1–25.

Fields, M. D. (2006). Lawyering skills training for DV representation: Tips from a retired judge. *Domestic Violence Report, 12*(1), 1-2, 11-12.

Fields, M. D. (in press). Getting beyond: "What did she do to provoke him?": Comments by a retired judge on the Special Issue on Intimate Partner Violence, Custody and Visitation. *Violence Against Women.*

Fine, M. A., & Fine, D. R. (1994). An examination and evaluation of recent changes in divorce laws in five western countries: A critical role of values. *Journal of Marriage and the Family, 56,* 249-263.

Flango, C. R. (2003). Science and technology for judges. Trends in 2003: Virtual visitation—Is this a new option for divorcing parents? Williamsburg, VA: National Center for State Courts. Retrieved May 17, 2007, from http://www.ncsconline.org/WC/Publications/KIS_SciJud_Trends03.pdf

Girdner, L. (1996). Mediation. In D. M. Goelman, F. L. Lehrman, & R. L. Valente (Eds.), *The impact of domestic violence on your legal practice: A lawyer's handbook* (pp. 17-21). Washington, D.C.: ABA Commission on Domestic Violence.

Girdner, L., & Hoff, P. M. (1996). Parental abduction. In D. M. Goelman, F. L. Lehrman, & R. L. Valente (Eds.), The impact of domestic violence on your legal practice: A lawyer's handbook (pp. 11-16). Washington, DC: ABA Commission on Domestic Violence.

Gleason, W. J. (1997). Psychological and social dysfunctions in battering men: A review. *Aggression and Violent Behavior, 2*, 43-52.

Goelman, D. M., Lehrman, F. L., & Valente, R.L. (Eds.). (1996). *The impact of domestic violence on your legal practice: A lawyer's handbook.* Washington, DC: American Bar Association.

Golding, J. (1999). Intimate partner violence as a risk factor for mental disorders: A meta-analysis. *Journal of Family Violence, 14*, 99-132.

Gondolf, E. (in press). Culturally focused batterer counseling for African American men: A clinical trial of re-assault and re-arrest outcomes. *Criminology and Public Policy.*

Graham-Bermann, S. A., & Edelson, J. L. (Eds.). (2002). *Domestic violence in the lives of children: The future of research, intervention and social policy.* Washington, DC: American Psychological Association.

Hardesty, J. L., & Chung, G. H. (2006). Intimate partner violence, parental divorce, and child custody: Directions for intervention and future research. *Family Relations, 55,* 200–210.

Hardesty, J. L., & Ganong, L. H. (2006). A grounded theory model of how women make custody decisions and manage co-parenting with abusive former husbands. *Journal of Social and Personal Relationships, 23,* 543-563.

Hart, B. J. (1990). Safety planning for children: Strategizing for unsupervised visits with batterers. Unpublished manuscript, Pennsylvania Coalition Against Domestic Violence. Available at http://www.mincava.umn.edu/hart/safetyp.htm

Hart, B. J. (1992). State codes on domestic violence: Analysis, commentary and recommendations. *Juvenile and Family Court Journal, 43*, 1-81.

Holtzworth-Munroe, A., Meehan, J., Herron, K., Rehman, U., & Stuart, G. (2000). Testing the Holtzworth-Munroe and Stuart (1994) batterer typology. *Journal of Consulting and Clinical Psychology*, *68*(6), 1000-1019.

Jaffe, P. G., & Crooks, C. V. (2005). Understanding women's experiences parenting in the context of domestic violence. Available at http://www.vaw.umn.edu/documents/commissioned/parentingindv/parentingindv.html

Jaffe, P. G., & Crooks, C. V. (2007). Assessing the best interests of the children. In J. L. Edleson & O. J. Williams (Eds.), *Parenting by men who batter: New directions for assessment and intervention.* New York, NY: Oxford University Press.

Jaffe, P. G., Lemon, N. K. D., & Poisson, S. E. (2003). *Child custody and domestic violence.* Thousand Oaks, CA: Sage.

Johnson, N. E., Saccuzzo, D. P., & Koen, W. J. (2005). Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. *Violence Against Women, 11*, 1022-1053.

Johnston, J. R. (1992). High-conflict and violent parents in family court: Findings on children's adjustment, and proposed guidelines for the resolution of custody and visitation disputes. Section III: Proposed guidelines for custody and visitation for cases with domestic violence. Corta Madera, CA: Center for the Family in Transition.

Johnston, J. R. (1995). Research update: Children's adjustment in sole custody compared to joint custody families and principles for custody decision making. *Family and Conciliation Courts Review, 33*, 415-425.

Johnston, J. R., Lee, S., Olesen, N. W., Walters, M. G. (2005). Allegations and substantiations of abuse in custody disputing families. *Family Court Review, 43*, 284-294.

Kaufman, J., & Zigler, E. (1987). Do abused children become abusive parents? *American Journal of Orthopsychiatry, 57*, 186-198.

Kaufman Kantor, G., & Little, L. (2003). Defining the boundaries of child neglect: When does domestic violence equate with failure to protect? *Journal of Interpersonal Violence, 18,* 338-355.

Kelly, J. B. (1993). Current research on children's postdivorce adjustment: No simple answers. *Family and Conciliation Courts Review, 31*, 29-49.

Kernic, M. A., Monary-Ernsdorff, D. J., Koepsell, J. K., & Holt, V. L. (2005). Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence. *Violence against Women, 11*, 991-1021.

Kitzmann, K. M., Gaylord, N. K., Holt, A. R., & Kenny, E. D. (2003). Child witnesses to domestic violence: A meta-analytic review. *Journal of Consulting and Clinical Psychology, 71,* 339-352.

Klein, A. (2007). United States sued for granting abusers child custody. *National Bulletin on Domestic Violence Prevention, 13*, 1.

Leighton, B. (1989). *Spousal abuse in metropolitan Toronto: Research report on the response of the criminal justice system* (Report No 1989-02). Ottawa, Ontario: Solicitor General of Canada.

Lemon, N., Jaffe, P., & Ganley, A. (1995). *Domestic violence and children: Resolving custody and visitation disputes.* San Francisco, CA: Family Violence Prevention Fund.

Liss, M. B., & Stahly, G. B. (1993). Domestic violence and child custody. In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (pp. 175-187). Thousand Oaks, CA: Sage.

Logan, T. K., Walker, R., Jordan, C. E., & Horvath, L. S. (2002). Child custody evaluations and domestic violence: Case comparisons. *Violence and Victims, 17*(6), 719-742.

Margolin, G. (1998). The effects of domestic violence on children. In P. K. Trickett & C. Schellenbach (Eds.), *Violence against children in the family* (pp. 57-101). Washington, DC: American Psychological Association.

Maxwell, M. S., & Oehme, K. (2001). *Strategies to improve supervised visitation services in domestic violence cases.* Available at http://www.mincava.umn.edu/documents/commissioned/strategies/strategies.html

Meier, J. (1993). Notes from the underground: Integrating psychological and legal perspectives on domestic violence in theory and practice. *Hofstra Law Review, 21*, 1295.

Meier, J. (2003). Domestic violence, child custody, and child protection: Understanding judicial resistance and imagining the solutions. *American University Journal of Gender, Social Policy, and Law, 11*, 702.

Miller, D., & Challas, G. (1981). *Abused children as adult parents: A twenty-five year longitudinal study.* Paper presented at the National Conference for Family Violence Researchers, University of New Hampshire.

Morrill, A. C., Dai, J., Dunn, S., Sung, I., & Smith, K. (2005). Child custody and visitation decisions when the father has perpetrated violence against the mother. *Violence Against Women, 11*(8), 1076-1107.

Myers, C. (1984). *The family violence project: Some preliminary data on a treatment program for spouse abuse.* Paper presented at the Second National Conference for Family Violence Researchers, University of New Hampshire.

National Center for State Courts. (1997). *Domestic violence and child custody disputes: A resource handbook for judges and court managers.* Williamsburg, VA: Author. [National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185].

National Council of Juvenile and Family Court Judges (NCJFCJ). (1994). *Model code on domestic and family violence.* Reno, NV: NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV 89507]. Available at www.ncjfcj.org/images/stories/dept/fvd/pdf/modelcode_fin_printable.pdf

National Council of Juvenile and Family Court Judges (NCJFCJ). (1995a). Family violence in child custody statutes: An analysis of state codes and legal practice. *Family Law Quarterly, 29*, 197-228.

National Council of Juvenile and Family Court Judges (NCJFCJ). (1995b). *Custody and visitation decision-making when there are allegations of domestic violence.* Reno, NV: NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV 89507].

National Council of Juvenile and Family Court Judges (NCJFCJ). (1999). *Family violence: Legislative update, Vol. 5.* Reno, NV: NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV 89507].

National Council of Juvenile and Family Court Judges (NCJFCJ). (2004). *Family violence: Legislative update, Vol. 10.* Reno, NV: NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV 89507].

National Council of Juvenile and Family Court Judges (NCJFCJ). (2005). *Family violence: Legislative update, Vol. 11.* Reno, NV: NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV 89507].

National Council of Juvenile and Family Court Judges (NCJFCJ). (2006, revised from 2004 version). *Navigating custody and visitation evaluations in cases with domestic violence: A judge's guide.* Reno, NV: NCJFCJ.

National Council of Juvenile and Family Court Judges (NCJFCJ). (2007). *State legislation: Rebuttable presumption that a perpetrator of domestic violence shall not have sole custody, joint legal custody, or joint physical custody.* Current through 06/21/06. Unpublished document, Department of Family Violence, National Council of Juvenile and Family Court Judges. University of Nevada, P.O. Box 8970, Reno, NV 89507.

National Fathers' Resource Center (NFRC). (2007). *Domestic violence.* Retrieved December 16, 2006, from http://www.fathers4kids.com/html/DomesticViolence.htm

Neustein, A., & Goetting, A. (1999). Judicial responses to the protective parent's complaint of child sexual abuse. *Journal of Child Sexual Abuse 8*(4), 103-122.

Neustein A., & Lesher, M. (2005). *From madness to mutiny: Why mothers are running from the family courts—And what can be done about it.* Lebanon, NH: Northeastern University Press.

O'Sullivan, C. S. (2000). Estimating the population at risk for violence during child visitation. *Domestic Violence Report, 5*(5), 65-66, 77-79.

O'Sullivan, C. S., King, L. A., Levin-Russell, K., & Horowitz, E. (2006). *Supervised and unsupervised parental access in domestic violence cases: Court orders and consequences.* Final technical report submitted to the National Institute of Justice, March 2006.

Ramos, M. D., & Runner, M. W. (1999). *Cultural considerations in domestic violence cases: A national judges benchbook.* San Francisco, CA: Family Violence Prevention Fund.

Rosen, L. N., & O'Sullivan, C. S. (2005). Outcomes of custody and visitation petitions when fathers are restrained by protection orders: The case of the New York family courts. *Violence Against Women, 11*(8), 1054-1075.

Rosewater, L. B. (1987). The clinical and courtroom application of battered women's personality assessments. In D. Sonkin (Ed.), *Domestic violence on trial* (pp. 86-96). New York, NY: Springer.

Rossman, B. B. R. (2001). Longer term effects of children's exposure to domestic violence. In S. Graham-Bermann & J. L. Edleson (Eds.), *Domestic violence in the lives of children.* Washington, DC: American Psychological Association.

Saccuzzo, D. P., & Johnson, N. E. (2004). Child custody mediation's failure to protect: Why should the criminal justice system care? *NIJ Journal, 251*. Available at http://ncjrs.org/pdffiles1/jr000251.pdf

Saunders, D. G. (1994). Child custody decisions in families experiencing woman abuse. *Social Work, 39*, 51-59.

Saunders, D. G., & Browne, A. (2000). Intimate partner homicide. In R. T. Ammerman & M. Hersen (Eds.), *Case studies in family violence* (2nd ed.). New York, NY: Plenum.

Saunders, D. G., & Hamill, R. (2003). *Violence against women: Synthesis of research on offender interventions.* Report to the National Institute of Justice, U.S. Department of Justice. Available from National Criminal Justice Reference System, NCJ 201222. Available at http://www.ncjrs.org/

Sheeran, M., & Hampton, S. (1999). Supervised visitation in cases of domestic violence. *Juvenile and Family Court Journal, 50*, 13-26.

Shefts, K. R. (2002). Virtual visitation: The next generation of options for parent-child communication. *Family Law Quarterly, 36*, 303-327.

Sierra, L. (1997, December). Representing battered women charged with crimes for failing to protect their children from abusive partners. *Double-time 5*(1-2). [Newsletter of the National Clearinghouse for the Defense of Battered Women, 125 S. 9th Street, Suite 302, Philadelphia, PA 19107].

Silverman, J. G., Mesh, C. M., Cuthbert, C. V., Slote, K., & Bancroft, L. (2004). Child custody determinations in cases involving intimate partner violence: A human rights analysis. *American Journal of Public Health, 94*, 951-957.

Stacey, W. A., & Shupe, A. (1984). *The family secret: Family violence in America.* Boston: Beacon Press.

Stark, E. (2007). *Coercive control: How men entrap women in personal life*. New York, NY: Oxford University Press.

Stern, N., & Oehme, K. (2002). The troubling admission of supervised visitation records in custody proceedings. *Temple University Law Review, 75*(2), 271-312.

Stern, N., & Oehme, K. (2007). Increasing safety for battered women and their children: Creating a privilege for supervised visitation intake records. *University of Richmond Law Review, 41*(2), 499-534.

Stover, C. S., Van Horn, P., Turner, R., Cooper, B., & Lieberman, A. F. (2003). The effects of father visitation on preschool-aged witnesses of domestic violence. *Journal of Interpersonal Violence, 18*(10), 1149-1166.

Straus, M. A. (1983). Ordinary violence, child abuse, and wife beating: What do they have in common? In D. Finkelhor, R. J. Gelles, G. T. Hotaling, & M. A. Straus (Eds.), *The dark side of families: Current family violence research* (pp. 213-234). Newbury Park, CA: Sage.

Thoennes, N., & Tjaden, P. (2000). *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey.* NCJ 183781, November 2000, Research Report. Available at http://www.ojp.usdoj.gov/nij/pubs-sum/181867.htm

Tutty, L., Weaver-Dunlop, J., Barlow, A., & Jesso, D. (2006). An evaluation of the Community Safe Visitation Program: Updated 2006. Calgary, AB: RESOLVE Alberta. Available at http://www.ucalgary.ca/resolve/reports/2006/2006-05.pdf

Walker, L. E. (1984). *The battered woman syndrome.* New York: Springer.

Wallerstein, J. (2000). *Unexpected legacy.* New York, NY: Hyperion.

Williams, O. J., Boggess, J., & Carter, J. (2004). Exploring the role of abusive men in the lives of their children. In P. G. Jaffe, L. L. Baker, & A. J. Cunningham (Eds.), *Protecting children from domestic violence: Strategies for community interventions.* New York, NY: Guildford.

Wolfe, D. A. (1985). Child-abusive parents: An empirical review and analysis. *Psychological Bulletin, 97*(3), 462-482.

Wolfe, D. A., Crooks, V. L., McIntyre-Smith, A., & Jaffe, P. G. (2004). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical Child and Family Psychology Review, 6*, 171–187.

Wofford, S., Elliot, D., & Menard, S. (1994). Continuities in marital violence. *Journal of Family Violence, 9,* 195-226.

Zorza, J. (1992). "Friendly parent" provisions in custody determinations. *Clearinghouse Review, 26*, 921-925.

Zorza, J. (1996). Protecting the children in custody disputes when one parent abuses the other. Clearinghouse Review, 29, 1113-1127.

