

## EXPERIENTIAL STUDIES SHOW THAT BIAS AGAINST WOMEN EXISTS IN THE COURTS ESPECIALLY RELATED TO CHILD CUSTODY

343. The problem of giving custody or unrestricted visitation to abusers has not arisen suddenly. The media has covered it extensively over many years. Articles in the popular media on protective parents losing custody to an abuser include articles from 1995 to 2006, from the east coast to the west pointing out judges who give custody to abusers, the use of PAS, the harm to the children, the discrimination against women, advice to women not to report abuse, court orders to women to not file additional motions, the involvement of the FBI and federal law in arresting women, and women who go into hiding to avoid turning children over to abusers. 1

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1 Following is a brief summary of some articles:

A. World Net Daily, April 20, 1999, Exclusive Commentary, Judith Reisman: Discussion of mothers losing custody to abusers, the use of PAS, and that mothers hide sexual abuse of children so as not to lose custody.

B. Pittsburgh Post-Gazette: Special Reports: Casualties of a Custody War tells the story of a 16 year old boy subject to "threat therapy" meaning that if the boys did not visit their father and act nice, the mother would be jailed. Nathan subsequently killed himself after leaving writings about how his father continued to harass them through court cases.

C. "Heavy Hand of Justice" by Jill Kramer, Pacific Sun October 24-30, 2001, CUSTODY SWITCH

"If you suspect that your ex-spouse is molesting your child, don't report it to authorities. If you do, you risk losing custody to your child's molester."

But Gardner's contention that there is an epidemic of sexual abuse allegations in custody fights is not borne out by research. In a study of 9,000 disputed custody cases, fewer than 2% involved such allegations - true or false. And when the charges are leveled, they're usually true. A team of researchers at the University of Michigan examined 215 cases and found that, in 156 of them, or 72%, it was "likely" that sexual abuse had occurred. But, of those likely cases, the judges disregarded more than half."

"Idelle Clarke lost custody of her daughter to her ex-husband in Los Angeles family court after social workers determined that he had sexually abused her repeatedly. A family court judge dismissed the sexual abuse charge, deciding that the girl who was eight years old when she first described the abuse had been coached by her mother to lie. The children's services department filed an appeal, but promptly dropped it when the father, a well-fixed executive in the entertainment industry, sued department staffers. The child was placed in her fathers custody in 1998 and Clarke has been fighting the decision ever since. ... Meanwhile, Clarke's daughter, now 15, claims that her father continues to molest her. She has written a number of letters to her court-appointed attorney, pleading for help. But the attorney is an ardent proponent of parental alienation syndrome."

D. Pop psychology has brutal role in family court, April 18, 2002, Eric Zorn, Chicago Tribune  
Zorn tells the story of a 10 year old who has said my dad is going to hurt me and my dad gets drunk sometimes but was taken from the courtroom away from her mother to her father without even saying good bye to her mother based on PAS.

E. Custody fight: Documentary sheds light on system that lets children suffer at the hands of abusive fathers, By [BOB PORT, October 16, 2005, Albany Times Union](#).  
"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. ... What our legal system has failed to grasp is that lust for vengeance drives the worst of fathers to use litigation itself as a way to abuse ex-wives. Their economic incentive has also grown. Winning custody can be cheaper than child support. ... There is little Sarah, ordered to live with a father she feared. "You feel like," she says, biting her lip, "you want to die." There is the terror-stricken

344. Voluminous evidence exists that courts are discriminating against women, particularly battered women, are giving more importance to fathers' rights than mothers' or children's rights, that mothers are denied due process or meaningful access to court, that judges operate with negative stereotypes against women and a paternal preference, and that mothers are prevented from protecting their families or

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voice of Manya recorded on the phone, pleading with her mother to rescue her from her father, who molested her for years. "I don't care if you have to break the law," she sobs, "get me out right now."

