

Child Custody Evaluations With Child Abuse Or Domestic Violence Allegations: Ethical Issues, Practical Techniques, and Common Pitfalls

Robert Geffner, Ph.D., ABN, ABPP

Licensed Psychologist, Licensed Marriage & Family Therapist
Diplomate Clinical Neuropsychology and Board Certified in
Couple & Family Psychology

President, Family Violence & Sexual Assault Institute

President, Institute on Violence, Abuse and Trauma

Distinguished Research Professor of Psychology

Alliant International University, San Diego

Co-Chair, National Partnership to End Interpersonal Violence

President, American Academy of Couple & family Psychology

10065 Old Grove Rd., San Diego, CA 92131

email: bgeffner@pacbell.net

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Presentation Outline:

- **Issues of Domestic Violence or Child Abuse**
- **Myth of “Parental Alienation Syndrome”**
- **Alienation vs Abuse vs Rejection**
- **Qualification and Roles of Evaluators**
- **Evaluation Procedures & Interviewing Child**
- **Avoiding Bias – 10 Biggest Mistakes**
- **Custody and Visitation Recommendations with Allegations of DV or Child Abuse**
- **New Research and “Turned Around” Cases**
- **A Collaborative, Team Approach**

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Recent research has shown a connection between brain development, childhood maltreatment, family violence and trauma. Our understanding of the effects of these types of adverse childhood experiences on the brain has expanded. The influence of trauma on the brain makes it much more difficult to focus on just one issue when assessing or treating these children and victims of intimate partner violence.

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It is Estimated...

In about 40-60% of the homes where a parent is being maltreated, the child is also a victim of abuse.

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INTIMATE PARTNER VIOLENCE (IPV) AND ITS POTENTIAL EFFECT ON CHILDREN

It is normal for a child growing up in a home with domestic violence to manifest a multitude of symptoms. These include emotional, cognitive, social, and physical effects of exposure to IPV, and possible externalizing or internalizing behaviors.

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Children's Understanding of Parental Conflict

- **Davies and Cummings:** self-blame and unresolved conflict more distressing
- **Grych & Fincham:** children are more distressed when the conflict is about them and when they attribute blame to themselves. Also, threat greater for younger children and for children also physically abused by father.
- **Jaffe, Hurley & Wolfe:** children feel most responsible for the violence and safety of their mother when the violence has been more frequent and severe.
- **Kerig:** for boys, as their appraisal of conflict severity increased, so did their behavior problems, except with extremely high levels of violence where behaviors were lower. For girls, greater internalizing behaviors.

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Definitions

- **Distinction between Abuse and Aggression:**
- **Abuse = a pattern of behavior where one partner gets his/her needs met at the expense of the other through the use of power and control; usually has elements of intimidation, and often produces trauma.**
- **Aggression = usually physical but can be verbal or sexual, where one person commits an assaultive behavior on the other person.**
- **Thus, can have abuse without physical aggression, or aggression without abuse. Mutual Abuse would be where both partners are fighting with each other for power and control (not common – 10-15% of cases).**

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

The Leadership Council on Child Abuse & Interpersonal Violence

High conflict families are disproportionately represented among the population of those contesting custody and visitation. These cases commonly involve domestic violence, child abuse, and substance abuse. Research indicates that custody litigation can become a vehicle whereby batterers and child abusers attempt to extend and maintain their control and authority over their victims after separation.

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Common Mistakes For Failure to Recognize Domestic Violence

- Focusing on police and medical records to confirm abuse
- Limiting issue to physical violence
- Skepticism of new or delayed abuse allegations

¹⁰ Goldstein, Bancroft, Jaffe, Geffner, Silberg et al

Common Mistakes For Failure to Recognize Domestic Violence

Aggressive or "Inappropriate" behavior by victims:

Victim Challenging Abuser and Court

Victim as Litigant

¹¹ Victim upset and Angry

Joan Meier surveyed the 2001 case law and identified 38 appellate state court decisions concerning custody and domestic violence. She found that 36 of the 38 trial courts had awarded joint or sole custody to the alleged *and adjudicated* batterers. Two-thirds of these decisions were reversed on appeal.

Meier, J. (2003), *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*. AUJ Gender, Soc. Pol. & the Law, 11:2 675-731.

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

Suchanek, J., & Stahly, G.B. (2001, April). *The relationship between domestic violence and paternal custody in divorce*. (April 1991). Paper presented at the annual meeting of the Western Psychological Association, San Francisco. ¹²

"Studies show that batterers have been able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases."

Domestic Violence & the Courtroom Understanding the Problem... Knowing the Victim. Booklet of the American Judges Association, Lenore Walker, Ed.D., Judge Robert Lee Price, Diane Wilk, Susan Rogers. 1996 (also see NCJFCJ booklets, 2003, 2008)

¹³

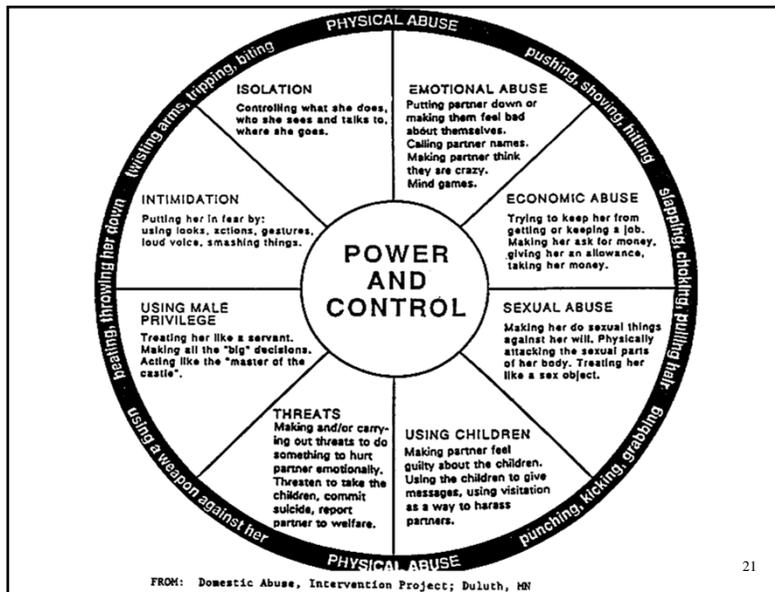
- **“Child custody and visitation disputes appear to occur more frequently when there is a history of domestic violence. Family courts often do not consider the history of violence between the parents in making custody and visitation decisions. In this context, the non-violent parent may be at a disadvantage, and behavior that would seem reasonable as a protection from abuse may be misinterpreted as a sign of instability.”**

