DISORDER

IN THE COURTS

Mothers and Their Allies Take on the Family Law System

EDITED BY:

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and

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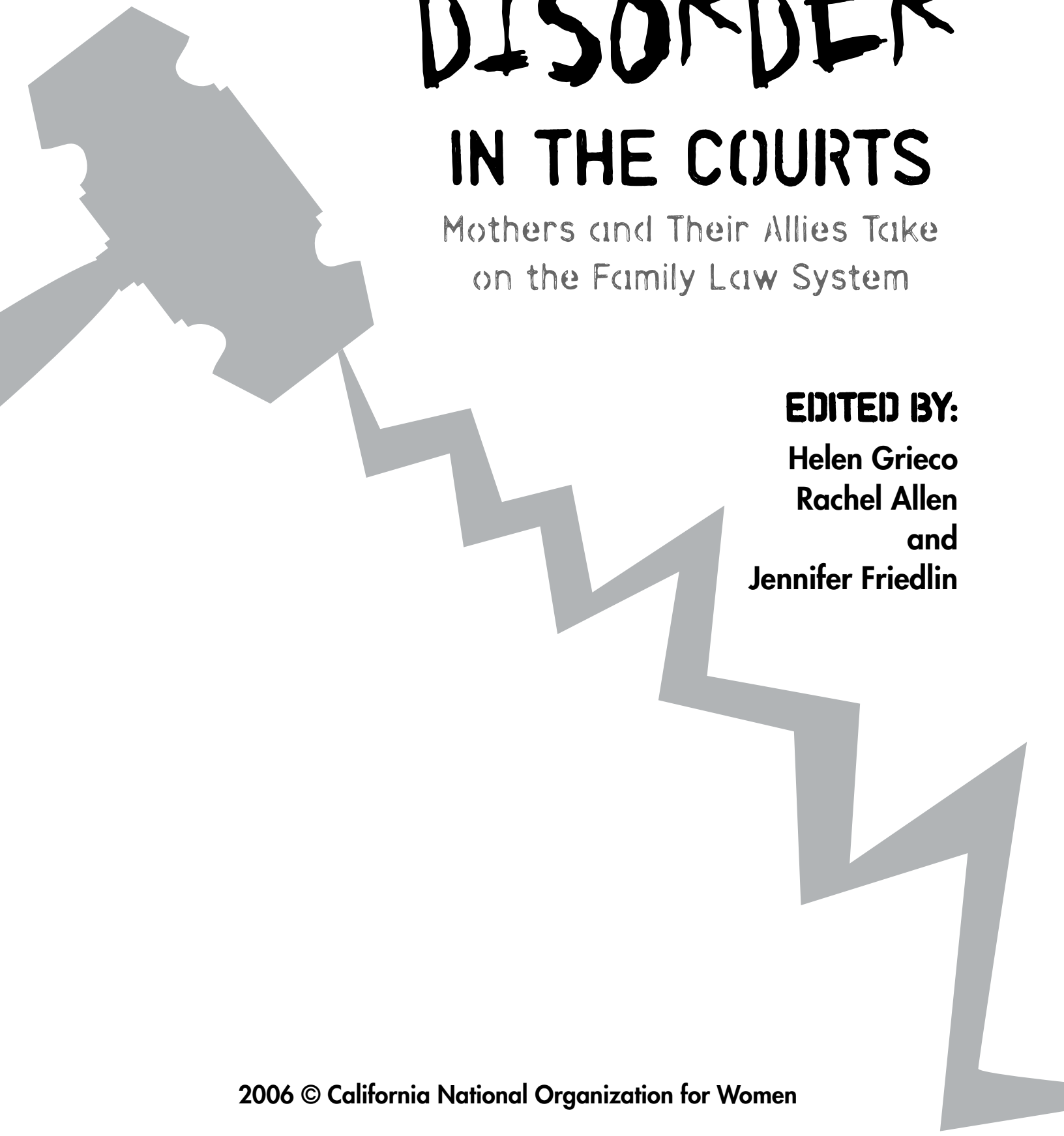

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Preface

By Phyllis Chesler

I first started researching custody battles in 1977. It was not a fashionably feminist thing to do. At that time, most feminists viewed motherhood as a forced and isolating experience—and they had a point. Some feminists misguidedly thought that women would be able to achieve high-status careers if men were saddled with child-rearing responsibilities—as if men could actually be forced to take on such tasks—and that if women wanted equality in the workplace then surely men were entitled to equality at home. Feminists confused maternal obligations with maternal rights. Women did not have maternal rights—only obligation and most men did not want to be obligated to the diaper-detail.

Although mothers still received no wages for their work at home and less than equal pay for equal work outside the home; although most fathers had yet to assume an equal share of home and child care, divorced fathers began to campaign for "equal rights" to sole custody, alimony and child support and for mandatory joint custody.

The year 1979 was the year of Kramer vs Kramer. After seven years of full-time "single" mothering, Mrs. Kramer abandons her long-absent husband and young son. She returns eighteen months later, a well-dressed high-status executive, who demands and receives courtroom custody.

Mrs. Kramer's victory was pure Hollywood fantasy. In reality, after years of absence, fathers, not mothers, were returning to demand and win visitation and custody. In reality, mothers, not fathers, were being custodially challenged for having careers or for moving away. Some fathers really wanted custody. Most used the threat of a custody battle as an economic bargaining chip. The threat was effective. It still is.

Back in the day, I interviewed hundreds of mothers, lawyers and mental health experts both in North America and around the world. I studied slave narratives and historical records. I also did an original study in which I discovered that "good enough" heterosexual mothers lost custody 70 percent of the time and that lesbian mothers lost 82 percent of the time when they were challenged. And I documented certain important trends for the first time. For example: Violent husbands and incestuous fathers could win custody; mothers who allege incest or who are being battered will not be protected but will, in fact, be custodially penalized as mentally ill and "alienating" parents.

Mainly, I found that most custody battles were nightmarish ordeals which battered women and children one more time. Most custodially embattled mothers were willing to bargain away all economic rights and remain vulnerable to continued verbal and physical abuse) in order to remain "in relationship" with their children. Despite some hard-working and well-intentioned lawyers, judges and legislators, our legal and judicial system is hard pressed to deliver true justice for anyone who is not very wealthy.

While "good enough" fathering definitely

exists it is different than "good enough" mothering. Most "good enough" fathers do not subject their wives and children to harrowing custody battles. I found that violent and exceptionally misogynist fathers do so. Many such fathers are authoritarian or they are "smother" fathers who wish to become their child's Mommy, best buddy or ward. ("Poor daddy needs me, I can't leave him.") I described how some fathers brainwash children in divorce and custody battles in ways that many mothers simply cannot do. Mandatory joint custody as a panacea and as a hot button issue was heating up as I wrote the book, as were issues such as mediation, equitable distribution, alimony or spousal support, and children's rights. I addressed them all.

While I wrote, I was also drawn into the very earliest high profile lesbian custody cases in California, Colorado, and Illinois. The women and their supporters were fiery feminists. The mothers were highly political. These cases drew enormous media coverage. In one instance, the judge would not allow the mother's supporters to sit in the courtroom. In another case, the media was barred. The times were colorful, highly dramatic, and slightly crazy.

I published *Mothers On Trial. The Battle for Children and Custody* early in 1986. It was both widely praised and widely attacked by liberal and gender-neutral feminists—and by Fathers Rights groups. I was scorned as a "man-hater." My statistics as well as my motives were hotly challenged.

In 1986, I put the book's ideas into practice.

First, I organized a Congressional press briefing which now-Senators Barbara Boxer and Charles Schumer attended. Hand-picked mothers traveled from around the country to describe their ordeals. It was a moving and well-covered event—but it did not and could not really lead to any legislation. A gender-neutral presumption of custody or a mandatory joint presumption of custody would hurt too many both traditional stay-at-home and career mothers.

Then, together with Noreen Connell, then President of NOW-NY State, we organized a landmark Custody Speak-out, which was attended by 500 people. Legislators, judges, lawyers, feminist activists and mental health professionals all confirmed what the "good enough" Speak-out mothers said. Domestically violent and even incestuous fathers can—and did—win custody; wealthy, absentee fathers and those with infertile second wives also can—and did win custody. Women's poverty, naiveté, and inability or refusal to fight "dirty" all made the custody battle a horrendous ordeal. When women turned to mental health professionals for support during such prolonged battles, this was sometimes used to stigmatize them as mentally ill. The mothers who first spoke out (in NYC, then in Toronto) were incredibly brave and very moving. Demonstrations took place outside the NY Speak-out. The New York Times covered the Speak-out twice.

The FBI also contacted me in 1986 to question me about the whereabouts of a mother "gone missing" together with her sexually abused daughters. Apparently, she disappeared after a judge awarded her police-officer ex-husband custody of his daughters. The FBI convened a Grand Jury to question me—and had they not "captured the felon" I was ready to sit in jail rather than say

anything further. At the time, few mainstream feminists understood that my silence would have been a political act.

Indeed, some mothers had begun to run away. They were almost always captured. Why did they run? Because when they alleged paternal child sexual abuse custody was frequently flipped to the fathers. In order to protect their children, mothers became "felons." As the media began to glamorize the Underground Railway for mothers, more feminists understood what was at stake—but many mothers also became more interested in appearing on television than in building a movement for mother's rights which would include challenging the judicial and legislative systems.

After *Mothers on Trial* came out, I continued to deliver lectures and do media interviews on the subject. Desperate mothers also asked me to testify in custody cases around the country. I did what I could. I often suggested that they have me work with local mental health professionals who had connections to the sitting judges—a wiser course than bringing in a New York expert. Some of the mothers whom I interviewed became lawyers, paralegals and mental health professionals. Many specialized in family law. Some worked on educating lawyers, judges and legislators or on supporting other mothers in similar circumstance.

In 1988, I co-coordinated a press conference in NYC in which mothers and children who had lost each other in custody battles and through forced adoption spoke out. In 1989 I participated in a demonstration for Dr. Elizabeth Morgan in Washington D.C. In 1990, I participated in the first Task Force on Custody ever convened within the American Psychological Association. Drs. Lenore Walker, Geraldine Butts Stahly (one of the authors of this book), and I taught a one day certificate training program about custody which was attended by experts from eleven states. We also presented a panel and speak-out that drew 250 APA members from 26 states. We talked to other mental health professionals about what kind of double standards to expect and how to handle them.

Over the years, various grassroots attempts were made by women and their male and female supporters, to support each other and to educate civilians and legislators about what to expect. Few groups lasted. Handbooks were created, but mothers sometimes gave bad advice, like to bypass expensive lawyers and represent themselves. The movement to protect mothers and children in part has failed because the mothers got burned out. The battle was always uphill and full-time and eventually women had to pay the bills. No foundations would seriously fund what would amount to a mothers' rights movement. At their best, some groups publicly exposed the injustices, and supported individual women going through the court system. But, often, because they themselves were neither lawyers nor judges arguing the merits of the case, they were often seen as troublesome and difficult amateurs; there was some truth to this perception.

In order to fully address the injustices well documented in this collection of essays, the approach must be multi-pronged. It must include fundraising; public education; lobbying; support for individual mothers; the training of a cadre of anti-patriarchal professions, both women

and men; persuading wealthy law firms to provide some pro bono services for cases in which women are being battered and children molested continuing to publish studies and books which are accessible to ordinary women is also essential.

It is now almost thirty years since I began my research into custody battles. Over the years thousands of mothers have called and written to me. They still do, asking for advice, referrals, therapy and assistance. The need was and remains enormous, the resources scant.

Now I can refer them to this very welcome online book project. It may provide a lifeline to individual mothers, children and their supporters, and serve as a call to action. Let me congratulate California NOW for doing this.

Introduction

By Helen Grieco, Rachel Allen and Jennifer Friedlin

The National Organization for Women (NOW) is the country's largest and longest running women's rights organization. NOW is committed to fighting discrimination against women and girls, and ensuring their equality in every aspect of society. NOW is structured in chapters, and California NOW (CA NOW) is the largest chapter in the country, with 100,000 members and donors.

Imagine this: A mother endures years of abuse at the hands of her husband. One day, her husband strikes the children or gets caught in the act of sexually abusing one of the kids, and she decides she has got to break free. She files for custody, assuming she's got an open and shut custody case. But the family court judge fails to look at all the evidence and the professionals who are supposed to evaluate the family ignore all the signposts of abuse. Eventually, the mother loses custody. In order to see her children, the mother may have to pay for supervised visits or she may lose all rights to her kids. No, you say, this can't be. Well, think again.

In the 1990s, CA NOW started getting call after call that fit this pattern. In fact, as then president of CA NOW, Helen Grieco received so many calls from desperate mothers that she formed a statewide task force to strategize how to best address the startling trend. Under Grieco's leadership, CA NOW proposed legislation, lobbied for statewide reform, called for investigations of court funding and worked to get public attention on the injustices women faced in family courts. In an effort for CA NOW to ascertain how widespread the problems were, Grieco created and posted a questionnaire on the CA NOW website to collect information on individual cases. Rachel Allen joined CA NOW as public relations director in 2001, and had worked on the family law issue as president of the Marin County NOW chapter for several years. In 2002, Allen and Grieco (along with Sue DiPaolo and Elena Perez) analyzed the findings of the hundreds of questionnaires submitted, and tried to answer the question of how and why so many women were being victimized by the courts. The end product was the "CA NOW Family Court Report, 2002," which presented findings from analysis of over 300 mothers' cases. The report showed that perfectly fit mothers were regularly losing custody of their children to less-than-fit fathers, and put forth an explanation for why it was happening.

Analysis of the data rendered stunning statistics. We found that 76 percent of respondents' cases involved allegations of some kind of abuse by the father and that in 69 percent of those cases the offender was given unsupervised contact or custody. Although conservative commentators and right-wing fathers' rights groups tried to discredit the research by saying that the sample was not representative of a larger problem, we knew that the 300 cases we studied and their staggering similarities exposed trends that were impossible to ignore.

This study and the calls we have continued to receive over the years from flabbergasted mothers have revealed that the courts are regularly ignoring evidence of child abuse and domestic violence when deciding contested custody cases. In addition, we have documented a common pattern of gender bias, denial of due process, corruption, fraud and reliance on unscientific labels to pathologize normal mothers.

These women speak of judges who berate them in court and dismiss crucial evidence; attorneys who bail on them midway through their case or who side with the father instead of representing the interests of the children; and evaluators who decide they are unfit parents for a whole slew of often contradictory reasons. Evaluators have been known to support denying a woman custody because she: is "too close" to her children; breastfed her children for too long; did not cooperate in giving unsupervised access to an abusive father; works outside the home; doesn't work outside the home. We hear from mothers who walked into the court as the primary caregiver and protector of their children and walked out unable to even send the kids a birthday card or talk to them on the phone. These mothers often lose custody to men who have criminal records, histories of domestic violence and/or child abuse and substance abuse problems. Some of the men have never even met their children.

How can this happen? One of the roots of the problem, we believe, stems from the activities and advocacy efforts of so-called Fathers' Rights groups. Connected to a larger right-wing ideology, the movement for "fathers' rights" rests on a belief in unquestioned patriarchy – some have even called for the overturning of the 19th amendment! They seek to abolish child support and to instate automatic joint custody. Although fathers' rights advocates refer to "equality," "equal access" and "shared parenting," they are not fighting for joint childcare responsibilities inside of marriage. Instead, the call from fathers' rights groups for equal parenting turns up only after divorce, a transparent ploy to use rhetoric to reduce men's financial obligations to their children and their ex-wives and to maintain control over their families, even after the marriage is legally dissolved.

These groups have helped propagate bunk psychological syndromes like Parental Alienation Syndrome (PAS), which is based on the unfounded "theory" that mothers regularly brainwash their children to say that they have been abused by their fathers. PAS is then used as a legal strategy to justify taking children from their mothers, while subverting evidence of abuse by fathers. Fathers' Rights groups claim that fathers are discriminated against in family courts, receiving custody of children only a small percentage of the time. The truth is, however, that when fathers fight for custody, they get it 50 to 70 percent of the time. Sadly, all too often they get custody even when it is not in the best interest of the child.

Meanwhile, the fathers' rights movement has been gaining strength and legitimacy. Fatherhood groups are well funded, well organized and publicly supported through conservative mouthpieces in the media. In addition, the Bush Administration supports the so-called "responsible fatherhood" agenda. Some organizations, such as the National Fatherhood Initiative receive millions of dollars from the federal government, much of which is

not accounted for in direct programming. Some people suspect that a portion of the money may even be used to litigate custody cases on behalf of fathers. (For more about the history and activity of the fathers' rights movement, see the CA NOW Family Court Report at http://canow.org/famlaw_report/famlawreport.php.)

Lest anyone reading this should draw the conclusion that we are simply interested in bashing men, we are not. We are well aware that there are many loving, caring fathers who are deeply concerned about doing right by their children. We are also aware that these men rarely demand sole custody and the removal of the mother from the child's life. We have heard from many decent men who are just as disturbed by the family court's treatment of women and children as we are. And, as you will see on the pages of this book, some of these men have become our allies in the fight for justice in the legal system. The problem we have been struggling with does not have to do with these men; it has to do with the abusive men who use the court system to continue terrorizing their families. After all, what better way to further abuse a mother than by taking her children from her?

As CA NOW took up this issue, we found allies around the country who were just as concerned as we were. Although many media outlets shied away from this complicated topic, media stars like Dr. Phil were brave enough to speak out against what he called "America's silent epidemic." Feminist icons like Gloria Steinem have weighed in, too, calling the crisis in the family law courts an issue that "the women's movement, which provided leadership in past reforms and crucial struggles to make law more gender free, supportive of children and families, and economically just, must lead on."

One of the most amazing outcomes of this horrific situation is the steely determination of the women who have been through the system to change it. After losing their children, women from Delaware to Alaska have fought back in an effort to change the system and to prevent the same thing from happening to other women. These women have written legislation, formed organizations, started court watch programs, built websites, held conferences, organized demonstrations and protests and worked to get media exposure.

A couple of years ago, after researching an article about moms who turned their personal tragedies into political crusades, freelance journalist Jennifer Friedlin suggested a project that would highlight the work being done across the country to change the way custody decisions involving allegations of abuse are made. This book is borne of our mutual desire to underscore and applaud the achievements of the mothers and the various professionals who are working for justice.

In this collection of essays, you will hear from experts – from psychologists and legal experts to journalists and moms – who have been fighting on the frontlines for mothers' rights. Karen Anderson turned her own personal struggle to protect her children from sexual abuse into a crusade on behalf of all mothers. Lundy Bancroft has been a fierce supporter of battered moms and now calls on these women to spearhead a mothers' rights movement. Sharon D. Bass, LMFT explains the role of the judge and judicial discretion in the outcome

of cases. Dr. Robert Geffner lends his expertise on child sexual abuse and the ways it is treated in the family law arena. Retired judge Sol Gothard gives his perspective on the family courts based on nearly fifty years of experience. Professor Mo Hannah explains her motivation for organizing the country's leading conference on the issue of battered women and custody. Karen Hartley-Nagle tells the story of her family law case and how it inspired her to run for office on a family law platform. Paige Hodson turned her experience in the courtroom into a battle for protective legislation – and won! The legal team of Kristen, Diane and Charles Hofheimer offer advice to mothers on how to present their cases in court. Filmmaker Dominique Lasseur explains his motivation for making the groundbreaking film, "*Breaking the Silence*." Professor Garland Waller advises people on ways to get media attention, and journalist Kristen Lombardi explains the difficulties of reporting on these issues. Professor Geraldine Stahly allowed us to print her research on domestic violence and custody, and blogger Trish Wilson makes a powerful argument against assumed joint custody.

This book will help explain how the courts work and give any mother going through the family court system some of the tools she will need to protect herself and her children. And, for mothers who may have lost their children, we hope these essays will provide you links to resources that may assist you in your effort to regain custody of your kids. This book will not replace good counsel and a strong support system, but we hope it will provide you a greater understanding the issues, and that is may inspire you to help join the movement for change.

We have found that lawyers and domestic violence agencies are always looking for more information that can help them serve their clients, and we trust that this book will meet this need. We believe that this book will also inspire other women's rights organizations to take up this issue, and that it will give them the tools and information they need to get started. Mostly, we hope that this book will generate greater activism among people interested in righting the numerous wrongs of the family court system.

We know that this book is just one step in the battle to reform the family court system. But CA NOW is committed to fighting for change until we win. Whether you are a parent, a psychologist, a lawyer, a judge, a journalist, an activist or a concerned citizen, we encourage you to get involved and to fight along side us as we work to ensure that our family court system never again strips a fit parent of her parental rights in favor of an abuser.

Domestic Violence, What's That? One Woman's Case and Her Fight for Justice

By Karen Anderson

When I met my husband Don in 1985, I had never heard the words 'domestic violence' and I thought 'red flags' only flapped in the breeze at Bay Meadows. While I had heard the old adage, "If it sounds too good to be true, it probably is," I didn't know that applied to people as well as advertising offers.

I was a single mom with 3 boys from a prior marriage that ended in a friendly divorce. Don was extremely charming and convincing. He knew how to say exactly what I wanted to hear. I was naive and believed him. It was a whirlwind romance, with 3 more children born into 8 years of what turned out to be a hellish marriage that was plagued with Don's jealousy, obsessive control, and verbal and psychological abuse, including threats of physical violence toward his step-children. I feared for their safety and tried to "fix" the perpetrator with demands for counseling.

All the elements of domestic violence were present in our home, but I didn't know what to call it or how to stop it. Marriage counseling didn't work. Counseling with his pastor only increased my feeling of being trapped, as I was consistently told that God would change my husband in "His time" if I would just be patient and have more faith. It was never suggested that there should be a higher value put on safety than on commitment.

I ended the relationship in 1993. The children of the marriage were two girls (ages 2 and 4) and a boy, 7. When Don left, he said I wouldn't be able to make it without him and he promised that he would see to it that I lost everything. It was the only promise he ever kept.

As is common, the abuse became more pronounced at the time of separation, when Don realized he was losing control. He stalked me, tried to run me off the road with the kids in the car, came to my home and picked fights with my sons, ripped out telephone and electrical lines, stole personal property, stole my mail, harassed me in public, verbally assaulted me in front of the kids, etc. At the urging of a deputy sheriff, I applied for a domestic violence restraining order, but the presiding judge ignored my petition.

In 1996, my daughters revealed that their father was molesting them. One described a long history of vaginal and anal penetration, oral copulation, and being shown child pornography as a precursor to the assaults. The children's disclosures were supported by medical evidence of penetration in one child, psychological reports, therapists' reports, a 12-year-old eyewitness to an incident of molestation, and their brother's disclosures about his father's clandestine visits to his sisters' bedrooms in the middle of the night.

When Don became aware of the children's allegations of sexual abuse he called the custody evaluator (a psychologist appointed by the presiding judge) who was known to enjoy a favored position in the court system. This was the pivotal point in the litigation where the case was corrupted. The evaluator responded to Don's request for help by soliciting the county-paid Family Law Facilitator to represent Don in family court and use "parental alienation syndrome" (PAS) to attack the children's credibility.

Don's attorney (the Family Law Facilitator) examined the evaluator on the witness stand. After refusing to review the evidence of sexual abuse, he testified that the children and I were making up the abuse and this was a case of PAS "right out of Richard Gardner's textbooks." He recommended that the children be put in their father's sole custody, so the judge switched custody, even though Don was under active criminal investigation for felony child sexual abuse.

Since that horrible day when my children were put in the custody of their abusive father, I have fought relentlessly for justice and I have had some successes. I suspected fraud in the court's administration of a federal child access grant that was designed to protect victims of family violence and ensure that non-custodial parents had visitation with their children. After I filed a complaint against the court for fraud, the court lost its $162,000 child access grant. A new child protection law was passed because of my case and 2 others like it, Family Code §3027.5, created from the facts of my case. The State Victims Compensation Board conducted a new investigation of the allegations of molest, found that there is at least a preponderance of evidence that the children were molested by their father, and authorized the children to receive benefits as crime victims. And several of the court professionals associated with my case were disciplined by State oversight agencies, fined, and/or fired for professional misconduct.

However, the biggest victory came when I got an unexpected phone call at work. It was from my son saying, "Mom, I'm home! I'm calling from your house. My stuff is all here. I'm finally home." I was flooded with a feeling of euphoria, speechless, and breathless, I cried tears of joy. I knew he was home for good. Fed up with a system that refused to protect him, he packed up and left his father's house. When he returned to my custody, he set out to rescue his sisters.

In an August 2005 hearing, a new court-appointed custody investigator concluded a thorough investigation of the case. In her report, the investigator wrote: "There is compelling evidence to support the conclusion that the children were molested by their Father," and she criticized court officials for "highly inappropriate alignment with the Father." In making a recommendation, she declared, "I would be negligent if I did not ask that the Court give strong consideration to placing the children in the sole custody of their Mother so that these children are protected…" Her recommendations were ignored. When the custody investigator gave sworn testimony in April 2006 that my daughters are being harmed in Don's custody, the court still refused to transfer custody back to me, even though Don is currently being criminally prosecuted by the district attorney for violating custody orders.