Contested custody, about 10 percent of break-ups, clogs courts. In these disputes, some studies show, a mildly abusive, or brutally battering or seriously molesting parent lurks in three fourths of cases. It can be a mother, but mostly it tends to be a father, and recent studies show fathers winning these battles 2-1.

Law guardians may not listen to their clients, the children, and they inevitably end up taking sides, then avoid communication with the losing side. They can freely engage in what lawyers call ex-parte communication they talk to one side without the other present. Judges do it, too. It's unethical and it deprives one party of a fair hearing. Yet, in our family courts, ex-parte exchanges, even hearings, can be standard operating procedure."

F. In the Courts: Fit Calif. Moms Losing Custody to Abusive Dads, 10/11/02, by Pamela Burke, Women's E News Correspondent. 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.

"Attorneys will tell women not to raise sexual abuse charges in custody hearings," says Tom Lyon, a professor at the University of Southern California Law School and a former dependency court attorney. "Judges will hold it against them as the basis for denying custody." ...

Clearly, Clarke and her allies believe that is what happened in her case. Recently declared a vexatious litigant, Clarke is barred from filing any further legal motions statewide unless she posts \$25,000 each time. But she continues to press forward with Yeaman by her side. This month the California Supreme Court denied her Petition for Review.

G. In the Courts: Desperate Moms taking Abused Children Underground, 10/07/01, Mariam Raftery, Women's E News Correspondent. 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. The involvement of the FBI in tracking down the women, charging them with federal kidnapping charges and jailing them in federal jails illustrates the involvement of the federal government in this violation of human rights. It is estimated up to 100,000 women annually go into hiding rather than expose their children to abusers.

H. Commentary, Biased Family Court System Hurts Mothers, 09/05/01, by Garland Waller, WEnews contributor. 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 interest of the child. The American Judges Foundation themselves studied the problem and found that abusers win custody 70% of the time. In her discussions with Dr. Gardner, she asked what a mother should do if her child reported abuse. He suggested she tell the child not to say such things or she would beat her.

I. The Guardian Unlimited, May 8, 2006. The problem has now spread to the U.K. as well. The story tells of children dragged kicking and screaming into cars to visit their fathers, of fathers who abduct the children and take them to a foreign country and then given unsupervised visitation again, of sons who describe in graphic detail the father's sexual abuse and are forced to visit him alone. "The court wants the fathers to have contact" said the mothers and neither the facts nor the child matters.

receiving court protection of their most fundamental rights. The Leadership Council on Child Abuse and Interpersonal Violence has gathered an extensive list of such evidence: I. Research (24 articles); II. Gender Bias Reports (6) and Reports by Testimony Project (3); III. Reports by Professional Organizations (8); IV. Scholarly Commentary (44); and V. Media Reports (22). A brief summary of the findings is footnoted below.<sup>2</sup>

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<sup>2</sup> Starting as early as 1983 in South Carolina fathers were winning in 84% of the cases including when they were violent, to 1989 when the Massachusetts court found that more weight was given to fathers' interests than those of the mother or children to a study of custody evaluators in 1996 who thought that so called alienation was more important than violence against the mother the research shows a clear picture of discrimination against women and children and violation of their rights to protection and court access. One study in 1995 found that the allegations with the most proof of abuse were the ones where the reporter was most likely to suffer sanctions including losing custody or visitation, being jailed and ordered not to report again or take the child for an examination. A study of 800 couples in 2005 showed that in nearly 50% of the cases with substantiated violence, the violence was never mentioned in the custody case. One study found that no fathers lost custody to a mother where an alleged perpetrator was in the home yet mothers lose custody frequently to fathers who are themselves alleged perpetrators. Joan Mier found in 36 of 38 cases of alleged or adjudicated abusers, sole or joint custody was awarded to the abuser. Two-third's of the decisions were overturned on appeal. In 1999, research found that only 10% of the cases resulted in the child being placed with the protective caretaker with supervised visitation to the abuser. Even with a statutory presumption against custody to a perpetrator, the law was more effective only if there was no friendly parent provision or joint custody presumption. The Michigan gender bias study found that only 58% of judges follow the state statute requiring the consideration of violence and 11% say they never follow it. California court records show that violent fathers were as likely to pursue sole custody as non-violent fathers but more likely to win than non-violent fathers. Articles and books present case after case of custody lost to abusers.

