

Are "Good Enough" Parents Losing Custody to Abusive Ex-Partners?

by Stephanie Dallam -- updated 2008
for the Leadership Council on Child Abuse & Interpersonal Violence.

INTRODUCTION

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High conflict families are disproportionately represented among the population of those contesting custody and visitation. These cases commonly involve domestic violence, child abuse, and substance abuse. Research indicates that that custody litigation can become a vehicle whereby batterers and child abusers attempt to extend or maintain their control and authority over their victims after separation. Although, research has not found a higher incidence of false allegations of child abuse and domestic violence in the context of custody/visitation, officers of the court tend to be unreasonably suspicious of such claims and that too often custody decisions are based on bad science, misinterpretation of fact, and evaluator bias. As a result, many abused women and their children find themselves re-victimized by the justice system after separation.

Empirical research examining this issue is summarized below.

I. RESEARCH

Abrams, R., & Greaney, J. (1989). *Report of the gender bias study of the Supreme Judicial Court of the Commonwealth of Massachusetts.*

A 1989 study by the Massachusetts Supreme Judicial Court found that in cases involving custody and visitation litigation, "The interests of fathers are given more weight than the interests of mothers and children." (pp. 62-63).

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

Research has found that many custody evaluators consider alienation of more significance than domestic violence in making custody recommendations. A survey of 201 psychologists from 39 states who conducted custody evaluations indicated that domestic violence was not considered by most to be a major factor in making custody determinations. Conversely, three-quarters of the custody evaluators recommended denying sole or joint custody to a parent who "alienates the child from the other parent by negatively interpreting the other parent's behavior."

Bemiller, Michelle. (2008). *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts. Journal of Child Custody, 5(3/4), 228-255.*

Abstract: The following study adds to research that examines child custody cases involving a history of interpersonal violence. This study contributes to past research by providing qualitative accounts of women's experiences with intimate partner violence prior to custody loss, institutional abuse at the hands of the family court, and abuse experienced after custody loss. Data come from a convenience sample of 16 noncustodial mothers from northeastern Ohio. Findings support past research, which finds corruption, denial of due process, and gender bias in the family court system. Policy recommendations are made and future research directions suggested.

Bourke, D. (1995). *Reconstructing the patriarchal nuclear family: Recent developments in child custody and access in Canada. Canadian Journal of Law and Society, 10(1), 1-24.*

Even if a woman is awarded custody by a court, a court will generally determine that it is in the "best interests of the child" for the ex-partner to be awarded access. According to the results of one study, in nearly every case, and eclipsing virtually all other factors, access of the non-custodial parent (usually the father) was considered

paramount to the "best interests of the child". This was irrespective of the quality or regularity of his parenting.

Chesler, P. (1991, 1986). *Mothers on Trial: The Battle for Children and Custody*. NY: Harcourt Brace Jovanovich, Publishers.

Phyllis Chesler interviewed 60 mothers involved in a custody dispute and found that fathers who contest custody are more likely than their wives to win (p. 65). In 82% of the disputed custody cases fathers achieved sole custody despite the fact that only 13% had been involved in child care activities prior to divorce (p. 79 tbl. 5). Moreover, 59% of fathers who won custody litigation had abused their wives, and 50% of fathers who obtained custody through private negotiations had abused their wives (p. 80 tbl. 6).

The Committee for Justice for Women and the Orange County, North Carolina, Women's Coalition. (1991). *Contested Custody Cases In Orange County, North Carolina, Trial Courts, 1983-1987: Gender Bias, The Family And The Law*. Author.

The Committee for Justice for Women studied custody awards in Orange County, North Carolina over a five year period between 1983 and 1987. They reported that:

"...in all contested custody cases, 84% of the fathers in the study were granted sole or mandated joint custody. In all cases where sole custody was awarded, fathers were awarded custody in 79% of the cases. In 26% of the cases fathers were either proven or alleged to have physically and sexually abused their children."

Depner et al. (1992). Building a uniform statistical reporting system: A snapshot of California Family Court Services. *Family and Conciliation Courts Review*, 30. 185-206.

Among custody litigants referred to mediation, "[p]hysical aggression had occurred between 75% and 70% of the parents . . . even though the couples had been separated. . . [for an average of 30-42 months]". Furthermore, [i]n 35% of the first sample and 48% of the second, [the violence] was denoted as *severe* and involved battering and threatening to use or using a weapon."

Emery, R. E., Otto, R. K., & O'Donohue, W. T. (2007). Custody Evaluations: Limited Science and a Flawed System. *Psychological Science in the Public Interest*, 6(1), 1-29.

Theoretically, the law guides and controls child custody evaluations, but the prevailing custody standard (the "best interests of the child" test) is a vague rule that directs judges to make decisions unique to individual cases according to what will be in children's future (and undefined) best interests. Furthermore, state statutes typically offer only vague guidelines as to how judges (and evaluators) are to assess parents and the merits of their cases, and how they should ultimately decide what custody arrangements will be in a child's best interests. In this vacuum, custody evaluators typically administer to parents and children an array of tests and assess them through less formal means including interviews and observation. **Sadly, we find that (a) tests specifically developed to assess questions relevant to custody are completely inadequate on scientific grounds; (b) the claims of some anointed experts about their favorite constructs (e.g., "parent alienation syndrome") are equally hollow when subjected to scientific scrutiny; (c) evaluators should question the use even of well-established psychological measures (e.g., measures of intelligence, personality, psychopathology, and academic achievement) because of their often limited relevance to the questions before the court; and (d) little empirical data exist regarding other important and controversial issues (e.g., whether evaluators should solicit children's wishes about custody; whether infants and toddlers are harmed or helped by overnight visits), suggesting a need for further scientific investigation.**

Erickson, Nancy S. (2005, Spring). Use of the MMPI-2 in Child Custody Evaluations Involving Battered Women: What Does Psychological Research Tell Us? Family Law Quarterly vol 39, no. 1, p. 87-108.

Erickson notes:

The effects of domestic violence on survivors, who are primarily women, may be severe. Battered women's advocates often note that, in custody cases, the batterer often "looks better" to the court than the victim does because he is confident and calm, whereas she is still suffering the effects of his abuse and therefore may appear hysterical, weepy, anger, or otherwise not "together."

When a custody evaluation is conducted by a psychologist, the revised version of the Minnesota Multiphasic Personality Inventory (MMPI-2) is often used as part of the evaluation process. The MMPI-2, like other traditional psychological tests, was not designed to be used in custody evaluations and arguably should not be used for such

purpose except "when specific problems or issues that these tests were designed to measure appear salient in the case."

If it used, Erickson notes that "great care must be taken" as "a misinterpretation could result in placing custody of a child with a batterer, which could put the child at severe risk."

Erickson reviews research on the use of MMPI evaluations with battered women and found that the psychological stress that battered women suffer may result in MMPI scores that do not accurately evaluate their ability to parent.

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

The authors examined 214 allegations of sexual abuse in divorce cases that were evaluated by a multidisciplinary team at a university-based clinic. 72.6% were determined likely, 20% unlikely, and 7.4% uncertain. The temporal relationship between allegations and divorce were analyzed and results revealed that in cases where CSA was judged to be likely or uncertain, in 18% of these cases divorce followed discovery of sexual abuse, in 32% cases discovery of sexual abuse followed divorce, in 34% of cases sexual abuse followed divorce, and 16% of allegations were found to be unrelated to divorce. Of the 20% of cases that were judged to be false or possibly false cases, only approximately a quarter ($n = 10$) were determined to have been consciously made. The remainder were classified as misinterpretations.

Faller and DeVoe found that 40 concerned parents experienced negative sanctions associated with raising the issue of sexual abuse. These sanctions included being jailed, losing custody to the alleged offender, a relative, or foster case, limitation or loss of visitation, admonitions not to report alleged abuse again to the court, Protective Services or the police, and prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future. None of the parents experiencing these sanctions were ones who were judged to have made calculated false allegations. In fact, sanctioned cases tended to score higher on a composite scale of likelihood of sexual abuse, and were more likely to have medical evidence than cases without sanctions.

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

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

Johnston, J. R., Lee, S., Olesen, N. W., Walters, M. G. (2005) "Allegations and Substantiations of Abuse in Custody-Disputing Families." *Family Court Review*, 43, 283–294.

Johnson, N. E., Saccuzzo, D. P., & Koen, W. J. (2005). *Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. Violence Against Women*, 11(8), 1022-1053.

This study shows that victims of domestic violence (DV) are greatly disadvantaged when states require mediation of child custody disputes. The investigators empirically evaluated outcomes and found that mediators failed to recognize and report DV in 56.9% of the DV cases. The court's screening form failed to indicate DV in at least 14.7% of the violent cases. Mediation resulted in poor outcomes for DV victims in terms of protections, such as supervised visitation and protected child exchanges. As a result, the capacity of mediators to focus on the child's best interest is called into question.

Kernic, M.A., Monary-Ernsdorff, D. J., Koepsell, J. K., & Holt, V. L. (2005). *Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence. Violence Against Women*, 11(8), 991-1021.

This retrospective cohort study examined the effects of a history of interpersonal violence (IPV) on child custody and visitation outcomes.

The investigators analyzed documentation on more than 800 local couples with young children who filed for divorce in 1998 and 1999. These included 324 cases with a history of domestic violence and 532 cases without such a history. The researchers estimate that at least 11.4% of Seattle divorce cases involving couples with dependent children involve a substantiated history of male-perpetrated domestic violence. The

findings reveal a lack of identification of IPV even among cases with a documented, substantiated history, and a lack of strong protections being ordered even among cases in which a history of substantiated IPV is known to exist.

In 47.6% of cases with a documented, substantiated history, no mention of the abuse was found in the divorce case files.

"The court was made aware of less than one fourth of those cases with a substantiated history of intimate partner violence."

Mothers in cases with a violent partner were no more likely to obtain custody than mothers in non-abuse cases. Fathers with a history of committing abuse were denied child visitation in only 17% of cases.

Logan, T. K., Walker, R., Jordan, C. E., & Horvath, L. S. (2002). Child custody evaluations and domestic violence: Case comparisons. *Violence & Victims*, 17(6), 719-42.

This study is one of the first to examine characteristics of disputed custody cases and their custody evaluation reports differences between domestic violence and non-domestic violence cases. This study selected a 60% random sample of cases with custody evaluations in Fiscal Year 1998 and 1999 (n = 82 cases). Out of the 82 cases, 56% (n = 46) met criteria for classification into the domestic violence group and 44% (n = 36) did not. In general, results indicated that although there were some important differences in court records between cases with and without domestic violence, there were only minor differences between custody evaluation reported process and recommendations for the two groups.

Lowenstein, S. R. (1991). Child sexual abuse in custody and visitation litigation: Representation for the benefit of victims. *UMKC Law Review*, 60, 227-82.

Sharon Lowenstein examined 96 custody and visitation disputes involving allegations of child sexual abuse from 33 states. Visitation was the principal issues in 36 cases. The father was alleged to have sexually molested their child in each of these 36 cases. Yet in two-thirds (24) of these cases fathers were granted unsupervised visitation.

Custody was the principle issue in 56 cases. In 27 of the 56 cases (48%) mothers lost custody. In 17 of these cases (63%) the mother lost custody to a father alleged to be a perpetrator. In two cases (3.6%) fathers lost custody. No father lost custody to a

mother whose household included an alleged perpetrator (either the mother, a stepfather, the mother's boyfriend, or one of mother's relatives).

Meier, Joan. *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, A.U. J. Gender, Soc. Pol. & the Law, 11:2 (2003), 657-731, p. 662, n. 19, and Appendix.