In my case, it seemed that the court rewarded the law-breaking father for abusing his children and violating custody orders, and punished me, the law-abiding mother, with loss of my children for daring to ask for protection; a backlash pattern of judicial vengeance routinely visited upon protective mothers in family courts across the nation.

There are no words to describe the trauma of losing children to their abuser, and being unable to protect them as their minds, bodies, and souls are assaulted. It causes pain that time cannot heal; pain that is so consuming, so deep, so intense, that feeling it literally takes my breath away. Waking up each morning to the gut wrenching sense of loss is like facing the death of a loved one, every day. Even when children finally come home and relationships are restored, the irretrievable years of childhood that were lost leave scars of grief that cannot be ameliorated. How does one survive, cope, and make a meaningful life in the throes of such despair?

Social injustice had never before touched my life in a personal way. It had been more of a concept extrapolated from books than a reality to me. Now I was staring it in the face. Through attorney Seth Goldstein, several mothers who were facing the same roadblocks to protecting their children found each other. Until I met these women, I thought my case was an isolated fluke. I was shocked to hear other stories that were identical to my own, with only the names of the "bad guys" changed. We met together in Fairfield, and began an organized effort in California to combat the judicial attacks on "protective parents," a largely unknown label coined years earlier by pioneers in the field of child advocacy, and one we would turn into a household word in California's legislature and judiciary.

The turning point leading me into activism came when I was invited to represent California protective moms at a press conference at the Department of Justice's Violence Against Women Office in Washington, D.C. in May 1997. My case had gained national attention because of the judge's outrageous bias, marked by his vicious courtroom demeanor, denigration of community members as "witch hunters" who clamored for the protection of my children, and threats to financially sanction my attorneys and me $52,000 for "harassing" the court by bringing the children's allegations of sexual abuse to the court's attention.

When I arrived in Washington, I met 21 other women from around the country who had lost custody of their children as a result of trying to protect them from abusive fathers. The press conference was a bittersweet union of wounded family court "war veterans," each critically injured by judicial malfeasance. There was a sad comfort in knowing we were not alone.

Those of us present at the press conference networked, discussed legal and political strategies and met with advocates, attorneys and other professionals who understood the root causes of the backlash against protective parents. We exchanged contact information and began working together across the states, primarily by phone. Our contact in the Department of Justice was Sarah Connell, a bright young woman who had worked in the domestic violence field. Sarah "got it." She understood that abusive men were manipulating the

courts to use custody litigation as an extension of marital abuse. As the Violence Against Women Office was increasingly inundated with calls from mothers with cases like mine, Sarah became a point person in connecting us.

Back home in California, I began working with other mothers who were victims of the family court system. One of the moms, Josie Cohen, developed breast cancer during her fight to protect her son, Jackson, who repeatedly disclosed sexual abuse but was not protected by the family court despite multiple substantiations of the abuse by experts at U.C. Davis Medical Center. After several years of court battles, and well over a million dollars in litigation costs, Jackson was finally returned to the custody of his mother – just in time to watch her die. After his mother's death, Jackson was taken, kicking and screaming, by the physical force of police officers from his grandmother to the custody of his father. To this day Jack remains isolated from all of his maternal family and friends, and even from his paternal grandmother who also tried to protect him from his father.

We who comprised the core group of protective parents vowed to Josie on her deathbed that we would carry on the fight to save her son and change the system that failed us all. This was the catalyst for the formation of California Protective Parents Association, a non-profit child advocacy organization. We created a board of directors and obtained a 501 (c) (3) tax exemption. Connie Valentine became president of the organization and I became the director. With a small grant from the California Health Care Foundation, we were off and running as an official organization.

Once established, CPPA began a massive public education campaign to expose the failure of family courts to protect victims of domestic violence and child abuse. In the infancy of CPPA, we obtained a toll free phone line, which was posted on "The Leeza Show" after a mom appeared on the show to tell her story. We were immediately bombarded with calls. Over 200 distraught mothers called from the East Coast to the West Coast desperately seeking help to rescue their children who had been judicially kidnapped. Their anguish at losing their children was gut wrenching. These were all-American soccer moms who were totally devoted to their children. Most of them had not only lost custody, but were denied any meaningful contact with their children, if any. All of them had been financially ravaged by litigation costs. The vast majority of these women were treated like criminals and "sentenced" to supervised visitation, for no other reason than asking the family court to protect their children from an abusive father. The gender bias was so blatant and extreme that it sometimes jumped off the paper in court transcripts. Court officials, especially custody evaluators, denigrated and demeaned these women with negative stereotypical labels and traits while virtually ignoring all evidence of abuse and praising the abusers for their "interest" in their children.

We were overwhelmed by the response and our upstart organization had little to offer other than information and sympathy. What these moms needed were pro bono attorneys and miracles. We created a database of the callers and helped to hook up moms geographically to support each other. We traveled up and down the

state visiting California moms, collecting their relevant court documents, going to court with them and offering whatever help we could.

The next logical step was to call on the experts in gender discrimination, so we attended a conference by the National Organization of Women. There, we cornered Helen Grieco, then president of California NOW, and explained what was going on in the family courts. Having survived domestic abuse at the hands of her father, Helen was a quick study. She listened attentively and gave us her word that she would do something to help. Two years later, Helen established the CA NOW Family Law Task Force to address the problem of gender bias against women in the family court system. CPPA was a founding member of the task force. Helen's leadership and unwavering commitment to our "cause" has been a Godsend to women all over America.

CPPA's outreach motto was "suit up and show up." We attended every event and conference we could find about family violence and the law, with a primary focus on child sexual abuse. We read and studied. We took all the same training court evaluators were required to take, and more, and we found experts to mentor us in the law and politics. As we developed expertise in the field, we were invited to present at family violence conferences and press conferences. We testified before boards of supervisors, the state bar, and at a Congressional hearing. We co-sponsored annual conferences on child sexual abuse and traveled to help organize protective parent groups in other states. We contacted every advocacy organization and governmental agency involved to any degree in protective parent cases to plead for cooperation in our mission to protect children in family courts. On our journeys, we found others who were fighting the same battle, gathered supporters and forged friendships too numerous to mention.

In our database we kept lists of the good and bad court officials, child protective workers, attorneys and mental health providers so that new callers could know what to expect and how to prepare themselves. We created a family court events questionnaire and did a pilot study of 13 California counties. This study showed a consistent pattern of gender bias, due process violations and ethics abuses in protective parent cases.

While documenting cases we discovered rampant "judicial terrorism"; mothers across America were routinely being threatened by courts not to speak publicly about the judicial abuses they were suffering. Claiming publicity about the case was harmful to the children, judges would incrementally reduce whistleblowers' child access, leaving the children with no source of emotional support. As public outreach educators, however, the judiciary had no power to censor our free speech. So, we became the voice of the muted, and took our cause to the California State Capitol.

We quickly realized that it would require radical measures to penetrate the formidable power structure of a well-established, state funded system. By "thinking outside the box" Connie and I came up with a novel approach for informing legislators about the protective parent issue. Knowing that legislators are inundated on a daily basis with mounds of paper, we decided to do something different.

Operating under the auspices of a loosely

formed collaborative organization, Mothers of Lost Children, we arrived at the capitol wearing yellow t-shirts, each with a photo on the front of a child who had been placed in the custody of an abuser and the caption: "Captive: Held Hostage in the Custody of Abuser." On the back of the T-shirt was a photo of the judge who endangered the child with the caption: "Wanted, Judge (whoever) To Be Held Accountable." The case number was printed immediately below the photo of the judge, to give the appearance of a mug shot. The T-shirts proved to be exactly what we needed. Everywhere we went people stopped to ask what the t-shirts were all about. A legislative aid even chased us down the hall to ask if we had an extra t-shirt he could pin on the wall of his office. Each week we went to the capitol and passed out a flyer describing a horrific case where a child was endangered by the family court and naming the "professionals" responsible for the court's failure to protect. Surprisingly, we made very few enemies and lots of friends.

The rest is history, so to speak. With the invaluable help of Syrus Devers, Sheila Kuehl, Debra Ortiz and the Legislative Coalition to Prevent Child Abuse, Senate Bill 792 was introduced in 1999. This bill spawned a myriad of new statutes and rules designed to protect abused children and their non-offending parents in family court litigation. The laws outlined how child custody mediation and evaluations are to be conducted and imposed training requirements for those conducting them. On January 1, 2000, the first legislative fruits of our labors were enacted through Family Code §3027.5, a law that prohibits courts from removing or restricting custodial rights from parents for making lawful allegations of child sexual abuse in family court litigation. On its heals came Family Code's §3110 – §3118, which set standards for qualifications, training, and requirements of professionals conducting custody evaluations.

News of our organization's work spread, and we became the unofficial leaders of the protective parent movement on the West Coast. We partnered with the California Alliance Against Domestic Violence and several other organizations to present recommendations to the (resistant) Judicial Council. Together with Geraldine Stahly (whose work appears in this collection), a professor at California State, San Bernadino, I worked to develop a standardized questionnaire to be used in protective parent research. Connie worked with attorney Meera Fox of Child Abuse Solutions to develop a curriculum and template that Fox is using to train mediators and evaluators.

Despite the resounding noise and overwhelming amount of forward movement we had made, it seemed from the continuing calls we were getting to be having little impact on the outcome of individual court cases. Judges were simply ignoring the new laws or re-writing them from the bench to suit their own agendas. And some evaluators were too confused, lazy, or defiant to comply with the new laws. State oversight boards, where the foxes guard the hen houses, are critically lax in disciplining the professionals they regulate. CPS across the nation seemed to have adopted a "don't bother investigating incest if a disclosure occurs during litigation" rule. And the mother-blaming mentality was still thriving.

When my son Jeff escaped from his father and

came back to live with me, his father refused to sign a stipulation to legalize his change of custody. So, while I was in San Diego at a conference, Jeff wrote a 7-page declaration to the court describing the years of trauma and abuse he endured in the custody of his father. At the end of his declaration, he wrote, "This is what I have been dying to say for 7 years." After reading these words, it occurred to me that the kids we advocated for might benefit from the support of peers in similar situations, and a forum to talk about their experiences. So we organized a place for them to meet together.

Sitting around a dining room table, the kids shared their stories with a candor that amazed me. They instantly bonded and the transformation of their spirits, from cautious shyness to committed camaraderie was phenomenal. They decided to form The Courageous Kids Network (CKN.)

In April 2004, the kids publicly presented their stories at the 9th Annual Child Sexual Abuse Awareness Conference in Davis, California. A few months later, the kids were invited to speak at the main plenary event of the 9th International Conference on Family Violence in San Diego. The kids gave victim impact statements that brought a crowd of 1,500 to tears. The resounding applause went on for a very long time. Later in the day, the kids conducted a workshop where they told their stories in detail to a packed room of professionals stunned by the blatant violations of their human rights. News of the Courageous Kids' testimonies spread throughout family violence circles. Finally, the voices of the children were being heard, and in January 2005, the Courageous Kids presented at the Battered Mother's Custody Conference in Albany New York, which was featured in the October 2005 PBS documentary, "Breaking the Silence: Children's Stories."

The remarkable strength and bravery of the Courageous Kids in sharing their traumas and triumphs in the litigation vortex that robbed them of their childhoods is an inspiration to all who are privileged to hear them. While battered and bruised by the system, forced to grow up far too soon, plagued by memories of fear, loneliness, and oppression, these children decided to step up to the plate and advocate for other kids still trapped in the custody of abusers. May God bless these angels unaware for the amazing thing they have done.

So what lies ahead for California Protective Parents Association and the Courageous Kids? The momentum of the family court reform movement has taken flight, literally. Jeff and another Courageous Kid flew to New York to present at a judicial conference for judges in the 9th judicial district on May 16, 2006, marking what we believe is a historical day in America. To anyone's knowledge, the direct voices of the kids whose lives were shattered by dysfunctional family courts had never been heard at a judicial conference.

As for the ground level work of California Protective Parents Association, our vision is to collaborate on the initiation of a federal criminal investigation and financial audit of specific family courts/programs, develop a court watch program for family violence cases, provide quality legal representation for children in protective parent cases to ensure the children's physical safety, and realize the creation of a non governmental

Crimes Against Children Citizen Oversight Panel with the statutory authority to correct dangerous custody placements. We have some good laws. But when they are not implemented the way the legislature intended, we have bad decisions in courtrooms. Therefore, our ultimate goal is to abolish absolute judicial immunity through public initiative law. We believe no one, especially those paid with the citizens' tax dollars, should be absolutely immune from liability for violating the law or negligently endangering a child. We will go forward, with the help and support of our allies, and the hopeful words of Martin Luther King: "When people get caught up with that which is right and they are willing to sacrifice for it, there is no stopping short of victory."

You can go to courtcrimes.com to read the details of my case and view evidentiary documents.

Making a Mothers' Movement

By Lundy Bancroft

There is no love deeper, more complete and more vulnerable than the love that caring parents feel for their children. There is a bond so strong that it can be hard to tell exactly where the parent ends and the child begins, and the line is even harder to draw when our children are very young. Mothers have an additional bond from having carried their children inside of their bodies and having given birth to them, and more than half of mothers have experienced a deepened attachment through breast-feeding their babies. And mothers are, in the great majority of cases, their children's primary caretakers, especially during their early years. All connections between caring, non-abusive parents and their children are so important as to be almost sacred, but there is usually a particular quality to the mother-child bond. That life-giving and sustaining connection deserves the full support and admiration of communities and nations.

And just as there is a special beauty and importance to relationships between mothers and their children, there is a special and extraordinary cruelty in the abusive man who attempts to break or weaken the mother-child bond, whether by turning children against their mother, by harming the children physically, sexually or psychologically, or by attempting to take custody of the children away from her.

Children need protection from their abusive parents. In the realm of custody litigation that involves abuse, the abusive parent tends to be the father while the protective parent is usually the mother. We don't know that much about what happens to protective fathers, since their cases are so much less common, but we know that protective mothers frequently encounter a system that is insensitive, ignorant about the dynamics of abuse, and biased against women, so that mothers sometimes find themselves being forbidden by the court from protecting their children from a violent, cruel or sexually abusive father. And this outcome is a tragic one, for children and for their mothers.

Through the book that you are now reading, we are hoping to communicate to you our caring and solidarity with the challenging road you have ahead of you, as you fight to keep your children safe in body and soul. We want to let you know how critically important we believe that project to be, and how much your children need you to stand up for their rights and their well-being. You deserve admiration, not criticism, for the courageous risks you are taking on their behalf, and for your determination that all of you should have the opportunity to live in freedom and kindness.

Our society is currently giving mothers a powerful and crazy-making mixed message. First, it says to mothers, "If your children's father is violent or abusive to you or to your children, you should leave him in order to keep your children from being exposed to his behavior." But then, if the mother does leave, the society many times appears to do an abrupt about-face, and say, "Now that you are spilt up from your abusive partner,

you must expose your children to him. Only now you must send them alone with him, without you even being around any more to keep an eye on whether they are okay."

What do we want? Do we want mothers to protect their children from abusers, or don't we?

The sad result of this double-bind is that many mothers who take entirely appropriate steps to protect their children from exposure to abuse are being insulted by court personnel, harshly and unethically criticized and ridiculed in custody evaluations and psychological assessments, and required to send their children into unsupervised contact or even custody with their abusive fathers. And sometimes these rulings are coming in the face of overwhelming evidence that the children have both witnessed abuse and suffered it directly, evidence that would convince any reasonable and unbiased person that the children were in urgent need of protection. Family courts across the US and Canada appear to be guilty day in and day out of reckless endangerment of children.

Fortunately, there are also many women who do succeed in keeping their children safe post-separation. Some manage to persuade judges to grant the mother appropriate right to keep her children safe. Others lost in the early stages but do better later, as the abuser finally starts to show his true colors over time. Some women find that the succeed best by staying out of court, and using other methods to protect their children, such as waiting for the abuser to lose interest and drop out, or moving some distance away so that he will tire. Some women find that what works best is to focus on involving their children in supportive services, connecting them to healthy relatives, and teaching them to think critically and independently, so that they become strong children who see through the abuse and manipulation.

There is no formula that works for everyone. What strategies will work best for you depends on what your local court system is like, how much support you are receiving from friends and relatives, how much internal strength your children have, and how much (or how little) damage the abuser has already succeeded in doing to your relationships with your children. And each abuser is different. Some, for example, can be placated if they feel like they have won, and will gradually drift off, while others will never be satisfied with anything less than completely alienating children from their mother. Lawyers can advise you on court strategy, therapists can share their insight into children's injuries and healing processes, but ultimately you have to rely most on your own judgment, because you are the only expert on the full complexities of you specific situation.

As you make your way ahead, I hope you will put a high priority on taking good care of yourself. Seek out kind, supportive people who are good listeners. Nurture your friendships and family relationships. Try to step through the stress long enough each day to spend some time showering your children with love if they are with you, and make sure to play with them, not just look after their needs. Notice what you have already done well, as a parent and as an advocate for your children. Give yourself credit for your own strength, and celebrate the fact that your mind is getting free of the abuse, even if your children are not free yet. Cry out your sorrows

when you need to, sob into a pillow behind a closed door so you won't upset your children, but do sob, because your heart needs the cleansing relief of those tears. And then build on your strengths and accomplishments to keep fighting.

I wish the "justice system" dispensed justice, but where it comes to child custody litigation involving abusive fathers, outcomes are mixed at best. With adequate knowledge and planning, and especially if you are among the fortunate mothers who are able to obtain competent legal representation from a lawyer who understands what abusers are like as parents, you may be able to keep your children on the path to healing. If your case goes poorly, there are still ways that you can help your children feel your love and support surrounding them, and give them the strength to survive their father's destructiveness. But regardless of the outcome you experience personally, you might want to keep the following points in mind:

1. The custody system in the US and Canada is broken. You are not the only person who has experienced unhealthy and biased responses, and you are not the crazy, paranoid, vindictive person they may be painting you as.

2. Other women need your help to change that system, so that protective mothers start receiving proper respects for their rights and their children's rights.

Depending on where your own case stands currently, you may have trouble imagining any involvements right now beyond your day-to-day survival, and your efforts to keep your children functioning. But involvement in social change efforts is not necessarily separate from personal healing. Many women have found that when they become active in the protective parents movement, raising their voices loudly for the custody rights of mothers who have been battered or whose children have been sexually abused, their own healing leaps forward. Breaking down personal isolation sometimes goes hand in hand with breaking down political isolation. So this book will not only suggest ways to carry on your own fight, but will offer you avenues to join forces with other women (and male allies) who are working for social justice, so that protective mothers and their children can stop being torn apart.

I want to express my personal gratitude to you for your efforts to protect your children from abuse, and to raise them into caring, kind, humane values. The whole world benefits when you fight for your children's rights and their freedom. Protective mothers are some of our society's most invisible and most important heroes.

"Turning a Personal Battle into a Political Crusade," an Interview with Karen Hartley-Nagle

Karen Hartley-Nagle has spent years fighting her ex-husband for custody of her children. She invested tens of thousands of dollars in legal fees and years in and out of Delaware courtrooms, fighting to keep her kids. When all of her efforts failed, Hartley-Nagle boned up on the law and kept on plugging. She even turned her tragedy into a bid for public office.

When did you hit your lowest point?

In the first three custody battles, my ex-husband and I were given joint custody of our three children and I had primary placement. Then, in November 2002 my ex took me to court for a fourth time. Up until that point I had spent $86,000 on lawyers' fees and ten days before the hearing my lawyers wanted another $40,000. I was totally broke and could not afford this. I asked for a continuance but it was denied.

Right before the hearing, the guardian ad litem handed me a document and said, "If you don't sign this, the kids are either going with your ex or to foster care or I may recommend to the judge that you don't see them at all." I know now that she did not have the legal authority to do this, but at the time I was scared and didn't know what to do, so I signed the document.

The document I signed gave my ex husband primary placement and final decision-making authority. I was given supervised therapeutic visitation once every two weeks. I had hoped that after I signed the agreement I would be able to find an attorney to help me regain primary custody of my children. I must have gone to 50 attorneys in my state and in Pennsylvania, but they all told me that it would cost me at least $100,000. I was so desperate I tried to gamble to get the money for an attorney. Luckily, I broke even, but I do not recommend this as a strategy.

While all this was going on, I was paying $125 for each supervised visit with my kids twice a month for one hour. I paid for this service for three months, but then I ran out of money and I could no longer afford to see my kids. There was a period of one year when I didn't see them. I was devastated. I felt I had no power to do anything about the situation. I thought my kids were gone forever. It was such an Alice in Wonderland scenario.

Once I realized I was on my own, I filed a handwritten motion to modify custody and I thought I could go into the court and tell the judge my story and he would return my kids. But then all the judges in my county recused themselves and my case was sent to another county. It took me a year and a half to finally get into court. I couldn't stand the waiting and that's when I said the heck with it and I started to take action.

What did you do?

I wrote a 17-page letter about what had happened to me and sent about 200 copies to any-

one I thought would have had an interest in my case. The letter was extremely long and I wasn't getting far. But writing and sending this letter helped me to start speaking about my problem and the issue in general and this taught me to be more concise and clear. It was also therapeutic.

I also began sending information about my case to state legislators along with studies that supported what I was saying. This empowered me to realize that I could do my own research and find support for what I was saying. I complained to my legislators, saying that it was extortion for the state to demand that mothers pay to see their kids without a hearing finding them unfit. You can't keep moms from seeing kids because they can't afford to pay a therapist.

I also started figuring out what I would need to do to represent myself pro se. I started studying the law, family law and case law. I started realizing how many of my rights were violated, and I thought this is just not right.

I also discovered that I could not just go to the judge, tell my story and expect a positive outcome. I learned I needed to state the problem, show evidence that backed what I was saying and then ask for the resolution I wanted that conformed to Delaware's state statutes.

What led to your run for office?

Through my outreach efforts, I met the person at the head of the Independent Party in March 2004. He introduced me to Frank Infante and Michael Dore, who were then running for governor and lieutenant governor, respectively. Frank assigned Mike to do the research into my case. By the time Mike finished investigating my case, they both believed me and backed me.

By nature, I am really shy and introverted, but Mike and Frank told me that I had to speak out. I still feel ill when I do this. In 2004, they nominated me to run for state senate. They said you're going to speak out and help kids and parents like you. Although I had never given a speech, I decided to run on the platform of changing the family court system. My democrat and republican opponents each spent $100,000 on their campaigns and I had $100 to spend. But I gained confidence and learned how to work the media and create a buzz. For instance, when my campaign signs were stolen, I held a press conference about my signs being the most coveted signs in the campaign. I lost, but I learned a great deal and I also saw some positive changes.

What changes have you seen?

In addition to losing my kids, I had also been ordered to pay child support, which was ridiculous because I didn't have a job or resources. In any case, when I failed to pay child support, the state took my driver's license away, which was crazy, because how are you supposed to get to a job if you don't have a license! I lobbied our state legislature and the law was changed. It no longer permits the state to take away a person's driver's license for failing to pay child support. We also have a bill before the state legislature that would strengthen the laws against child molesters.

Where do things in your case stand now?

At my last hearing in 2004, I failed to regain custody of my kids. The judge excluded all the evidence that had been admitted in the hearings

that took place before I was coerced into signing the agreement that turned custody over to my ex. There was no mention of domestic violence.

I then appealed to the Supreme Court. Luckily, an attorney who had heard of me helped me to write my Supreme Court brief. The Supreme Court agreed to hear the case. My case was reversed and remanded for a new hearing in Family Court on the issue of coercion and duress.

My case is still before the Supreme Court and I am now representing myself. I am asking them to find that the guardian ad litem, my ex spouse, his attorney and the mental health official coerced me into signing the agreement that gave my ex-husband sole custody. If the panel of three judges agrees that I was coerced into signing the agreement, then I will be allowed to have primary placement of my kids. If not, I don't know what will happen.

You also petitioned to have your case heard before an open court and won. How did this happen?

When my case went to Supreme Court, I made a motion to have the court opened. The judge agreed and I was extremely surprised. I think he agreed to this because I ran for office on the open court issue.

What has been the result of having the case before an open court?

When I started running for office, people started to want to help me and I found a therapist who offered to do the visitations for free. This meant that after a year I was able to see my kids again.

But three months ago I was told by my ex's attorney, first through a therapist and then in writing, that if I didn't drop the Supreme Court case, my ex wouldn't allow me to see my kids. I refused to drop the case and he will not allow me to see my kids. He said he's not going to until the litigation is over. The only pending litigation is the Supreme Court case in which I won a reversal. So, here we have a situation where I'm complying with the order and my ex is trying to coerce me into dropping my coercion case!

