

**CHILD CUSTODY OUTCOMES IN CASES INVOLVING
PARENTAL ALIENATION AND ABUSE ALLEGATIONS**

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STATEMENT OF THE PROBLEM and LITERATURE REVIEW

Domestic Violence Field's Critiques of Family Courts' Unsafe Adjudications

A growing concern over the past 30 years among domestic violence scholars and practitioners has been courts' family courts' treatment of mothers and children who allege a father is abusive in custody and visitation litigation. Many scholars and advocates assert that family courts are awarding unfettered access or custody to abusive fathers, (Edleson, J., 2006; Goldfarb, S., 2008; Bancroft & Silverman, 2012), and increasingly cutting children completely off from their protective mothers. (Neustein & Leshner, 2005; Petition in Accordance with Inter-American Commission on Human Rights, 2007; Meier, 2010). This has been observed especially where mothers allege child sexual abuse. (Faller & DeVoe, 1995; Stahly et al, 2014; Neustein, A. & Goetting, A., 1999). Domestic violence organizations are being flooded with pleas for help from battered women litigating custody, because evaluators and judges do not credit their claims of abuse and seek to maximize fathers' access to children instead. (Meier, 2010). Scholars and practitioners report that custody courts commonly do not recognize domestic violence and child abuse (Jaffe, Crooks & Poisson, 2003), fail to understand their implications for children and parenting (Stark, 2009; Dalton, Carbon & Olesen, 2003), and increasingly, turn against mothers and children who insist on pressing claims of abuse by a father in custody litigation. (Neustein & Leshner, 2005; Stahly, 2013; Meier, 2009, 2010; Fernandes, 2010).

In fact, there appears to be a trend toward removal of custody from protective mothers and awards to allegedly abusive fathers, which has been estimated to occur in the tens of thousands per year. (Leadership Council, 2008). The result for children may include ongoing abuse, loss of a secure maternal-child relationship, and at worst, death at their fathers' hands.

(Bartlow, in press; Goldstein, B., 2013). Although litigants often speculate that the problem is particular to one jurisdiction or another, the problems have been observed nationwide (Jaffe, Crooks & Poisson, 2003; Dalton, Carbon & Olesen, 2003), and globally. (Gardner, Sauber & Lorandos, 2006; Meier, 2013). In response, an independent and decentralized movement of “protective parent” advocates and mother-survivors has become increasingly active both locally and federally. (Stark, 2009; Bancroft, 2010).

This study seeks to produce a database of custody and abuse and alienation cases to empirically test many of these reports from the domestic violence and protective parent fields.

Empirical Evidence is Limited but Growing

Empirical support for these observations of family court adjudications involving abuse has been sparse. Some early empirical research in particular locations identified a trend toward favoring fathers, in contrast to widespread assumptions that mothers are favored in custody litigation. (Supreme Judicial Court of Massachusetts, 1990). Additional small studies have elaborated on a pattern of family court failures to consider evidence of intimate partner violence, disrespectful treatment of battered women, gender biased treatment of mothers, and granting of physical custody to perpetrators of intimate partner violence. (Slote et al, 2005; Bemiller, 2008; Meier, 2003). Another study found that the prevalence of court preferences for joint custody and “friendly parent” principles, seems to outweigh judicial consideration of abuse claims. (Morrill et al, 2005). These principles have been adopted explicitly by many state legislatures but are also implicitly valued by most family courts.

Studies of Custody Evaluators and Abuse

In the past ten years, a handful of studies has begun to systematically and empirically analyze custody evaluation practices in cases involving domestic violence or child abuse

allegations. These studies confirm that many custody evaluators actually lack meaningful knowledge or expertise in domestic violence and child abuse, and often make recommendations that do not take abuse into account. (Saunders, Faller & Tolman, 2011; Davis, O’Sullivan, Susser & Fields, 2011; Logan, Walker, Jordan & Horvath, 2002; Pence, Davis, Beardslee & Gamache, 2012). Several studies have also independently found that custody evaluators tend to fall into two groups: those who understand domestic violence and abuse and believe it is important in the custody context, and those who lack such understanding, are skeptical of abuse allegations and believe they are evidence of alienation (Saunders, Faller & Tolman, 2011; Haselschwerdt and Hardesty, 2010; Erickson and O’Sullivan, 2010). Evaluators in the latter category tend to have “patriarchal” beliefs, which dictate their interpretations of the information they acquire. (Saunders, Faller & Tolman, 2011). One study of New York cases found that most custody evaluators’ recommendations were unsafe for children in homes where abuse was alleged, and in most cases substantiated. (Davis, O’Sullivan, Susser & Fields, 2011).

Parental Alienation Theory as Key Factor in the Discrediting of Abuse Claims

A primary mechanism which gives evaluators and courts a quasi-scientific rationale for rejecting abuse allegations is the theory of “parental alienation (PA),” originally called “parental alienation syndrome (PAS),” and more recently also called “child alienation,” or “alienation.” (Meier, 2013; Silberg, Dallam & Samson, 2013; Erickson, 2010). PAS, a construct invented and promoted by Richard Gardner, described a “syndrome” whereby vengeful mothers employed child abuse allegations in litigation as a powerful weapon to punish ex-husbands and ensure custody to themselves. (Gardner, 1992a; 1992b). Gardner claimed that child sexual abuse allegations were rampant in custody litigation, and that the vast majority of such claims are false, designed by the mother to “alienate” the child from the father and drive him out of the child’s

life. (Gardner, 1987, 1991). Gardner also characterized PAS as profoundly destructive to children's mental health and as risking their relationships with their (purportedly falsely accused) fathers for life. (Gardner, 1992a, 1992b). Recommended remedies to PAS could be "draconian," including a complete cutoff from the mother in order to "de-program" the child. (Gardner, 1992a). PAS quickly became widely incorporated into custody litigation when any abuse – not just child sexual abuse – was alleged. (Meier, 2009).