Joan Meier surveyed the 2001 case law and identified 38 appellate state court decisions concerning custody and domestic violence. She found that 36 of the 38 trial courts had awarded joint or sole custody to alleged *and adjudicated* batterers. Two-thirds of these decisions were reversed on appeal. These cases included a case in which the perpetrator had been repeatedly convicted of domestic assault (*In re Custody of Zia*, 736 N.E. 2d 449 [Mass. App. Ct. 2000]); in which a father was given sole custody of a 16-month old despite his undisputed choking of the mother resulting in her hospitalization and his arrest (*Kent v. Green*, 701 So. 2d 4 [Ala. Civ. App. 1996]); in which the father had broken the mother's collarbone (*Couch v. Couch*, 978 S.W.2d 505 [Mo. App. 1998]); had committed "occasional incidents of violence" *Simmons v. Simmons*, 649 So. 2d 799, 802 [La. App. Ct. 1995]); and had committed two admitted assaults (*Hamilton v. Hamilton*, 886 S.W.2d 711, 715 [Mo. App. 1994]) . More such instances can be found in the article.

Neustein, A., & Goetting, A. (1999). Judicial Responses to Protective Parents, *Journal of Child Sexual Abuse*, 4, 103-122.

<http://www.haworthpressinc.com/store/SampleText/J070.pdf>(go to page 109 of pdf)

This study examined judicial responses to protective parents' complaints of child sexual abuse in 300 custody cases with extensive family court records. **The investigators found that only in 10% of cases was primary custody was given to the protective parent and supervised contact with alleged abuser. Conversely, 20% of the cases resulted in a predominantly negative outcome where the child was placed in the primary legal and physical custody of the allegedly sexually abusive parent. (see p. 108). In the rest of the cases, the judges awarded joint custody with no provisions for supervised visitation with the alleged abuser.**

Neustein, A., & Leshner, M. (2005). *From Madness to Mutiny -- Why Mothers are Running from Family Court and What Can Be Done About It*. (Northeastern University Press.

This scholarly book documents case after case where accusations of sexual abuse by a child resulted in forced contact with the alleged abuser, and sometimes complete termination of parental contact with a loving parent who seeks only to protect the child.

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

This research evaluated the effectiveness of statutes mandating a presumption against custody to a perpetrator of domestic violence (DV) and judicial education about DV. Across six states, the authors examined 393 custody and/or visitation orders where the father perpetrated DV against the mother and surveyed 60 judges who entered those orders. With the presumption, more orders gave legal and physical custody to the mother and imposed a structured schedule and restrictive conditions on fathers' visits, except where there was also a "friendly parent" provision and a presumption for joint custody. Thus it appears that a presumption against custody to a perpetrator of DV is effective only when part of a consistent statutory scheme.

Polikoff, N. D. (1992). Why are mothers losing: A brief analysis of criteria used in child custody determinations. *Women's Rights Law Reporter*, 14, 175-184.

Finding that judges evidence a strong "paternal preference" in contested custody cases. When sole custody is awarded, it is awarded to the father in 50-63% of cases.

Rosen, L. N., & Etlin, M. (1996). *The hostage child: Sex abuse allegations in custody disputes*. Bloomington, IN: Indiana University Press.

This book challenges the presumption that allegations of child sexual abuse that arise during custody disputes are usually fabricated. Five cases are described in which children were not protected from their abuser during custody disputes, despite the existence of medical evidence of sexual abuse. In these cases, the allegations were not believed, and the children were returned to the parent who abused them.

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

A random sample of custody and visitation petitions filed in New York City Family Courts in 1995 was used to examine outcomes of mothers' Order of Protection

(OP) Petitions in relation to parents' custody and visitation petitions. Fathers restrained by OPs were more likely to secure visitation orders (64%) than not. In contrast, 80.8% of fathers' custody petitions were dismissed when they were restrained by OPs. Fathers' custody petitions were most likely to be ordered when mothers' OP petitions were withdrawn. Mothers were most likely to secure custody when their OP petitions were ordered or withdrawn. Courts rarely denied petitions. Those that did not result in court orders were either withdrawn by the petitioner or dismissed by the court (most likely because of failure of the petitioner to appear in court). This pattern has negative implications for battered women who may be vulnerable to pressure or threats from abusive ex-partners.

Saccuzzo, D. P., & Johnson, N. E. (2004). Child custody mediation's failure to protect: Why should the criminal justice system care? *National Institute of Justice Journal*, 251, 21-23.

Available at <http://ncjrs.org/pdffiles1/jr000251.pdf>

The researchers looked at mediations in which the parties could not reach a mutual agreement. They compared 200 mediations involving charges of DV with 200 non-DV mediations. Joint legal custody was awarded about 90% of the time, even when domestic violence was an issue. Mothers alleging domestic violence only received primary physical custody 35% of the time.

Attorneys who represented mothers at these proceedings said that they often advised their clients not to tell the mediator about domestic abuse. After looking at the results of such mediations, the researchers determined that the attorneys' advice may well be justified; women who informed custody mediators that they were victims of domestic violence often received less favorable custody awards.

Stahly, G. B. (1990, April). Battered women's problems with child custody. In G. B. Stahly (Chair), *New directions in domestic violence research*. Symposium conducted at the annual meeting of the Western Psychological Association, Los Angeles. [Cited in Liss, M. B., & Stahly, G. B. (1993). Domestic violence and child custody. In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (175-187). Thousand Oaks, CA : Sage.]

Sociologist Geraldine Stahly, PhD., surveyed battered women's shelters in order to gather information on extent of custodial problems encountered by women seeking

shelter services. Of the more than 100,000 women reported on by the shelter staff, 34% reported the batterer threatened to kidnap their children; and 11% of batterers had actually kidnapped a child. In 23% of cases batterers had threatened legal custody action, and in 7% of the cases known to the shelter staff, such actions had already been filed.

In 24% of the cases, the battering man used court-ordered visitation as an occasion to continue verbal and emotional abuse of the woman, and in 10% of the cases, physical violence continued. Shelter staff reported numerous cases in which courts granted unsupervised visitation in spite of evidence of physical abuse of the child (12,401 reported cases) and child sexual abuse (6,970 reported cases).

Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., Farris, W., Stuebner, N., Evans, K., German, G., & Frias, F. (n.d.). Family violence impacts child custody: A study of court records.

Researchers at California State University, San Bernardino, examined the relationship between custody disputes and allegations of family violence in 147 randomly selected family court files of divorce involving children. The cases examined occurred during 1998-2002 in four courts in three counties of Southern California. They found that violent fathers were less likely to seek sole custody than battered mothers. However, violent fathers were just as likely as nonviolent fathers to file for sole custody. Surprisingly, in the cases where violent fathers did pursue sole custody they were *more likely* to prevail than were non-violent fathers.

Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004). Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse. In *Disorder in the Courts: Mothers and Their Allies Take on the Family Law System* (a collection of essays), electronic download available at http://store.canow.org/products.php?prod_id=3

To better understand the problems that protective parents face in the legal system, researchers at California State University, San Bernardino, are performing an on-going national survey. To date, over 100 self-identified protective parents have completed the 101-item questionnaire. The study found that prior to divorce, 94% of the protective mothers surveyed were the primary caretaker and 87% had custody at the time of separation. However, as a result of reporting child abuse, only 27% were left with

custody after court proceedings. 97% of the mothers reported that court personnel ignored or minimized reports of abuse and that they were punished for trying to protect their children. 45% of the mothers say they were labeled as having Parental Alienation Syndrome (PAS). Most protective parents lost custody in emergency ex parte proceedings (where they were not notified or present) and where no court reporter was present. 65% reported that they were threatened with sanctions if the "talked publicly" about the case.

The average cost of the court proceedings was over \$80,000 and over a quarter of the protective parents reported being forced to file bankruptcy as a result of filing for custody of their children. 87% of the protective parents believe that their children are still being abused; however, 63% have stopped reporting the abuse for fear that contact with their children will be terminated. Eleven percent of the children were reported to have attempted suicide.

Stahly, G .B., Oursler, A., & Takano, J. (1988, April). *Family violence and child custody: A survey of battered women's fear and experiences*. Paper presented at the annual meeting of the Western Psychological Association, San Francisco. [Cited in Liss, M. B., & Stahly, G .B. (1993). Domestic violence and child custody. In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (175-187). Thousand Oaks, CA : Sage.]

In this pilot study of battered women's experiences with child custody (n = 94), mothers reported that their batterer frequently used threats against the children in an attempt to keep the woman from leaving them. Twenty-five percent of battered women reported that their batterer threatened to hurt the children, 25% reported that he threatened to kidnap the children, and 35% reported that the batterer threatened to take the children away through a custody action.

Suchanek, J., & Stahly, G. B. (1991, April). *The relationship between domestic violence and paternal custody in divorce*. Paper presented at the annual meeting of the Western Psychological Association, San Francisco.

Suchanek and Stahly examined 150 randomly selected files of marital dissolution from a Southern California district courthouse between 1980 and 1989. They found that dissolution cases in which violence toward the woman had been asserted (usually in support of a restraining order) were significantly more likely to include custody

disputes. In fact, when there were allegations of violence perpetrated by the father, he was twice as likely to seek sole physical and legal custody of the children and just as likely to win. Thus, violence did not appear to make a difference in how courts determined custody. Fathers who were alleged to be violent were no less likely to win custody than fathers with no allegations of violence.

Sutherland, T.J. (2004). High-conflict divorce or stalking by way of family court? The empowerment of a wealthy abuser in family court litigation. *Linda v. Lyle* – A case study. *Massachusetts Family Law Journal*, 22(1&2) 4-16.
<http://www.mincava.umn.edu/reports/linda.asp>

Virtually all coverage of high-conflict divorce assumes both parents are the source of the conflict. This article argues that some high-conflict divorces are actually the manifestation of stalking behaviors by wealthy domestic abusers. Provides a case analysis of *Linda v. Lyle* - Linda was married to Lyle for 22 years. He was a violent spousal and child abuser. Despite the fact that a volume of CPS reports had accumulated against Lyle, he obtained sole custody of their son. Linda was given visitation but Lyle frequently prevented her from seeing her child. To date, the case has litigated for approximately 6 years without respite. Lyle is quite wealthy and Linda, who was a homemaker, has been left homeless and is a pro per litigant facing two attorneys. The court blamed her for the protracted litigation because she attempted to reestablish a relationship with her child.

Waits, K. (1998). Battered women and their children: Lessons from one woman's story. *Houston Law Review*, 35, 29-108.
<http://www.omsys.com/fivers/Rkw18349#Rkw18349>

Documents in detail the personal story of one battered woman's experience in the family court system. Shows how a man who had abused both his wife and kids ended up with full custody of his young son and unsupervised visitation of his other children. The nonabusive mother (who had previously been the children's primary caretaker) was given probationary custody of her daughter and other son. The judge threatened the mother saying "If you do one thing to disrupt visitation, I'll take your daughter and give your ex-husband custody of her too." The mother regained custody of her son only after her ex-husband's new girlfriend reported him to the police for physically abusing the

boy. Notes that many judges, psychologists and lawyers want to believe in a just world and thus allow themselves to be fooled by batterers.

Walker, L. & Edwall, G. (1987). Domestic violence and determination of visitation and custody in divorce. In D. J. Sonkin (Ed.), *Domestic violence on trial: Psychological and legal dimensions of family violence* (pp. 127-152). New York: Springer.

II. GENDER BIAS REPORTS

II a. Official State Reports

New Jersey was the first state to give prominence to the goal of raising awareness of gender bias in the court system. Since the establishment of their gender bias task force, forty-five states and a number of federal circuit courts have established gender bias task forces, including: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, District of Columbia, and Puerto Rico. These task forces were initiated by a variety of institutions and organizations, including the state supreme court, judicial council, and bar association. Thirty-four have published reports.

A number of state task forces collected and analyzed data on the experiences of women in family courts.