- *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family, p. 100 (1996).*

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Recent research has shown a connection between brain development, childhood maltreatment, family violence and trauma. Our understanding of the effects of these types of adverse childhood experiences on the brain has expanded. This presentation will discuss brain development and the various types of multiple victimization experienced by children that often leads to later aggressive behavior and impulsivity due to the interaction of the brain and psychosocial factors. The influence of trauma on the brain and development makes it much more difficult to focus on just one issue when assessing or treating these children or victims of various forms of intimate partner violence.

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POSSIBLE CONSEQUENCES TO VICTIM

- Powerlessness/learned helplessness
- Unpredictable consequences of actions
- Questions sense of reality
- Nervous breakdown, depression
- Dependency
- Emotional instability
- Suicide or attempts

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Abused Victim with PTSD

Assess:

- Safety Concerns
- Coping Strategies
- Social Support (real and perceived)
- Stressors
- Need for Referrals

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Custody Evaluators' Beliefs About Domestic Abuse Allegations

Daniel G. Saunders, Ph.D.

University of Michigan School of Social Work
Presentation at the NCADV, August, 2010

Custody Evaluators' Beliefs About Domestic Abuse Allegations

Recent NIJ study that custody evaluators are very ill-informed about trauma.

Saunders, D. G., Faller, K. C., & Tolman, R.L. (2012). Child Custody Evaluators' Beliefs About Domestic Abuse Allegations

<https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>

Saunders et. al., (2010) Belief in the Importance of Social Hierarchies

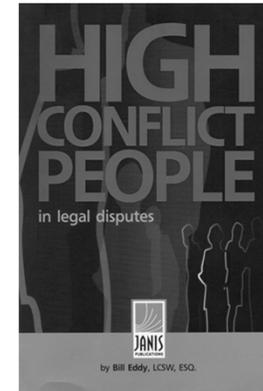
- Belief that social hierarchies are needed (social inequality is good) related to judges and custody evaluators beliefs that:
 - ◆ victims make false allegations
 - ◆ victims alienate their children
 - ◆ fathers do not make false allegations of abuse.

“High Conflict Divorce”

The theory/label/worldview of “High Conflict Divorce” confuses clear cut issues of domestic violence and child abuse by assigning blame for the violence equally to victims and perpetrators and viewing the violence as situationally caused by the “family system” dynamics.

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Don't confuse the theory of High Conflict Divorce with the study of High Conflict People—Bill Eddy's work sheds light on how batterers use the courts to further abuse their victims through litigation.



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Johnson's Typology of IPV

(Johnson, 2008)

NOT VALIDATED AND DOES NOT MATCH ACCEPTED RESEARCH

	Intimate Terrorism (IT) (Feminist Perspective)	Situational Couple Violence (SCV) (Family Violence Perspective)
Motives of DV	Maintaining general control over one's partner	Family conflict that is instigated by stress
Distinguishing Features	Violence rooted in <i>coercive control</i> Multiple violent and non-violent control tactics	Violence rooted in <i>conflict or situational stress</i> Specific conflicts or situations in which one or both partners act out

Co-Occurrence of IPV and Child Abuse

- 30 studies find correlation.
- As number of incidence of DV against partner increase so does likelihood of child abuse.
- Daughters of batterers are 6.5 times more likely than other girls to be victims of incest.

Understanding Child Abuse Allegations in Child Custody Cases

Important Questions

1. Are allegations of abuse rampant in divorce?
2. Are most allegations of abuse in divorce false?
3. Are false allegations of abuse being made by vindictive women trying to obtain sole custody?
4. How do abusive men typically react to being left?
5. What happens to parents who make allegations of abuse in divorce?
6. What happens to the accused father?
7. What happens to the children?

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CHILD PROTECTIVE SERVICES

Allegations Of Child Abuse

**CONFIRMED, FOUNDED, SUBSTANTIATED
(30-52%)**

PROBABLY TRUE

**UNSUBSTANTIATED, UNCONFIRMED, NOT
ABLE TO BE PROVEN (30-45%)**

PROBABLY NOT TRUE

UNFOUNDED (2-12%) - -

[Misperceived (6-10%),

False (2-5%)]

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COMMON ERRORS IN CHILD PROTECTIVE SERVICES EVALUATIONS

- Asking: “Who told you to say that?”
- Deferring to Family Judge, and screening out case
- Blaming reporting parent for multiple reports and/or calling it alienation
- Asking questions beyond child’s developmental level: “What does Daddy know?”

COMMON ERRORS IN CHILD PROTECTIVE SERVICES EVALUATIONS

- Using forced choice questions.
- Ruling out new allegations because old ones were ruled out.
- Ignoring behavioral indicators.
- Ignoring the context of recantations (after reunification with abusers).
- Failing to recognize that inconsistency can reflect multiple instances.

MISINTERPRETING UNSUBSTANTIATED CPS REPORTS TO MEAN CHILD WAS LYING OR SOMEONE WAS COACHING THE CHILD

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Important Questions

1. Are allegations of abuse rampant in divorce?
2. Are most allegations of abuse in divorce false?

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False Report

- ⊙ Out cry from adult involving falsehoods of events that did not occur for the purpose of instigating an investigation.
 - › An anonymous report that someone saw a young child being molested in the back yard when completely untrue. Child denies event.

