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Confirmed: Custody Courts Fail Children

Custody courts have been ruining children's lives for decades---just like the Catholic Church! Increasingly, over the years, safe, protective mothers have been complaining about the widespread failure to protect their precious children. The courts have dismissed the mothers as "disgruntled litigants." Victims of domestic violence (DV) were silenced, gagged, punished, bankrupted, jailed and deprived of a relationship with the children they risked their lives to protect.

Understandably, many mothers believe this American tragedy is caused by corruption or worse, but there is a more realistic explanation. The courts developed responses to DV custody cases at a time when no research was available. The popular assumption in the 1970s was that DV was caused by mental illness, substance abuse or the actions of the victims. This led courts to turn to mental health professionals as if they were the experts on DV. Later research proved the initial assumptions were wrong,¹ but the courts have never used research to reform their outdated and discredited practices.

Most custody cases, like any litigation, are settled more or less amicably. The problem is the 3.8% of cases that require trial and often much more.² Court

¹ Domesticshelters.org, "Abuse Cannot be Blamed on Mental illness." Available at <https://www.domesticshelters.org/articles/identifying-abuse/abuse-cannot-be-blamed-on-mental-illness>

² Stephanie J. Dallam, "The Parental Alienation Syndrome: Is It Scientific?" in Expose: The Failure of Family Courts to Protect Children From Abuse in Custody Disputes (E. St. Charles & L. Crooks eds., 1999). available at <http://leadershipcouncil.org/1/res/dallam/3.html>.

professionals have been taught to treat contested custody as “high conflict” by which they assume both parents are angry at each other and act out in ways that harm the children. The research is clear, however, that a large majority of contested custody cases are DV cases in which the most dangerous abusers seek custody in order to regain what they believe is their right to control their partners.³ These are the cases in which mothers, children and bystanders lose their lives. More often the children survive but suffer through pain and torment that often leads to shorter lives.

DV is about control, including financial control. This means that in contested cases, the abusive father usually controls most of the economic resources. Therefore, the best way for lawyers and mental health professionals to make large incomes is to support approaches that favor wealthy abusers. The pernicious Parental Alienation Syndrome (PAS) was concocted to give these professionals an argument to support abusive fathers. This started the cottage industry that has done so much to help abusers and spread misinformation in the courts. Today, judges have spent their entire careers hearing this misinformation, so it is deeply ingrained.

Gradually, as the DV movement developed, more and more research became available. The research undermines many of the original assumptions and demonstrates the harm caused by many standard practices, including relying only on mental health professionals who have limited knowledge of DV or child sexual abuse.⁴ With each new scientific study, mothers and the professionals who try to help them

³ Peter G. Jaffe, Claire V. Crooks & Samantha E. Poisson, “Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes,” 54 JUV. & Fam. Ct. J. 57 (2003).

⁴ Daniel G. Saunders, Kathleen C. Faller & Richard M. Tolman, Child Custody Evaluators’ Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations. (June, 2012). available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>.

hoped the courts would take a fresh look at their failed practices. Each time we have been disappointed, and the tragic outcomes hurt so much more because we know they can be prevented.

Failure to Integrate Current Scientific Research

The ACE (Adverse Childhood Experiences) Studies are medical research from the Centers for Disease Control and Prevention.⁵ The Saunders Study (2012) is scientific research from the National Institute of Justice in the US Justice Department.⁶ This highly credible research goes to the essence of the best interests of children. The National Council of Juvenile and Family Court Judges seeks to train judges about this vital research. Any attempt to resolve custody cases involving DV or child abuse without this research should be understood as malpractice.⁷ And yet this is exactly what most custody courts do every day.

The first ACE Study was published in 1998. The initial purpose was to use this information to treat medical patients. In many cases, patients suffer from unexplained ailments and pain. Doctors rarely considered that childhood trauma from decades earlier could be the cause. The ACE research demonstrates that childhood trauma often causes health problems throughout victims' lives.⁸

Dr. Vincent Felitti, lead author of the original ACE Study, now believes that prevention is the most important use for his research.⁹ ACE is often compared to the

⁵ Vincent J. Felitti, Robert F. Anda, D. Nordenberg, D. F. Williamson, AM Spitz, V. Edwards., MP Koss, et al. "The Relationship of Adult Health Status to Childhood Abuse and Household Dysfunction." *American Journal of Preventive Medicine*. 1998; 14:245-258. Available at <https://www.ncbi.nlm.nih.gov/pubmed/9635069>.

⁶ Saunders, et.al. *supra*. Note 4

⁷ Barry Goldstein, "Warning to Judges, Evaluators, Caseworkers and Legislators." Available at <https://barrygoldstein.net/articles/warning-to-judges-evaluators-caseworkers-and-legislators>

⁸ Felitti, et.al, *supra*, note 5

⁹ Barry Goldstein, *The Quincy Solution: Stop Domestic Violence and Save \$500 Billion*. (2014)

1964 Surgeon General's report linking cancer and smoking.¹⁰ Society used this knowledge in a variety of ways to prevent smoking and thus reduce cancer, heart disease and many other serious health problems.

The ACE research has the potential to provide even more benefits to society. For thousands of years society has permitted and even encouraged behavior that is now recognized as DV and child abuse. The present level of cancer, heart disease, diabetes, mental illness, substance abuse, suicide, crime and many other health and social problems is related to this long history of tolerating DV and child abuse.¹¹ The exciting opportunity ACE provides is that these scourges of society can be dramatically reduced by prevention of abuse. Custody courts need to be part of the solution.

At a time when ACE says prevention of abuse is critical, the Saunders study demonstrates the widespread failure of judges, lawyers and evaluators to recognize DV and child abuse.¹² It is difficult for custody courts to protect children when they are relying on professionals who do not know what to look for when responding to reports of DV and child abuse.

ACE Research

What Courts Are Missing

DV and child abuse are far more harmful to children than previously understood. Children exposed to ACEs will live shorter lives with increased risk of health and social problems for the rest of their lives. Most of the harm is caused not by the immediate physical injuries that courts tend to focus on but the fear and stress caused by the

¹⁰ "History of the Surgeon General's Reports on Smoking and Health." Available at https://www.cdc.gov/tobacco/data_statistics/sgr/history/index.htm

¹¹ Felitti, et.al, *supra*, note 5

¹² Saunders, et.al. *supra*, note 4

pattern of abuse. One-quarter of children in the United States will suffer sexual abuse before they reach the age of 18.

Significantly, the ACE research used a methodology that eliminated any possibility of false reports.¹³ This is important because the myth that mothers and children frequently make false allegations is one of the biggest obstacles to preventing child sexual abuse.

Common Mistakes Caused by Ignorance of ACE

Although DV advocates have been saying for decades that physical assaults are not the most harmful part of DV, courts have continued to focus almost exclusively on physical injuries. ACE demonstrates it is living with the fear and stress caused by living with an abuser that creates most of the harm.¹⁴ Most contested custody cases involve at most “only” a few incidents of physical abuse. Instead abusers use a variety of other coercive and controlling tactics to remind the direct victims and the children what can happen if she doesn’t obey. One physical assault is enough to alert children of what the abuser is capable of. Victims live full time with the fear that causes stress because they never know when he will cause another incident.

Until recently, researchers believed the United States was spending \$5-8 billion annually on health costs related to DV.¹⁵ Based on the ACE Research, we now know the full cost is \$750 billion.¹⁶ The earlier calculations applied only to immediate physical

¹³ Felitti, et.al, *supra*, note 5

¹⁴ *id*

¹⁵ Robert Pearl, “Domestic Violence: The Secret Killer that Costs \$8.3 Billion Annually.” (2013) available at <https://www.forbes.com/sites/robertpearl/2013/12/05/domestic-violence- the-secret-killer-that-costs-8-3-billion-annually/#3ce3a1634681>.

¹⁶ T. Dolezal, David McCollum & M. Callahan, “The Economic Impact of Violence and Abuse (2009). Available at www.ccasa.org/wp-content/uploads/2014/01/economic-cost-of-vaw.pdf

injuries while the updated research includes all the health problems caused by living with the fear and stress.

Many custody courts place a time limit on abuse incidents so that older incidents, usually physical assaults, cannot be considered. The rationale for taking DV into consideration is the impact of such behavior on children. The passage of an arbitrary number of years is unlikely to change the fear and stress a physical assault creates. More common incidents of DV that are neither physical nor illegal remind the victims of what the abuser is capable of and so the mother and children continue to live with the fear and stress that ACE tells us causes so much harm. The time limit makes it easier for courts and abusers but not for children.

Common approaches that are inappropriate in DV cases, such as calling such cases “high conflict” and mandating co-parenting, are based on the demand that the victims just “get over it.” The fear caused by DV and child abuse is viewed as an obstacle to the shared parenting arrangement courts prefer rather than a good reason to avoid a harmful arrangement. Courts have the power to force children to interact with the abuser, but they can’t take away the fear and stress. This pushes children to use survival mechanisms that force the painful incidents deeper inside them. ACE tells us that eventually the harm will come out in much more dangerous forms.¹⁷

High conflict approaches are not based on scientific research and so fail to consider that most contested custody cases are really about DV. High conflict approaches create a false equivalency between abusers and victims. Society tells women to leave abusers, but custody courts punish mothers for trying to minimize

¹⁷ Felitti, et.al. *supra*, note 5

contact with someone who brutalized her. The only way to reduce the fear and stress caused by ACEs is to protect children from interactions that reignite the fear and stress. This can be done by forcing abusers to change their behavior or limiting contact to supervised visits. Instead, high conflict approaches pressure the victims to interact with the abuser and punish mothers for trying to protect their children.

