

## **Punishing Disclosure and Silencing Victims: How the California Family Law Courts Retraumatize Abused Children By Labeling Them “Alienated”**

Carrie Leonetti

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**PUNISHING DISCLOSURE AND SILENCING VICTIMS:  
HOW THE CALIFORNIA FAMILY LAW COURTS  
RETRAUMATIZE ABUSED CHILDREN BY LABELING  
THEM “ALIENATED”**

**Carrie Leonetti\***

*This Article documents the California family law courts’ poor responses to children’s disclosures of child abuse and neglect, presuming that they are false, minimizing the impact of abuse on children, or engaging in wishful thinking that the abuse will simply cease even though the perpetrator has faced no accountability and taken no steps to reform. It focuses on the detrimental impacts that the pop psychology of “parental alienation” has for child safety when children’s reports of abuse are disbelieved and minimized, particularly when it combines with other fact-finding failures in the courts.*

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## I. INTRODUCTION

“Imagine that you are creating a fabric of human destiny with the object of making men happy in the end, giving them peace and rest at last, but that it was essential and inevitable to torture to death only one tiny creature—that baby beating its breast with its fist, for instance—and to found that edifice on its unavenged tears, would you consent to be the architect on those conditions?”

--- Dostoyevsky, *The Brothers Karamazov*

For many children who have experienced child abuse and neglect (“CAN”),<sup>1</sup> their first opportunity to disclose the abuse to someone who might be able to help them is during family law proceedings. For some, their parents’ separation is the first time when they feel that they can safely disclose, because it is the first time that they are not living under the same roof as their perpetrator. For others, an interview with children’s counsel or a custody evaluator is the first time that any adult has asked them whether they are safe or are being hurt. The family law courts, therefore, are one of the primary institutional responders to CAN.

It is crucial that when any victim of family violence (“FV”) discloses abuse, they receive an evidence-based, risk-sensitive, and appropriate response. Further, it is critical that children’s disclosures of CAN be treated as presumptively true and children receive a protective response to their disclosures until and unless a reliable, evidence-based forensic investigation by a qualified investigator determines otherwise. Unfortunately, the California family law courts have a terrible track record of responding to children’s disclosures of CAN, often presuming that they are false, minimizing the impact of CAN on

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1. “Child abuse”, as used in this Article, includes the physical, psychological, and sexual abuse of a person under eighteen. This Article uses “intimate partner violence” (“IPV”) to describe family violence (“FV”) and sexual violence (“SV”) between adult partners, “child abuse and neglect” (“CAN”) to describe FV/SV involving a child victim, and “FV” as the umbrella term encompassing all these phenomena. At times, the Article also uses “domestic violence” (“DV”) because that is the preferred term in California legislation and cases and the more frequent term in the academic literature. FV includes physical, psychological, sexual, and financial abuse and coercive control. The Article prefers “FV” to “DV” because DV can refer either to only IPV or to all forms of FV and can therefore be ambiguous.

children, or engaging in pop psychology wishful thinking that the abuse will simply cease even though the perpetrator has faced no accountability and taken no steps to reform.<sup>2</sup>

The failure to address FV in custody and visitation decisions violates the best interests of the child standard.<sup>3</sup> The United Nations Special Rapporteur on Violence Against Women and Girls recently issued a call for submissions regarding the impact of violence against women and children in custody cases.<sup>4</sup> The Special Rapporteur noted: “Children who are victims of violence and abuse by a parent (in many cases the father) often continue to be subjected to such violence and abuse, against themselves and/or the other parent (in most cases the mother) post-separation, through imposed contact with the abusive parent.”<sup>5</sup>

## II. STATUTORY FRAMEWORK IN CALIFORNIA

### A. Custody and Contact

#### 1. Best Interests

The primary, overarching considerations in adjudicating contested custody are supposed to be the child's best interests, health, safety, and welfare.<sup>6</sup>

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2. See generally Carrie Leonetti, *A Little Knowledge is a Dangerous Thing: Custody Evaluators and the Pop Psychology of “Parental Alienation” in the California Family Law Courts*, 57 USF L. REV. 223 (2023).

3. See G.A. Res. 44/25, art. 3, Convention on the Rights of the Child (Nov. 20, 1989) (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”).

4. See Special Rapporteur on Violence Against Women and Girls, *Its Causes and Consequences, Call for Inputs - Custody Cases, Violence Against Women and Violence Against Children*, UNITED NATIONS OFF. OF THE HIGH COMM’R ON HUMAN RTS., <https://www.ohchr.org/en/calls-for-input/2022/call-inputs-custody-cases-violence-against-women-and-violence-against-children> (last visited Mar. 8, 2022).