Iatrogenic False Allegation

Might result from interviewer suggestion or bias.

Parental Indoctrination

- ⊙ Parent or adult fabricates an allegation and coaches a child consciously and intentionally to manipulate the legal system for their own goals.
 - › Classic coaching
 - › Not easy to do, especially with young children
 - › Too often suggestibility research has been misapplied or over-generalized to abuse cases

Parental Misinterpretation and Suggestion

- ⊙ Arise in the context of a fearful, anxious, or histrionic parent who takes an innocent remark, physical finding, or behavior and incorrectly place it in the context of abuse.
- ⊙ May unintentionally coerce child to endorse the erroneous interpretation.

OVERVALUING THE COACHING HYPOTHESIS

Faller's Review of the Coaching Issue

In a Child Abuse and Neglect review in 2007 Faller concluded...

“Although relevant studies do not always address directly the coaching of children, they support a conclusion that coached statements and other types of false abuse allegations by children are uncommon.”

It's Mom's fault



- Are there actual behavioral indicators, observations, or evidence that Mom has attempted to program the child?
- Are disclosures By the Child relatively consistent?
- Investigate the divorce and the facts surrounding the child's first disclosure
- Corroborating evidence & sensory details

Thoennes & Tjaden (1990)

- Examined 9,000 families in these areas had custody or visitation disputes.
- Of these 9,000 disputes, less than 2% involved allegations of sexual abuse.
 - ◆ 50% likely
 - ◆ 33% unlikely
 - ◆ 17% uncertain
- Thoennes, N., & Tjaden, P.G. (1990). The extent, nature, and validity of sexual abuse allegations in custody and visitation disputes. *Child Abuse & Neglect*, 14(2), 151-163.

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Summary of Fanslow, Robinson, Crengle, & Perese (2008) Study

- Approximately ¼ of women interviewed reported CSA
 - ◆ Maori women were over-represented
- Median age at onset of CSA was 9 years, with perpetrators 21 years older
- Frequency of occurrence of CSA
 - ◆ 1/2 once
 - ◆ ¼ “few times”
 - ◆ ¼ “many times”
- 83% abused by a single perpetrator
- 86% of male perpetrators were family members

Thoennes & Tjaden (1990)

- **Mothers accused biological fathers in 48% of the cases.**
- **Allegations by mothers were no more likely to be determined false than those by fathers.**

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Brown, Frederico, Hewitt, & Sheehan, 2000 (Australia)

- **Found that 5% of custody disputes involved allegations of CSA**
- **70% involved severe physical and/or sexual abuse**
- **False allegations = 9% - same rate as child abuse registry**
- **Similar findings in an Australian study by Hume (1997) of a different court**

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Bala & Schuman, 1999 (Canada)

- **Reviewed 196 Canadian cases with written judicial opinions (1990-98)**
- **Sources of allegations:**
 - ◆ **71% by mothers**
 - ◆ **17% by fathers**
 - ◆ **9% - child prime instigator**
- **Findings**
 - ◆ **23% judicial finding of abuse**
 - ◆ **35% evidence of abuse but no finding**
 - ◆ **45% judicial finding of no abuse**
 - ◆ **30% believed to be false**

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Trocme and Bala

- ◎ **Of 135,574 child maltreatment investigations in Canada in 1998**
 - > **42% substantiated**
 - > **23% remained suspected**
 - > **35% unsubstantiated**
 - **31% report made in good faith**
 - **4% report intentionally false**

This article and their subsequent research challenge some of the misperceptions about the frequency and characteristics of intentionally false allegations in child welfare investigations and their relationship to custody and access disputes.

Important Questions

3. When false allegations are made, do they come from vindictive women trying to obtain sole custody?
4. How do abusive men typically react to being left?

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Bala & Schuman, 1999 (Canada)

- False accusations
 - ◆ 21% of accusations by fathers judged to be false
 - ◆ 1.3% of accusations by mothers judged to be false

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Trocme and Bala, 2005 (Canada)

- Huge sample 7,632 cases
- Found 4% rate of maliciously fabricated allegations of child abuse by children against a parent in all cases of child maltreatment.
- Of disputed child custody cases, 12% were of maliciously fabricated allegations of sexual and physical abuse and neglect occurring in a divorce context; non-custodial parents (usually fathers) bring 43% of all intentionally fabricated allegations, while custodial parents (usually mothers) bring 14%.

Nico Trocme & Nicholas Bala (2005). False Allegations of Abuse and Neglect When Parents Separate. *Child Abuse & Neglect*, 29,1333-1345.

How do abusers typically react to being left?

- At least half of men who abuse their female partners also abuse their children.
- Fathers who batter mothers are twice as likely to seek sole custody of their children than non-violent fathers.
- Violence and threats of violence tend to increase after separation.

Bancroft & Silverman. (2002). *The batterer as parent*. Sage.

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Pediatric Recommendations in Custody Disputes

- Forensic medical specialists have seen cases of false allegations and are adept at discerning the facts.
- All child disclosures of abuse should be taken seriously.
- Sometimes during a marital separation, the offending parent has left the home and the child feels that it is safe to talk about the abuse.

Questions

5. What happens to mothers who make allegations of abuse in divorce?
6. What happens to the accused father?

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Although research has not found a higher incidence of false allegations of child abuse and domestic violence in the context of custody/visitation, officers of the court tend to be unreasonably suspicious of such claims. Too often, custody decisions are based on bad science, misinterpretation of fact, and evaluator bias. As a result, many abused victims and their children find themselves re-victimized through the abuser's misuse of the justice system after separation.