Courts like shared parenting approaches because they view this as the best way to create compromise and settlement. Even dangerous abusers are unlikely to be awarded anything less than unsupervised visitation, which gives them incentive to demand shared parenting. Most states have laws that are supposed to bar shared parenting in DV cases. Even the research most favorable to co-parenting found it only works under the best of circumstances. Unequal power and fear of the abuser are far from the best of circumstances.¹⁸

Children have a good chance to recover from exposure to ACEs if they are no longer exposed to ACEs and can access the therapy and medical treatment they need.¹⁹ This requires the safe parent to have control over health decisions. Saunders found that abusers use shared parenting to block the mother's decisions. This is particularly true when mothers seek therapy for their children, because an abuser fears the child will reveal his abuse.²⁰ Unfortunately, courts frequently get around legal obstacles to shared parenting and the harm it causes children by pressuring mothers to accept shared parenting with their abuser. In many cases, mothers are punished and viewed as uncooperative if they object to such a harmful arrangement.

¹⁸ Gabrielle Davis, et.al, "The Dangers of Presumptive Joint Physical Custody." (2010). Available at <http://www.thelizlibrary.org/liz/Dangers-of-Presumptive-Joint-Custody.pdf>

¹⁹ Goldstein, *supra*, note 9

²⁰ Saunders, et.al., *supra*, note 4

The ACE research demonstrates the need for trauma-informed professionals in custody cases involving possible DV and/or child abuse. Instead, the courts frequently use the same small group of evaluators and other professionals that would be used in cases that do not involve abuse. These unqualified professionals routinely disbelieve or minimize true reports of abuse. This leads to harmful decisions that remove the child's last chance to overcome the harm caused by exposure to ACEs.²¹

The ACE research demonstrates that exposure to DV and child abuse cause far more harm than previously understood. This means that when courts try to resolve custody in these cases without taking ACEs into consideration, they minimize the harm to children. States typically require courts to consider a large number of factors, and judges usually have complete discretion. The ACE research establishes that DV and child abuse are far more consequential to children than any of the other factors that courts often treat as of primary importance.²²

I have seen many cases in which courts treated a child's fear of the father as an obstacle that needed to be overcome rather than a warning of potential harm and danger. In many cases, the mother is blamed for her child's fear. The ACE findings tell us that it is the fear and stress from abuse that causes most of the harm. The focus should be on how to reduce rather than ignore the fear. Courts that are not informed by the ACE research have little chance to properly understand the fear caused by an abuser.

Harm from Failure to Integrate the ACE Research Findings

²¹ Goldstein, *supra*, note 9

²² Felitti, et.al, *supra*, note 5

Some court officials may believe that the failure to integrate ACE and other vital research is neutral because it applies equally to both sides. In reality, ignorance of the ACE findings strongly benefits abusive fathers and harms protective mothers and their children. Ignorance that makes it harder to recognize abuse and easier to minimize the harm inflicted by the abuser inevitably tilts court decisions in ways that err on the side of harming children.

The failure to consider the ACE research makes it harder for courts to recognize DV, because it removes two vital tools from the courts. All of the DV tactics, and not just physical abuse, contribute to the fear and stress that causes so much harm to children. The first tool--looking at the pattern of abusive behavior —provides the most important information necessary for detecting DV. Recognizing the overall pattern of behavior – examining many incidents of abusive behavior over the course of time-- which helps establish the motives of abusers. In addition, abusive tactics persist throughout the course of litigation, which ought to convince the court that the abuser hasn't changed his ways.

The second tool for detecting DV involves recognizing the fearfulness of the victim and her children. The purpose of DV tactics is to pressure and intimidate the partner to obey the abuser. This inevitably causes fear in the mother and children; therefore, court professionals should pay attention to the level of fear they express.

One of the problems with the courts' focus on incidents rather than patterns is that a victim might strike back out of anger or frustration, or the abuser may claim she did. Often in these instances, court agents claim that the victim is the one who is

abusive. However, it is mother's and children's fear of the abuser that indicates who is the perpetrator and who is the victim.

The most outrageous statistic I have found related to ACE is that in the U.S, about a quarter of all children are sexually abused by the time they reach adulthood.²³ The long-lasting sexual abuse scandals in the Catholic Church, in the Boy Scouts, at Penn State, in the family courts, at prep schools, and in many other respected institutions are the rule and not exceptions. These patterns can flourish only in systems that are fundamentally flawed.

Victims of child sexual abuse are treated differently depending on their relationship with the alleged offender. Only when the suspect is a stranger does the legal system take the assault seriously. The investigation is led by law enforcement; they seek to immediately interview the suspect and attempt to have him take a lie detector test. The purpose of the investigation is to gather evidence so they can bring criminal charges.²⁴

Most child victims are abused by someone they know, and for young children, this is likely to be a close family member, like a father or step-father.²⁵ In most cases, child abuse investigations are conducted by social workers. The parents are given notice before any interview, so if they are motivated to do so, they have time to destroy any evidence and silence the child. The purpose of the investigation is reunification so evidence is not collected or preserved. If the case later becomes part of a custody

²³ id

²⁴ Camille Cooper, "Child Protection in America: Separate and Unequal." In *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*. V. II. Ch. 7 (2016) (Mo Therese Hannah and Barry Goldstein, eds.)

²⁵ Roxanne Lieb, Vernon Quincey, & Lucy Berliner, "Sexual Predators and Social Policy." In *Crime and Justice* 43-114 (Michael Tonry, ed., 1998); David Finkelhor et. al., *Missing, Abducted, Runaway and Throwaway Children in America*. (1990)

dispute, the lack of evidence is treated as proof the mother coached the child.²⁶ The failure to bring charges against the alleged offender is treated as proof the reports must be false.

Custody courts have a culture in which any report of child sexual abuse is viewed as suspect. As I will discuss in the section about the Saunders study, most court professionals believe in the myth that mothers frequently make false reports. Attorneys routinely discourage mothers from raising the issue or even refuse to present evidence of child sexual abuse.

Courts often make preliminary orders that serve to silence the children. The courts usually use the same evaluators and other professionals in most cases. They rarely have the specialized child sexual abuse expertise that is needed. This is the equivalent of using a general practitioner instead of a specialist when a patient has cancer or heart disease.

There are several reasons why a child sexual abuse report may be made. Most of the time it is because the report is true. The next most likely explanation is that the suspect violated the child's boundaries: the father might have slept in the same bed, laid down beside the child while putting them to bed, or engaged in some other benign act that made the child uncomfortable. In these cases, the father is completely safe and can easily be instructed to change his behavior, which would improve his relationship with the children, But, in a contentious custody case, it is easier to accuse the mother of coaching the child to make a false allegation.

²⁶ Cooper, *supra*, note 24

Other common explanations include equivocal evidence²⁷, a good faith report that turns out to be wrong, and the least likely, which is that the mother deliberately made a false report. This occurs less than 2% of the time,²⁸ but it is what the courts focus on more often than all the more likely explanations. Dismissing reports of a painful issue is the easiest thing for courts and other authorities to do, but it is why we so often fail to protect children.

The ACE research confirms what courts should already know: that cases involving DV or child abuse may involve life or death issues. As discussed later in this article, over 700 children involved in contested custody cases were murdered in the last ten years.²⁹ In addition, such children die early from suicide, drug overdoses, accidents and crime. If they survive the immediate risks, they are more likely to suffer cancer, heart disease and other medical problems that reduce their life expectancy. This is caused by the fear and stress that courts fail to take seriously.³⁰

Aside from early death, children impacted by exposure to ACEs will suffer from health and social problems. The stress caused by ACEs is responsible for many common diseases and also leads to bad choices that harm their lives. The children are less likely to reach their potential and more likely to be involved in crime, substance abuse and risky sexual behavior. The stress and missed sleep undermine their

²⁷ In the Elizabeth Morgan case, the judge ruled that there was equal evidence on both sides of the sexual abuse case. Therefore, because the mother did not have sufficient proof the child would be required to have unsupervised visits with the alleged abuser.

²⁸ Nicholas M .C . Bala et al ., *Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper* (Department of Justice, Canada, 2001), http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2001/2001_4/2001_4.html.

²⁹ Center for Judicial Excellence, "U.S. Divorce Child Murder Data." Available at <https://centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/>

³⁰ Felitti, et. al. *supra*, note 5

attention in school and cause children to act out in ways that take time away from other students.³¹

When courts fail to understand how children are impacted by ACEs, they issue decisions that isolate and silence children. This makes it safer for abusers to continue to harm these and other children. In many cases, children believe they are being punished for revealing their father's abuse. Frequently, the worst punishment is that they lose their mothers. They learn to never report mistreatment, even by strangers, which means the children become more vulnerable to further abuse. More generally, the children spend their childhoods in pain, fear and sadness.

Courts that fail to consider ACEs routinely deny and minimize reports of abuse. Inevitably, this leads to children not receiving the treatment they need. They are often placed with abusers who actively oppose such treatment. The abuse becomes normalized, and the stress is left untreated, thus harming the children for the rest of their lives.

Needed Remedies: The courts' routine failure to use trauma-informed professionals in cases where children were likely exposed to multiple ACEs demonstrates that the court system is not handling abuse cases with the gravity they deserve. A mental health degree does not provide the necessary knowledge about ACEs, just as it doesn't convey the needed expertise about DV and child sexual abuse. In most cases, the children's ACE score and potential consequences are not even discussed. Trauma-informed experts know how to recognize exposure to ACEs and emphasize the treatment they need to recover.

³¹ id

In any case in which there is evidence or reports of DV or child abuse, it should be mandatory to calculate the children's ACE score. This is one way to make sure courts treat abuse cases more seriously. The ACE score helps courts understand the harm children have suffered and their need for treatment, ensuring that the courts pay attention to the most important issues.

