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To cite this article: Joyanna Silberg & Stephanie Dallam (2019) Abusers gaining custody in family courts: A case series of over turned decisions, Journal of Child Custody, 16:2, 140-169, DOI: [10.1080/15379418.2019.1613204](https://doi.org/10.1080/15379418.2019.1613204)

To link to this article: <https://doi.org/10.1080/15379418.2019.1613204>



Published online: 02 Jul 2019.



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# Abusers gaining custody in family courts: A case series of over turned decisions

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## ABSTRACT

This article presents findings and recommendations based on an in-depth examination of records from 27 custody cases from across the United States. The goal of this case series was to determine why family courts may place children with a parent that the child alleges abused them rather than with the nonoffending parent. We focused on “turned around cases” involving allegations of child abuse that were at first viewed as false and later judged to be valid. The average time a child spent in the court ordered custody of an abusive parent was 3.2 years. In all cases we uncovered the father was the abusive parent and the mother sought to protect their child. Results revealed that initially courts were highly suspicious of mothers’ motives for being concerned with abuse. These mothers were often treated poorly and two-thirds of the mothers were pathologized by the court for advocating for the safety of their children. Judges who initially ordered children into custody or visitation with abusive parents relied mainly on reports by custody evaluators and guardians *ad litem* who mistakenly accused mothers of attempting to alienate their children from the father or having coached the child to falsely report abuse. As a result, 59% of perpetrators were given sole custody and the rest were given joint custody or unsupervised visitation. After failing to be protected in the first custody determination, 88% of children reported new incidents of abuse. The abuse often became increasingly severe and the children’s mental and physical health frequently deteriorated. The main reason that cases turned around was because protective parents were able to present compelling evidence of the abuse and back the evidence up with reports by mental health professionals who had specific expertise in child abuse rather than merely custody assessment.

## ARTICLE HISTORY

Received 21 November 2018  
Revised 17 May 2019  
Accepted 3 March 2019

## KEYWORDS

Adolescents; alienation in child custody cases; child custody; children; sexual abuse

## Introduction

In most cases, conflicts around custody and access are resolved by the parents outside of court. If the parents are unable to reach such an agreement, the court must help to determine the decision-making authority and

physical contact each parent will have with the child. Research suggests that contested custody cases often represent a high prevalence of family violence compared to the general population of divorcing adults (Bruch, 2001; Jaffe, Zerwer, & Poisson, 2004). Family violence may take the form of physical, psychological, and/or sexual assault. However, research suggests that family courts may fail to take allegations of abuse seriously, solely based on the fact that they surfaced during a custody dispute (Thoennes & Tjaden, 1990; Meier, 2013).

Problems in family court have increasingly come to the attention of the media, with dramatic stories of homicide following judges' refusal to grant protective orders (Borden, 2013; Morse, 2009), mothers losing custody to abusers (Waller, 2001; 2011), and children fleeing after placement with their alleged abuser (Silva, 2012). Studies have found that family courts are often highly suspicious of mother's motives for being concerned with abuse and mothers who raise concerns are often treated poorly and receive less than favorable custody rulings (Faller & DeVoe, 1996; Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005; Saccuzzo & Johnson, 2004). Faller and DeVoe (1996) reported that women were often sanctioned for reporting abuse. These sanctions included being jailed; losing custody to the alleged offender, a relative, or foster care; limitation or loss of visitation; admonitions not to report alleged abuse again to the court, Protective Services, or the police; and prohibitions against taking the child to a physician or therapist because of concerns regarding sexual abuse in the future.

The problem has also been analyzed by the Leadership Council on Child Abuse and Interpersonal Violence (2008) using empirical data to estimate that 58,000 children a year are placed in the custody of an abuser. In 2018, Congress looked into this matter and passed House Resolution, 72, which noted that in the preceding 10 years researchers have documented a minimum of 653 children murdered in the United States by a parent involved in a divorce, separation, custody, visitation, or child support proceeding, often after access was provided by family courts over the objections of a protective parent (PP). Congress urged family courts to take actions to safeguard children during custody disputes. The Office on Violence Against Women (OVW) housed within the Department of Justice sought research to address the issue of perpetrators gaining custody. The current study was funded as part of OVW's attempt to better understand this critical issue.

A number of factors have been mentioned in the literature to explain why children may be placed at risk by family courts. These factors include: (a) lack of education in domestic violence and child abuse (Bow & Quinell, 2001; Gourley & Stolberg, 2000; Saunders, Faller, & Toman, 2011); (b) gender bias and pathologizing mothers reporting abuse (Rivera, Zeoli & Sullivan, 2012; Saunders et al., 2011); (c) the inappropriate use and

interpretation of psychological testing (Bancroft & Silverman, 2002; Erickson, 2005); and (d) the strong legal presumption in favor of joint custody and “friendly parent” provisions (Dore, 2004; Rivera et al., 2012).

Saunders et al. (2011) studied child custody and visitation decisions in domestic violence cases and concluded that the most unsafe parenting plans were derived by evaluators who had limited knowledge of domestic violence and the dynamics of abuse. Bow and Quinnell (2001) found that the vast majority of child custody evaluators had no graduate school or internship/postdoctoral training in the child custody area. In a survey of custody evaluators, Gourley and Stolberg (2000) found that about three-quarters indicated that their primary child custody training method was reading books and journal articles. Accordingly, evaluators regularly fail to investigate allegations of abuse, dismissing them on the basis of their impressions of the parties or the results of psychological testing (Bancroft & Silverman, 2002). Rivera, Zeoli and Sullivan (2012) found that if an abusive father acts calm, professional, or charming, the woman’s allegations are less likely to be believed by the mediator—even if she has a restraining order against him. Saunders et al. (2011) found that patriarchal beliefs remain one of the strong influences in evaluators making recommendations that imperil children’s safety.