California

Danforth, G., & Welling, B. (Eds.). (1996). *Achieving Equal Justice for Women and Men in the California Courts: Final Report*. Judicial Council of California Advisory Committee on Gender Bias in the Courts
<http://www.courtinfo.ca.gov/programs/access/documents/f-report.pdf>

Noting that negative stereotypes about women encourage judges to disbelieve women's allegations of child sexual abuse. Gender bias problems are particularly acute in family courts, and most problematic when sexual abuse of children is alleged in custody or visitation proceedings. Negative stereotypes about women encourage judges

to disbelieve women's allegations of child sexual abuse. The report stated: "One striking example is the tendency to doubt the credibility of women who make these allegations, and to characterize them as hysterical or vindictive even when medical evidence corroborates a claim of child abuse." (p. 149-150).

Another major problem area involved child custody and visitation disputes between parents when there has been a history of domestic violence. The committee also found that custody and visitation orders frequently fail to include adequate provisions to prevent further abuse, giving batterers unrestricted access to their children and therefore unrestricted access to their abused spouse" (p. 12).

British Columbia

Law Society of British Columbia Gender Bias Committee (1992). *Gender equality in the justice system, Volume II* . Author. [as cited in: Penfold, S.P. (1997). Questionable beliefs about child sexual abuse allegations during custody disputes. *Canadian Journal of Family Law*, 14 , 11-30.]

Noting that, although research indicates that false accusations of sexual abuse during child custody disputes are not a common occurrence, lawyers tend to advise women not to raise allegations of sexual abuse because they will jeopardize their chances of receiving custody.

Florida

Report of the Florida Supreme Court Gender Bias Study Commission Executive Summary (March 1990) <http://www.flcourts.org/sct/sctdocs/bin/bias.pdf>

Noting that "Many men file proceedings to contest custody as a way of forcing an advantageous property settlement. . . . Contrary to public perception, men are quite successful in obtaining residential custody of their children when they actually seek it." (p. 7)

Maryland

Wilson, T. *Domestic violence in Maryland : More from the gender bias report* . (Available: <http://www.voiceofwomen.com/articles/violence.html>)

Summarizing the conclusions of the Maryland Gender Bias Report on domestic violence, Trish Wilson states:

"[T]he most pervasive and difficult problems facing victims of domestic violence are attitudes and lack of understanding of many judges and court employees about the nature of domestic violence. Too often judges and court employees deny the victim's experiences, accuse the victim of lying, trivialize the cases, blame the victim for getting beaten, and badger the victim for not leaving the batterer. All this is due to a lack of understanding of the dynamics of domestic violence, including lack of knowledge of studies of batterers which show that the violence is not caused by the victim; that batterers do not give up control when the victim leaves; and that batterers try to manipulate victims to affect the judicial process. This manipulation of the court process includes batterers and other abusers who misuse the court system in regards to divorce, custody, visitation, and child support as well as domestic violence."

Massachusetts

Abrams, R., & Greaney, J. (1989). *Report of the Gender Bias Study of the Supreme Judicial Court [of Massachusetts]*, 62-63.

***Gender Bias Study of the Court System in Massachusetts*, 24 New Eng. L. Rev. 745, 747, 825, 846 (1990).**

http://www.amptoons.com/blog/files/Massachusetts_Gender_Bias_Study.htm

Massachusetts was one of the first states to document the gender bias against women in family courts. This court-initiated study expressly found that "our research contradicted [the] perception" that "there is a bias in favor of women in these decisions." Moreover, it found that "in determining custody and visitation, many judges and family service officers do not consider violence toward women relevant." The Court's study further found that "the courts are demanding more of mothers than fathers in custody disputes" and that "many courts put the needs of noncustodial fathers above those of custodial mothers and children."

Michigan

Final Report of the State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession (January 23, 1998).

<http://www.michbar.org/>

In 1993, Michigan passed an amendment to the "best interests of the child" statute which requires judges to consider certain factors in determining custody and visitation matters. MCL 722.23; MSA 25.312. However, research found a mixed picture when it

assessed whether judges actually follow the statutory mandate. Of the judges responding to the question about whether they consider violence or threatened violence when making custody and visitation decisions, only a little more than half of the judges (58%) indicated that they always considered it. Eleven percent said that they never considered it.

In addition, several women testified that custody of the children was given to the batterer, sometimes by an *ex parte* order. In one instance it was reported that an abusive husband was awarded custody because he had a "stable income."

Pennsylvania

Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System,

<http://www.courts.state.pa.us/Index/supreme/BiasReport.htm>

II b. Reports by Testimony Projects

Arizona Coalition Against Domestic Violence, *Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence* (June 2003), pp. 33-34, 47-49.

The Arizona Coalition Against Domestic Violence carried out a two year study of 57 battered women who had gone through a custody battle in Arizona family courts. In the Arizona study, 72% of the mothers said they were not given an adequate chance to tell the court their side of the story and 41% were ordered into mediation though the court knew there was violence. (p. 48)

The survey found that courts awarded joint or sole custody to the alleged batterers 56-74% of the time (depending on the county). Many of these cases involved documented child abuse or adult abuse.

The Arizona studies main findings were:

a. In spite of evidence of violence against women and/or their children, (and with such violence documented in 63% of the cases) the courts consistently ordered sole or joint custody to perpetrators in 74% of the cases in Maricopa County and 56% of the cases in the other counties combined.

b. Income level, which was highly skewed towards father, seemed to have the most impact on the ultimate custody decision.

c. A mother represented by an attorney was more likely to win custody.

d. Having a custody evaluator more likely resulted in the mother losing custody.

e. By and large, the systems of control the perpetrator established pre-divorce, including physical and sexual violence and child abuse, were maintained post-separation with the added ability to use the court system to abuse the victims.

f. Having an order of protection had no impact on the final custody decision; contrary to Arizona law, the courts simply ignored the documented existence of domestic violence.

g. The courts ignored well-known research and federal standards as 100% of the victims were ordered to go to mediation or a face-to-face meeting with the abuser.

h. A large number of perpetrators had weapons or used alcohol or drugs when with children.

i. A large number of judges thought that since the parties were separated, domestic violence was not a concern.

j. In a large number of cases, unsupervised visits were awarded or the supervisor was an untrained person such as a family member.

Heim, S., Grieco, H., Di Paola, S., & Allen, R. (2002). *Family Court Report*. Sacramento, CA: California National Organization for Women.

[\(download the entire report-PDF format\)](#) requires the free utility [Adobe Acrobat](#)

EXCERPT: After significant research, CA NOW declares the present family court system in California to be crippled, incompetent, and corrupt. The bias in the system results in pathologizing, punishing, and discriminating against women. The system leaves decisions, which should be made on facts in a courtroom, to extra-judicial public and private personnel. The system precludes the parties, particularly the mother, from her rights to due process, including a trial, long cause hearing, or adjudication, to which she is entitled, much less an appeal of these decisions. Mothers are coerced into stipulations through the rubber-stamping of definitive evaluations and reports, which become the court's ruling. The present family law system in California exists to enrich

attorneys and allied mental health and mental health professionals. This system allows mothers to be taken to court time after time, challenging what is in “the best interests of the child,” therefore subjecting them to a system that has no end for them or their children. In the most egregious cases, perfectly fit mothers who were the primary caretakers of their children lose custody to the fathers who are motivated by evading support obligations, and are often known abusers.

Human Rights Tribunal on Domestic Violence and Child Custody sponsored by the Battered Mothers' Testimony Project based at the Wellesley Centers for Women in Massachusetts (2002) [\[3\]](#)

A multi-year, four-phase study using qualitative and quantitative social science research methodologies by the Wellesley Centers for Women. Battered women reported having to participate in wrenching custody battles with their ex-spouse to keep their children. They noted that their problems were aggravated and sometimes prolonged in the courts or by social service agencies. The battered women testified that they have been wrongly perceived as hysterical and have been accused of lying. **The research found widespread adoption of "parental alienation syndrome," and found "a consistent pattern of human rights abuses" by family courts, including failure to protect battered women and children from abuse, discriminating against and inflicting degrading treatment on battered women, and denying battered women due process. Histories of abuse of mother and children were routinely ignored or discounted.** They also reported that evidence of abuse was often ignored, judges were insensitive, and guardians ad litem - the court-assigned advocates for children - made poor assessments. Domestic violence advocates reported that women who fear the family court process stay in abusive situations instead of seeking help.

Slote, K. Y., Cuthbert, C., Mesh, C. J., Driggers, M. G., Bancroft, L., & Silverman, J. G. (2005). Battered mothers speak out: Participatory human rights documentation as a model for research and activism in the United States. *Violence Against Women*, 11(11), 1367-95.

This article describes the work of the Battered Mothers' Testimony Project, a multiyear effort that documented human rights violations against battered women and their children in the Massachusetts family court system.

EXCERPT: Battered women with children often receive painfully ironic mixed messages from the government. On one hand, they are urged by state actors-such as the police, child welfare agencies, and district attorneys-to leave their batterers and flee to a confidentially located shelter to protect themselves and their children. On the other hand, once these women finally do take the courageous step to leave, they are often pressured by those working in the family court system to negotiate child custody and visitation with their batterers and to encourage an ongoing relationship between their batterers and their children, many of whom have been victimized by these same men. Battered mothers are often expected to yield to custody and visitation orders that may require them and their children to maintain long-term, unprotected contact with the batterers. If they fail to comply with these court orders, they risk being held in contempt of court or even losing custody of their children to the batterers.

The Voices of Women Organizing Project (VOW). (2008). Justice Denied: How Family Courts in NYC Endanger Battered Women and Children. Brooklyn, NY: Battered Women's Resource Center. ([Executive Summary](#))

EXCERPT: 80% of women said their abuser threatened to take away their children and used the court to follow through with that threat. 10% of women said they stopped reporting abuse for fear of losing contact with their children.

Mothers were told by their lawyer, the law guardian or the judge not to oppose visitation, even when they felt it was unsafe or when their children protested.

Tracy, C., Fromson, T., & Miller, D. *Justice in the Domestic Relations Division of Philadelphia Family Court: A Report to the Community, Domestic Violence Report, Vol. 8, No. 6 (Aug/Sept. 2003), p. 94.*

http://www.friendsfw.org/Links/WLP_Report_language_access.pdf

A study of the Domestic Relations Division of Philadelphia Family Court conducted by the Philadelphia Women's Law Project in cooperation with the court, found that litigants are often denied due process, and that applicable legal standards are "not always observed, particularly in the consideration of abuse in custody proceedings, leaving families at risk."

III. REPORTS BY PROFESSIONAL ORGANIZATIONS

American Bar Association Commission on Domestic Violence. (2006). [10 Myths About Custody and Domestic Violence and How to Counter Them](#). Washington, DC: Author.

American Judges' Foundation. *Domestic Violence and the Court House: Understanding the Problem. Knowing the Victim* . Williamsburg, VA: Author. (see, Forms of Emotional Battering Section, Threats to Harm or Take Away Children Subsection: <http://aja.ncsc.dni.us/domviol/page5.html>)

Fathers are often awarded sole custody even when their sexual and physical abuse of the children is alleged and substantiated. According to the American Judges Association, 70% of the time the abuser convinces the court to give him custody.

American Psychological Association. (1996) . *Report of the American Psychological Association presidential task force on violence and the family*. Washington, DC : Author. Available at <http://www.apa.org/pi/pii/familyvio/issue5.html>

Noting that custody and visitation disputes appear to occur more frequently when there is a history of domestic violence. Family courts often do not consider the history of violence between the parents in making custody and visitation decisions. In this context, the nonviolent parent may be at a disadvantage, and behavior that would seem reasonable as a protection from abuse may be misinterpreted as a sign of instability. Psychological evaluators not trained in domestic violence may contribute to this process by ignoring or minimizing the violence and by giving inappropriate pathological labels to women's responses to chronic victimization. Terms such as 'parental alienation' may be used to blame the women for the children's reasonable fear or anger toward their violent father." (p. 100).

"Studies of custody disputes indicate that fathers who battered the mother are twice as likely to seek sole physical custody of their children than are nonviolent fathers, and they are more likely to dispute custody if there are sons involved."