DV custody litigation is often the last chance to save children from the consequences of exposure to ACEs. Evaluations, recommendations, and decisions made by the courts should include a discussion of the treatment and remedies needed to reduce children's fear and stress. These are the responses needed to prevent the awful consequences that the children would otherwise endure.

In summary, the widespread failure of courts to include the ACE research in its consideration of abuse cases causes courts to minimize the harm caused by a parent's abuse. The ACE research informs us that exposure to ACEs is a matter of life or death and that the courts should treat these cases accordingly.³²

A lot of the mischief created by custody courts is based on the misplaced belief that children need both parents equally. Children do not need both parents equally; they need their primary attachment figure more than they need the other parent, and they need their safe parent more than the abusive one. Children do benefit from having both parents in their lives, but only if both parents engage in safe parenting. When a parent's poor parenting causes a child to live with fear and stress, that parent is causing more harm than good.

³² id

Children exposed to ACEs will need medical treatment as health problems develop, and therapy. Part of the treatment is to reduce the stress that can cause so much harm. Abusers often use shared parenting to interfere with needed treatment.³³ Accordingly, it is critical for the safe parent to have complete control over health care.

The ACE research established that most of the harm from DV and child abuse is caused by the fear and stress these induce in the child. The selection of a custodial parent should be based on which parent is most likely to reduce the fear and stress.

Similarly, decisions about visitation should emphasize the need to reduce the child's fear and stress. This means visitation must be supervised until and unless the abuser changes his behavior. The end of the parents' relationship does not end his abuse or the fear and stress experienced by the children. The abuser should complete an accountability program and convince a judge that unsupervised visits are safe. The court should consider whether the abuser accepts sole responsibility for his abuse, understands the harm he caused, is committed to never abusing anyone again, and realizes that any further abuse could end the relationship.

The Saunders Study

What Courts Are Missing: There is now a specialized body of scientific research about DV that can be used to help courts recognize and respond to reports of DV. Present practices fail to use this research, leading directly to mistakes that place children in jeopardy. The professionals upon whom the courts rely for expertise are rarely familiar with this current research and so focus on less important issues.³⁴ The courts fail to scrutinize the work of these professionals, which they need to do in order

³³ Saunders, et. al., *supra*, note 4

³⁴ *id*

to reject recommendations that are unsupported and often contradicted by this research.

Saunders found that judges, lawyers and especially evaluators need training in specific DV topics, including screening for DV, risk assessment, post-separation violence, and the impact of DV on children. Many evaluators who claimed to conduct DV screening did so using psychological tests that provide no information about DV. Other evaluators demonstrated their lack of DV knowledge by making clear mistakes in responding to vignettes that Saunders provided as part of his study. Many court professionals discredit DV reports based on common non-probative information; they fail to look for the pattern of abuse or to consider which parent is afraid of the other.³⁵

There are several behaviors associated with greater risk of lethality, but few court professionals focus on these behaviors or conduct a risk assessment in DV custody cases. Few court professionals understand that DV is not caused by anything the victim did. Abusers often continue their abuse during litigation and are likely to abuse future partners. These concerns are rarely considered in DV custody cases. The ACE research demonstrates the impact of DV on children, but again, courts rarely focus on this vital information.

Most evaluators and other court professionals do not have the specific DV knowledge needed by custody courts.³⁶ Legal and mental health degrees do not provide the DV knowledge needed to recognize the risk from DV.³⁷ Workshops and trainings in DV can be helpful but do not provide the level of expertise needed. Many of

³⁵ id

³⁶ id

³⁷ id

the trainings relied upon by the courts are not done in a multi-disciplinary manner, do not include DV advocates, and may include misinformation about “parental alienation” and other unproven theories.

Professionals without the specific DV knowledge recommended by Saunders tend to focus on the myth that mothers frequently make false reports and on unscientific alienation theories.³⁸ Deliberate false reports of abuse by mothers occur less than 2% of the time.³⁹ Nevertheless, many unqualified professionals continue to rely on stereotypes and propaganda and so assume false reports are far more common than they actually are.⁴⁰

Parental Alienation Syndrome (PAS) was developed not on the basis of any research but rather on the personal beliefs, experiences, and biases of a psychiatrist, Dr. Richard Gardner. His beliefs included many public statements that sex between adults and children can be acceptable. His theory was created to support the cottage industry of lawyers and mental health professionals who make large incomes by supporting wealthy abusers. Because of its notoriety, PAS is often used under the guise of different names, such as “alienation” or “parental alienation.”⁴¹

The American Psychiatric Association rejected inclusion of bogus alienation theories from the DSM-V (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition), despite heavy lobbying by the cottage industry, because there is no scientific basis for the theory.⁴² Some courts mistakenly consider alienation as valid because

³⁸ id

³⁹ Bala, et.al., *supra*, note 27

⁴⁰ Saunders, et.al., *supra*, note 4

⁴¹ Paul Jay Fink, “Parental Alienation Syndrome.” In *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*. (Mo Therese Hannah and Barry Goldstein, eds.) ch. 12 (2010)

⁴² “Good News: APA Rejects Parental Alienation Disorder,” 16 *Domestic Violence Rep.* 88 (2011)

parents certainly can and do make negative remarks about the other parent. This is common sense, but it doesn't prove that alienation is caused by mental health issues or that it causes more harm than DV or child abuse. Negative comments are simply bad behavior, and courts do not need help from professionals, especially from the cottage industry, to judge this behavior. It is very common for courts to treat mothers' sincere attempts to protect their children from abuse as though such actions constitute alienation. In fact, in the majority of these cases, the father's abuse caused the alienation.

Professionals without the needed DV training who focus on myths and alienation theories tend to make recommendations that harm children. Their mistaken focus says more about their lack of qualifications than the circumstances in the case. Courts should keep in mind that the Saunders study is based on peer-reviewed scientific research and that unqualified evaluators are providing their subjective opinions unsupported by valid scientific research.

DV advocates have the specific DV knowledge that courts need.⁴³ This makes sense because they represent the only profession that works full time on DV issues. A big part of their job is to keep battered women and their children safe. This is also supposed to be an important component of the court's mission. Too often advocates have been discredited because "they are always against DV." Of course, this is consistent with the law and the mission of the courts. Saunders' research supports what seems obvious: that DV experts are needed to understand DV custody cases.⁴⁴

⁴³ Saunders, et.al., *supra*, note 4

⁴⁴ *id*

The specialized body of DV knowledge was not available when custody courts turned to mental health professionals as though they were experts in DV. We now know that DV is not caused by mental illness.⁴⁵ Over two decades after the release of the first ACE Study, and seven years after the Saunders study was published, most evaluators and other court professionals are not informed by current scientific research. They don't know about fundamental topics like DV dynamics and batterer narratives. They are also unfamiliar with child sexual abuse.

This helps to explain why Saunders found that the courts need to use a more multi-disciplinary approach.⁴⁶ The present practices serve to deny and minimize true reports of DV and child abuse. Mental health professionals are useful when the main issue in a case is mental illness or psychology. In cases involving other issues, the courts would be better served by seeking expertise from experts in DV, child sexual abuse, medical issues, substance abuse, and other relevant topics.

There is conflicting research about the benefit of shared parenting arrangements, but there is widespread agreement by legitimate researchers. Shared parenting can only benefit children under favorable conditions that include voluntary agreement by both parents, ability to cooperate and living nearby.⁴⁷ DV involves a fundamental imbalance of power and so co-parenting in these cases is harmful.⁴⁸ Saunders found that abusers use joint decision-making to regain control by refusing to agree to anything

⁴⁵ National Domestic Violence Hotline, "Abuse and Mental Illness: Is There a Connection?" (May 6, 2015) Available at <https://www.thehotline.org/2015/05/06/abuse-and-mental-illness-is-there-a-connection/>

⁴⁶ Saunders, et.al., *supra*, note 4

⁴⁷ Davis, et. al., *supra*, note 18

⁴⁸ *id*

the mother wants. He also found that abusers often use visitation exchanges to harass or assault the victim.⁴⁹

Aside from child deaths, the extreme decisions that Saunders calls “harmful outcome” cases are the most heart-breaking and destructive. These are cases where the alleged abuser wins custody and a safe, protective mother who is the primary attachment figure is limited to supervised or no visitation.⁵⁰

Harmful outcome cases are always wrong because the harm of denying children a normal relationship with their primary attachment figure, a harm that includes increased risk of depression, low self-esteem and suicide,⁵¹ is greater than any benefit the court thought it was providing. Saunders found that these mistakes are caused by the use of flawed practices such as failing to recognize abuse, relying on unscientific alienation theories, or the use of professionals unqualified for abuse cases.⁵²

Particularly disturbing are court decisions that maintain harmful outcomes despite the findings by Saunders. In one New York City Case, the initial order was created in response to a false report of abuse by the abusive father. More than 18 months later, the court has not even addressed its mistake. None of the attorneys appointed to represent the mother, a Vietnamese immigrant with limited English ability, have been willing to inform the court about Saunders’ findings. Instead, at each hearing the court focuses on non-probative issues like the mother’s difficulty with various professionals or

⁴⁹ Saunders, et.al., *supra*, note 4

⁵⁰ *id*

⁵¹ David Cawthorpe, Malcolm West and Thomas Wilkes, “Attachment and Depression: Relationship Between the Felt Security of Attachment and Clinical Depression Among Hospitalized Female Adolescents.” U. S. National Library of Medicine and National Institutes of Health. (May 2004) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2538630/>

⁵² The case is VTV vs MK. I am not revealing identities because the case is ongoing and the mother is not safe.

her being late for meetings. And so, all this time a young boy is deprived of a normal relationship with his primary parent.⁵³

Closely related to the last example is a finding by Saunders that courts focus on a mother's anger and emotion all out of proportion to what it says about her parenting.⁵⁴ This is based on the stereotype of the scorned or angry woman. In any other type of litigation, the father's reliance on the mother for most of the child care would be understood as an admission she is a good mother. She did not become unfit because she decided to leave the relationship or report his abuse.