The list also contains gender bias studies that have been done in 45 states and a number of federal circuits dating from 1989 to 1998. The reports found that gender bias and negative stereotypes about women resulted in judges disbelieving women and failing to protect them and especially the children when sexual abuse allegations are raised. The early Massachusetts study found that courts are demanding more of women than men and putting the needs of noncustodial fathers above those of custodial mothers and children while other studies found that judges show a strong paternal preference.

The American Psychological Association found that violent men are twice as likely to seek custody especially if sons are involved. As early as 1987, at a legal continuing education seminar on sex abuse, protective parents were advised that without irrefutable medical evidence, they should not raise issues of sexual abuse or they would lose custody. The articles cover research from Australia to Canada and from the US to the UK.

Dallam, S. J., & Silberg, J. L. (Jan/Feb 2006). Myths that place children at risk during custody disputes. *Sexual Assault Report*, 9(3), 33-47.

In spite of more than 20 years of litigation, legislation, research and education, this 2006 article shows that the problems have not been ameliorated. The myths include that there are false more allegations of abuse during divorce, that battering women is not related to child abuse, that custody to abusers is rare, that fit mothers do not lose custody, that PAS is valid, and that women abuse children more than men. One study even found that the more honest women are about the violence, the more likely they are to receive a negative outcome. In fact mothers are pathologized and punished for taking steps to protect children. The article refers the reader to 53 other articles supporting the conclusions.

345. This concern prompted the publication of the book, EXPOSE: The Failure of Family Courts to Protect Children from Abuse in Custody Disputes in 1999 in which a well known case, Dr. Elizabeth Morgan, illustrated the failure of the U.S. courts to protect children, “When I asked the U.S. courts to protect my child from sadistic abuse and incest I was jailed three times for no crime, the third time for more than two years. Judge after judge was enraged that I asked for justice. I am one of many mothers so misused. In the end my child, more fortunate than most, was protected, but never by a U.S. judge.”<sup>3</sup> Morgan had accused her husband and his parents of abuse but was not believed even after the 14-year-old step daughter also accused him of abuse. The judge ordered unsupervised visitation and Dr. Morgan sent her child into hiding. She spent two years in jail until she was released by the passage of a law tailored for her. It was overturned a few years later but by that time, the child was 18. After Morgan and her child were discovered in New Zealand, the father sued but the New Zealand courts protected the child and refused to return her to the U.S. because it had become obvious the U.S. courts had not and would not protect her. This was however a rare victory because of the high economic and social status of the parties involved. Most litigants cannot afford nor would they know how to flee to New Zealand and they would not have access to high level Washington D.C. operatives to get a law passed for their release. Exhibit 6.

346. Richard Ducote, an attorney who has represented battered women for years said, “After twenty years in family law courtrooms throughout the country, I confidently say that no woman, despite very abundant evidence that her child has been sexually molested by her ex-husband or that she has been repeatedly pummeled by the violent father of her child, can safely walk into any family court in the country and not face a grave risk of losing custody to the abuser for the sole reason that she dared to present the evidence to the judge and ask that the child be protected.” (Exhibit 6, p. 11) Sol Gothard, Judge of the Court of Appeals in Louisiana said, “There are very few times in law when you can state anything categorically, but I can certainly say that beyond any doubt whatsoever, the problem expressed by Wendy Titelman in this book is epidemic and widespread, and it has been this way for the forty-four years that I have been involved with the legal system.” (Exhibit 2, page v)

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Jaffe, Crooks, and Poisson, Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, *Juvenile and Family Court Journal*, Fall 2003, p. 57. Exhibit 9

The time of separation is the most dangerous time when severe domestic violence and death is most likely. (p. 62) Abusers often use visitation access time as a time to threaten and abuse women. 78% of the women reported that children were the conduit to abuse. The phenomenon is so common, supervised visitation centers are recommended. (p. 63) In the past, we used to put into the orders that pick up and drop off of the children would be in front of the police station. Recent research shows that in high-conflict cases, the best interest of the child is to have a primary caretaker who has good psychological health and a cessation of the violence including not seeing the father.