PAS was explicitly invented by Gardner as a rationale for denying child sexual abuse; he explained it in part by gender stereotypes such as "hell hath no fury like a woman scorned." (Gardner, 1987, 1992a). As a "syndrome," PAS lacked any scientific or empirical foundation, and has today been largely - although by no means completely - rejected by experts and scholars, and to a lesser degree, courts. (American Psychological Association, 1996; Myers, Berliner, Briere, Hendrix, Jenny, and Reid, 2002; Emery, Otto & O'Donohue, 2005; Dalton, Drozd & Wong, 2006; *Snyder v Cedars*, 2009; *People v. Fortin*, 2001).

However, the discrediting of PAS has not ended reliance on the concept of "parental alienation" in family courts. On the contrary, scholars and forensic evaluators continue to give substantial attention to parental alienation, which they contend is distinct from PAS. (Johnston & Kelly, 2004a; Fidler & Bala, 2010a). Whether PA is really different from PAS, particularly in how it is used in court, is debated. (Erickson, 2010; Meier, 2013). However, there is not much doubt that parental alienation¹ remains a dominant issue in many if not most custody cases in which a mother has alleged a father is abusive. (Fidler & Bala, 2010a, 2010b; Johnston, 2005;

1 Parental alienation is also spoken of as "child alienation" and "alienation;" in referring to "PA" we intend to capture all references to "alienation" of a child from a parent in custody and visitation litigation.

Johnston, Walters & Olesen, 2005; Gould, 2006; Saunders, Faller & Tolman, 2011; Bancroft & Silverman, 2012).

PA's role in custody and abuse cases has been widely decried by the domestic violence field. By re-framing a mother who claims she seeks to protect her child from abuse as a pathological or vengeful liar, who is severely "emotionally abusing" her children by falsely teaching them to hate and fear their father, PA theory makes a self-described "protective parent" *persona non grata*. (Jaffe, Crooks & Poisson, 2003; Stark, 2009; Meier, 2009, 2010). The PA label diverts courts' attention away from the claims a father is abusive to replace it with a focus on a supposedly lying or deluded mother or child. (Bancroft & Silverman, 2012). In fact, evaluators' characterizations of mothers as "alienators" appears to have a significant impact on courts, leading them to deny mothers' allegations of abuse even when the abuse has never been ruled out. (Erickson, 2010; Meier, 2013). In some cases even expert validations of child abuse (*Bhatia v. Debek*, 2007), and comprehensive Guardian Ad Litem confirmations of the validity of the abuse claims (Sealed Case, Brief in Support of Appellant, 2010) have been insufficient to overcome the seemingly irrefutable presumption of falsity that flows from the label "alienator." For all these reasons, leading commentators have called the use of "parental alienation" claims against mothers in custody and abuse litigation "a national crisis." (Bancroft & Silverman, 168, 2012).

With two exceptions, all of the above critiques of PA have been experiential and anecdotal – not empirical. However, one small study of 18 published and unpublished Minnesota parental alienation cases concluded that it appeared that these courts "exhibit anti-mother gender bias," that the use of alienation has had an unfair impact on women, and that many of the cases involved switches of custody to the father. (Berg, R., 2011). Another study in

progress holds promise as providing empirical support for the domestic violence field's claims about parental alienation. Joyanna Silberg and colleagues have been analyzing "turned-around cases," i.e., cases in which a first court refused to believe alleged abuse and sent a child into unprotected care of an abuser, and a second court corrected that ruling and validated the abuse. Silberg's and colleagues' research to date has indicated that parental alienation labeling plays a significant role in the erroneous and harmful first outcomes. (Silberg, Dallam & Samson, 2013).

The Difficulty of Challenging in Litigation the Use of PA Labels to Deny Abuse

While some advocates have sought to challenge on appeal courts' misuses of parental alienation theory to deny, minimize or penalize mothers' abuse allegations in custody litigation, these challenges have yet to be successful. (*Jordan v. Jordan*, 2010, 2011; *Bhatia v. Debek*, 2007). Ironically, in non-family criminal and civil cases, PAS has been ruled inadmissible and unscientific (*People v. Fortin*, 2001; *Snyder v Cedars*, 2009); but the admissibility of "PA" has never been adjudicated, although its scientific basis, especially as applied to abuse allegations, has been questioned. (Bruch, 2001; Erickson, 2010; Meier, 2009, 2010). One reason PA is difficult to challenge in court is that family courts are widely recognized as using less stringent legal standards for admissibility of evidence. (Murphy, 2010; Weissman, 2001) Another is that parental alienation is treated by courts as though it is fact-based and gender-neutral, and, since it is typically propounded by a purportedly "neutral expert," such as a psychologist or a Guardian ad Litem (child's representative) appointed by the court, it appears to be objective and scientific. Without a principled objective or scientific basis for rejecting the concept, advocates, scholars and lawyers have found it difficult to persuade evaluators or courts that parental alienation is being misused to deny valid abuse claims. (*Jordan v. Jordan*, 2011; *Sealed Case*, 2009). Rather,

common critiques of PA as masking true abuse can seem to non-abuse experts to be nothing more than complaints that the courts are not believing their clients' allegations of abuse.

Gulf Between Domestic Violence and Family Court Constituencies

The domestic violence community's alarms about the failure of family courts to appropriately adjudicate abuse allegations, including substantiated allegations, appear to have had minimal impact on typical family court and evaluator practices. (DV LEAP, 2014). Many mainstream family court practitioners, including leading forensic experts, judges, and private lawyers, do not accept abuse advocates' and scholars' views of parental alienation or custody and abuse adjudications as gender-biased or failing to recognize the realities of abuse. (E.g., Fidler & Bala, 2010b). The two professional spheres – domestic violence experts and advocates and family court researchers and practitioners – remain separate and apart, and disinclined to trust each others' perspectives. (Salem & Dunford-Jackson, 2008). Consequently, domestic violence and child abuse concerns remain only minimally integrated into standard family court practices. (Meier, 2003; Salem & Dunford-Jackson, 2008).