Hon. Sol Gothard, 2006; Leadership Council, 2006

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Why valid disclosures may arise during divorce or custody disputes

1. Some children may have less contact with an abusive parent and feel less threatened or inhibited about revealing secrets
2. Some children may have more time alone with the abusive parent and a heightened sense of vulnerability may result in a disclosure by the child.
3. The stress and anxiety of the divorce may increase the closeness between the child and a family member in whom they decide to confide secrets about how the family used to be.
4. A parent may not have been abusive before, but under the stress of the divorce may turn to the child for nurturance and affection.

Sink (1988)

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How prevalent are false allegations?

Estimates of false allegations coming into social services: 2-8%

Everson, M., & Boat, B. (1989). False allegations of sexual abuse by children and adolescents. *Journal of the American Academy of Child and Adolescent Psychiatry*, 28, 230-235.

Goodwin, J., Sahd, D., & Rada, R. (1982). False accusations and false denials of incest: Clinical myths and clinical realities. In Goodwin (Ed), *Sexual abuse: Incest victims and their families*. Boston: John Wright.

Gomes-Schwartz, B., Horowitz, J., & Cardarelli, S. (1990). *Child sexual abuse*. Newbury Park, CA: Sage

Jones, D., & McGraw, J. (1987). Reliable and fictitious accounts of sexual abuse in children. *Journal of Interpersonal Violence*, 2, 27-45.

Thoennes, N., Cosby, F., & Pearson, J. (1988). *Child sexual abuse: A unified system response: Final report*.

Washington DC: Department of Health and Human Services

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Where do the reports of high rates of false allegations come from?

1. Anecdotal estimates or guesses from "experts"

Richard Gardner: .."the vast majority of children who profess sexual abuse are fabricators."

2. Studies which label as false all accounts which the authors do not believe

Green, A. (1986). True and false allegations of sexual abuse in custody disputes, *Journal of the American Academy of Child Psychiatry*, 25, 449-456.

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3. Studies or review articles which label all those whose abuse is not substantiated legally as false allegations

cf. Ceci, S., & Bruck, M. (1995). *Jeopardy in the courtroom*. Washington, DC: American Psychological Association.

4. Studies using invalid checklists of false allegations

Gardner, Richard (1987). *The parental alienation syndrome and the differentiation of fabricated and genuine child sex abuse*. Creskill, NJ: Creative Therapeutics

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The Myth of “Parental Alienation Syndrome” vs Abuse vs Attempts at Parental Alienation

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Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases

CAROL S. BRUCH

Family Law Quarterly 35, 527 (2001)

The Parental Alienation Syndrome: A Dangerous Aura of Reliability

Cheri L. Wood *LOYOLA OF LOS ANGELES LAW REVIEW* 29: 1367-1415 (1994)

Alienation And Alignment Of Children

Philip M. Stahl, Ph.D. This article is excerpted from Chapter 1 of Philip Stahl’s book, *Complex Issues in Child Custody Evaluations*. Sage Publications, 1999.

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NOT a Syndrome!

- Attorney John Myers (1993) argued that there was no empirical evidence to show that the eight characteristics of PAS were a syndrome.
- No empirical work to determine whether the 8 characteristics predict alienating behaviors.
- Without empirical research, courts cannot determine the reliability of the diagnostic criteria as predictors of the syndrome

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- Testimony about Parental Alienation Syndrome, therefore, should not be admissible because PAS characteristics have not been shown to reliably predict alienation.

- Testimony about Parental Alienation Syndrome is more prejudicial than probative for this reason

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Criticism of Gardner's PAS

American Psychological Association's Presidential Task Force on Violence and the Family (1996) found research indicating that many mothers lost custody cases in which there were concerns about domestic violence because the abusive fathers were able to convince the court that the mothers were engaged in alienating behaviors.

Treatment of PAS: Parent-ectomy and "Threat Therapy"

1. "I strongly recommend sanctions, including transfer of custody to the alienated parent, monetary sanctions (when feasible), transfer to a neutral transitional site, and jail sentences, especially house arrest."
 - ◆ Refers to incarceration as "short-term therapy."
 2. "Older child[ren] (11-16) . . . can be placed in a juvenile detention center for a few days to reconsider his (her) decision" [not to visit the rejected parent].
 3. For younger children who refuse visitation, Gardner suggested temporary placement in a foster home or a shelter for abused children.
- "This is obviously punitive and could help such children rethink their decision not to visit."

Addendum I (June 1999) Parental Alienation Syndrome (2nd Edition)⁷⁸

PAS "cure" is like the Death Penalty

- The "danger" to the child in a PAS case is seen as having the rejected parent cut out of his or her life completely. The court sees the Protective Parent's protective actions as evidence of alienation, not protection.
- The "cure" for PAS is to cut the child off from contact with the "alienating" parent and send them to live full time with the accused.
- Once accused fathers get custody, they invariably cut the mother out of the child's life almost entirely. Their justification is the need to protect the child from the mother's alienating behavior. The court does not see the father's actions as alienation, but as protection.
- The cure is the same as the danger which justified it.

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Gardner's recommendations: Non-offending mother

"If the mother has reacted to the abuse in a hysterical fashion, or used it as an excuse for a campaign of denigration of the father, than the therapist does well to try to "sober her up Her hysterics will increase the child's ... untoward reactions to the abuse. She will contribute to the child's feeling that a heinous crime has been committed and will therapy lessen the likelihood of any kind of rapprochement with the father" (1992, p. 576-7).

One has to do everything possible to help her put the "crime" in proper perspective. She has to be helped to appreciate that in most societies in the history of the world, such behavior was ubiquitous, and this still is the case.

"The therapist need not sanction the behavior, but should try to reduce the exaggerated reaction to pedophilia that most individuals in our society have at this point "(p. 577).