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

This book published by the American Bar Association includes guidelines on legal practices in the best interest of the child, stating:

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

Lopatto, A. D., & Neely, J. C. (1995). *Lawyer's Manual on Domestic Violence: Representing the Victim*. Supreme Court of the State of New York Appellate Division, First Department Francis T. Murphy, Presiding Justice.

National Center for State Courts. (1997). *Domestic violence and child custody disputes: A resource handbook for judges and court managers*. Williamsburg, VA: author. [National Center for State Courts, 300 Newport Avenue, Williamsburg, VA23185].

By Susan L. Keilitz, Courtenay V. Davis, Carol R. Flango, Ann M. Jones, Meredith Peterson and Dawn Marie Spinozza. National Center for State Courts. 1997.

The purpose of this handbook is to provide judges and court managers a concise guide to resources for:

Determining when Domestic Violence is occurring between the parties to a dispute over child custody or visitation;

Coordinating the management of custody and visitation disputes involving Domestic Violence to maximize the safety and efficiency of court processes; and

Using resources to ensure that resolutions to custody and visitation disputes effectively address the best interest of the child and the safety of Domestic Violence victims.

Published by the National Center for State Courts under a joint grant from the State Justice Institute and National Institute of Justice

Contact National Center for State Courts at 888-228-6272 to order a copy for approximately \$15.00.

National Council of Juvenile and Family Court Judges. (1993). *Model code on domestic and family violence*. Reno, NV : NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV89507].

National Council of Juvenile and Family Court Judges. (1995). *Custody and visitation decision-making when there are allegations of domestic violence*. Reno, NV : NCJFCJ. [National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8970, Reno, NV89507].

National Council of Juvenile and Family Court Judges. Justice and Family Court Journal, Family Violence Issue, Spring 1999, Volume 50, No. 2, 86 pp.

Articles developed by a number of authors encompassing such topics as child custody, supervised visitation, child support, managing the domestic violence court docket, adult fatality reviews, full faith and credit to protective orders, and the Uniform Child-Custody Jurisdiction and Enforcement Act. Published by the National Council of Juvenile and Family Court Judges, Family Violence Department.

National Council of Juvenile and Family Court Judges. (2006). *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (2nd edition). Reno, NV: NCJFCJ. ([download PDF](#))

EXCERPT from page 19: "Children in contested custody cases may indeed express fear of, concern about, distaste for, or anger with one parent. And those feelings may sometimes have been fostered or encouraged by alienating behaviors on the part of the other parent. On the other hand, there are a variety of competing explanations that need to be explored-including the very real possibility that the children are responding to concerns based in their own experience with the parent from whom they feel estranged." [Read whole excerpt](#)

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

Available at <http://www.ncjrs.org/>

[Testimony to the Truth Commission](#). (2007, Jan 13). Fourth Battered Mothers Custody Conference. Albany, NY.

Sixteen women testified before the Truth Commission at the Fourth Battered Mothers Custody Conference about their family law cases, which covered eleven states.

The common theme that emerged from the testimony is that there is a widespread problem of abusive parents being granted custody of children and protective parents having their custody limited or denied, and/or being otherwise punished.

There is a crisis in the custody court system, which has resulted in thousands of children being sent to live with abusers while safe, protective parents, primarily mothers, are denied any meaningful relationship with their children. The court system has failed to respond appropriately to domestic violence and child abuse cases involving custody. The Commission found many common errors made by the courts and the professionals they rely upon which contribute to these tragedies. These same mistakes have negatively impacted battered women and children in other cases, with less extreme results.

IV. SCHOLARLY COMMENTARIES

Bain, P. & Chrest, S. & Morrow, M. (2000). *Access to justice denied: Women and legal aid in B.C. Vancouver : Women's Access to Legal Aid Coalition* .

Bancroft, L. R. (1998). *Understanding the batterer in custody and visitation disputes*.

<http://www.thelizlibrary.org/liz/understanding-the-batterer-in-visitation-and-custody-disputes.pdf>

A batterer who does file for custody will frequently win, as he has numerous advantages over his partner in custody litigation. These include, 1) his typical ability to afford better representation (often while simultaneously insisting that he has no money with which to pay child support), 2) his marked advantage over his victim in psychological testing, since she is the one who has been traumatized by the abuse, 3) his ability to manipulate custody evaluators to be sympathetic to him, and 4) his ability to manipulate and intimidate the children regarding their statements to the custody evaluator. (p. 5)

Because of the effects of trauma, the victim of battering will often seem hostile, disjointed, and agitated, while the abuser appears friendly, articulate, and calm. Evaluators are thus tempted to conclude that the victim is the source of the problems in the relationship. (p. 6)

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

Becker, M. E. (1995). Double binds facing mothers in abusive families: Social support systems, custody outcomes, and liability for acts of others (Roundtable). *University of Chicago Law School*, 2, 13, 28-29.

Bryan, P. E. (1999). *Women's freedom to contract at divorce: A mask for contextual coercion. Buffalo Law Review*, 47(3), 1153-1273.

Describes the severe disadvantages facing battered women in contested custody cases.

Bryan, P. E. (2000). Re-asking the woman question at divorce. *Chicago-Kent Law Review*, 75(3), 713-763.

Outlines the problems women face at divorce. Notes that women often have less financial resources and often receive inadequate representation. In addition, negative stereotypes about women encourage judges to disbelieve or minimize women's allegations of abuse against them or their children.

Cahn, N. R. (1991). Civil images of battered women: The impact of domestic violence on child custody decisions. *Vanderbilt Law Review*, 44, 1041-1097.

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

Custody litigation and the child sexual abuse backfire syndrome. (1988, Winter), *Jurisfemme* , 8, 21.

Presenters at a 1987 legal continuing education seminar on sexual abuse allegations in child custody litigation, suggested that "unless there was irrefutable medical evidence of sexual abuse, the custodial parent should not raise the allegation" because they risk losing custody to the abuser.

Dalton , C. (1999). When paradigms collide: Protecting battered parents and their children in the family court system. *Family & Conciliation Courts Review*, 37(3) , 273-296.

Clare Dalton, a full professor at Northeastern University School of Law, notes that despite a growing body of helpful research and extensive legislative reform, significant obstacles still confront adult and child victims of partner violence in the family court system. The adult victim's experience of abuse may affect her credibility in a number of significant ways. First, her reluctance to disclose, inconsistencies or gaps in her story, or the incremental way in which she shares it -- all produced by the traumatic nature of her memories -- may raise suspicions that she is fabricating. If her interlocutor seems to question her story or to suggest her own complicity in the abuse, the vulnerability that leads her to doubt her own perceptions and blame herself for her situation may leave her unable to assert her own reality and her abuser's responsibility. If she expresses anger or even rage toward her partner, her listener may discredit her account as the product of hostility or vindictiveness. If she directs that anger and rage toward safer targets, which is not uncommon, she may alienate the very people on whose assistance she depends.

"Mediators, guardians ad litem, custody evaluators, and judges confusing abuse with conflict may . conclude that the parents who oppose shared parenting are acting vindictively and subordinating the interest of the children to their own rather than expressing their legitimate anxieties about their own and their children's ongoing safety. Ironically, within the friendly parent framework, a mother's proper concern about her own abusive partner's fitness to parent will negatively affect her chance to win custody, not his. At the same time, the abuser's willingness to share the children, which assures his ongoing access to his partner and allows him to continue to manipulate and intimidate her, will, within the same framework, make him appear the more attractive candidate for custody." (p. p.277.)

De Sanctis, L. M. (1996). Bridging the gap between the rules of evidence and justice for victims of domestic violence. *Yale Journal of Law & Feminism*, 8, 359-407 .

Noting that batterers are often charming and manipulative, and people want to believe their denials,

"Because batterers often are charming and well versed in manipulation tactics, they can make excellent witnesses who actually help jurors draw on their "belief in a just world." For example, batterers [when they are defendants in criminal cases] often

testify in a calm and collected manner that the victim was injured due to her drug or alcohol use, or that she became hysterical and needed to be restrained. Jurors may also rely on a defendant's position in society to deny the possibility that he committed the crime. For example, a juror may find it completely inconceivable that a religious person or a city council person could batter his partner. Even if the batterer does not testify, he will likely appear well-groomed and poised at the trial. Unless the defendant is drooling and unkempt, jurors may not be able to overcome their "belief in a just world" to evaluate the evidence fairly." (p. 372)

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

Noting that domestic violence is a widespread phenomenon, the central thesis in this article is that the justice system needs to better recognize the special needs of children exposed to domestic violence. An abusive parent often realizes after separation or divorce, that the most effective way to hurt the other parent is through emotional or psychological abuse utilizing the family courts.

EXCERPTS:

"In reality, however, contested custody cases often represent a high level of violence compared to the general population of divorcing adults" (p. 5).

"Paradoxically, women may not be believed when violence is reported because they are seen to be exaggerating incidents of violence as a way of manipulating the courts" (p. 5).

"Many battered spouses are advised to promote relationships and set aside past conflicts with ex-spouses who may be a danger to them and their children. If they do not comply, they may be deemed 'unfriendly or unfit parents' and they can lose custody to abusive parents" (p. 5).

Ducote, R., & D. M. Harrison. (1988). Aggressive advocacy for parents protecting children in child sexual abuse cases. In E. Bruce Nicholson and Josephine Bulkley (Eds.), *Sexual abuse allegations in custody and visitation cases: A resource book for judges and court personnel*. Washington, DC: American Bar Association.

Erickson, Nancy S. (2007, February). [Confusion on the Role of Law Guardians. The Matrimonial Commission's Report and the Need for Change.](#)
NEW YORK
FAMILY LAW MONTHLY vol. 8 (no. 6), 1-2.

Erickson notes:

"An adult can fire his/her attorney, but the child may be trapped in a relationship with a law guardian who does not represent the child, and the child's voice may never be heard."

I have been involved in cases where I had reason to believe that the law guardian was not doing his/her job or was actively attempting to gain judicial approval for a course of action that would be harmful to the law guardian's client. In some cases, the law guardian communicated with the child so infrequently that it would have been impossible for the law guardian to be familiar enough with the case to be able to represent the child at all. **For example, in one case I am familiar with, a child told his therapist that he would kill himself if he continued to be forced to visit — even under supervision — with the father who had sexually abused him and had threatened to kill his mother. The boy's law guardian had spoken with him only once and took no action even to seek out the facts, much less to protect the child.** In fact, he worked closely with the attorney for the father to make sure that no unfavorable orders were issued against the father.

Fahn, Meredith S. (1991). Allegations of Child Sexual Abuse in Custody Disputes: Getting to the Truth of the Matter, 25 *Family Law Quarterly* 193.

Problems specific to the fact-finding of child sexual abuse alleged between divorcing or divorced parents are discussed. Fahn argues that the legal system's mechanisms for protecting children from intrafamilial sexual abuse are inadequate. Contrary to the popular assumption that accusers have nothing to lose by raising false allegations, a mother who fails to meet a stringent standard of proof faces the risk of losing custody. There is often a judicial bias against the accusing mother and child. The courts may characterize the mother as overprotective, vindictive, or uncooperative and therefore, transfer custody to the father.

Fields, M. D. (1996, Summer). Practical ideas for judges in domestic violence cases. *Judges' Journal*, 32.

Noting that domestic abuse victims are often subject to the same victim-blaming attitudes as rape victims.

Geffner, R. & Pagelow, M.D. (1990) "Mediation and Child Custody Issues in Abusive Relationships." *Behavioral Sciences and the Law*, 8 (2), 151-161.

Goldstein, S. J., & Tyler, R. P. (1998). Frustrations of inquiry: Child sexual abuse allegations in divorce and custody cases. *FBI Law Enforcement Bulletin* , 1-6.

Notes that sexual abuse allegations that surface during divorce or custody cases cause frustration for law enforcement investigators because lack of evidence, possible biases, and the acrimony between partners on the verge of divorce. Although research shows that most are legitimate reports, only well-planned and well-executed investigations can produce the sound evidence required to prove allegations and protect children from further abuse.