One of the most surprising findings in Saunders was that social workers tend to make better custody recommendations in DV cases than do psychologists.⁵⁵ One reason is that psychologists focus on psychological tests that were neither designed nor normed for the populations seen in family court. These tests tell the court nothing about DV but are often used to pathologize the victim.⁵⁶ The reliance on these tests leads to mistaken assumptions that if the father has no mental illness, and the children seem to be doing well, any abuse report must be false. But DV is not caused by mental illness, and children use a variety of defense mechanisms in response to trauma; therefore, to outsiders, they may appear to be doing well.

Common Mistakes from Ignorance of Saunders: Mental health professionals relied on by the courts rarely have the knowledge recommended by Saunders that is necessary to recognize and respond to DV.⁵⁷ They often dismiss true reports of abuse

⁵³ id

⁵⁴ Saunders, et.al., *supra*, note 4

⁵⁵ id

⁵⁶ Robin Yeaman, "Urgent Need for Quality Control in Child Custody Evaluations." In *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*, (Mo Therese Hannah and Barry Goldstein, eds.) ch. 21 (2010)

⁵⁷ Saunders, et.al., *supra*, note 4

because they don't know what to look for. In other cases, they focus on less important issues because they don't understand the importance of the abuse dynamics in the family. This creates the worst possible scenario, because judges believe they are receiving expert advice about the abuse when the issue is actually being ignored, misunderstood or minimized. And the mistakes all tip the courts to err on the side of posing a risk to children.

Custody courts desperately need the specialized knowledge now available about DV and child sexual abuse. We know this because of the frequency with which courts disbelieve or minimize abuse reports.⁵⁸ The courts could access the necessary specialized knowledge by reading the scientific research or by learning from DV and child sexual abuse experts serving as trainers or expert witnesses.

Unfortunately, most of the training is provided by other judges or mental health professionals. Any experts other than the usual mental health professionals who testify regularly in such cases are treated as suspect. A mental health degree that included no exposure to information about DV or child sexual abuse is the focus of any discussion of credentials. In other words, courts routinely fail to consider that someone qualified in psychology and mental illness does not necessarily have expertise in DV or child sexual abuse.

The courts have continued to impose harmful outcome decisions on children long after the Saunders Study found they are always wrong and based on flawed practices. This demonstrates the widespread failure of court professionals to keep abreast of

⁵⁸ Center For Judicial Excellence, *supra*, note 28. Silberg, J.L., "How Many Children Are Court-Ordered Into Unsupervised Visitation With an Abusive Parent After Divorce," available at <http://www.leadershipcouncil.org/1/med/PR3.html>

current scientific research. It also demonstrates that courts routinely fail to compare the benefits and risks of different custody and visitation arrangements. They are not comparing the certain and severe harm of denying children a normal relationship with their primary attachment figure with whatever benefit they want to achieve. The standard practice of relying on subjective opinions unsupported by good research contributes to this mistake.

In DV cases, if the abuser will receive unsupervised visitation, the best approach is parallel parenting. The children have witnessed their father's abuse and are often frightened when their parents are together. Parallel parenting reduces communication to absolute necessary situations. Abusers do not co-parent; they counter-parent. It is unsafe and unhealthy to allow shared parenting when there is a history of DV and one parent is afraid of the other.

Mental health professionals often promote shared parenting in inappropriate cases because it requires more paid work for them or their colleagues. Inevitably they are pressuring the victim to cooperate and asking the mother and children to push their fear deep inside themselves where it might cause greater harm later on. A better practice is to pressure the abuser to change his behavior and to focus on how to reduce the fear and stress he caused. Shared parenting does just the opposite.

Saunders found that court professionals need training in screening for DV.⁵⁹ They need to avoid discrediting abuse reports based on non-probative information. Common examples include the mother returning to her abuser, failing to follow-up with a petition for a restraining order, or lacks a police or hospital report. These safety-seeking

⁵⁹ Saunders, et.al., *supra*, note 4

responses are common among survivors. Another typical scenario is the children showing no fear when professionals observe them interacting with an alleged abuser. The children understand that he won't hurt them with someone present, so they feel free to play with a father whom they still love.

Professionals without the needed expertise routinely discredit true reports of abuse for the kind of non-probative factors described above. DV experts would be looking for a pattern of abuse (not just physical assaults) and focusing on which parent is afraid of the other. Judges almost never discredit an evaluation for focusing on non-probative issues and failing to use best practices to recognize DV and child sexual abuse.

Saunders recommended court professionals learn about risk assessment.⁶⁰ This ought to be mandatory if the courts want to keep children safe. Attempted strangulation, hitting a woman while pregnant, hurting animals, forced or pressured sex; threats of murder, suicide or kidnapping, a belief she has no right to leave, and access to guns are common factors associated with a higher risk of lethality.⁶¹ Law enforcement regularly uses this information, but courts charged with protecting kids do not.

Many inadequately trained court professionals assume the end of the relationship is also the end of the risk. In reality, leaving is the most dangerous time for women. At least 45% of women killed in DV homicides are killed after they leave.⁶² Most of the

⁶⁰ id

⁶¹ Domesticshelters.org, "Danger Assessment Could Predict if an Abuser Will Kill You." Available at <https://www.domesticshelters.org/articles/identifying-abuse/danger-assessment-could-predict-if-an-abuser-will-kill>

⁶² NIJ Journal/ Issue No. 250. Available at <https://www.ncjrs.gov/pdffiles1/jr000250.pdf>

contested custody cases involve the worst abusers who are using custody to regain control over their victim. Courts rarely question the father's motive, and they usually fail to focus on evidence in plain sight that he is trying to pressure her to return or punish her for leaving.

There is nothing the mother did or could do to force her partner to abuse her. His actions are based on his beliefs and sense of entitlement. This means that even if he never hurts the mother again, he will abuse future partners. The children who have been exposed to ACEs and are living with the fear and stress that cause so much harm will be exposed to more abuse and so cannot heal. This is an important issue in almost every DV custody case but is rarely discussed.

In the broken system, I have actually seen court professionals pressure children to get over their fear or even blame mothers for alienation because the father's abuse made a child afraid of him. The fear of mothers and children is viewed as an obstacle to shared parenting, but it is actually a warning about an underlying abuse problem that must be dealt with. The fear of a parent or child is an important piece of evidence that would help courts understand the family dynamics if only the professionals understood its meaning.

Like the ACE research, Saunders' focuses on the importance of the impact of DV on children. The consequences literally destroy children's lives. This means that DV and child abuse go to the essence of the best interests of a child. Unfortunately, most court professionals don't have the needed training so they focus on less consequential issues. In some cases, the courts actually go out of their way to avoid hearing evidence about ACE and Saunders. This inertia and defensiveness routinely hurt children.

Judges and other court professionals have constantly heard that children do better with both parents in their lives. This is true in the vast majority of cases in which both parents love their children and engage in safe parenting. Children are harmed by losing one of their parents, but they are hurt far more when one of the parents continues to be abusive. This is why Saunders determined that professionals need training about the impact of DV on children.⁶³ The health and safety of children must have a higher priority than anything else, including maintaining a relationship with a parent who causes more harm than good.

Harm from Failing to Integrate the Saunders Findings: Saunders found that professionals without the needed DV knowledge tend to focus on the myth that mothers frequently make false reports of abuse and rely on unscientific alienation theories.⁶⁴ The bogus alienation theories encourage ignorant professionals to believe the destructive myth.⁶⁵ Knowledge of Saunders would prevent courts from disbelieving true reports of abuse, and this will improve courts' ability to protect children.

Courts repeatedly place children at risk because they are relying on professionals that don't have the necessary knowledge of DV.⁶⁶ This mistake leads courts to disbelieve true reports and minimize the harm from abuse. The lack of risk assessment means the courts are not even trying to guard against potential lethality. The deaths and health problems suffered by children involved in contested custody are directly related to the failure to use current research like Saunders.

⁶³ Saunders, et.al., *supra*, note 4

⁶⁴ *id*

⁶⁵ Fink, *supra*, note 40

⁶⁶ Saunders, et.al., *supra*, note 4

Under present court practices, concerns from protective parents that the other parent presents a risk to the child are treated as an obstacle to the preferred shared parent arrangement. Courts routinely fail to consider research that demonstrates the full risk to children. The ACE research states that the danger is greater than previously understood,⁶⁷ but most courts respond to DV cases without the education ACE provides.

The benefit of having both parents in children's lives is exaggerated because the courts are unaware of the full risk abusive parents cause. Evaluators fail to weigh the risks and benefits, so keeping both parents involved is treated as the main objective rather than a means to benefit children when a parent is safe. Ignorance of the risks always tilts the court toward keeping abusive fathers in children's lives and against protecting children from real dangers.

Evaluators and other court professionals who are unfamiliar with the specialized body of DV research spend their careers spreading misinformation. Judges repeatedly hear this misinformation-- first as lawyers, and later as judges. Few DV trainings include experts in DV and child sexual abuse, and in too many cases, judges refuse to pay attention on the rare occasions they receive accurate information.

The myth that mothers frequently make false reports of abuse is based on stereotypes. This lie is promoted by the family court cottage industry and the abusers they help. This misinformation thrives in an arena where ignorance of credible scientific research is routinely tolerated. The myth inevitably encourages courts to disbelieve true reports of abuse, and this undermines the ability to protect children.