<sup>3</sup> EXPOSE The Failure of Family Courts to Protect Children from Abuse in Custody Disputes: A Resource Book for Lawmakers, Judges, Attorneys and Mental health Professionals, Our Children Our Future Charitable Foundation, Los Gatos, CA, 1999, p. 1. Exhibit 6.

347. The individual stories in EXPOSE illustrate time and time again that in spite of physical, medical and eye witness evidence, which would be enough to convict the abuser in criminal court under higher standards of proof, family court judges ignore the evidence, blame the mothers and give custody to the fathers sentencing the children to years of abuse. (Exhibit 6, pps. 15, 47, 55, 108, 113,146) Negative stereotypes about mothers and bias for fathers continue to drive the resulting injustice. (Exhibit 6, p. 109) Nannette Pierson Sachs, chair of Amicus for Domestic Justice argues, “Using cases involving allegations of incest as the example, I would like to present evidence to suggest that the misfiring of the system – in these cases its failure to protect children from incest – is neither inadvertent nor accidental but deliberate and willful. Such perverse decisions as judges compelling children to visit regularly with parent-molesters and most egregiously, placing them in the custody of molesters, should not be minimized as unfortunate results that have to be tolerated so as not to undermine the public’s confidence in the legal system. Given the reality that these cases are argued and adjudicated over a period of months or even years, it is preposterous to attribute such child-jeopardizing outcomes to honest errors of an overworked or under-qualified bureaucracy (or a judge’s temporary indisposition). I will argue that professional recommendations and judicial decisions having the effect of putting children in harm’s way for sexual abuse are sufficiently common to be read as evidence of implicit understandings in a segment of the child protection field that permit, and even encourage, professionals to choose the options that will enable molesters and disempower protective parents.” (Exhibit 6, p. 144) Bellasalma argues that it is those very people who believe in the so called “traditional” gender roles of male dominance and female submission who create and accept psychological theories such as Parental Alienation Syndrome and Malicious Mother Syndrome that pathologize the reporting of abuse. (Exhibit 6, p. 156) Judges then reinforce those roles by granting custody to fathers and punishing mothers who have reported abuse.
348. Punishing professionals who report abuse is also part of the pattern and not new. Since before the time of and including Freud, professionals who report abuse, especially child abuse, have suffered various forms of retaliation. (Exhibit 6, p. 163) For centuries there has been a cyclical suppression of public and professional awareness of child sexual abuse. Freud’s colleagues threatened to destroy him if he persisted in his recognition of the prevalence of child sexual abuse. Thus, he changed his story to claim it was only fantasy but some of his followers, who have lapsed into obscurity, did not.
349. Dr. Kemp reignited the issue in 1962. During the 1970s such reporting became mandatory with immunity given to reporters. Still the backlash against those who tell the truth has been severe including ethics complaints and law suits. (Exhibit 6, p. 165- 169) Numerous examples of law suits against doctors and psychologists across the country further enforce the silence. 4 Those so called mental health experts

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4 Althaus v. Cohen, No. 70 W.D. Appeal Dkt. 1998, No. 71 W.D. Appeal Dkt. 1998, Supreme Court Pennsylvania, August 22, 2000. Parents sued the psychologist over allegations of sex abuse. The court ruled for the psychologist. <http://www.leadershipcouncil.org/1/lg/2000.html>; O’Heron et al v. Blaney et al, 276 Ga. 871, 583 S.E. 2d 834, 2003, Ga. LEXIS 608 (Supreme Court of Georgia 2003), June 30, 2003. A doctor was sued for reporting. First the district attorney brought criminal charges but the grand jury

whose theories have been challenged repeatedly as unscientific, remain today the primary courtroom advocates for fathers and are accepted by judges.