Gardner's recommendations: Non-offending mother

1. Discourage litigation.
2. Encourage her to stay with her husband (the abuser).
3. Help her over her anger.
 - ◆ “If one is tense and angry with a man, one is less likely to achieve sexual gratification.”
4. Encourage her to become more sexually responsive to her husband (1992, pp. 585).

Treatment Recommendations: The Offender

- The father has to be helped to appreciate that there is a certain amount of pedophilia in all of us, and that all of us, as children, are “polymorphous perverse.”
- He has to be helped to appreciate that pedophilia has been considered the norm by the vast majority of individuals in the history of the world.
- He has had bad luck with regard to the place and time he was born with regard to social attitudes toward pedophilia. However, these are not reasons to condemn himself.
- He must learn to control himself if he is to protect himself from the Draconian punishments meted out to those in our society who act out their pedophilic impulses.
- Therapy with the father should not be spent focusing on the primary problem (i.e., sexual molestation). Instead, therapy should be spent “talking about other things” as the goal of therapy is “to help people forget about their problems” (1992, p. 592).

What does Gardner recommend?

- “One of the steps that society must take to deal with the present hysteria is to ‘come off it’ and take a more realistic attitude toward pedophilic behavior” (1991, p. 120).
- Abolish mandated reporting of child sexual abuse.
- Do away with immunity for reporters of child abuse.
- Create federally-funded programs to assist the “millions” of people (1992, p. 688) that Gardner claims have been falsely accused of child sexual abuse (1995).

National Council of Juvenile and Family Court Judges

A Judicial Guide to Child Safety in Custody Cases



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Judges Cautioned on PAS

“The court should not accept testimony regarding parental alienation syndrome, or “PAS.”

The theory positing the existence of PAS has been discredited by the scientific community

“*application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. PAS does not pass this test. Any testimony that a party to a custody case suffers from the syndrome or “parental alienation” should therefore be ruled inadmissible and stricken from the evaluation report under both the standard established in Daubert and the earlier Frye*”

NCJFCJ - CLARE DALTON ET AL.,

According to the American Psychological Association, “... there are no data to support the phenomenon called parental alienation syndrome ...” AM. PSYCHOL. ASS’N, VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 40, 100 (1994) (stating that custody and visitation disputes appear to occur more often in cases in which there is a history of domestic violence).

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Distinguishing “Alienation” from Abuse: Behaviors Are the Key

- Is there trouble in the child’s attachment relationship with either parent?
- If yes, what is the cause for the dysfunction/disruption?

Drozd, L. M., & Olesen, N. W. (2005). “Is it abuse, alienation, and/or estrangement from the perspective of the child.” *Journal of Child Custody*.

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**DISQUALIFYING ABUSE
DISCLOSURES BECAUSE
THE CHILD DOES NOT
PRESENT IN A
STEREOTYPICAL
MANNER.**

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Additive Symptoms

While any one indicator of abuse cannot significantly lead to confidence that a child is abused, each independent non-correlated indicator of abuse adds greatly to the probability of a true abuse case.

3-5 nonredundant abuse indicators of moderate strength overcome the differential base rates of abused and nonabused children in most realistic samples.

Everson & Faller, 2012

Kathleen Coulborn-Faller, 1998

- **In one third of cases in which the perpetrator confessed, the child's disclosure contained one or more of the following: lacked emotion, lacked childlike perspective, lacked detail.**

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Children who have been traumatized may demonstrate impairments in the following developmental areas:

- **Attachment:** social isolation and difficulty relating to and empathizing with others
- **Biology:** impairments in movement and sensation, hypersensitivity to physical contact, problems with coordination, balance, and body tone, unexplained physical symptoms, and increased medical problems
- **Mood Regulation:** difficulty regulating emotions, trouble knowing and describing feelings and internal states, communication difficulties
- **Dissociation:** experiencing feelings of detachment or depersonalization, withdrawal of attention to outside world, demonstrate amnesia-like state

- **Behavioral Control:** poor impulse control, self-destructive behavior, aggression against others, sleep disturbances, and eating disorders
- **Cognition:** problems focusing on and completing tasks in school, difficulty planning and anticipating, difficulty understand own contribution to what happens to them, learning difficulties, and problems with language development
- **Self-Concept:** lack a continuous, predictable sense of self, suffer from disturbances of body image, low self-esteem, shame, and guilt

SOURCES OF RISK TO CHILDREN FROM UNSUPERVISED CONTACT WITH BATTERERS

1. Risk of Continued or Intensified Undermining of the Mother's Authority and of Mother-Child Relationships
2. Risk of Rigid, Authoritarian Parenting
3. Risk of Neglectful or Irresponsible Parenting
4. Risk of Exposure to New Threats or Acts of Violence Toward Their Mother
5. Risk of Psychological Abuse and Manipulation
6. Risk of Physical or Sexual Abuse of the Child by the Batterer
7. Risk of Inconsistency
8. Risk of Child Learning Attitudes That Lead to DV
9. Risk of Abduction
10. Risk of Exposure to Violence in Their Father's New Relationships

From Bancroft & Silverman, 2002⁹⁶

SPECIAL ISSUES IN VISITATION DISPUTES WITH ALLEGATIONS OF DOMESTIC VIOLENCE

Jaffe & Geffner, 1998

<u>ISSUES</u>	<u>VISITATION DISPUTE WHEN ALLEGATIONS OF ABUSE</u>
Central Issue	Safety for mother and children
Focus of Court Hearing	Assessing lethality risk and level of violence; protection
Assessment Issues	Impact of violence on mother and children; developmental needs Father's level of acceptance of responsibility Safety plan for mother and children Parenting abilities
Planning for Future	Consider no, suspended or supervised visitation
Resources Required	Specialized services and assessment with knowledge and training about domestic violence Supervised visitation center Co-ordination of court and community services ⁹⁷

Evaluation Procedures in Child Custody Cases Dynamics of IPV or Child Abuse

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Timelining

- **A Timeline is a chronology of the entire narrative history of the case, in chronological order. It should cover all issues relevant to the child's best interests, and should include all the information available to the evaluator.**

System Failure: CPS

Child Welfare Workers base their decisions on biases against believing women and children when they know a divorce is involved.