⁶⁷ Felitti, et.al., *supra*, note 5

Unscientific alienation theories were concocted to help abusers distract attention from their abuse so that they can win their custody cases. The research and every legitimate professional organization have rejected the bogus theories⁶⁸. The alienation theories widely used in family courts are not included in the DSM-V, which is the compendium of all valid mental health diagnoses.⁶⁹ The court system continues to embarrass and discredit itself by treating these theories as if they had any validity and in doing so, they are destroying children's lives.

Needed Reforms: Courts must start using a multi-disciplinary approach. Instead of automatically using the usual evaluators, judges should consider what type of expertise is needed. If there are significant issues involving mental illness and DV, it may be useful to use more than one expert. DV and child sexual abuse involve a specialized body of knowledge, and courts should seek experts who focus mainly or exclusively on abuse when that is a critical issue in the case. Similarly, courts should use a multi-disciplinary approach when planning trainings for judges and other professionals.

The Saunders study makes clear that professionals without specific DV knowledge are not qualified to respond to abuse cases.⁷⁰ Judges need to inquire about this knowledge before appointing an evaluator, GAL or other neutral professional. Judges should review reports and recommendations to determine if the professional demonstrates expertise in the subjects Saunders recommends. Without this knowledge, any reports should be discredited and the recommendations ignored.

⁶⁸ Fink, *supra*, note 40

⁶⁹ American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders. (5th ed. 2013)

⁷⁰ Saunders, et.al., *supra*, note 4

Courts must eliminate harmful outcome cases because they are wrong; they demonstrate flawed practices, and worst of all, they harm children. These are the cases that create a strong appearance of corruption and undermine the reputation of the court. In Dutchess County, New York, these bad practices led abused women to stop using the courts, resulting in a series of DV homicides.⁷¹

The Stop Abuse Campaign sent a letter to the National Council of Juvenile and Family Court Judges that provided research and media investigations that conclusively proved that the courts are getting a high percentage of abuse cases wrong.⁷² The National Council is one of the best judicial organizations and agreed with our findings. We conducted a series of conference calls to discuss improved training and needed reforms. They warned us that many judges will not pay proper attention to trainings unless they involve other judges. The National Council includes some of the best judges for DV issues, but as Saunders demonstrates, judges need a multi-disciplinary approach. Accordingly, it is important that judges become open to learning from other professionals besides judges.

Frequent Catastrophic Mistakes

Over 700 Children Involved in Contested Custody Have Been Murdered in the Last Ten Years:⁷³

⁷¹ Dutchess County Legislative Citizens' Advisory Committee on Domestic Violence (Oct. 2010) available at <https://www.dutchessny.gov/Departments/County-Legislature/Docs/Citizens-Advisory-Committee-on-Domestic-Violence-System-Wide-Review-Rec.pdf>

⁷² In 2017 this author sent letters to the National Council and the National Center for State Courts. The Stop Abuse Campaign and National Council engaged in a series of conference calls about how to create the needed training and reforms to make courts safe for children. <https://barrygoldstein.net/articles/two-letters>

⁷³ Center for Judicial Excellence, *supra*, note 28

Most of these murders have been committed by abusive fathers. Courts rarely learn from current research, so they are unaware that most contested custody cases involve the most dangerous abusers who believe their female partner has no right to leave. These are the cases that lead to murder or other catastrophes, but courts don't guard against that risk because they don't understand the fundamental nature of these cases.

In a California case, Katie Tagle told the judge that the father had threatened to kill the baby. In the transcript, the judge repeatedly states that he thinks the mother is lying and therefore allowed the father access. After the murder, the judge expressed his sincere sorrow but said there was nothing he could have done differently based on what he knew. In a sense, he is right, because as long as he doesn't use the research provided by Saunders and relies on the myth that mothers frequently make false reports, he, and more generally the courts, cannot keep children involved in DV custody cases safe.⁷⁴

In Pennsylvania, a judge used the high-conflict perspective by treating a safe, protective mother as being as responsible for the custody dispute as was the abusive father. The father used the access provided by the court to kill seven-year-old Kayden Mancuso. He left a note on the child's body saying that this is what the mother deserved. This is exactly the motive for abusive fathers that use custody to regain control. Even after the murder and the note, the judge stubbornly insisted that both parents were responsible for what happened.⁷⁵

⁷⁴ Stacy Moore, "Judge: My supposition is that you're lying.." Hi-Desert Star, (Feb. 6, 2010) available at http://www.hidesertstar.com/news/article_8fd6065e-81d2-56d1-991c-f03de8712afd.html

⁷⁵ Barry Goldstein, "Kayden Mancuso Should Be Alive and Well." Stop Abuse Campaign (August 12, 2018) available at <https://stopabusecampaign.org/2018/08/12/kayden-mancuso-should-be-alive-and-well/>

In many cases like those described above, the court provided the access that the fathers needed to kill their children. By minimizing abuse, failing to use the ACE findings, and disbelieving true abuse reports due to ignorance of the Saunders and Bala research, courts routinely fail to recognize the danger. A court system that fails to err on the side of safety errs on the side of child murders.

The myth that mothers frequently make false reports is a killer. The Tagle case illustrates what can happen when court professionals rely on the myth instead of on the evidence. The Meier Study discussed below demonstrates the frequency with which abuse reports are disbelieved.⁷⁶ The myth helps keep abusive fathers in children's lives; at least while they have lives.

Bartlow Study Explains Why Courts Fail to Reform Dangerous Practices

The Bartlow Study sought to follow-up on news stories about 175 child murders involving contested custody cases over a two-year period. Dr. Bartlow and her students interviewed judges and court administrators in the communities where the tragedies occurred. The judges tended to be those who were most interested and knowledgeable about DV, which is probably why they agreed to participate. They provided thoughtful and illuminating discussions about DV custody cases.⁷⁷

Context and patterns are important to understanding DV, but court professionals are trained to take each case and each incident separately. This discrepancy is likely

⁷⁶ Professor Joan Meier is the lead author for a much-anticipated study for the National Institute of Justice. For this article I have relied on the Draft Summary of Family Court Outcomes Study, Grant 2014-MU-CX-0859; power-point slides from presentations Professor Meier gave at the Battered Mothers Custody Conference and AFCC Conference in Toronto as well as emails Professor Meier generously exchanged with me to provide information and feedback about her study. Joan Meier, et.al., "Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations." (2019). At https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448062

⁷⁷ Dianne Bartlow, "Judicial Response to Court-Assisted Child Murders." In *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*. (Mo Therese Hannah and Barry Goldstein, eds.) V. II (2016)

one of the reasons for the courts' poor response to abuse cases. The pattern and frequency of child murders in contested custody cases was unknown until the Dastardly Dads blog⁷⁸ and the Center for Judicial Excellence started compiling information about these tragedies.⁷⁹

The courts have made no effort to keep records of child murders or other obvious tragedies that their decisions have enabled. If courts, and perhaps more importantly, the public knew the frequency with which court decisions led to children's deaths, reforms would be demanded. Instead, judges have reacted defensively to these tragedies and dismissed the murders as the exception.

Dr. Bartlow asked the court leaders she interviewed what reforms had been adopted in response to the tragedies in their community. The shocking answer-- that no reforms had been made-- illustrates the problem with a court system that has no ability to spot the patterns of dangerous mistakes and deaths.⁸⁰ The child murders in the Tagle and Mancuso cases illustrate the problem where the courts respond defensively even after an unbearable tragedy.

Consumer panels automatically review child deaths caused by consumer products, but courts have no process to study the mistakes that cost children their lives or how to improve practices to better protect children. This means preventable murders will continue until the legislatures intervene. And the same mistakes and outdated practices that immediately lead to child murders more often result in a childhood of abuse, fear and stress that leads to the awful consequences described in the ACE

⁷⁸ Dastardly Dads Blog, "175 children murders" Feb. 25, 2011. The blog is no longer available online.

⁷⁹ Center for Judicial Excellence, *supra*, note 28

⁸⁰ Bartlow, *supra*, note 77

studies. There is no response or explanation for why courts fail to integrate highly credible scientific research that would prevent most of these tragedies, because the courts can't even admit there is a problem.

58.000 children sent for custody or unprotected visitation every year

A study led by Dr. Joyanna Silberg for the Leadership Council provides the best estimate of the number of children sent for custody or visitation with dangerous abusers. The failure to integrate vital research like ACE and Saunders explains why courts frequently fail to protect children. All of the mistakes tilt the courts towards placing children in jeopardy.⁸¹

Strong anecdotal evidence indicates that the excessive use of shared parenting frequently leads to preventable deaths. What possible reality-based argument could justify the use of shared parenting in DV cases? Even if the allegation of abuse is false, the fact that one parent would accuse the other of DV demonstrates they cannot cooperate

The original campaign for shared parenting was made in total good faith and was never intended for DV cases. The cottage industry and the abuser groups they work with have aggressively promoted shared parenting in courts and legislatures. The fact that co-parenting is routinely discussed and used in DV cases provides a strong confirmation of the failure of courts to protect battered mothers and their children.

What isn't routinely discussed is the frequency that shared parenting in DV cases leads to early deaths of children and others. In many cases the required access leads to the murder of mothers, children and bystanders. More commonly children forced to

⁸¹ Silberg, *supra*, note 57

live with continued fear and stress lose their lives from suicide, drug overdoses and other harmful choices. Even more common, according to the ACE research, are deaths from a variety of illnesses particularly related to the stress the court failed to address.

85% of Child Sexual Abuse Reports Result in Custody to the Alleged Abuser:⁸²

Research like Saunders and Bala tell us that deliberate false abuse reports are rare.⁸³ This means that in a large majority of sexual abuse cases, the courts are sending children to live with their rapist or abuser. The children are likely to suffer more abuse and will be silenced because they are under the control of the abuser. This saves courts from more reports of abuse but prevents children from protecting themselves. These bad decisions also mean children will be denied the therapy and treatment they desperately need.