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

Humphreys, C. (1997). Child sexual abuse allegations in the context of divorce: Issues for mothers. *British Journal of Social Work* . 27(4), 529-544.

Noting that when mothers raise concerns about child sexual abuse during divorce proceedings, these are often construed as vindictive and misguided, resulting in the children not being protected.

Peter Jaffe, Claire V. Crooks, & Samantha E. Poisson. (2003). Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes. *Juvenile and Family Court Journal*, 54(4), 57-67.

Domestic violence has been recognized as an important factor to consider in determining the best interests of children in custody and visitation disputes. However, there remain many misconceptions about the extent and impact of domestic violence in child custody proceedings. This article outlines 7 misconceptions with respect to domestic violence and child custody that represent barriers to safety and accountability in these cases. Each of these misconceptions is juxtaposed with the perspectives of 62 women victims and 95 children exposed to domestic violence who had to navigate the justice system after separation from an abuser.

Jaffe, P., & Geffner, R. (1998). *Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service and Legal Professionals. Children Exposed to Marital Violence* . American Psychological Association

Noting that the nonidentification of domestic violence in divorce cases is the major source of poor assessments in psychologists who specialize in custody and access evaluations.

Jenkins, S. (2002). Are children protected in family court? A perspective from Western Australia. *Australian and New Zealand Journal of Family Therapy*, 23(3), 145-152.

Notes that despite a lack of supporting evidence, many fear that mothers use false accusations against fathers as "weapons" in custody and visitation disputes.

Jones, J. T. R. (1996, Winter). Battered spouses' damage actions against non-reporting physicians, *DePaul Law Review*, 45, 191-262.

Contents that many physicians fail to diagnose abuse because of their bias against violence victims.

Keating, Sharon S. (1988). Children in Incestuous Relationships: The Forgotten Victims, 34 *Loyola Law Review* 111.

Discusses the many injustices that children who have been the victims of incest suffer in our present court system. The courts are returning children to parents who are accused of molesting them, in spite of significant physical and psychological evidence that the abuse occurred. This article discusses how courts work and how they have little patience with a parent who will not compromise. "If a parent believes the child's story that the abuse happened, reports the abuse to the proper authorities, feels anger toward the perpetrator, that parent is considered by the court to be unreasonable." However, these responses would be considered normal if the perpetrator were not a family member.

Backlash groups have painted pictures of modern day witchhunts and McCarthy-type hearings, attempting to shift the focus from abused children to innocent fathers who are being persecuted by vindictive wives. Recent studies have shown that there is no evidence to support the idea the incidence of false accusations is higher in divorce-custody cases. Even when allegations are proved to the court's satisfaction, the judge

may order supervised visitation. Court-ordered visitation between a rape victim and a rapist in any other context would be a judicial outrage. However, in incest cases this is considered acceptable.

Keenan, L. (1985) Domestic violence and custody litigation: The need for statutory reform. *Hofstra Law Review*, 13, 407-441.

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

Kleinman, T. G. (2004). [Child Protection and Child Custody: Domestic Violence, Abuse, and Other Issues of Child Protection](#). *Journal of Child Custody*, 1(1), 115-126. (pdf)

Although the safety of the child or parent from the physical abuse of the other parent, history of domestic violence (if any), and parental fitness are often among the factors that must be considered by trial courts in making a custody determination, the paramount concern for safety of the child is conspicuously absent and may even appear to be overwritten in custody and visitation decisions.

Kleinman, T. G. (2004). [Child Protection and Child Custody: Domestic Violence, Abuse, and Other Issues of Child Protection](#). *Journal of Child Custody*, 1(1), 115-126. (pdf)

A child's need for safety should trump any and all other considerations in family law. Child-service agencies cannot be expected to both promote reunification and child protection simultaneously. The author asserts that legislatures need to change the laws such that it is clear to the court that children come first and that safety is paramount. Although visitation between child and parent is considered to be a fundamental right, this right can and should be abrogated when initial evidence shows that such contact poses a risk of danger to the emotional or physical health and safety of the child. A new and specially trained court dealing only with issues of family violence and abuse may need to be considered.

Lehrman, F. (1996). Factoring domestic violence into child custody cases. *Trial*, 32 (2), 32-40.

Lemon, N. K. D. (2000). Custody and Visitation Trends in the United States in Domestic Violence Cases. *Journal of Aggression, Maltreatment & Trauma*, 3(1), 329-343.

This article addresses custody and visitation trends in domestic violence cases in the United States and concludes that the way domestic violence issues are treated in custody and visitation cases is often problematic, and the author calls for specific reforms.

Lemon, N., Jaffe, P. & Ganley, A. ((1995) . *Domestic Violence and Children: Resolving Custody and Visitation Disputes*. San Francisco, CA: Family Violence Prevention Fund.

Mahoney, M. R. (1991). Legal images of battered women: Redefining the issue of separation. *Michigan Law Review*, 90, 1-94.

Discusses studies confirming high percentages of custody awards to fathers who battered their wives.

McDonald, M. (1998). The myth of epidemic false allegations of sexual abuse in divorce cases. *Court Review*, 12-19.

The beliefs that false allegations of sexual abuse in divorce are epidemic and that it is mothers who falsely accuse fathers are not supported by good, methodologically sound research. "It seems easier to believe that a mother is insane than that a clean-cut, handsome man would sexually offend his children. The mother may present to the court as anxious, stressed and upset about the situation, which in some minds seems to support the idea of her insanity."

Meier, J. S. (1993). Notes from the underground: Integrating psychological and legal perspectives on domestic violence in theory and practice. *Hofstra Law Review*, 21, 1295-1366.

Meier, J. S. (2009). [Parental Alienation Syndrome and Parental Alienation: Research Reviews](#). VAWnet: National Online Resource Center on Violence Against Women.

Reports that "alienation claims have become ubiquitous in custody cases where domestic violence or child abuse is alleged," often resulting in custody being awarded to the alleged abuser.

Myers, John E. B. (1997). *A Mother's Nightmare - Incest: A Practical Legal Guide for Parents and Professionals*. Thousand Oaks, CA: Sage.

In cases of child molestation, there is rarely any proof save the disclosure by the child. When family court judges hear unproved accusations, they often assume that the accusing parent is lying in order to smear the other parent. That's a crime punishable by loss of custody. As a result, many mothers who make good faith accusations of child sexual abuse are losing custody of their children to the alleged abuser.

Pagelow, M. (1990). *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*. *Mediation Quarterly*, 7(4).

Battered women are intensely fearful of losing custody, while men who batter feel they have nothing to lose by using custody as a bargaining tactic.

Pagelow, M. D. (1993). *Justice for victims of spouse abuse in divorce and child custody cases*. *Violence and Victims*, 8(1), 69-83.

Noting that batterers' often use of custody disputes as a power tactic and the likelihood of batterers to abuse the children.

Abstract: Unequal power positions and domination-subordination roles of battering husbands and battered wives during marriage contaminate the process of separation and divorce. These dynamics may continue long after the marriages cease. Risks of extreme violence, rape, and homicide are highest when victims seek freedom. Because both victims and abusers construct a veil of secrecy while married, even if abused wives disclose the violence during the separation process, there may be nothing to substantiate their claims. Restraining orders often fail to restrain obsessed husbands; other husbands may get revenge by using their children as pawns. Attitudes favoring fathers' rights and joint custody may help win unfair financial advantages, and/or continued control over victims after divorce. Mandatory mediation in some states may give abusers additional advantages. Although some of these problems are being addressed with mechanisms to ameliorate them, the need to recognize problems facing battered wives in divorce and custody contexts has not received adequate attention. The purpose of this article is to provide a review and commentary on these issues.

Paquette, Catherine. (1991). *Handling Sexual Abuse Allegations in Child Custody Cases*. *New England Law Review*, 25, 1415.

Notes that judicial systems should avoid punishing the accusing parent in a custody proceeding by changing the custody when an allegation of sexual abuse is deemed "unfounded." Unfounded does not mean false or fabricated; it only means that there was not enough evidence to determine whether sexual abuse occurred.

Penfold, P. S. (1995). Mendacious moms or devious dads? Some perplexing issues in child custody / sexual abuse allegation disputes. *Canadian Journal of Psychiatry*, 40(6), 337-341.

Notes that despite the fact that research shows false allegations to be rare, courts tend to disbelieve and act punitively toward mothers who raise sexual abuse allegations in custody cases.

Penfold, P. S. (1997). Questionable beliefs about child sexual abuse allegations during custody disputes. *Canadian Journal of Family Law*, 14, 11-30.

Susan Penfold (1997, p. 26), a professor of Child Psychiatry at the University of British Columbia, notes that during custody disputes many men minimize their responsibility for the marital breakdown by "pathologizing their ex-wives and presenting themselves as the rational, reasonable and logical parent." In this context, raising concerns about child sexual abuse tends to galvanize men and their lawyers to present a scenario that glorifies the father's parenting abilities while stressing the woman's "supposed vindictiveness, fabrications, manipulations, instability and so on" (p. 26).

Rockey, Arlaine. (2003). Custody Cases: Protecting Children from Sexual Abuse.

article available at <http://www.arlainerockey.com/>

Why Aren't the Children Protected?

When allegations of child sexual abuse arise during a custody case, unfortunately, the professionals who are involved often look first to question the motives and veracity of the protective parent rather than to what they can do to protect the child. Most people think that making allegations of sexual abuse is a sure way for the protective parent to win the custody case. Nothing could be further from the truth.

There is a backlash in full force in our legal system against protective parents. "Protective parents" are those acting to protect their children from abuse, be it physical

or sexual. Protective parents are, much more often than not, mothers. The Fathers Rights Movement has been built on the myth that evil mothers have lodged false allegations of sexual or physical abuse or domestic violence against millions of fathers just to deprive and alienate them from their children.

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

Saunders, D. G. (2007). *Child custody and visitation decisions in domestic violence cases: Legal trends, research findings, and recommendations*. Violence Against Women Online Resources.

http://new.vawnet.org/Assoc_Files_VAWnet/AR_CustodyRevised.pdf

EXCERPT: It may be hard to believe that an abusive partner can ever make good on his threat to gain custody of the children from his victim. After all, he has a history of violent behavior and she almost never does. Unfortunately, a surprising number of battered women lose custody of their children (e.g., Saccuzzo & Johnson, 2004). This document describes how this can happen through uninformed and biased courts, court staff, evaluators, and attorneys and how the very act of protecting ones' children can lead to their loss.

Silverman, J. G., Mesh, C. M., Cuthbert, C. V., Slote, K., & Bancroft, L. (2004). Child custody determinations in cases involving intimate partner violence: A human rights analysis. *American Journal of Public Health*, 94(6), 951-957.
<http://www.ajph.org/cgi/content/full/94/6/951>

Intimate partner violence and child abuse are recognized both as public health concerns and as violations of human rights, but related government actions and inactions are rarely documented as human rights violations in the United States. Men who abuse female partners are also highly likely to abuse the children of these women. However, family courts are reported to often ignore risks posed by abusive men in awarding child custody and visitation. Battered women involved in child custody litigation in Massachusetts (n = 39) were interviewed. A recurring pattern of potential human rights violations by the state was documented, corresponding to rights guaranteed in multiple internationally accepted human rights covenants and treaties. The human rights framework is a powerful tool for demonstrating the need for legal, social, and political reform regarding public health concerns.

Smith, R., & Couches, P. (1997). Fairness and accuracy evaluations of domestic violence and child abuse in custody determinations. *Judges' Journal*, 36, 38-42.