Patriarchal beliefs go hand in hand with pathologizing mothers who raise concerns about abuse. One of the main pathologies attributed to mothers who raise abuse concerns is that of being an “alienator” (i.e., inducing parental alienation in their children). The term “parent alienation” refers to a concept created by psychiatrist Richard Gardner (2003), who maintained that it was a widespread psychiatric syndrome in children. Gardner defined Parental Alienation Syndrome (PAS) as follows:

The parental alienation syndrome (PAS) is a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child’s campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent’s indoctrinations and the child’s own contributions to the vilification of the target parent. (p. 2)

Gardner’s work has been subjected to widespread criticism (see, e.g., Clemente & Padilla-Racero, 2016; Meier, 2013). It has been criticized for being misogynistic (Laing, 1999; Milchman, 2017), relying on circular reasoning (Hoult, 2006), relying on vague and subjective criteria (Faller, 1998), and because the assessment and treatment of PAS has never been subjected to adequate empirical testing (O’Donohue, Benuto, & Bennett, 2016; Saini, Johnston, Fidler, & Bala, 2016). The proposed syndrome was based on Gardner’s clinical impressions of custody cases he believed involved false allegations of child sexual abuse (Gardner, 1987). At the time, Gardner was a frequent expert witness, most often on behalf of fathers accused of

molesting their children (Sherman, 1993). Without citing any evidence, Gardner (1987) claimed that PAS is responsible for most accusations of child sexual abuse that are raised during custody disputes, and that “in custody litigation ... the vast majority of children who profess sexual abuse are fabricators” (p. 274). Contrary to Gardner’s assertions in this regard, research shows deliberately false allegations are rare (U.S. Department of Health & Human Services, 2010) with minimal or no increase in false reporting during custody litigation (see Dallam & Silberg (2014) for a review). Research further indicates, that the majority of false allegations of maltreatment in the context of custody disputes derive from misinterpretations or misperceptions rather than calculated false allegations (Bala, Mitnick, Trocme, & Houston, 2007; Thoennes & Tjaden, 1990).

The reality of domestic violence and child abuse were largely ignored in Gardner’s early writings on his theory. Problems in a child’s relationship with one parent were simply blamed on the other parent—usually the mother (see Gardner, 1992). Negative programing by the favored parent is assumed *a priori* as the main cause of the syndrome. PAS thus provides a ready-made defense for parents accused of abuse and is frequently introduced in custody cases in order to discredit allegations of family violence or abuse (Bruch, 2001). Gardner’s recommended treatment for parental alienation involves coercive and punitive treatments for both the mother and the child with sole custody often being awarded to the alleged abuser (Dallam & Silberg, 2016). These treatments have not been adequately studied for efficacy (see Mercer (*in press*), this issue) and Johnston and Kelly (2004) described them as “a license for tyranny” (p. 625).

Gardner’s theory of PAS has been difficult to overcome because he relied on popular gender and cultural myths (see Dallam & Silberg, 2006, for a review) and offered courts a simple approach for complex cases. Gardner made no attempt to perform a behavioral or observational approach to his assessment of the family. Instead, the alienating parent was painted by Gardner as pathological and completely to blame for the child’s position. The rejected “victim parent” in Gardner’s theory was considered totally blameless (Gardner, 2003, p. 16). In actuality, when a child rejects a parent there is a wide range of possible explanations including normal developmental conflicts with a parent, separation anxiety with the preferred parent, abuse or neglect, and so forth (e.g., Faller, 1998; Garber, 1996). Moreover, research on the topic has found that rejected parents often have contributed to their situation. For example, in a survey of 292 young adults whose parents had divorced when they were young, Huff (2015) found that participants were not influenced to reject a parent due to manipulation by the other parent; instead, they tended to align with the parent who exhibited

the most caring behavior toward them and reject parents who were violent or perceived as less caring.

Current proponents of parental alienation theory (e.g., Bernet, 2008; Warshak, 2015), no longer attach the word “syndrome” when describing parental alienation, yet, they have continued many of Gardner’s approaches to evaluation and treatment. Consequently, many of the same criticisms of Gardner’s original writings may be applicable (Houchin, Ranseen, Hash, & Bartnicki, 2012; Meier, 2013). For example, Bernet (2008) suggests that parental alienation is a “relational disorder” rather than a syndrome; yet, it uses almost identical criteria as Gardner’s original conceptualization. Many newer formulations of parental alienation also rely on Gardner’s simplistic view of the preferred parent being primarily to blame for the child’s rejection of the other parent while paying minimal attention to the many other factors that might influence a child’s relationship with their parent. A more empirical approach has been offered by Drozd, Olesen, and Saini (2013). They propose using a multiple hypotheses approach to consider all potential factors impacting a child’s relationship with a rejected parent to avoid the simplified attribution of blame advocated by Gardner.

At the current time, definitions of parental alienation and methods of operationalizing this concept differ among proponents to such an extent that the body of literature on the phenomenon cannot be reliably synthesized to assess its overall validity (Saini et al., 2016). As such, none of this work has reached a point of scientific credibility; yet, family courts continue to rely on the alienation construct when making custody determinations.

The routine use of psychological tests to help determine the best custody arrangement for children has been noted as another factor that may favor perpetrators over PPs (see Erickson, 2005). While this testing is done in an attempt to increase the objectivity of the evaluator’s decisions, Tippens and Wittman (2005) argued that these tests have little scientific validity in custody evaluations and evaluators typically extend their conclusions beyond what the data they generate would merit. Even well-established psychological measures (e.g., measures of intelligence, personality, psychopathology, and academic achievement) are problematic because they are poor predictors of parenting capacity (Gottfried, Bathurst, & Gottfried, 2004) and have limited relevance to the questions before the court (Emery, Otto & O’Donohue, 2005). In addition, psychological tests like the Minnesota Multiphasic Personality Inventory (MMPI) are not normed on women who have suffered domestic violence and may produce misleading results in traumatized women. For example, The MMPI may initially indicate a personality disorder that leads a custody evaluator to question her parental

fitness, yet elevated scores often return to normal when a woman achieves safety (Erickson, 2005).

Psychological assessment of an alleged perpetrator is particularly difficult due to the high degree of denial among offenders, and the absence of a typical test profile for offenders (Becker & Murphy, 1998). Similarly, there is no psychological test that can determine whether or not a person has abused a child (American Psychological Association Ad Hoc Committee on Legal and Ethical Issues in the Treatment of Interpersonal Violence, 1997). Nor is there any psychological test that can establish whether a mother's concern about abuse is factual (Bancroft & Silverman, 2003). These discriminations depend on extensive knowledge of the dynamics of abuse and domestic violence, which may not be part of custody evaluator expertise (Saunders et al., 2011).

Another factor that can lead to unsafe custody placements is joint custody presumptions and "friendly parent" statutes, which are routinely applied throughout the United States (Zorza, 1992). In a study of battered women's experience in family court, Rivera et al. (2012) found that family courts prefer to award joint custody even when one partner has a history of violence. This equal access arrangement provides an opportunity for the batterer to continue to have frequent access to the other parent, which may negatively impact the victim's parenting while exposing children to further violence (Bancroft & Silverman, 2002).