Most lawyers do not know the statistics, but they know mothers who report sex abuse usually lose custody and are severely punished. Protective mothers often complain that their attorneys refuse to present evidence of child sexual abuse. This means courts never have an opportunity to protect child sexual abuse victims. The retaliation and punitive practices employed by courts prevent them from detecting possible sexual abuse.

Child sexual abuse is a painful and embarrassing subject. Experts know that it takes time to develop a trusting relationship before children are ready to discuss such a sensitive issue. Play therapy is often the best approach and has the benefit of eliminating the issue of coaching, because through play, children reveal whatever is

⁸² Amy Neustein and Michael Leshner, *From Madness to Mutiny: Why Mothers Are Running From the Family Courts—And What Can Be Done About It.* (2005) The information in the book was supplemented by an email from Michael Leshner to Barry Goldstein in 2011.

⁸³ Saunders, et.al., *supra*, note 4. Bala, et.al., *supra*, note 27.

bothering them without consciously doing so. Reports of sexual abuse are often discredited for non-probative reasons, such as a child using a bland tone after repeatedly telling the story, or the child being unafraid of the alleged abuser when witnesses are present.

These are among the many common mistakes of which the “experts” used by the courts remain unaware. As Saunders’ study teaches us, inadequately trained professionals tend to focus on the myth that mothers frequently make false reports.⁸⁴ Bogus alienation theories were concocted based on the false belief that child sexual abuse is not harmful and that most reports are false.⁸⁵ Professionals who are unqualified to work with sexual abuse cases contribute to the courts judging such a high percentage of such cases wrongly.

More Evidence Undermines Status Quo

Meier Study Reviewed Published Decisions Involving Claims of DV, Child Abuse and Alienation⁸⁶

No one study will prove or disprove the effectiveness of present practices used in responding to DV custody cases. Instead, courts and researchers need to put together information from credible scientific research and from reports about child murders to determine whether the courts are adequately protecting children under their control.

Professor Joan Meier and her colleagues worked under a grant from the National Institute of Justice. The complete study reviewed over 4000 published cases that

⁸⁴ Saunders, et.al., *supra*, Note 4

⁸⁵ Fink, *supra*, note 40

⁸⁶ Meier, *supra*, note 76

involved DV, child abuse and alienation. This research comes from a highly credible source and so is worthy of serious consideration.⁸⁷

The Meier study determined the frequency with which courts transferred custody from mothers to fathers when the mothers accused the fathers of abuse. While the number of fathers starting out with custody was quite small, the study found that, in comparison with fathers' custody losses, women lost custody at higher rates when they alleged abuse. The study does not claim to prove whether the present practices are effective. Comparing the frequency with which mothers and fathers lose custody in combination with other research about the frequency of true reports offers important information about the status of present court practices. The Meier research also provides information about related topics, such as gender bias, that might help explain the results.⁸⁸

One of the judges interviewed for the Bartlow study stated that she believes some of her colleagues bend over backwards to keep fathers in children's lives because so many other fathers abandon their children.⁸⁹ This is probably one of the reasons for the continued gender bias *against mothers* seen in custody courts. This is not a new problem. Starting in the 1980s, court-sponsored gender bias committees using a variety of approaches found widespread gender bias especially against women litigants.⁹⁰

⁸⁷ id

⁸⁸ id

⁸⁹ Bartlow, *supra*, note 77

⁹⁰ Molly Dragiewicz, "Gender Bias in the Courts: Implications for Battered Mothers and Their Children" in *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*. (Mo Therese Hannah and Barry Goldstein, eds.) Ch. 5. (2010)

The courts have done little to overcome gender bias, and the Meier study confirms that it is still a serious problem. Professor Meier discovered that when courts find that a mother has committed alienation, it significantly helps the father, but when courts find the father has committed alienation, this doesn't affect the outcome.⁹¹ This appears to make the continued use of alienation theories a violation of equal protection and due process at least until it can be considered without the common bias against mothers.

PAS and subsequent alienation theories were based on sexist stereotypes of the scorned or angry woman. It was based on the myth that women frequently make false reports of abuse. Ironically, the assumption has been that mothers make false reports of abuse to gain an advantage in custody litigation, but the findings in Meier⁹² and elsewhere⁹³ confirm that alleging abuse, especially child sexual abuse, make mothers' risks of losing custody skyrocket.

The Meier Study confirms the enormous influence that alienation theories have in DV custody cases. I find it troubling that a theory based on the belief that sex between adults and children can be acceptable and used to help abusive fathers gain custody⁹⁴ would have more influence with the courts than the ACE research from the CDC and the Saunders study from the US Justice Department. This seems incompatible with custody courts' denial of serious problems with their response to abuse cases.

⁹¹ Meier, *supra*, note 76

⁹² Meier, *supra*, note 76

⁹³ Lundy Bancroft, Jay G. Silverman, and Daniel Ritchie, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. (2d ed,2011)

⁹⁴ Fink, *supra*, note 40

Professionals would need an understanding of the basis for any alienation finding in order to analyze the validity of the outcome. This is problematic because alienation has no universal definition or any generally accepted method for evaluation or diagnosis. There are no standards for evidence necessary to believe alienation claims. The Meier study did not attempt to assess the validity of alienation claims in the cases in its database; indeed, many court opinions do not explain their basis for such findings. It is likely that some parents say things to the children which are derogatory about the other parent; however, this is a far cry from the leap to treating such comments as a form of severe child abuse warranting removal of custody. But experience in these cases teaches that many alienation findings are based on the fact that a child is afraid or doesn't want a relationship with a parent, feelings which routinely stem from other causes. Yet alienation theorists treat every case of a child who dislikes a non-custodial father as alienation. A finding of so-called alienation, based on an unsupported claim or supposition from the "alienated" parent, without knowledge of concrete alienating behaviors and without ruling out of the estranged parent as the cause of his own alienation from his child, should be considered suspect.⁹⁵

There is no valid research to support the idea that alienation is caused by mental illness (as opposed to bad behavior), which is why bogus alienation theories were not included in the DSM-V. Accordingly, courts' reliance on mental health professionals in this regard should be suspect. In fact, there is no research establishing the harm caused by alienation because there is no standard definition nor proof of harm.⁹⁶

⁹⁵ Leslie M. Drozd, Nancy W. Olesen & Michael Saini, *Parenting Plan and Child Custody Evaluations: Using Decision Trees to Increase Evaluator Competence and Avoid Preventable Errors*. (2013)

⁹⁶ id

We know that exposure to DV and child abuse often leads to illnesses that shorten children's lives, based on the ACE research. Saunders found that harmful outcome cases are always wrong because the harm from denying children a normal relationship with their primary attachment figure is greater than whatever benefit the court thought it was creating by separating children from the safe, protective mother. This is based on attachment research stating that children suffer increased risk of depression, low self-esteem and suicide when denied a normal relationship with their primary attachment figure.⁹⁷

It is troubling that courts routinely assume that alienation must be more harmful than separation from the primary parent based on subjective opinions that have no basis in scientific research. There is plentiful anecdotal evidence that alleged abusers given custody based on alienation claims use that power to destroy the child's relationship with the mother.

In the notorious Shockome case, the NY judge took custody away from a mother who was the primary caretaking parent. She had been named Dutchess County Mother-of-the-Year because of her outstanding parenting skills. Nevertheless, the court granted custody to the alleged abuser based on claims of alienation. The so-called alienation included the mother telling the children to eat healthy foods, dress appropriately for the weather, and avoid adult-oriented programs. This was considered alienation because the father did not use these good parenting practices.⁹⁸ The father was allowed to move to Texas, and the mother was allowed almost no contact with the children. When the Texas court finally obtained jurisdiction, it sought to restore custody

⁹⁷ Susan Goldberg, "Attachment Part Three: Attachment Across the Lifespan." (Nov. 2004)

⁹⁸ Goldstein, *supra*, note 9

to the mother. They scheduled therapy between the mother and children, but by that time the father had so destroyed the relationship that it could not be salvaged.⁹⁹

The Meier study found that courts are crediting only 41% of mothers' abuse allegations when fathers do not claim alienation. If alienation is alleged, the mothers are believed only 23% of the time. For child sexual abuse reports, mothers are believed 15% of the time in non-alienation cases but only 2% of the time (1 out of 51) when fathers cross-claim alienation.¹⁰⁰ In other words, charges of alienation against protective mothers very often lead to their losing custody of their children.

The same study found that mothers lose custody 26% of the time when no alienation is claimed; 44% of the time when alienation is claimed and 73% of the time when courts credit alienation claims against them. Mothers lose custody 28% of the time when they raise concerns about child sexual abuse. This increases to 58% if the father alleges alienation, and to 100% if the court credits the alienation claim.¹⁰¹

Extant research is clear that domestic violence and child abuse are far more consequential to children than is a child's feeling of alienation from an abusive parent. The harm from alienation is unproven, since there is no standard definition for alienation. The ACE research establishes that exposure to DV or child abuse shortens children's lives and causes a lifetime of health and social problems.¹⁰² The Meier study found that when courts credit both a mother's claim of abuse and a father's claim of alienation, mothers still lose custody in 43% of the cases.¹⁰³

⁹⁹ Tim Shockome blogspot Available at <http://timshockome.blogspot.com/>

¹⁰⁰ Meier, *supra*, note 76

¹⁰¹ *id*

¹⁰² Felitti, et.al., *supra*, note 5

¹⁰³ Meier, *supra*, note 76

This exposes the common court failure of minimizing the significance of DV and child abuse while allowing itself to be manipulated by a cottage industry that makes large incomes promoting an unscientific theory. These professionals are laughing all the way to the bank while the children cry themselves to sleep.