Purpose, Goals & Objectives

Purpose

The core purpose of the study is to conduct an empirical analysis of child custody cases in which abuse allegations and/or alienation allegations are made by one parent against the other, and of the extent to which allegations of parental alienation influence the custody outcomes. More specifically, the study seeks to build on and expand the results of an earlier pilot study that examined gender differences in custody cases involving allegations of parental alienation with or without concomitant allegations of abuse.

Background – Pilot Study

This proposal was developed as a result of a preliminary research study conducted by the Principal Investigator, who sought to develop an objective, empirical measure of whether, and if so, to what extent, parental alienation was distorting accurate outcomes in custody and abuse adjudications. She supervised the collection of a database of 240 electronically available custody opinions involving allegations of parental alienation; a majority also involved abuse allegations.

Findings from this pilot study indicate the following: (1) mothers who alleged child sexual abuse lost primary custody 20% more often than mothers who did not allege abuse; (2) even where courts validated abuse allegations against fathers, the fathers received a custody outcome in their favor over 40% of the time; (3) fathers who alleged alienation were over twice as likely to receive a custody outcome in their favor as mothers who alleged alienation, a statistically significant result (OR 2.32, CI 1.19-4.51); (4) when courts substantiated fathers' alienation claims, fathers were even more likely to win than mothers were when courts substantiated mothers' alienation claims. (OR 4.41, CI 1.23-15.88); (5) Even when a court specifically found that fathers' allegation of alienation was invalid, fathers were still statistically more likely to win than mothers (OR 4.97, CI 1.08-22.98); (6) Mothers alleging alienation against the father, but not alleging abuse (about 1/3 of the cases), won their alienation claims about as often as fathers. Additional preliminary results are contained in "Figures" (attached hereto).

Expanding from the Pilot Project

The present study will increase the size of the sample by adding 5 years to the time frame. Second, the study will be expanded to include a comparison group of custody cases involving abuse allegation where alienation was not alleged. A rough electronic search indicates

that this expansion should increase the database approximately tenfold. The expanded database will both facilitate more robust multivariate analysis, but will also enable the Project to more accurately assess the impact of parental alienation allegations on outcomes, by comparing outcomes in cases with alienation defenses to outcomes in cases without such defenses. In short, the project seeks to provide an objective and empirical assessment of custody and visitation outcomes by gender, in cases involving abuse and/or alienation.

Goals

The overarching **goals** of the project are to determine to what extent the widespread anecdotally based critiques of family courts are empirically supported - in particular, to determine whether there is any measurable evidence of gender bias in custody and abuse adjudications, particularly where parental alienation is alleged. Given the gulf between domestic violence experts' concerns and mainstream family court practices and beliefs regarding adjudication of abuse allegations and parental alienation claims, empirical data which provide objective evidence of whether family courts are or are not adjudicating custody and abuse cases in the gender biased manner alleged by the critics, could be a powerful bridge between the two communities, and could potentially persuade advocates on either side that the other's perspective has some objective merit. Depending on the results of the study, different recommendations for practice could emerge – for instance, domestic violence advocates might be persuaded that the problems are more localized and not so universal, thus focusing their attention on local, specific interventions. Conversely, family court professionals might be persuaded by objective and comprehensive evidence of gender bias and neglect of safety concerns (e.g., a significant number of awards of custody and unsafe visitation even after abuse has been validated) that more

fundamental changes are necessary, including possibly legal or constitutional checks of the use of parental alienation or greater control over how custody/abuse cases are adjudicated.

Objectives

Our primary **objectives** are:

- To assess the degree to which family courts can objectively and empirically be said to be awarding unsafe custody or unsupervised visitation even when abuse² has been validated, or there is objective evidence of it;
- To assess overall win³ rates by gender in cases involving abuse allegations and cases involving alienation allegations;
- To explore whether alienation is a more successful claim for fathers than for mothers, particularly where the mother has alleged paternal abuse;
- To explore whether mothers lose more or less often depending on the type of abuse (adult, child, sexual, mixed) alleged; and
- To explore how alienation defenses impact outcomes by gender, and custody courts' treatment of abuse allegations.

PROJECT DESIGN AND IMPLEMENTATION

Description of research design and methods

Research questions: To what extent are custody and abuse adjudications in the U.S. removing children from their mothers and subjecting children to unsafe visitation? What are the outcomes by gender in these cases? Does parental alienation play a significant role in these outcomes? Is parental alienation used in a gender-biased manner? Do different types of paternal abuse

² The term “abuse” is used to include IPV, CA, CSA, and combinations thereof.

³ By “win/loss” we intend simply to look at what relief was requested by each party and what relief was ordered by the court. Based on our collective experience in the field, we believe that in most cases one party or the other will clearly have “won” the case. Cases where outcomes were mixed will be examined for whether one party won more than the other, or more significantly (e.g., won physical custody but lost on legal decisionmaking for the child). We will either incorporate those into the larger database after that judgment, or will separately analyze such cases.

allegations have differing effects on mothers' risk of losing custody? To what extent do courts validate abuse and issue protective custody and visitation orders, including when there is objective evidence (e.g., official documentation or validation) or an adjudication of abuse?