350. Attorneys who advocate for the abused children are also attacked. (Exhibit 6, p. 167-170) Garnet Harrison was disbarred in Mississippi and an arrest warrant is still out for her arrest in that state. An attorney in Georgia was threatened with prosecution, found in contempt, fined and also faced disciplinary action. The president of Justice for Children was sued for alleging corruption in Texas courts. Journalists who write in favor of the victims are attacked. Police officers and prosecutors, volunteer victim advocates and even judges who stand up for victims are persecuted. In these petitioners cases, attorneys or other helpers were threatened in the K.A., Shockome, Petitioner A, B and C and Navitril cases.
351. When the reporter is the mother, she is punished for not reporting by claiming she failed to protect the child and she is punished for reporting by losing the child in a custody battle. Such backlash has been reported by many observers since at least 1986. (Exhibit 6, p. 195) The court has not responded to protect these children. 5 A contempt citation was filed against K.A. for reporting abuse to CPS (paragraph 60). Bradshaw and Petitioner C were ordered not to report.
352. As Director of National Center for Protective Parents, H. Joan Pennington's testified to Congress (Exhibit 6, p. 181-182) that 20 years of public outcry about battering has resulted in judges who still don't acknowledge domestic violence and its impact on custody. She alleges the legal system has failed miserably to protect abused children as was found in New York by Assemblyman Jerrold Nadler. (Exhibit 6, p. 201) As the pattern repeats state after state, attorneys are advising parents not to raise the issues of abuse if they want custody. (Exhibit 6, p. 183) Appellate courts in general do not disturb lower court findings because of the great weight granted to the judge who sees the witnesses and hears the testimony.

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refused to indict. Then the abuser sued civilly. The doctor prevailed.  
<http://www.leadershipcouncil.org/1/lg/2004.html>; Ouvellet et al v. Tillitski et al, Court of Appeals of Georgia, Third Division, August 27, 2004. The abuser sued the psychologist for reporting sexual abuse of his son. The court held for the psychologist. <http://www.leadershipcouncil.org/1/lg/2004.html>; P.T. et al v. Richard Hall Community Mental Health Care Center et al, Superior Court of New Jersey, Appellate Division, November 25, 2003. A psychologist who gave his opinion in a child custody sexual abuse case was sued. The court held the psychologist had complete immunity and no duty of care to the non custodial parent. <http://www.leadershipcouncil.org/1/lg/2003.html>; September 22, 2004. Children's Hospital was ordered to pay 1.2 million dollar to a father whose case was discussed on a CNN broadcast about PAS. A judge had previously ruled that the allegation was without merit and barred any further examinations of the child or disclosure of facts to anyone. <http://www.leadershipcouncil.org/1/lg/2004.html>; Morrow v. Ripley. While there was a criminal action pending, the accused sued the grandmother of the 7-year-old girl claiming she was coached. The civil case was held pending the outcome of the criminal one. <http://www.leadershipcouncil.org/1/lg/2004.html>. While in most cases the professionals prevail, it still costs them much time and money to defend. It takes only one such suit to silence many others who would report but for the threat of suit. Also a ruling for 1.2 million is a serious deterrent.

5 Dziech and Schudson, On Trial: America's Courts and Their Treatment of Sexually Abused Children, state, "The critique is predictable; courtroom justice is a "sometime thing" in which conservative rich men make the rules and play the game for the benefit of conservative rich men. The rest – elderly, poor, women, minorities and children, are powerless." (p. 21)