5. See *id.*

6. See CAL. FAM. CODE § 3020(a) (West 2023) (effective Jan. 1, 2020) (“The Legislature finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court’s primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children.”); *Montenegro v. Diaz*, 27 P.3d 289, 293 (Cal. 2001) (“Under California’s statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child.”); *In re Marriage of McKean*, 254 Cal. Rptr. 3d 726, 731 (Cal. Ct. App. 2019) (noting that the

## 2. Child Safety

The California Legislature has deemed that “children have the right to be safe and free from abuse, and that the perpetration of child abuse or domestic violence in a household where a child resides is *detrimental* to the health, safety, and welfare of the child.”<sup>7</sup> In determining children’s best interests, the family law courts must consider their health, safety, and welfare and any history of abuse by one parent against them or their other parent.<sup>8</sup>

If, due to a history of domestic violence (“DV”), contact with a parent could jeopardize the child’s safety, a custody or visitation order must be made in a manner that ensures the child’s health, safety and welfare *and* the safety of all family members.<sup>9</sup> Therefore, if the child’s right to safety conflicts with ongoing contact with both parents, the child’s right to safety is supposed to override the necessity of contact.<sup>10</sup>

The California Family Law Code (“FC”) establishes a rebuttable presumption against awarding physical or legal custody to an individual who has inflicted DV against either a child or their other parent.<sup>11</sup> The presumption can be rebutted only by a preponderance of the evidence demonstrating that joint custody is nonetheless in the child’s best interests.<sup>12</sup> In determining whether the presumption has been overcome and custody is in the best interests of the child, the court must consider whether the perpetrator has successfully completed a

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overarching concern in child custody determinations is the best interest of the child); *S.Y. v. Super. Ct. of San Diego Cnty.*, 240 Cal. Rptr. 3d 137, 146 (Cal. Ct. App. 2018) (“The first factor to be considered in determining rebuttal of the presumption is the best interest of the child, without using the preference for frequent and continuing contact with both parents to rebut the presumption of detriment. The best interest of the child is always the overriding goal . . .” (internal citation omitted)).

7. FAM. § 3020(a).

8. See CAL. FAM. CODE § 3011 (West 2023) (effective Jan. 1, 2023); see also *Bianka M. v. Super. Ct.*, 423 P.3d 334, 343 (Cal. 2018) (“Determinations about the custody of children are to be made based on a determination of the child’s best interests. In making that determination, the court must consider, among other relevant factors, the health, safety, and welfare of the child; any history of abuse by one parent against the child or the other parent; the amount and nature of the existing contact between the child and parents; and the habitual use of controlled substances or alcohol by either parent.” (internal citation omitted)).

9. See FAM. § 3020©.

10. See CAL. FAM. CODE § 3044(b)(1) (West 2023) (effective Jan. 1, 2022).

11. See *id.* § 3044(a); *In re Marriage of Fajota*, 179 Cal. Rptr. 3d 569, 570 (Cal. Ct. App. 2014); *Christina L. v. Chauncey B.*, 177 Cal. Rptr. 3d 178, 181 (Cal. Ct. App. 2014).

12. See FAM. § 3044(a) (West 2022) (effective Jan. 1, 2022); *Christina L.*, 177 Cal. Rptr. 3d at 181; *Celia S. v. Hugo H.*, 207 Cal. Rptr. 3d 756, 761 (Cal. Ct. App. 2016).

batterer's treatment program, has successfully completed a parenting class, has successfully complied with the terms of any protective order, has committed additional acts of DV, and is in possession of a fire-arm.<sup>13</sup> The preference for "frequent and continuing contact" with both parents cannot be considered in determining whether the rebuttable presumption has been overcome.<sup>14</sup>

### B. Allegations of CAN

When allegations of CAN arise, before making a custody determination, the family law court must determine the veracity of such allegations to ensure it is acting in the best interests of the child.<sup>15</sup> As a prerequisite to considering allegations of CAN, the court may require "independent corroboration".<sup>16</sup>

If allegations of CAN are made during a child-custody proceeding, the family law court may order a custody evaluator to conduct an evaluation, investigation, or assessment.<sup>17</sup> The court may also, but is not required to, refer the allegations to the local child-welfare agency for investigation.<sup>18</sup> If such a referral is made, the welfare agency is prohibited from drawing inferences about the credibility of the allegations because they were made during a child-custody dispute.<sup>19</sup>

### C. Consequences of False Allegations

If the family law court finds substantial evidence that a parent knowingly made a false report of child sexual abuse ("CSA") with the intent to interfere with the other parent's lawful contact with the child, the court can limit the reporting parent's custody or visitation to protect the child's health, safety, or welfare.<sup>20</sup> Conversely, the court

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13. See FAM. § 3044(b)(2).

14. *Id.* § 3044(b)(1); *Celia S.*, 207 Cal. Rptr. 3d at 760; *Ellis v. Lyons*, 206 Cal. Rptr. 3d 687, 694–95 (Cal. Ct. App. 2016).