The friendly parent concept is codified in child custody statutes requiring a court to consider as a main factor for custody which parent is more likely to allow "frequent and continuing contact" with the child and the other parent, or which parent is more likely to promote the child's contact or relationship with the other parent (Dore, 2004). Although the friendly parent concept was developed to keep both parents in children's lives, it can prevent nonoffending parents from being able to protect themselves and their children from violence at the hands of the other parent. The friendly parent presumption has been particularly problematic in domestic violence cases because a battered spouse might not be generous in sharing custody with an intimidating ex-partner. The same is true in cases of child abuse. Protective mothers often object vigorously to their children spending unsupervised time with a violent or pedophilic father. An abusive father, on the other hand, often has no objections to having the children seeing their mother. Courts punish parents engaging in "unfriendly behavior" by denying them custody or time with their children. Thus, the friendly parent concept can favor abusers and punish PPs. Moreover, children's needs may be subordinated to penalties against the parent (Dore, 2004).

In conclusion, despite a robust literature about the failures of our nation's family courts to protect abused children, there is a paucity of



literature that documents the various components of the decision-making process that lead some custody evaluators and judges to place children with parents alleged to have abused them. The purpose of this study was to gather information from in-depth case analyses to identify what factors lead judges to put children in harm's way by granting violent parents unprotected access to their children.

## Method

To assess the factors involved in judicial decision making, custody cases were identified involving mistaken judicial decisions that were reversed when compelling evidence of abuse became apparent at a later time. We employed an exploratory, multicase study design. Case study is an ideal methodology when a holistic, in-depth investigation is needed (Feagin, Orum, & Sjöberg, 1991). The multiple-case design permits the researcher to make generalizations based on the observations of patterns or replications among the cases (Yin, 2003). In addition, multiple data sources were used allowing triangulation of data, which is a method recognized as enhancing confidence in the ensuing findings (O'Donoghue & Punch, 2003).

## Inclusion criteria

To evaluate the problem of abusive parents gaining custody, we needed to locate cases in which we could determine that the abuse had actually occurred and that the court failed to protect the child. Consequently, we focused on what we termed "turned around" cases in which the court recognized that it had made an error in awarding custody to an abuser and sought to remedy the situation. To be included in the dataset each case had to meet the following conditions: (a) the case was litigated within the United States; (b) evidence of abuse by one of the parents (e.g., a child's disclosure, protective service findings, and/or suspicious injuries while in the custody of the alleged abuser) had to have been presented to the court prior to the first judicial decision; (c) the child was originally court ordered into unsupervised custody or unprotected visitation with the alleged abuser; (d) later, based on compelling evidence of abuse, the ruling was reversed, a new settlement was reached, or there was a modification of custody or visitation such that the child was no longer ordered into unsupervised contact with the alleged abuser; and (e) the judges' decisions and/or other documents supporting the rationale for the custody determination were available for both the initial custody decision and later modification.



## Case finding

We limited our search to the United States. We were not able to locate a central repository with custody data that would allow us to pick random cases, as our criteria were too specific to be included in any databases of custody cases. As a result, relevant custody cases were identified using a variety of methods. These included sending out a letter to professionals who work with custody litigation involving abuse claims, letters to organizations who advocate for PPs involved in custody litigation, and a review of on-line and newspaper articles. The sample size was limited by the rigor of our inclusion criteria. We identified 27 cases that met our inclusion criteria and for which the necessary documentation was available. All cases meeting our inclusion criteria for which we had collected the necessary documentation were included in the dataset. The cases had all been adjudicated between 2002 and 2012. It should be noted that since completing our research, professionals have continued to refer cases to us. We have now gathered over 50 cases, suggesting this phenomenon may be widespread.

## Coding

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

Once cases were identified, the principal investigator obtained all available relevant documents for coding. These included judicial decisions and opinions, transcripts of judicial decisions during hearings, motions that included abuse evidence, depositions of mental health evaluators that included abuse evidence, transcripts of professionals that presented evidence of abuse, and social service reports documenting findings. We termed the date of the judicial decision that placed the child with maximum access to the abuser "Time 1," and termed the date of the later decision that led to the child being protected "Time 2." An effort was made to locate documents that contained the professionals' reasoning at both decision points. The second author and a research assistant did the coding. Inter-rater reliability was established by having both researchers code the

**Table 1.** Abuse reported to court.

	CSA <i>n</i> (%)	Physical abuse <i>n</i> (%)	Emotional abuse <i>n</i> (%)	Neglect <i>n</i> (%)	Medical neglect <i>n</i> (%)	DV against PP <i>n</i> (%)
Time 1	19 (70.4)	14 (52)	11 (41)	2 (7.4)	3 (11.1)	16 (59.3)
Time 2	14 (54)	15 (58)	10 (38)	3 (12)	7 (27)	2 (8)

*Note.* *N* = 27. PP = protective parent.

first four cases and any disagreements were resolved by consensus. The fifth case was coded separately and answers were tabulated. The percentage of agreement was 97.2%.

## Results

Because this was an exploratory study with a small sample size, analyses mainly took the form of comparisons using percentages and frequency tables. The 27 cases were drawn from 13 different states representing all regions of the United States. The cases included 11 (41%) boys and 16 (59%) girls. The mean age of the children when the family court first failed to protect them was 6.5 years with a range of 3–15 years. The average time a child spent in the court ordered custody of an abusive parent was 3.2 years (range: 4 months to 9.25 years). All of the PPs were female and all of the abusers were male. (We have since identified four turned around cases where the father was the PP and the mother the alleged abuser; therefore, although all the PPs in our sample were mothers, we recognize that this is not always the case.) The majority (92%) of the parents had been married. The families were predominantly (93%) from middle and upper socioeconomic groups likely due to our solicitations of private lawyers. The mothers were 81% Caucasian. The balance included one African American, two Korean immigrant mothers, one East Indian immigrant, and one Asian-American. The fathers were 93% Caucasian with one African-American and one American Indian father in the sample.

### Type of abuse reported to the court

In all of the cases analyzed, children disclosed abuse perpetrated by their father. At Time 1, 78% of children disclosed more than one type of abuse (Table 1). The most common types of abuse reported to the court were sexual abuse (70%) and physical abuse (52%). Seven children (26%) disclosed both. In addition, almost 60% of the mothers reported experiencing domestic violence as part of the marriage. At Time 1, 84% of the mothers who reported domestic violence had applied for a protection order. Of those who applied, the order was granted 94% of the time. In a number of cases, the protective order was granted by one court and then vacated by the family court judge hearing the custody case so the order was only in

effect briefly. In most cases (88%), the protection order was to protect the safety of the mother. In 31% of cases it was to safeguard the child.

After being placed in the custody or unsupervised visitation with their abuser at Time 1, 88% of children reported new incidents of abuse. Of those experiencing new incidents of abuse, most (77%) experienced more than one type. For many children, the abuse had escalated and was becoming increasingly severe. Not surprisingly, the children's mental and physical health frequently deteriorated. In addition, medical neglect became a prominent type of abuse reported at Time 2. A total of 27% of the children were alleged to have experienced medical neglect. This often took the form of the perpetrator failing to seek medical attention after having harmed the child. For example, several of the children experienced broken bones for which the perpetrator failed to seek medical treatment. It also took the form of the perpetrator denying very distressed children access to therapy. For example, in some cases the children were suicidal, yet the perpetrator refused to allow them to see a therapist.