353. The federal courts will not accept custody cases as divorce is exclusively a state matter. So the cases brought at federal court have been brought on other grounds. One case that was accepted at the federal level was Chrissy F.<sup>6</sup> The Chrissy F. case (in which Harrison was one of the attorneys) was denied certiorari to the Supreme Court, killing the hopes of thousands of protective parents. (Exhibit 6, p.181) As one prominent family law attorney stated, “If the goal of the family court system is to protect as many sexually abused children as possible while still respecting the fundamental concepts of due process of law, our current system is an utter failure.” (Exhibit 6, p. 208)
354. Several qualitative studies have been done to document this pattern of bias against mothers and the states failure to protect children. *Battered Mothers Speak Out*, a report published by the Battered Mothers Testimony Project (BMTP) at Wellesley College in November 2002 (7) documents the human rights violations battered women suffer when they fight against their abusers for custody of their children in the Massachusetts family courts. Since 1999, project co-directors interviewed 40 battered mothers with experience in 11 of Massachusetts’ 14 counties. Said Cuthbert, “Despite their diversity, the problems that they identified were remarkably similar. The courts fail to protect battered women and children by issuing child custody rulings that endanger them. Family courts give custody to batterers. Child abusers are given unsupervised visitation. Women and children are required by the courts to interact with their abusers with no protection.” (See executive summary, Exhibit 25)
355. In court, women are often at a disadvantage. A law that could provide critical protection—the Massachusetts Presumption of Custody Law that affirms that the children’s best interests are not served when they are placed in the custody of a batterer or child abuser is not regularly enforced. Women usually receive custody in uncontested cases, but the 1989 gender bias study commissioned by the Massachusetts Supreme Judicial Court found that fathers win three times more often than mothers in contested custody battles.
356. The Battered Mothers’ Testimony Project found that the Massachusetts Family Court system violated human rights through:
- a. Failure to protect battered women and children from abuse: incidents include granting child custody to batterers.
  - b. Discrimination and bias: holding mothers to a higher parenting standard than fathers.
  - c. Degrading treatment: court investigators treat battered women with disrespect.

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<sup>6</sup> Chrissy F by her next friend Donna Medley v. the Mississippi Department of Public Welfare, W S 161615 (USDC So. D Miss. 1991)

<sup>7</sup> Wellesley Center for Women, Women’s Rights Network, Wellesley College.

- d. Denial of due process: court officers pressure battered mothers to engage in unsafe face-to-face mediation with their abusers.
- e. Allowing the batterer to continue the abuse through the court system: battered mothers are harassed emotionally and financially when batterers can file multiple, baseless motions.
- f. Failure to respect economic rights: judges fail to hold batterers accountable for nonpayment of child support.

357. In an effort to replicate the Wellesley study in a very different state, the Arizona Coalition Against Domestic Violence carried out a two year study of 57 women who had gone through a custody battle in Arizona family courts. <sup>8</sup> In the AZ 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) Some courts limited the case to three hours when a fundamental issue such as child custody and violence was presented. Some courts limit temporary hearings to 20 minutes, 10 each side. In reality, the final order is the same as the temporary in almost every case so in reality, parents are given 10 minutes to present their case on the most important issue in their and their children's life. (p. 49) Likewise women were afraid to raise issues of violence for fear they would be used against them. (p. 48) (Exhibit 8)

358. In the AZ study, 86% of the participants reported discrimination based on gender, socioeconomic status, religion, language and race. (Exhibit 8, p. 49, 89) Examples of such behavior are illustrated on page 51-2, and 95 of Exhibit 8. The judges continued to order mothers into extremely dangerous situations and 37% said that violence is no longer a concern after the divorce. In one egregious case, the judge ordered the mother to deliver the child to the father though he had threatened repeatedly to kill her and the man's therapist felt the threat was credible enough to warn the mother and the court! (Exhibit 8, p. 62) This particular father had a long history of mental health problems and arrests.

359. The father's rights are often privileged over the mother's or the right of the child to safety. (Exhibit 8, p. 62) Many participants in the study felt the judge was improperly delegating the judicial role to the evaluators. (Exhibit 8, p. 63) By relying on the evaluators report when it is based on junk science such as PAS, the evidence rules are being subverted as is due process for the litigants. As reported in the Children in the Crossfire series of studies, when documentation of the abuse toward the mother was given to the mediator, fathers were more apt to win custody. (Exhibit 8, p. 53)

360. The Arizona studies main findings were:

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<sup>8</sup> Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, Arizona Coalition Against Domestic Violence, June 2003. Exhibit 8.