Hypotheses

General

- Fathers accused by mothers of IPV, CA, or CSA (or a mix) are more likely to win their case than mothers who make such allegations;
- Allegations of IPV, CA, and/or CSA by mothers with custody are correlated with loss of maternal custody and/or loss of the case;

Parental Alienation

- Fathers who counter mothers' allegations of abuse with counter-claims of parental alienation, regardless of whether the PA is credited or not, win more often than fathers who do not raise PA;
- Fathers' counter-claims of parental alienation when accused of abuse are correlated with increased losses of custody and access by mothers;
- Fathers using parental alienation claims win their cases more often than mothers using parental alienation claims, particularly where abuse is alleged;
- Parental alienation labels applied to mothers are correlated with awards of custody or unsupervised access to fathers, even after judicial findings that the father committed adult or child abuse;

Different Types of Abuse Allegations

- Mothers' allegations of domestic violence are credited more frequently than mothers' and children's allegations of child abuse, particularly child sexual abuse;
- Mothers' and children's allegations of child sexual abuse disproportionately result in custody switches to the accused father compared to other types of abuse allegations;
- Mothers alleging domestic violence lose the case and lose custody less often than mothers alleging child abuse (or mixed adult and child abuse).

Methods - Data collection

This project seeks to develop a massive database from which to draw an empirical, objective, and non-subjective analysis of custody and abuse case outcomes. By limiting our research to published case opinions (mostly appeals) and relying solely on the courts' own report of the facts, findings, and outcomes, the study avoids any debate about the facts or interpretations

of courts' fact finding. Rather, at its most basic level, the study will tabulate outcomes by gender, looking at which parent alleged what, what findings the court made, and measuring outcomes by gender (outcomes will include simple "case wins/losses"⁴ and separately, custody switches).

The first stage of data collection will be to expand the pilot study so it spans 2000-2014, in order to enlarge the database and increase the utility of multivariate analyses. Using a variety of search terms within Google Scholar and/or LEXIS/NEXIS and WESTLAW databases, researchers will search for all electronically published decisions in the U.S. in which there were (i) abuse allegations and alienation allegations; (ii) abuse allegations but no alienation allegations; and (iii) alienation allegations but no abuse allegations. The pilot study identified 240 alienation-only cases in the ten year period prior to Summer 2013. Expanding the search an additional five years (two years forward and three years back) is expected to reveal at least another 200-300 alienation-only cases. Expanding the database to include all abuse-only, non-alienation cases will expand the database much more. Based on preliminary and rough pilot LEXIS searches we believe the researchers will need to sort through approximately 6,000 cases, resulting ultimately in a useable database of approximately 2,000 published opinions.

Because most published opinions are appellate decisions, the vast majority of the pilot database is appellate decisions; however, a small number of trial court opinions were electronically available and were included to maximize the pilot data pool. For the proposed expanded project, we will again collect all electronically available decisions, because the project

⁴ See note 3, *supra*.

is focusing on trial court decisions.⁵ As long as they are in print and publicly available both appellate and trial court opinions are a valid source of this information. To make sure that trial court opinions are not systematically different from the appellate decisions with respect to the factors of concern we will analyze them separately – if they appear to differ in a significant manner we will decide whether to include them or not.

Methods - Coding

The original database has already been coded for over 20 factors, such as:

- which parent has custody at the outset;
- which parent alleges abuse;
- kind of abuse (adult, child, or child sexual abuse) alleged;
- which parent alleges alienation;
- court’s findings re abuse;
- court’s findings re alienation;
- involvement of a neutral evaluator/GAL;
- position the neutral took on abuse and alienation;
- win/loss outcome by gender;
- custody switch or not by gender

See Appendix 2.

With the expanded database, we will add several codes, (i) including documented evidence of abuse (e.g., court orders);⁶ (ii) any concrete evidence of alienation, such as proof that

⁵ We will also code the outcomes on appeal, so we can identify rates of reversal, an interesting statistic in its own right for advocates and lawyers in the field, some of whom specialize in appeals. This data may also help shed light on the degree to which appellate courts are or are not protective against potentially unsafe trial court decisions.

⁶ We are aware that documented evidence of abuse is often overlooked in court adjudications. (Kernic, Monary-Ernsdorff, Koepsell, and Holt, 2005). Our purpose here will not be to go behind the courts’ opinions to ascertain what information was available; rather it will be simply to

a mother told a child untruths about the father; (iii) different clinical or pathologizing labels similar to an “alienation-type” defense (e.g., “Munchausen by Proxy”); and “judicial animosity/diatribe.” The reasons for the last two additions are explained below, under “Methods - Limitations.”

The existing database will be re-coded along with newly collected cases to ensure consistency across the entire dataset.

Methods - Statistical Analysis

For the pretest, a knowledgeable, skilled coder reviewed 600 cases, developed the methodology, coding guidelines, and an Excel database of about 240 cases. This process took about 5 weeks on a full-time equivalent basis. The proposed project (more years and broader selection of cases) is likely to produce about 6,000 cases for review and require most of 2015 for review and coding (after hiring of researchers, and development of an expanded coding sheet is complete. The result will be a spreadsheet on which every case is logged and coded according to a systematic list of relevant factors. The PI and researchers will consult with the data analysts at the Institute for Women’s Policy Research (IWPR) to ensure that exclusive, numeric codes are used in order to assist with the subsequent statistical analysis.

Once data collection is complete, the data will be turned over to IWPR as raw, machine-readable data (likely Excel or Access) for conversion to Stata, data verification, and cleaning by IWPR. IWPR will specify and create composite measures in Stata and documentation files will be updated. IWPR will prepare the final documentation and data file. The codebook will include case counts, variable descriptions, and exclusive and exhaustive codes and value labels

identify whether the court *acknowledged* the existence of such evidence, and to assess whether that judicial knowledge affected outcomes.

for all numeric coded fields. It is not anticipated that the data will require the construction or application of any sample weights. Additional user notes will include the Stata programs for data management and statistical analyses used in the project.