### **To whom children disclosed**

At Time 1, all children disclosed their abuse to their PP, which in the cases studied was their mother. Many children disclosed to other people as well, especially to professionals who were evaluating the child. At Time 2, only 71% of children disclosed to the PP. This may be due to the fact that most children were no longer in the custody of the PP and were restricted from seeing her. In addition, in several cases the PP had been threatened by the court not to report any further abuse or face losing all contact with their child. This may have discouraged children from confiding in their mother as they were threatened with never seeing her again if they did so.

### **Reports to child welfare agencies**

At Time 1, 93% of suspected abuse was reported to Child Protective Services (CPS). The abuse was unfounded or ruled out by CPS in 63% of cases and founded in 22% of cases. One case was mixed, as some of the abuse was founded while other alleged abuse was unfounded. However, the investigations by child welfare agencies were largely irrelevant to the decisions at Time 1; whether CPS founded the abuse or not, it was the custody evaluators and guardian ad litem (GALs) whose opinions determined custody. At Time 2, only 73% of the abuse was reported to CPS, and only 20% of the allegations were judged to be founded. This was despite the fact that children had gotten older, were providing clearer disclosures, and objective evidence of the abuse was mounting. It appeared that once CPS determined the abuse was unfounded or ruled out, they failed to adequately

**Table 2.** Judge's rationale for not protecting at Time 1.

	<i>N</i>	% of total <sup>a</sup>
Pathology of the PP <sup>a</sup>	18	67
Parental alienation	10	37
Mother and child viewed as enmeshed	2	7
Brainwashing or coaching	9	33
Obsessive	1	4
PP not credible but no pathology noted	3	11
Accepts opinion of professional or GAL who does not believe child was abused	18	67
Mental health professional	12	44
GAL	8	30
Insufficient evidence of abuse	10	37
Recantation of child	1	4
Equality of problems on both sides	4	15
Perpetrator provides more stable home	4	15
Other (e.g., perpetrator more likely to comply with court orders, more "friendly" parent)	3	11

Note. PP = protective parent; GAL = guardian ad litem. <sup>a</sup>In most cases judges offered more than one rationale.

investigate subsequent reports. In addition, CPS often seemed biased against finding abuse due to the fact that the allegations first surfaced during custody litigation. Some CPS workers noted the custody evaluator's concern with "parental alienation" and opted not to assess the abuse thoroughly.

### Outcome at time 1

At Time 1, 59% of perpetrators were given sole custody and PPs were given only limited contact with the abused child. Six PPs (22%) were allowed only supervised contact with their children and two PPs (7%) lost all contact. Seven PPs (26%) were given primary custody but the abuser was allowed unsupervised visitation. In three cases (11%), the parents were awarded joint custody.

**Type of hearing in which custody or unsupervised access was awarded to the perpetrator.** The majority of perpetrators (52%) gained custody or visitation at a hearing to modify custody. Another 18.5% gained custody or visitation at a final custody hearing. Although a number of mothers first lost custody in ex-parte hearings (hearings where they were not present), we could not use these hearings for Time 1 because no evidence was heard. Instead we coded Time 1 as the next hearing where evidence regarding abuse was presented so that the judge's reasoning in response to the evidence could be examined.

**Judge's rationale for not protecting abused children at Time 1.** In 78% of cases, a primary reason the judge gave custody to the perpetrator was the mother was not viewed as credible or alleged to have some form of pathology that called her credibility into question (Table 2). In 67% of decisions, the judge cited the opinion of a custody evaluator or GAL who did not believe child was abused.

At Time 1, a mental health evaluation was performed on the child in 91% of the custody cases. Most evaluations were performed by therapists (43%) or custody evaluators (38%); in 14% of cases reports were submitted by both a therapist and custody evaluator. A total of 85% of mental health professionals advising the judge either failed to believe the child and the PP, or believed them and still recommended that the child be forced into custody or unsupervised visitation with the perpetrator. When judges received reports from professionals who differed on their view of the credibility of the child's allegations, judges tended to accept the recommendations of a professional who did not believe the child, even when hearing testimony from other professionals who had more expertise in the matter or who had examined the child more contemporaneously to the abuse.

Judges presiding over child custody disputes often appointed a GAL for minors. Although the role of the GAL is to protect the interests of children, the involvement of GALs in the cases studied often contributed to children not being believed or protected from abuse. In 73% of cases for which we had data, the GAL sided with the perpetrator against the child. For example, in one case that involved over 10 abuse reports, including allegations of sexual abuse along with broken bones and human bite marks, the GAL recommended that the father receive sole custody and the judge complied. In another case in which a child disclosed abuse, the GAL referred the child to an expert in parental alienation who then testified against the child's claims.

While state agencies mandated to investigate abuse were involved in 93% of the cases at Time 1, CPS ruled out abuse 63% of the time. Although we have strong evidence that all the children in our sample were actually abused, CPS only founded abuse in 20% of cases. The fact that CPS had confirmed the abuse did not necessarily lead to evaluators and GALs accepting the determination. Instead, they tended to rely on their own assessment of the situation.

**Outcomes for mothers at Time 1.** Two-thirds of the mothers in this sample reported having experienced domestic violence at the hands of their husband prior to separating. Of these women, 88% applied for and received a protection order prior to the custody determination. However, the presence of domestic violence did not appear to influence the decision making of the court.

Two-thirds (67%) of the mothers were pathologized for advocating for the safety of their children. Pathologizing the mother often occurred in the context of psychological testing results which were then echoed by the other professionals involved. Many mothers were termed "narcissistic" and "histrionic," and behaviors such as taking notes on their children's behaviors were categorized as pathological or "obsessive." The word

“enmeshment” was used to describe the close bond between the child and PP and the PP’s strong advocacy for her child’s safety. Thus the normal dependence an abused child might feel on a safe parent was misperceived as a pathological trait. Without specific evidence of this behavior, many mothers were accused of “coaching” the child, particularly mothers who videotaped disclosures, or wrote down word for word what the children disclosed. These pathological labels discredited the mother’s legitimate concerns about the children and were compounded by accusations of PAS or parental alienation which appeared to be the evaluator’s attempt to explain why a mother would report abuse that the evaluator contended had not happened. All of these various labels were used to call the mother’s credibility into question and blame her for their child’s disclosure of abuse.