- 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.

361. For this group of battered mothers, state law was violated at virtually every turn. Constitutional issues such as due process, equal protection and the fundamental right of parenting were violated by arbitrary rules and actual practice. The fundamental precepts of international human rights law were violated. The children's rights to a violence-free life and due process in the courts according to the United Nations Convention on the rights of the Child were also violated.

362. In the same year, a study was released regarding the domestic relations division of the Philadelphia Family Court. <sup>9</sup> While the methodology was different, the findings were equally horrific. A summary of their findings includes:

- a. Limited access to court, inadequate length of hearings, lack of appropriate translation, disrespect and lack of information;
- b. Backlogs leave families in distress and especially battered families in danger;
- c. The main petitioners are women, gender bias contributes to a distorted application of the law and subjects women to condescension, indifference and hostility;
- d. Applicable legal standards are not always observed especially in child custody cases leaving many families at risk;
- e. Due process is lacking; more than half of the protection order cases were completed in five minutes or less; 75% of protection order hearings and 50% of custody hearings are completed in 10 minutes or less, no more than five minutes was spent on more than half of the litigants in custody cases;
- f. Even when looking at protection from abuse cases being heard only on the merits with both parties present; 50% were heard in less than 10 minutes;
- g. Even when looking at child custody cases being heard on the merits with both parties present, 39% of the cases were heard in less than 10 minutes;
- h. African-Americans (petitioners who are mainly women) were given less time than Caucasians in custody cases;
- i. Some judges refused to hear evidence of domestic violence in custody cases;
- j. Some litigants were not allowed to present their evidence or question their opponent;
- k. Some judges refused to issue protection from abuse orders even though evidence of violence had been presented;
- l. Some victims were ordered to joint counseling though there was domestic violence;

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<sup>9</sup> Justice in the Domestic Relations Division of the Philadelphia Family Court: A Report to the Community, Women's Law Project, Philadelphia, Pa, April 2003. Exhibit 10.

- m. Many judges showed ignorance of domestic violence and its effects, some advised the women to just live with it, some chastised women for seeking protection orders;
- n. Litigants were frequently attacked or threatened in or near the court with little or no security;
- o. Mothers were held to higher standards than fathers;
- p. The procedures did not meet the Trial Court Performance standards established by the National Center for State Courts;
- q. The researchers felt that drastic underfunding of the domestic relations division may be related to the gender bias as most petitioners are women;

363. In California, the California Protective Parents Survey project collected questionnaires nationally from September 2001 to December 2004 and netted 164 responses nationally and 93 in California. Exhibit 11 For both groups, 83% of the primary caretakers had primary custody at the beginning of the litigation. Mothers initiated litigation in 63% of the cases in CA and 61% of the cases nation wide. The main issue was child custody and visitation (94%). The mothers alleged the fathers had substance abuse issues (69% CA, 65% US); a criminal history (55% CA, 52% US); the mother was a victim of domestic violence (88%); allegations of child abuse arose during the litigation (91%), 71% was physical abuse and 65% sexual; and the father threatened to take the children if the mother left (74% CA, 78% US). Medical or physical evidence was submitted by the mother in 60% of the cases, other corroboration was presented in 80%, and the child identified the father as the perpetrator (74%). The evidence was ignored by the court (97%). Though 88% of the mothers reported they were victims of domestic violence, the mother was advised not to mention domestic violence or child abuse in court (67% CA, 64% US) and was advised by her attorney that pursuing court action would harm the case (62% CA, 57% US). Custody was changed over mother's objection or in an emergency hearing (70%). The most potent reason for custody to change to the father was an allegation of child abuse (67% CA, 62% US). After litigation, 19% of the mothers had primary custody yet 71% of the children continue to report abuse by the father.