I put out a press release two days before my hearing, including all these details, and Channel 47, a local television station, showed up. They reported the case on the evening news. What's interesting is, if the court is open, the media can come in and they can't be sued because they are reporting on testimony they have heard. It's no more "he said/she said."

I don't know if the coverage helped me, but it brought these important issues to the public's attention. In addition, two other people showed up who have their own cases pending, and I think being able to witness such a proceeding helped them to understand how these procedures go. Many protective parents wind up in court and have no idea what to expect. Knowing what to expect provides a measure of comfort.

What is next on your activist agenda?

I started the Nagle Foundation, a not-for-profit, 501(c)(4) organization. The foundation's goal is to promote children's rights and combat child abuse and domestic violence. We are planning to do this by bringing experts together to discuss these issues among themselves and with

the media, as well as lobbying activities, and public education.

In addition, I also decided to run for Congress in 2006. I'll be running as a "fusion" candidate, on both the Democratic and Independent tickets, because I don't want to be confined and restrained from speaking about transparency and accountability in government, including the family court system.

What lessons would you like to pass along to other protective parents enmeshed in the family court system?

Don't blame yourself: You need to know this isn't just happening to you. Bad things happen to good people.

Don't be passive: At first I thought that if I was quiet and went along with whatever I was asked to do this awful situation would get rectified. But I was wrong. At first it's hard to act, because your fear of retaliation. But keep at it. The more you learn and the more you fight back, the easier it gets.

Know the law and your rights inside and out: My ex had been convicted of domestic violence and he had been declared the perpetrator of domestic violence. In Delaware there is a presumption against perpetrators getting primary placement for custody, but neither the judge nor the guardian ad litem followed the rule. I didn't know the law when I signed the document relinquishing custody of my kids. Had I known then what I know now, things might have turned out very differently.

When you go before a judge, keep your emotions in check: If you show all the anger you feel inside or get upset, the judge may not be as receptive to the information you need him/her to hear to present you case.

Back up your case: I learned that you don't make any statements you can't support with documents or witnesses, because the other attorneys will hold you accountable and will make it appear as if you made up incidents that you know to be facts. They may tell the judge that you don't see reality. So I learned to present only information that you can prove with documentation and records.

Reach out to other people: Contact activists and politicians who may be sympathetic to your case. You will be surprised at the people who may respond to you.

Learn how to address politicians and the media: If you want to alert media about something that is happening in your case, be very specific. Put out a press release for a public hearing about a particular issue related to your case and make it open to the public. Then the paper may post a notice about your hearing. That's the way to get your message out and to identify people with the same issue as you.

Once you have amassed a group of people, you can go to your local politicians and demonstrate that it's not just about you.

Timing is everything: When you issue a press release, do it on a Monday or a Tuesday, typically slow news days in many areas. Friday's when people are anxious to get home for the weekend I have found are not as effective.

Use radio talk shows to get your message out: Radio talk shows are a great vehicle for getting your message out. They are not censored. You can call in and say, "This relates to something I am dealing with…." But you better be ready with a good sound bite. You need to know exactly what you want to convey to the public and be able to get your message across quickly and clearly. Offer the problem and what you see as a potential solution. The same is true when you approach a journalist or a legislator.

The Power of One in Alaska

By Paige Hodson

"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has."

- Margaret Mead

During one of the last evenings of the Alaska Legislature's 2004 session, I paced the halls of the state capitol. I had put in two years of hard work crafting a bill that would make it more difficult for domestic violence and child abuse perpetrators to obtain unsupervised visitation rights and custody of their children. After unanimous votes at every level of the legislative process, we were now hours away from finding out whether Alaska House Bill 385 would get to the Senate floor for the final vote. Last-minute politics by a powerful senator who purported to believe there was an epidemic of false allegations of domestic violence had thrown a wrench into what had previously been a smooth process for this important bill.

At last, the behind-the-scenes wrangling resolved and the bill was finally allowed onto the floor. At 12:43 a.m. on May 11, 2004, I sat in the gallery and watched the tally board light up as each of the state senators voted "Aye." I wanted to pump my fist in the air and shout, "Yes!" Instead, I silently beamed, shed a tear of gratitude and breathed a huge sigh of relief. HB 385 passed the Senate with a vote of 18-0. The House voted in concurrence on the same day and the bill became effective as law on July 1, 2004. Finally, abused women and children had more tools available to give them better access to safety. It was a wonderful victory for protective parents all over the state.

My life experience had not always been this rewarding.

I am many things – a mother of two children, a court-appointed special advocate for abused and neglected children, a three-term PTA president, a small-business owner, a community volunteer, a runner, a skier, a daughter and a sister. But I am also a domestic violence survivor who worked hard to make sure that the court would act in the best interests of me and my children and limit my abusive ex-husband's contact with them.

I met my ex-husband on a blind date. Initially, he was very charming and attentive, but as the relationship progressed his bad temper, impatience and manipulative behaviors slowly emerged. After we were married, the charm disappeared and I found myself locked in a union with a man who was verbally and emotionally abusive. About one to two times a year, my ex would take the abuse up a notch and push me or spit on me.

Eight years ago, my husband, kids and I were on vacation in Hawaii. I had been granted 30 minutes of freedom to go for a jog. He said he was going to take the children downstairs and play in the pool. When I returned, I found our six-year-old daughter fully dressed, sitting on the couch reading. The baby was crawling around unattended,

and my spouse was in the next room with the door closed. My daughter told me her father had put her in an hour time-out for refusing to swim after her inflatable toy boat had blown away (she couldn't swim in deep water). Disappointed in his lack of appropriate parenting techniques, but certainly not surprised, I just said, "Oh," and turned my back to go to the kitchenette for some water. My husband came out of the next room screaming and swearing at me. He grabbed my arm and dragged me into the next room.

At that moment, I decided I had had enough. I had stayed with him because I believed that "children need their fathers" and "marriage is forever." But I realized that my kids and I deserved a better, safer life. Upon returning to Anchorage, he asked me if I was going to divorce him. I said, "Yes." From that point on, I was subjected to hours of verbal abuse. His main theme was, "If you leave, I'll say or do anything to prove you an unfit mother, and if I can't, you will never see those kids again." He told me he would tell the judge that I was an adulterer, a lesbian, promiscuous, abusive of our children and him, an alcoholic, suicidal and mentally ill. All these statements were complete fabrications, but the truth had never stopped him before. He also told me that he had "connections" through his Siberian hunting and guiding business and that they could help he and the kids disappear.

The thought of my kids disappearing struck more fear in me than anything else I had faced or knew I would face as I struggled to leave this 11-year abusive marriage. Although I was afraid of physical harm and financial devastation in my choice to leave, his threats to take the children terrified me most of all. My children were the primary reason I had the strength and courage to leave.

Although I believed my husband would say or do anything to prove me an unfit mother, I thought at the time that he would not stand a chance of getting custody of the kids. After all, I was doing the right thing. According to all the brochures and public service announcements about domestic violence, women must get out of abusive relationships if they want to protect their children from the violence and its long-term effects. Research studies have consistently shown that children who witness violence suffer a wide range of short and long-term emotional and behavioral problems. These children are at higher risk for psychosomatic disorders, anxiety, sleep disruption, excessive crying, problems in school, drug and alcohol abuse, sexual acting out, running away and even suicide. Boys who experience abuse are more likely to inflict severe violence as adults. And girls who witness abuse may tolerate abuse as adults.

As I quickly learned, however, there is a big disconnect between what we hear and read in society and how the family court system conforms to these messages. While the research seems to indicate that the best thing for kids is to eliminate their exposure to violence and abuse, the family court system often prevents protective parents, particularly when they are the moms, from trying to do just that. And, many family judges, working on the presumption that joint custody or exposure to both parents is best, fail to account for the need to limit a child's exposure to abusive behavior. In my experience, misogynistic attitudes also greatly affect efforts to protect children. Upon

filing for divorce, I quickly became re-victimized by the system, which discounted my reports of abuse. Because of my concerns about joint legal and shared physical custody I was characterized as being "uncooperative," "hostile," "unfriendly," "alienating" and "mentally ill."

My former spouse made good on a number of his threats. He answered my petition for divorce at first with a request for 50/50 legal and physical custody of the children. It took nearly two years just to get to trial. Up until the trial, we had a custody investigator on the case who had put herself in the dual role as mediator. She continually pressured me to give my ex more time with the kids, implying that if I didn't she would look harshly upon me in her final decision. At one point when my ex forced his way into my home, she intimidated me and my attorney not to file for a restraining order. She regularly ignored signs that my ex was abusing the kids. One time the baby came home with a black eye; on other occasions the baby would be returned home badly dehydrated, unfed or with a diaper rash so bad he was raw and bleeding. When overnight visits began close to trial time, my eldest kicked and screamed all the way to her dad's.

In the first custody trial my ex succeeded in getting joint legal custody and visitation for forty percent of the time. He got this because the judge bought into his claims that I was alienating my children from him and the judge wanted to give my ex as much time as possible to "negate" my influence on the children. The judge acknowledged one incident of domestic violence that was witnessed by my mother, but basically downplayed it as well as the rest of the abuse, indicating that he felt it had nothing to do with the kids. The judge left the case open in a fashion, saying that he was ordering us into individual and co-parenting counseling and that he was strongly considering my ex's request for 50/50 custody. If the arrangement wasn't working, he wanted the co-parenting counselor to tell him who they felt was "at fault," and implied that that person would then lose custody altogether.

At the second trial a year later I won sole legal and primary physical custody. My ex got three weekends out of every four and half of the summer. The judge was beginning to acknowledge the deteriorating relationship between my ex and my daughter and started to assign at least some of the blame to my ex's behavior rather than to me. Finally, at the modification trial another year or so later, my ex's visits were reduced to every other weekend, but he still gets half of the summer.

After three full custody trials, I was finally awarded sole legal custody, but even this proved to be only a paper token given the judge's decision to maintain a liberal visitation schedule. The judge also assigned my former husband full authority over my daughter's therapeutic treatment. Three years later, my ex-husband has never taken my daughter to therapy, mainly, I believe, because he does not want her to disclose the violence.

Although I successfully removed myself from face-to-face contact with my former husband, he continues to exercise his power through his treatment of the children. My daughter says the only way she copes with the visits is by "going to another place in her head" when the abuse be-

gins. My younger son tells me he tries to imagine he is not there or hides behind furniture to make himself as unnoticeable as possible. The children tell me about their father's cruel behavior in the home and yet there is nothing I can do to prevent them from being exposed to it.

As awful as this ordeal continues to be, one of the best things to come from it was the energy I was able to muster to fight back. The seeds of my activism were born as I sat in that Anchorage courtroom at my first trial. I could feel the anger swell within me as the judge chastised me and threatened to give full custody to my ex-husband because I did not believe 50/50 shared physical custody was appropriate for a nursing infant and a seven-year-old who were witnesses of domestic violence and direct victims of their father's abuses. I vowed then and there that as soon as I was in a place of relative safety, both personal and legal, I would fight back.

Over the course of my time in the family court system I grew to realize that my experience was not an isolated instance, but rather a reflection of a pervasive pattern in Alaska and across the country. Many of the things I heard court personnel say about domestic abuse further convinced me of the need to change the system and people's mindsets. I regularly heard people working in the Alaska Court System utter such idiotic statements as:

"I know he abused you, but what does that have to do with his parenting? "

"It couldn't have been that bad, she stayed, she never called the police."

"It's a communication problem."

"It wasn't abuse, it was a difference in parenting styles."

"Everyone is nuts in custody cases."

"Mother Theresa doesn't marry Jack the Ripper."

"They are in a toxic dance."

"It takes 2 to Tango."

"Boys will be boys."

"Men's parenting behaviors shouldn't be scrutinized."

"Lets give the 'disadvantaged parent' as much visitation time as possible to 'cure' the relationship."

"He seems so 'nice.'"

I also learned that many women stay in abusive relationships in Alaska because their abusers threatened to take their children if they left. Attorneys even told some victims of domestic violence that they should not mention abuse for fear of angering the court. Many women were told that they could not hope for anything better than 50/50 custody. One mother told me, "If I stay, I can protect my daughter 100 percent of the time. If I leave, I may not be able to protect her even half the time." And so the mother stays.

These attitudes and misunderstandings about the destructiveness of giving abusers custody rights have affected Alaskan families across our state and have resulted in a great deal of violence and several deaths. For example:

- Abused mom in Kenai lost custody of her children because the judge felt she

had emotionally harmed the children by taking them to a shelter. She went to the shelter because her battering spouse had threatened to kill her and the children.

- A mom in Skagway lost custody because she refused overnight visitation after her four-year-old daughter was given alcohol and was sexually molested by her father. The court refused to provide adequate supervision even after the local child protective service and the child's psychologist independently verified the abuse charges.
- A mother in Fairbanks died from 56 stab wounds during a visitation exchange. The father had unsupervised overnight visitation with his five-year-old child who witnessed his mother's death. During that custody trial, the judge admonished the mother to be flexible and "co-parent," despite having been beaten, raped and stalked.
- A Ketchikan father fed his toddler a lethal dose of sleeping aids shortly after the supervision requirement was lifted. The guardian ad litem supervising the visits testified about how well the father was doing and the judge followed those recommendations. The father, however, had an active restraining order against him after attacking the mother and child and had also been convicted for possession of child pornography. The child was found drowned and the father was charged with 31 new counts of possessing child porn. He eventually pleaded guilty to 2nd degree murder.
- An Anchorage mom who was hospitalized because her ex beat her when she left him was forced to send her kindergartner off for unsupervised weeklong visits. This man also had a criminal record for cocaine dealing, assault with a deadly weapon and arson. The custody evaluator in that case told the mom that his abusive behavior had nothing to do with his parenting.

After learning about all these other cases and living through my own drama, I began my efforts as an activist. The first thing I did was to look closely at the existing statutes. I learned that many of our statutes supported joint custody and I found several areas in the statutes that worked to disadvantage and penalize victims of domestic violence and their children. For example, domestic violence was just one factor in a laundry list of things the judges had to consider when deciding custody cases; it carried no extra weight. Judges regularly awarded temporary custody on an equal basis with no consideration to the safety or best interests of the child.

According to the law, the "friendliest" parent was to be rewarded and the "unfriendly" parent was in effect to be punished. As a result, many judges began viewing protective parents who brought claims of domestic violence as "unfriendly." In addition, a statutory preference for joint legal custody was being interpreted as a preference for shared physical custody – again with little heed paid to basic safety or parenting issues. Evaluators based custody decisions on junk science theories, outmoded pro-joint custody social policies and hearsay.

After reading through the statutes, I called my friend and former family law attorney, Allen Bailey, who had once promised to help me if I ever decided to fight for changes in Alaska's family laws. Allen was a former municipal prosecutor and he had been a staunch advocate for domestic violence victims during his career. Together, we developed what we felt was the best custody statute acknowledging the effects of domestic violence on children. We drew primarily from Louisiana and the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges. We looked at and correlated Alaska's child protection statutes, which identify children's exposure to domestic violence as child abuse. And we fine tuned HB 385 as best we could to be responsive to the needs of our unique and diverse Alaskan communities.

In particular, the bill:

- Elevates the weighting of domestic violence in the best interest of the child factors judges must consider
- Makes consideration of domestic violence a factor in temporary custody decisions. Prior to passage of the law, the statute made no exception for DV or child abuse, etc. The judge had to award temporary 50/50 temporary custody
- Provides an exception for the "friendly parent" provision where there is domestic violence/child abuse (the existing factor often resulted in the victim and/or protective parent being penalized with lost visitation time or lost custody when domestic violence was minimized, ignored or disbelieved inappropriately.) Friendly parent statutes encourage the judge to look only at which parent was more willing to "share" the kids", who was more "cooperative". Battered moms and those trying to protect their kids can't do that, so they were penalized.
- Institutes a rebuttable presumption that batterers will not get custody of children. This raises the bar higher for perpetrators of domestic violence by forcing them to prove why they should have any custody.

Upon signing HB 385 into law last year, Governor Frank Murkowski said: "No Alaskan should live with domestic violence, and decisions to seek help should not be clouded by a fear of losing custody of your child.... We now have a law that will help protect Alaska's children and ensure we do not punish a battered co-parent by awarding custody to the parent who has been the abuser."

Yet, while the new legislation is beginning to work positively for abuse victims, I believe we need to do much more to ensure lasting and meaningful change. Personally, I would like to see the elimination of the use of custody evaluators as well as the "friendly parent" statues. I also think the state should restrict the use of psychologists and require mandatory annual training for judges in domestic violence and child abuse. The professionals working in the family court system have a great deal of power and we must insist that these people are properly trained so that they can act in the best interest of the children and their protective parents. With one stroke of a pen, a judge can guarantee that children grow up safe and secure

or they can banish children to a life full of conflict, pain and continued suffering.

Today, I am continuing my efforts to explode all the myths about domestic violence in order to ensure that victims of domestic abuse are heard, believed and supported. My group, Alaska Moms for Custodial Justice now provides networking, education and support for protective parents in contested custody situations and advocates for court reforms to better protect abuse victims in custody litigation. In addition, I also created Custody Preparation for Moms (www.custodyprepformoms.org), an educational website designed to assist domestic violence victims in custody litigation.

Becoming a part of the effort to help make positive changes in our family court system has given me a great deal of confidence and satisfaction. Recently, I was contacted through my website by an east coast freelance reporter working on an article about the plight of battered mothers in the family court system. When she learned that I was the co-author of the Alaska legislation, she disclosed that she had recently moved from Alaska, leaving her abuser behind. "I am sure I would not have primary physical child of my son without that legislation. Do you know I have blessed the author of that legislation, without knowing who created it, for many months? Thank you, thank you, thank you."

What could be better than that?

For further information:

Custody Preparation For Moms:
www.custodyprepformoms.org

For information regarding 2004 Alaska HB 385 – Rebuttable Presumption Law:
http://www.legis.state.ak.us/PDF/23/Bills/HB0385Z.PDF
http://www.akrepublicans.org/mcguire/23/spst/mcgu_hb385.php

From a Judge's Perspective: An Interview with Judge Sol Gothard

Judge Sol Gothard, JD, MSW, ACSW, has nearly 50 years of experience working in the court system. He has a Masters in Social Work and a JD. His last position as a social worker was as assistant chief probation officer in the New Orleans Juvenile Court, while attending law school at night. He practiced law for ten years, during which time he also was the attorney for Child Protective Services (CPS) in Jefferson Parish, LA. In 1972 he was elected judge of the Juvenile Court for Jefferson Parish, LA, where he became Chief Judge. In 1986, he was elected to the 5th Circuit Court of Appeal, State of Louisiana, where he became Senior Judge. He retired on September 1st, 2005.

Judge Gothard estimates that during his 48-year career as a social worker in a Juvenile Court, attorney for CPS, Juvenile Court Judge and Appellate Court Judge, he has been involved with over 2,000 cases that involved allegations of child sexual abuse. Recently, Gothard served on the faculty of the National Council of Juvenile and Family Court Judges (NCJFCJ), training judges on how to address child sexual abuse in custody and divorce cases. He continues to train judges, and was recently a keynote speaker at a judicial training session in NY. He also continues to speak nationally at conferences, where he is in high demand.

After reviewing family law cases and observing family law courts for so many years, do you think they are functioning properly?

No, too many are not. Even though there are great efforts out there to inform judges and court personnel about the issue of child sexual abuse and how it is treated by our family courts, too many courts continue to further victimize young victims of abuse and the parents who try to protect them. For instance, the National Council of Juvenile and Family Court Judges is an excellent organization. They have a most informed faculty, and they have done a lot of important work on this subject; unfortunately, their messages have failed to reach far too many family court judges, who apparently have not attended the training sessions that NCJFCJ provides. Too many courts that deal with custody and visitation do not have the understanding of the dynamics of the problem, or of the depth of the problem.

What do you think the main problems are?

One big problem is the treatment of abuse by the courts, especially when child sexual abuse is alleged. The problem is that too many judges and the so-called experts they rely on (psychologists, social workers, mediators, etc..) have no clue as to the extent of sex abuse and the dynamics it creates in custody and divorce cases. They rely on junk science like the absurd concept of Parental Alienation Syndrome (PAS), which has been put out there as knowledge, even though there is nothing legitimate about it. The NCJFCJ is on record saying that this nonsense should be inadmissible in court proceedings. Lawyers who are appointed as Guardians ad litem (GAL) all too

often have insufficient knowledge of the dynamics of child sexual abuse and rely, instead, on these absurd theories, often to the detriment of children. Let me emphatically state that I am not pro-mother against father or vice versa, I am in favor of fair hearings that provide due process of law and equal protection of law for all, but most especially, the children. We loose sight of this, and I am irritated by the remarks of so-called "Fathers' Rights" groups. I am the father of five children, four sons and a daughter. I certainly know what it is to raise children, get them educated, and work and hope that they will turn out ok, which, thank goodness, mine have. Four of them are married and have children: therefore, I am also a grandfather. So, why would I want to be against fathers? What is there about a father's role in raising children that I don't understand? The evidence (my children are a writer, a lawyer, two PhDs and an MD) shows that my wife of 48 years and I have done ok by our children; so don't attempt to label me as being "anti-fathers" or anti anything else, other than incompetence and/or injustice in the legal system when I see it.

Many times fathers complain that court proceedings involving custody determinations have been biased against them. But, have you ever seen a father complain that PAS was used to deprive him of custody? This may have happened, but I have never seen it. This is about protecting children, and I implore judges to make every effort to find out if children were abused before they make the custody or visitation decision. Instead, too often, the misinformed or uninformed professionals, and especially lawyers acting as GAL, will take the side of the accused parent (invariably the father) and against the mother who has been accused of "alienating" (God, I hate that word) the children against the father. The child, who may very well have been victimized, has a court appointed attorney who is supposed to represent his/her best interest and is acting against his/her best interest, often advocating that custody be removed from the complaining parent (again, invariably the mother) that first reported the allegation of child sexual abuse.

What are the biggest mistakes judges make?

Some judges would rather believe that a woman is crazy and lying, than that the men are abusive. I hate to use words like "sexism" or "racism" because many times we are waving a red flag; we are inciting people by appealing to their hearts instead of their heads, and to emotions rather than clear thinking. However, I am forced to use the word sexism here, because of the long history of this attitude toward women. There is an old English saying, "a wife, a dog, a Sycamore tree, the more you beat them the better you be." Isn't that horrible? At the same time, the infamous quote "rape is a charge so easily made, but not so easily proven," also originated in England, accepted and fostered by Freud, and made its way into American law. Even Wigmore advocated this in his book on evidence, published in 1940 and continued to be used as late as 1960 in the law schools of America! Kinsey said incest happens in one in a million families in Western cultures, which we now know to be nonsense. While I do not know the percentage of incest, numerous studies have shown that somewhere around 16 percent of boys and 25 percent of girls will be victims of sexual abuse during their childhood. Sexual abuse (including incest) is com-

mitted by people of every race, class and religion; but, so many times we find that the perpetrator is affluent, better than average educated, often pillars of the community, which the public and many judges often refuse to believe. The women reporting suspected cases of child sexual abuse are, too often, portrayed as "hysterical," whereas the perpetrators referred to above are often sophisticated, calm, manipulative and quite convincing. I have been involved in many such cases where evaluators were convinced that dad was lying and mom was just hysterical, and they then influence the judge to make a wrong decision.

Other problems are that the judges have accepted some common myths about sexual abuse that have been around for over the twenty years in which I have been teaching about the subject. I document the evolution and prevalence of some of these in my presentations; I show the headlines of twenty years ago, which are the same myths that, unfortunately, are still prevalent today. Some of these myths are: the problem of child sexual abuse is grossly exaggerated; children lie, especially in custody cases; there is a child sex abuse industry that therapists who work with victims are perpetuating because it is lucrative (if you want to talk about lucrative, you should see the amount of money made by some well-known defense witnesses!); children are coached and "brainwashed" to lie by mothers; PAS; fathers no longer get a fair shake in the courts (this is true much more of mothers than fathers); there is a "witch-hunt" against fathers, and other harmful myths. These myths have been repeated, and some judges assume they are true, even though they have been, in most situations, discredited.

Relative to the myth that mothers are constantly making false accusations of child sexual abuse against fathers, the most famous study on this was done by the National Association of Family and Conciliation Courts in Denver, CO, which studied 9,000 cases in various courts throughout the nation involving custody disputes. They found that only seven mothers had deliberately coached children to lie. This study has been peer reviewed in respected journals. I defy anyone to show me 9,000 cases, whether they are contracts, worker's comp, corporate law, or any other type of lawsuit, where deliberate lying occurred only seven times in 9,000 cases. It appears to me that there is less lying here, than in any other area of contested cases!

What are the biggest mistakes mothers make?

Number one is you have to be as objective as possible. I realize it is hard to be objective; your child has experienced such a betrayal of trust. I know it's emotional, but fight it and try to be strong and don't antagonize the court. You can't prevail in court by yelling and screaming. You have to be calm to be effective. Be factual. Don't insist that you are 100 percent right 100 percent of the time. Concede the true facts of the case, even if they are against you. Do not ever, ever lie or exaggerate in court. If the other side is lying and exaggerating, do not be tempted to play the same game. With a good judge, who has a good staff and a competent attorney representing you, the truth should, hopefully, prevail.