A total of 59% of the mothers in our sample lost complete custody to the perpetrator and some were given only supervised visitation. Several mothers were threatened that if they reported abuse again they would lose all visitation rights. One was ordered to pay her ex-husband’s considerable legal expenses and was denied visitation with her child when she was unable to come up with the money necessary to do so.

In addition to losing custody or having access to their children curtailed, mothers were often punished for reporting abuse and courts often set up systems to make it more difficult for them to protect their children. For example, a report by a custody evaluator claimed that the fact that the mother believed that her former husband abused her son was in itself a form of child abuse. In several other cases mothers not only lost custody, but were also threatened with the loss of all contact with their child if they ever so much as spoke with their child about abuse again. In some cases, mothers were ordered not to report any abuse to their state’s child protection agency. Instead, they were ordered to only report abuse to a special master or parenting coordinator appointed by the court. Abuse reported to these officers of the court was often not investigated or referred to CPS.

## **Outcome at Time 2**

As previously noted, at Time 2 all children were protected from further unsupervised contact with their abusive father. Most mothers (81%) were awarded sole custody. In 11% of cases the mother was forced to share custody with the abuser but children were given the choice whether or not to visit with him. In one case, the child was placed in the custody of a safe family member and had unfettered access to the PP.

**Type of hearing in which children were finally protected.** Regaining custody was difficult and costly for PPs usually taking a number of years. One of the main ways PPs regained custody was through an appeal. Eight

**Table 3.** Main reasons why case turned around based at Time 2.

	<i>N</i>	%
Reports from professionals	17	63
Child's mental health is deteriorating	8	30
Persuasiveness of child's disclosure	6	22
Child's continued refusal to visit	6	22
Appeal	5	19
Perpetrator arrested or about to be arrested	4	15
Rejection of PAS	3	11
Compelling medical evidence of abuse	3	11
GAL recommendation	3	11
Testimony of neutral witnesses	2	7
Perpetrator's bad behavior in court	1	4
Other (e.g., settlement, mediation, emancipation of minor, relinquishment)	4	15

Note. GAL = guardian ad litem; PAS = Parental Alienation Syndrome.

(30%) of the cases were appealed to a higher court where five decisions (19%) from Time 1 were reversed. Some appeals, though successful, did not change the child's custody status as the case was remanded back to the trial court. Three appeals were unsuccessful, yet the mothers eventually had the children returned to them through other means. A total of 15% of children were protected at a final custody hearing and another 15% of children were protected at a hearing to modify custody. The remaining cases involved a number of other types of hearings including status conferences, protective orders, mediation agreements, or emergency motions.

**Main reasons that children were protected at Time 2.** The main reason that cases were turned around was because PPs were able to present evidence of the abuse and back the evidence up with reports by professionals who were able to dispel the misinformation and myths promulgated at Time 1 (Table 3). As with Time 1, judges at Time 2 tended to rely on the judgment of professionals when modifying custody determinations. A total of 78% of custody cases included testimony by a professional. However, since the custody evaluations had been done at Time 1, the professionals testifying in court were no longer custody evaluators and GALs. At Time 2, almost all were therapists (89%), reporting children's symptoms and disclosures as permitted within each state's laws, or professionals involved in specialized abuse evaluations (11%). Over half (57%) of those who testified about the child had specific expertise in abuse at Time 2 versus 10% at Time 1.

In 63% of decisions at Time 2, judges cited reports and testimony from professionals who supported the child's claims of abuse. In many cases, the judge was persuaded by the convergence of evidence from a number of different sources. For example, one judge was persuaded by a forensic evaluation of the child which included the child's disclosure of sexual abuse, medical evidence of sexual abuse, along with the testimony of a neutral witness about the child's behavior at school (Table 4).

In cases in which the PP won an appeal, it was often because the lower court had violated the PP's rights or disregarded important evidence of



**Table 4.** Mental health evaluations of children.

	Time 1 %	Time 2 (n = 23) %
Mental health evaluation performed	91	78
By therapist	44	89
Specialized abuse evaluation	15	11
Custody evaluation	41	0
Professional was a specialist in abuse	10	57

abuse. For example, in two appellate cases, ample evidence of abuse had been presented by professionals; however, the judges questioned the children alone in chambers and ignored other evidence. Both cases were reversed because the judge relied on their own interview instead of the ones done by trained professionals. In one of these in chamber interviews, the young child made a partial recantation and the judge based her decision on this, rather than the medical and psychological evidence presented.

A particularly compelling reason that cases turned around was that the perpetrator was arrested or was under threat of being arrested. This occurred in 15% of cases. In three cases, the perpetrator lost custody due to being arrested. In a fourth case, a perpetrator relinquished his rights to prevent being arrested for sexually abusing his daughter.

The self-advocacy of older children was another important factor resulting in children finally being protected. For example, some children continually ran away, reported their abuse to CPS, or refused all attempts at visitation and could not be coerced to participate in reunification therapy with their abuser. Another boy was hospitalized for his extreme distress. He did well in the hospital but calmly stated his intent to kill his father whenever he was to be discharged back to his father—knowing this would prevent his discharge. Other children reported their abuse to CPS or made a special effort to find a safe person they could confide in about the abuse. For example, a 12-year-old girl asked the court to allow her to switch from a male therapist to a female one. The court-ordered male therapist had ignored her complaints against her father for many years. Within two sessions with her new female therapist, the girl revealed ongoing rape and torture by her father since the age of four. The new therapist's report resulted in a termination of the father's rights (Table 4).

### **Role of specialized attorneys**

Attorneys play an important role in custody litigation. We examined the types of attorneys that PPs utilized at Time 1 and Time 2. Most (95%) PPs hired private attorneys at Time 1. At Time 2, 59% had hired an attorney who specialized in family cases involving allegations of violence. These data suggest that having an attorney familiar with abuse and with presenting

**Table 5.** Child symptoms mentioned in court records.

Child behaviors	Time 1 ( <i>n</i> = 23) <i>n</i> (%)	Time 2 ( <i>n</i> = 24) <i>n</i> (%)
Sexual behaviors	11 (46)	5 (21)
Depression	4 (17)	8 (33)
Anxiety	11 (46)	17 (71)
Self-harm	1 (4)	3 (13)
Suicidal	3 (13)	8 (33)
School problems	3 (13)	6 (25)
Anger	9 (38)	5 (21)
Regressive behaviors	10 (42)	8 (33)
Reluctance to visit perpetrator	14 (61)	17 (71)
Nightmares	9 (38)	9 (38)
Other (e.g., problems sleeping, running away, eating disorders)	9 (38)	10 (42)

evidence of abuse to family courts may be an important factor in helping to turn these cases around.