364. The mother was herself restricted from all contact with the child at some point (60% CA, 55% US). She was put on supervised visitation at some point (51% CA, 44% US). Parties were ordered to mediation (91% CA, 75% US). A child custody evaluator was selected by the court (86%). PAS was specifically used against mother (40% CA, 41% US) or Gardner quoted (16%) or the term "alienator" used (27% CA, 29% US). The mothers felt the result was due to discrimination (97%), unethical behavior (74-80%), gender bias (68-70%), and fathers having more money (64-65%). Though nearly a third of mothers spent over \$90,000 on the case and had to file bankruptcy, for nearly 80%, the case continues. The mothers felt due process was violated by the inability to present her case, inadequate or incomplete transcripts,

insufficient time, no attorney, mother threatened, *ex parte* hearings, refusal to allow mother to see evaluations and transcripts, and no reporter at the hearing so an appeal was not possible (55-88%).

365. The resulting situation has left fathers with full custody even when he was identified as the perpetrator of violence (41% CA, 40% US); mother has no contact with the child (22% CA, 21% US); mother has supervised visitation (18%); they have joint custody (22%); mother has primary custody (16% CA, 19% US), father has supervised visitation (7%). The children continue to report abuse (74% CA, 71% US) but mother is unable to protect the child (82%) because she fears that reporting abuse will result in her contact with the child to be terminated (56% CA, 60% US). In California, in 85% of family law cases, at least one party does not have an attorney.

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366. On May 10, 2006 in Delaware, the organization Common Cause held hearings on the family court system and found faulty records, inaccurate transcripts and secretive proceedings. 11

367. An investigative reporter in Phoenix, Arizona admitted that when she first heard stories that judges were giving custody to abusers, she thought it was just hysterical women making claims and that it could not be true. She admits now that she was wrong. 12 As she states, the bottom line is that abusive fathers are convincing judges to ignore children's cries of abuse, claiming that it's really the mothers who are coaching the children. The fathers get custody; the mothers get no or limited visitation; and the children are sentenced to a life of hell. She relates a case where the mother was threatened by the judge, on pain of jailing, not to bring forth any more allegations of abuse or risk losing her child altogether. Accusing your wife of Parental Alienation Syndrome (PAS) is advice *du jour* on father's rights websites. She tells the story of a woman who fought for years and pleaded for protection for her child. She was accused of fabricating it. The father killed the child in 2004. Exhibit 12. In another case in Arizona, a mother after pleading in vain was forced to send her daughter to the fathers for a weekend. Thinking it would keep her safe, a friend of the child went with her. The father killed them both.

368. A newspaper article in June 2006, describes what the author believed to be the only case in which a mother accused of PAS won her child back before she turned 18 – after the child ran away from home for more than 8 months. 13 The mother fought for 13 years while her daughter remained with the father she claimed was abusive. The child sought the assistance of an NGO for children's rights and was placed in a foster home eventually to be returned to her mother at the age of 17. Utah had

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10 [www.courtinfo.ca.gov/programs/cfcc/programs/description/flic.htm](http://www.courtinfo.ca.gov/programs/cfcc/programs/description/flic.htm)

11 <http://www.leadershipcouncil.org/1/1g/2006.html>, accessed 10 December 2006.

12 Jana Bommersbach, Jana's View, Phoenix Magazine, May 2006, p. 28. Exhibit 12.

13 Article Launched: 6/18/2006 12:00 AM , Mom termed 'parental alienator' wins rare vindication in courts ,BY TROY ANDERSON, Staff Writer, LA Daily News. Exhibit 13.

validated the abuse claims but Los Angeles County ruled that the more than 100 reports of abuse against this child were unfounded. The article claims that some judges and the California Judicial Council have tried to eradicate the use of PAS in custody cases but have failed. California National Association for Women (NOW) said they had hundreds of such cases where children are put and left in harms way. Exhibit 13.