What can be done to better serve children who have been abused?

The court must hear the child and then take action on that knowledge. We need children to experience court as a non-threatening atmosphere. We have to have judges who are objective and informed. Similarly, the NCJFCJ offers training and seminars to judges and court evaluators to ensure professionally sound and objective hearings. The judge, first and foremost, needs to learn which training sessions are legitimate, and one merely has to look at the list of presenters to determine that. There is so much knowledge out there about how children are able to express themselves at different ages, the reliability and unreliability of memory, and other information that will enable a judge, with the proper staff, to come to a proper conclusion, based on true facts, and science, not on myths, junk science, or gender bias.

Child Sexual Abuse and Child Custody Disputes

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Introduction

Child sexual abuse (CSA) is a problem that has been recognized for many years in the United States. In 2003, an estimated 90,000 CSA cases were reported to various agencies (National Association of Counsel for Children, 2006). Research has consistently shown that approximately 1 in 4-6 girls and 1 in 6-10 boys are sexually abused before they reach 18 years of age (e.g., Portwood, 2006; Wilcox, Richards, & O'Keeffe, 2004). In addition, the dynamics of power and control that are often important aspects of CSA are very similar to those which occur in domestic violence cases. Disclosures of CSA and histories of domestic violence may lead the nonoffending parent or victim of spouse abuse to file for divorce and request sole custody of the child(ren). A victim of spouse abuse or a nonoffending parent may file for divorce due to other reasons without realizing that CSA has also occurred. Once in a safe environment, away from direct contact with the offending parent, a child may disclose sexual abuse. As such, it is not surprising that CSA is sometimes alleged during child custody litigation.

Unfortunately, however, there are some common myths regarding CSA within custody litigation. For example, two frequently mistaken beliefs are that child sexual abuse allegations are quite common during divorce and child custody battles, and that the great majority of the allegations are false (Dallam & Silberg, 2006; Schuman, 1999). In reality, however, only about 6-12% of all child custody cases have CSA allegations (Dallam & Silberg, 2006; Thoennes & Tjaden, 1990; Trocme, & Bala, 2005). In addition, CSA allegations are likely to be substantiated at approximately the same rate during custody proceedings as they are in non-custody cases (i.e., in the range of 30-45%) (e.g., Bala & Schuman, 2000; Faller & DeVoe, 1995; Thoennes & Tjaden, 1990; Trocme & Bala, 2005). Likewise, false accusations of CSA are reported to be quite uncommon both during custody proceedings and in other incidents (Faller & DeVoe, 1995; Schuman, 2000; Trocme & Bala, 2005). It should be noted that "substantiation" refers to the likelihood that the case can be prosecuted, and that actual evidence exists to support the allegation. Most cases are "unable to be substantiated," which means that there may not be sufficient evidence to actually prove that abuse occurred; this does not mean that it did not occur, however. A "false allegation" refers to someone (e.g., a parent, the child, etc.) intentionally making an allegation that s/he knows is not true. Unfortunately due to the above mentioned myths, many CSA allegations are not investigated thoroughly in child custody cases since some

attorneys, judges, child protection workers, and child custody evaluators assume that the allegations are false in these types of cases, which then tends to hinder an objective investigation.

The recent large study in Canada by Trocme and Bala (2005) also found that the rate of intentionally false allegations of CSA in custody cases was low (4-12%). However, they found some very interesting results when they looked more closely at the data. For example, they found that is was very unlikely that a false allegation of CSA was made by a child. When false allegations did occur, they were more likely to involve physical abuse or neglect. In addition, false allegations in child custody cases were more likely to be made by fathers or by neighbors than by mothers.

Moreover, it is often inaccurately believed that there is no relationship between domestic violence (spouse abuse) and child abuse. The literature has continuously demonstrated the opposite (Appel & Holden, 1998; Busch & Robertson, 2000; Edleson, 1999). As stated above, offenders who batter their spouses are likely to use power and control techniques to not only batter their spouses, but also to abuse their children (American Psychological Association, 1996; Appel & Holden, 1998; Edleson, 1999; Lemon, 2000).

It is erroneously believed that custody transfers of children to abusive parents are rare (Dallam & Silberg, 2006). A phenomenon, however, has emerged in the family court system in which custody has indeed been transferred in both temporary as well as permanent bases to the person accused by a child of sexual abuse. Empirical research on the actual prevalence of these types of cases is not yet available. However, there are numerous anecdotal reports of these situations in the United States and in Canada.

The myth of "Parental Alienation Syndrome"

So what are the main reasons for these custody transfers when they do occur? Legislators favor joint custody in general in most states, but when this is not feasible many statutes and rulings favor the parent who appears most amenable to a joint custody agreement (Dallam & Silberg, 2006). Thus, the "friendly parent" laws, as these have often been called, whose objective was to assure that the children would go to the most flexible parent, were established. However, in an abusing situation, often the parent who tends to be most open to joint custody is the offending parent even though this person may not have been very involved in the primary care taking of the child(ren) prior to the divorce. Thus, these laws have hurt non-offending parents when they support their child who has made such allegations of being abused (Dallam & Silberg, 2006).

And what has contributed to this phenomenon? Partially to blame is an often claimed, but unfounded "disorder:" Parental Alienation Syndrome (PAS). PAS was defined by Richard Gardner, as "a psychiatric disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against the 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" (Gardner in Waller, 2001). Gardner coined PAS as if it was

some type of condition or disorder, which solely arises during custody disputes, in which most often the mother, in an effort to spite the father and gain sole custody of the child, "brainwashes" the child and manufactures a false abuse story. Gardner's ideas, however, have not been submitted to methodologically sound research testing, nor were his publications peer reviewed or accepted by experts in the child maltreatment or family violence professions. Furthermore, almost all of his publications were self-published.

Although PAS is an unfounded term with no supporting research data, and includes internally contradictory and confusing statements, many attorneys, judges, and child custody evaluators in our judicial system have adopted PAS as though it were a validated syndrome. For this reason, its usage has become quite frequent in child custody cases where sexual abuse allegations or domestic violence have been alleged. The supposed syndrome, however, is not an actual diagnosis, nor is it recognized in any mental health or medical diagnostic code. In fact, it is a circular argument that has most often been used against mothers when allegations of abuse have surfaced that are not believed by those in some authority position; in these situations, the child(ren) often reject or are estranged from the father, and align with the mother, which is not surprising or abnormal if abuse has occurred. This rejection of an abusive parent by a child is then used as the "evidence" that PAS exists and is being perpetrated by the mother. In many of these cases, there is no observable evidence of abnormal behaviors, psychopathology, or programming by the mother, and the only reason for removal of her children and transferring of custody has been the conclusion and assumption of "PAS." Many of these mothers (it can also happen to fathers but most of the cases seem to involve the mothers) display anger, symptoms of post traumatic stress (PTSD), anxiety, depression, paranoia, and/or suspiciousness (Neustein & Lesher, 2005). What is overlooked, though, is that these symptoms are to be expected given the context of the situation. The symptoms and behaviors of the mother are often exacerbated in a self-fulfilling prophecy when the abuse allegations are not believed, not thoroughly and objectively investigated, and the custody of the child(ren) is threatened (Neustein & Lesher, 2005). There are important distinctions among abuse, alienation, estrangement, rejection, and alignment that are often overlooked in these cases (Drozd & Olesen, 2004; Kelly & Johnston, 2001).

It should be noted, however, that attempts at alienation behaviorally do indeed occur at times in child custody cases. These are specific behaviors on the part of a parent, or both parents, that can be documented, and the effects can be determined by an objective and comprehensive evaluation. This is separate from the circular arguments and assumptions proposed by PAS advocates and evaluators that overlook or ignore the abuse allegations and their context. If alienation has occurred in cases where there has been no abuse, then appropriate recommendations for interventions can be made to alleviate stress on the child and parents.

Types of Situations in Child Custody Cases

Child custody cases involving CSA allegations can vary depending on what type of circumstanc-

es are presented. One situation is when there is an abusive relationship (involving domestic violence as well as CSA) and the mother files for divorce in order to leave the relationship and keep her children from additional abuse. In this instance, several issues can affect the child custody outcome. One issue is whether any abuse has been reported prior to filing for the divorce. If there has been no abuse reported either by the children or the spouse prior to the filing for divorce, the family courts and evaluators may ignore or minimize the alleged violence. In such a case, the family court may view the woman as attempting to gain custody through falsely alleging child abuse.

Indeed, there are cases in which certain behaviors are misinterpreted, or where someone may have over-reacted, and thorough investigations by trained evaluators can usually disclose these. However, if no previous abuse has been reported or substantiated, the opposing attorney or accused parent may be more likely use the ploy of PAS.

On the other hand, if there has been reported abuse, the courts may use this as evidentiary support for abuse within the home. For this reason, it is always important to report any type of abuse at the time it has occurred, or to have documentation from neutral collateral sources who observed the behaviors or effects. While courts can be inconsistent in how they consider the history of violence between the parents in making custody decisions, the reported abuse could support the consistent power dynamics present in domestic violence and child abuse. It may also aid the mother's case in that it illustrates the abusiveness and dangerousness of the spouse, and a pattern of behaviors.

A second scenario can occur when the mother or the child discloses abuse during the divorce proceedings. Judges, and even the attorneys representing the mothers, can be very skeptical of allegations raised during these proceedings. This can be a particularly scary situation for the mother, as family courts often stigmatize mothers as vindictive, malicious and spiteful when they report or support their child's abuse allegations during a divorce. As a result, mothers should know that reports of child abuse, including sexual abuse, may be taken less seriously by the judicial system and sometimes even by child protection services personnel when they are made during a custody dispute. In fact, due to the backlash movements against CSA in recent years, a mother who reports CSA in the midst of a custody dispute is at risk for losing custody in family court if she supports her child and pursues reduced, supervised visitation and investigation of the father. If she does not support or believe her child's allegations, she is at risk for losing custody of her child by Child Protective Services for failure to protect her child. This is a serious dilemma without an easy answer.

The "PAS" label could additionally be attributed to the mother if the child does not want to visit with the other parent. The opposing attorney may say that the mother must be brainwashing the child by slandering the parent so much that the child does not want to visit with him. While this type of alienation (not PAS) or rejection can occur, the child may actually not want to visit with the parent because they are fearful of further abuse. Again, a thorough evaluation by someone trained in domestic violence, child

abuse, and child custody is the key to these cases to determine the most likely causes for the various behaviors, and to make appropriate recommendations.

Recommendations for a Mother in These Situations

So what can a mother do when going through a child custody case and sexual abuse is alleged by their child? There are several recommendations a woman should think about. These include:

1. **Always hire an attorney who is very familiar with these types of cases, understands the dynamics of abuse, and knows how to litigate such cases.** Even if you may be well versed in the judicial system, it is not wise to represent yourself in such a child custody case. An attorney trained in these areas will enable you to go on the offense, not solely react on the defense. It is imperative that the attorney knows about issues surrounding allegations of "PAS," family violence and family dynamics. Such issues are crucial to a case involving CSA allegations, making it fundamental for the attorney to be competent and trained in such subjects. Additionally, having an attorney who is trained in CSA issues in child custody cases will allow you to be more proactive in obtaining Frye or Daubert hearings to disallow suggestions of "PAS" as junk science. Therefore, if such evidence is reviewed in these hearings before the actual child custody case begins (or at anytime during the case), evidence regarding PAS may not be admissible during the child custody case. Such a preemptive strike can be very important in giving yourself the best opportunities to a fair custody case and an objective and comprehensive evaluation of the evidence. It is also important to make sure the case focuses on the child, the abuse allegations, and parenting issues, not on suggestions of PAS.
2. **Understand the issues yourself before the custody case begins.** While your lawyer needs to be proactive and represent you, you may also need to be aware of the issues on both sides of these cases. Knowledge can be very powerful. It is vital that you understand the proceedings that are involved in a child custody case and with the issues of family violence and family dynamics that are often brought up during such cases (especially when CSA is alleged). While it is not necessary for you to become an expert in these issues, it is important for you to understand what types of things might be considered and examined during a custody case. Examples of relevant books dealing with some of these issues are at the end of this article. Becoming more knowledgeable will help you assist your lawyer and yourself to the best of your abilities during the custody case. It is important to also be aware that too much knowledge may be used against you by opposing attorneys and untrained evaluators to bolster the allegations of alienation and programming and to label you as being obsessive about the abuse allegations.

3. **Knowing the issues also involves knowing the "other side."** Learn what types of things the father's attorney may use in his search to obtain physical custody for the father, even when CSA is alleged. For example, your attorney should search some of the father's rights or PAS websites on the internet, to get an idea for what may be presented by the other attorney during the custody case. You want to have as few surprises as possible. This way you and your attorney can be more prepared to keep the focus on the child(ren), parenting abilities, observable behaviors, bonding and attachment, rather than on you as suffering from PAS.

4. **It is important to maintain the focus on the child(ren) and the allegations, actual evidence and data, and the actual purpose of a child custody evaluation (i.e., the best interests of the child and parenting abilities/home environment).** In many of these cases, the focus is taken off of the allegations and the offending parent and placed on the mother and her behavior in reaction to the allegations such that the mother has to continually defend herself in the courtroom.

5. **When abuse is alleged, either in the form of CSA or spouse abuse, report it when it happens.** Do not do the investigation or question the child. You can file police reports and get medical or mental health evaluations as objective documentation that may help determine whether the likelihood is that abuse occurred.

6. **Finally, expect the unexpected. It may seem as though there is no possible way that you could be accused of PAS or that an abusive father would attempt to gain physical custody of his children.** However, such things are not rare and the possibility needs to be anticipated so that you can prepare yourself for such a situation. Some suggest not pursuing the child abuse allegations if they occur in the midst of a divorce action due to the potential negative consequences of losing custody completely as discussed above. It is difficult to make a general statement about this, and each case must be decided upon its own merits.

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NOTE: All books and videos can be purchased at a discount from:
The Institute on Violence, Abuse and Trauma
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Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse

By Geraldine Butts Stahly, PH.D., Linda Krajewski, Bianca Loya, Linda Krajewski, Bianca Loya, Kyra Dotter, Kimberly Evans, Wesley Farris, Felicia Frias, Grace German, Nancy Stuebner, Kiranjeet Uppal, And Jenna Valentine
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Abstract

This project is a pilot study of a national survey undertaken to examine the experiences of protective mothers. One hundred fifty-seven self-identified protective mothers, completed a 101-item questionnaire describing aspects of their custody dispute. The pilot data includes demographic factors, economic impact, and a full variety of protection issues, including the range of allegations, the role of psychological expert examinations, diagnosis and testimony, family court response and outcomes for children. Findings to date suggest that protective mothers are likely to be mothers who have been victims of domestic violence, and are likely to be labeled "alienators." Mothers were also likely to be advised by their attorneys and other professionals not to report abuse of their child during custody proceedings. Mothers who support their children's allegations of physical or sexual abuse were overwhelmingly denied custody and sometimes denied visitation with their children.

Introduction

Empirical studies have established an increase in child abuse in families in which there is domestic violence, and an increase in custody challenges by fathers who have a history of battering (Stahly, 1999). There is evidence of an increase in the negative labeling of mothers who report child abuse or domestic violence during custody disputes. Several high profile cases have led to increased public attention, and fractious public debates have erupted between groups supporting the alleged perpetrators of abuse as victims of malicious accusation on the one hand, and groups supporting the reporting parent as the victim of malicious psychiatric labeling on the other (Dallam, 1998). For example, in spite of the lack of empirical support and peer review, Richard Gardner's (1985) theory of Parental Alienation Syndrome (PAS) continues to influence judges, court appointed evaluators and mediators and other court personnel with adverse consequences for the protection of children in custody disputes. There have been no studies to date on the extent of the overall phenomenon of protective mothers, the psychiatric labeling of protective behavior or the extent to which protective behavior appears to be justified by the circumstances and evidence in custody cases. The current study was undertaken to study the experiences of protective mothers.

Methods

The study utilized a 101-item self-report questionnaire which was distributed to a sample of convenience that included individuals who

self-identified as protective mothers contacting the California Protective Parents Association and California NOW, as well as individuals visiting the California NOW website. Questionnaires were available for completion through the website and were also distributed at conferences regarding child abuse and domestic violence held in California. Data collected from the questionnaires included demographics, legal history of the custody case, allegations of abuse, criminal conduct, substance abuse and results of psychological evaluations, including the role of the allegation of parental alienation in custody case outcomes.

One hundred fifty-seven completed surveys from protective mothers were collected and entered into SPSS. Descriptive statistics were run on the data from this initial sample. A majority of the respondents were from California (89). A total of 271 children were involved in the study (157 girls and 114 boys); 65 percent of the children were age five or under.

RESULTS

Figure one. Reporters of Child Abuse

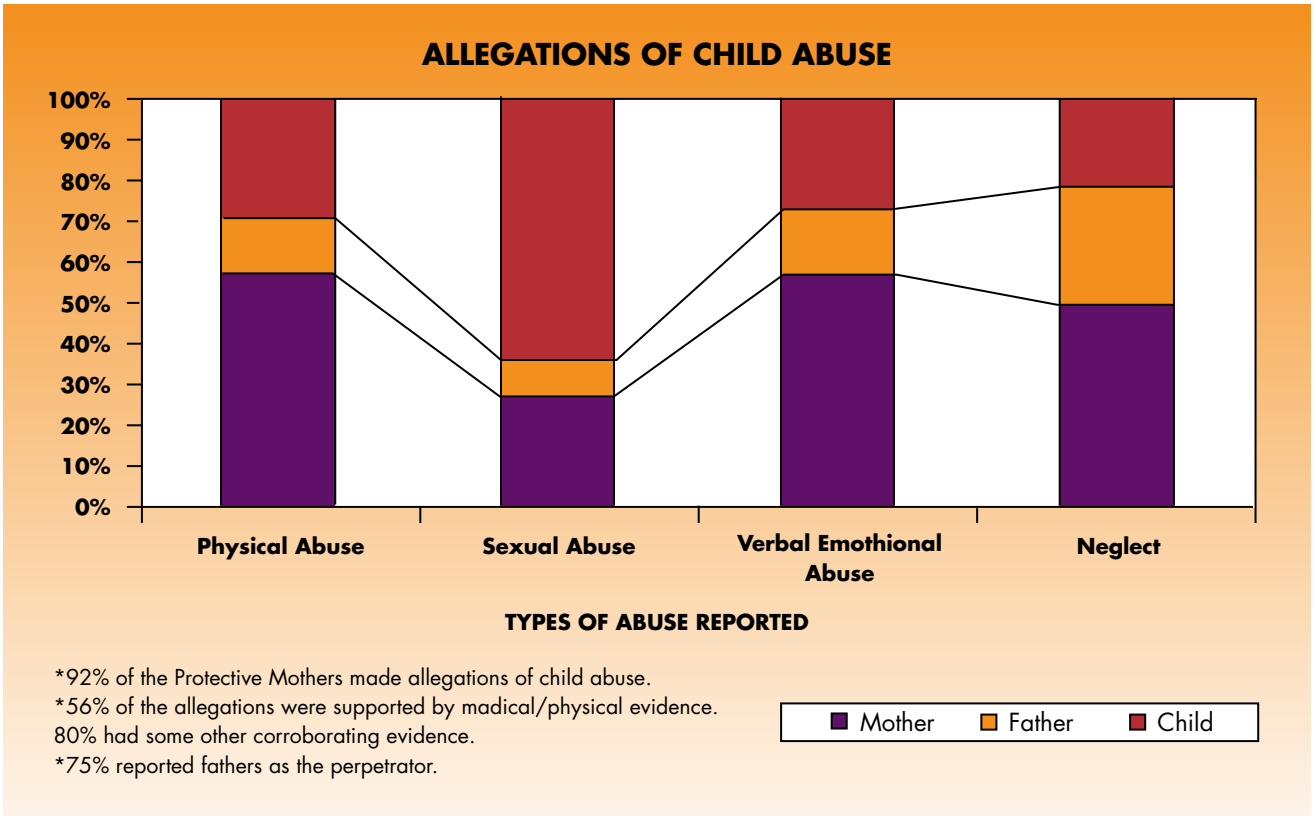
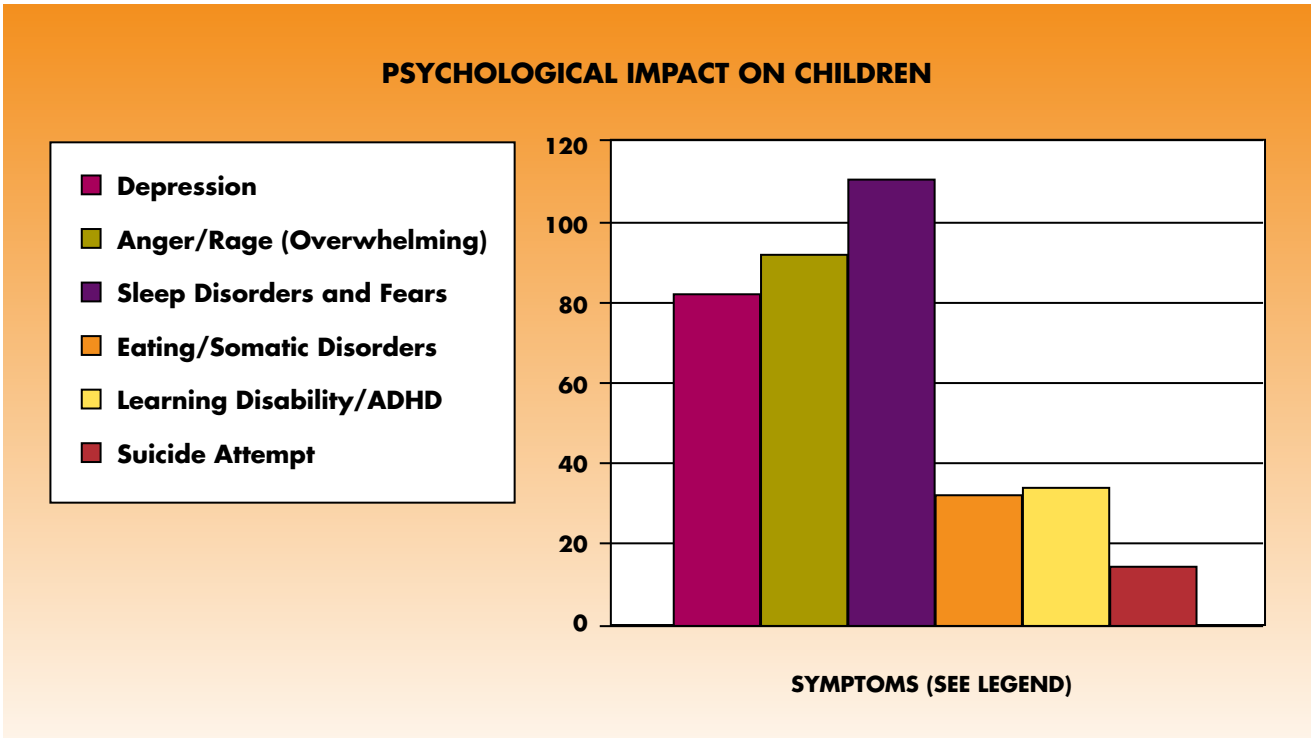


Figure 2. Psychological Impact on Children



Note: One percent of the children were reported to have attempted suicide

Table one. Financial Impact of Custody Dispute

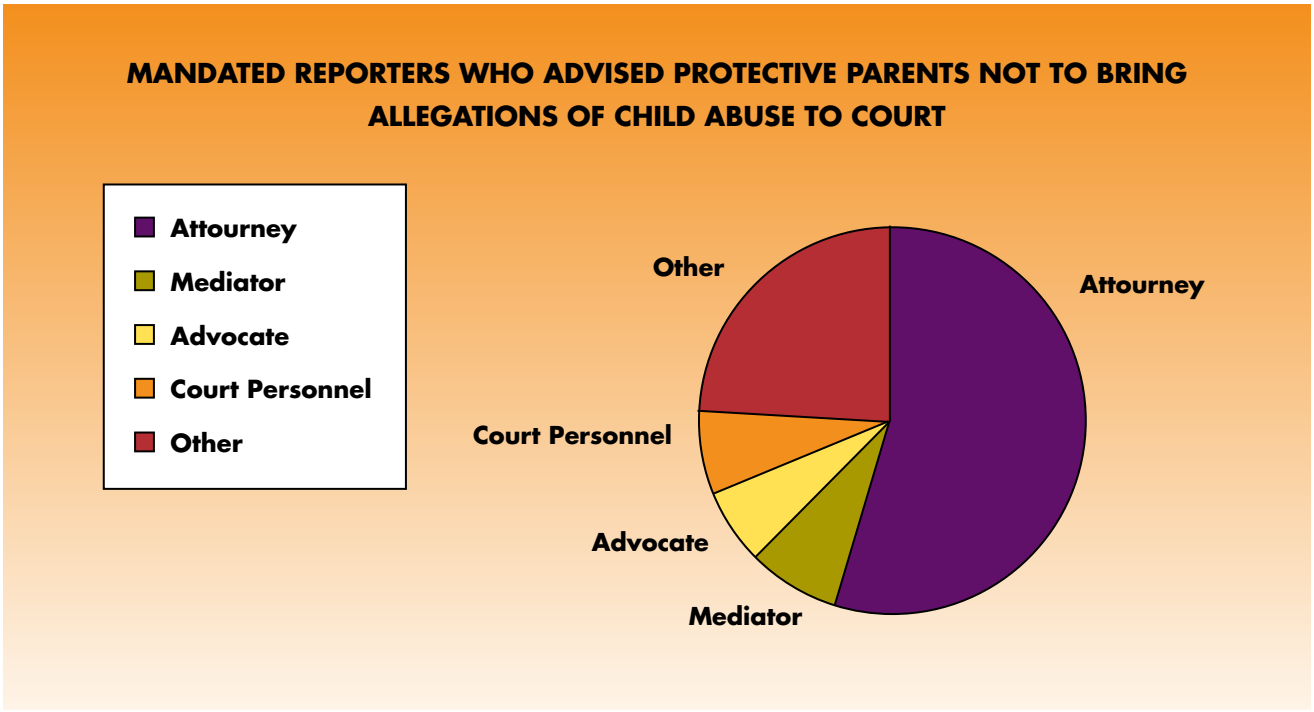
Number of attorneys involved	**547**
Average per case	**4**
***Total cost of custody cases**	
Average cost per family	**$90,506.77**
88 percent of the protective mothers were subjected to psychological evaluation by the court	
Average cost of psychological evaluation	**$6,887.35**

** 27 percent of the protective mothers were forced to file bankruptcy as a result of filing for custody of their children*

Court Abuse

- 85 percent of the protective mothers were denied adequate presentation of information or witness.
- 69 percent lost custody in emergency court order.
- 65 percent were threatened with sanctions if they "talked publicly" about the case.
- 65 percent of the protective mothers were advised not to report abuse (Figure 3).
- 56 percent lost custody with no court reporter present.
- 60 percent lost custody in ex parte proceedings (64 percent of the protective mothers, at some point, were not represented by an attorney when their ex spouse or partner was.)
- 54 percent of the protective mothers were not permitted to see the evaluation/ recommendation.