The statistical experts will then test the Project hypotheses by applying multiple logistic regression to test the relative impact of gender, different kinds of abuse claims, and other factors on outcomes when one parent alleges alienation, and in custody/abuse cases where alienation is not raised. While this analysis will help answer important questions about which factors drive outcomes in alienation and abuse cases, it will also be important to provide simpler statistical analyses such as cross-tabs and odds ratios.

As a project in translational research we also propose to perform analyses that will be easily adopted and understood by practitioners and policymakers. These analyses will compare common multi-factorial scenarios and will provide easily understood odds ratios that demonstrate the impact of gender or abuse claims on outcomes in parental alienation and abuse cases. For example, such an analysis would compare the rate of custody switches when the mother alleges child sexual abuse and she does not, assuming that in both cases the mother originally had custody of the children and the father has alleged parental alienation. These simpler statistical operations will broaden the analyses we are able to provide, help to demonstrate the extent to which common critiques of family courts are or are not empirically borne out, and will provide some empirical conclusions related to categories that are too thinly populated to warrant regression analysis. Because we hope the findings of this study will have a direct impact on practice in family courts, it is critical that our results be framed in terms that are easily understood by non-statistical practitioners and that the analyses we employ are aimed directly at recognized issues and problems in the field.

Methods – Limitations

Data

One limitation (as well as benefit) of this study is its reliance primarily on electronically available court opinions.⁷ This results in a database populated primarily by appellate decisions, because trial court decisions are often not written, and they are usually not published. However, some trial court decisions *are* written and are electronically available. In addition, some appellate decisions and some trial court decisions are denominated “unpublished” – which in this context means that the decision is not legal precedent that can be cited in future legal briefs.

These differing types of opinions may differ in systematic ways. For instance it is possible that appeals are not representative of the vast majority of cases that do not get appealed due to lack of resources or information. It is also possible that cases denominated “unpublished” are in the eyes of the deciding court, less “significant” cases, containing less important legal issues and more complicated or amorphous facts. Whether any of these differences systematically affect the factors we are interested in, such as outcomes by gender or the role played by alienation defenses, is unknown. Accordingly, we will analyze these differing types of cases separately to ascertain if they differ along any of the factors we care about. If they do we will separate out the analyses and discuss those differences. If they do not, they will be included in the total database, as we seek to acquire the most robust database we can.

⁷ The benefit of this database, which fueled the decision to analyze these opinions, is that we are relying solely on courts’ own descriptions of their findings and their decisions, so the analysis is entirely objective and empirical, and is difficult to challenge.

Assessing the Impact of the Alienation Defense by Comparison with Cases without Alienation Defense

One important question we hope to answer in this study is – to what extent does alienation defense impact outcomes for mothers alleging abuse. If the statistical comparison of cases with an alienation defense to cases without such a defense results in a clear statistical difference, we will have confirmed our hypothesis. However, if that comparison results in a finding that the two categories of cases are not very different in outcomes, we will need to go further before we can conclude that alienation does *not* impact outcomes. We expect that cases which use other quasi-clinical labels for mothers alleging abuse, such as “enmeshment,” “paranoid,” “personality disorder,” etc., can be compared quite closely to alienation cases, that is, can be treated as the same category of pathologizing labels for mothers alleging abuse. Hence, we will code for all such alternative labels, in addition to explicit reliance on the term “alienation.”

It is also possible that there will be a number of custody and abuse cases which do not use clinical/pathological labels for mothers who allege abuse but do, however, display notable animosity and attacks on the mothers’ character. The PI is aware of a number of such cases, where courts characterize mothers they disbelieve as “malicious and calculated,” (G v C, 2010). In one case the court characterized the mother as using “stealth” and continuing to have frequent painful sexual intercourse with her husband so that she could “complain she was sexually abused” and “to keep the plaintiff [husband] in the marriage until she had all of her ducks lined up to get sole custody of the children.” (Sealed Case, 2009)

Cases such as this, while not necessarily using pathological or clinical labels to deny the mother’s abuse allegations, are still indicative of a particular dynamic which the domestic violence field has identified in cases involving alienation as well: That is, the alienation label

may be effective precisely because it pathologizes and discredits a mother who alleges abuse – but there are other ways to do that. One other way is to use other pathologizing labels. Another way is to cast such a mother as “evil” “malevolent,” etc. We believe that all of these different ways of demeaning and rejecting mothers’ allegations of abuse may be found in this database (and will be separately coded), and should be analyzed separately and compared with respect to the hypotheses we are testing. If we find that each of these differing methods of dismissing mothers’ abuse allegations impacts outcomes similarly that will be an important conclusion. If we find that they differ in impacts, that too will be important.

Limits of overall database

Ideally, this study would not only examine custody cases involving abuse, and alienation, but also all other custody decisions, in order to have a comparison population for the cases involving abuse (and alienation). Unfortunately, the size of that database would be too unmanageable for the team at this time. As a result, we will not be able to draw empirical conclusions about how mothers’ abuse allegations themselves affect outcomes, as compared to custody cases without abuse allegations. Further research would be necessary to explore this question more comprehensively.

Secondly, to develop a more complete gender analysis, we would ideally like to compare outcomes in cases where fathers allege intimate partner violence by mothers, with outcomes in cases where mothers allege intimate partner violence by fathers. Unfortunately, the pilot study produced only 1-2 cases of the former, and we suspect there will not be a sufficient number of such cases even in the expanded database, to be able to do such a comparison. However, there were a somewhat greater number of cases in the pilot study where fathers allege the mothers have abused the *child*, and it may be possible to compare those to cases where mothers allege the fathers have abused the child for a slightly different but still useful gender analysis.