I have heard many judges and evaluators suggest they are being fair because they favor mothers and fathers about an equal amount of the time. This fails to consider some important factors about the context. In our still sexist-society, mothers continue to provide most of the child care. Further, children suffer substantial harm from being separated from their primary attachment figure, who is usually the mother.¹⁰⁴

Other research demonstrates that mothers make deliberate false reports of abuse less than 2% of the time; fathers, on the other hand, are 16 times more likely to make deliberate false reports.¹⁰⁵ The Saunders' study found that evaluators and other professionals without specific DV knowledge tend to believe in the myth that mothers frequently make false reports.¹⁰⁶ This means that courts are more likely to believe fathers over mothers than would be justified by the evidence.

Child abuse is different than DV because the mother would always be present when the father abuses her. For child abuse the mother often has to rely on the child's reports or behavior. This makes it more likely there could be a good faith misunderstanding and there might be inadequate evidence available.

The Meier Study could not and did not seek to prove that court findings of fact were wrong; it merely recounts the courts decisions in abuse cases. Court defenders

¹⁰⁴ Goldberg, *supra*, note 95

¹⁰⁵ Bala, et.al., *supra*, note 27

¹⁰⁶ Saunders, et.al., *supra*, note 4

may argue that believing abuse claims less than half the time is appropriate because abuse claims are often false or unproven. But consideration of the context of the outcomes and credible scientific research demonstrate that the decisions are strongly tilted in favor of abusive fathers and thus pose risks to children.

Based on the Bala Study, one would expect mothers' reports of child abuse would be valid about 98% of the time.¹⁰⁷ Other studies might predict a slightly reduced percentage of true reports,¹⁰⁸ but this is in the context of many professionals believing the myth and so overestimating the frequency of false reports.¹⁰⁹ There could be cases in which the evidence is inadequate even if the report is true. Many protective mothers cannot afford an attorney or rely on attorneys who do not know how to present abuse cases. This could result in cases where a court cannot find in a mother's favor. There is, however, no valid justification for reducing the expected 98% valid reports of abuse to 41%.

Claims of alienation have become a standard abuser legal tactic. Father's rights groups promote this unscientific theory; lawyers encourage abusers to use it, and the cottage industry of mental health professionals make large incomes by supporting this tactic. How can fathers prove that mothers are engaging in alienating behavior when they are separated from the mother and so have no personal knowledge of what she is saying to the children?

¹⁰⁷ Bala, et.al., *supra*, note 27. The Bala Study was based on reports about child sexual abuse but is often applied to domestic violence because there is no reason to believe DV would be falsely reported more than child sexual abuse.

¹⁰⁸ Merrilyn McDonald, "The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases." 12 Court Review-Spring 1998. Available at <http://www.amjudges.org/publications/courtrv/cr35-1/CR35-1McDonald.pdf>

¹⁰⁹ Saunders, et.al., *supra*, note 4

With most judges, lawyers and evaluators having inadequate DV knowledge and therefore relying on myths and unscientific alienation theories, it is reasonable to believe that these mistaken beliefs contribute to the failure of courts to recognize true reports of abuse, especially when fathers claim alienation. Again, there is no valid justification to go from the likely 98% true reports to the 23% credited by courts when fathers use this standard abuser tactic.

As discussed earlier, the response of society and especially the courts to reports of child sexual abuse are particularly problematic. The Bala study was based on reports of child sexual abuse. It is fair to say that there are many good reasons why child sexual abuse would be hard to prove. It is also possible that a child's behavior or statements might be misunderstood. At the same time, we know child sexual abuse is far more common than we would like to believe. ACE research tells us that one-quarter of U.S. children are sexually abused.¹¹⁰ Presumably it would be much more likely that abuse reports would come from actual victims rather than pretenders. Accordingly, the idea that only 15% of all reports, and 2% of reports when fathers claim alienation, is true is patently absurd.

Context is critical to understanding DV and is very helpful in understanding the court decisions on custody. The Meier study did not look at prior child care arrangements and probably could not have done so because this is rarely the focus of court opinions. In a large majority of the cases reviewed in Meier, it's reasonable to assume that the mother was probably the primary attachment figure and plausible that the father wanted or even demanded that she provide most of the child care.

¹¹⁰ Felitti, et.al., *supra*, note 5

There are substantial risks associated with separating children from their primary attachment figure including depression, low self-esteem, and suicide.¹¹¹ The fact that a mother provided most of the child care usually means she is the more skilled and experienced parent. Presumably, loving fathers would not want their children cared for by an unfit mother, so the parents' prior arrangements demonstrate that, before they were in an adversarial position, the father believed that she was a fit parent. Courts treat contesting parents equally, but this context demonstrates they are not equal as far as child care experience or attachment; thus, there is good reason to favor the primary parent, whom the father implicitly admitted is a good mother.

Meier found that when mothers raise abuse issues and there is no alienation claim by the father, the mothers lose custody 26% of the time.¹¹² The courts might say this is favoring mothers because they are keeping the children $\frac{3}{4}$ of the time, but with all the factors favoring the mother, she should retain custody in almost all the cases.

When fathers use their standard alienation tactic, mothers lose custody in 44% of the cases.¹¹³ Based on Bala, fathers in contested custody are 16 times more likely than mothers to make false reports- so the mothers' abuse claims are highly likely to be true but the fathers' alienation claims much less so.¹¹⁴ Many of the alienation claims are likely based on children's justified fear or anger toward the father, rather than actual alienating behavior on the part of the mother.

What is the harm of separating a child from their primary attachment figure, in comparison with the harm posed by alienation of the child from the non-primary parent?

¹¹¹ Goldberg, *supra*, note 95

¹¹² Meier, *supra*, note 76

¹¹³ *id*

¹¹⁴ Bala, et.al., *supra*, note 27

The importance of primary attachment is derived from well-respected research on child development that is applied in many areas, aside from child custody. There is no dispute that being separated from their primary parent creates serious risks for children. Alienation theories are highly controversial and have been rejected for inclusion in the DSM-V because of a lack of scientific support.¹¹⁵ There is no valid research about the harm caused by alienation, in part because there isn't even universal agreement on a definition for alienation.

Research that claims great harm from alienation includes harm that came from DV, child abuse and the breakup of the family. Children in intact families often witness parents denigrating each other, but this doesn't seem to have a long-term harmful impact. I am not saying alienation is benign; my concern is that courts are assuming great harm based on speculation and familiarity with a bogus theory. Saunders found professionals without the needed DV knowledge tend to focus on unscientific alienation theories.¹¹⁶

As mentioned earlier, there seems to be a pattern of courts giving custody to alleged abusers based on the belief the father will promote the relationship with the mother. However, once he has control, he does just the opposite. This is to be expected, as *The Batterer as Parent* found that all DV abusers engage in harmful parenting practices that include undermining the relationship with the mother.¹¹⁷ Furthermore, courts could address the alienation issue without separating children from their primary attachment figure.

¹¹⁵ Domestic Violence Rep., *supra* note 41

¹¹⁶ Saunders, et.al., *supra*, note 4

¹¹⁷ Bancroft, et.al., *supra*, note 92

Accordingly, Meier's findings – that when mothers report abuse and fathers claim alienation, mothers lose custody 44% of the time; and when the court believes the alienation claim mothers lose custody 73% of the time¹¹⁸ --reflect practices that cannot be in the best interests of the children. These decisions are based on believing dubious claims of alienation and assuming it has far more significance than what is supported by any valid research.

Essentially what is happening is that courts fail to differentiate between subjective and objective opinions. Without skepticism, courts accept personal opinions from cottage industry professionals that are motivated by financial incentives and are masked as scientific, but are actually biased in favor of abusive fathers

The failed response to child sexual abuse is strongly supported by the myth that mothers and children frequently make false reports. Saunders found that inadequately trained professionals focus on this myth.¹¹⁹ The failure to prove sexual abuse can be caused by inadequate evidence, the difficulty in proving abuse of young children, a lack of physical evidence, or a good faith report based on misunderstanding the child's statements or behavior. Nevertheless, the failure to prove the report, or worse-- the failure to believe a true report--routinely results in fit mothers losing custody.

This result means that if the report was true, the child will be silenced and never receive the therapy needed. When older, the child will be at increased risk of depression, low self-esteem, and suicide. The child will believe they were punished for making the report, leading them to ensure they never do so again and thus leave them

¹¹⁸ Meier, *supra*, note 76

¹¹⁹ Saunders, et.al., *supra*, note 4

more vulnerable to future sexual assaults. In their desire to punish mothers for raising the issue of sexual abuse, the courts rarely consider the serious long-term consequences.

Learning from Bad Decisions and Tragic Outcomes

A Day in the Life of Ivan Denisovich is a classic book by Alexander Solzhenitsyn. It tells the story of one day in a Soviet Union forced labor camp. The descriptions provided are of the most awful day imaginable. The power of the story is that the author keeps telling us that he is describing one of the better days.¹²⁰

For whatever reason, the court system has yet to update beliefs and practices stemming from the 1970s. It has failed to integrate current scientific research or respond to the many tragedies that their outdated and discredited practices have caused. If watching innocent young children lose their lives because of court decisions fails to cause court officials to reexamine their practices, what will?

The Bartlow study interviewed the judges and court administrators with the most training and knowledge about DV. These are the court leaders whom one would expect to respond appropriately when children lose their lives due to bad practices.

So, what does it tell us when the very best court officials dismissed a child murder in their community as though it were an exception? This speaks volumes about the culture in the court system, its failure to look at patterns and its presumption that if a court makes a decision, it must be right. Even a child's funeral does not spark curiosity about whether there could be better practices to protect children.