Figure 3. Mandated Reporters Who Advised Protective Mothers Not to Bring Allegations of Child Abuse to Court



Outcomes for Protective Mothers & Children

- 97 percent believed they were discredited for trying to protect their child
- 97 percent believed that the court personnel ignored or minimized allegations of abuse
- 83 percent of the protective mothers were the primary caretaker and 87 percent had custody at the time of separation; 31 percent were left with custody of their children after court proceedings.

- 90 percent of the protective mothers reported domestic violence
- 88 percent of the protective mothers believe that their children are still being abused; 61 percent have stopped reporting the abuse for fear that contact with their children will be terminated.
- 83 percent of the protective mothers no longer believe that they can protect their children
- 71 percent of the children continued to report abuse
- 69 percent lost custody as a result of the psychological evaluation
- 53 percent continued to experience violence after separation
- 42 percent of the protective mothers were labeled as having PAS (Parental Alienation Syndrome); 29 percent were labeled as "alienators"

Discussion

Findings support the notion that mothers who are labeled as "alienators" are at a high risk of losing their children. Labeling the mother appears to put a judicial emphasis on the mother's "issues" rather than a focus on the protection of the child. Courts appear to discriminate against protective mothers, often removing custody in ex parte proceedings, denying mothers both access to evaluation reports and the opportunity to rebut negative findings, and threatening sanctions against mothers who "talk publicly" about their case. Courts' bias against mothers for supporting charges against fathers appears evident by the finding that more than half of the mothers were advised not to report abuse during their custody cases, even by individuals who were mandated reporters of child abuse. Findings also indicate a strong connection between domestic violence and child abuse, with a majority of the mothers making reports of domestic violence. An overwhelming number of mothers believe that their children are still being abused, and most have stopped reporting, even though most of their children are still reporting abuse. Furthermore, mothers no longer believe that they can protect their children, so that the system which was supposed to help them protect their children — the judges, attorneys, mediators, police and psychological evaluators — have not only let them down, but penalized them for trying to do so. A significant consequence of reporting abuse is the finding that only a few of the mothers retained custody of their children as a result of the court proceeding. This preliminary study includes a bias of the self-selection of reporters and may not represent the general experiences of all mothers reporting abuse in custody proceedings. On-going research is designed to obtain a less biased sample, including a more geographic spread and a solicitation of information from groups of fathers.

References

Available upon request

Toward Better Outcomes In Child Custody Disputes

by Sharon D. Bass, LMFT

This chapter is dedicated to my boys Stephen, Gregory and Michael --

Here is the deepest secret nobody knows, (here is the root of the root and the bud of the bud, and the sky of the sky of a tree called life; which grows, higher than soul can hope or mind can hide), and this is the wonder that's keeping the stars apart, I carry your heart (I carry it in my heart).

e.e. Cummings

The judiciary has long acknowledged that citizens with disputes can do a far better job of settling their own differences than can any judge. And so it is that most separating and divorcing parents do not resort to the courts to settle their differences as it regards child custody and visitation. Nevertheless, child custody and visitation disputes are justiciable controversies and, as such, citizens have a right to litigate these matters. If one parent demands to litigate, the other parent simply has no choice.

True joint parenting time arrangements are rare and by dint of basic logic and reasonableness, benefit children only in circumstances were parents have superb post-separation relationships, which is unusual, and who live almost next door to one another, which is even more unusual---and is why, absent strictly enforced co-parenting court-ordered arrangements, true joint custody essentially does not exist.

In California, joint physical custody and the concept of frequent, continuing contact with both parents is a construct of our legislature. Litigated custody disputes, by their very nature, preclude court-ordered joint physical custody as a reasonable decision in the best interest of children.[1] Court orders that force children to endure joint physical custody or to spend a substantial percentage of their time going back and forth between households in the enforcement of a particular judge's conception of frequent and continuing contact are patently destructive and constitute capricious social engineering that does not reflect the natural state of family affairs. The concept of court-ordered joint physical custody and court-ordered frequent and continuing contact is an imagined good that misuses judicial authority to attempt to enforce a dream of how life ought to be.

This is of particular concern as judicial authority rests in interpreting and applying the law as it was intended to be interpreted and applied by the legislature. The separation of powers is fundamental to our system of government. The requirement for judges to conform their deci-

sions to a good faith application of law to the facts of a case is undermined when legislators craft family laws that include language giving judges broad discretion in the application of those laws. The broad discretion to craft orders applicable to a particular family, and the heretofore entirely undefined "in the best interest of the child" non-concept may sound warm and cuddly but in actual practice, judges enjoy essentially unfettered freedom to make what can be exceedingly destructive decisions. Judges dance to the tune of many drummers, the least of which, it sometimes appears, is fairness, reasonableness and the best interest of children.

As just one example, Judith Wallerstein, PhD, of the Center for the Family in Transition, reported in her 1995 amica curiae brief to the California Supreme Court for IN RE MARRIAGE OF BURGESS, that in 1988 the California Senate Task Force on Family Equity (of which she was a member) recommended a provision that was enacted into law, amending California Family Code, Code Section 2030 to make it "... clear that joint custody is not the preferred custodial arrangement." She also states, "judges have sometimes applied a seemingly irrebuttable presumption that frequent and continuing access to both parents lies at the core of the child's best interest. Therefore, it is important to state very clearly that the cumulative body of social science research on custody *does not* support this presumption." The cumulative body of research to date continues to *not* support the presumption that a child's best interest lies with frequent and continuing access to both parents. Nevertheless, court mandated joint physical custody and orders requiring weekday as well as every other weekend visitation are commonplace when such orders should be exceedingly rare and unusual. In cases were domestic violence is at issue, continuing contact with perpetrators is extremely damaging to children. Custody of *any kind* to perpetrators of domestic violence is an unconscionable judicial act.

If it were true that children are harmed by infrequent and non-continuing contact with their fathers, given the fact that in California half of all first marriages end in divorce (and with each subsequent marriage the divorce rate is even higher), as will be discussed below, the fact that most children do not have frequent, continuing contact with their fathers at any where near the frequency typically mandated by family law judges in litigated cases, would make it reasonable for judges to impose their opinion of what is alleged to be in the best interest of children on at least half of all families in California (because you cannot get divorced, even out of court, without a judge reviewing and approving your written settlement agreement and to the contrary of what occurs in the courtroom, it appears judges could not care less about frequent and continuing contact). To the contrary, we know that the greatest suffering inflicted upon the children of separating and divorcing parents occurs at the hands of family law court judges.

We know that in the vast majority of out-of-court parenting agreements physical custody of children is delegated to the mother: that is to say that most children whose parents are separated or divorced spend most of their time under the care and control of their mothers. It has long been known that the amount of parenting time actu-

ally exercised by fathers, in contrast to the amount of time actually awarded, whether by agreement of the parties or by court order, decreases precipitously over time. In their review of the 1998 U.S. Census data, Emery, Otto and O'Donnell found that 40 percent of non-custodial fathers had had no contact with their children the previous year and that contact by the other 60 percent of non-custodial fathers averaged 69 days per year. They concluded that "joint physical custody (about 100 over-nights per year) is not the norm." These authors' analysis underscores the validity of an earlier analysis by Seltzer which found that 30 percent of fathers separated for two years or less saw their children only several times a year or less.[2]

A working definition of "joint physical custody" as equal to 100 overnight's per year represents father-child visitation of less than every other weekend and is apparently so rare and unusual that it is not accounted for in the data. Sixy-nine days per year (the average time spent by 60 percent of non-custodial fathers), equates to 34.5 weekends per year. If a child were to spend Christmas school vacation and one month during the summer with a non-custodial father, 69 days per year would mean a child would spend one or less weekend per month at Dad's house. These findings stand in stark contrast to the demanding, sometimes convoluted and often onerous parenting plans urged by fathers, proposed by custody evaluators and court mediators and ordered by judges. It is the norm for judges to require even toddlers and preschool children to spend week nights in addition to every other weekend with their dads. It is also not unusual for a judge to admonish a mother that she may not cancel visitation in order to allow a sick child to remain at home in bed saying that unless the child is hospitalized, or the mother obtains a note from the doctor saying the child is too ill to be moved, he or she can just as well be sick at Dad's house as at Mom's. When judicial parenting-time orders based on imagined dreams of how life ought to be collide with real world considerations, the mother is often labeled an alienating parent or the parent least likely to allow ongoing, frequent contact with the other parent.

Why is the allegation of interfering with a father's contact with children (i.e., "parental alienation" in all it's guises) so frequently asserted and of such paramount importance in the court? Certainly, it would not be a good thing to do but why is it the focus of the most serious allegations about women? Using the example of California law, the California Family Code states at Code Section 3040, "the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the non-custodial parent... and shall not prefer a parent as custodian because of that parent's sex." When couples separate, in the vast majority of instances, the children reside with their mothers. If a judge wants to make a change in custody to a father, he or she must find a rationale, however superficial or contrived, to upset the status quo. In common lawyer parlance this is described as the judge wanting "something to hang his/her hat on." California Family Code, Section 3040 provides the means to that end. Allegations of alienation or denial of contact for any reason whatsoever, actual or potential, provides a judge with the means to an end— a rationale to "upset the status quo" and change custody to fathers as well as grounds to refuse to allow children to move away with their mothers.

As a society, we have unspoken, rigidly adhered to rules of conduct and gender role constraints that are used by judges to rationalize decisions that are patently destructive to the lives of women and children. In the United States, the paramount role of men and of institutions of authority such as the court (which are identified in masculine, not feminine, terms), is that of the protection of women and children. To be considered a hero is the greatest honor that can be bestowed upon a man or person in authority. Hero's undertake actions that protect and ensure the well-being and safety of women and children. Conversely, there is no easier way to become a really bad guy than by harming a woman or child. Removing the custody of children from a mother is understood in our society as the very worst thing that can be done to a woman. "Good guys" or institutions of authority (in this case that means judges, male and female, who represent the court system) can only harm women that are not "real women." For a woman to is considered not a "real woman" she must fall under one or more of the three following categories. First, she's not really a woman if she ceases in some way to exist as a real person or, in litigated custody disputes, ceases to have a voice that is heard. A judge who denies a woman's requests for adequate awards of attorney fee and costs, forces her into *in pro per* status or having to beggar help from ineffective counsel thereby effectively marginalizing and silencing her. Unable to assert or protect her legal rights, she functionally ceases to exist. Second, she not a real woman if she is crazy— which explains the tremendous interest of trial and appeals court judges in women's alleged mental status as a justification for harm. Any label will suffice to fulfill this condition from labeling a woman the ubiquitous "narcissistic," to claiming that even though a mother cannot be found to be actually doing anything to interfere with the children's relationship with their father she might "inadvertently or unconsciously" be doing something to influence the children against their father and, even if she isn't doing it now, she "might do it in the future." (And if you think the latter sounds too Kafkaesque even for family law court read the April 29, 2004, California Supreme Court decision in, IN RE MARRIAGE OF LAMUSGA) . Finally, she's not a real woman if she is considered to be bad or evil. For example, parental alienation syndrome, malicious mother, the alienated child, etc., are factitious "disorders" promulgated by certain custody evaluators, male litigants, and judges, for the specific purpose of damning mothers by labeling them as malevolent beings. The underlying purpose of the "bad or evil" category as with the others is to create a socially acceptable pretext to harm a mother by making a change of custody to a father and making it extremely difficult or impossible for a mother to have future contact with her children, as well as to rationalize numerous other takings.

These are the ground rules. Good guys and good institutions are expected to protect and defend "real" women and their children. The loopholes described above define under what circumstance it is justifiable to harm women and children. While unspoken, these concepts are played out in almost every movie ever produced because they represent our deepest values. These rules also account, in part, for the entitlement

argument of perpetrators of domestic violence who defend their violation of the basic code of manhood by accusing their victims of being either crazy or bad. If she's not a real woman, the twisted logic goes, it's not a male role violation to hit her, lie to her, take her money, take her children and so on.

Families in which domestic violence is an issue represent a substantial percentage of all litigated child custody cases. This occurs for a number of reasons not the least of which is that perpetrators and their attorneys understand that gender bias against women is rampant in the court. Perpetrators of domestic violence, a group composed predominately of men, channel the "overkill" that hallmarks private abuse into aggressive litigation tactics designed to allow them to continue to ride roughshod over their families. The emerging autotomy of victims (children included), whether or not the woman initiated the dissolution, is perceived as insufferable to batterers (and apparently to a number of family law court judges as well). As the ability to maintain power and control in other areas erodes, batterers have the ability to exert continuing control, and exact revenge, through custody litigation. The tactics of power consist of, among other things, demanding sole physical custody of children; demanding 50/50 parenting time or disruptive visitation schedules (regardless of how little time they spent with their children before the break-up); demanding visitation schedules be strictly enforced; alleging women are mentally ill and/or malicious; insisting children are lying about what occurs during visits; alleging that children are not being properly supervised at home (one way of asserting she is doesn't exist as a mother to her children); demanding court orders restricting mothers from making decisions that are normally and naturally made by mothers (such as keeping children at home when they are ill) and demanding immediate changes of child custody if mothers move away or take any actions of any kind designed to mitigate the damage being done to their children or to respond to real world considerations.

We know that in families where domestic violence is an issue, children who were not physically abused prior to the breakup have a greater than 50 percent chance of being abused after the breakup. Inappropriate, callous or abusive treatment of children during visitation serves as a clear message to mothers that the abuser is in more control than ever and normal, natural attempts to intervene by the mothers are alleged to be actions proving malicious interference with the father-child relationship.

Going into a family law courtroom is like going into a bad neighborhood– one should not go in there alone. Fairness starts with adequate attorney fee and costs awards. That opposing parties must be on a level playing field in the court is basic to family law. Nevertheless, the denial of attorney fees and costs to women is widespread. Denials of requests of adequate awards of attorney fees and costs provides the strongest disincentive possible to an opposing party to settle disputes by negotiation and maximizes the utilization of the litigation process to take unfair advantage of the financially weaker party. Women are often required to represent themselves *in pro per*. The family law bar is extremely sensitive of the negative financial consequences to an attorney representing a woman who is not able to indepen-

dently and fully fund family law litigation. Once a judge has shown his or her determination to deny sufficient fee and costs awards to a woman, an attorney will become determined to withdraw or complete the case as quickly as possible, using the least amount of time and effort. In an attempt to minimize his or her business financial losses, many attorneys provide only minimal legal services to their clients, often failing to undertake the actions necessary to protect and assert their client's legal rights and initiating a downward spiral of events that makes the case even less attractive to subsequent attorneys. It is not uncommon that the advantage enjoyed by men in the family law court is so extreme, so immense and so overwhelming that concepts of parity, fairness, due process of law and equal protection of the law simply do not exist. Once this process has begun to unfold in a case the judge can be fairly said to have relinquished his or her role as a fair and impartial arbiter of disputes and re-created his or her courtroom into an arena for bullying, revenge and takings.

In cases in which family violence is an issue, denial of fees and costs to the victim of the violence is manna from heaven to a perpetrator. The inequitable and unconscionable outcomes that routinely occur in domestic violence family law court cases directly undermines the efforts of the legislature, law enforcement, the criminal courts and the many groups and organizations dedicated to putting an end to family violence.

In California, our legislature has given judges the authority to appoint evaluators to perform custody investigations. It is often believed that court-appointed custody evaluators are given too much authority by judges and that judges simply accept without question the assertions, assessments, and recommendations of evaluators and "rubber stamp" recommendations as court orders. In fact, the authority to decide matters that come before a judge, including making physical and legal custody determinations, deciding visitation days and hours, and all other matters related to parenting rights and responsibilities, is constitutionally vested in the judiciary. A judge cannot delegate the authority to decide a matter to any non-judicial officer except by prior consent of the parties.[3] Advance statements or indications by a judge that he or she is referring a matter to an investigator and that the investigator's recommendations will become the orders of the court are improper and should be reported, in California cases, to the Commission on Judicial Performance.

Unquestionably, evaluators can write reports containing statements that are inaccurate, false or misleading; operate out of biased attitudes or special interests; discuss litigants in a disrespectful manner; use language that is demeaning; write poorly and communicate inaccurately; include inappropriate information; make erroneous assumptions; go beyond what they were asked to do, and evidence varying degrees of incompetence or dishonesty. That the attention of family law litigants becomes riveted on evaluators' reports is completely understandable. The stakes are enormous. The assumption is that an "expert" is automatically recognized by the court as knowing what's best.

It is erroneous to assume that judges automatically give deference to experts' reports,

including the reports submitted by evaluators judges themselves select. Many family law court litigants are not aware that the family law code does not require judges to order child custody investigations or evaluations of any kind in order to decide child custody disputes. The appointment of a custody evaluator is permissive, not mandatory, in making custody and visitation decisions. It is within the sole discretion of the judge to decide how much weight, *if any*, he or she chooses to give to the assessments and opinions expressed by an evaluator.

One does not have to be involved in very many litigated custody cases to observe the process of the how evaluators and/or evaluation reports are accepted or rejected by some judicial officers who (as euphemistically stated by attorneys) "know where he/she wants to go with the case." Some judges have repeatedly ordered evaluations, changing evaluators until he or she came upon an evaluator who made the recommendations the judge wanted made. There have been circumstances in which an evaluator recommended a change in custody which the judge was all to eager to make and later, when the evaluator reported the custody change was damaging to the child, the judge summarily ignored the information. This understanding is central to the understanding of what is occurring in any court case. Fairness lies solely with the judge. It is the judge who determines the outcomes. It is the judge who writes the orders. In actual practice, the phrase "best interest of the child" translates into nothing more than this is what the judge decided. Whatever the judge decides, that's touted as having determined what is in the best interest of the child.

Judges whose primary assignment is to the family law department of a court are *required* by California Family Law Rule 1200 at subsection (1) to have attended a basic education program on California family law and procedure designed primarily for judicial officers. Subsections (2) and (3) *requires* any judge hearing family law matters to attend continuing education in family law. Judges should be routinely and openly asked if and when they completed this mandatory education.

When ordering a custody evaluation, litigants must require judges to spell out precisely, and place on paper in a court order, exactly what the issues are to be addressed by the evaluator well before any evaluator is contacted. Defining and limiting the purpose and scope of an evaluation is extremely important.

Evaluation costs are usually apportioned between the parties. I am aware of numerous instances where judges apportioned fees equally between the parties without any knowledge or prior discussion of what those fees would be and completely ignoring what was well known to be the significant differences between the parents financial abilities. This should not occur. No judge can properly decide a fees matter if he or she does not have an accurate understanding of what the fees are. Furthermore, there is nothing at all wrong with negotiating fees with an evaluator or finding another evaluator who charges less and asking the court, if an evaluator has been specifically named by the court, to replace one with the other.

In a San Francisco Superior Court custody case where there was a history of domestic violence, the mother, who earned less than a tenth of what the

father earned, was filed *in forma pauperis* and was usually required to appear in the court *in pro per*. She repeatedly begged the judge for attorney fees. The judge refused at every turn. As a tactic to exert continuing power and control over the mother, the father engaged in on-going and extensive financial abuse by routinely requested the appointment of experts to the case – and the judge was always more then happy to oblige. Based on my knowledge of the case, the judge never made any effort whatsoever to determine in advance what any cost would be and clearly made no effort whatsoever to fairly apportion any costs based on the hugely differing financial abilities of the parties. When the issue of cost arose the father quite conveniently said no problem, your honor—just order each party to pay half and he would be more than happy to advance the full amount up front (ultimately advancing well over six figures on the mother's behalf) and the mother could just owe him. And so the judge did. The mother provided documentation to the court regarding the overwhelming debt that was being generated by the judge's orders and requesting that the judge re-apportion the costs according to the relative financial positions of the parties. Her requests fell on deaf ears. Finally, the mother, having been court-ordered into overwhelming debt, attempted to discharge the debt in bankruptcy. The father vigorously opposed her in the bankruptcy court bragging in one declaration that he had spent even more than the full amount owed him by the mother on attorney fees for the purpose of opposing the bankruptcy. Court ordered therapy for children and evaluation expenses are considered child support under federal bankruptcy law and are not dischargable debts. The judge that created this mother's nightmare, wouldn't you know, was a member of one of those yummy-sounding "fairness" committees at the California Judicial Council.

While a judge is empowered to make orders affecting the parties and their children, he or she does not have the authority to require any particular person to perform a custody evaluation: any evaluator is completely free to refuse any assignment.

Stipulating to anything in regards to custody, visitation, therapy or evaluations can be a very dangerous business. Judges are required to act within their jurisdiction and craft court orders that comport with the law. While judges have broad discretion in family law, their authority is none the less limited by jurisdiction and law. Agreeing to something that is beyond the jurisdiction of a judge or that the law does not allow, can give the judge authority where he or she previously had none. When asked to "stipulate" to anything, it is important to ask why it is that the judge, whose job it is make decisions, does not want to make this one. Being told that one should agree because if one doesn't the judge will just order it anyway is a manipulation. Being told that if one does not voluntarily agree to something the judge wants "the judge won't like it," is a form of coercion. It is the job of a judge to make decisions. If the judge believes he or she has the authority to make a particular order, he or she does not need anyone to stipulate to it. Let the judge do his or her job.

Acknowledging the "havoc" caused in litigants' lives and the exceedingly destructive outcomes based on judicial reliance on incompetent

evaluators, the California legislature has mandated specific educational requirements for evaluators. Litigants should not simply assume that an evaluator has complied with the requirements. It is important to verify that an evaluator is currently qualified to perform evaluations as well to find out if he or she is in good standing with his or her licensing board. It is also important to understand that the fact that a licensed mental health professional has attended the required education does not automatically ensure that he or she will perform his or her assignment competently, knowledgeably or ethically.

Reviewing resumes and interviewing evaluators is also important. There is a difference between scope of practice and scope of competence. Scope of practice refers to the legal definition that frames what a particular profession does and the limits placed on the functions persons in that profession may lawfully perform. Scope of competence, on the other hand, refer to the limits placed on what a particular person in that profession may do based on his or her education, training, and experience. Families who have special problems, e.g., domestic violence, substance abuse, parents or children with specific disabilities or medical conditions, etc., need to assess whether, notwithstanding compliance with the educational prerequisites for court-appointed evaluators, an evaluator has the requisite background that will allow him or her to competently address the issues.