POTENTIAL IMPACT

Implications for Family Court Practice

The original pilot research was conceived by Professor Meier specifically in order to see if empirical research would support the widespread critiques of parental alienation's role in denying valid abuse claims in custody cases. The goal was, and remains, to develop empirical findings which will either validate those critiques in order to help persuade a broader community of concerned professionals of the need for change; or will put those critiques in perspective as potentially not representative of what goes on in a comprehensive evaluation of court practices.

Confirmatory Conclusions

Should the research empirically demonstrate some of the hypotheses – e.g., that parental alienation as it is used in the courts in abuse cases is gender-biased - the impact in the field could be substantial: First, it could impact specific trial court adjudications by allowing litigants and lawyers to convince judges not to rely on parental alienation in ways that have been demonstrated to be inequitable and inaccurate. Second, it could impact appeals of unfavorable decisions: Advocates will be able to cite this research in briefs and arguments before appellate and trial courts and it may persuade appellate courts that PA testimony or “diagnoses” are unconstitutionally biased and/or unscientific and therefore, reversible error. Objective empirical indications that PA is gender biased will significantly reduce its credibility in the courts and facilitate reversal of such decisions on appeal. Third, advocates and policymakers will be able to point to this research to support state and federal legislatures in reining in of the theory's use in court. (Several federal proposals developed by domestic violence and protective parent advocates are currently circulating in Congress. This kind of empirical research would create significant momentum to support them.) And fourth, by providing objective empirical data to

support some of the critiques of family courts this research could make training and education of trial judges and forensic experts more compelling and effective in ways that will help victims of adult and child abuse.

Disconfirmatory Conclusions

Should the research results *not* confirm most of the study's hypotheses, it will demonstrate that although the problems of which the field complains may be real, they may not be representative of the universe of family court adjudications of custody and abuse. In that case, it will be important for the domestic violence field to be educated on which, if any, of their critiques are empirically supported and which are not. This may lead to more targeted interventions with particular courts, particular judges, and/or particular evaluators who are seen to be providing problematic assessments of abuse allegations, rather than broad-brush critiques of the family court system based on gender bias or denial of abuse. It is possible that a more measured and specific critique will actually elicit more collaboration and support from the court system than the broader critique does; if so, reforms of problem areas, courts, or personnel, may become more viable, and the domestic violence field will be able to marshal its resources and focus to enact change in the particular locations and contexts where it is required.

Planned Scholarly Products

Once the empirical and qualitative analyses have been completed, Professor Meier will take the lead, with the assistance of Dr. O'Sullivan and Dr. Rosen, in drafting the Overview Summary for the NIJ. In addition the complete study will be published in at least two scholarly journals and will address a literature review, methods, data collection and analysis, statistical findings, policy and practice implications, and questions raised. The articles will be submitted to both legal and social science and specialty journals. Because this issue is widely recognized as a

problem area in the field, we are cautiously optimistic that publication in law reviews and journals such as the *Children's Rights Law Journal*, *Violence Against Women*, or the American Psychological Association *Journal of Forensic Psychology* will not be difficult. In addition, shorter papers, potentially on particular aspects of the study, will be developed for widely read practice journals and venues such as the *Family Law Quarterly*, *Family Court Review*, *VAWnet*, or the *Journal of Child Custody*. Additional journals that may be good outlets for distributing these results include *Gender & Society*, and the *Journal of Marriage and Family*. Drs. O'Sullivan and Rosen are definitely interested in authoring or co-authoring articles. IWPR's Drs. Hayes and Milli will also explore an IWPR publication.

Plan for Dissemination to Broader Audiences

The team anticipates a wide interest in this research, particularly if the study does demonstrate some degree of gender bias in how parental alienation is used or failure to adequately respond to abuse in courts' adjudications of custody and abuse. Therefore the team is committed to wide distribution of the results.

First, the PI and team will develop brief, practical research summaries for use in trial and appellate litigation, and in trainings and presentations to judges, lawyers, and others. In addition, if the PA critique is supported by the study, a tool for judges, evaluators and lawyers, designed to ensure that parental alienation is not mistakenly used to mask valid abuse claims, will be developed and disseminated widely as well. (Meier, J., 2013).

Professor Meier will distribute both the scholarship and any shorter, more practice-oriented publications through her non-profit (DV LEAP)'s⁸ website and electronic lists, the

⁸ DV LEAP specializes in appellate litigation on behalf of adult and child victims of abuse in the family. DV LEAP has devoted substantial resources to advocacy for victims in child custody litigation, through appeals, trainings and presentations, and scholarship. From 2011-2013 DV LEAP had a two year

national domestic violence lawyers' list operated by the ABA Commission on Sexual Assault /Domestic Violence ("ABA CSDV"), and protective parents' advocates' lists. In addition, she will share them with the national organizations partnering with the DOJ Office on Violence Against Women to provide Technical Assistance to the field on the issue of custody and abuse, such as the Battered Women's Justice Project ("BWJP"), and the Legal Resource Center on Violence Against Women.

We also expect to offer webinars and presentations to the domestic violence field through ABA CSDV trainings, BWJP webinars, NCADV Conferences, Jewish Women International's webinars and DV LEAP presentations. We expect to share the research with family court practitioners and judges through Association of Family and Conciliation Court (AFCC – the leading family court association) Conferences, American Psychological Association conferences, local and national judicial training conferences, etc. As a result of DV LEAP's cooperative agreement with DOJ-OVW, DV LEAP has a good number of judicial and court-related contacts who have expressed interest in presentations on such issues. Finally, the PI is also part of a number of coalitions of advocates and experts who are involved in potential federal legislative efforts to reform family court practices: Data from this study could be extremely helpful in informing the Congress and other policymakers.