Zorza, J. (2000). The UCCJEA: What is it and how does it affect battered women in child-custody disputes. *Fordham Urban Law Journal, 35*, 909-935.

Zorza, J. (in press). The "friendly parent" concept – Another gender biased legacy from Richard Gardner. *Domestic Violence Report.*

Resources for Battered Mothers

***Helping Children Thrive: Information for Mothers who Have Left Abusive Relationships*, 2004**
by Linda Baker & Alison Cunningham
Centre for Children & Families in the Justice System
London Family Court Clinic
254 Pall Mall St., Suite 200
London, Ontario N6A 5P6 Canada
http://www.lfcc.on.ca/index.htm

***When Dad Hurts Mom: Helping Your Children Heal the Wounds of Witnessing Abuse*, 2004**
by Lundy Bancroft
New York, NY: G.P. Putnam's Sons

***Little Eyes, Little Ears: How Violence Against a Mother Shapes Children as They Grow*, 2007**
by Alison Cunningham & Linda Baker
Centre for Children & Families in the Justice System
London Family Court Clinic
254 Pall Mall St., Suite 200
London, Ontario N6A 5P6 Canada
http://www.lfcc.on.ca/index.htm

***Supervised Visitation: Information for Mothers*, 2007**
Family Violence Prevention Fund
383 Rhode Island St. Suite #304
San Francisco, CA 94103-5133
http://fvpfstore.stores.yahoo.net/supervised-visitation-information-for-mothers.html

Managing Your Divorce: A Guide for Battered Women, 1998
National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, NV 89507
http://www.ncjfcj.org/images/stories/dept/fvd/pdf/managing_divorce.pdf

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THE PARENTING OF MEN WHO BATTER

It's Saturday morning in the Franklin home. Breakfast is rushed because Marty, who is 12 years old, and his sister Rhonda, 9, have early soccer games. Their mother Donna is scurrying around while her husband Troy eats and reads the morning paper. Marty grumbles to his mother, "Ma, hurry up! I told you last week, the coach picks the starting players 20 minutes before game time."

His mother snaps back, "If you had washed your uniform last night like I asked you to, we wouldn't be in such a hurry." Rhonda pipes in, "I did mine."

Marty shoots his sister a dirty look and says, "Oh, I guess I just can't compete with goody two-shoes here. Hey, maybe my soccer suit is dirty, but at least I don't get the Bitch of the Year Award."

Donna reacts sternly, saying, "Don't talk that way to your sister, young man!" Troy now glances up from his paper, annoyed. "How the hell do you expect Marty to react? If he's not absolutely perfect, both of you are all over him."

"Never mind, Dad," Marty breaks in flippantly, "I'm used to it. If one of them isn't bitching at me, it's the other."

Donna's blood begins to boil as Troy returns to reading. "Your son just called me a bitch. You're his father - you have nothing to say about it??" Troy half rises out of his seat. "Yeah, I do have something to say. If you would conduct yourself like an adult, instead of getting all hysterical, things wouldn't get like this with the children. Don't be so damn sensitive. Marty didn't call you a bitch, he said you bitch ***at*** *him, which is true. You do."*

Marty laughs. Rhonda does too, then immediately feels ashamed towards her mother and turns red in the face. Their mother yells loudly at Troy, "It's not me! You're the problem here, you're just encouraging his bad attitude!"

Troy pounces out of his seat yelling back, "That's enough out of you, you goddamned bitch!," and hurls his newspaper to the floor. He shoves Donna hard towards the kitchen door so that she stumbles and falls. "Get the hell out of here, right now," he screams, "or you'll be sorry!" Donna bursts into tears and runs up to the bedroom. Marty and Rhonda are left trembling, although Marty forces a smile and mumbles to Rhonda, "What the hell does Mom expect?"

[The above scenario is a fictional account, incorporating dynamics from a number of my cases.]

The published research on children's exposure to domestic violence focuses largely on two aspects of their experience: The trauma of witnessing physical assaults against their mother, and the tension produced by living with a high level of conflict between their parents (e.g. Rossman, Hughes, & Rosenberg, 2000). As important as these factors are, they are in fact only one aspect of many complex problems that typically pervade the children's daily life. The bulk of these difficulties have their roots in the fact that the children are living with a batterer present in their home. The parenting characteristics commonly observed in batterers have implications for the children's emotional and physical well-being, their relationships with their mothers and siblings, and the development of their belief systems. All of these issues need to be examined in making determinations regarding custody and visitation in cases involving histories of domestic violence.

The Batterer Profile: Implications for Children

Batterers have been established to have a profile that distinguishes them from non-battering men. Each of these identified characteristics can have an impact on children's experience and development. Some of the critical areas that court personnel should be aware of include:

Control: Coerciveness is widely recognized as a central quality of battering men (Lloyd & Emery, 2000). It is commonly true that one of the spheres of the battered woman's life that is subject to heavy control by the batterer is her parenting. In some cases this control begins even before the children are born, through such behaviors as the batterer refusing to use birth control, requiring or forbidding the woman to terminate a pregnancy, or causing her pregnancy through a sexual assault. (Some history of intimate partner rape is present in 25-40% of domestic violence cases, and statistics that include other kinds of sexual assault to battered women are even higher; see review in Mahoney & Williams, 1998.) Once children are born, the batterer may overrule the mother's parenting decisions, and he may enforce his will by verbally abusing the mother or physically assaulting her when he is angry about the children's behavior or when she does not cede to his parenting directives (Ptacek, 1997), as we see with Troy in our opening scenario. It is predictable, therefore, that battered women would be far more likely than other women to feel that they have to alter their parenting styles when their partners are present, and researchers have found that this is in fact the case (Holden & Ritchie, 1991). Thus children are being raised in a context where their mother cannot safely use her best judgment about how to care for them.

Entitlement: Batterers have been demonstrated to have much higher rates than other men of

believing that they are entitled to use violence towards female partners when they deem it to be necessary (Silverman & Williamson, 1997), and to take and overall stance in the relationship of claiming a superior status and expecting catering and deference (Adams, 1991; Edleson & Tolman, 1992). Troy exhibits his entitlement and sense of superiority by, for example, contributing nothing to the work of a very busy morning and actively encouraging his son's negative attitudes towards females.

Clinical observation indicates that the higher a batterer's level of entitlement, the more likely he is to chronically behave in selfish and self-centered ways. He may, for example, become irate or violent when he feels that his partner is paying more attention to the children than to him, which can make it difficult for the mother to properly meet the children's physical and emotional needs. Similarly, he may treat the mother like a servant in front of the children, so that they learn to disrespect her and treat her in a similar fashion. In addition, many batterers cause *role-reversal* occur in their relationships with their children, where the children are made to feel responsible to take care of the battering parent and meet his needs. This can create a burden of parentification for the children, in addition to making them more vulnerable to sexual abuse.

Manipulation: It is common for a batterer to be manipulative of family members, using such tactics as dishonesty, false promises, and the sowing of divisions to increase his power and escape accountability (Bancroft & Silverman, 2002). Batterers tend, for example, to cultivate a public image of generosity and kindness. When children observe the batterer's popularity in the community, they can become more likely to blame their mother or themselves for the abuse in the home, since other people do not seem to believe that their father has a problem. Manipulation may also involve lying to the children, or drawing them in as agents of the abuse, as exhibited by Troy when he get his children to laugh at inappropriate jokes about their mother. Children who are traumatized by exposure to violent acts can safely be assumed to be at greater risk of being psychologically harmed by such manipulation than children who are less emotionally vulnerable.

Possessiveness: It is common for men who batter to perceive their partners as owned objects (Adams, 1991), and this outlook extends to their children in many cases. Many clients of mine have, for example, defended their physical or sexual abuse of the children by insisting that it is their paternal prerogative to treat their children as they see fit. Batterers' possessiveness towards both partners and children can have important post-separation implications; for example, batterers have been found to seek custody at higher rates than non-battering fathers do (APA, 1996), to be at their greatest risk of committing homicide of women or children during and after the break-up of a relationship (Langford, Isaac, & Kabat, 1999; Websdale, 1999). Parents who perceive children as possessions have been observed to have high rates of child abuse in general (Ayoub, Grace, Paradise, & Newberger, 1991), and the link between such attitudes and incest perpetration is widely noted (e.g. Leberg, 1997; Hanson, Gizzarelli, & Scott, 1994; Salter, 1988).

This is a brief and partial review of the batterer profile. Each of the characteristics commonly found in batterers, including denial and minimization about their abusive and violence actions, battering in multiple relationships, and high level of resistance to change, can have an important impact on children who are exposed to them. (These issues, and several related ones, are discussed in greater detail in Bancroft & Silverman, 2002).

Risk of Child Abuse

The various published studies of physical abuse of children by batterers indicate that roughly half of batterers repeatedly assault children in the home, a rate about 700% that of non-battering men (e.g. Bowker, Arbitell, & McFerron, 1988; Straus, 1990; Suh & Abel, 1990; and other studies). An equally substantial body of research finds batterers four or more times more likely than other men to sexually abuse their children or step-children, with exposure to domestic violence one of the top risk factors for incest victimization (e.g. McCloskey, Figueredo, & Koss, 1995; Paveza, 1988; Sirles & Franke, 1989; and several other studies) . The literature on incest perpetrators describes a profile that is compatible with battering, including a high level of control, entitlement, and manipulativeness, and a tendency to view children as owned objects (e.g. Leberg, 1997; Salter, 1995).

No evidence currently exists to suggest that the risk of child abuse by a batterer declines post-separation, and in fact there is considerable reason to believe that such risk may *increase*. Batterers tend to be enraged and retaliatory for an extended period after a relationship ends, contributing to volatility in their behavior, and they sometimes increase their targeting of the children as a way to frighten or upset the mother because the separation is causes a loss of access to avenues to abuse the mother directly (Bancroft & Silverman, 2002). The risk to children may also be augmented by the fact that the battered mother is no longer able to monitor the batterer's treatment of the children during his times of contact with them. Clinicians sometimes observe that courts are reluctant to believe reports from battered women regarding mistreatment of their children during court-ordered visitation, which can sometimes leave children vulnerable to ongoing abuse by the batterer.

The Batterer's Parenting Style

Apart from the risk of overt child abuse, batterers often tend toward authoritarian, neglectful, and verbally abusive approaches to child-rearing (Margolin, John, Ghosh, and Gordis, 1996). The effects on the children of these parenting weaknesses may be intensified by their prior traumatic experience of witnessing violence. For example, children whose battering fathers yell or bark orders at them appear to be more

shaken by these experiences than children who have not been exposed to violence, as they are aware of his capacity for physical assault whether or not he has ever assaulted them directly. My colleagues and I also often observe that a batterer's authoritarian or intimidating behaviors in the children's presence, or towards them directly, can cause traumatic memories to be reawakened in them, with resultant increase in their symptoms and interference in their social and intellectual development. Batterers have also been observed to exhibit neglectful parenting, including unsafe levels of supervision, manipulativeness (Bancroft & Silverman, 2002). Additional crucial problems in the parenting of men who batter include the use of the children as weapons against the mother and the undermining of the mother's authority, which are discussed further below, with important post-separation implications.

The Batterer as Role-Model

Boys who are exposed to domestic violence show dramatically elevated rates of battering their own partners as adolescents or adults (Silverman & Williamson, 1997), and research suggests that this connection is a product largely of the values and attitudes that boys learn from witnessing battering behavior (Markowitz, 2001; Silverman & Williamson, 1997). Daughters of battered women show increased difficulty in escaping partner abuse in their adult relationships (Doyne et al., 1999). Both boys and girls have been observed to accept various aspects of the batterer's belief-system (Hurley & Jaffe, 1990), including the view that victims of violence are to blame, that women exaggerate hysterically when they report abuse, that males are superior to females, and that the use of violence against women by men is justifiable (Bancroft & Silverman, 2002). Donna and Troy's son Marty exhibits, for example, his absorption of his father's negative and degrading attitudes towards females, which he acts out towards his sister Rhonda and towards his mother.

The destructive influence that batterers can have on children's belief-systems, and therefore on their future behavior, has not received adequate attention in most professional publications, and appears to be largely overlooked in crafting custody and visitation determinations. It should be further noted that children who are traumatized may be particularly easy to influence, due to their elevated needs for belonging, security, and self-esteem, and therefore decisions to place children in unsupervised contact with a batterer should be made with great care.

Undermining of the Mother's Authority

Battering is inherently destructive to maternal authority. As we saw with Troy in the opening scenario, the batterer's behavior provides a model for children of contemptuous and aggressive behavior

towards their mother. The predictable result, confirmed by many studies, is that children of battered women have increased rates of violence and disobedience towards their mothers (Jaffe & Geffner, 1998). These inherent effects are aggravated in many cases by the batterer's deliberate weakening of the mother's ability to set limits, which may be accompanied by violence towards her regarding issues about the children (Ptacek, 1997). We saw Troy, for example, give explicit approval to his son's disrespectful language towards Donna. Troy is able in this way to enhance his own power in the family and ensure that his wife will appear to be an ineffective or volatile parent. Troy then goes on to assault Donna to retaliate against her for her efforts to stand up for herself and for her daughter.

Impact on Family Dynamics

Many other behaviors that are commonly observed in batterers can distort family functioning. Some common examples include:

Interfering with a mother's parenting. Partners of my battering clients make frequent reports of being prevented from picking up a crying infant or from assisting a frightened or injured child, of being barred from providing other basic physical or emotional care, and even of being forbidden to take children to medical appointments. Interference of this kind can cause the children to perceive their mother as uncaring or unreliable, feelings which the batterer may reinforce by verbally conditioning the children through statements such as, "Your mother doesn't love you," or, "Mommy only cares about herself." The trauma caused to the mother by domestic violence can also sometimes make it more difficult to be fully present and attentive for her children (review in Levendosky & Graham-Bermann, 2000), which ironically the batterer may then use to his advantage in a custody or visitation dispute.

Sowing divisions with the family: In our opening scenario, Troy uses favoritism to build a special relationship with one of his children (Marty), demonstrating a dynamic that occurs frequently in the parenting of men who batter. As other researchers have noted, the favored child is particularly likely to be a boy, and the batterer may bond with him partly through encouraging a sense of superiority to females (Johnston & Campbell, 1993).[1] Batterers may also sow divisions through deliberate creating or feeding of familial tensions. These behaviors are a likely factor in the high rate of intersibling conflict, including violence, observed in families exposed to battering behavior (Hurley & Jaffe, 1990). Descriptions of division-sowing behaviors in incest perpetrators (Leberg, 1997) are remarkably similar to clinical

[1] Although Johnston and Campbell make observations that are very similar to mine regarding family functioning in domestic violence cases, they reach almost opposite conclusions, greatly minimizing the risk to children from unsupervised contact with most batterers. For a detailed critique of their formulations, see Bancroft & Silverman, 2002.

observations of these behaviors in men who batter (Bancroft & Silverman, 2002).

Use of the children as weapons: Many batterers use children as a vehicle to harm or control the mother (Erickson & Henderson, 1998), through such tactics as destroying the children's belongings to punish the mother, requiring the children to monitor and report on their mother's activities, or threatening to kidnap or take custody of the children if the mother attempts to end the relationship. These behaviors draw the children into the abuser's behavior pattern. Post-separation, many batterers use unsupervised visitation as an opportunity to abuse the mother through the children by alienating them from the mother, encouraging them to behave in destructive or defiant ways when they return home, or by returning them dirty, unfed, or sleep-deprived from visitation (Bancroft & Silverman, 2002). This important dynamics rarely appears to be taken into account in crafting custody and visitation plans.