15. See *Robert J. v. Catherine D.*, 91 Cal. Rptr. 3d 6, 17 (Cal. Ct. App. 2009).

16. See CAL. FAM. CODE § 3011(a)(2)(B) (West 2023) (effective Jan. 1, 2023).

17. See CAL. FAM. CODE § 3118(a) (West 2022) (effective Jan. 1, 2022). In the case of allegations of child sexual abuse, the court must order the evaluation. *See id.*

18. See CAL. FAM. CODE § 3027(b) (West 2022 (effective Jan. 1, 2011)); *see also* CAL. WELF. & INST. CODE § 328(a) (West 2022) (effective Jan. 1, 2023).

19. See WELF. & INST. § 328(a) ("An inference regarding the credibility of the allegations or the need for child welfare services shall not be drawn from the mere existence of a child custody or visitation dispute.").

20. See CAL. FAM. CODE § 3027.5(b) (West 2022) (effective Jan. 1, 2020).

may not deny or limit a parent's custody or visitation if the parent reported CSA based upon a reasonable belief that the child was a victim or sought treatment for the child from a licensed mental health professional for suspected CSA.<sup>21</sup>

#### D. Children's Views

The family law court must "consider" and give "due weight" to the wishes of children who are of "sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation."<sup>22</sup>

### III. IMPACTS OF THE "PARENTAL ALIENATION" CONSTRUCT ON CHILD SAFETY

I have previously written about the entrenchment of the pop psychology of "parental alienation" ("PA") in the California family law courts.<sup>23</sup> This Article focuses specifically on the detrimental impacts that the construct has for child safety when children's reports of CAN are disbelieved and minimized, particularly when it combines with other fact-finding failures in the courts.

#### A. Failing to Recognize the Relationship Between Intimate Partner Violence and Child Safety

Despite decades of advocacy, social-science research, and legislation reform, the family law courts still seem not to understand the relationship between intimate partner violence ("IPV") and child safety, continuing to award custody of and unsupervised contact with children to IPV perpetrators. For example, in *Marriage of H.*,<sup>24</sup> Father had raped and strangled Mother and threatened to kill Mother and Children, but the court declined to issue a domestic violence restraining order ("DVRO") to protect Children, reasoning that "dad's

21. See *id.* § 3027.5(a).

22. CAL. FAM. CODE § 3042(a) (West 2022) (effective Jan. 1, 2022); *In re Marriage of LaMusga*, 88 P.3d 81, 94 (Cal. 2004) ("The weight to be accorded to such factors must be left to the court's sound discretion."); *Chalmers v. Hirschkop*, 152 Cal. Rptr. 3d 361, 380 (Cal. Ct. App. 2013) (noting that Section 3042 requires the court to give due weight to a child's preferences if the child is deemed if it is in child's best interests); *Ian J. v. Peter M.*, 152 Cal. Rptr. 3d 323, 339 (Cal. Ct. App. 2013) (noting requirements of Section 3042).

23. See generally Leonetti, *supra* note 2..

24. See *In re Marriage of Crystal and Shawn H.*, No. DN106123, 2013 WL 2940952 (Cal. Ct. App., June 17, 2013).

wrongful behavior was directed against” Mother, “not directed against the children.”<sup>25</sup> At a subsequent custody hearing, the court granted Father’s request for visitation with Children, explaining:

But just because [Father] did bad things to [Mother], doesn't mean that these kids lose their father. There are a lot of dads in prison who have done things worse than what [Father] did, who have an ongoing relationship with their children. And I do not believe that what [Father] did was directed toward the children. I think, obviously, there's some collateral damage. Any time that one parent does something bad to the other parent, there's collateral damage.<sup>26</sup>

The court acknowledged Father’s conduct had “caused some incidental harm to the children,” but explained it had been “directed toward [Mother], and not the children.”<sup>27</sup>

#### B. Disbelieving Victims and Over-Estimating False Complaints During Custody Proceedings

The folkloric belief by family court personnel that children’s disclosures of CAN are likely false when they are made during custody proceedings is well documented in the social-science literature. Jaffe and Geffner (1998) document the mythology of false allegations among court custody evaluators:

[M]any mental health professionals, who should have benefited from several decades of research on domestic violence, still believe that as many as one in eight women are magnifying violence as a ploy in custody disputes. In addition, many professionals, judges, and others often believe that mothers are intentionally alienating their children from the fathers in divorce cases in order to gain an advantage in custody disputes . . .<sup>28</sup>

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25. *Id.* at \*7.

26. *Id.* at \*8.

27. *Id.*

28. Peter G. Jaffe & Robert Geffner, *Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals*, in *CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH, AND APPLIED ISSUES* 371, 379 (George W. Holden et al., eds., 1998) (citation omitted).