### Symptoms reported in children at Time 1 and Time 2

The children in the cases we analyzed tended to have multiple symptoms of distress (Table 5). It should be noted that the symptoms were gleaned from court records. Symptoms in these children were never systematically investigated, measured, or reported during the custody case. As a result, these likely represent an underestimation of the true rate of distress in these children.

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

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

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

**Table 6.** Perpetrator behaviors mentioned in court records.

	Time 1 <i>n</i> (%)	Time 2 <i>n</i> (%)
Anger	15 (63)	17 (71)
Projection (blames PP for child's problems)	15 (63)	16 (67)
Boundary Violations	11 (46)	7 (29)
Minimizing evidence or implausible rationalizations	10 (42)	12 (50)
Substance abuse	8 (33)	5 (21)
Child pornography	5 (21)	6 (25)
Failure to appropriately address child's needs	4 (17)	11 (46)
Fabrication of documents	3 (13)	1 (4)
False report of PP to child welfare	3 (13)	1 (4)
Isolating	1 (4)	3 (13)
Daily functioning problems	1 (4)	3 (13)
Other (e.g., threats, controlling behaviors, false claims about the mother, criminal behavior)	16 (67)	14 (58)

Note. *N* = 24; data missing from three cases. PP = protective parent.

### Perpetrator behaviors at Time 1 and Time 2

We examined court records for behaviors in perpetrators that might have provided support for claims by the mother and child that the father was abusive (Table 6). The most common behaviors mentioned in court records were problems with anger (63%) and engaging in projection (63%), which took the form of the perpetrator blaming the PP for all their child's problems. The following is a quote from a custody evaluator's report at Time 1: "Father can become angry and argumentative and justify it as someone else's inappropriate behavior .... Parenting is hindered by a pattern of self-centeredness and narcissism that can be made worse by a tendency to deny his contribution to problems." Despite recognizing this behavior in the father, the custody evaluator recommended the father receive custody.

The third most common behavior mentioned in court documents was boundary violations by the perpetrator. This usually entailed the father insisting on sleeping in the same bed as the child or bathing with the child. Another common behavior was implausible rationalizations particularly about their children's symptoms of distress. In one case a boy would kneel over with his bottom up and cry, "It's going to hurt!" at school. The child had reported being anally raped by his father. When the child's unusual behavior was brought to the father's attention, he brushed it off saying that this was how the child passed gas.

In 33% of cases, there was evidence that the father had substance abuse problems. Sometimes these problems were severe with multiple drunken driving arrests. There was evidence of the father possessing child sexual abuse images (previously referred to as child pornography) in 21% of cases at Time 1. Other behaviors included fabricating documents that were presented to the court to counter allegations of abuse, and falsely reporting the mother to child welfare for child abuse.

Many of these behaviors remained constant or increased after the perpetrator gained sole custody or unsupervised access to the child. For example,

the perpetrator's difficulties managing anger, his use of projection, and minimizing of evidence and offering implausible rationalizations increased slightly between Time 1 and Time 2.

The most notable behavior that increased was the perpetrator's failure to adequately address the child's physical and/or emotional needs. Whereas failure to address the child's needs was mentioned in 17% of cases at Time 1, it was noted in almost half (46%) of cases by Time 2. The most common presentation of this behavior was the perpetrator failing to take the child to a doctor after having physically hurt the child, or refusing to take the child to see a therapist when the child was displaying symptoms of severe distress. There was also an increase in isolating behaviors. For example, after gaining custody, some perpetrators would attempt to isolate the child from other people and controlled the child's access to a phone—in essence holding their victim hostage. Perpetrators also displayed numerous other behaviors which were combined under “other.” These mainly took the form of threats against the child and the mother, controlling behaviors, and criminal behaviors not previously mentioned.

## Discussion

Our research confirms numerous prior observations of the danger that family courts can pose for abused children and PPs. The majority of the children in our sample had been sexually and/or physically abused. Rather than protect them, the courts often ordered them into the sole custody of their perpetrator, placing their physical and mental health at risk. We also confirmed prior concerns noted in the literature regarding problems with custody evaluations such as evaluators' bias against mothers reporting abuse, their lack of education in domestic violence and child abuse, and the inappropriate use of psychological testing and biased reporting of test results. Statutory legal presumptions in favor of joint custody and “friendly parent” provisions were often a contributing factor. These presumptions worked in favor of abuse perpetrators and against imperiled children as they stigmatized parents who tried to protect their children from further abuse.

A primary finding of our finding is that the outcome of the custody cases we analyzed had little to do with the quality of the evidence presented. Instead, outcomes were largely based on the custody evaluator's personal beliefs and biases. Poor custody evaluations that ignored previous histories of domestic violence and/or child pornography and which minimized overt signs of abuse were a major problem in our sample. Both GALs and custody evaluators tended to be highly suspicious of abuse allegations and biased in favor of the accused father. Of particular concern is the fact that GALs, who are specifically appointed to safeguard the child's

welfare during the litigation process, sided with the alleged perpetrator over the child in 73% of cases.

Unfortunately, the evaluators in the cases we analyzed appeared blind to abuse in any form. They not only ignored claims of sexual and physical abuse disclosed by the child, they also ignored the history of domestic violence that was often present in these cases. Two-thirds of the mothers in this sample reported having experienced domestic violence at the hands of their husband prior to separating and most had received a protection order. While there is growing consensus that perpetrators of domestic violence are more likely to be deficient, if not abusive, as parents (see Jaffe, Johnston, Crooks, & Bala, 2008), the father's history of interpersonal violence was not viewed as relevant to the mother's concerns for her child's safety when formulating recommendations for custody. As such, our findings replicate those of Davis, O'Sullivan, Susser, and Fields (2010) who found that the facts of a case had less influence on the final custody and visitation arrangements than the custody evaluator's personal beliefs about domestic violence and abuse allegations during custody disputes.

A second finding is that psychological tests tended to be interpreted in a manner that justified the evaluator's personal beliefs and were ignored when they did not. We obtained reports regarding psychological testing in just half of the cases we analyzed. At the time of our analysis, we did not code these reports. After analysis, we did a qualitative examination of these reports to better understand the role they played in erroneous decisions at Time 1.

Overall, we found psychological reports at Time 1 were often biased against mothers and in favor of fathers. Consistent with the finding of Erickson (2005), several of the mothers who had been victims of domestic violence were interpreted as having "histrionic" personality traits based on MMPI results. Histrionic traits are associated with exaggerating symptoms, making the mothers appear less credible to the evaluator. Common findings in psychological reports on mothers included being "enmeshed" with her child and "lacking in insight." Rather than being derived from any testing results, these conclusions appeared to be based on the fact that mothers expressed concern for her child's safety and disagreed with the evaluator's contention that the child had not been abused.