Retaliation for the mother's efforts to protect the children: A mother may find that she is assaulted or intimidated if she attempts to prevent the batterer from mistreating the children, or may find that he harms the children more seriously to punish her for standing up for them, and therefore may be forced over time to stop intervening on her children's behalf (e.g. see the extended case description in Jones, 1994). In our opening scenario, Troy's assault on Donna was a direct result of her efforts to protect her daughter from psychological harm, and may have the effect of intimidating her the next time she would like to protect her children from him. This dynamic can lead children to believe that their mother doesn't care about the ways in which the batterer is hurting them because she sometimes maintains a frightened silence in the face of his behavior. This perception in children can be exacerbated in cases where a court requires a battered woman to send her children on visitation with their father over their objections. It therefore becomes critically important for children who have been exposed to domestic violence not to be required to see or speak with the perpetrator when they are voicing or demonstrating a preference not to do so.

Post-Separation Implications

Custody and visitation determinations in the context of domestic violence need to be informed by an awareness of the destructive parenting behaviors exhibited by many batterers, and in particular the ways in which these behaviors may damage or eliminate the potential for children to heal psychologically and socially from the traumatic experiences they have endured. Exposure to a batterer's inappropriate parenting has especially important implications for children who are struggling with two sets of psychological injuries, one from previous witnessing of domestic violence and the other from their parents' divorce. (The great majority of children who live with a batterer directly see or hear one or more acts of violence, research that is reviewed in Kolbo, Blakely, & Engleman, 1996, and a substantial number witness sexual assaults

against their mother, as discussed in Wolak & Finkelhor, 1998).

In evaluating custody and visitation and crafting appropriate parenting plans, the following elements require close examination:

The children's healing needs. There is a wide consensus that children's recovery from exposure to domestic violence and from divorce depends largely on the quality of their relationship with the non-battering parent and with their siblings (reviews in Heller, Larrieu, D'Imperio, & Boris, 1998, and in Graham-Bermann, 1998). Therefore, visitation plans should take into account whether the batterer is likely, based on his past and current behavior, to continue (or begin) to undermine the mother's authority, interfere with mother-child relationships, or cause tensions between siblings, all of which can interfere significantly with children's healing. Children also need a sense of safety in order to heal well (van der Kolk & McFarlane, 1996), which may not be fostered by leaving them in the unsupervised care of a man whose violent tendencies they have witnessed, even if they feel a strong bond of affection for him. (It should also be noted that both children and adults can become strongly bonded in an unhealthy way to a perpetrator of abuse through a process known as *traumatic bonding*, elucidated in Dutton & Painter 1993, 1983, and in James, 1994. I have observed that evaluators who assess the strength of children's bonds with their battering fathers rarely address the role of traumatic bonding.)

The need for detailed assessment. A batterer's history of parenting behaviors needs to be investigated carefully, to assess for the presence of any of the common problems described above, with particular attention to the risk that he may use children as a vehicle for continued abuse of the mother. Such as assessment cannot be properly performed through reliance on clinical evaluation of the father, mother, or children, as it must involve extensive collecting of evidence from other sources of information such as school personnel, witnesses to important events, police and medical reports, child protective records, telephone and mail communications, and other sources. Courts need further to ensure that custody evaluators have extensive training on the multiple sources of risk to children from unsupervised contact with batterers, such as the ones discussed above. (A detailed guide to performing proper custody and visitation evaluations in the context of domestic violence allegations can be found in Bancroft & Silverman, 2002).

Safely fostering father-child relationships. Except in cases where a batterer has been terrifyingly violent or threatening to the mother in the presence of the children, or has abused the children directly in a severe and repeated form, it is common for children to request some degree of ongoing contact with their battering fathers. In many cases they may benefit from such contact as long as safety measures are provided, the contact is not overly extensive, and the abuser is not permitted to cause set-backs to the children's healing process.

One way to foster these goals is to increase the use of professionally-supervised visitation, ideally based in a visitation center. A future transition to unsupervised visitation should not be assumed, but should instead be conditioned on the batterer completing a high-quality batterer intervention program, dealing seriously with any substance abuse issues he has, and showing other indications of being serious about changing his abusive behavior and accepting responsibility for his past actions. (It should be noted that batterer programs that are run on a "power and control" model have been found to be quite a bit more effective than was previously believed, especially if any attendant drug and alcohol issues are also properly addressed - see Gondolf, 2001.)

Where careful assessment leads to the conclusion that unsupervised visitation is physically and emotionally safe for the children, visits that are kept relatively short in duration and that do not include overnight stays can help to reduce the batterer's ability to damage children's critical healing relationship with their mother. Such restricted contact can allow the children to meet their need to have an ongoing bond with their father and to share key life events, while simultaneously limiting his influence as a destructive role-model, which has been shown to put them at very high risk for future involvement in domestic violence (discussed above). A plan of this kind also helps to ensure that children feel securely and safely attached to their primary home, and to feel that the court system is empowering their mother to protect them, elements which are indispensable to recovery in traumatized children.

Conclusion

Children who are exposed to domestic violence have multiple potential sources of emotional and physical injury from the batterer's behavior, well beyond the witnessing of assaults alone, and their potential for recovery from past domestic violence can be compromised by ongoing unsupervised contact with their father. Additionally, children are at risk to develop destructive attitudes and values that can contribute to behavioral and developmental problems. Abused mothers face many obstacles in attempting to protect their children from a batterer, and can benefit when their protective efforts receive strong support from courts and child protective services. Family and juvenile court personnel, as well as those working in child protection agencies, can increase the quality of their interventions on behalf of children by deepening their understanding of the common patterns that may appear in the parenting of men who batter, including ways in which a batterer may damage mother-child and sibling relationships and make it difficult for a mother to parent her children. Courts can increase their effectiveness in domestic violence cases involving children by focusing on maternal and child safety, and by seeking ways to reduce the batterer's influence as a role model, particularly for his sons.

NOTES

Adams, D. (1991). *Empathy and entitlement: A comparison of battering and nonbattering husbands.* Unpublished doctoral dissertation. (Available from Emerge, 2380 Massachusetts Ave., Cambridge, MA, 02140.)

American Psychological Association Presidential Task Force on Violence and the Family (1996). *Violence and the family*. Washington, DC: American Psychological Association.

Ayoub, C., Grace, P., Paradise, J., & Newberger, E. (1991). Alleging psychological impairment of the accuser to defend oneself against a child abuse allegation: A manifestation of wife battering and false accusation. In M. Robin (Ed.), *Assessing child maltreatment reports: The problem of false allegations* (pp. 191-207). New York: Haworth Press.

Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage Publications.

Bowker, L., Arbitell, M., & McFerron, R. (1988). On the relationship between wife beating and child abuse. In K. Yllo & M. Bograd (Eds.), *Feminist Perspectives on Wife Abuse* (pp. 159-174). Newbury Park, CA: Sage.

Doyne, S., Bowermaster, J., Meloy, R., Dutton, D., Jaffe, P., Temko, S., & Mones, P. (1999). Custody disputes involving domestic violence: Making children's needs a priority. *Juvenile and Family Court Journal, 50*(2), 1-12.

Dutton, D., & Painter, S. (1983). Traumatic bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse. *Victimology: An International Journal, 6*(1-4), 139-155.

Dutton, D., & Painter, S. (1993). The battered woman syndrome: Effects of severity and intermittency of abuse. *American Journal of Orthopsychiatry, 63*(4), 614-622.

Edleson, J., & Tolman, R. (1992). *Intervention for men who batter: An ecological approach.* Newbury Park, CA: Sage.

Erickson, J., & Henderson, A. (1998). "Diverging realities: Abused women and their children. In J. Campbell (Ed.), *Empowering survivors of abuse: Health care for battered women and their children* (pp. 138-155). Thousand Oaks, CA: Sage.

Gondolf, E. (2001). *Batterer intervention systems*. Thousand Oaks, CA: Sage Publications.

Graham-Bermann, S. (1998). The impact of woman abuse on children's social development: Research and theoretical perspectives. In G. Holden, R. Geffner, & E. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* (pp. 21-54). Washington, DC: American Psychological Association.

Hanson, R.K., Gizzarelli, R., & Scott, H. (1994). The attitudes of incest offenders: Sexual entitlement and acceptance of sex with children. *Criminal Justice and Behavior, 21* (2), 187-202.

Heller, S., Larrieu, J., D'Imperio, R., & Boris, N. (1998). Research on resilience to child maltreatment: Empirical considerations. *Child Abuse and Neglect, 23*(4) 321-338.

Holden, G. & Ritchie, K. (1991). Linking extreme marital discord, child rearing, and child behavior problems: Evidence from battered women. *Child Development, 62*, 311-327.

Hurley, D.J., & Jaffe, P. (1990). Children's observations of violence: II. Clinical implications for children's mental health professionals. *Canadian Journal of Psychiatry, 35*(6), 471-476.

Jaffe, P., & Geffner, R. (1998). Child custody disputes and domestic violence: Critical issues for mental health, social service, and legal professionals. In G. Holden, R. Geffner, & E. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* (pp. 371-408). Washington, DC: American Psychological Association.

James, B. (1994). *Handbook for treatment of attachment-trauma problems in children.* New York: Free Press.

Johnston, J., & Campbell, L. (1993). Parent-child relationships in domestic violence families disputing custody. *Family and Conciliation Courts Review, 31*(3), 282-298.

Jones, A. (1994). *Next time she'll be dead.* Boston: Beacon Press.

Kolbo, J., Blakely, E., & Engleman, D. (1996). Children who witness domestic violence: A review of empirical literature. *Journal of Interpersonal Violence, 11*(2), 281-293.

Langford, L., Isaac, N.E., & Kabat, S. (1999). *Homicides related to intimate partner violence in Massachusetts 1991-1995*. Boston: Peace at Home.

Leberg, E. (1997). *Understanding child molesters: Taking charge*. Thousand Oaks, CA: Sage.

Levendosky, A., & Graham-Bermann, S. (2000). Trauma and parenting: An addition to an ecological model of parenting. In R. Geffner, P. Jaffe, & M. Sudermann (Eds.), *Children exposed to domestic violence* (pp. 25-36). New

York: Haworth Maltreatment and Trauma Press.

Lloyd, S., & Emery, B. (2000). *The dark side of courtship: Physical and sexual aggression*. Thousand Oaks, CA: Sage.

Mahoney, P., & Williams, L. (1998). Sexual assault in marriage: Prevalence, consequences, and treatment of wife rape. In J. Jasinksi & L. Williams (Eds.), *Partner violence: A comprehensive review of 20 years of research* (pp. 113-157). Thousand Oaks, CA: Sage.

Markowitz, F. (2001). Attitudes and family violence: Linking intergenerational and cultural theories. *Journal of Family Violence, 16*(2), 205-218.

McCloskey, L.A., Figueredo, A.J., & Koss, M. (1995). The effect of systemic family violence on children's mental health. *Child Development, 66*, 1239-1261.

Paveza, G. (1988). Risk factors in father-daughter child sexual abuse. *Journal of Interpersonal Violence, 3*(3), 290-306.

Ptacek, J. (1997). The tactics and strategies of men who batter: Testimony from women seeking restraining orders. In A. Cardarelli (Ed.), *Violence between intimate partners: Patterns, causes, and effects* (pp. 104-123). Boston: Allyn & Bacon.

Rossman, R., Hughes, H., & Rosenberg, M. (2000). *Children and interparental violence: The impact of exposure*. Philadelphia: Brunner/Mazel.

Salter, A. (1988). *Treating child sex offenders and victims: A practical guide.* Newbury Park, CA: Sage.

Salter, A. (1995). *Transforming trauma: A guide to understanding and treating adult survivors of child sexual abuse*. Newbury Park, CA: Sage.

Silverman, J., & Williamson, G. (1997). Social ecology and entitlements involved in battering by heterosexual college males: Contributions of family and peers. *Violence and Victims, 12*(2), 147-164.

Sirles, E., & Franke, P. (1989) Factors influencing mothers' reactions to intrafamily sexual abuse. *Child Abuse and Neglect, 13*, 131-139.

Straus, M. (1990). Ordinary violence, child abuse, and wife-beating: What do they have in common? In M. Straus & R. Gelles (Eds.), *Physical Violence in American Families* (pp. 403-424). New Brunswick: Transition.

Suh, E., & Abel, E.M. (1990). The impact of spousal violence on the children of the abused. *Journal of Independent Social Work, 4*(4), 27-34.

van der Kolk, B., & McFarlane, A. (1996). The black hole of trauma. In B. van der Kolk, A. McFarlane, & L. Weisaeth (Eds.), *Traumatic stress: The effects of overwhelming experience on mind, body, and society* (pp. 3-23). New York: Guilford.

Websdale, N. (1999). *Understanding domestic homicide*. Boston: Northeastern University Press.

Wolak, J., & Finkelhor, D. (1998). Children exposed to partner violence. In J. Jasinksi & L. Williams (Eds.), *Partner violence: A comprehensive review of 20 years of research* (pp. 73-111). Thousand Oaks, CA: Sage.

MI- NOW

Disciplining Divorcing Parents: The Social Construction of Parental Alienation Syndrome

by FRANCOISE T. BESSETTE

A thesis submitted to the Department of Sociology In conformity with the requirements for the degree of Master of Arts

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Excerpts:

Dr. Richard Gardner built his career as an expert witness by testifying in court on behalf of over 400 non-custodial fathers fighting for custody (Lavietes, 2003; Bruch, 2001). Of the prolific amount of work Gardner generated in his long career, he is most renowned for his radical positions regarding incest, often referring to what he described as Western culture's "sex abuse obsession"; his insistence that children often lie about sexual abuse; and his controversial theory of parental alienation syndrome. All of these notions helped the Fathers' Rights Movement construct custodial mothers as vindictive, collusive, and suffering from some form of "custody court" specific medical syndrome. Pg 45

Gardner introduced the term "parental alienation syndrome" in 1985 pg 47

Many of Gardner's disciples who are prone to emulate his tendency for the dramatic have adopted his style of writing. A recent published manual dedicated to his memory, The International Handbook of Parental Alienation Syndrome, houses thirty-four articles in favour of Gardner's theories and is divided into three sections: concepts, clinical considerations and legal issues. Of these, three written by Gardner are theoretical, and published posthumously; three are based on case studies; two analyze existing data; twenty-six are theoretical/opinion pieces; and only one is based on an original 1991 study of separated families. All but three heavily reference Gardner, relying on his work with a blind, unquestioning loyalty; and most cross-reference each other's work with five prominent names resurfacing throughout: Leona Kopetski, Deirdre Rand, Randy Rand, Richard Sauber, and Richard Warshak.

Another of Gardner's supporters is Dr. Glenn F. Cartwright, a psychologist and professor in the department of educational and Counseling Psychology at McGill University. Cartwright edits a website from McGill called PAIN – Parental Alienation Information Network. This site promotes the work of Richard Gardner and parental alienation syndrome by providing lists of articles, lawyers, psychologists/psychiatrists, and other useful links related to parental alienation syndrome. Professor Cartwright, a founding member of the Parental Alienation Syndrome Research Foundation in Washington, DC (Cartwright, 2008a), presented a brief to the Canadian Special Joint Committee on Child Custody and Access in 1998. Drawing on Gardner's statistics, he told members that parental alienation syndrome affected 90 percent of all children in custody disputes (Cartwright, 2008b:1), and recommended harsher sanctions against alienating parents such as fines, a change in custody, and incarceration. (2008b:2). Pg 54-55

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MI-NOW

Parental Alienation Syndrome:

The Hoax that Hurts Children

Barry Goldstein

Richard Gardner did not rely on any research to concoct his theory of Parental Alienation Syndrome. Instead it came from his personal experiences, beliefs and biases. His outrageous bias is demonstrated by many public statements to the effect that sex between adults and children can be acceptable.[1] Here are two examples, but there are more in a chapter written by Dr. Paul J. Fink, past president of the American Psychiatric Association.