¹²⁰ Alexander Solzhenitsyn, *A Day in the Life of Ivan Denisovich*. (1962)

The Pennsylvania judge who made the bad decision that led to the murder of Kayden Mancuso had no background in DV or family law. He believed in treating cases as high conflict rather than applying the research establishing that most contested custody cases involve abusive fathers motivated to hurt the mother, even if in doing so he harms the children.

The killer left a note on Kayden's lifeless body telling the world his motive. He said that the murder would cause the mother to suffer. *Unbelievably*, the judge continued to blame both parents AFTER the murder and the father's note.¹²¹ Courts are routinely creating a false equivalency between mothers trying to escape a father's abuse who may be legitimately angry at the harm he has done, with the father who is using the children and custody only to hurt his adult victim. Why do courts continue to use the same practices for cases involving two safe parents as they use for abuse cases that are often a matter of life and death?

Dutchess County, New York is a conservative-Republican community. There is no constituency for attacking the courts. When the county suffered a series of DV homicides, the county legislature asked a citizen's committee that included professionals that work on DV issues to investigate the county response to DV. The committee did extensive research and produced a lengthy report. There were many flawed practices that contributed to the failed DV response.¹²²

The committee found that one of the most serious problems in the county was the courts' response to DV. The courts, especially the custody courts, were ignorant about DV and biased in favor of abusive fathers. This discouraged battered women

¹²¹ Barry Goldstein, *supra*, note 75

¹²² Dutchess County Citizens' Advisory Committee on Domestic Violence, *supra*, note 71

from using the courts for protection, because their flawed practices made women less safe. The committee found the courts' practices contributed to the series of DV homicides, but no reforms have come from the findings.¹²³

The ACE research found that exposure to DV and child abuse is far more harmful than previously understood and it is the fear and stress that cause most of the health and social problems.¹²⁴ The Saunders study found that most judges, lawyers and evaluators do not have the specific DV knowledge they need. Those without this understanding tend to make decisions that place children in jeopardy.¹²⁵

ACE is medical research from the CDC, and the Saunders study comes out of the National Institute of Justice in the US Justice Department. In other words, this is peer-reviewed, highly credible research that goes to the essence of the best interests of children in custody cases involving abuse. How can court officials allow judges to make life and death decisions without this vital information? Even worse, some judges actually refuse to listen to this research when it is offered by one of the parties.

The new Meier research demonstrates that courts believe mothers' abuse reports far less than good scientific research would predict. Courts also remove children from mothers' custody far more often than the research would support.¹²⁶ Court defenders would like to believe these decisions represent fair outcomes. The courts' widespread failure to integrate current scientific research, use a multi-disciplinary approach, or consider needed reforms in the face of catastrophic tragedies undermines any belief that the courts' decisions could be justified.

¹²³ id

¹²⁴ Felitti, et.al., *supra*, note 5

¹²⁵ Saunders, et.al., *supra*, note 4

¹²⁶ Bala, et.al., *supra*, note 27.

Meier's research demonstrates the enormous influence that alienation theories have wielded over DV custody cases¹²⁷ How can a theory that was never based on scientific research and was therefore dismissed by the American Psychiatric Association and barred from the Diagnostic and Statistical Manual of Mental Disorders (DSM) continue to hold sway in the court system?

Significantly, alienation is a sexist theory both in how it was created and how it continues to be applied. Meier's findings show that allegations of alienation generally help abusive fathers and harm protective mothers. Meier also demonstrates that courts have made little progress in overcoming their long history of gender bias.¹²⁸ How can court decisions be fair or credible when myths and stereotypes reflecting gender bias are allowed to influence case outcomes? Most of the bias is intrinsic and unintentional, but it influences decisions and contributes to the harm courts inflict on children and their mothers.

The Safe Child Act

The Safe Child Act is a comprehensive plan to improve the custody court response to DV custody cases in order to make the courts safer for children. It is based on current scientific research and DV dynamics. This is the plan courts would have adopted years ago if they were open to needed reforms and improvements.¹²⁹

Health and Safety of Children First Priority in all Custody and Visitation Decisions

¹²⁷ Meier, *supra*, note 76

¹²⁸ *id*

¹²⁹ <https://barrygoldstein.net/safe-child-act> For more information about the Safe Child Act see Barry Goldstein, "The Safe Child Act: When a Parent Does More Harm than Good." Available at <https://barrygoldstein.net/articles/the-safe-child-act-when-a-parent-does-more-harm-than-good>

Every state has laws or court decisions that establish factors courts are required to consider when deciding custody and visitation. Abuse cases involve life-or-death decisions, in which the health and safety of children is far more important than any other factor. The ACE research provides definitive evidence for situations in which children's health and safety are at risk. Risk assessment, as discussed in Saunders's research, would tell the courts which factors are associated with increased risk of lethality. Presently, judges have complete discretion as far as which factors to focus on, and appellate courts rarely interfere with this discretion. This means that children will not be protected, since the courts are unfamiliar with current research and focus on less crucial factors.

Most courts are not trauma-informed because they are unfamiliar with the ACE studies and related scientific research. This leads them to minimize dangers faced by children. Their limited focus on physical injuries means that courts are considering only one percent of the harm caused by DV and child abuse.¹³⁰

Courts frequently fail to recognize health and safety risks because they are unfamiliar with current scientific research. Court professionals routinely fail to recognize abuse because they rely on non-probative factors that lead them to discredit true reports. The myth that mothers frequently make false reports, along with reliance on unscientific alienation theories, undermines the ability of courts to recognize abuse.¹³¹ When courts engage in practices like refusing to consider earlier incidents of abuse, they help abusers gain the access they need to punish their partners and harm children.

Courts Must Integrate Current Scientific Research like ACE and Saunders

¹³⁰ Goldstein, *supra*, note 9

¹³¹ Saunders, et.al., *supra*, note 4

Courts have failed to create reforms based on scientific research. Originally courts developed practices to respond to DV at a time when no such research was yet available. Many of those earlier practices turned out to be flawed. We now have substantial research that ought to make it easier for custody courts to recognize when abuse allegations are true.

As of 2020, courts continue to cling to mistaken assumptions that were disproven decades ago. The research is clear: mental illness, substance abuse and anger problems do not cause DV;¹³² mothers rarely make deliberate false reports;¹³³ older abuse incidents continue to be relevant;¹³⁴ and court professionals continue to discredit true reports of abuse based on non-probative information.¹³⁵

The research demonstrates that most of the harm from abuse is from the fear and stress the abuser causes.¹³⁶ Nevertheless, courts place little if any priority upon reducing the fear and stress. Courts rarely look for patterns of abuse to recognize DV, and they don't ask which parent is afraid of the other. DV and child abuse cause far more harm than alienation or the loss of an abusive parent.¹³⁷

Courts Must Use a Multi-Disciplinary Approach

Courts first turned to mental health professionals at a time when it was assumed that DV was caused by mental illness or substance abuse. These professionals are experts in mental illness and psychology, and their involvement can be helpful when

¹³² Domestic Shelters, *supra*, note 1

¹³³ Bala, et.al., *supra*, note 27

¹³⁴ Felitti, et.al., *supra*, note 5

¹³⁵ Saunders, et.al., *supra*, note 4

¹³⁶ Felitti, et.al., *supra*, note 5

¹³⁷ *id*

those topics predominate. Even if they have taken some workshops or trainings, however, they do not have the needed expertise on DV and child sexual abuse.

Using the same small group of professionals creates an insular atmosphere that has contributed to the failure of courts to integrate new research and create reforms in response to avoidable catastrophes. There is now a specialized body of scientific research and knowledge that would help courts recognize and respond effectively to abuse cases. Relying only on the usual suspects undermines the courts' ability to safeguard children.

Courts Should Hold Early Hearing Limited to Abuse Issues

The Safe Child Act would create the practice of holding a hearing early-on in custody cases that involve reports and/or evidence of DV and/or child abuse. Most separating or divorcing couples consist of two safe parents, so this provision would not apply to those cases. This hearing would be limited to abuse issues giving courts the opportunity to focus on the most important issue for children. Cases that now take many months or years would be resolved within a few hours. Best of all, the courts will have a better chance of getting the case right.

If one of the parents is safe and the other is abusive, we only need to look at the ACE research to know who should be chosen as the custodial parent by the court. The safe parent would win custody while the abuser would be limited to supervised visitation until he changes his behavior and convinces the court that the benefits of unsupervised visits outweigh the risks. Deliberate false reports of abuse are rare,¹³⁸ so this hearing

¹³⁸ Bala, et.al., *supra*, note 27

focused on abuse issues will likely resolve most abuse cases saving courts and parties substantial time and resources.

Court Professionals Need Training and Retraining about Domestic Violence

Judges and other court professionals need to be trained about current scientific findings related to domestic violence dynamics and batterer narratives. The Safe Child Act is needed because currently, most professionals continue to make critical decisions about these cases without the requisite knowledge. These professionals also need retraining to unlearn the misinformation they absorbed that leads to decisions that harm children. The training and retraining should be conducted in a multi-disciplinary manner by experts on DV and child sexual abuse.

States Must Provide Additional Funding so DV Advocates Can Participate in DV Custody Cases

Research as well as common sense tells us that DV advocates are the primary experts on DV.¹³⁹ They are members of the only profession that focuses solely on problems caused by domestic violence. They are experts in critical subjects like safety planning and DV dynamics.

The courts need such advocates to help train court professionals about DV. Advocates also need to be trained to serve as expert witnesses. This would allow DV victims to be able to afford the most knowledgeable DV experts, and court professionals would therefore learn correct information about DV. DV agencies are already

¹³⁹ Saunders, et.al., *supra*, note 4

underfunded, so the states must provide additional funding to cover the cost of these additional services.