Many custody evaluators include psychological testing of parents and children as part and parcel of the evaluation process. Psychological testing is used very rarely in private practice and even in inpatient psychiatric settings. According to Emery, Otto, and O'Donohue, there is no scientific support for the indiscriminate use of psychological tests in custody evaluations. They state:

> "...difficult to explain and problematic...are...evaluation practices including widespread use of well-established measures with no clear relevance to the custody context (e.g., measures of intelligence), attempts to measure constructs created to apply to child custody decision making (e.g., "parental alienation syndrome"), efforts to identify "parent of choice" (e.g., the Bricklin Perceptual Scales), and the use of measures that a significant number of psychologists view with skepticism (e.g., the Rorschach Inkblot Technique)." [4]

Other tests Emery, et. al. question are the use of the Achenbach Child Behavior Checklist; Ackerman-Schoendorf Scales for Parent Evaluation of Custody; Custody Quotient; Draw a Person; Human Figure Drawings; MMPI/MMPI-2; Parent Awareness of Skills Survey; Parent Perception of Child Profile; Perception of Relationships Test; Wechsler Abbreviated Scale of Intelligence, and the Weschler Intelligence Scale for Children-IV.[5] An internet search on the subject will turn up an impressive array of allegedly better, different custody evaluation tests, all with no science supporting their validity, marketed in the name of custody evaluation tools for use by court appointed experts.

Litigants should ask, in advance of committing to an evaluation with a specific evaluator, under what circumstances he or she utilizes

psychological testing for a parent or child in performing a custody evaluation. If testing is used, evaluators should be required to provide a copy of the scientific studies underpinning the use these tests in custody evaluations.

The differences between a custody evaluation and therapy are enormous. A custody evaluation is a legal discovery procedure that is occurring in an adversarial context. Litigants can help to ameliorate concerns having to do with honest and fair reporting or accuracy in an evaluation by tape recording the sessions.

Also, it is important to point out that court appointed evaluators have certain legal protections including, but not limited to, that court appointed evaluators cannot be sued for malpractice for what they do in a case. This is not to say, however, that mental health professionals appointed by a judge are free to do whatever they please and if there are concerns about the conduct of an evaluator, those concerns should be addressed in a complaint to that professional's licensing board.

In California, judges are allowed by law to order litigants into therapy for parent-child issues. It is important that the judge identify specifically on the record the alleged problem for which therapy has been ordered and state the specific length of therapy as is required and limited by code. Litigants generally select their own therapists and if a litigant is already in therapy, that therapist should suffice. Because therapy is court ordered does not mean that the legal privilege of confidentiality therapy clients enjoy as a matter of law evaporates. To attempt to require the therapist to come into court and report on the sessions or the outcome or make an assessment to the court are demands beyond the limits of a judge's authority.

Finally, litigants can retain private therapists to support them through the process to address the intense emotional issues that naturally arise and to support problem solving. This can be especially useful if the therapist has experience working with litigants in the family law system and has an understanding of the dynamics of litigation.

All this having been said, what follows is the most important point of all. While the judge is responsible for the outcome of his or her cases, we individually and collectively are directly responsible for the fact that any particular person is sitting as a judge in a court. The California Constitution provides for the election of judges to our state courts at all levels. Judges of superior courts hold office for six year terms after being elected at general elections held in the counties to which they are assigned and each receives a substantial income which comes out of the general tax fund.

Our state constitution intends for judges to be elected officials and that citizens be fully aware of the decisions individual judges are making and have regular opportunities to publically discuss and debate individual judicial performance for the purpose of making responsible decisions about who it is exactly we want to choose to settle our disputes. Our state constitution provides for the filling of judicial vacancies prior to the expiration of terms by allowing the governor to appoint a temporary replacement. This privilege is effectively a perquisite for the governor allowing him to engage in political pay-backs

by gifting judgeships to friends and to friends of friends, etc.

As a way of circumventing the right of the community to elect our judges, the men and women occupying judgeships (the vast majority of whom were appointed rather than elected) routinely choose to vacate their offices prior to the end of their terms in order to allow the governor the opportunity of appointing a temporary replacement. If the temporarily appointed judge is unchallenged at the end of the term for the vacancy he or she filled, he or she simply remains in the judgeship. As he or she is considered to have been running "unopposed," his or her name never appears on any election ballot. For all intents and purposes, the community whose right it is to discuss, consider and choose it's judges is entirely unaware that a judicial term has even expired. Slick move. The result of all of this is that we have judges we don't know, the vast majority of whom where appointed for political pay back purposes, who have made careers at tax payer's expense out of what was intended to be a short-term opportunity for public service.

There is no public official who can have a greater personal effect on the lives of individuals and families for good or for ill than a judge. Our country was founded on the principle that the more power a public official has, the greater the public scrutiny required. This is exactly why, in every town in which there is an old court house, that court house is located in the center of town and each court room has a gallery. We are supposed to be regularly seated in the galleries of our courtrooms watching and discussing what is taking place and scrutinizing our judges. That is how the system was meant to work. That is how the system does work. But the system only works if we work it. The poor quality of our judiciary is the direct consequence of having abdicated of our personal responsibility to identify, elect, and then monitor and report on those persons we choose to decide our matters.

This is a fact worth repeating: the majority of California judges have served many terms in public office despite the fact that these judges' names have never appeared on any voter ballot ever and despite the fact that they have never received even one vote! Repeat judicial terms ought to be reserved for only the best and brightest which means that as a matter of course, most candidates ought not to serve more than one term. As citizens, "we the people" are responsible to oversee and craft our government. We must vote for our judicial officers and then hold them accountable for what they do in our name just as we do all other public officials. Knowing who our judges are, observing their behavior in and out of court, knowing what decisions they are making and whether they are conducting themselves ethically, and encouraging and supporting attorneys to compete for judgeships is the most effective way to improve the quality of judicial decision-making in family law cases.

Footnotes:

1. See California Family Code §3080, et. seq. See also California Family Code § 3002, et. seq., especially § 3020, "Legislative finding and declarations. The Legislature finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share in the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child," and, §3022 "Authority of court to make custody order."

2. Emery, R. E., Otto, R. K., O'Donohue, (2005). A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System. *Psychological Science In The Public Interest, 6:1,* 15.

3. Fewel v. Fewel (1943) 23 Cal.2d 431, 436. Judicial decision making "may not be delegated to investigators or other subordinate officials or attachés of the court, or anyone else". Also, unilateral ceding of authority by a judge has been found to be grounds for discipline by the Commission on Judicial Performance and the California Supreme Court.

4. Emery, et. al. at page 7.

5. Emery, et. al. at pages 5-9.

Joint Custody - A Failed Proposition for Women, Children…and Loving Fathers

BY TRISH WILSON

Fathers' rights activists have been promoting presumptive joint physical custody for many years. Fathers' Rights groups like Fathers and Families, and the American Coalition for Fathers and Children, have mandatory joint physical custody on the top of their agendas, and efforts have been made or are underway in every region of the country. Presumptive joint custody bills studied or introduced in California, New York, Nevada, Colorado and Maryland have failed. Presumptive 50/50 joint custody has been rejected in Australia, New Zealand, Canada (Ottawa and Ontario), and the U. K. Lord Falconer, the U. K. constitutional affairs secretary, said: "There cannot and will not be an automatic presumption of 50/50 contact. Children cannot be divided like the furniture or the CD collection."

Fathers' rights activists see presumptive 50/50 joint custody as a means of lowering their child support obligations. They also see it as a means of meddling with parenting decisions by the primary caregiving parent, who is most often the mother, in order to stay in control. These groups disguise their agenda promoting presumptive joint physical custody by calling it "shared parenting." There is nothing "shared" about presumptive joint physical custody. "Physical custody" refers only to where the child lives. It does not refer to the act of parenting itself or the ability to parent.

A study by Maccoby and Mnookin found that, when joint custody is ordered to resolve custody disputes, three years later the couples experienced more conflict and less cooperative parenting than couples for whom joint custody was the first choice of each parent. This proves that presumptive joint physical custody alone does not improve the relationship between warring parents. Children are caught in the middle of these skirmishes, and they suffer for it.

Forcing joint custody on parents, especially when one parent does not want it, or feels it is not good for the children, does not inspire parents to cooperate with each other when it comes to parenting their children. As blogger Ophelia Payne said, "presumptive joint custody with the 50/50 arrangement should never be applied across the board. People do divorce for reasons other than incompatibility, and to hand children over to people who may very well be abusive or in some other way mentally unstable in the name of legal consistency does everyone a disservice but the unstable parent."

Presumptive 50/50 joint custody does not take the individual needs of children into account, nor is it based on there being "shared parenting" before the divorce. It caters to a minority of fathers who demand it. Ms. Payne has also written: "What children need is true consistency,

not legal consistency, and in a time of divorce 'consistency' does not amount to being shuttled between homes just because one parent or the other feels cheated by their ex. Someone has to give, and it should never be the children."

Custody should be determined on a case-by-case basis. One particular form of custody, such as joint custody, should not be forced on parents when other forms of custody would be more appropriate for them and especially for their children. Joint custody is already an option for parents who choose to try it on their own. There does not need to be a presumption for it. 90 percent of parents settle without the need for court intervention in deciding what form of custody is best for them and for their children. Most parents do not choose joint custody because they recognize how hard it would be on their children. They also recognize that in most cases the mother had been the primary caregiver of the children, and they believe she should continue in that capacity. That is why mothers most often get sole custody. It is not due to bias against dads in court, like the fathers' rights movement wants us to believe. When dads make an issue of custody, they get some form of it more than half the time, most often joint legal custody.

Courts are not biased against fathers. Lynn Hecht Schafran found in "Gender Bias in Family Courts," published by the American Bar Association Family Advocate, that "despite the powerful stereotypes working against fathers, they are significantly more successful than is commonly believed. The Massachusetts [gender bias] task force, for example, reported that fathers receive primary or joint custody in more than 70 percent of contested cases."

Schafran noted that, "the various gender bias commissions found that at the trial court level, in contested custody cases, fathers won more than half the time. This is especially significant in light of the fact that not only do fathers win more often in court when they take these cases to trial, but also that an overwhelmingly higher percentage of fathers gain primary custody — by any means — than were ever the primary caregiver of their children during marriage. Statistically, this dashes the argument that 'only the strongest cases are taken to trial,' and in fact indicates an extraordinary bias against mothers and the value of mothering and mothers' work."

The children's needs are often ignored when presumptive joint custody is applied. Researcher Dr. Judith Wallerstein has acknowledged that joint custody asks a lot of children, even when there is no abuse. It is harmful to children who cannot handle the restrictive schedule. Many of them cannot handle the shunting back and forth between homes very well. They also must keep track of which home they are to be in on a given day, which is stressful for them. They lose track of their friends and their extracurricular activities suffer when parents pay too much attention to when the children are supposed to be with them rather than on what their children would like to do with their own time.

In the cases where joint custody has worked, the families had these qualities in common: the parents had an amicable relationship, their divorce was amicable with little or no conflict, they had

higher-than-average incomes, they had only one child, neither parent (especially the father) had remarried, they lived within close proximity of each other, they had flexible job schedules, the child could handle the joint custody arrangement, the parents chose freely between themselves to try joint custody and they chose to make it work.

Cases requiring a judge to decide custody are over-represented by cases involving abuse, unfit or uninvolved parents, power and control issues and other issues. It is because of those kinds of cases and fathers' rights lobbying for presumptive 50/50 joint custody that divorce- and custody-related cottage industries have been introduced into the court system. Divorcing parents now often have to pay for mediation, arbitration, psychological and custody evaluations, child legal representatives (called different things in different states), model parenting plans and parent education programs. That means making money from divorce and custody cases, and boy, is there money to be made! Fathers' rights activists keep these divorce industry professionals in business by insisting on paying them for custody evaluations, psychological evaluations, and the like.

U. S. fathers' rights lobbying for "equal rights" and "children needing both parents" caught the attention of the Association for Family and Conciliation Courts. Members of AFCC include attorneys and especially psychologists who have jumped on the divorce/custody bandwagon to make lots of money via mandatory mediation, custody evaluations, psychological evaluations, appointments of guardians ad litem, and the rise of the use of parenting coordinators - all very costly requirements designed to help parents "get along." What did fathers' rights activists give to fathers with their push for their "rights?" More expensive litigation, expensive and mandatory evaluations and classes, and no problems solved because the court system is not designed (nor should it ever be designed) to make sure parents parent properly. Ironically, fathers' rights lobbying has harmed fathers much more than anything they accuse feminists of having done.

This set-up allows mandated custody and psychological evaluations, parenting coordinators (who create parenting plans), guardians ad litem, and mediation to be ordered by the court, the expense of which is entirely paid for by the litigants. It is mom who takes on the brunt of the burden because mothers traditionally earn less money than men and childless women. Often mothers get unfairly charged for evaluations and mediation, often financially devastating her and leaving her with less or no resources for representation. This leaves many women fighting for their children pro se (without counsel), while being charged thousands and thousands of dollars for court ordered "extras." In some really bad cases, mom ends up paying to have supervised visits with her child after dad successfully batters her with excessive litigation and financial draining on extras.

Contentious or "high conflict" cases are a minority of all divorce cases, and they often involve parents who are unable or unwilling to put the best interests of their children first. A Florida Bar Journal article by Ann White, Esq. reported that abusive fathers are much more likely than non-abusive parents to contest custody, not pay child support and kidnap their children. Those abusive and contentious dads will keep their ex's in court

no matter what. High conflict cases are less than ten percent of all divorces. They include abusers, disinterested parents, ne'er do wells, control freaks, people with substance abuse problems, people with psychological problems and other issues.

Most parents manage to work out visitation schedules on their own and they adapt to the changes that become necessary as a child grows and matures. I've heard both good and bad reasons regarding why mom or dad either won't let the other parent have a scheduled visitation or see the kids when they are scheduled to do so. While I hear fathers' rights activists and supporters complain all the time about moms who won't let dads have their visitation, I hear very little from them about the dads who have little to no interest in seeing their children. Those moms and kids have no ability to force dad to be a good parent or to abide by his visitation.

These problems with the family court are not isolated to a few cases. While mothers are often financially and emotionally devastated by their family court experiences, it is the children who pay the price. As a civil society, founded on principles of fairness and justice, we must address these problems with major reform.

Suggestions for Change:

1. Do away with the "divorce industry." Prevent the use of custody evaluators, psychological evaluators, mandatory mediation, guardians ad litem, mandatory parenting classes, and the use of parenting coordinators who create "parenting plans" for couples in the midst of a contested custody battle. The divorce industry drains the pockets of parents. That money would be better used on their children. Because of these divorce-related cottage industries, people who make their money from contested custody cases and divorces are getting rich at the expense of parents and children going through a very painful time in their lives.
2. Require that all guardians ad litem and mediators be properly trained and monitored. Set up standards for guardians ad litem and mediators that must be met. Currently there is no quality control, and little or no accountability.
3. Prevent the use of bogus "syndromes" such as Parental Alienation Syndrome from being used in the family court system. Also prevent the use of "friendly parent" theory, which discriminates against and denigrates primary caregiving parents, most of whom are mothers.
4. Recognize that we live in a mobile society, and that it is sometimes necessary for a parent to relocate. Do not discriminate against custodial parents who wish to move, while allowing non-custodial parents to move, even if their move completely disrupts visitation. A study by Sanford Braver found that non-custodial fathers are just as likely to relocate as custodial mothers. Forbidding a custodial mother from relocating with her children violates her Constitutional right to live where she pleases and to improve the quality of her and her children's lives.

5. Do away with presumptive joint physical custody. Parents should be looked at on their own merits to determine which form of custody is most appropriate for them and their children. A cookie-cutter approach to custody - which is what presumptive joint physical custody is - ignores established parenting patterns and the best interests of the child.

6. The way parents "share" custody upon divorce should reflect the way they have "shared" parenting while married. Divorcing parents are not equally situated when they enter a courtroom. Courts must recognize that one parent had taken on sacrifices and losses inherent in taking on the role of primary caregiver. Most often, that parent is the mother. Do not minimize or denigrate these sacrifices by ordering "shared parenting," which is nothing more than a euphemism for joint physical custody.

7. Award alimony in a way that divorcing mothers are able to get back on their feet.

8. Remove the tie between child support and physical custody/visitation. The California Gender Bias Report has shown that non-custodial fathers often seek the number of overnights with their children that will get them a lower child support order.

Down the Rabbit Hole: Legal Strategy in Protective Parent Cases

By Kristen, Diane and Charles Hofheimer

A protective mother often enters the judicial process like Alice down the rabbit hole: thrown into a universe where an entirely new and counterintuitive set of rules apply. Her intuitive responses and her expectation of justice make her look raving mad, while the batterer appears to be the victim. Strategically, it is best if the protective mother can familiarize herself with the Wonderland rules of the courtroom and prepare herself to function in that universe, rather than getting stuck on how backwards or unfair those rules may be, at least until her case is concluded. The following is a series of tips to assist protective mothers in navigating the world of the court system, first addressing how to avoid the traps that your abusive former partner will set in order to try to make you look like the crazy or unstable person he wants others to believe you are, and second addressing how you and your attorney can best present your case so that the court can finally "get it."

1. Avoiding the traps that make you look like you are the unstable parent.

Forget Fair: That's right, forget fair. Swallow the pill early and wholly. None of what is happening in your life is fair and the court will not even the score. Never assume that the judge is going to hear you tell your story and then stand up for you. You can be sure that your children's father (and his attorney) will tell a very different story to the judge, and the judge will not magically know which story is the truth. In the courtroom, it is not about truth, it is about evidence. Do not get caught up each and every time something happens in your case that is not fair. Save your physical and emotional strength to focus on your strategy.

Sometimes unfair can benefit you in the long run. Most batterers are narcissistic. Given enough rope, they often hang themselves.

Making things right in the system is a different battle than protecting your children. Do not try to fight both battles at the same time - protect your children first. Protecting your children is more important than being right about anything. Even if you do not agree with the rules, sometimes you have to play by them in order to win. Suffer fools if you must, and chalk it up on the "puke meter."

2. Be aware of the effects of Post-Traumatic Stress Disorder.

Protective mothers often find themselves in the midst of custody litigation following their own escape from ongoing abuse at the hands of the abusive parent. Because of this, the protective mother is often suffering from post-traumatic stress disorder (PTSD) while she is dealing with attorneys, custody evaluators and guardians ad litem as well as when she is sitting in the courtroom. The very

fact that she is suffering from post-traumatic stress disorder can play right into the theory of the universe that the abusive parent wishes to promote.

Because of PTSD, a protective mother is often worn thin and frazzled. She may be physically, emotionally and cognitively disorganized. She is at the end of her rope and can appear to others to be crazy, just as the batterer repeatedly says she is. Because the batterer is so persistent, the protective mother has often exhausted her usual allies, including her family and friends and has often been through a few attorneys before her case is through. She has insufficient financial, emotional and sometimes legal support and appears to others to have few "believers."

A batterer has often conditioned his victim to appear as if she is overreacting. The abuse, even post-divorce litigation abuse, can be so subtle and insidious that its messages and effects are seen and felt only by the victim. They are inherent in the relationship. When the victim tries to point out the abusive tactics to persons outside the relationship, she appears to be overreacting to very minor and/or reasonable action on the part of the abuser. When the abuser then states that the protective parent is hysterical and overreacts to everything, he is believed.

Because the protective parent has lost faith in a system which has failed to protect her child and has allowed the batterer to have ongoing opportunities to further abuse her through litigation, the protective parent often appears angry and frustrated at the court system. The people at the top of the very system which is the subject of her anger and frustration are now charged with evaluating the reasonableness of her anger.

In contrast to the post-traumatic protective parent, the batterer will always appear calm, friendly and helpful. The batterer will always be in control of his words, his gestures and his expressions.

3. Get the "Stepford Wife" Makeover.

Even though you shouldn't have to, and even while the world is falling down around you, looking like what the judge thinks a mother should look like will help you tremendously. This is the time to succumb to patriarchal ideals of motherhood. Change the world later. This makeover not only includes your wardrobe, but your mannerisms and the way that you communicate with the judge and other important people in your case.

The most superficial change that can affect the outcome of your case is your wardrobe. At this point in your life, you may have to borrow clothes from your friends or visit a high-end consignment shop, but your clothing and appearance in court is very important to your case. Even if money is not a problem and your closet is full of designer business suits, you probably want to wear something a little more maternal than that. While a business suit may convey that you are a successful, contributing member of society, you want the judge picturing you at a PTA function or soccer game, not a board meeting.

A nice, tailored suit in something lighter and less lawyer-looking than black, navy or pinstripe is always a good bet. A knee length skirt is more motherly than slacks. Yes, it is old fashioned, but remember, in some states, female attorney

hopefuls are still not allowed to wear slacks while taking the bar exam. This is the climate in which you are functioning. A soft-colored blouse or sweater and low heels complete the soccer-mom-going-to-junior-league-luncheon look. If you have or can borrow a set of pearls (they can be fake a la Barbara Bush) and earrings, even better. Your hair should look neat, but not severe. Even though it sounds silly and has nothing to do with the merits of your case, the judge will be watching you throughout your case, and the way you look will form a large part of the judge's opinion of your credibility and ability to function as a mother.

Always be courteous and polite to everyone in the process. If someone needs to play bad cop, let that be your attorney. The clerk and the bailiff are as important as the judge. Judges often ask their clerks and bailiffs about the behavior of parties when the judge is not in the courtroom. Likewise, if you behave badly in front of the secretary or receptionist of an evaluator or guardian ad litem, you can be sure it will have an impact on what kind of person that evaluator or guardian thinks you are. I know one guardian ad litem who has a hidden camera in the reception area of her office in order to see how parents behave with their children in the waiting area, when they think no one is looking.

The guardian ad litem, custody evaluator and other professionals have immense power in your case. Do not argue with them, even if they are wrong. Put your best foot forward. If they do something wrong or make a mistake, tell your attorney and let your attorney handle it. Remember, you must always be the good cop, your attorney can be the bad cop.

It is important to remember that the opposing attorney is not always a bad person. You may certainly disagree with her or him or correct her or him, but do not argue or make it a personal battle with the attorney. She or he may not be personally invested in the case. Also, she or he may have fallen for the batterer's story, in which the batterer is the victim. Remember, your ex is convincing. He managed to pull you in at one time.

4. Never make faces in court, i mean never.

I cannot overemphasize this. You will hear ridiculous things in court. You will be made out to be a horrible person. Your ex will tell lies. His witnesses will tell lies. It doesn't matter. If your face is contorted and your eyes are rolling while these lies are being said about you, it will make the lies more convincing. If you keep a poker face while the lies are being told, the lies will be far less credible. The judge sees you on the witness stand for a far shorter period of time than he watches your demeanor while the attorneys make their arguments and the other witnesses testify. Many judges are convinced that they can see what is "really going on" in a case by watching the faces, gestures and demeanor of the parties while the case is going on.

Likewise, if the opposing party or someone else is lying on the witness stand, do not say, "He's lying!" or begin gesticulating or scribbling notes to your attorney wildly. For one thing, if you and your attorney have prepared together sufficiently, your attorney will already know that he is lying. Your attorney needs to be listening to what is being said on the witness stand in order to effectively cross-examine the witness. Furthermore, it makes

you look like the crazy person that the witness has just finished saying that you are. If someone is lying and you are not confident that your attorney is aware of the lie, calmly and quietly write a note and pass it to your attorney discreetly.

Remember, the judge does not have a crystal ball revealing the truth to her or him. The outcome of your case does not depend on the truth, but on the evidence that is presented in court. Your presentation in court and your testimony are part of that evidence.

5. Always tell the truth, but don't spill your guts.

While it may be cathartic to open up the floodgates and let it all come gushing out, litigation is not the appropriate forum for that catharsis. You need to speak in such a way that the evaluators, guardian ad litem and the judge are ready, willing and able to hear you.

First and foremost, tell the truth. There may be some parts of your story that do not cover you in glory. We all have done a thing or to that we would rather not have to talk about in a custody battle. Besides the fact that lying under oath is wrong and illegal, it is far better to appear to be a credible human than a liar. The truth, with explanation, is always better than a lie or half-truth.

When you are testifying, organize your thoughts before speaking. If you need a moment to gather your thoughts before you begin, it is absolutely fine to take a moment to do so before you begin answering a question. When you are on the witness stand, make sure you are answering the question that is being asked. Do not lose the forest for the trees. Not every detail needs to be presented in court, and diluting the important points with superfluous details can detract from the evidence that will have the most profound impact on your outcome. Give facts and not conclusions. It is the province of the court to make conclusions, your job is to present the facts in a way which leads the judge to reach the correct conclusion. Finally, remember that the judge's attention may drift. Give the important details, but be focused and succinct.