Pedophilia "is a widespread and accepted practice among literally billions of people."[2]

"The (sexually abused) child might be told about other societies in which such behavior was and is considered normal... In such discussions the child has to be helped to appreciate that we have in our society an exaggeratedly punitive and moralistic attitude about adult-child sexual encounters."[3]

Richard Gardner was an active and effective promoter of PAS and used it to create a cottage industry of lawyers and mental health professionals who have enjoyed large incomes by supporting practices that help abusive fathers. Most child custody cases are settled more or less amicably. The problem is with the 3.8% of cases that require a trial and often much more.[4] Although many court professionals have been

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[1] Paul J. Fink, "Parental Alienation Syndrome" in *Domestic Violence Abuse and Child Custody*, Mo Therese Hannah & Barry Goldstein, eds. Ch. 12 (2010)
[2] Richard A. Gardner, *Child Custody Litigation: A Guide for Parents and Mental Health Professional* P. 93 (1986).
[3] Richard A. Gardner, *True and False Accusation of Child Sex Abuse*. P. 572 (1992)
[4] Stephanie J. Dallam, *The Parental Alienation Syndrome: Is It Scientific?* (1999), *available at* http://www.leadershipcouncil.org/1/res/dallam/3.html.

misled to treat these as "high conflict" cases by which they mean both parents are acting out in ways that hurt the children, the research demonstrates a large majority of these cases are really domestic violence.[5] The most dangerous abusers, ones who believe their partners have no right to leave are using a variety of tactics to manipulate the courts to regain control over their victims. Most of these abusers have not committed the most severe physical abuse which is what most court professionals are looking for and so they fail to recognize the danger or the motives.

Domestic violence involve a variety of tactics abusers use to control and coerce their victims. Economic abuse is a common tactic so the abusers usually control most of the family resources. This means the best way for court professionals to earn a large income is to support practices that favor abusive fathers.

I do not believe PAS would have been so successful in spreading its poison into family courts if the judges had been aware of its origins. The problem is that most of the attorneys for protective mothers, especially when PAS first appeared were unaware of its history or its enormous flaws. In many cases they raised little or no objections to the bogus theory that never had the scientific support required to justify courts to consider it.

PAS Is Deeply Flawed

In addition to the lack of any scientific basis to justify PAS, it is an illogical theory that is based on circular reasoning. PAS assumes that if a child does not like the father[6], is afraid of him and does not wish to spend time with the father the only possible explanation is that the mother is alienating the child.

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[5] Peter G. Jaffe, Claire V. Crooks, & Samantha E. Poisson, "Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes," 54 *Juv. & Fam. Ct. J.* 57 (2003)

[6] PAS is a sexist theory that was designed to help abusive fathers and is virtually only used to support the position of fathers.

There are many other possible causes that are far more likely than alienation, but PAS is designed to deny any other possible explanation and is often used to prevent a full investigation of other possibilities particularly domestic violence or child abuse. Among the more common alternative explanations for the father's bad relationship are normal adolescent rebellion; the father was rarely involved with the children during the relationship; the father is boring; domestic violence, child abuse and other behaviors that scare the child.

PAS is based on the assumption that children need both parents equally and that any alienation should be treated as the most important if not the only issue the court should be concerned with. In reality, children do not need both parents equally even though it sounds fair on the surface. They need their primary attachment figure more than the other parent and the safe parent more than the abusive one.

Even in intact families, children will usually hear parents criticize each other. While I would not encourage this, the experience does not prevent children from having a full and happy life. A rift between children and a parent is likely to last only a short time and have limited effects. Gardner never provided any scientific basis to treat this as the most important issue. One of the problems, however is many of the faulty assumptions are hidden from the court.

Later Research Confirmed PAS is Invalid

One of the main causes when courts fail to protect children is the myth that mothers and children frequently make false reports of abuse. As with any myth, it would not survive if there were not some cases where the mother or child has deliberately lied in accusing the father of domestic violence or direct child abuse. There are many

common factors that lead courts acting in good faith to disbelieve true reports of abuse. This would include the lack of available evidence; professionals who do not know what to look for; gender bias; the assumption that a father who is successful in other parts of their lives would not be abusive, the difficulty in proving sexual abuse and the skills abusers have to manipulate people. The problem is compounded by the reliance on professionals that are part of the cottage industry that deliberately spread misinformation to help their abusive clients.

Ironically, abusers claim the reports are made to gain an advantage in litigation, but the reports actually make it harder for mothers to be successful. It is painful and embarrassing for mothers and children to speak about the fathers' abuse and guarantees they will be viciously attacked. It is far more likely that victims will deny or minimize abuse issues and many attorneys pressure clients not to report domestic violence and especially child sexual abuse.

PAS is based on the biased belief that virtually all reports mothers or children make about abuse are false. To the extent that there is anything to support this claim it is that proponents of PAS automatically disbelieve virtually every report and use their own biased results to support PAS. In reality, in the context of contested custody cases, less than two percent of reports by mothers against fathers are deliberately false.[7] This fact alone should fully discredit PAS.

The same study found that fathers are 16 times more likely than mothers to make deliberate false reports.[8] At first glance this seems hard to believe as women are not 16

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[7] Nicholas M.C. Bala et al., *Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper* (Department of Justice, Canada, 2001), http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2001/2001_4/2001_4.html.

[8] id

times more honest than men, but this is not what the study says. The study is limited to contested custody cases which are overwhelmingly domestic violence cases with the worst abusers. They believe that she had no right to leave so they are entitled to use any tactic necessary to reassert the control they believe they are entitled to.

The Saunders' Study is highly credible research that comes from the National Institute of Justice in the U.S. Justice Department. The purpose was to look at the knowledge and training about domestic violence of evaluators, judges and lawyers. The findings help explain why the courts so often fail to protect children in domestic violence cases. The Study found that these professionals need more than generalized domestic violence training which can mean different things to different people. They need specific knowledge that includes screening for domestic violence, risk assessment, post-separation violence and the impact of domestic violence on children. Significantly, professionals without the needed expertise tend to believe the myth that mothers frequently make false reports and focus on unscientific alienation theories. These mistaken assumptions lead to decisions that place children in jeopardy.[9]

This research demonstrates that the assumptions used to concoct PAS were mistaken and in fact are the opposite of reality. The beliefs of Gardner and the cottage industry promoting his work are based on their fundamental ignorance of how domestic violence works. So when an evaluator or other professional is claiming PAS by

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[9] Daniel G. Saunders, Kathleen C. Faller & Richard M. Tolman, *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations* (Oct. 31, 2011), https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf.

whatever name they use for it, they are telling the court more about their own lack of expertise than about the circumstances in the family.

PAS recommends an extreme remedy in which the children are forced to live with the alleged abuser and denied a normal relationship with their mother who is usually their primary attachment figure. The Saunders' Study included a section about exactly these decisions which he called "harmful outcome" cases. These decisions are always wrong because the harm of separating children from their primary attachment figure, a harm that includes increased risk of depression, low self-esteem and suicide when older[10] is greater than any benefit the court thought it was providing. The Saunders' Study found that these decisions are usually based on very flawed practices so often the opposite result would often have benefited the children.[11] So PAS recommends the court impose a drastic solution that is always against the children's best interests.

All legitimate organizations of professionals in the field have condemned the use of PAS. Abuser rights groups and professionals from the cottage industry that work with them mounted an aggressive campaign to include PAS in the DSM-V which is the compendium of all valid mental health diagnoses. The American Psychiatric Association rejected their demands because there is no scientific basis to support PAS.

Even before this latest rejection of attempts to legitimize PAS, psychologists have started to be disciplined for relying on a diagnosis that does not exist.

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[10] Susan Goldberg, *Attachment Part Three: Attachment Across the Life Span* (Nov. 2004), http://www.aboutkidshealth.ca/news/Attachment-Part-Three-Attachment-across-the-life-span.aspx?articleID=7966&categoryID=news-type.

[11] Daniel G. Saunders, *supra*, note 9

"If the report of the child custody evaluator indicates that it is based even in part on a PAS theory, the protective parent should ask the court to reject the report in its entirety on the ground that PAS is not a recognized mental health diagnosis and that the court should either appoint another child custody evaluator or proceed without one. It has become public record that at least three psychologists have been disciplined by their licensing boards for giving testimony in custody cases regarding PAS. If licensing boards of mental health professionals would take the step of disciplining a licensee for using PAS in an evaluation, then PAS obviously cannot be said to be accepted in the psychological profession and thus should not be admissible into evidence."[12]

Use of PAS by Other Names

As people have learned that PAS is a bogus theory that has caused enormous harm to children it has become ever more discredited. Supporters have responded by using a different name or term such as alienation or parental alienation. Very often when courts are asked to ignore alienation claims, the judge or other professional will point out that clearly there is such a thing as alienation and we know from personal experience that parents sometimes make negative remarks about the other parent.

While this is true, such statements do not cause the kind of harm that is assumed when courts believe a mother is alienating the children. In most cases the father has no personal knowledge as he no longer lives with the mother and so just assumes she is alienating the children or claims it is based on hearsay statements by the children. If someone wants to assume PAS based on the poor relationship with the children, that is

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[12] Nancy Erickson, "Fighting False Allegations of Parental Alienation in *Domestic Violence, Abuse and Child Custody*, Mo Therese Hannah & Barry Goldstein, eds. P. 20-36 (2010). The psychologist sanctioned were Douglas Darnall in Ohio, Larry Leatham in California and William Wrigley in Queensland.

PAS. If they want to create a harmful outcome case, that is PAS. If there is no substantial evidence demonstrating what the harm is, that is PAS.

As I mentioned earlier, contested custody are overwhelmingly domestic violence cases. Alienation theories are typically used to counter reports of domestic violence or child abuse. Court professionals often feel compelled to treat each issue equally in order to be fair to both parties, but abuse issues are far more consequential to the children. Domestic violence and child abuse are considered adverse childhood experiences (ACE) by important medical research from the Centers for Disease Control and Prevention. Children exposed to one or more ACEs will live shorter lives and suffer more illness and injuries throughout their lives.[13] Alienation, even if true does not rise to the level of a health or safety risk unless it results in completely severing the relationship. And most claims of alienation in the context of domestic violence cases are false. They are given more credence because professionals without the expertise the Saunders' Study finds necessary frequently disbelieve true reports of abuse. And courts often take the failure to find abuse as if it means the mothers made deliberately false reports.

The excessive focus on alienation theories and related friendly parent approaches have been a disaster for children. The purpose of abusers seeking custody is to regain control over their victims. The victim wants to limit contact with their abusers because they experience the abusers as scary and harmful. They left their abusers in order to promote safety for themselves and their children. Abusers are great

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[13] V.J. Felitti et al., "The Relationship of Adult Health Status to Childhood Abuse and Household Dysfunction. 14 *Am. J. Preventive Med.* 245 (1998).

at manipulation and claim to want to share parenting with the mothers. The mothers' normal reaction to his abuse and efforts to limit contact with their abusers is often treated as alienation and lack of cooperation.

In many of these cases, the fathers are given custody based on the belief that they are more likely to cooperate with the mother. Once they gain the control that custody provides, they use the power to interfere with the mothers' relationship and encourage the children to become hostile to their mothers. The children quickly learn that they are rewarded for expressing negative attitudes towards their mothers or treating her poorly and punished if they express love towards their mothers. This is exactly what we would expect abusers to do so this behavior proves the original assumptions were wrong, but courts that would severely punish mothers under similar circumstances generally allow abusers to get away with worse behavior.[14]

The Enormous Harm of Using Unscientific Alienation Theories

Most cases involving allegations of alienation also involve potential domestic violence and/or child abuse. If the mother is making negative and false statements about the father and the court fails to prevent this, the consequences to the children are likely to be minor, but if a court disbelieves true reports of abuse, particularly committed by the most dangerous abusers seen in contested custody cases, the consequences are likely to be catastrophic. The problem is compounded because most courts continue to use outdated practices that do not include integration of important new research like ACE and Saunders or a multi-disciplinary approach that includes genuine domestic violence experts in cases involving intimate partner abuse. Many courts only

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[14] Mo Therese Hannah & Barry Goldstein, eds. *Domestic Violence, Abuse and Child Custody* (2010).

consider physical abuse even though the ACE Research demonstrates it is the fear that leads to the worst kind of stress that causes the most harm to children.

The widespread use of outdated practices routinely results in decisions that deny or minimize true reports of domestic violence and child abuse. The ACE Study demonstrates that domestic violence is far more harmful to children than previously understood. PAS, regardless of what name is used is based on the false assumption that virtually all reports of abuse are false and encourage inadequately trained professionals to make decisions that endanger children.

The present level of what we now call child abuse and domestic violence is based on thousands of years of tolerance for these abusive tactics. Although the laws have changed, the beliefs that encourage abuse are still very common. Too many men continue to feel entitled to control their partners because that is what they experienced growing up and see encouraged in the media and elsewhere. The worst abusers have been successful in manipulating custody courts to undermine laws designed to prevent domestic violence.

The ACE research is incredibly exciting. Society now has the ability to significantly reduce cancer, heart disease, diabetes, mental illness, crime, substance abuse, suicide, dropping out of school and many other serious diseases and social problems. This is why Dr. Vincent Felitti, the lead author of the original ACE Study believes that prevention is the best use for his research. Reducing these health and social problems will increase life expectancy, improve the quality of our lives and increase economic output as we reduce the enormous cost of tolerating abuse. These benefits require society to implement the best practices available to prevent domestic

violence and child abuse. Society cannot realize these benefits as long as we allow a bogus and unscientific theory called PAS (and other terms) to continue to be used to help abusers undermine domestic violence laws and ruin our children's lives.

In Brief: Parental Alienation Syndrome and Parental Alienation

Joan Meier

Parental Alienation Syndrome (PAS) and Parental Alienation (PA) are commonly raised to combat a mother's allegations that a father is abusive and that his access to the children should be restricted. While PAS and PA are sometimes used interchangeably, they have separate origins, and are pointedly distinguished by their originators. They are also not equally subject to legal challenge.

PAS was invented by Richard Gardner in the 1980's to explain what he considered to be an epidemic of child sexual abuse allegations in custody litigation. Gardner claimed, with no empirical basis, that the vast majority of such allegations are false, but were fabricated by vengeful or pathological mothers. Credible and extensive empirical research has demonstrated that the assumptions underpinning PAS, including that child sexual abuse allegations are rampant, and generally false, are themselves entirely false. Over time, the strange assumptions underlying Gardner's theory have been critiqued and the validity of a scientific "syndrome" has been roundly rejected by numerous legal and psychological professional and expert bodies and researchers. Gardner's apologist attitude toward pedophilia has contributed to the discrediting of PAS. While this has not ended reliance on PAS within courts and policymakers, it has reduced its use. To date, the only published opinions addressing the admissibility of PAS have ruled against it.

However, Parental Alienation has risen from the ashes of PAS. PA (or "child alienation") has been defined by leading well-regarded researchers, many of whom have rejected the validity of PAS, as addressing cases where a child expresses "unreasonable negative feelings and beliefs" (including fear) about a parent "that are significantly disproportionate to that child's actual experience with that parent." The key difference between this definition and the way PAS has been understood is that PA recognizes the different factors that can cause a child to be alienated from a parent. These researchers have also found that the disliked parent often contributes to a child's alienation.