CAPABILITIES/COMPETENCIES

Professor Joan Meier has been teaching and litigating domestic violence cases for over twenty years while teaching domestic violence clinics at George Washington University Law School. She is widely published on the issue of custody and abuse and is also a leading appellate lawyer

cooperative agreement with the DOJ Office on Violence Against Women to develop trainings and tools for courts, professionals, and litigants on custody and abuse. See www.dvleap.org for more information.

in the field. Professor Meier received the inaugural national “Sharon Corbitt Award” to a domestic violence lawyer from the American Bar Association’s Commission on Domestic and Sexual Violence. Her nationally operating non-profit, the Domestic Violence Legal Empowerment and Appeals Project (DV LEAP), was the first organization launched to handle appellate litigation in the domestic violence field, and has spawned a number of local projects.

Leora Rosen, PhD, is currently an Independent Professional Researcher; served as a senior social science analyst from 1998 to 2007 at the *National Institute of Justice* in the Violence and Victimization Research Division, where she spearheaded the development of the research portfolio on custody and visitation in domestic violence cases and contributed to the development of other research programs pertaining to intimate partner violence and other forms of violent victimization. She also co-edited a special issue of the journal *Violence Against Women*, containing some of the very first empirical research into custody and abuse adjudications in the U.S. On the proposed Project, Ms. Rosen will participate as a consultant in analyzing the empirical results and assisting in writing them up.

Chris O’Sullivan, PhD, is a former Psychology professor and current Research and Evaluation Consultant, has extensive experience in empirical research in the fields of domestic violence and sexual assault, including an NIJ funded review of custody evaluations in custody cases involving domestic violence. On the proposed Project she will assist with the literature review, shaping hypotheses and research design, interpretation of results, and write up and presentation for different audiences.

Sean Dickson, MPh, JD, accomplished a remarkable amount of social science statistical research in the public health field both during and before obtaining his MPh and JD. He conducted the original “pilot” research which launched this proposal. He will provide hands-on

supervision of the Senior Research Associate and Graduate Research Assistant in getting the coding sheet amended and finalized, getting their case collection launched and systematized, and will help Professor Meier resolve any questions that arise in the course of this research.

The **Institute for Women’s Policy Research** is the leading think tank in the United States focusing primarily on domestic women’s issues. For this Project, **Jeffrey Hayes, MA, PhD**, Study Director, will lead the statistical analyses of the database once all the cases have been collected and coded. Dr. Hayes managed the original data collection for the household survey of over 2700 respondents examining economic insecurity following the Great Recession. Previously he worked at the McGill Institute for Health and Social Policy and the Harvard Project on Global Working Families analyzing child and family well-being. **Dr. Jessica Milli, MA, PhD**, Senior Research Associate, is currently a Visiting Assistant Professor of Economics at Randolph College in Lynchburg, VA. Her research focuses, among other thing, on domestic violence and women’s economic status. Drs. Hayes and Milli will conduct the statistical analyses in Year 2, and assist in interpretation of the results.

Management and Organization

Oversight and Management

The Project will be managed by Professor of Clinical Law and Principal Investigator Joan Meier, who has specialized in litigation and scholarship on custody and abuse for the past 10 years, and who began this research under a grant from the DOJ Office on Violence Against Women in 2011. Her conception of the project is significantly informed by two experienced professionals in NIJ research on this topic, Drs. Leora Rosen and Chris O’Sullivan; a statistically trained lawyer who skillfully led the pilot data gathering and statistical analysis in 2013, Sean Dickson, Esq.; and the statistical experts from the Institute for Women’s Policy Research. The

expanded data collection will be conducted by retained research assistants under Professor Meier's supervision, most likely graduate students from George Washington University law or graduate schools.

Professor Meier will oversee the entire project. She will convene virtual meetings of the team by phone and Skype periodically to spell out roles and tasks, to ensure that the research is being conducted according to the established timelines, to identify and troubleshoot problems that arise, and to discuss procedures, findings, and additional statistical or qualitative analyses.