EXCERPT ". . . Although both common sense and the prevailing legal standard dictate careful consideration of evidence in domestic or family violence when determining custody, allegations of domestic violence and/or child sexual abuse made during a divorce or custody proceeding are not always taken seriously. These allegations often are wrongly perceived as false because they are asserted in a contentious environment and because of the widespread myth that parents fabricate domestic violence and child abuse allegations in order to gain an advantage in court. When combined with the misuse of psychological syndrome evidence, the perception that a parent has fabricated the allegations often results in unfair retribution against the reporting protective parent. (p. 39)

St. Charles , E., & Crook, L. (1999) . *Exposé: The Failure of Family Courts to Protect Children from Abuse in Custody Disputes - A Resource Book for Lawmakers, Judges, Attorneys and Mental Health Professionals*. Los Gatos, CA: Our Children Our Children Charitable Foundation.

This book is a collection of essays, academic thesis, research papers and newspaper articles contributed by professionals from the fields of law, mental health, sociology, journalism, medicine, civil rights, the media and child advocacy. Expose is being widely acclaimed as the first publication to put into perspective many of the factors that are influencing the tragic placement of children by the family court system. Expose is endorsed by over 70 organizations nationwide.

Waits, K. (1995). Battered women and family lawyers: The need for an identification protocol. *Albany Law Review*, 58, 1027-1062.

Arguing that both male and female lawyers fail to serve battering victims adequately for several reasons including fear of retaliation by batterers, identification with the batterer or the victim, or assumptions of incompetence on the subject.

Walker, L. E., Brantley, K. L., & Rigsbee, J. A. (2005). A Critical Analysis of Parental Alienation Syndrome and Its Admissibility in the Family Court. *Journal of Child Custody*, 1(2), 47-74. [[download from Haworth \\$](#)]

Although some mental health professionals and child custody evaluators, attorneys, and judges have been quick to accept and admit PAS as evidence in these disputes, especially in those that have cross-complaints alleging family violence, there has been no consistent empirical or clinical evidence that PAS exists or that the alienator's behavior is the actual cause of the alienated child's behavior towards the target parent.

It is argued here that the PAS construct itself is flawed and its use by custody evaluators to justify placement with the rejected parent may result in more serious damage to the child who is taken away from the parent to whom the child has bonded. These authors suggest that the PAS argument has been accepted by some courts that seem almost eager to punish the so-called alienating parent without regard for the immediate or long-term impact on the child.

Walker, Lenore E.A., and Edwall, Glenace E. "Domestic Violence and Determination of Visitation and Custody in Divorce." Ch. 8, pp. 127ff. Sonkin, Daniel. Phd. Domestic Violence on Trial, Springer, 1987.

Winner, K. (1996). *Divorced from justice: The abuse of women and children by divorce lawyers and judges*. HarperCollins.

Karen Winner is an investigative reporter based in New York. In this expose, she shows how women and children nationwide are suffering at the hands of lawyers and judges.

Wilson, R. F. (2001). *Children at Risk: The Sexual Exploitation of Female Children After Divorce*. *Cornell Law Review*, 86(2), 253-327.

The author marshals overwhelming empirical evidence more than 70 social science studies showing a connection between family disruption and child sexual abuse of girls. This evidence shows that a female child, after her parents divorce, faces a significantly elevated risk of being sexually abused by either a parent, a parent's partner, or a person outside of the home. The author argues that family law deals inadequately with this disturbing phenomenon because courts in custody proceedings generally neglect to address the increased statistical probability of sexual abuse after divorce.

Zarb, L. H. (1994). *Allegations of childhood sexual abuse in custody and access disputes: What care is in the best interests of the child?* *Canadian Journal of Family Law*, 12, 94-114.

Noting that the parent alleging abuse, usually the mother, is in a no-win situation. On the other hand, if she does not report her suspicions, she risks both her child's safety and her reputation as a responsible parent. On the other hand, if she does allege sexual abuse but is unable to prove it, she risks being viewed as a vindictive and selfish parent. In either case, she could jeopardize her own chances of obtaining custody of her child" (p. 95).

Zorza, J. (1994). Using the Law to Protect Battered Women and Their Children, *Clearinghouse Review*, 27(12) at 1440.

Zorza, J. (1996). Protecting the children in custody disputes when one parent abuses the other. *Clearinghouse Review*, 29, 1113-27.

Noting that "friendly parent" provisions, which "favor awarding custody to the parent who will foster the better relationship between the child and the other parent," are dangerous for battered women and their children. "Friendly parent provisions actually encourage abusers to continue to use the children as pawns in custody fights because even false allegations that a father was denied access to the children frequently result in the abuser's winning custody."

Zorza, Joan. The "Friendly Parent" Concept--Another Gender Biased Legacy from Richard Gardner, 12 *Domestic Violence Report* 65 (2007). ([download pdf](#) - republished with permission of Civic Research Institute)

Noting that the "friendly parent" concept (FPC) is related to "Parental Alienation Syndrome" (PAS), an unscientific theory that has been used to deprive countless mother of custody of their children and to force children to live with an abusive parent. Some version of the FPC has been enacted by 32 states in their custody laws. It gives custody preference to the parent who will better encourage a good relationship between the child and the other parent. The FPC is based on many of the same myths as PAS, and leads to many of the same punitive outcomes for children.

According to this article:

"Although every state has made domestic violence ("DV") a factor that courts must consider in custody cases, and at least 24 have a presumption that batterers not be given custody, studies show that batterers still win custody in states with the FPC unless a statute clarifies that it does not apply when there is DV. The FPC is based on many of the same myths as PAS, namely that (1) DV is rare, not that serious, often mutual,

raised by mothers for tactical gain, and ends following the divorce or custody case; and (2) incest is rare and raised by mothers for tactical gain" (p. 75).

Zorza, J., & Rosen, L. (2005). [Editors Intro To Custody and Abuse Issue.](#) *Violence Against Women. 11(8), 983-990.*

This issue reports the results of four studies-all funded by the National Institute of Justice-that, for the first time, present systematically collected empirical evidence on the custody crisis facing battered women in America. The studies in this issue include data collection having occurred in 9 of the 50 states. They suggest that battered women continue to be disadvantaged in custody disputes with their abusers.

V. MEDIA REPORTS

Anderson, Troy. (June 18, 2006). [Mom termed 'parental alienator' wins rare vindication in courts.](#) *L.A. Daily News*

EXCERPT: Former San Fernando resident Irene Jensen battled the family court and child protective systems for 13 years to save her daughter from an allegedly abusive father. But the system turned the tables on her: Jensen found herself accused of making up the allegations and in the glare of the national spotlight when she was labeled a "parental alienator." Her daughter, Tiffany-Ann Carver, now 17, spent years in the custody of her father [who she claims physically and sexually abused her]. Tiffany eventually ran away and sought the assistance of the Alliance for Children's Rights, which helped place her in a foster home. Late last year, a Los Angeles judge returned Tiffany to the custody of her mother.

Baltimore Sun [editorial]. (April 3, 2008). **A tragic end. Our view: In custody disputes, protect children first.** *Baltimore Sun.*

<http://www.baltimoresun.com/news/opinion/editorial/bal-ed.domestic03apr03,0,6986230.story>

The laws in Maryland could have better protected Amy Castillo's three small children. But the judges in this nasty custody dispute had the final say over her estranged husband's right to visit them, and they misjudged his potential to harm his daughter and two sons.

When Mark Castillo didn't return his children, ages 2, 4 and 6, to their Silver Spring home Saturday, their mother frantically tried to convince Montgomery County

police that something was amiss. But he had already drowned them in a bathtub in a Baltimore hotel, police said.

No judge could have predicted Mr. Castillo's desperate act of defiance against his wife, but his diagnosed mental disorders and previous suicide attempts should have been a signal to proceed with utmost caution. Was supervised visitation, even for a limited period of time, even considered?

Mrs. Castillo, a pediatrician, had tried to end her husband's visitation rights in June 2007 and, earlier that year, sought a restraining order to keep her husband away from the kids. But in the latter case, the law required her to show "clear and convincing" evidence of abuse or harm to the children. Mr. Castillo's alleged threat to kill the children to punish her, as Mrs. Castillo recounted to a judge in 2007, wasn't enough. It was her word against his - as is often the case in these disputes.

Findings by two mental health professionals that Mr. Castillo posed no threat or little risk to his children also complicated the picture. But Circuit Judge Joseph A. Dugan Jr. found the Castillos' relationship so disturbing that he told the couple he had "substantial difficulty" believing either spouse. That should have prompted him to order supervised visitation. It would have offered the children some protection.

Burke, Pamela. (October 22, 2002). [Fit Calif. Moms Losing Custody to Abusive Dads](#). *WEnews*

New statistics indicate California fathers with a history of child abuse, domestic violence or criminal behavior often have been granted visitation and sole custody of their children in contested cases.

Carner, Talia. (2008). [THE SCANDAL IN OUR OWN BACKYARD](#). <http://www.vibrantnation.com/interviews/2008/08/26/the-scandal-in-our-own-backyard/>

Discusses the types of errors that lead children to be placed with their abuser in custody cases." Paradoxically, a family court judge is the one professional in the courtroom who is not required to be trained in domestic violence and child abuse. As a result, wrapped in their own mix of prejudices, religious beliefs, or misguided assumptions, all too many judges are ignorant about the dynamics of family abuse, ignorant about the nature of child molestation, and ignorant about the ways in which an abuser manipulates the courtroom as the arena where he can hand a woman the final blow by taking her children away."

Carpenter, M., & Kopas, G. (1998). Causalities of a custody war (three-part series). *Pittsburgh Post Gazette*, May 31-June 2. <http://www.post-gazette.com/custody/default.asp>

Describes the case of Nathan Grieco, a High School junior who killed himself after being forced to visit his father, who he claimed was physically and emotionally abusive. Nathan and his brothers were "diagnosed" with PAS because they did not want to visit their father who had battered their mother in front of them. They were subjected to "threat therapy" to cure PAS. This therapy involved the court telling the children that if they refused to visit their father, or did not obey and respect him, their mother would be arrested and incarcerated.

Carr, G. (October 14, 2002). Conflict delays family court's task force meeting. *Elgin Courier News* (Illinois).

Noting that a large number of parents have complaints about Kane County 's family court system, including one woman whose children were returned to her ex-husband after the Illinois Department of Children and Family Services investigated a complaint of child abuse against him. The complaint, filed by a school official, was listed as "indicated," or legitimate.

Childress, Sarah. (Sept. 25, 2006). [Fighting Over the Kids: Battered spouses take aim at a controversial custody strategy](http://www.msnbc.msn.com/id/14870310/site/newsweek/).

Newsweek <http://www.msnbc.msn.com/id/14870310/site/newsweek/>

EXCERPT: "Parental alienation is now the leading defense for parent's accused of abuse in custody cases, according to domestic-violence advocates. And it's working. The few current studies done on the subject consider only small samples. But according to one 2004 survey in Massachusetts by Harvard's Jay Silverman, 54% of custody cases involving documented spousal abuse were decided in favor of the alleged batterers. Parental alienation was used as an argument in nearly every case."

Farrant, Rick. (October, 2, 2005). Little Bird caught in parental tug of war. *The Journal Gazette* (Fort Wayne, IN) <http://www.fortwayne.com/>.

EXCERPT: "Michael Martz of Van Wert pleaded guilty in 1996 to attempted gross sexual imposition of a 9-year-old girl. Since then, he's been required to register yearly with county and state sex offender registries, and an Ohio statute amended in

2003 prohibits sex offenders from living within 1,000 feet of a school. His status as a sex offender, however, hasn't dissuaded courts from granting Martz unsupervised visitation with his preteen daughter and on March 30, Martz filed for custody of his daughter.

After the divorce, Brenda was given custody of Little Bird, and Michael was granted unsupervised visitation consisting of four hours twice a week, every other weekend and some holidays. In 2002, Brenda and her new husband, John Linser, say they began noticing disturbing behaviors in Little Bird and persistent urinary tract infections that suggested possible abuse. Children Services of Van Wert County conducted an investigation and determined that while the girl's behavior indicated "she may have been exposed to some sexually inappropriate behavior," the agency could not substantiate abuse. A third investigation was done by Children Services, and this time the agency concluded that "allegations are indicated and that (the girl) is at a high risk for future abuse were she to resume visitation time with the alleged perpetrator, Michael Martz." After the court continued to allow Martz access to the girl and on April 25 a Van Wert Common Pleas magistrate found Brenda Linser in contempt of court for withholding visitation. A Van Wert County grand jury indicted them on charges of interference with custody."