In theory, this broader and more balanced approach to children's estrangement from a parent should be less likely to undermine abuse allegations and protective parents' attempts to keep their children safe. In practice, however, PA has been used in court in largely identical fashion to PAS: to penalize mothers who allege that the father is unsafe for the children, and to label them "alienators." While the research demonstrates no correlation between alienating conduct and being a victim of battering, these writers and many evaluators still often treat battered mothers as alienators when they allege that a father is unsafe.

Helpful New Research

Recent federally funded research has demonstrated that custody evaluators tend to fall into two categories: those who know about domestic violence and consider it important in custody litigation, and those who do not. This research confirms that those who do not have an in-depth understanding of domestic violence also tend to label abuse allegations "alienation" and rarely identify abuse as a serious concern. Sadly, alienation labeling has also entered child welfare agency practices, who frequently discount and sometimes even turn against mothers who report child abuse by a father, particularly in context of custody or visitation litigation. Consistent with these findings, preliminary results of very new research into "turned-around" cases (i.e., those in which a first court fails to believe abuse and protect a child, and a second court recognizes abuse and protects the child) is demonstrating that alienation labeling plays a substantial role in courts' refusals to believe abuse and protect children.

For all these reasons, once the alienation label is applied either in a court or child welfare proceeding , it is extremely difficult to achieve safety for at-risk children and the risk of mothers losing custody increases.

An Abuse-Sensitive Approach to Parental Alienation

The full paper lays out a seven-step approach to addressing PA allegations in a case where abuse is also alleged. The core premise is that abuse must be fully adjudicated or evaluated before alienation theory may be considered. If followed faithfully, this approach would exclude PA labeling from all valid abuse cases, except insofar as alienation is a part of a batterer's abusive pattern.

Strategic Considerations

It is critically important for litigants to make an explicit record challenging the scientific validity of PAS as a theory, and of PA where it is applied to deny abuse allegations. This will normally require an expert witness with background in domestic violence, child abuse, and parental alienation theory. While such testimony may not succeed at trial, it may help make a record that could support a reversal on appeal. And while such experts can be costly, occasionally a pro bono expert can be found with the help of national organizations with this expertise.

A second strategy consideration concerns the fact that many batterers are themselves alienators of the children from their mother. It is difficult for domestic violence advocates, lawyers, and litigants to adopt this concept even where it might help their case, given that the label is used to deny abuse most of the time. However, it is to be hoped that courts will take alienation at least as seriously when an abuser commits it, as when a mother alleging abuse is viewed as an alienator. Individual litigants must come to terms with their own comfort level on this issue. However, an alternative term, "domestic violence by proxy" may be useful.

See the full Applied Research paper: Meier, J. (2013, September). *Parental Alienation Syndrome and Parental Alienation.* Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence. Available at: http://www.vawnet.org

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VAWnet.org
National Online Resource Center on
Violence Against Women

Applied Research

Parental Alienation Syndrome and Parental Alienation: A Research Review

Joan S. Meier

The willingness to pathologize capable mothers even extends to mothers' "warm, involved" parenting -- which they assert can powerfully fuel alienation in a child (Johnson et al., 2005, p. 208; Kelly and Johnston, 2001). Such discussions are more than sufficient to ensure that whenever a mother and child have ambivalence about the children's father, and certainly in most cases where mothers allege abuse, virtually any loving parenting by the mother can be labeled a form of "alienation."

Applied Research papers synthesize and interpret current research on violence against women, offering a review of the literature and implications for policy and practice.

VAWnet is a project of the National Resource Center on Domestic Violence.

Parental alienation syndrome (PAS) and parental alienation (PA) are often invoked in legal and legislative contexts addressing the rights of fathers and mothers in custody or visitation litigation. Indeed, alienation claims have become ubiquitous in custody cases where domestic violence or child abuse is alleged, as grounds to reject mothers' requests to limit paternal access to their children. This paper provides a historical and research overview of PAS and PA, identifies strategic issues for advocates working with abused women and children,* and offers guidelines to improve courts' treatment of these issues. While PAS and PA have much in common both as theories and with respect to how they are used in court, they have distinct scientific and research bases and critiques. This paper, therefore, addresses them separately.

Parental Alienation Syndrome

Historical Background

The notion of children's hostility to one parent in the context of divorce was first characterized as a pathology by divorce researchers Wallerstein and Kelly. They theorized that a child's rejection of a noncustodial parent and strong resistance or refusal to visit that parent was sometimes a "pathological" alignment between an angry custodial parent and an older child or adolescent and that this alliance was fueled by the dynamics of marital separation, including a child's reaction to it (Wallerstein & Kelly, 1976, 1980). Although significant, Wallerstein and Kelly's construct did not become a staple of custody evaluations or judicial determinations. Moreover, their early work does not use the phrase "parental alienation," but focuses instead on children's "alignment" with one parent against the other.

** The use of gender-specific language in this paper to refer to protective and abusive parents is in response to both Richard Gardner's gendered framework for PAS and to relevant research on domestic violence.*

Beginning in the early 1980's, attention to a purported "parental alienation syndrome" exploded as the result of the dedicated efforts of Richard Gardner, a psychiatrist loosely affiliated with Columbia Medical School[1] who ran a clinical practice that focused on counseling divorcing parents.

Based solely on his interpretation of data gathered from his clinical practice, Gardner posited that child sexual abuse allegations were rampant in custody litigation, and that 90% of children in custody litigation suffered from a disorder, which he called "Parental Alienation Syndrome (PAS)." He described PAS as a "syndrome" whereby vengeful mothers employed child abuse allegations as a powerful weapon to punish ex-husbands and ensure custody to themselves (Gardner, 1992a; 1992b). He further theorized that such mothers enlisted the children in their "campaign of denigration" and "vilification" of the father, that they often "brainwashed" or "programmed" the children into believing untrue claims of abuse by the father, and that the children then fabricated and contributed their own stories (Gardner, 1992b, p. 162, 193; 2002, pp. 94-95). He claimed – based solely on his own interpretation of his own clinical experience – that the majority of child sexual abuse claims in custody litigation are false (Gardner, 1991), although he suggested that some mothers' vendettas were the product of pathology rather than intentional malice (Gardner, 1987, 1992b). In short, Gardner claimed that when children reject their father and they or their mother makes abuse allegations, this behavior is most likely the product of PAS rather than actual experiences of abuse. PAS theory is thus premised on the assumption that child abuse claimants' believability and trustworthiness is highly suspect.[2]

While acknowledging that if there was actually abuse which explained a child's hostility there could be no PAS (Gardner, 1992a), Gardner's "diagnostic criteria" focused on various personality characteristics of the accuser, accused, and the child, rather than expert assessments of abuse itself or the other reasons that might explain a child's hostility to a parent (Gardner, 1992b; see also Hoult, 2006). Rather, Gardner's PAS theory presumes that a child's hostility to a father is pathological, which, in turn, encourages courts to suspect that mothers who make such allegations are doing so only to undermine the child's relationship with the father. Indeed, in differentiating between "fabricated" and "bona fide" abuse, Gardner uses "the Presence of the Parental Alienation Syndrome" as itself an "extremely valuable differentiating [criterion]" (Gardner, 1987, p. 109). By PAS, as previously discussed, he means a child's "campaign of denigration" of the father and the mother's supposed "programming" of the child/ren (Gardner, 2002, pp. 95-97). In short, Gardner's PAS theory essentially *presumes* PAS's existence from the mere presence of a child's hostility toward and/or fear of their father based on alleged abuse. This is unfortunately precisely how it has been applied in many courts.

It should be further noted that the "Sexual Abuse Legitimacy Scale," which Gardner invented as a means of quantifying the likelihood that sexual abuse claims were valid, was so excoriated by scientific experts as "garbage" that he withdrew the scale; however, many of the factors it contained continue to be part of his qualitative discussions of how to determine whether child sexual abuse allegations are legitimate (Bruch, 2001; Faller, 1998).

Gardner's Remedies for PAS

Gardner's "remedy" for purportedly severe PAS is extreme - including complete denial of maternal-child contact and "de-programming" the child through a concerted brainwashing effort to change the child's beliefs that they have been abused (Bruch, 2001; Gardner, 1992a; see also www.rachelfoundation.org). After being subjected to these procedures and ordered by the court to live with the father they said abused them, some children became suicidal nd some killed themselves (Bruch, 2001; Hoult, 2006). In other cases, courts have ordered children into jail and juvenile homes as part of Gardner's recommended "threat therapy" which is the stock in trade of strict alienation psychologists

(Hoult, 2006; Johnston & Kelly, 2004a). In one such case, a judge ordered a frail nine-year-old boy seized by three police officers and placed in a juvenile detention facility when he refused to get into his father's car for a scheduled visitation. The son of the father's girlfriend had sexually abused the boy, and he had also witnessed the father's violence against his mother. After three days of abuse by the other boys in the detention facility, the boy agreed to cooperate with the court order. The judge concluded that his "treatment" for "parental alienation" had worked (E. Stark, personal communication, May 2007).

As critiques of PAS have pointed out, PAS is a teflon defense to an accusation of abuse, because all evidence brought to bear to support the abuse claims is simply reframed as further evidence of the "syndrome" (Bruch, 2001). That is, all efforts to gather corroboration of the allegations are simply treated as further evidence of her pathological need to "alienate" the child from the father (Gardner, 1987, 1992a). If the protective parent points to a therapist's opinion that the child has been abused, the therapist is accused of a "folie a trois" (a clinical term from the French for "folly of three") which suggests that all three parties are in a dysfunctional "dance" together (Bruch, 2001). A child's or a protective parent's repetition of claims of abuse is routinely characterized as further evidence of extreme alienation, and punished by court orders prohibiting continued reporting of abuse.

Gardner's pro-pedophilic and misogynistic beliefs

Gardner's underlying beliefs regarding human sexuality, including adult-child sexual interaction, are so extreme and unfounded that it is hard to believe that courts would have adopted his theory had they known. First, he asserted that the reason women lie about child sexual abuse in custody litigation is because "hell hath no fury like a woman scorned" (Gardner, 1992b, pp. 218-19), and/or because they are "gratifie[d] vicariously" (Gardner, 1991, p. 25; 1992a, p. 126) by imagining their child having sex with the father. There is of course no empirical basis or support for these offensive assertions.

Second, Gardner's views of sexuality were disturbing. He claimed that all human sexual paraphilias, including pedophilia, sadism, rape, necrophilia, zoophilia (sex with animals), coprophilia (sex with feces), and other deviant behaviors "serve the purposes of species survival" by "enhanc[ing] the general level of sexual excitation in society" (Gardner, 1992b, p. 20; see also Hoult, 2006; Dallam, 1998.)

Further, Gardner claimed that women's physiology and conditioning makes them potentially masochistic rape victims who may "gain pleasure from being beaten, bound, and otherwise made to suffer," as "the price they are willing to pay for gaining the gratification of receiving the sperm" (Gardner, 1992b, p. 26).

Regarding pedophilia, Gardner argued expressly that adult-child sex need not be intrinsically harmful to children, and that it is beneficial to the species, insofar as it increases a child's sexualization and increases the likelihood that his or her genes will be transmitted at an early age (Gardner, 1992b). Gardner claimed, "sexual activities between an adult and a child are an ancient tradition" and phenomenon which "has been present in just about every society studied, both past and present" (Gardner, 1992b, pp. 47-48). He viewed Western society as "excessively punitive" in its treatment of pedophilia as a "sickness and a crime" (Gardner, 1991, p. 115), and attributed this "overreaction" to the influence of the Jews (Gardner, 1992b, pp. 47, 49). Gardner opposed mandated reporting of child sexual abuse and specifically described a case in which he successfully persuaded a mother not to report a bus driver who had molested her daughter, because it would "interfere with the natural desensitization process, would be likely to enhance guilt, and would have other untoward psychological effects" (Gardner, 1992b, pp. 611-12; see also Dallam, 1998). Gardner's perspective on adult-child sexual interaction can be summed up in his reference

to Shakespeare's famous quote: "'There is nothing either good or bad, but thinking makes it so'" (Gardner, 1991, p. 115).

Despite his assertions that pedophilia is widespread and harmless, he asserted in a filmed interview that a child who tells his mother he has been sexually molested by his or her father should be told "I don't believe you. I'm going to beat you for saying it. Don't you ever talk that way again about your father" (Waller, 2001).[3] This response – and his beliefs described above – suggest that the animating intention behind the PAS theory's denial of the validity of child sexual abuse reports is not a genuine belief that child sexual abuse is often falsely reported, but rather a belief that such reports should be suppressed.

The Lack of Evidence Base for PAS

While Gardner and PAS have had many adherents, particularly among forensic evaluators and litigants, there is actually no empirical research validating the existence of PAS. And there is extensive empirical proof that the assumptions underlying the theory are false.

Sole empirical study of PAS does not validate the concept. Only one study has been published that purports to empirically verify the existence of PAS. Consistent with scientific standards, this study sought to assess the "inter-rater reliability" of PAS – i.e., the extent to which different observers can consistently identify PAS (Rueda, 2004). The study built directly on Gardner's criteria, taking for granted that those criteria reflect PAS. It then measured the degree to which a small sample of therapists agreed on whether five case scenarios presented to them reflect those PAS criteria or not (Rueda, 2004). The findings were that there was a reasonable degree of agreement about whether these cases indicated PAS. However, the findings do not prove its existence – rather, they prove that a small number of mental health professionals agreed on applying the *label* PAS to cases of estranged ("alienated") children. Many therapists surveyed, however, had refused to fill out the questionnaire and some expressly stated they didn't believe PAS existed. This study thus simply presumed rather than proved the key question: is the concept of PAS actually a disorder caused by a malevolent aligned parent's efforts, or is it simply a reframing of a child's estrangement flowing from abuse, other problematic conduct by the alienated parent, or other normative reasons? The author himself admits that the findings did not "differentiate PAS from parental alienation" (Rueda, 2004, p. 400). Since "parental alienation" is merely a label that does not in itself explain the reason for the child's alienation, this admission essentially negates the study as a validator of PAS.

PAS' empirical bases are false or unsupported. The claims upon which Gardner based his PAS theory are thoroughly contradicted by the empirical research. First, Gardner (1991, 1992b) claimed that child sexual abuse allegations are widespread in custody cases and that the vast majority of such allegations are false. These claims have no empirical basis, other than Gardner's interpretation of his own clinical practice. In contradiction, the largest study of child sexual abuse allegations in custody litigation ever conducted found that child sexual abuse allegations were extremely rare (less than 2% of cases) and of those, approximately 50% of the claims were deemed valid, even when assessed by normally conservative court and agency evaluators (Thoennes & Tjaden, 1990). Other studies have found such allegations to be validated approximately 70% of the time (Faller, 1998). Moreover, leading researchers have found that the dominant problem in child sexual abuse evaluation is not false allegations, but rather, the "high rates of unsubstantiated maltreatment" in "circumstances that indicat[e] that abuse or neglect may have occurred" (Trocme & Bala, 2005, pp. 1342-44).