McGraw and Smith study found that only 5.6% of child sexual abuse allegations in divorce cases were believed by CPS workers to be founded when the workers knew in advance that the allegations arose in the context of a divorce.

When the same cases were subjected to a non-subjective, unbiased investigation protocol, 44.4% of the exact same cases were found to be substantiated.

That means 38.8% of cases disbelieved based on bias of evaluators.

But since maliciously fabricated allegations of sexual abuse in custody are 1-7.6%, true allegations should have been much higher.

When presented with these results, the child welfare workers coined the term "divorce-induced polarization."

McGraw, J., Melbourne, J., & Smith, H.A. (1992). Child Sexual Abuse Allegations Amidst Divorce and Custody Proceedings: Refining The Validation Process, *Journal of Child Sexual Abuse*, 1(1) 49-62.

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Issues to Assess for Each Family Member

Violence/Abuse/Intimidation	Trauma/PTSD
Psychological Functioning	Social Skills
Substance Abuse/ Dependence	Dominance/Need to Control
Attitudes - Power & Control	Psychopathy
Parenting Skills	Self-Esteem
Gender Role Stereotypes	Anger/Hostility
Attachment/Bonding	Depression
Communication	Impulsivity
Assertiveness	Fears
Conflict Resolution Skills	Empathy
	Meeting Needs

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Determining the Impact

Assessments should be used to:

- Determine whether the child needs an immediate intervention.
- Suggest needed short and long-term services.
- Clarify whether and what court action is appropriate.
- Determine if visitation with the abusive parent should be supervised or curtailed.

Key Sources to Acquire Information

- Collateral Interviews/reports with family and friends, police records, medical records, reports from employers (If you don't have them, get them!)
- Interviews with Children
- Interviews with Victim
- Physical and Psychological Impact of violence on each family member
- Interviews with former partners
- Non-verbal cues when discussing incidents of violence (notice changes in posture, tone, loss of eye contact, etc.)

IDENTIFICATION OF VICTIMS OF WIFE/PARTNER ABUSE*

Robert Geffner, Ph.D. & Mildred Pagelow, Ph.D.

Bearing in mind that both victims and their abusers are likely to minimize or deny the occurrence of spouse abuse, professionals need to draw upon their training, experience, and their observation skills to make accurate assessments. The first clues may not be visible in the appearance or outward behavior of the clients. The initial interviews are very important in the process of identifying victims of spouse abuse. At least one interview with each spouse should be conducted in private. It is very important to determine the level of intimidation that may be occurring and how free the abused spouse may be to express feelings and opinions openly.

The interviewer can learn much by watching and listening during joint interviews. For example, pay attention to body language, and watch for eye contact, reactions indicating possible fear rather than ordinary nervousness, and avoidant posture. Listen for "permission" words between them. Does either party talk about men and women exclusively in terms of traditional stereotypes? Are these terms about the other sex negative? Be alert for indicators of jealousy pointing to possessiveness, immaturity, or low self-esteem.

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Trained interviewers should be able to discover how important decisions are reached in the family, especially concerning financial matters. Yet they should be aware that the person who writes the checks does not necessarily have decision making powers; sometimes the controlling spouse merely delegates the check-writing and accounting duties to the other. The roles of each spouse should also be explored to determine domination and subservience. Details concerning how each spouse spends time at home, their chores, responsibilities, and decision making power provide indications of possible rigid role restrictions suggestive of potential abuse. The history of the individual or couple should include items about both their present relationship and their families or origin. Finally, if there are any children, the interviewer should seek information about them.

Physical abuse often is preceded by psychological abuse, and it usually is a gradual conditioning process. An abuser may begin by intimidation, such as verbal abuse, degrading the spouse, punching holes in walls with his first, or by destroying or disposing of possessions owned by, or at least valued by, the partner.

* The ideas for the original version of this questionnaire originated in a subcommittee of the Domestic Violence/Family Court System Committee of the Los Angeles, Calif., Conciliation Court.

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SPOUSE ABUSE IDENTIFICATION QUESTIONNAIRE

(Robert Geffner, Ph.D., ABPN & Mildred Pagelow,
Ph.D.)

- ___ Were either you or your spouse physically abused in childhood? If so, in what way?
- ___ Was there a history of violence in either of your families?
- ___ If so, was the violence directed at the children, or was it directed at one parent by the other?
- ___ Does either your spouse or his/her parents abuse alcohol? Do you? Do your parents?
- ___ Has your spouse ever threatened to harm you?
- ___ Are your spouse's problems usually blamed on you or others?

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SPOUSE ABUSE IDENTIFICATION QUESTIONNAIRE

- ___ Have you been attacked or blamed when your spouse got angry?
- ___ Are you afraid of your spouse's temper?
- ___ When drinking, does your spouse get rough or violent?
- ___ Has your spouse ever hurt you? When? What happened?
- ___ Has your spouse ever deliberately hurt or killed a pet?
- ___ Does your spouse have a Dr. Jekyll and Mr. Hyde personality?
- ___ Are your children afraid when your spouse is angry?
- ___ Have you felt free to invite family or friends to visit you?

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SPOUSE ABUSE IDENTIFICATION QUESTIONNAIRE

- ___ Is your spouse an extremely jealous person?
- ___ Has your spouse ever forced you to have sex even though you did not want to?
- ___ Have you ever called, or thought of calling, the police because an argument was getting out of control?
- ___ Have your neighbors or friends ever called the police because of your situation?
- ___ If the police were called, was your spouse arrested or given a citation?
- ___ Does your spouse ever threaten to take the children where you could not find them?
- ___ Did this ever occur?
- ___ Do you feel safer when I talk with you alone?