While evidence of alleged domestic violence, and even adjudicated domestic violence was often noted in the psychological evaluations of fathers, the significance of these was universally ignored at Time 1. In addition, a number of fathers had deficiencies apparent in psychological testing that should have raised concerns about their parenting skills. For example, one custody evaluator found the father's parenting to be "hindered by a pattern of self-centeredness and narcissism". In another case, the custody

evaluator described the father as “antisocial, narcissistic and controlling”. Despite credible allegations of abuse being present the custody evaluators in these cases recommended the fathers receive custody.

When fathers had normal psychological test results, these were viewed as evidence that he could not be an abuser. In one case, the judge ignored a CPS finding of sexual abuse because the father’s psychological and psychosexual testing didn’t show did not show deviant patterns. The father later lost custody after his semen was found on his daughter’s pajamas.

In some cases, bias in favor of the father was evident in the language used by the evaluators. In one case, the psychologist referred to the father in a personally familiar fashion calling him by his first name throughout the report while referring to the mother by her last name. A more subtle indicator of biased language was found in a report where the evaluator used different language to characterize the two parents’ self-reports. For example, one evaluator wrote: “Mrs. B. expressed she was afraid of Mr. B. Mr. B. believes there is nothing to be afraid of.” Rather than using a word like “said” or “expressed” to describe what Mr. B. reported, the evaluator appears to accept the father’s denial of abuse at face value. The father went on to threaten and stalk a number of court personnel suggesting the mother’s fears of her former husband were well founded.

Overall, judges’ decisions were heavily influenced by psychological reports and judges often cited them when ordering the child into the custody of the child’s abuser. Judges may put far too much significance in custody evaluations, not realizing that much of what is portrayed in a psychological report, particularly one by a poorly trained or biased evaluator, may be a subjective opinion and not a data-based conclusion.

A third finding was that the pathologizing of mothers was a key factor in the court’s erroneous findings at Time 1. Two-thirds (67%) of the mothers were pathologized for advocating for the safety of their children. The assault on mothers’ credibility took a variety of forms including accusations of enmeshment, coaching, and/or “alienation.” Both custody evaluators and GALs tended to view mothers who alleged that their child was being abused as fabricating or exaggerating incidents of violence as a way of manipulating the courts to gain a tactical advantage. The child’s disclosures of abuse were viewed as the result of the mother’s behaviors or attitudes, whether conscious or unconscious. Thus, the assault on mothers’ credibility through these unvalidated pathologizing labels was a direct cause of the continued abuse of the involved children. Similar to the findings reported by Faller and DeVoe (1996), some mothers who raised reasonable concerns about abuse were sanctioned for reporting abuse and threatened with the loss of all contact with their children if they ever reported abuse again.

A total of 37% of mothers were alleged to have induced PAS, Parental Alienation Disorder (PAD), or parental alienation in their children. The terminology or theory used to accuse mothers of “alienation” did not change how the evaluators used the concept and the solutions offered were similar. There was a simplistic focus on blaming the mother and the recommended solution was to separate the child from their mother and place them with their father. In most cases, evaluators told the court that the child would suffer permanent mental health damage unless the child’s relationship with the father was repaired. In six cases mothers were given only sporadic supervised visitation (often after a period of no contact) and in two other cases the mother was allowed no contact at all with their children. These mothers had functioned as the child primary caregiver since birth. From an attachment theory perspective (Bowlby, 1969), a child’s sense of security is rooted in relationships with familiar caregivers. Decades of psychological research have documented the harm experienced by children forcibly separated from their parents (American Psychological Association, 2018). For example, research has shown that the physical separation between a child and primary caregiver, particularly when unexpected, can lead to internalizing symptoms (e.g., depression, anxiety), externalizing behaviors (e.g., withdrawal, aggression), along with social and cognitive difficulties (Makariev & Shaver, 2010).

Our findings offer support to those who have noted that more recent theories of parental alienation do not present a significant improvement over Gardner’s original conceptualization of PAS (Houchin et al., 2012; Meier, 2013). For example, the various parental alienation theories utilized by professionals evaluating the children in our dataset all included the logical error of affirming the consequent (see Mercer (*in press*), this issue), as there had been no documentation of the mothers attempting to brainwash their children against the father. Similarly, no supporting evidence for maternal coaching was presented in any of the cases we studied. Instead, it was merely assumed. It should be noted that the literature suggests that concern over false abuse allegations arising from maternal coaching is usually misplaced. After reviewing the literature, Faller (2007) found a minimal amount of evidence to support coaching as a significant factor in child’s disclosures of abuse. Faller concluded that “children falsely claiming abuse or being coached to state they have been abused, when they have not, should not be a primary preoccupation of child abuse professionals” (p. 949).

A fourth finding was the negative long-term effects that pathologizing of mothers on the relationship between the mother and child.<sup>2</sup> Not only were mothers denied the ability to protect their children from further abuse, they also usually lost custody. After being labeled as having some type of mental pathology, this label stuck to mothers. In some cases, because the



mothers had been labeled unfit parents due to their concerns about abuse, the mothers were denied custody even after their concerns about abuse were found to be valid. For example, in one case the father was arrested for sexually assaulting his son. This placed the court in an awkward position as a previous judge had given the father sole custody after ruling that the mother was obsessed with abuse and had coached the child into making false allegations against him. After the father's arrest, custody was not returned to the mother because of the prior ruling against her. Instead, the mother's sister was given custody. In another case, custody was awarded to a father's girlfriend after the father was deemed unsafe. Thus, once a court had made a finding against the mother for coaching or alienation, some mothers never regained custody even after their concerns about abuse had been validated.

A fifth concern is that state agencies mandated to investigate abuse were rarely helpful in protecting the children in the cases we analyzed. CPS was involved in 93% of the cases. Although we have strong evidence that all the children in our sample were actually abused, CPS agencies erroneously unfounded or ruled out abuse 63% of the time. CPS workers were quick to close cases without an investigation apparently taking their cues from family court officials who believed that the abuse allegations were false. Thus, CPS, a supposedly independent agency, would often close a case without an investigation based on the fact that the family was involved in custody litigation. At the same time, reports by CPS rarely influenced decisions even when they determined that abuse was founded. If custody evaluators and GALs disagreed with them, the child welfare agency's findings were ignored.

A sixth concern was the blind eye that judges and evaluators turned to evidence of fathers possessing child sexual abuse imagery. Possession of child pornography is a serious criminal offense and raises fundamental questions about the perpetrator's fitness as a parent. Most offenders arrested in the United States for possessing internet child pornography have pictures and videos that depict preteen children experiencing severe sexual abuse such as penetration by an adult (Wolak, Finkelhor, & Mitchell, 2011). Research has shown that many Internet offenders are motivated by a sexual interest in children (Seto, Reeves, & Jung, 2010). In a recent meta-analysis, Seto, Hanson, and Babchishin (2011) found that more than half (55%) of offenders admitted to a history of contact sexual offending. In addition, victim information submitted to National Center for Missing & Exploited Children ([n.d.](#)) by law enforcement as of 2015 showed that 15% of child pornography is produced by a parent or guardian. Yet, inexplicably a father's possession of child pornography tended to be ignored by the family courts when making custody determinations.