"The Linsers say they spent 10 days in jail and their children were placed in foster care before Arkansas released the couple on their own recognizance."

Goodwin, Jan. (November 2006). "Please Daddy, No", *O, The Oprah Magazine*.

EXCERPTS: "We lock up adults who molest children -- but what if the molester is the child's parent? All too often, an outrageous quirk of the law known as the incest loophole metes out only a slap on the wrist and sends the father (or mother) home to abuse again."

For a society that prides itself of its love for children, our handling of incest is a dangerous hypocrisy. A child molested by a stranger can run home for help and comfort. A child sexually abused by a parent cannot. And that tragedy will repeat itself again and again until we stop looking the other way

Grand Rapids Press [editorial]. (October 20, 2007). [Child custody caution](#). *Grand Rapids Press* (Michigan), p. A12.

A probe by the Michigan Department of Human Services and its Office of Family Advocate must answer troubling questions surrounding the death of a 9-year-old Montcalm County boy, who was left in the care of an admitted child abuser.

Although, his mother was seeking to regain custody of him, 9-year-old Nicholas Braman was left in the care of his father who recently admitted abusing his two older sons and was facing jail time for that crime. Oliver Braman pled guilty in September to using an electric cattle prod to discipline his teenage sons. The two boys, ages 14 and 15, fled the home and went to live with their mother. An assistant Montcalm County prosecutor had urged protective services workers to remove Nicholas from his father's home. An e-mail from a child welfare worker less than two hours before Nicholas' body was found reiterated that the boy was not at risk and that the father was attending parenting classes. Nicholas was not removed from the home because the abuse allegations did not specifically involve him. The boy's body was discovered along with his father's and step mother's in what police are calling a murder/suicide.

Keating, G. (April 23, 2000). Disputed Theory Used in Custody Cases: Children Often Victims in Parental Alienation Syndrome Strategy. *Pasadena Star-News*.

http://www.canow.org/NOWintheNews/familylaw_news_text.html

Peter Jamison (Mar. 2, 2011) [California Family Courts Helping Pedophiles, BATTERERS Get Child Custody](#) *SF Weekly*

This well researched article focuses on a number of California custody cases where allegations of domestic violence or child molestation by mothers were rejected by the courts and resulted in children being abused. The abuse was later proved by criminal convictions — and, in one case, the child was murdered.

Keating, G. (February 11, 2001). Group seeks reform for family court Bias against women alleged. *San Gabriel Valley News* (Pasadena, CA)

Although many medical associations say parental alienation syndrome is a myth, it is commonly used to help gain custody of a child, even when evaluators say the parent is abusing the child. It's such a powerful legal tool that lawyers attend seminars on how best to use it.

" ... No woman, despite very abundant evidence that her child has been sexually molested by her ex-husband ... can safely walk into any family court in the country and not face a grave risk of losing for the sole reason that she dared to present the evidence to a judge and ask that the child be protected," said Richard Ducote, a child advocacy lawyer based in New Orleans.

King, J. (2001). *All but my soul: Abuse beyond control*. <http://www.allbutmysoul.net/>

A mother's, who is also a psychologist, personal account of losing her children to the man who she says battered her through out the marriage and sexually abused their children. Dr. King alleges that despite the court having substantiated his abuse, she was denied any contact with her children.

King, Tim. (May 12, 2007). [Abuse Under the Watch of Oregon 's Justice System](#). Salem News.

EXCERPTS: This is a story about abuse, survival, false religion and dubious court systems in a state that may be advanced on some levels, but sometimes proves to be a miserable failure in terms of equity and fairness and conventional thinking.

It is the saga of an Oregon woman whose attempt to seek justice for marital rape and physical abuse would not only result in no prosecution, but lead to threats that *she* would be charged with crimes if her allegations continued.

Kramer, J. (October 24-30, 2001). [Custody Switch](#), *Pacific Sun*

Jill Kramer, an investigative journalist, interviews a number of professionals and protective parents. This article describes the impact that PAS is having in custody cases across the country.

Cites a number of cases in which family courts have failed to protect children who have alleged abused and separated them from their protective mothers. Notes that there's a high degree of skepticism in the family court about any allegation of bad acts made by one parent against the other, which filters down to how the child protection case is handled. Even when CPS does substantiate an allegation of abuse, it's usually not prosecuted, as it usually involves the word of a child against that of an adult. In the rare instance of a prosecution and conviction, the judge may still decide it's irrelevant to the custody dispute.

Krause, A. (July 17, 2000). [Letting children speak for themselves](#). *San Francisco Daily Journal*.

Alanna's parents separated when she was 5-years-old, sparking a custody battle that lasted nine years. Alanna describes how a judge refused to listen to her report of physical abuse suffered at the hands of her father. The judge, instead, believed contrary

to the evidence that her mother had somehow caused the alienation. To prevent Alanna from reporting him after an episode of physical violence, her father had her institutionalized in a juvenile facility to be "deprogrammed." After being returned to live with him, Alanna ran away and lived on the streets of LA until a new judge reviewed her case, and allowed her to return to her mother. She is currently a strong advocate for reforming how the judicial system deals with children who claim to be abused.

**Krishnamurthy, Kiran. (November 12, 2006). [Theory issue in custody dispute](#)
[The merits of parental alienation syndrome are disputed among groups](#). *Richmond Times-Dispatch*.**

EXCERPT: Tina Wilson says she was following an attorney's advice when she took her daughter to a domestic-violence shelter on Father's Day. She was desperate. A judge had granted sole custody to her former husband, who had been convicted of assaulting Wilson six years earlier and who is now the subject of physical- and sexual-abuse allegations leveled by their 9-year-old daughter.

Wilson says her daughter kicked, begged and screamed not to go back to her father, who had accused Wilson of alienating him from the girl. "Your dad can't come in here," Wilson said she assured the girl at the shelter. But authorities located Wilson and her daughter at the Williamsburg-area shelter. A police officer took away the girl, who was returned to her father.

Krishnamurthy, Kiran. (January 19, 2007). [Judge Grants Sole Custody of 9-year-old Girl To Father](#). *Richmond Times-Dispatch*.

EXCERPT: A judge granted sole custody of a girl to her father after a medical expert testified yesterday to believing the man physically and sexually abused the child.

Lehmann, C. (2000, September 1). Controversial Syndrome Arises in Child-Custody Battles, *Psychiatric News*,

<http://www.psych.org/pnews/00-09-01/controversial.html>

"In nearly 100 court cases in which the parent, usually a mother, alleged that the former spouse has sexually abused their child, custody was granted to the alleged perpetrator, and the mother's custody was restricted or eliminated, according to John Myers, a law professor at Pacific University in Sacramento, Calif., and author of A

Mother's Nightmare: A Practical Legal Guide for Parents and Professionals , a book published in 1997 by Sage Publications.

"I have spoken with about 100 women whose allegations of child sexual abuse backfired in court. The outraged father seeks custody, and the defense raises PAS. The mother's allegations are dismissed because she cannot prove the abuse occurred, and she is branded hysterical, mentally unstable, and unfit,' said Myers."

Lombardi, Kristen. (January 2003). Custodians of Abuse. *Boston Phoenix*.

IF YOU'RE A PARENT, it's your worst nightmare: finding out that your child is being molested by your spouse. If you seek a divorce as a result, or are already going through one when you make the discovery, you hope that family court will do the right thing: grant you sole legal and physical custody of your child. In fact, you can't even *imagine* that there could be any other outcome in the custody judgment. But for many parents -- in nearly every instance, mothers -- just the opposite occurs: the alleged abusers don't just get unsupervised visitation rights, they get full custody.

Lombardi, Kristen . (April 11, 2006). [Her Right to Be Obnoxious: Hell Hath No Fury Like a Mother Scorned](#).

The Village Voice.

Every week, Darel can be found pacing along the 150 William Street block, protesting the way New York City Administration for Children's Services caseworkers have handled her now closed case. In 1997, the department alleged that Darel's ex-husband, a retired New York City police detective, had molested their daughter. But a series of complicated twists in Manhattan Family Court would cause judges to drop the accusation as "unproven," find Darel guilty of neglect, and place her daughter in foster care. Eventually, she lost custody for good to the man whom ACS had once accused of abuse.

Neff, Elizabeth. (July 3, 2006). Abuse, or a ploy for custody? *Salt Lake Tribune*
http://www.sltrib.com/utah/ci_4006820

EXCERPT: What 17-year-old Tiffany Ann Carver says she recalls most from the custody battles that raged during her childhood is not being listened to. The courts, she says, seemed more focused on her father's rights than hers. "I was never treated like a

human being with rights. I never felt like a child. I was just another file, a stack of paper."

Marech, Rona. (April 1, 2008). Experts question family legal system. Children' s deaths raise issue of adequate protection in custody disputes. *Baltimore Sun*.

http://www.baltimoresun.com/news/local/baltimore_city/bal-md.law01apr01,0,2307912.story

EXCERPTS: As details emerged about three youngsters apparently drowned by their father in a downtown hotel room over the weekend, legal experts and family advocates questioned whether Maryland law goes far enough to protect children in custody disputes.

Some argue that judges are too quick to dismiss women's claims of abuse and too willing to award unsupervised visitation - even if one parent has a history of mental illness or battering the other.

Amy Castillo, whose estranged husband, Mark Castillo, allegedly confessed to the killings, said in court documents that her husband had threatened to make her suffer by killing their children. He also had a history of mental problems.

But a judge rejected her request for a permanent protective order.

Leigh Goodmark, an associate professor at the University of Baltimore School of Law, noted that the legal standard in custody or visitation cases is the best interest of the children. But it can be difficult to persuade a judge that violence against a parent poses a danger to the children, even though there is evidence to suggest that. Goodmark's research has shown that though it's often assumed that women are making up allegations of abuse for their own advantage, despite the fact that the social science doesn't support this view.

Martin-Morris, D. (March 1995). The worst that could happen. *McCall's*, p. 70.

Beliefs about sick, vindictive mothers who turn the children against their innocent fathers has led to a legal backlash against mothers. Sherry Quirk, an attorney and president of the American Coalition for Abuse Awareness (ACAA), notes that judges tend to believe court-appointed experts who testify that the mother invented allegations

of child sexual abuse and then "brainwashed" the child into believing it as part of a vindictive plot to get back at her former husband. If the mother continues to insist that the story is true, she is viewed as obsessive and unstable. The judge may respond by giving the father custody (Martin-Morris, 1995).

O'Meara, K. P. (April 26, 1999). Has Psychiatry Gone Psycho? *Insight Magazine*. http://www.join-hands.com/psychology/richard_gardner.html

Cites several prominent cases in which child custody has been awarded to a person alleged (backed with solid evidence) to have sexually molested the child. The mothers who sought to protect their children are allowed only supervised visitation. These outcomes are the result of court acceptance of an unscientific psychological fad - parental alienation syndrome.

Phelps, Giselle. (June 8, 2007). [Ithacans protest family court system](#). *news10now* (New York).

Some Ithacans are calling for change in the family court system. The Tompkins County Family Court Reform Group says that judges, law guardians and court psychologists are failing to uphold professional standards. They say children involved in divorce cases suffer because documented cases of domestic violence are often ignored. "There are several cases and several women who are part our group have lost custody to abusers, somewhere there's documented evidence of the men's history of abuse," said Irene Weiser.