When speaking with evaluators, guardians ad litem and other potential witnesses, do not assume that you can trust people just because they are supposed to be helping you or your children. Talk to your attorney before speaking to anyone about your case. Do not attempt to publicize your case without first discussing it with your attorney. Remember that you are only guaranteed confidentiality when you are speaking to your attorney outside the presence of anyone except your attorney and her/his agents. You have no privilege of confidentiality with the guardian ad litem, your child's therapist or an evaluator. Also, be aware that you may be being taped, there may be a tracking device on your vehicle, your house may be bugged and there may be spy software on your computer. These are relatively common tactics for abusers. Paradoxically, it is important not to tell people other than your attorney if you think that you are being taped or spied upon, as it will make you sound paranoid. You can be certain that the abuser has told everyone involved in your case that you are, in fact, paranoid.

6. Watch out for land mines.

Your ex will set them and then point his finger at you when you stumble into them. An

example of this is the "friendly parent trap." The abusive parent makes an unreasonable request designed to catch you being an uncooperative co-parent. If you currently have physical custody, he will ask for visitation over some period in which he knows that you have something special planned with your child, or he will ask for something that you know is not best for your child, like bringing your child back from visitation at an unreasonably late hour on a school night. If he currently has physical custody, he will ask you to forfeit an important visit or create a situation where it becomes terribly inconvenient for you to exercise your visit. He anticipates that you will react with in an angry and uncooperative manner, which he will use as an example in court of how you create friction. How you react to these set ups is extremely important, and should be discussed with your attorney before you give any response, whatsoever, to the set up. If you are put on the spot and asked for an immediate response, your response should be, calmly, "I need some time to think about whether or not that idea is what is best for our child(ren)." Discuss with your attorney whether it is a point on which you should give in (and show how exceedingly reasonable you are to his capricious demands), or whether you should counter with a calm, "No, I do not think it would be best for Junior to go to poker night at Hooters with you this Wednesday night, but he would love to go to the children's museum after school on Wednesday, if you would like to take him." When you decline the unreasonable request, always make a reasonable counter offer, and do it in writing. His traps depend upon your having a strong emotional reaction to his actions. If you react calmly, from a position of strength, the traps will fail.

7. Take back the power.

The traumatic bonding which occurs between hostages and their keepers also occurs between abusers and their intimate partners. The abuser creates a dependence on him and becomes larger than life and omnipotent in they eyes of his partner or former partner. He can elicit emotions from his partner at will - empathy, anger, guilt (even when the partner is the one who has been wronged) and feelings of powerlessness.

It is helpful to understand how the batterer operates. He uses coercion, power and control. He has a sense of entitlement with, and ownership of, his partner/former partner and children. He uses manipulations, set ups and mind games. The abuser projects what he is and what he does onto the subjects of his abuse, and he actually sees himself as the victim. He is a master of minimization of his own bad behaviors, denial and blame shifting. He will use "gaslighting," a technique of manipulating his victim and her surroundings so that she begins to think that maybe he is right, maybe she is crazy. The abuser will do anything to wear down his partner's self worth. He knows that he can elicit an emotionally charged reaction from her, and he depends upon this. You cannot, and the court cannot, change this pattern of manipulative behavior. Your awareness of it, coupled with your awareness of your own reactions to the behavior, can change the cycle. Remember, his scheme relies upon your reacting strongly and emotionally to his behavior.

8. Do the unexpected.

Not responding the way an abuser anticipates takes away his power. If he pushes a hot button, respond with logic and emotional indifference. Go along with his ludicrous demand, or offer a reasonable alternative instead. He will become flustered. Practice being non-reactive. Rather than reacting, keep a fact log of the dates, times and incidences of his immature and selfish behaviors. That way, rather than making you look crazy, his actions make him look unstable. He wants to keep you in a constant state of crisis. Remember, what is most immediate is often not the same as what is most important. Stay focused on your long-term strategy. Every action does not require a response.

9. Abuser's biggest weapons are also their Achilles heels.

A batterer's inherent sense of entitlement and omnipotence can lead to carelessness. If he feels that he is above rules and court orders, give him some rope, rather than exhausting yourself in an effort to rein him in. He may just hang himself. Also, he is so accustomed to being able to manipulate your behavior that he will be lost if he is unable to.

His calm, cool and collected demeanor - if you think about it, that is completely inconsistent with someone who is listening to evidence that his child is acting out, disclosing abuse, etc. If he were not the perpetrator, he would normally have some emotional reaction to hearing these things and would want to find out if the child is being abused. He would want there to be investigations and he would be cooperating with authorities.

10. Help the Court to "get it."

Most of the work in a trial is done before you ever go to court. You must be proactive, talk to everyone involved after being advised by your attorney. Evaluators, guardians ad litem, social workers and therapists will have mostly formed an opinion before the hearing. You must be involved in the formation of these opinions.

Your conduct in the pre-trial phase is crucial. You are living in a microscope slide at this point in your life. Assume everything you do or say is known or knowable to the abusive parent and his attorney.

Discovery is a tool that attorneys use to find out facts, along with the opposing party's theory of the case and trial strategy. Extensive discovery is absolutely necessary in protective parent cases. Dig! Dig! Dig! The truth is out there. Do not forget cell phone records, they can be very helpful. Plot every fact that you find out on your timeline of events. Make the connections. The extensive quantity of relevant facts in protective parent cases must be organized and digested well before trial.

Also, you need to file appropriate pretrial motions. If the other side has disclosed in discovery that they intend to introduce evidence which may be inadmissible, pretrial motions can narrow the issues and exclude evidence which should not be allowed. Trials can be won or lost on pretrial motions.

Remember that your judge does not have any background into your situation except for the admissible evidence presented in court. The judge may not ever even see your children and will never be as invested in them as you are. The judge is seeing the battering parent for the first

time, and it will most likely not be apparent that the batterer is abusive, remember how long he was able to hide his true nature from you. Also, it is difficult for a judge to wrap his mind around the idea that a man would abuse, and especially molest, his own child. Just because a judge does not get it, does not mean the judge is evil or corrupt. In order to make a determination that someone is a child molester, the judge has to mentally go there, which can be very uncomfortable. It is far easier for the judge to choose a rational alternate hypothesis. You must be able to show that the alternate hypothesis being offered, that you are a crazy, vindictive alienating parent is not a rational hypothesis. Do not give up on your judge and begin seeing him as the enemy when things are not going well, instead, figure out how to tell your story in a way that your judge will really hear it.

In order to make your story convincing, you must unravel the facts. The abusive parent will present a story that seems very simple and easy to swallow. The truth is far more difficult. Concise and accurate presentation of facts is crucial. Timelines, charts, graphs, videos, and other forms of demonstrative evidence which break down cumbersome amounts of information into tangible and easy-to-read exhibits can be better ways of producing evidence than lengthy testimony about facts that seem menial when taken individually. The truth is essential. If you did something that makes you appear less than perfect, explain why you did what you did. Remember, you are presenting facts, not opinions. Let the judge form the correct opinion herself/himself, based upon your presentation of the evidence.

If your child's father has abused your child, once the abuse comes before the court, the abuser will likely file a petition for physical custody. He will then have turned the child abuse case into a child custody case. This changes all of the underlying assumptions, clouds the abuse disclosure in suspicion, dilutes the issue of abuse and changes the focus and treatment. You need to clarify every step of the way that the abuse is not a custody issue. The disclosure of abuse preceded the abuser's campaign for custody.

One thing that will help you is if you are able to fit individual facts, which seem unimportant when taken separately, into the larger context. Educate the court. Expert witness testimony on domestic violence and on child sexual abuse is extremely important, in some cases crucialyou're your ex presents evidence that he "passed" a psychosexual evaluation or a lie detector test, you may need an expert on rebuttal to explain why an incest perpetrator can "pass" such an evaluation and/or lie detector test. Make each witness' testimony fit together. Show that each of your actions was a reasonable reaction to the events as they took place. Show why your story makes more sense than his, why your reactions to disclosures of abuse make more sense than his reactions.

When he is on the stand, try to poke holes in his story. Surprise him on cross-examination by questioning his demeanor and response, which will probably be very cold and placid, to hearing statements his child has made regarding being abused. Nothing can be as simple and black-and-white as his story will be. Find the holes. Dig, dig, dig in preparing the case. Find the truth, then find the admissible evidence.

When all is said and done, let your closing argument be the lightbulb over your judge's head. Highlight the very best evidence as to why your version is the truth and his cannot be.

11. Pick the Right Attorney:

You absolutely must have an attorney who "gets it," who understands the dynamics of abusive relationships and does not second guess the gravity of your case. Your attorney must comprehend what she/he is in for. Attorneys often hate protective parent cases because they are always hard fought, they never seem to end and the money almost always runs out before the case is closed. Even if your attorney has the biggest heart in the world, she/he has staff and overhead expenses to pay, not to mention that she/he is probably in business so that she/he can pay her/his own personal bills, and time working is time away from her/his own family. Make sure your attorney is up for the fight, and make sure your attorney is being paid. You have the right to expect your attorney to work and fight hard for you, and your attorney has the right to expect to be paid for her/his services. Also, you have to have someone in your corner other than your attorney. A friend, family member or therapist to provide you emotional support is an absolute necessity. Your attorney will burn out too early if you rely on your attorney as your main source of emotional support. Also, many really great attorneys are lousy at providing emotional support.

12. Remember: It Takes Teamwork.

You should acknowledge that your case is more important to you than it is to your attorney. Even if your attorney has her heart and soul in your case, it is your life and your child. You and your attorney meet occasionally to make sure you are on the same page with regards to your case. You should plan your communication in advance, or it may not happen as it should. Trial lawyers spend most of their time outside of the office, and it can be difficult to get them on the phone. Set a series of appointments with your attorney well before your trial date. If you are having a difficult time reaching your attorney by phone, call the office and schedule a telephone appointment. When you have questions, see if they can be answered by a paralegal. Also, faxes and e-mail can be more effective means of communication than telephone calls, but do not turn into the boy who cried wolf. If you fax your attorney daily, your faxes will not get the immediate attention that they receive if you only send them when there is an important, time sensitive issue. If you feel that your attorney may not be on the same page as you, get the kinks worked out well before trial day.

If you become dissatisfied with your attorney, do not fire him or her impulsively. Make a consultation with one or more other reputable attorneys to get a second opinion. Often, there are minor kinks in communication that can be resolved in a short meeting. If so, stay with your attorney. It will be far more expensive to bring a new attorney up to speed, and your new attorney may not become as invested in your case as your original attorney. Also, many judges see it as a weakness in a party's personality or case if that

person has switched attorneys. If, however, you have lost faith in your attorney, hire a new attorney in whom you do have faith. You need to trust that your attorney is doing her best for you, and you need to be able to work together as a team. If you cannot afford an attorney, read and reread these tips until you have fully absorbed them, and do the best you can.

Some Consequences of Covering the Courts

By Kristen Lombardi

There's an old adage among investigative reporters slapped with a libel lawsuit: Wear it proud, like a badge of honor. After all, the argument goes, when you do your job right, you expose what people have fought to keep silent. The threat of legal action, in short, comes with the territory.

I'd heard that adage over and over again in December 2004, when a 12-person jury ruled that an article I'd written on the family-court system had libeled a father whose ex-wife had accused him of molesting his children. The jury not only ruled in favor of the father, but also awarded him $950,000 to boot.

Until now, I haven't worn this verdict as a badge of honor. On the contrary, it's been a crushing blow for me. True, I stand by my work chronicling a custody battle involving child sexual-abuse allegations. (At its core, the case has hinged on a subhead that one of my former editors penned.) Yet I've known the general public wouldn't see libel as honorable. And I've feared I let down my article's sources – all the experts who laid out how the nation's family courts fail to protect children from abuse, all the mothers whose custody battles illustrated the systemic problems there.

So when California NOW asked me to participate in this book project last fall, I balked. The first thing that flashed through my mind was, "Oh, no. Not that topic." Not the topic that has hounded me ever since I began digging into it three years ago. I cringed at the thought of putting into words my experience covering the courts, and my subsequent transformation from proud reporter to beaten defendant. But then, I had a revelation. By writing about how the family courts treat child-abuse allegations, I'd done nothing more than any good reporter would do: I'd acted as a check on a governmental institution set up to protect children. My story shows just the kind of barriers any reporter can bump up against when tackling the controversial issue.

In January 2003, I wrote a 9,000-word article, based on a three-month investigation, examining how the nation's family courts handle custody cases involving allegations of child sex abuse. The story hit the streets on January 10, under the headline, "Children At Risk," and fronted the Boston Phoenix, where I'd been a staff writer for four years. (I am now a staff writer at the Village Voice, in New York City.) The article documented a national trend in the family courts – how parents, primarily mothers, lose custody of their children to alleged abusers.

On its face, the trend seems counter-intuitive. How could a court system set up to protect the best interests of children hand them over to potential abusers, even in the face of compelling evidence? I'd first heard this claim from child-

welfare advocates while covering the priest sex-abuse scandal in Boston in 2002. I didn't believe it then. And I'd had a hard time believing that such injustices could be occurring to another set of victims. But my sources kept pressing me to examine the issue.

"It's a scandal bigger than the Catholic Church," one source said, pleading with me.

I started digging. And the more I dug, the more convinced I became that the family courts were failing kids. I discovered three studies concluding as much – the first on the California courts, the second on the Massachusetts courts, and the third on 1,000 custody cases nationwide. I interviewed up to 25 experts, from family-law attorneys to child-abuse specialists. They all seemed to have the same complaints about family court, regardless of which state's court system they were familiar with. First, the courts relied on social workers or therapists not skilled at recognizing sexual abuse. Second, normal courtroom checks and balances didn't exist. Third, gender bias against women still prevailed in court. That two dozen sources could offer up the same criticisms struck me as significant. It told me I was on to something. It told me to keep digging.

My interviews with mothers caught up in what proved to be nightmares in family courts inspired me to press on. I spoke with women who lost custody to men who were targets of child-abuse investigations. In some cases, the allegations seemed to be substantiated by physical evidence. Yet this mattered little to family courts. When mothers kept complaining about abuse, they endured fierce punishment. They lost visitation, or the right to talk to their kids on the phone. Some were thrown in jail for contempt. The penalties seemed so out of whack when compared to the women's actions – all they were doing was trying to save their children.

The mothers did not come across as conniving, vindictive conjurers of false claims, as their ex-husbands invariably argued in court. Their pain and despair – their hysteria at times – colored their voices and manifested in their faces. I was convinced they were being honest, up front. At the very least, I surmised in interviews, they believed their exes were abusing their kids – and they often had records to back up those beliefs. I read medical exams and therapy reports, child-abuse investigations and court decisions. I saw evidence of abuse on paper that left me unnerved.

The paper trail helped me push for my investigation. Unlike many reporters who cover child sexual abuse, my editor had been just as committed as I was at exposing the problems in family court. In October 2002, she'd attended an awards ceremony in my place, and met some of the folks who'd tipped me off to the issue. When she returned, she told me, "I think there's something here. Look into it."

I bumped into plenty of barriers along the way. The biggest challenge, by far, had to do with obtaining documents. I managed to find enough of a paper trail to document certain sex-abuse claims, but I couldn't get my hands on the vast majority of the paper work. Medical exams, therapy reports, and child-welfare investigations were often sealed, legally, a sign of the sensitivity of child molestation. I'd go to a courthouse to request a custody

case file, only to find half of it redacted. I'd go to a courthouse to witness a custody hearing, only to find it closed to the public. Those who knew the investigations – child-protection workers or guardians ad litem – were legally barred from discussing their findings.

I necessarily turned to those sympathetic to the mothers' plight to try to obtain confidential documentation. I interviewed as many sources as I could about the content. In an attempt to see the sealed records for myself, I often had to promise I wouldn't quote from them or, on occasion, even let on I had them in my possession. Sometimes, it worked, and sources gave me materials off the record. Most of the time, it didn't.

Then came the threat of legal action, a major impediment to any journalistic project. This hung over me from the moment I'd begun reporting on the family courts. Child-abuse experts told me, half-jokingly, that I'd probably face a libel lawsuit if I tried to expose how women were losing custody to alleged abusers. Other journalists who'd taken on this topic had already been sued. Not only that, but experts said some fathers' rights organizations were actually encouraging allegedly abusive fathers to use the legal system to shut down publicity about their custody cases.

As I reached out to accused fathers, I found out for myself how real the threat could be. I remember the panic that swept over me when a lawyer for one father said, in response to my request for an interview, "You're traveling down a very dangerous path here."

To me, the implication was clear: Publish this article, and we'll sue.

That father never did file a libel lawsuit because of my story. But the threat turned into reality anyway. As part of my article, I'd described a custody battle involving a prosecutor in another state. In May 2003, four months after my article had appeared in print, he sued me, my editors, and the Phoenix, alleging he was libeled by four phrases – four sentence fragments – in the nine-page piece.

When I read his complaint, it seemed surreal. I believed I'd accurately reported the details of his custody fight. How government authorities had received allegations that he'd molested his children. How social workers had conducted an investigation into allegations that his oldest daughter was abused, and that she had pegged him as her abuser. How the family court had awarded him full custody of his other children. How did he have a leg to stand on, I wondered, when what I reported was substantially true?

You might think the First Amendment protects a reporter from liability for reporting on how a government agency responded to sex-abuse allegations. You might think the First Amendment protects a reporter for covering an assistant state's attorney whose wife had accused him of a crime. Certainly, I did. But, it turns out, I was wrong.

Indeed, the trial turned out to be a Kafkaesque nightmare, much like the experiences of the mothers in my piece. Nothing went our way. The federal district court ruled, remarkably, that this prosecutor was not a public official for the purposes of libel law, thereby keeping the suit alive. The court refused to reconsider its ruling

even after hearing the father's lawyer argue what seemed to me to be a contradictory theory at trial: that the State fired him because, as an assistant state's attorney, his background was subject to heightened public scrutiny.

Over four days, 12 jurors listened as witnesses detailed the investigation I'd described in my article – the medical exams, state reports, physical injuries, and more. In fact, my attorney argued that the records available to me when I wrote the piece were just the tip of the iceberg. He subpoenaed the confidential investigation file and read sections of the report to the jury – including the daughter's graphic allegations.

In the end, the jury sided with the father, going so far as to award him nearly a million dollars. Today, we continue to fight the judgment on appeal, which is pending in Massachusetts. But things got worse in January, when a second father filed a libel lawsuit five days before the statute-of-limitations would have expired. His custody case, famous among family-court reformers nationwide, was summarized in a paragraph in my article. His name was mentioned once. For that, he's demanding $10 million.

Looking back, I see the toll these libel suits have taken on me professionally. They have effectively shut me up, kept me from covering the family courts. People contact me all the time based on my prior work, pitching me one horror story after another born out of the system. I tell them the same thing – my beat won't allow me to cover the courts. Truthfully, though, I haven't had much desire to tackle this topic again for fear of another turn on the witness stand.

If I've taken away anything from my legal ordeal, it's that we, as a society, still have a hard time with incest. We don't want to talk about it. We don't want to think about it. We especially don't want to recognize that powerful and successful men might engage in such activity. I've concluded from my libel suit that all it takes for people to push the idea out of their minds is little more than protestations of innocence. How else can I explain why the jurors would weigh the accounts of abuse – in the children's own words – yet return a verdict for the father? What else could it be but societal denial?

The way to chip away at this denial is for reporters to do what I did, of course: Cover a matter of indisputable public concern. The public needs to know how the family courts respond to allegations of child sex abuse, and push for reform. And for that to happen, reporters need to wear the prospect of a lawsuit as a badge of courage. Whether they will or not, is another story.

Kristen Lombardi is a staff writer for the Village Voice. Her work in exposing the clergy sex-abuse scandal has been recognized by the Colombia Journalism Review and the Poynter Institute. In 2003, the California Protective Parents Association bestowed her with its "Friend of the Child Award" for "outstanding journalism and coverage of child sex abuse crimes and their cover up," in part for her 9,000-word article about the failure of family courts to protect children from abuse.

The Making of "Small Justice: Little Justice in America's Family Courts"

By Garland Waller

Diane Hofheimer, a paralegal and child advocate, handed me the VHS tape with a warning: The video would chill me to the bone. She told me it showed a three-year-old girl clinging to a banister, begging not to be sent to live with her father. As Diane explained, a family court judge had awarded custody of this little girl to her dad despite evidence that he had sexually abused her. The thought of this made my skin crawl and part of me refused to believe that our court system would do this to a child.

So I did what many people in my situation would do: I put the tape on top of my "to do" pile. And there it sat, staring me in the face, for six months. About once a week, Diane would call to check in and see if I had watched the tape and each time I had to tell her, "No, not yet." She was patient.

A little background. Diane is a childhood friend. She and I grew up in the same Quaker meeting in Virginia. She and her husband, Charlie Hofheimer, had created a law office in Virginia Beach, Va., that represented women in custody and divorce cases. Together they had learned that the courts often ignored evidence of sexual abuse and awarded custody to the abusive parent, typically the father. Diane was alarmed that no one in the media was telling this story. And that was why she had turned to me. She was hoping that I would use my skills as a TV producer to get the word out about this issue.

Eventually, I mustered up the courage and put the tape in the VCR. As promised, the videotape showed a towheaded girl, clinging to a banister, screaming, in a haunting, horrifying cry, "Please, Mommy, please don't make me go to my daddy's house." It was a singular moment in space and time for me; it was the moment that changed my life. If, as Diane said, this child was not a lone exception but part of a trend that extended across America then this amounted to a national scandal that needed to be exposed.

I began to research custody and divorce cases in which violence or abuse was a component. I had always expected that parents going through a divorce would put the needs of their kids first. But, as the research unfolded I began to see that violent men tended to be the ones who demanded custody. And when they did, they had a good shot at receiving it.

During the course of my research, I read things like:

> "Fathers who battered the mother are twice as likely to seek sole custody of their children as non-violent fathers." – American Psychological Association's Presidential Task Force, Violence and the Family. (2000)

And:

> "Abusers/batterers who are crimi-

nally liable for their violence nonetheless are getting sole or joint custody in approximately 70 percent of challenged child custody cases." – *The American Judges Foundation, Domestic Violence in the Courtroom: Understanding the Problem, Knowing the Victim*. (1996)

"Between 50-75 percent of the men who batter their wives or female partners also abuse their children." – *Lenore E. Walker et al, "Beyond the Juror's Ken: Battered Women." 7 Vermont Law Review 1,* (1982)

I was growing increasingly convinced about the extent of this scandal and its potential as the subject of a documentary. But despite my background producing well-funded syndicated documentaries on such topics as the fear of nuclear war, rape, child abuse and drug addiction, I had a feeling no network would back me on this project until I could show them the finished goods. So, I decided to make my first independent, low budget documentary using $20,000 of my own money and one of my graduate students at Boston University who generously agreed to work for free.

In 1998, I began shooting "Small Justice: Little Justice in America's Family Courts." I spent months gathering information, and fully immersing myself in this issue. Given the complexity of the family court system and the intricacies of abusive relationships, I was lucky that I had Diane Hofheimer to guide me. Diane explained legal theories and the intricacies of the family court system and she gave me boxes of legal research. She also introduced me to mothers who had lost custody of their kids to abusers.

To document the abuse of justice being perpetrated by the family courts, I decided to follow Diane and Charlie Hofheimer as they worked with three mothers who were losing or had lost custody of their kids in family courts. I never doubted these women or their stories because they were so open, so desperate for help, so determined to protect their children. But I could see how they could lose in court, not because there wasn't evidence, but because they presented themselves poorly. They were overwrought and angry, and their emotions often affected their composure.

I can't imagine any loving mother, frankly any loving father, acting differently. Sometimes, after a day of shooting, I would lie in bed at night, unable to sleep because of what I had seen. I wondered what I would do if the court ignored me and my efforts to protect my child. Would I run away with my child? How would I live? Where on the planet could I go without being caught? I saw the underbelly of American justice and I wondered what options these protective mothers had.

In addition to the mothers, my crew and I also interviewed leading experts like attorney Richard Ducote, Dr. Carolyn Newberger of Children's Hospital in Boston and Karen Winner, author of "Divorced from Justice," one of the few books on this issue. These interviews further convinced me that the system was deeply flawed.

Unfortunately, all of the dads involved in the cases I featured refused to speak with me, as did

their lawyers. But I did manage to get an interview with Dr. Richard Gardner, the man who devised Parental Alienation Syndrome, the debunked theory behind many of the most egregious decisions handed down by family court judges.

According to Dr. Gardner, alienating parents, typically the mothers, use accusations of abuse in order to alienate their children from their fathers. During my interview with Dr. Gardner, one of the last he gave before he committed suicide in 2003, I asked him what a mother should do if her child revealed that his or her father had abused them sexually.

Gardner said she would respond by saying, "I don't believe you. I am going to beat you for saying that. Don't ever talk that way about you father.'"

Although Gardner's theory has been widely discredited by the psychological establishment, the fact is that many members of the judicial system have bought into PAS. Now, when a mother brings allegations of sexual abuse before the court she is often accused of PAS. Unfortunately, many judges find PAS more credible than a hospital record of vaginal tearing or unexplained blood in the anus of a child.