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A GUIDE TO ASSESSING RISK TO CHILDREN FROM BATTERERS

1. The Abuser's History of Physical Abuse Toward the Children
2. The Abuser's History of Neglectful or Underinvolved Parenting
3. The Abuser's History of Sexual Abuse or Boundary Violations With the Children
4. The Batterer's Level of Physical Danger to the Partner or Former Partner
5. The Batterer's Level of Psychological Cruelty Toward Partner or Former Partner and Toward the Children
6. The Batterer's History of Using the Children as Weapons and of Undermining Mother-Child Relationships

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A GUIDE TO ASSESSING RISK TO CHILDREN FROM BATTERERS (Cont'd)

7. The Level of Coercive or Manipulative Control That the Abuser Has Exercised Over His Partner During the Relationship
8. The Abuser's Level of Entitlement, Self-Centeredness, or Selfishness
9. The Batterer's Substance Abuse History
10. The Batterer's Refusal to Accept the End of the Relationship or to Accept His Former Partner's Decision to Begin a New Relationship
11. The Batterer's Level of Risk to Abduct the Children
12. The Abuser's Level of Refusal to Accept Responsibility for Past Violent or Abusive Actions
13. The Batterer's Mental Health History

From Bancroft and Silverman, 2002¹²⁴

Questions to Ask

- **Conflict Resolution:** Does the parent effectively communicate with his/her spouse when conflict arises, How does the parent deal with his/her children during conflict
- **Issues of Control and Dominance:** A parent who uses power and control, is impulsive, or violent is clearly at risk for future violence and those who use empathy, are appropriately assertive, and who are able to listen or collaborate as a means to reach a mutual agreement shows positive conflict resolution skills

From Bancroft & Silverman

- “Those families who have the greatest degree of psychological health among mothers and children appear to be among those most vulnerable to being labeled as having “parental alienation.”
- Those are the ones that have the secure attachment to the protective parent and tend to reject outright the abusive behavior of the batterer upon separation.

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Factors associated with Good Case Outcomes, Neustein & Goetting, 1999

- Judges trained in child abuse and IPV
- Competency of GAL's if appointed
- Sophistication and thoroughness of CPS methodology
- Quality and expertise of court appointed experts
- Protection for children viewed as goal

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General Incorrect Assumptions Often Made by Child Custody Evaluators

- IPV has no correlation with child abuse and unfit parenting
- What happens between the parents does not affect the children
- A woman must facilitate access to their children's father regardless of danger
- Maximum contact with both parents is essential and beneficial to all children

What Does the Literature Say?

- In domestic violence studies, about half of the men who batter are reported to abuse their children (range of 47 - 54%), some studies have up to 70% (Bowker, Arbitell, and McFerron, 1998)
- 50% of the men who battered their wives also abused a child more than twice a year, a rate of about 7 times that for nonviolent husbands
- Men were reported to have used severe violence an average of 20 times against a child in one year, compared to four times for the battered women (Varcoe and Irwin, 2004)
- Male dominance and violence against wives, especially marital rape, was a much more important link to child abuse by fathers than the father's childhood victimization (Bowker, Arbitell, and McFerron in Saunders, 1998)

Literature Continued

- Level of danger of the perpetrator should be assessed very carefully and taken into consideration regarding drop-off points and times with the children and protective measures should be put in place for women and children during access
- Child custody and access processes provide opportunities for abusive partners to exert power and control over their partners and children
- Many use the children by threatening to harm/kill the children, or take them away from the mother, or the mother would be deported without the children, and to keep them compliant with demands-also use the children as an excuse to harass them by phone, in person during access visits, and used formal systems processes to harass.

Not Allowing for Disconfirming Information

- “I will remove child from you, if there are more abuse reports.”
- Child may not see therapist. Therapist is cause of abuse reports.
- Order DSS to call Judge regarding any new reports and don’t investigate.
- Prevent contact with family of protective parent.
- Bar experts on child abuse from court.

Not Allowing for Disconfirming Information

- Threaten child any further disclosures will result in loss of preferred parent.
- Cut-off all physical, phone, email contact with preferred parent.
- Prohibit all parties from discussing abuse, even in therapy.

How do you create openness to new information?

- Abuse-proofing procedures.
- Encourage therapeutic discussions.
- Encourage open investigation of new reports
- Hire impartial experts, from different counties, different courts.
- Build in frequent review with multiple sources of input.

From Joy Silberg, 2005

TOP TEN MISTAKES MADE BY COURTS/ EVALUATORS WHEN ABUSE ALLEGATIONS ARISE IN CHILD CUSTODY DISPUTES

Joy Silberg, PhD, adapted by Robert Geffner, Ph.D. (2003)

- 1) MISINTERPRETING UNSUBSTANTIATED CHILD PROTECTIVE SERVICES (CPS) REPORTS OR EVALUATIONS TO MEAN SOMEONE WAS LYING OR MADE A KNOWINGLY FALSE ALLEGATION (I.E., LACK OF CONFIRMATION DOES NOT MEAN THERE WAS NO ABUSE).
- 2) MISUNDERSTANDING THE MANIPULATIVE ANGER, DENIALS, AND PROTESTS OF A BATTERER/ABUSIVE SPOUSE AS RIGHTEOUS INDIGNATION FROM BEING ACCUSED OF “FALSE ALLEGATIONS”
- 3) USING LABELS TO BLAME SOMEONE, MOST OFTEN GIVEN TO WORRIED OR ABUSED MOTHERS, SUCH AS “PARENTAL ALIENATION SYNDROME” (PAS), MUNCHAUSEN BY PROXY, ORDERLINE OR HYSTERICAL PERSONALITY DISORDERS, OR ENMESHED PARENT