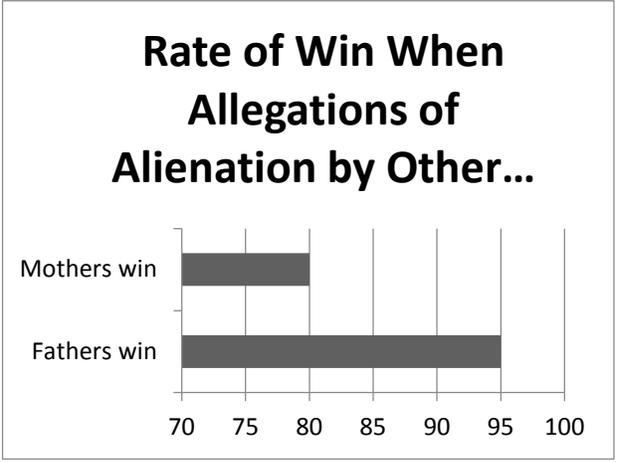
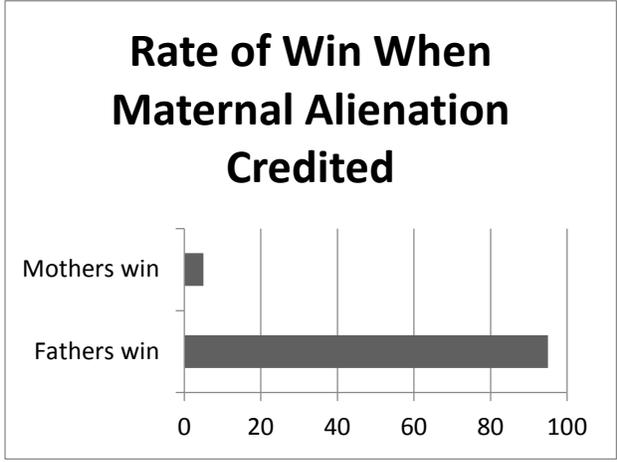
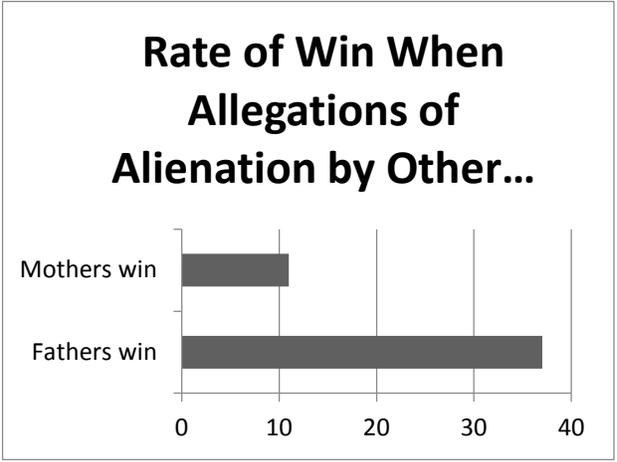
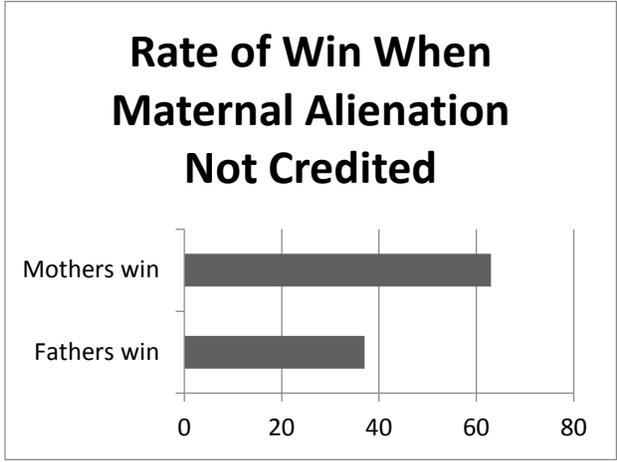
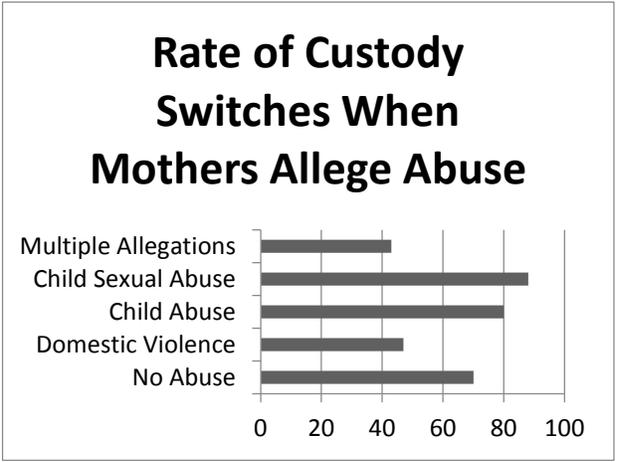
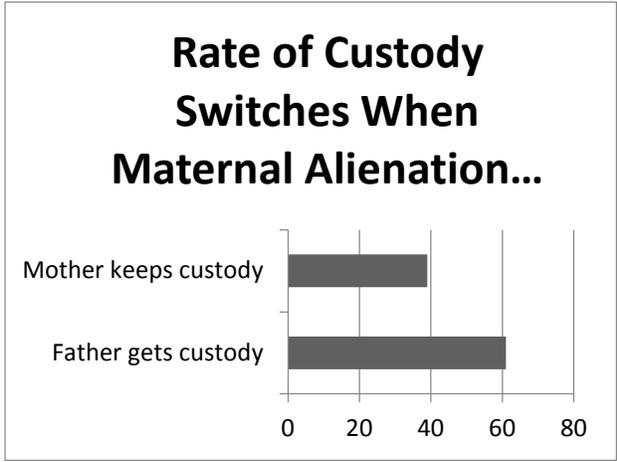
Research/Data-gathering

Research terms and searches will be developed by Professor Meier and Sean Dickson and vetted by the team before implementation. Relevant case factors by which each case is to be coded, initially identified by Mr. Dickson and Professor Meier in their 2013 preliminary work, but to be expanded for this Project, will also be discussed and vetted with the team. Sean Dickson will assist Professor Meier in advising and overseeing the research, to ensure consistency. Research will be conducted by the retained research assistants under the supervision of Professor Meier and Sean Dickson. IWPR will advise the research team on coding methods that are optimal for statistical analysis.

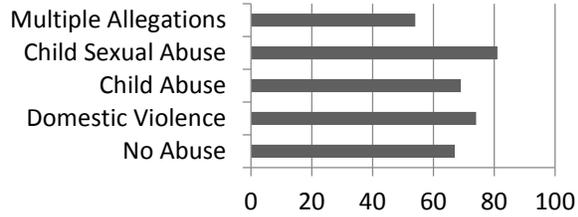
Empirical Analyses

IWPR will conduct all of the statistical analyses, with input and discussion by the rest of the team. Substantive questions about how to frame hypotheses and whether to run different statistical tests will be considered with the whole team. Ultimate discussion of the meaning of the empirical results and the conclusions that can be drawn will also be informed by the whole team.

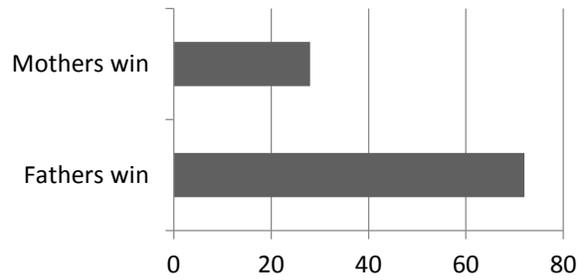
FIGURES



Rates of Win When Mothers Allege Different Types of...



Rate of Win When Mother Alleges Abuse



Rate of Win When Mother Does Not Alleges Abuse