As I wrapped up production of "Small Justice" in 2001, I thought I would have no problem selling the show. After all, I had uncovered a national scandal and I had extensive testimony from three protective mothers and a litany of experts from across the spectrum. I was wrong.

I took the show to all the news magazines at CBS, ABC and NBC, but no one wanted it. HBO and CNN also said no. I heard these responses over and over again:

"What's wrong with the mother?"
"Give me something that is more clear cut."
"It's her word against his."
"He looks pretty normal to me."
"Guys don't do this to their kids."
"I thought all mothers got custody unless they were, like, nuts."
"We can't air that. We could get sued."
"It looks like 'He said-She said" to me."
"This is way too complicated to explain to folks."

It is probably hard for anyone involved in this awful situation to understand why the media will not touch this issue. After all, these stories are filled with injustice and human drama. Unfortunately, television stations fear lawsuits and that fear hinders their willingness to uncover important stories and stand up for what is right.

Although the large broadcasters rejected "Small Justice", the good news is that the documentary received some acclaim. It garnered the award for "Best Social Documentary" at the NY International 2001 and was honored with the Award for Media Excellence from the 8th International Conference on Family Violence, which was presented in California at the International Conference on Family and Domestic Violence. I showed clips of "Small Justice" and spoke at two conferences hosted by the National Organization for Women. "Small Justice" was also shown at The Museum of Fine Arts in Boston and the Key West Indie Film Fest gave it an award.

I like to believe that "Small Justice" contributed to the growing interest in this area. Over the past couple of years, conferences like the Battered Mothers Custody Conference have been dedi-

cated to the issue, books have been written and recently *Breaking the Silence: Children's Stories* aired on PBS. These are big accomplishments and each one helps to call attention to the heartbreaking injustices in the system.

There are still nights when I cannot sleep because I hear Suzi begging not to be sent to her father's house. Every day, I get at least one letter from a terrified mother or worried grandfather, someone trying to protect a child from a family court system that is at best woefully misguided and, at worst, dangerous. And so, I believe that those of us who are able to fight the system, must continue the uphill battle to get the courts and the media to listen to a disturbing truth.

If you have a story about a travesty in the family courts that you would like a newspaper or television station to cover, here are some tips you may wish to consider before approaching a reporter:

- Approach a journalist whose beat includes the court system and/or social issues.
- Explain your story in a neat and organized fashion. Be concise.
- Explain how your story ties in with an issue of social justice the news station or newspaper has previously covered.
- Give the journalist time to think and to ask questions.
- Provide statistics and documents (a page, not two) that support your story.
- Stay calm. As the protective parent, you may be upset, anxious and distraught. Journalists hate that as much as judges do. You have to find something deep in your soul to keep you calm.
- Do not give journalists too much information. If you provide too much material, they won't read any of it.
- Explain what your ex-husband/abuser will say about you. Don't hide those things.
- Ask the reporter if they need any additional information. Experts? Statistics? Court documents?
- Write an outline of your story and keep it to one page. If you can break it down into bullet points, even better.
- Make sure you explain that you are not alone. You are one of numerous parents experiencing this problem in the court system.
- Direct the reporter to websites where they can learn more.
- Give them the names of experts, nationally and locally.
- If a reporter does not immediately agree to cover the story, do not get upset and slam the phone down or storm away. Try to nurture the relationship by e-mailing the journalist with updates about your court appearances and any unfair rulings.

What Breaking the Silence Means

By Dominique Lasseur

Documentary film producer Dominique Lasseur set out to explore the failures of the family court system in "Breaking the Silence: Children's Stories." But when public television broadcast the program in the fall of 2005, the father's rights movement was quick to react with scathing criticism and a deluge of viewer complaints.

What compelled you to take on this issue?

We didn't set out to produce a piece about custody issues. We had planned to make a documentary about the impact of domestic violence on children. We really wanted to show stories of what was being done to help children who were raised in domestic violence environments. What we found was one story after another of protective mothers having their children taken away from them and given in sole or partial custody to the very man who terrorized the mother and the children. It was so outrageous, that when we heard the first stories we thought they were aberrations, but then we found that this was in fact happening often and everywhere. We knew at that point that this was the story to concentrate on.

When did you become convinced that there was a systemic problem within the family court system?

I met a woman in New Jersey and I spent an afternoon listening to her story. She had been divorced for two to three years and had lost custody of her kids. Her ex-husband was making her life a total prison by dragging her into court every month. She was a professional, intelligent woman, and I thought this can't be happening. This is clearly a horrible story, but it has to be one case in a million. But looking further we found the same story everywhere, in Florida, New Orleans, Ohio, California, etc.

I spoke with dozens of women who were very candid about what they had endured. After listening to one story after another, there was no way to ignore the extent of the problem. We chose to feature the stories where there were extensive court proceedings so that we could verify that what the women was telling us was what she had testified in court as well. So there was a clear history of allegations of domestic violence and/or child physical or psychological abuse.

All the women we interviewed went to court believing the system was fair, not thinking for a moment their kids could be taken from them. It seems that we are now on this issue where we were 20-25 years ago on domestic violence. I would assume that it was as difficult at that time to talk about domestic violence, as it is to talk about this particular issue now. People don't want to believe it. They don't want to know about it. To tell you the truth, many times in my interviews I said to the woman I was interviewing, "It would be easier to believe that you were fabricating all this because what you're telling me is so horrendous. It feels like you're telling me a story about some remote country where there is no notion of justice." And the fact that it's happening here in America was unbelievable, is unbelievable.

In your opinion what is the underlying problem?

In my view, the problem is that while criminal courts have made tremendous progress in dealing with domestic violence, family courts are not as informed about the dynamics of family violence.

Why hasn't the family court system progressed in the same way as the criminal court system?

On the record family court judges say to women, "You're an intelligent, professional woman, so I don't believe you've been abused." You would not hear a judge in criminal court say that because people know that domestic violence is not just happening in inner city, poor neighborhoods. That's one example. The other example is people who are aware of the dynamic of domestic violence know what an abuser looks like and behaves like, they know that someone who is professional looking can be behind closed doors someone who has terrorized his wife and family. In fact, you have doctors, attorneys, actors who all look fabulous to the community but who are violent abusers. I think it comes down to a lack of training, lack of accountability.

What is the long-term impact of this problem?

As long as this situation continues we will undo years of progress on domestic violence because women are put in a Catch-22. If they don't report child abuse or domestic violence, they stand the risk of losing their kids because they failed to protect them. But if they do disclose domestic violence or sexual abuse then the kids are at risk of being taken away because the mothers will be blamed for alienating them or fabricating charges.

Was it difficult to find a network to back your show?

No, I can't say it was hard. We've been producing programs for Public Television for more than 20 years. I'm glad and proud that they are broadcasting our programs. We co-produced Breaking the Silence with Connecticut Public Television and it was aired nationally by PBS.

But the backlash has been pretty strong.

There's been an organized campaign mostly by father's rights groups to demand that PBS stop distributing the program. They characterized the program as an attack on fathers. This is akin to saying because you're doing a documentary on the Holocaust you're accusing all Germans. It makes no sense. But it has given them a forum and they have jumped on it. Our point was not to deny that some men are victims of domestic violence. We did not seek to portray all men as rabid violent abusers. What we wanted to say is simple: children should not be put in the custody of a parent who is endangering them.

In reviewing the show, ombudsmen for both the Corporation for Public Broadcasting and PBS criticized Breaking the Silence for lacking balance. How do you respond?

The CPB Ombudsman, Ken Bode, clearly had some personal axe to grind. He did not bother to contact us before writing his "report" and simply regurgitated the fathers' rights arguments. He went on to write two more "updates" without any indication that he was interested in the fairness and balance he claimed our documentary was lacking. The PBS Ombudsman did a more honest job even if we disagreed with his

conclusions. And unlike Ken Bode, he published letters he received from people who disagreed with his report.

PBS's official statement on the film indicated that, "The producers approached the topic with the open mindedness and commitment to fairness that we require of our journalists. Their research was extensive and supports the conclusions drawn in the program. Funding from the Mary Kay Ash Charitable Foundation met PBS's underwriting guidelines; the Foundation had no editorial influence on program content. However, the program would have benefited from more in-depth treatment of the complex issues surrounding child custody and the role of family courts and most specifically the provocative topic of Parental Alienation Syndrome (PAS). Additionally, the documentary's 'first-person story telling approach' did not allow the depth of the producers' research to be as evident to the viewer as it could have been."

Did you look for a father who had a similar experience to some of the mothers featured in your show?

Yes, I spoke with a father's organization and it was clear that that they had a specific political agenda that they wanted to bring to this. The women we interviewed were simply mothers who were trying to protect their kids.

Your main source of funding for Breaking the Silence, the Mary Kay Ash Charitable Foundation, has also distanced itself from the program. Are you surprised by this?

The Mary Kay Ash Charitable Foundation did not distance itself from the program. There are very strict guidelines for PBS underwriters who are not to exercise any control over the editorial content of the programs they support. Mary Kay simply made it clear that these rules had been respected and that we the filmmakers had full editorial control. The work of the foundation and of Mary Kay Corporation on the issue of domestic violence is remarkable and will continue to affect positively the lives of thousand of women across the country.

It seems that the discussion about Breaking the Silence has turned into a debate over style rather than substance. Would you agree?

If the documentary helps in any way to open a dialogue about how family courts are victimizing the very families they are supposed to protect, then any debate will have been positive.

Has there been any positive outcome?

Yesterday, I was in Westchester County where I showed an eight-minute excerpt of Breaking the Silence to family court judges and personnel. Some were aware of the issues we presented and others were surprised. But it was very positive to see this information being used.

You are not the first journalist to get into hot water after reporting on this topic. Kristen Lombardi, another contributor to this book, was sued and lost after writing an expose in the Boston Phoenix. Why do you think these stories generate so much of a backlash?

These are complex stories filled with pain and extreme passions. There are strong vested interests that want to keep the public from knowing what is going on in family courts. I believe we're

approaching a tipping point when people will demand more accountability from our courts.

What advice do you give to other journalists who want to cover this issue?

My only advice is, get your facts straight, get good insurance and get a good attorney.

Are you planning to do a follow up to Breaking the Silence?

While our next project will not be on domestic violence, we are committed to do more on this issue and to follow up on what we have learned with Breaking the Silence.

The Protective Mothers Movement: An Activist's Notes

By Mo Hannah

> " Remember: resist; do not comply."
>
> – *Andrea Dworkin, "Life and Death"*

Burnout

I recently served as the chairperson of the Battered Mothers Custody Conference (BMCC) – formally entitled, "Battered Women, Abused Children, and Child Custody: A National Crisis." I've done this conference every January for three years in a row. Writing this now, nearly two months after the conference, I feel pretty much the way I felt after the first conference and the second: massively burned out.

Back in the day, I never would have admitted to this frivolous thing called burnout. I considered it a lunatic-fringe disorder, about as real as the "syndrome evidence" used by forensic evaluators to vilify protective mothers. But that was before this issue became, for me, a moral imperative. When an issue becomes, for you, a moral imperative, it is bound to burn you out.

These days, with so many injustices being inflicted on so many people, work done on behalf of any human rights issue is intrinsically noble. For me, however, the injustice inflicted on protective mothers is uniquely egregious – first, because it came close to ripping my own life apart, and second, because it is ripping apart the lives of thousands of women all over the country.

One thing that makes this atrocity especially flagrant is that the enterprise of taking children away from fit mothers results in the cutting of some big checks for a lot of people. Consequently, a lot of people are invested in this problem not being solved. We are fighting gravity, so to speak, which is among the reasons why fatigue and discouragement and disgust, i.e., burnout, is ubiquitous among protective mother activists. Burnout is the cost of doing business, of acting on this issue.

A few years ago, when a friend and I planned the first Battered Mothers Custody Conference, I didn't expect it to be anything more than a single meeting of the minds. I figured that, if the mothers' custody advocates I'd met during and after my own journey through custody hell had never been together under the same roof to talk about this issue, it was time they did so. I was happy to do it the first time, and I was happy when it was over. I never expected it to become an annual event. I never wanted it to become an annual event.

Three years later, I am paying, for the third year in a row, the price of neglecting my other life as a psychologist, professor, and single mother in order to work on the conference. As my partner, an anti-war activist since his youth, reminds

me, "Movements eat people up alive." Especially this one, this barely nascent movement led by people who, like me, are the walking wounded. Besides taking up an enormous amount of time, the work is re-traumatizing; the calls I get from mother after mother, telling the story of their custody battle, reminds me so much of my own.

I am, nonetheless, one of the lucky ones. I went through financial ruin and emotional trauma, but I managed, in the end, to keep my kids. So many other mothers, women who are my sisters, have not seen their kids in months, or even in years. Whatever I'm feeling doesn't come close to like the pain that burns inside those mothers who come to the conference because they have lost their children and have no where else to turn, nothing else to hang their hope on.

There are pivotal moments, the flashbulb memories, of each conference that linger, reminding me of why I'm doing this. This year's winner is the comment made by producer Garland Waller: "Think how much further behind this movement would be, if we didn't have this conference every year."

The Conference

Despite its depressing focus, the conference gives me a good amount of personal satisfaction, perhaps because its audience mirrors the complexity of my own pursuits as an academic, advocate and activist. Held annually in Albany, New York's capitol, the conference draws in people from all over the country. An entire weekend is devoted to a single issue: the phenomenon of mothers losing custody of children whom they are trying to protect from unsafe contact with an abusive father.

This conference is, in certain ways, an anomaly. It attracts professionals and litigants, people working in the system, people working against it, people who have been harmed by it. Sitting side by side are state government officials and attorneys, domestic violence staff and their clients, NOW chapter leaders and soccer moms. The largest contingent in our audience is comprised of battered mothers, most of them there on scholarship after being bankrupted by legal fees or impossibly high child support payments. Some already have been to jail and back for "contempt of court," for refusing to send their kids for visitation with a suspected sex-offender father, for disobeying an unjust court order, for failing to pay the impossible amount of child support ordered by the judge who gave custody of their kids to the abuser or for just speaking out too loudly against the madness.

This year's conference featured over 40 of the best presenters in the country, the top experts in the field. With 225 people in attendance we had our best turnout ever. The sessions were well-received, exciting, even, at times, profound. When people were leaving at the end of the weekend, the ambiance was one of solidarity, of renewed energy and hope. We even ended up in the black; this year, I was able to pay the conference bills without dipping into my own bank account.

In these past three years, we have come close to fulfilling the original objectives for having this conference:

- To draw public and media attention to the bias and injustices faced by battered women and their children in their inter-

actions with the family court system in this nation;

- To enlighten court personnel, legislators, government agencies, and policy makers about these realities and to press for change;
- To educate professionals, including attorneys, domestic violence counselors, social workers, legal advocates, and others who work with battered women about the ways in which abusive dynamics manifest within the context of family court legal processes;
- To discuss and disseminate strategies for improving the outcomes of child custody cases of battered mothers;
- To facilitate communication and collaboration among experts, scholars, professionals, advocates, and lay persons who work on behalf of battered mothers and their children

But no conference, or series of conferences, can dismantle an injustice that is as hidden, and as massive, as this one, especially when the injustice is so lucrative for those who perpetrate it. We certainly have not solved this problem. We have, however, formed a movement. While far from being enough, this is far from being nothing; the protective mothers movement brings this problem to the fore. Naming an injustice brings validation to those who have been victimized: I am confident that now, in comparison with several years ago, fewer battered mothers feel all alone, fewer believe the lies that they are unfit and that they deserve what happened to them.

The Battered Mothers Custody Conference provides a backdrop for putting together the pieces of this puzzle – this counter-intuitive, nonsensical phenomenon of taking children away from good mothers. When all of the pieces are viewed together, the picture that emerges can be summarized in simple terms: abuse, and the enablement of abuse, in an abusive culture. What the protective mother issue is about is the abuse of women who are trying to raise their children in a safe environment. It's about the abuse of children, who become the spoils of a war launched by narcissistic, even violent men. It is about the abuse of power, enabled by the free rein given to family court agents, like law guardians (guardians ad litem), attorneys and judges. It is about the abuse of the credibility given to psychologists, who, for profit, sign their name and lend their title to specious theories and flawed practices. It is about violence against women.

Those mothers who do what the billboards say to do and leave the man who is abusing her discover that escape is simply not allowed. What is permitted, however, is a shift of the abuse from one forum to the next, from the family home to the family courthouse. The family court, the Wild West of today's legal system, with its cartoon-like trials, Kafka-esque rulings and horror story endings, becomes little more than a weapons contractor that manufactures, for profit, additional firepower for the abuser's arsenal.

Those who are shocked to discover that the family court not only enables abuse, but renders it profitable are those who do not understand the greater political structure within which the family court system operates. The family court simply does not work for battered mothers and their children.

The Movement

In obvious and important ways, the protective mothers movement resembles many other movements that have rallied for social change. The move to organize unions, the movements against war, apartheid, and nuclear proliferation, the women's suffrage, civil rights, anti-rape, feminist, and gay/lesbian rights movements, among others, share features in common with our own. And in fact, movements build upon one another: a protective mothers movement would be impossible if the domestic violence movement had not done the work of establishing that domestic violence is harmful.

The gravity that the protective mothers movement is working against is the same weight that has confronted every other movement, especially when the movement, like ours, is just being born. We know that there are many people, such as family law attorneys, guardians at litem, forensic evaluators, supervised visitation centers and parenting coordinators who financially benefit from the suffering of protective mothers. There are many people, therefore, who would be loathe to see this particular trough get cleaned up, much less disappear. But consider what it took to get workers to organize, to risk their jobs and the wrath of the goon squads to wrestle for equitable treatment and fair pay from bosses who had cared only about the bottom line. We are aware, from the gender bias studies conducted in over 40 states, that women encounter sexist attitudes when they walk into a courtroom. Yet imagine the sexism that greeted the women who demanded voting rights from their all-male government. Think of the courage it took for the first women to speak out about being raped to tell their story to a society that didn't want to hear about it. Protective mothers who have gone to the media with their cases, exercising their constitutional right to free speech, have been retaliated against in the form of fines or jail or both that are meted out by judges or other court agents. Remember the spying and wiretapping and the FBI files kept on anti-war and other activists working on progressive causes, one means used to suppress those who challenge the dominant forces in our society? Know anyone who has been billy-clubbed or arrested for protesting peacefully? Another frustration we struggle with in our movement is the failure of the mainstream media to cover our stories. But the mainstream media, especially during the last few years, won't publish anything that contradicts the cover story, especially when the story is what keeps the money flowing.

The problems of our movement also are similar to those that affected earlier movements. This includes, especially, the fact that not nearly enough people are morally outraged over this problem. Even fewer are outraged enough to join the movement against it. There is, therefore, not enough energy behind the movement. This applies, of course, to virtually every social justice movement out there, since there are too few people trying to change the world for the better, period. However, this is especially problematic for battered mothers, who already feel isolated and alone over what has happened to them.
Clearly, too few women have been paying attention to what has been happening to women in the family courts. Women seem to take this issue seriously only when it is happening to their sister, or to their daughter, or to themselves. Since the

time I went through my custody battle, I have thought to myself countless times that if women understood what was going on in the family courts, there would—or ought to be—rioting in the streets.

The few who have thrown themselves behind this problem are, with few exceptions, protective mothers. Unfortunately, protective mothers are typically 1) raising their kids under court order and sharing custody with an abusive ex-partner, or 2) spending all of their resources on getting their kids back after losing them to an abuser. In either case, the mothers, along with their time, money, energy, bodies, and souls, are spent. Keeping your kids, or getting them back, becomes a full-time job. This single reality eliminates from the action a good number of protective mothers who would otherwise be raising hell.

If we are ever going to be able to solve this problem, it is not going to be through hiring better lawyers. It is not going to be through teaching judges about domestic violence or convincing law guardians that it's not a good idea to take children away from primary caretaking mothers. They already know all that. We've told them. It hasn't worked.

Paraphrasing what has already been stated by a number of today's domestic violence leaders: the battered women's movement took a wrong turn when it became more of a service delivery system than a social change movement. I want to go a step further by asking, "Why are we focusing on helping battered women clean up the financial, social, and psychological wreckage of custody battles instead of stopping the batterer from engaging in this form of abuse? Why aren't we focusing on changing the behaviors of those who join in this battering of women, like those who wear black robes and sit in courtrooms?"

If we are ever going to be able to solve this problem, we have to avoid wasting our time reinventing the wheel. Instead, we need to look at what other successful movements have done, and we should then do the same. We need Rosa Park-like actions done by protective mothers who are both organized and unified, and who would there be equipped to refuse, en masse, to hand kids over to abusers. We need to get out of our houses and onto the streets, to make our outrage loud and visible.

Another thing we cannot afford are negative thoughts; the internal divisions, factions, backbiting, and badmouthing that the country-club set can afford have no place in the protective mothers movement. We need, desperately and above all, unity, an essential ingredient for all movements, so essential that I included the term in the subtitle of this year's conference: Unity—and Action!

If any issue is a human rights issue, this one is. To possess human rights means that you have the right to be a human being. Mothers have the right to protect their children from danger. Mothers have the right to be mothers.

Afterword: Activism is the Answer

By Helen Grieco, Executive Director, CA NOW

After years of domestic violence my mother fled with her children to find peace and safety for us. Instead, she found poverty and a new terror: the family courts.

I remember standing in a family court when I was 12 years old imploring a judge not to give my father custody or visitation, and demand he pay his child support. The judge didn't ask my opinion, I just gave it. The next time we had court-ordered visitation with my dad he became violent again and I ran from him with my sister. We tried to grab my brothers but my dad pulled them back inside the house. I ran to the neighbors to get help. My father kidnapped my brothers, leaving a note that said they'd be better off dead than with my mother. He sent a book to our house with a horrific cover titled, "I Had to Kill Her." After a hellish week, and my mother working round the clock, she found them. The officer that drove them back to our house told my mother that my 5-year-old brother guided him back to our house once he was back in our neighborhood.

I will never forget what my mother and brothers endured. The courts did not protect my mother from my father's abuse, nor did they protect my siblings and me. Tragically, 40 years later the story is too often the same. A mother attempts to leave an abusive partner and turns to the courts for help only to lose custody of the children she is trying to protect by that very court!

I will never forget the first time I had to tell an anguished mother that I didn't think she would retain custody of her child. I couldn't imagine how she could go on. I don't know if I could, should that same fate befall my daughter and me. I can't imagine how the child survives either. Indeed, some don't.

Nonetheless, I have not lost faith. For me activism is the only answer.

This book has shown the many reasons why the family courts are inept and fail to protect women and children from perpetrators of domestic violence and sexual abuse; it's also shown how important activism is in changing the system.

As activists we must continue to expose the true agenda of the Fathers' Rights movement. We must eradicate the gender bias, denial of due process, incompetence, corruption and fraud that is rampant in our family courts. We must eliminate the use of false syndromes like the Parental Alienation Syndrome scam. We have to change the power of extra-judicial personnel, ban ex-parte communications and minimize the massive costs of family court that bankrupt mothers, leaving them only one challenging option: to represent themselves in pro per. There are so many things we need to change to make the courts a place of justice.

For now this simple fact is true: a perfectly fit mother and primary caretaker can lose custody to a father who is an abuser. We have witnessed the

pattern enough to know it and to fear it. We've seen too often the battle for custody has become the ultimate weapon in the arsenal used by a perpetrator against his victims. Let us never forget that this is about power, money and control. It's about continuing to abuse women and children, and lowering child support by taking custody. This is NOT what's in the best interest of the children of our society!

On behalf of CA NOW, Rachel Allen, Jennifer Friedlin and myself, I want to thank all of our contributors for their tireless work for justice and their invaluable contributions to this book.

I offer my deepest, utmost respect and buckets of love to all the mothers and children victimized by America's family courts. Remember, you are not alone. Of course you feel unbearable fear and powerlessness and see the family court system as the enemy. Of course, you feel like you've been driven crazy. How could anyone stay sane in the face of loosing her child to an abuser? How could any child stay sane knowing the family courts would make you live with an abuser?

Activism saved me. Activism is the Answer. Together we will reform the family courts so that perfectly fit mothers cannot lose custody to an abuser, so that no child is court-ordered to visit or live with an abuser.

This book is filled with good advice. I hope it helped you in some way. I also invite you to our website http://canow.org/issues/family.php. We continue to update our site to share new information and solutions on the family court issue.

I look forward to the day when I no longer am contacted by a woman who is crying, saying, "I can't believe what's happening. How can I lose custody of my children to an abuser? Please, please help me."

If we all work together, change will come. Remember it took us 72 years to get to vote.

Collectively we can work to help mothers keep their children safe. Join the movement for change and mothers' rights. Join NOW. Organize a court watch. Work with your legislators to create good laws for your state, and fight bad ones. Collaborate with other mothers in your area to work together for change and to give each other support. Don't give up in your own case: continue with courage. Remember in November-vote your voice and choose candidates who care about the safety of mothers and their children.

In the struggle until we win,

Helen Grieco
Executive Director, CA NOW