Indeed, empirical research has found that the PAS theory is built upon an assumption which is the opposite of the truth: Where PAS presumes that protective mothers are vengeful and pathologically "program" their children, it is not women and children – but noncustodial fathers – who are most

likely to fabricate child maltreatment claims. In the largest study of its kind, leading researchers analyzed the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect. They found that only 12% of child abuse or neglect allegations made in the context of litigation over child access were intentionally false (Trocme & Bala, 2005). Notably, they found that the primary source (43%) of these intentionally false reports was noncustodial parents (typically fathers); relatives, neighbors, or acquaintances accounted for another 19% of false reports. Only 14% of knowingly false claims were made by custodial parents (typically mothers), and only two cases (out of 308) fit the alienation paradigm of an intentionally false abuse allegations against a noncustodial father (Trocme & Bala, 2005).

PAS has been rejected as invalid by scientific and professional authorities. The dominant consensus in the scientific community is that there is no scientific evidence of a clinical "syndrome" concerning "parental alienation." Leading researchers, including some who treat "alienation" itself as a real problem, concur, "The scientific status of PAS is, to be blunt, nil" (Emery, Otto, & O'Donohue, 2005, p. 10; see also Gould, 2006; Johnston & Kelly, 2004b; Myers, Berliner, Briere, Hendrix, Jenny, and Reid, 2002; Smith and Coukos, 1997; Wood, 1994). The Presidential Task Force of the American Psychological Association on Violence in the Family stated as early as 1996 that "[a]lthough there are no data to support the phenomenon called parental alienation syndrome, in which mothers are blamed for interfering with their children's attachment to their fathers, the term is still used by some evaluators and Courts to discount children's fears in hostile and psychologically abusive situations" (p. 40). Dr. Paul Fink, past President of the American Psychiatric Association, describes PAS as "junk science" (Talan, 2003, line 9). Nonetheless, defenses of PAS against critiques have led even some respected social scientists to mis-cite and distort the research (Lasseur & Meier, 2005).

Thus, PAS has been rejected multiple times by the American Psychiatric Association as lacking in scientific basis and therefore not worthy of inclusion in the Diagnostic and Statistical Manual of Mental Disorders. The most recent all-out campaign by PAS proponents for inclusion of (the re-named) "Parental Alienation Disorder" (PAD) was flatly rejected by the DSM-V committee in 2012 (Crary, 2012).

Echoing the scientific consensus, a leading judicial body, the National Council of Juvenile and Family Court Judges (NCJFCJ), has published guidelines for custody courts stating:

> [t]he discredited "diagnosis" of "PAS" (or allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the children's responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children's other parent (Dalton, Drozd, & Wong, 2006, p. 24).

The American Prosecutors' Research Institute and National District Attorneys' Association have also rejected PAS (Ragland & Field, 2003).

Court rulings on admissibility. Most family courts accept PAS contained in an opinion offered by an evaluator or Guardian Ad Litem (GAL) (legal representative for the child) without ever questioning its scientific validity or admissibility. Where it has been formally challenged on appeal, appellate courts have also avoided directly ruling on the issue. *See e.g., Hanson v. Spolnik*, 685 N.E.2d 71 (Ind.App. 1997), Chezem, J. dissenting (castigating both trial court and appellate court for reliance on "pop psychology" of PAS). As a result there are as of the date of this writing only three trial-level published opinions actually analyzing and ruling on the legal admissibility of PAS. Each opinion has concluded it lacked sufficient scientific validity to meet admissibility standards (*Snyder v. Cedar*, 2006 Conn.

Super. LEXIS 520, 2009; *People v. Fortin*, 2001; *People v. Loomis*, 1997). Four trial level decisions have ruled it was admissible, but the appeal of each decision resulted in no ruling on the PAS issue. No published decision exists for several of the purportedly favorable trial court opinions (Hoult, 2006).

PAS Continues to Garner Public and Judicial Attention

While the robust critiques and rejections of PAS as a "syndrome" have reduced the use of this label in court and in the research literature, it has continued to garner popular and political recognition. For example, the American Psychological Association and state and local bar associations continued to sponsor workshops on PAS during the first decade of the century. Since approximately 2005, roughly fifteen governors have issued proclamations concerning the purported problem of PAS at the urging of a relatively small group of PAS proponents (Parental Alienation Awareness Organization-United States, n.d.).

Parental Alienation

The many critiques of Gardner's PAS have resulted in a shift among leading researchers and scholars of custody evaluation from support for PAS to support for a reformulation of PAS to be called instead "parental alienation" or "the alienated child" (Johnston, 2005; Steinberger, 2006). Most recently, Johnston and Kelly (2004b) have clearly stated that Gardner's concept of PAS is "overly simplistic" and tautological, and that there are no data to support labeling alienation a "syndrome" (p. 78; 2004a, p. 622). Instead, they speak of "parental alienation" or "the alienated child" as a valid concept that describes a real phenomenon experienced by "a minority" of children in the context of divorce and custody disputes (Johnston, 2005, p. 761; Johnston & Kelly, 2004b, p. 78; see also Drozd & Olesen, 2004).

Johnston (2005) defines an alienated child as one

> who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent. Entrenched alienated children are marked by unambivalent, strident rejection of the parent with no apparent guilt or conflict (p. 762).

What is the difference between PAS and PA? The primary shift appears to be away from Gardner's focus on the purportedly alienating parent and toward a more realistic assessment of the multiple sources of children's hostility or fear of a parent, including behavior by both parents and the child's own vulnerabilities (Johnston, 2005; Johnston & Kelly, 2004b; Kelly & Johnston, 2001). Johnston and Kelly (2004b) state,

> In contrast to PAS theory that views the indoctrinating parent as the principal player in the child's alienation, this study [their own] found that children's rejection of a parent had multiple determinants . . . [another study of theirs also] supported a multi-dimensional explanation of children's rejection of a parent, with both parents as well as vulnerabilities within the child contributing to the problem. Alienating behavior by an emotionally needy aligned parent (mother or father), with whom the child was in role-reversal, were strong predictors of the child's rejection of the other parent. Just as important as contributors were critical incidents of child abuse and/or lack of warm, involved parenting by the rejected parent (pp. 80-81).

Johnston also differentiates her approach from Gardner's by rejecting his draconian "remedies," including custody switching to the "hated" parent. Characterizing Gardner's prescriptions as "a license for tyranny," Johnston and Kelly (2004b, p. 85) call instead for individualized assessments of both the children and the parents' parenting, maintaining focus on the children's needs rather than the parents'

rights. In theory, the goal is a more realistic and healthy relationship with both parents, rather than reconciliation with the hated parent as the only desirable goal (Johnston, 2005). Unfortunately, the common practice in court is far less nuanced and individualized (see below).

The notion that some children are alienated from a parent is both a less scientific and more factual assertion. It is thus easier to raise "alienation" in court without triggering a battle over the admissibility of scientific evidence (Gardner, 2002). However, debate continues to rage in research and advocacy circles over the extent to which parental alienation is something that can be measured, is caused by a parent, and/or has truly harmful effects, or whether it is simply a new less objectionable name for the invalidated PAS. To the extent that PA is widely used almost identically to PAS in court, it may not matter in practice what the theoretical differences are.

Critique of PA - Lack of Evidence Base

Questioning the scientific basis of parental alienation and PAS is challenging because these theories are described and referenced in a substantial social science literature (Turkat, 2002). Many of these materials make assertions about PAS and PA without any citation to scientific literature – yet their "publication" on the Internet and their association with apparently credentialed authors and/or supporters, give them an aura of credibility. Some articles do cite research selectively, but contain numerous unsupported assertions as well, about PAS, PA, and how they operate.

Custody evaluators and psychologists frequently insist as an anecdotal matter that alienation is present and is a terrible thing. However, the only empirical basis for this assumption of alienation's harmfulness at this time is limited to "clinical observation" (Johnston & Kelly, 2004b; see also Ackerman & Dolezal, 2006). Of course clinical observations are subjective, and do not constitute empirical evidence. Moreover, these statements do not indicate whether the relationship breaches between children and parents observed by these clinicians are a healthy or developmental response to their relationship with that parent, or if the "alienation" is wrongfully instigated by a favored ("aligned") parent (Johnston & Kelly, 2004b). Indeed, even if the clinical observers attempted to make the distinction, there would be no objective way of discerning whether their judgment was correct (short of a comprehensive assessment of the child-parent relationship, including any abusive, neglectful or cold, indifferent or hostile parenting by the disliked parent.

In fact, what the empirical evidence Johnston et al. (2005) have amassed indicates both that (i) actual "alienation" of a child is quite rare despite many parents' derogatory conduct or statements about the other parent and (ii) when children are estranged from a parent there are always multiple reasons, some of which are that parent's own conduct. Their widely published research has found that, despite the alienating behaviors of both parents in most of the families participating in their study, only 20% of children were actually "alienated" and only 6% were "severely alienated." Even among the children who rejected a parent, all had multiple reasons for their hostility, including negative behaviors by the hated parent, such as child abuse or inadequate parenting, or the children's own developmental or personality difficulties (Johnston, 2005; Johnston et al., 2005).

The fact that only a small fraction of children subjected to inter-parental hostilities and alienating conduct by their parents have been found to actually become "alienated" suggests that the focus on alienation is a tempest in a teapot – one that continues to distract from and undermine the accurate assessment of abuse and concomitant risks to children.

Lack of Evidence Base for Long-term Impact of Alienation

Johnston and others have acknowledged that "there is very little empirical data to back up their "clinical observations" that alienated children are significantly

undermined in their emotional and psychological development. In fact, Johnston and Kelly (2004b) forthrightly state that "there are no systematic long-term data on the adjustment and well-being of alienated compared to non-alienated children so that long-term prognostications are merely speculative" (p. 84). And, contrary to the common assertions of evaluators and alienation theorists that alienation is a devastating form of emotional abuse of children, Judith Wallerstein, the groundbreaking researcher of divorce who first pointed out the problem of children's sometimes pathological alignment with the custodial parent after divorce, found in her follow-up study that children's hostility toward the other parent after divorce was in every case temporary, and resolved of its own accord, mostly within one or two years (Bruch, 2001; Wallerstein et al., 2000).

Links between PA and Domestic Violence – Reversing the PA Paradigm

Johnston and Kelly's (2004b) research also reveals some interesting evidence about the relationship of domestic violence to alienation:

> While a history of domestic violence did not predict children's rejection of a parent directly . . . [m]en who engaged in alienating behaviors (i.e., demeaning a child's mother) were more likely to have perpetrated domestic violence against their spouses, indicating that this kind of psychological control of their child could be viewed as an extension of their physically abusive and controlling behavior (p. 81).

Coming from researchers who specialize in alienation, this empirical statement – that men who batter are often also men who intentionally demean the mother and teach the children not to respect her – is powerful confirmation of the experiences of many battered women and their advocates. Perhaps just one example from the author's caseload will suffice: In this case, the batterer would call the children out of their rooms where they were cowering, to make them watch him beat their mother while telling them he had to do this because she was a "whore" and a "slut." Other custody experts and researchers have also suggested that batterers are in fact the most expert "alienators" of children from their other parent (Bancroft & Silverman, 2002). The dilemma that this creates for battered women and their advocates with respect to the use of parental alienation as a claim is discussed in the section on "Strategy Issues" below.

Qualitative critique – PA denies abuse and is used, like PAS, in conclusory fashion. By recognizing the many reasons and ways children can become alienated from a parent, the new "alienation" theory is, in principle, more reasonable and realistic than the old PAS theory. Nonetheless, given the shared belief at the root of both theories – that abuse allegations are typically merely evidence of an aligned parent's campaign of alienation – the differences between "alienation" and PAS are, at best, unclear to many lawyers, courts, and evaluators.[4] Indeed, this author was involved in a case in which the court's forensic expert, over time, substituted the label "parental alienation" for her earlier suggestion of PAS, without changing anything else about her analysis. When queried about the differences between PA and PAS, she had little to say. It is not surprising, then, that even while trying to explicitly shift the focus from PAS to PA, proponents of the "new" PA continue to rely on PAS materials (Bruch, 2001; Steinberger, 2006).

Perhaps the most disturbing misuse of PA is seen when PA adherents fail to distinguish between children who are estranged from a non-custodial parent due to abuse or other negative behavior from children who have been wrongly influenced by their favored parent to hate or fear the other. Thus, leading adherents to PA theory including Johnston and colleagues sometimes describe children's symptoms and psychological harms and attribute them to "alienation," while simultaneously acknowledging that their research shows that "alienated" children include those who are *justifiably* estranged due to the disfavored parent's conduct. Cases worked on by this author have shown that abused children display many of the symptoms that are frequently attributed

to "alienation" both in the courts and in the literature (Compare Johnston, Walters, & Olesen, 2005; Johnston & Kelly, 2004b with Kathleen C. Faller, 1999; Righthand, 2003). Such discussions attribute to alienation harms which, in fact, may well be due to the disfavored parent's own behaviors (Meier, 2010).

This failure to distinguish between whether harm to children – or their hostility to their father – is caused by alienation or abuse sets up a paradoxically disastrous dynamic: So long as an abuser can convince a court that the children's attitudes can be labeled "alienation," he can *benefit* from the very impact of his abuse. In *Jordan v. Jordan*, the trial court found (based on two alienation psychologists' testimony) that the older of two children was severely alienated from her father, who had been found to have twice committed intrafamily offenses against the mother. Therefore, the court ruled that the legislative presumption against joint custody to a batterer was rebutted – by the child's alienation, which, the court stated, would cause her emotional damage, and which it was presumed could best be cured by more time with her father (who she adamantly refused to see). The problem with this analysis was that neither the experts nor the judge considered the possibility that the child's "alienation" may have been at least in part a reaction to the father's violence toward the mother and in front of the child, as well as his known manhandling of the child herself. As a result, the father won joint (and eventually, sole) custody, even though the possibility that the child's hostility was a function of *his own abusive behaviors* was *never ruled out* (Jordan, 2010). When this argument was put before the Court of Appeals, that Court also ignored the fact that such reasoning makes *battering a sure path to an award of custody* – so long as the children become alienated as a result. The Court simply affirmed that the alienation label is sufficient grounds to rebut the presumption against custody to batterers, without regard to whether it is the batterer's own abuse which may have caused the child's "alienation" (Jordan, 2011).

It should be noted that, while alienation researchers do not discuss child witnessing of adult domestic violence as a form of emotional child abuse, research has unequivocally found that child witnesses to adult abuse can be profoundly negatively affected and/or traumatized, even if they are not themselves the direct target of physical or sexual violence (Lewis-O'Connor, Sharps, Humphreys, Gary, & Campbell, 2006; Bancroft & Silverman, 2012). Therefore, even where children have not been directly abused themselves, their fear or hostility toward the batterer of their mother may be entirely expected.

The fact that courts are not nuanced in applying alienation theory would not in itself be sufficient to indict the theory itself. However, discussions of PA within the scholarly literature supporting the concept demonstrate that these applications of the theory are quite consistent with the way it is understood by its researchers and theorists. For instance, while on the one hand conveying a more reasonable awareness of the many factors that contribute to a child's alienation from a parent, Johnston and collaborators continue to pathologize mothers whose children are hostile or afraid of their fathers. In some of their earlier work they even go so far as to pathologize the "aligned" parent who "often fervently believes that the rejected parent is dangerous to the child in some way(s): violent, physically or sexually abusive, or neglectful" (p. 258). They go on to describe the pursuit of legal protections and other means of assuring safety as a "campaign to protect the child from the presumed danger [which] is mounted on multiple fronts [including] restraining orders…" (p. 258). Finally, like Gardner, these purported rejectors of PAS continue to assert that a parent can "unconsciously" denigrate the other parent to the child "as a consequence of their own deep psychological issues" which cause them to "harbor deep distrust and fear of the ex-spouse…" (p. 257; see also Meier, 2010). This willingness to pathologize capable mothers even extends to mothers' "warm, involved" parenting – which they assert can powerfully fuel alienation in a child (Johnston et al., 2005, p. 208; Kelly and Johnston, 2001). Such discussions are more than sufficient

to ensure that whenever a mother and child have ambivalence about the children's father, and certainly in most cases where mothers allege abuse, virtually any loving parenting by the mother can be labeled a form of "alienation."