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- 4) **IGNORING OR MINIMIZING ABUSE DISCLOSURES OR NOT EVEN EVALUATING ANY EVIDENCE BECAUSE SUCH CLAIMS ARE SUPPOSEDLY COMMON IN CHILD CUSTODY DISPUTES, AND THEREFORE AUTOMATICALLY FALSE**
- 5) **IGNORING NEW ABUSE DISCLOSURES BECAUSE OF PREVIOUS COURT OR CHILD CUSTODY EVALUATOR FINDINGS, OR HAVING A PRE-SET BIAS AGAINST SUCH ALLEGATIONS**
- 6) **SETTING UP "SOLUTIONS" OR MAKING RECOMMENDATIONS THAT PRECLUDE THE FACTS FROM EVER BEING DISCOVERED, SUCH AS REMOVING CHILD CUSTODY AND EVEN CONTACT FROM THE PERSON MAKING THE ALLEGATIONS AND PLACING THE CHILD WITH THE ALLEGED ABUSER**

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- 7) **CONFUSING A CRIMINAL STANDARD OF GUILT BEYOND A REASONABLE DOUBT, WITH THE BEST INTERESTS STANDARD NECESSARY TO PROTECT CHILDREN IN FAMILY COURTS**
- 8) **DISCOUNTING ABUSE DISCLOSURES BECAUSE OF THE AFFECT OF THE CHILD, OR THAT THE CHILD(REN) ALSO EXPRESSES LOVE AND WANTS TO HAVE CONTACT WITH THE ALLEGED ABUSER**
- 9) **OVERWEIGHTING OR RELYING ON RECANTATIONS AS THE "TRUTH" WHILE IGNORING ACTUAL EVIDENCE OR THAT MOST CHILDREN DO RECANT UNDER STRESS OR PRESSURE**
- 10) **OVERVALUING PAID EXPERTS, COURT EVALUATORS, OR AD LITEM ATTORNEYS WITH NO OR LITTLE LINICAL BACKGROUND, TRAINING, OR EXPERTISE IN DOMESTIC VIOLENCE OR CHILD ABUSE**

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Suggestions

- **If a determination of the likelihood of abuse is made, it is important not to recommend sole or joint custody to the offender and to make sure visitations are safe and supervised until the offender receives specific treatment for the abusiveness by a program or person specifically trained in this area**
- **Joint custody is contra-indicated in the context of family violence due to control issues, parents' inability to agree on childrearing, and message/modeling for children**
- **Do not be afraid to utilize supervised visitation in the context of family violence until effective treatment has been received and changes have been witnessed**
- **Be very cautious about mediation/ADR/FDR in IPV**

Definition

Turned Around Case (Joy Silberg, Joan Meier, et al, 2013):

- **One parent sought to protect his or her child or children from abuse by the other parent.**
- **Evidence of abuse by the other parent was provided to family court during the course of the custody case.**
- **The judge presiding over the case did not protect the child and ordered the child to spend unsupervised time with a parent alleged to have abused the child (Time 1).**
- **At a later time, a judge reversed the first decision and protected the child from abuse (Time 2). Or the parent was convicted for abusing the child or another child in a similar manner to what was alleged in family court at Time 1.**

In Time 1

85% of mental health professionals advising the judge either failed to believe the child and the protective parent...

...or believed them and still recommended that the child be forced into custody or unsupervised visitation with the perpetrator.

Over 77% of the time, the protective parent was blamed for the child's abuse allegations.

65% of the time, full custody was given to the alleged perpetrator.

In Time 1

Access Given To Alleged Perpetrator At Time 1 (n = 26)

Full custody to alleged perpetrator, no visitation to PP	2
Full custody to alleged perpetrator, supervised visits with protective parent	7
Full custody to alleged perpetrator, not clear whether PP allowed visits	8
Shared custody or unsupervised visitation with alleged perpetrator	8
Supervised visitation with alleged perpetrator* *(the children were terrified by the supervised visits and so did not feel protected)	1

In Time 2

Access to Alleged Perpetrator at Time 2 (n = 26)

No contact	21
Professional supervised visits	2
First no contact, later unsupervised visitation with father* *(child was an older teen boy)	1
Custody restored to mother, not clear what kind of visitation with father	1
Unsupervised visitation until next trial	1

In Time 2

Results

81% of abused children were not required to have any contact with the alleged offender.

Years Until Case Turned Around: Amount of Time Child Was Court Ordered Into Abusive Home (n = 24)

Range	1-10 years
Mean	4.6 years
Median	4 years

Results

Main Reasons Why Cases Turned Around (n = 33)

21%	Overtaken on appeal due to some legal error in first case	Example: Appeal court ruled that seeking exam to determine if child is abused is not abuse
21%	New evaluation of child (particularly by expert in CSA)	Example: Extended evaluation of young child facilitated a more clear and detailed disclosure
18%	New disclosure that is viewed as credible (especially to new therapist, or in different CPS district)	Example: New disclosure in CPS district that had not already ruled out abuse
12%	Child's self-advocacy: Child runs away or refuses to return home	Examples: Child refuses to leave psych center or will kill self or perpetrator; Child refused to return home from camp
6%	Psychiatric symptoms of child	Example: Child suicidal and deteriorating father's care
9%	Perpetrator's criminal behavior	Examples: Father convicted of molesting other children; Child porn found in father's possession
6%	Perpetrator's behavior in court	Example: Father was belligerent in court and judge found out father lied about not having a job

**Institute on Violence, Abuse & Trauma (IVAT)
at Alliant International University, San Diego**

Family Violence & Sexual Assault Institute (FVSAI)

**National Partnership to End Interpersonal
Violence Across the Lifespan (NPEIV)**

***International Conference on Violence, Abuse &
Trauma, Including the National Summit on
Interpersonal Violence and Abuse Across the
Lifespan – Sept., San Diego, CA***

***Assessing, Treating & Preventing Child,
Adolescent & Adult Trauma - March, Honolulu,
HI***