Port, B. (October 16, 2005). [Custody fight: Documentary sheds light on system that lets children suffer at the hands of abusive fathers](#). *Times Union* (Albany, NY) ([full-text](#))

"Breaking the Silence: Children's Stories," a PBS documentary set to air in the Capital Region at 10 p.m. Thursday on WMHT Ch. 17. "This exquisite documentary, "Children's Stories," like no other production I have seen, makes comprehensible the subtlety of a scandal that recurs in custody proceedings in New York and other states. It is an almost impossible story to tell, one from which journalists flee, and it boils down to this: A judge, often misled by self-interested lawyers and court-appointed professionals, ignores a protective mother, ignores the wishes of children and awards custody to a man who is an abuser, emotionally or physically, of his wife or their children."

Raftery, M. (January 15, 2002). Desperate moms taking abused children underground. *Womens Enews*.

<http://www.womensenews.org/article.cfm/dyn/aid/676/context/cover/>

In custody disputes involving sexual abuse claims, closed-door family courts too often award custody to the alleged abuser, saying the mother is lying. Some mothers take children underground; others flee the country.

Sheaffer-VanOrman, Suzanne. (January 4, 2007). Family Court trend doesn't favor mothers. *The Ithaca Journal* - Ithaca, NY.

EXCERPTS: Current trends are beginning to mimic a time when women and children were considered marital property. Though not as openly sexist as our historical legacy, judges and law guardians hide inside a Trojan horse of sexual equality. Many law guardians arbitrarily recommend that the fathers who want custody get it. Rather than concern for the best interest of the child, these law guardians appear to strive to raise the statistics in favor of fathers.

A court psychologist in Ithaca isn't required to undergo any domestic violence training in order to be hired by the court as an "expert witness."

As a result of such low standards, hundreds of women in Tompkins and many other counties have unjustly lost their rights and privileges to raise their children. These rights have been awarded to abusive and/or substance dependent fathers, many of whom have criminal records and have committed violent crimes against women. Judges have the discretionary power to dismiss evidence which may prove contrary to the law guardian and psychologist advice. This may happen when law guardians object to the submission of evidence that conflicts with their own recommendations.

Seckler, J. (April 2003). Family Law and Disorder. *Pasadena Weekly*.
<http://www.pasadenaweekly.com/features/coverStory/coverstory.html>

Mothers who have lost custody of their children to allegedly abusive husbands call for family court reforms. The family court system fails to protect women and children, who live at substantial risk of violence and abuse.

The sins of the fathers. (May 8, 2006). *The Guardian* (UK).
http://www.guardian.co.uk/g2/story/0,1770011,00.html#article_continue

Interviews three women and details their cases in family court. Concludes: "The little-known but astonishing truth about the family justice system is that it routinely grants contact orders to men who have been violent towards their partner and children."

EXCERPT: If a divorced father abducts his daughter, takes her abroad and goes to prison for the crime, you might think that no court would dream of granting him access to her again. When a court hears that a child is accusing his father of sexual abuse, most people would expect the man to be, at the very least, banned from further contact with his son. A father who has been repeatedly violent towards his ex-wife and children surely stands little chance, one would assume, of being allowed anywhere near them.

In fact, the father in each of these three cases has been granted access to his children by a court of law. The mothers are legally obliged to make the children see their fathers - even when the children are weeping and pleading not to go. If the mothers fail to force children, kicking and screaming, to visit a father who has abused them, they risk being sent to prison or losing custody. "And there's nothing - nothing - you can do about it," one explained. "It's not about what your child wants, it's about what the court wants. The courts want fathers to have contact. And if you don't play ball, you will lose your child."

Turner, M. (April 9, 2000). Know the legal system, speaker advises parents. *Davis Enterprise*.

In his keynote address at a conference titled Child Sexual Abuse and Professional Ethics held at the Veteran's Memorial Center in Davis on April 8th, John E. B. Myers said the level of skepticism in family courts when it comes to claims of child sexual abuse has "gone through the roof." Myers noted that in too many cases "good faith allegations are either ignored or interpreted as false" and the accuser "stands a good chance of losing custody of her child to the alleged abuser."

Vincent, L. (Feb. 8, 2003). Little girls lost? *WORLD magazine*. (Volume 18; Number 5)

<http://www.worldmag.com/displayarticle.cfm?id=6825>

Embraced in family courts across the country, a controversial "syndrome" may be placing abused children at risk.

Vincent, L. (Feb. 8, 2003). **PAS: The truth hurts.** *WORLD magazine*. (Volume 18; Number 5) <http://www.worldmag.com/displayarticle.cfm?id=6827>

Waller, G. (September 1, 2001). **Biased Family Court System Hurts Mothers.** *Women's E-News*.

<http://www.womensenews.org/article.cfm/dyn/aid/641/context/archive>

Notes that behind closed doors of the family court system, thousands of women each year lose child custody to violent men who beat and abuse mothers and children. The writer says family courts are not family-friendly and betray the best interests of the child.

Waller, G. (2001). *Small Justice: Little Justice in America's Family Courts*. (Documentary film).

<http://www.smalljustice.com/thedoc.html>

In this documentary film, Garland Waller, Professor at Boston University in the College of Communication, explores the American family court system which routinely takes children away from the protective parent and puts them in the care of the person the children have named as their abuser. She documents three cases in which protective mothers have lost custody to the man that her children have alleged has sexually abused them.

Watson, Beth. (July 30, 2008). [Battered woman becomes American refugee in Amsterdam](http://www.citypages.com/2008-07-30/news/battered-woman-becomes-american-refugee-in-amsterdam/1) (Minnesota news).

<http://www.citypages.com/2008-07-30/news/battered-woman-becomes-american-refugee-in-amsterdam/1>

In 1997, Holly Collins was granted refugee status based on the European Treaty on Human Rights." In the US, she is a wanted fugitive who kidnapped her children. She fled after a Minnesota judge reversed custody of the children, then ages seven and nine. Even though the court did find that Holly had been abused by her ex-husband, neither Child Protective Services nor family court was able to substantiate the children's claims of abuse. According to Holly, he beat, threatened, and raped her on numerous occasions. She has hospital records documenting wrist, foot, and head injuries, among others. One doctor confirmed that a three-centimeter scar on her body was consistent with a knife wound.

The court decided that Holly's fear of her husband's violence was alienating the children from their father, and allowed only limited, supervised visitation between Holly and her children. "[T]he court finds the record contains sufficient evidence that domestic abuse occurred between the parties," the judgment noted, but "[Holly] suffers from a personality disorder. The personality disorder respondent suffers from includes, but is not limited to, Munchausen syndrome by proxy. Whatever the label, the type or types, of emotional difficulty [Holly] suffers from is extremely resistant to treatment and requires years of long-term psychotherapy.... [T]he court finds that the minor children are at great physical and emotional risk if they remain in custody of [Holly]."

Despite the fact that multiple doctors (including Holly's court-ordered psychologist) involved with Holly could find no evidence to back the diagnosis, the court refused to change its ruling. Holly fled with her children and recieved asyln in the Netherlands based on her extensive records of being battered by her ex-husband, and her children's claims that they too had been abused by him.

Washington Post [editorial]. (April 3, 2008). JUSTICE SYSTEM ERRORS - Father Kills Three Children; Court Refused to Protect Them, Despite Repeated Warnings that They Were in Danger. *Washington Post*, p. A16 http://www.washingtonpost.com/wp-dyn/content/article/2008/04/02/AR2008040203055_pf.html

AMY CASTILLO went to court again and again to warn of the danger her estranged husband posed to their three small children. Once, she even defied the court's order allowing visits. Tragically, those efforts weren't enough for Anthony, 6, Austin , 4, and Athena, 3. Their deaths -- allegedly at the hands of the father feared by Ms. Castillo -- demand that Maryland officials figure out why layers of legal and health safeguards failed so terribly.

Mark Castillo, 41, of Rockville, was charged with murder after he allegedly drowned the children in a Baltimore hotel bathroom. Records in the Montgomery County Circuit Court case attest to the ugliness of the Castillos' custody dispute; of the father's mental problems and of the mother's worries. "He told me what would be worse is if he killed all of us. Then he said actually worse than that would be if he killed the children and not me so that I would have to live without them," Ms. Castillo told Judge Joseph A. Dugan Jr. in an unsuccessful bid for an order of protection.

It's simplistic to blame the judge. During a two-hour hearing, Judge Dugan wrestled with conflicting "he said, she said" accounts. A court-ordered psychological evaluation had concluded that the "risk of harm Mr. Castillo poses to his children is low," while noting that he loved and cared for his children. The judge took the unusual steps of requiring Mr. Castillo to provide proof that he was in psychological counseling and appointing a lawyer to oversee the best interests of the children. Nonetheless, he was constrained by the strict standard of proof that Maryland has set for a protective order to be granted. For the past 20 years, there have been efforts to change the current standard of "clear and convincing evidence" to that used in many other states, "a preponderance of the evidence." The reform, a priority for those who work with victims of domestic abuse, has repeatedly fallen victim to the defense attorneys who control key legislative committees.

We are under no illusion that this one remedy would have averted the tragedy of the Castillo case. It is for that reason that this case should be reviewed by the General Assembly and the Maryland judiciary to see whether laws and procedures need changing. It is striking, for instance, how many judges cycled through this case over its nearly two-year course. Would there have been a different outcome if one judge had dealt with all aspects of the case and had the benefit of continuity? Similarly, does it make sense to rotate judges in and out of family court? A series of tragedies involving children in the District prompted the assignment of judges specifically trained to handle the complexities and nuances of family law. New programs are being developed to assess the risk of violence; some question whether the traditional adversarial system of justice is best suited to deal with emotional family matters.

All these issues are worth studying. And just as the legal system should examine its practices, so should mental health professionals do their own soul-searching. Expert after paid expert was called in to study the Castillo family. But none recognized the signs that Amy Castillo so clearly saw.

White, Carroll V. (May 15, 2006). [Moms Losing Custody of Children](#). *Chicago News Sun*.

EXCERPT: [Annette Zender] was awarded sole custody of her daughter in 1997 by a Minnesota court. The custody order stated that domestic violence witnessed by the child would have a negative impact and specified certain measures to protect the child.

After Zender was granted permission by the Minnesota court to relocate to Illinois, the father filed for custody in Illinois.

The judge appointed a psychologist to perform an evaluation in the "best interests of the child" who reported, without evidence, that Zender coached her child to report abuse by the father. Based on this allegation of coaching, a Lake County judge, who was aware of previous Minnesota court orders to protect the child from the father, turned over custody to the father. The child was removed from school on Sept. 11, 2001, and has not returned to her mother's home, even for visitation, since that time due to ongoing legal wrangling initiated by the child's father.

Yeung, Bernice. (December 18, 2002). [Girl, Interrupted](#). *San Francisco Weekly*.

EXCERPTS: Alanna Krause believes that much of her hellish childhood could have been avoided. Now she's suing her father, her therapist, and her lawyer in an effort to prove it.

Alanna's life before college was nothing short of hellish, fraught with physical violence, institutionalization, and running away -- much of which could have been avoided. As a 10-year-old in 1993, Alanna had gotten tangled up in the crony-driven Marin family courts during a bitter child custody battle between her parents. Throughout the custody case, she begged to live with her mother, because, she claimed, her father was physically abusive and often left her at home alone. But in the end, the system granted custody of Alanna to her dad, despite some troubling circumstances.

Zorn, Eric. (April 18, 2002). *Pop psychology has brutal role in family court*. *Chicago Tribune*

Parental Alienation Syndrome figured into a long and ugly custody battle that concluded April 17 in DuPageCounty. (The column by Zorn can be found here - scroll down until you see it - <http://ericzorn.com/columns/2002/april/>)

EXCERPT: "Konetski allowed the father to argue PAS, and Gardner flew in to testify for the father that the mother was a "severe programmer" who ought only to be with her daughter in the company of a fellow "PAS expert." Is the mother, in fact, a severe programmer--every bit the lying, paranoid harridan that the father's attorneys and the girl's court-appointed lawyer portrayed her as during closing arguments in the case Wednesday? Or, as the mother's lawyers argued, is the dad a deceitful, vindictive,

occasionally violent alcoholic whom the daughter and the mother have every cause to fear and detest?

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Updated May 27, 2006