In short, parental alienation as a theory has been built – not by scientific or empirical research, but by repeated assertions – at first more extreme assertions by Gardner, and now less extreme but still distorted assertions by more sophisticated psychological professionals. Unfortunately it has been used virtually identically to PAS in family courts, to simply turn abuse allegations back against the protective parent and children (Meier, 2010). Anecdotal experience is now being confirmed by cutting edge research into "turned around" cases, i.e., those in which a court initially disbelieves a father is dangerous and, after some harm to the children, a second court corrects the error. Preliminary results of this research have identified PA labeling as one of three primary factors leading to erroneous denials of an accused abuser (usually a father)'s dangerousness, and orders subjecting children to ongoing abuse (Silberg, 2013; Silberg & Dallam, 2013). These preliminary results indicate that at least 37% of initial case errors (10 out of 27) were attributable to PA/PAS labeling. If an additional 12 cases in which the protective parent (usually a mother) was pathologized in similar manner (without the PA label) are included ,the percentage becomes 66%. Opinions of evaluators and Guardians Ad Litem (GALs) were a key factor in the court's unprotective erroneous decision in 67% of cases (Silberg, 2013; Silberg & Dallam, 2013).

PA and PAS Labeling by Child Protection Agencies

Despite the mission of child welfare agencies to protect child safety, many such agencies appear to have adopted PAS/PA reasoning. Anecdotal reports from the field suggest that many child welfare agencies are highly skeptical of any abuse claims raised within the context of custody litigations and discount their credibility.[5] Although Gardner asserted that sexual abuse claims raised in the custody litigation context were mostly false, as noted above, the empirical research demonstrates the opposite. Nonetheless, the widespread acceptance of PAS and PA theory has legitimized many child welfare agencies' skepticism toward such allegations when made by mothers in custody or visitation litigation (Lesher & Neustein, 2005; Neustein, A., & Goetting, A., 1999). In fact, in some jurisdictions, the same custody evaluators propounding PAS and PA are working with the child welfare agency.[6] This author has been involved in and learned of numerous cases in which the child welfare agency has refused to believe or even seriously investigate mothers' and children's allegations of a father's abuse, when the case was in custody litigation. It seems that some trainings delivered to caseworkers focus on identifying and weeding out false allegations as much or more than understanding the dynamics of child abuse in the family. In one highly regarded instruction manual, two factors listed as helpful in identifying false allegations are (i) ongoing custody/ visitation litigation and (ii) the accused's denial of the abuse (Pennsylvania Child Welfare Resource Center, 2011).

PA and PAS Labeling by Custody Evaluators

NCJFCJ Guidelines for judges state:

> In contested custody cases, children may indeed express fear of, be concerned about, have distaste for, or be angry at one of their parents. Unfortunately, an all too common practice in such cases is for evaluators to diagnose children who exhibit a very strong bond and alignment with one parent and, simultaneously, a strong rejection of the other parent, as suffering from "parental alienation syndrome" or "PAS." Under relevant evidentiary standards, the court should not accept this testimony. . . (Dalton et al., 2006, p. 24).

In one case with which the author is familiar, the court's forensic evaluator posited alienation as an explanation for the mother's and child's sexual abuse allegations, after observing a single brief visit in the court supervised visitation center, in which the father

and child were observed to be warm and enthusiastic. This evaluator, who was highly regarded by the court as an expert, did not believe that such affectionate interactions would occur if the sexual abuse allegations were true. However, expert research into child sexual abuse indicates the opposite: One cannot assess the veracity of such allegations by observing the parties' interactions. Most abused children continue to love their abusive parents, and crave loving attention from them. Particularly when they know they are in a safe setting, their affection for their parent and the parent for them, may be evident (Anderson, 2005; Bancroft & Silverman, 2002).

Recent major research has now confirmed that many neutral custody evaluators actually lack meaningful knowledge or expertise in domestic violence and abuse (Saunders, Faller & Tolman, 2011). In particular, many (especially private) custody evaluators do not understand the risks to adults and children *after* separation from the abuser, do not use an objective screening instrument and do not apply knowledge from the domestic violence field about assessing dangerousness. Those lacking this information tend also to believe: "(1) DV victims alienate children from the other parent; (2) DV allegations are typically false; (3) DV victims hurt children if they resist co-parenting; (4) DV is not important in custody decisions; and (5) coercive-controlling violence in the vignette was not a factor to explore" (Saunders, Faller & Tolman, 2011). These same evaluators were found to hold "patriarchal" norms (Saunders, Faller & Tolman, 2011). Both this study and other smaller ones have consistently found that custody evaluators fall into two groups: those who understand domestic violence and abuse and believe it is important in the custody context, and those who lack such understanding, are skeptical of abuse allegations and believe they are evidence of alienation (Saunders, Faller & Tolman, 2011; Haselschwerdt and Hardesty, 2010; O'Sullivan, 2011; Erickson and O'Sullivan, 2010). The fallability and ideology of custody evaluators is perhaps best summed up by one of these researchers: "The study showed that what the evaluator brings to the case has more influence on the family's fate than the facts of the case" (O'Sullivan, 2011). Particularly if actual physical violence was not extreme, many such evaluators (and judges) conclude that the perpetrator is not particularly dangerous and that women's and children's fears are overstated or simply fueled by vengeance.

These gaps in evaluators' and judges' appreciation of abuse dynamics and risks are reinforced by the strong emphasis in family courts and mental health training on the importance of children retaining robust relationships with their noncustodial parents after divorce. This leads to a dominant emphasis on "co-parenting" as the prime value by which custody litigants are judged. Thus, the National Council of Juvenile & Family Court Judges in its guide for judges on custody evaluations states, "[e]valuators may ... wrongly determine that the parent is not fostering a positive relationship with the abusive parent and inappropriately suggest giving the abusive parent custody or unsupervised visitation in spite of the history of violence..." (Dalton et al., 2006, p. 25). Alienation theory perfectly and problematically reinforces this emphasis on litigants agreeing to "share" parenting rather than restricting the other parent.

Strategy Issues for Litigants in Specific Cases

Expert Witnesses

The ideal strategy for combating PAS/PA claims leveled against an abuse survivor is the production of an expert to testify that PAS is not valid "science." Such an expert should also explain how PAS and PA are widely used to distract from and undermine an objective assessment of past abuse and future risk. Such expert testimony may be effective in persuading the trial judge to discount PAS or PA claims where there is evidence of abuse. The expert can also help the court understand the dynamics of the particular abuse alleged in the case, including the counter-intuitive aspects of child sexual abuse, or the controlling and coercive tactics used by abusers, which may help a court understand why a lack of severe overt violence does not make abuse

allegations fraudulent. However, even if expert testimony does not result in success at trial, the creation of a strong scientifically based record at trial will increase the chances that a PAS or PA-based ruling can be overturned on appeal.[7] Litigants and their advocates and experts should argue that PA should be treated – at most – as merely a behavior that does not by itself indicate anything other than the need for an individualized assessment of each child, their attitudes toward their parents, and the reasons therefor. Abuse allegations must be thoroughly and independently assessed, regardless of alienation claims (Drozd & Olesen, 2004; Meier, 2010). Ideally, alienation claims should be excluded unless and until abuse is *ruled out*. Otherwise, the alienation label is too easily used to cut short any serious consideration of abuse, and to re-frame true abuse as alienation, a dangerous error, as recent research indicates. For this reason, a popular "decision tree"[8] by leading scholars and forensic psychologists, which invites evaluators to assess *both abuse and alienation* simultaneously, is likely to simply continue the same problems already seen with the misuse of alienation (Meier, 2010).

However, it is the rare custody litigant who can locate and afford to pay a genuine expert on these subjects. Moreover, not all courts are persuaded by such testimony, and PAS and PA claims in custody litigation can be particularly tenacious and difficult to refute. Because PAS theory is so circular – deeming all claims, evidence and corroboration of abuse allegations merely to be further evidence of the "syndrome" – direct rebuttal is virtually impossible. Advocates and survivors in such situations have sometimes concluded that backing off of abuse allegations may be the only way to reduce the courts' focus on purported alienation by the mother. A troubling number of mothers have lost custody and even all contact with their children as a result of seeking to protect them from their fathers' abuse (Lesher & Neustein, 2005; Petition in Accordance, 2006). In this context, painfully tolerating unsupervised visitation or even joint custody with an unsafe father may be seen as the lesser of two evils. However such a resolution may not be permanent, as many abusive parents keep returning to court until they can wrest custody from the protective parent, which is frequently the punishment inflicted on protective parents who continue to report their children's complaints of abuse after being with their other parent.

Alienation by Batterers

Another strategic dilemma arises for victims of domestic violence (typically women) who have observed their abuser (typically men) to be actively alienating the children from their victim-parent. This is most common where the abusive parent is awarded full custody; however, it can also happen to a lesser extent whenever an abuser has unsupervised access to the children. As most advocates for abuse survivors know, what courts call "alienation," i.e., undermining a child's relationship with the other parent for illegitimate reasons, is a common behavior of abusers (Bancroft & Silverman, 2002; Johnston, 2005). In such cases, th esurvivor and her advocate must decide whether to invoke "parental alienation" against the perpetrator. On one hand, to do so would be to validate a concept of dubious validity which has been widely misused against female victims of abuse, and which has been vigorously opposed by domestic violence experts and advocates. One advocate has coined the term "maternal alienation" to distinguish batterer-perpetrated alienation from the much maligned "parental alienation" which is most often used against mothers (Morris, 2004). This term has yet to catch on in the field, and it seems this phrase could also easily be misconstrued as describing mothers who alienate their children. Given many courts' hostility to alleged alienation, as well as the genuine harm that abusers' combination of intimidation and terror with alienating conduct can engender by undermining children's safe relationship with their protective parent, the decision as to whether to allege alienation against an abusive father is not easily made. An alternative term that advocates for abuse victims may wish to use is "Domestic Violence by Proxy," a phrase which captures the way adult batterers may abuse children to hurt the children's mother (Leadership Council, 2009). However it is not clear whether this term captures non-violent alienating conduct.

An Abuse-Sensitive Approach to Adjudicating Parental Alienation Allegations

Given the inherent problems with even the reformulated concept of parental alienation, and given also the facts that (1) alienating behavior is indeed a factual reality, most often engaged in by abusive fathers, and (2) courts and evaluators are unlikely to abandon the concept, this paper seeks to provide an approach to alienation that, if implemented conscientiously, would cabin alienation's use to those cases where it is a legitimate issue. Such a proposal is currently most relevant to forensic evaluators and Guardians Ad Litem, but ideally, it would also become judicial practice to require that abuse be ruled out before alienation is considered. This approach could be adopted through state legislation, court policy, or individual judicial practice. The steps are the following:

1. **Assess abuse first.** Abuse should always be assessed – first – whenever there are allegations of abuse. If abuse claims are verified, or substantial risk exists, the remainder of the evaluation should be guided by safety and protection as the dominant concerns, with relationship preservation as only the secondary concern.

2. **Require evaluators to have genuine expertise in both child abuse and domestic violence.** Evaluators who lack such expertise should be required (as is implied by the APA's ethical custody evaluation guidelines, 1994, 2009) to bring in an outside expert. Real "expertise" requires more than one or two continuing education seminars. It requires in-depth training in abuse and/or in working with abused children and/or adults. The new and extensive research consistently shows that custody evaluators' opinions and recommendations are largely determined by their pre-existing beliefs and biases: in particular, those lacking meaningful domestic violence knowledge cannot be trusted to accurately assess abuse allegations and their implications for child well-being. Rather, the research proves that these evaluators bring inaccurate presumptions to these cases, including an assumption that women's abuse allegations are often false and merely a form of alienation, along with a lack of appreciation of the genuine danger posed by the abuser and the need for objective risk assessment. Precisely because assessments of abuse are empirically demonstrated to be dependent on the assessor's predispositions to believe or not believe such claims, actual training and *experience working with abused populations* should be a necessary pre-requisite for a valid assessment.

3. **Once abuse is found, an abuser's alienation claims against the victim should not be considered.** Virtually every article about alienation and abuse – including Gardner's – gives lip service to the principle that if abuse is real, then alienation is not. However, the current trend propounded by both Johnston and Kelly (2004a, 2004b) and Drozd and Olesen (2004) toward a "multivariate" approach, which evaluates abuse and alienation simultaneously, unavoidably gives too much weight to alienation claims in a manner which inevitably undermines accurate assessment of the validity and impact of real abuse claims (Meier, 2010). Alienating conduct bound up with a batterer's pattern of abuse should be identified as part of the abuse.

4. **A finding of alienation should not be based on unconfirmed abuse allegations or protective measures by the favored parent.** Consider a small thought experiment: When fathers allege that mothers or their new partners are abusing the child, and courts do not confirm the allegation, would it be normal to treat the father as a pernicious alienator from whom the child must be protected? In this author's experience, it is unlikely that experienced family lawyers or evaluators would expect – or advocate for – such treatment. The same standard should hold true for mothers alleging the father is an abuser. In short, alienation should not be linked to abuse allegations at all. If alienation is a

serious concern, then it must be one independent of abuse allegations. To treat abuse allegations as the hallmark of alienation, as is normally done in courts today, is simply to fall into the trap illuminated above – of misusing a claim of alienation to defeat, neutralize, or undermine the seriousness or validity of allegations of abuse. The two concerns should stand or fall – if at all – on their own.

5. **Alienation claims should be considered only under two conditions: If (i) other developmental or understandable causes of the child's hostility are ruled out, and (ii) there is specific concrete behavior by the favored parent which was intended to cause the child to dislike his/her father.** The alienation researchers consistently acknowledge that children may be alienated from a parent for a multiplicity of reasons, almost always including the disfavored parent's own behavior. Therefore it is critical to avoid leaping to the "alienation" label, as a means of attributing blame to the mother, unless and until other explanations for a child's hostility are ruled out. This approach excludes cases where the parent is engaged in some degree of alienating conduct (e.g., remarks) but the child is not in fact alienated (the vast majority of children, according to Johnston's research). It excludes cases where the preferred parent is hostile to the other parent but does not intentionally and concretely seek to alienate the child. It also excludes cases where the child is unreasonably hostile but the preferred parent is not the cause. Finally, it excludes cases where the child's hostility is understandable in light of his or her experiences with the disliked parent. These exclusions follow logically if we are to eliminate the misuse of alienation theory to blame protective parents and/or silence abused children. In short, as noted above, true "alienation" – in the sense of a child's estrangement malevolently or pathologically cultivated by the preferred parent – is at issue in only a tiny fraction of cases, i.e., some fraction of the 6% of severely alienated children Johnston et. al. identified in divorcing/separating families.

   In these rare cases, if a child is found to be unreasonably hostile to the other parent (i.e., the child refuses to visit or is incorrigibly resistant when visiting), the evaluation must seek to determine a cause for the unreasonable hostility. In addition to the above potential reasons (abuse, neglect, batterer-instigated alienation), emotional betrayals by the disliked parent, and developmental and situational cuases, e.g., the divorce itself, must be considered. In seeking to identify parentally-caused estrangement/ alienation, evaluators should be precluded from giving weight to protective measures such as filing court protective petitions or reporting to child protection. Otherwise, the alienation label becomes once again nothing more than a penalty for disbelieved abuse allegations.