A seventh finding that emerged from our analysis was the importance of the self-advocacy of older children in finally being protected. After being denied access to a PP and disbelieved by family court personnel, older children realized that no one was going to protect them. They were therefore forced to attempt to protect themselves. The means they choose usually involved running away or attempting to find someone who might be willing to listen to them and help them.

An eighth and final finding was the devastating long-term effects that erroneous family court decisions can have on vulnerable children. When children's disclosures of abuse were ignored by the courts, the abuse tended to become more severe and the children became increasingly distressed and despondent. The children in the cases we studied showed increased depression, anxiety, and suicidal ideation after being separated from their mothers and placed in the custody of their alleged abuser. Almost a third of the children threatened to commit suicide and one nearly succeeded—requiring several weeks in intensive care after attempting to hang himself. Dissociative symptoms, regressive behaviors, sexual acting out, school problems, and nightmares were also common in these children. Some children ended up hospitalized and on psychiatric medications to manage their extreme distress. Unfortunately, the children placed in psychiatric institutions often failed to get appropriate care for their post-traumatic symptoms. Hospital personnel tended to be influenced by the family court's erroneous findings that the child had not abused. As a result, they failed to properly diagnosis and treat the child's distress.

The profound effect of erroneous court decisions on these children's quality of life cannot be overemphasized. Although they were finally protected, the children spent an average of over three years in the custody of their abuser. These children were robbed of our society's promise of protection from maltreatment and it is likely that they will continue to suffer from the long term effects that maltreatment can have on their physical and emotional well-being.

In conclusion, the callous way these children were treated by the family court system can be expected to compound the harm associated with abuse. Professional responses to disclosures can have a significant impact on the well-being of abuse victims. Unsupportive responses, such as those where professionals minimize or disbelieve victims' allegations of abuse, can intensify the victim's distress. Such responses have been shown to hinder recovery in rape victims (Ullman, 1996; Campbell, Ahrens, Sefl, Wasco, & Barnes, 2001) and are related to greater post-traumatic symptom severity (Ullman & Filipas, 2001). Reports in court records revealed that many children experienced extreme demoralization and a sense of betrayal when judges refused to believe them and ordered them into their abuser's

custody. This fundamental sense of betrayal may last a lifetime, as these children can be expected to develop a sense of cynicism about the workings of government and a lack of trust in authority figures who claim to have their best interests at heart.

## Limitations

The cases that came to our attention were limited by the fact that many came from lawyers and litigants who responded to our solicitation and thus may not be representative of the full range of cases in which children have been placed in the custody or care of perpetrators. In addition, the cases were limited to parents of greater financial means as litigating child custody can be very expensive. As a result, our results are not necessarily generalizable to custody cases as a whole. More representative studies with a more diverse sample are needed that look at the outcomes to children from different socioeconomic groups in custody cases involving allegations of violence. In addition, our use of publicly available data to examine how courts deal with abuse had clear limitations. In our analysis of judicial decisions, there were multiple instances where judges referenced data that was not available to us. Finally, future studies are needed that compare children who are placed with safe parents versus those placed with their alleged perpetrators. Interviews with the families, along with objective measures of the post-traumatic effects experienced by the abused children, would have helped us make more definitive findings concerning the magnitude of harm that children experience as a result of erroneous judicial decisions.

## Recommendations

Because of the difficulty in substantiating allegations of interpersonal violence in custody cases, we recommend a comprehensive family evaluation by mental health professionals with expertise in interpersonal violence when such allegations arise. The American Professional Society on the Abuse of Children (2013) has recommended that evaluators conduct more than a single interview with children, rely upon multiple methods of data collection, and, when feasible, a team approach should be used to mitigate individual bias. Even with such a careful investigation, finding insufficient evidence for a definitive finding of abuse does not mean that “coaching” is the most likely alternative. It is difficult to substantiate abuse particularly in young children.

Based on our analysis we offer the following recommendations to improve outcomes for children who have the misfortune to be both abused and entangled in a custody dispute:

1. Child safety should be the first priority of custody and parenting adjudications. Courts should resolve safety risks and claims of family violence first, before assessing other best interest factors.
2. Children who disclose abuse should be referred for an evaluation by mental health professionals who have specialized training in this area.
3. Evidence from court-affiliated professionals regarding child abuse allegations in custody cases should be admitted only when the professional possesses documented expertise and experience in the relevant types of abuse, trauma, and the behaviors of both victims and perpetrators.
4. GALs, if appointed, should represent to the court the child's perspective and wishes rather than substituting their own judgment (see Ducote, 2002).
5. Agencies mandated to protect children should do independent investigations and not be biased by the belief that "custody battles" should be treated differently than other cases.
6. The friendly parent custodial preference should not to be applied in cases where there are allegations of domestic violence or child abuse. State codes should be modified to specify that the friendly parent provision does not apply in cases involving allegations of domestic violence or child abuse.
7. All evidence admitted in custody and parenting adjudications should be subject to evidentiary admissibility standards and courts must reject pseudoscientific concepts that pathologize parents seeking to protect children such as Parental Alienation Syndrome, and other simplistic theories of parental alienation that rely on this unvalidated construct.
8. Institutions such as residential treatment centers or psychiatric hospitals should act independently when children disclose abuse and not simply accept a custody evaluator's or GAL's opinion. Any new mental health deterioration in the child needs to be assessed rather than viewed through the lens of a previous court decision, which could be faulty or outdated.
9. Care should be taken to monitor the wellbeing of the child after any decision that involves giving custody to a parent that the child claims has abused them.

## Notes

1. We submitted our research plan for IRB approval but were advised our research was exempt because we relied on public records. In accord with good research practices, we took precautions to ensure the anonymity of the parties involved in the cases we analyzed.
2. Since completing this study, we have been made aware of four cases in which mothers were the alleged abusers and the father was accused of parental alienation after attempting to protect their children from further abuse. We have every reason to

believe that the use of parental alienation to pathologize protective fathers harms their relationships with their children as well.

## Disclosure statement

No potential conflict of interest was reported by the authors.

## Funding

This research was supported under award #2011-TA-AX-K006 for the DVLEAP-OVW Custody and Abuse TA Project from the Office of Violence Against Women of the U.S. Department of Justice. We would like to acknowledge the help of Elizabeth Samson in performing the original research.

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