6. **A parent may be called an alienator only where the parent consciously intends the alienation and specific behaviors can be identified.** In one case described earlier, the court explicitly found that the mother was not coaching the child, but posited that her own personal hostility to the father (due to his abuse) was unconsciously causing the child to invent sexual abuse scenarios (W v F, 2007). (Of course, this theory would be sufficient to negate all children's reports of abuse – since inter-parental hostility can be inferred in most custody battles.) Such unfounded judicial or evaluator theorizing has been legitimized by the widespread acceptance of the pop psychology attached to the PAS theory and propounded by Gardner and other PAS proponents. The best cure is a clean one: Psychoanalyzing should be prohibited; only identifiable behaviors should be considered in assessing for alienation.

7. **Remedies for confirmed alienation are limited to healing the child's relationship with the estranged parent.** Under this proposal, in the rare cases where problematic alienation is found

(again, after neglect, abuse, batterer-instigated alienation, and other descructive behaviors are ruled out), evaluators should not seek to undercut the child's relationship with the preferred parent, but rather, to strengthen the child's relationship with the parent from whom s/he is estranged. Thus, family therapy between the child and the estranged parent, therapy for the child, and/or therapy for the preferred parent, might be appropriate. Orders to both parents to cease any derogatory discussion of the other parent may be appropriate. Forced change of custody is not appropriate, unless the child's relationship with the estranged parent is sufficiently healed to make the child comfortable with such a prospect (Johnston, 2004b, 86-87).

Despite the problems in some of Johnston's writings, her research also confirms what many in the field already knew: Children are resilient, and they are not easily brainwashed into rejecting another parent, at least not without active abuse, coercion and terrorizing. Courts and evaluators should operate from a healthy appreciation for the range of imperfect parenting that children everywhere survive, and for the strength of children's hard-wired love for both parents. They should ensure that safe and loving relationships are made available and invited to flourish, and should trust that children will discern the truth about their loving parents so long as they are able to experience them directly. This is especially true given that courts' over-reaction to alleged alienation is resulting in widespread disbelief of abuse claims, many of which are valid, and subjection of children to the parents they fear, who are in many cases their or their mothers' abusers. The risks and harms to children from this extreme reaction to alienation concerns – now being scientifically documented – far outweigh the risks of inaction, even when a child hates or fears a parent for illegitimate reasons.

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Endnotes

1. Gardner was "an unpaid volunteer" who taught at times in the Columbia Medical School's division of child and adolescent psychiatry. The New York Times (June 14, 2003, correction), http://query.nytimes.com/gst/fullpage.html?res=9F05E0DB1539F93AA35755C0A9659C8B63

2. Over time, Gardner expanded the theory to address any case where a child has been "programmed" by one parent to be "alienated from the other parent" – and even stated that sexual abuse claims arise in only a minority of PAS cases (Gardner, 2002, p. 106).

3. Gardner's mental instability was tragically revealed when he committed suicide in 2003 by stabbing himself to death. The New York Times (June 14, 2003) http://query.nytimes.com/gst/fullpage.html?res=9F05E0DB1539F93AA35755C0A9659C8B63; http://en.wikipedia.org/wiki/Richard_A._Gardner

4. One lawyer's website says "PAS--sometimes called Parental Alienation (PA)—is a disorder that arises primarily in the context of child-custody disputes." (The Custody Center, n.d., line 1-2). Gardner himself acknowledged that many evaluators use "parental alienation" in court to avoid the evidentiary attacks that use of "PAS" would invite (Gardner, 2002). In practice, then, it seems that many practitioners conflate the two concepts.

5. One agency is known to treat Sunday nights as "custody night" because of the bump up in hotline calls that are received when children return from visits with their noncustodial fathers. Child welfare agencies' discounting of child abuse claims in the context of custody litigation is hard to find in written policy documents, but it is common experience among litigants, lawyers, and child welfare workers, that the credibility of such claims are discounted and that investigations are often declined in deference to the custody court.

6. This was true in one of the author's cases: *Oates v. Oates*, 2008 (documents on file with author). No matter how many reports were made of the children's abuse, the child welfare agency consistently rebuffed them. Not until after the litigation was it discovered that the custody evaluator who had "diagnosed" PAS, was also a primary advisor to the child welfare agency.

7. Surveys have indicated that appeals in domestic violence cases are surprisingly successful: an unscientific survey by this author of appeals in custody cases where

domestic violence was alleged found that 2/3 of awards to accused or adjudicated batterers were reversed on appeal (Meier, 2003). This is a staggering reversal rate, given the deference that appellate courts normally give to trial courts in custody cases.

8. Access the "decision tree" in: Drozd, L.M. & Olesen, N.W. (2004). Is it abuse, alienation, and /or estrangement? A decision tree. *Journal of Child Custody, 1*(3), 65-106. Available at: http://www.drdrozd.com/articles/DrozdOlesenJCC1(3)2004.pdf

References

Ackerman, M.J., & Dolezal, S. (2006). Experienced Custody Evaluators' Views of Controversial Issues. *American Journal of Family Law, 5*, 200-205.

Alford, N.M. (2003). Report of Court-Ordered Observations, dated Jun 16, 2003, in *Wilkins v. Ferguson*, DR-757-01 (on file with author).

American Psychological Association. (1996). Report of the American Psychological Association Presidential Task Force on Violence and the Family. Washington, DC: APA.

Anderson, C. (2005). Report in Wilkins v. Ferguson, DR-757-01 (on file with author).

Bancroft, L., & Silverman, J. (2012). *The Batterer as Parent 2: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, CA: Sage Publications.

Bruch, C.S. (2001). Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases. *Family Law Quarterly, 35*, 527-552.

Childress, S. (2006, September 25). Fighting Over the Kids: Battered Spouses Take Aim at a Controversial Custody Strategy. *Newsweek*.

The Custody Center. (n.d.). What is Parental Alienation Syndrome (PAS)? Retrieved May 15, 2007, from www.custodycenter.com/PAS

Crary, D. (2012). Parental alienation not a disorder, American Psychiatric Association says, available at http://www.huffingtonpost.com/2012/09/21/parental-alienation-is-no_n_1904310.html

Dallam, S. (1998). Dr. Richard Gardner: A Review of his Theories and Opinions on Atypical Sexuality, Pedophilia, and Treatment Issues. *Treating Abuse Today, 8*(1), 15-22.

Dalton, C., Drozd, L., & Wong, F. (2006). *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Rev. ed.). Reno, NV: National Council of Juvenile & Family Court Judges.

Drozd, L., & Olesen, N. (2004). Is it Abuse, Alienation, and/or Estrangement? A Decision Tree. *Journal of Child Custody, 1*(3), 65-106.

Emery, R.E., Otto R.K., & O'Donohue, W.T. (2005). A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System. *Psychological Science in the Public Interest, 6*(1), 1-29.

Erickson, N. (2007). Electronic message from Nancy Erickson (May 16, 2007), containing message from William Narrow, M.D., M.P.H., Research Director, DSM-V Task Force (March 13, 2007) (on file with author).

Erickson, N. and O'Sullivan C. (2011) Doing our Best for New York's Children: Custody Evaluations when Domestic Violence is Alleged, *NYS Psychologist, 23*: 2.

Faller, K.D. (1998). The Parental Alienation Syndrome: What Is It and What Data Support It? *Child Maltreatment, 3*(2), 100-115.

Faller, K.D. (2000). *Maltreatment in Early Childhood: Tools for Research Based Intervention*. NY: Routledge.

Gardner, R.A. (1987). *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (1992a). *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (1992b). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics.

Gardner, R.A. (2002). Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child Custody Disputes? *The American Journal of Family Therapy, 30*(2), 93-115.

Gould, J.W. (2006). *Conducting Scientifically Crafted Child Custody Evaluations* (2nd ed.). Sarasota, FL: Professional Resource Press.

Haselschwerdt, M. L., Hardesty, J. L., & Hans, J. D. (2011). Custody evaluators' beliefs about domestic violence allegations during divorce: Feminist and family violence perspectives. *Journal of Interpersonal Violence, 26*(8), 1694-1719.

Hoult, J. (2006). The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy. *Children's Legal Rights Journal, 26*(1), 1-61.

Johnston, J.R. (2005). Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child. *Family Law Quarterly, 38*, 757-775.

Johnston, J.R., & Kelly, J.B. (2004a). Rejoinder to Gardner's 'Commentary on Kelly and Johnston's 'The Alienated Child: A Reformulation of Parental Alienation Syndrome.' *Family Court Review, 42*(4), 622-628.

Johnston, J.R., & Kelly, J.B. (2004b). Commentary on Walker, Brantley, and Rigsbee's (2004) 'A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court.' *Journal of Child Custody, 1*(4), 77-89.

Johnston, J.R., Walters, M.G., & Olesen, N.W. (2005). Is It Alienating Parenting, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes. *Journal of Child Custody, 5*, 191-218.

Jordan v. Jordan, 14 A.3d 1136 (D.C. 2011).

Jordan v. Jordan, Brief of Appellant, FM - 10-FM-375 (2010)(on file with author)

Kelly, J., & Johnston, J. (2001). The Alienated Child: A Reformulation of Parental Alienation Syndrome. *Family Court Review, 39*(3), 249-266.

Lasseur, D., & Meier, J. (2005). Response to the Father and Families "Critique of the Scientific Basis for Key Assertions in Breaking the Silence: Children's Stories" (on file with the author).

Lesher, M., & Neustein, A. (2005). *From Madness to Mutiny: Why Mothers Are Running from the Family Courts – and What Can Be Done about It*. Lebanon, NH: University Press of New England.
Lewis-O'Connor, A., Sharps, P.W., Humphreys, J.,

Gary, F.A., & Campbell, J. (2006). Children Exposed to Intimate Partner Violence. In M.M. Feerick & G.B. Silverman (Eds.), *Children Exposed to Violence* (pp. 3-28). Baltimore: Paul H. Brookes Publishing Co.

Licata v. Licata (2003). Brief and Appendix for Defendant-Respondent, Docket No. A-00660-02T3, Superior Court of New Jersey Appellate Division, June 1, 2003.

Meier, J. (2010). Getting Real about Abuse and Alienation: A Response to Drozd and Olesen. *Journal of Child Custody, 7*:4, 219-252.

Meier, J. (2003). Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions. *American University Journal of Gender, Social Policy & the Law, 11*(2), 657-731.

Morris, A. (2004, September). The Story of Naming Maternal Alienation: New Research Enters Policy and Practice. Paper presented at Home Truths Conference, Melbourne, Australia. Retrieved November 26, 2008, from www.thelizlibrary.org/liz/maternalalienation.doc

Myers, J., Berliner, L., Briere, J., Hendrix, C.T., Jenny, C., & Reid, T.A. (Eds.). (2002). *The APSAC Handbook on Child Maltreatment* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Neustein, A., & Goetting, A. (1999). Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse. *Journal of Child Sexual Abuse 8*(4),103-122.

Martine "Tina" Oates v Michael "Micky" Oates, 2010 Ark. App. 345

O'Sullivan, C. S. (2010). *Custody Evaluations when There Are Allegations of Domestic Violence: Findings and Implications for the Court*. AFCC Ninth Symposium on Child Custody Evaluations, October 28-30, 2010, Cambridge, MA.

Parental Alienation Awareness Organization. (n.d.). Parental Alienation Awareness. Retrieved November 26, 2008, from http://www.parental-alienationawareness.com/awarness-articles.asp

Parental Alienation Awareness Organization-United States. (n.d.). What's new. Retrieved November26, 2008, from http://www.paao-us.com/whats_new.html

Pearson, J. (1993). Ten Myths about Family Law. *Family Law Quarterly, 27*(2), 279-299.

Pennsylvania Child Welfare Resource Center. (2011). Curriculum and Handouts, Retrieved August 13, 2013 from http://www.pacwcbt.pitt.edu/Curriculum/204%20Intake%20and%20Investigation/Handouts/HO%2011%20Knowingly%20False%20Reports.pdf

People v. Fortin, 289 A.2d 590 (N.Y. App. Div. 2001).

People v. Loomis, 658 N.Y.S.2d 787 (N.Y.Ct.Ct. 1997).

Petition in Accordance with Inter-American Commission on Human Rights, Retrieved November 26, 2008, from http://www.stopfamilyviolence.org/ocean/host.php?folder=133&page=468&T=

Ragland, E.R., & Field, H. (2003). Parental Alienation Syndrome: What Professionals Need to Know. *Update Newsletter, 16*(6). Alexandria, VA: National District Attorneys Association's American Prosecutors Research Institute. Retrieved October 30, 2005, from www.ndaa.org/publications/newsletters/ update_volume_16_number_6_2003.html

Righthand, S., Kerr, B., & Drach, K. (2003). *Child Maltreatment Risk Assessments: An Evaluation Guide. NY: Routledge.*

Rueda, C.A. (2004). An Inter-Rater Reliability Study of Parental Alienation Syndrome. *The American Journal of Family Therapy, 32,* 391-403.

Smith, R., & Coukos, P. (1997). Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations. *The Judges' Journal*, *36*(4), 38-42, 54-56.

Saunders, D., Faller, K. & Toman, R. (2011). *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations*, Final Technical Report submitted to the National Institutes of Justice.

Silberg, J. (2013). *When Allegations of Abuse Intersect with Intimate Partner Violence, Divorce and Separation*, Presentation to Child Welfare Agency of Montgomery County (on file with author)

Silberg, J., Dallam, S. & Samson, E. (2013). *Crisis in a Family Court: A Look at Turned-Around Cases*. Final report submitted to the Office on Violence Against Women, Department of Justice.

Snyder v. Cedars, 2006 Conn. Super. LEXIS 520 (2009)

Steinberger, C. (2006). Father? What Father? Parental Alienation and its Effect on Children. *Law Guardian Reporter, 22*(3). Published by the Appellate Divisions of the Supreme Court of the State of New York August, 2006 Volume XXII, Issue III. Retrieved November 26, 2008, from http:// www.drhavlicek.com/Parent%20Alienation%20Effects%20on%20Children.htm

Talan, J. (2003). The debate rages on . . . In Death, Can He Survive? Newsday.com July 1, 2003. Retrieved November 12, 2008, from www.leadershipcouncil.org/1/pas/talan.html

Thoennes, N., & Tjaden, P. (1990). The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes. *Child Abuse and Neglect, 14*, 151-163.

Trocme, N., & Bala, N. (2005). False Allegations of Abuse and Neglect When Parents Separate. *Child Abuse & Neglect, 29*(12), 1333-1345.

Waller, G. (Producer). (2001). *Small Justice: Little Justice in America's Family Courts* [Motion picture]. Seattle, WA: Intermedia Inc.

Wallerstein, J.S., & Kelly, J.B. (1976). The Effects of Parental Divorce: Experiences of the Child in Early Latency. *American Journal of Orthopsychiatry, 46*(1), 20-32.

Wallerstein, J.S., & Kelly, J.B. (1980). *Surviving the Breakup: How Children and Parents Cope with Divorce*. New York: Basic Books.

Wallerstein, J.S., Lewis, J.M., & Blakeslee, S. (2000). *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*. New York: Hyperion Books.

Wilkins v. Furguson, 928 A.2d 655 (D.C. 2007) (Litigation file in possession of author)

Wood, C. (1994). The Parental Alienation Syndrome: A Dangerous Aura of Reliability. *Loyola of Los Angeles Law Review, 27*, 1367-1415.

Zorza, J. (1992). 'Friendly Parent' Provisions in Custody Determinations. *Clearinghouse Review, 29*, 921-925.

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