Joan Meier (2022) notes that “family law, in both theory and practice, treats domestic violence and child abuse as exceptions to the norm and such allegations as often illegitimate despite longstanding empirical evidence suggesting abuse histories are common in custody cases.”<sup>29</sup> Meier recently completed a national, empirical study of family court cases involving FV and PA claims, which confirms that family courts reject mothers’ allegations of CAN by fathers approximately eighty percent of the time.<sup>30</sup>

Social-science research indicates that claims of CAN are false approximately two to four percent of the time.<sup>31</sup> It also indicates that allegations of CSA are not more likely to be false after parental separation.<sup>32</sup>

Nonetheless, the myth that allegations of CAN that surface for the first time during custody proceedings are likely to be false is highly prevalent in family courts. Research documents the general tendency to disbelieve women’s and children’s reports of CAN.<sup>33</sup> Epstein and Goodman (2019) document how “judges and others improperly discount as implausible women’s stories of abuse . . . .”<sup>34</sup> They explain that “mothers’ allegations of domestic violence are discounted or even fully discredited by family court judges.”<sup>35</sup> They note: “[w]omen

29. Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 GEO. L.J. 835, 837 (2022).

30. See *id.* at 850–52 (explaining that child welfare workers tend to be skeptical of child abuse allegations).

31. R. Kim Oates et al., *Erroneous Concerns About Child Sexual Abuse*, 24 CHILD ABUSE & NEGLECT 149, 149 (2000); Nico M. Trocmé et al., *Major Findings from the Canadian Incidence Study of Reported Child Abuse and Neglect*, 27 CHILD ABUSE & NEGLECT 1427, 1430–31 (2003).

32. See Nancy Thoennes & Patricia G. Tjaden, *The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes*, 14 CHILD ABUSE & NEGLECT 151, 159 (1990) (discussing the correlation between false abuse allegations and time elapsed since a divorce filing).

33. See Steven Collings, *Development, Reliability, and Validity of the Child Sexual Abuse Myth Scale*, 12 J. INTERPERSONAL VIOLENCE 665, 671–72 (1997) (examining stereotypes that influence evaluators’ beliefs of abuse claims); Lisa DeMarni Cromer & Rachel E. Goldsmith, *Child Sexual Abuse Myths: Attitudes, Beliefs, and Individual Differences*, 19 J. CHILD SEXUAL ABUSE 618, 619–21 (2010) (discussing the prevalence of child sexual abuse myths in mainstream media); Erna Olafson, *When Paradigms Collide: Roland Summit and the Rediscovery of Child Sexual Abuse*, in CRITICAL ISSUES IN CHILD SEXUAL ABUSE: HISTORICAL, LEGAL, AND PSYCHOLOGICAL PERSPECTIVES 71, 73–74 (Jon R. Conte, ed., 2001) (providing common beliefs and attitudes about child sexual abuse).

34. Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 405 (2019).

35. *Id.* at 431.

survivors of abuse inflicted by their intimate partners encounter doubt, skepticism, or disbelief in their efforts to obtain justice and safety from judges and other system gatekeepers.”<sup>36</sup> They explain: “[t]o assess the trustworthiness of a woman's account of domestic violence, judges and other gatekeepers are inevitably (though perhaps unconsciously) influenced by stereotypical beliefs about women, particularly in the context of intimate relationships.”<sup>37</sup> Further, “[t]wo of the most persistent and crude stereotypes about women's false allegations about male behavior are the grasping, system-gaming woman on the make and the woman seeking advantage in a child custody dispute.”<sup>38</sup>

Tishelman and Geffner (2010) document similar resistance to believing children's accounts, explaining: “[a]lthough public awareness of CSA has increased, reluctance to believe that a child may have been sexually abused by someone he or she knows and trust continues, compounded by difficulties inherent in substantiating true allegations and discounting mistaken ones.”<sup>39</sup>

Research also indicates that “fathers' rights groups” make tactical claims that false reporting is rampant in divorce cases and judicial personnel overestimate the rates of false complaints during custody proceedings.<sup>40</sup> It demonstrates a particular tendency to believe that children's reports of CAN are likely fabricated or embellished during parental separation.<sup>41</sup> A study sponsored by the United States Department of Justice found that court custody evaluators overestimated the prevalence of false allegations of DV and CAN, often recommended joint custody between DV perpetrators and victims, and often recommended perpetrators have unsupervised contact with children.<sup>42</sup> It notes:

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36. *Id.* at 405.

37. *Id.* at 425.

38. *Id.*

39. Amy C. Tishelman & Robert Geffner, *Forensic, Cultural, and Systems Issues in Child Sexual Abuse Cases — Part 2: Research and Practitioner Issues*, 19 J. CHILD SEXUAL ABUSE 609, 610 (2010).

40. See Mike Brigner, *Why Do Judges Do That?*, in DOMESTIC VIOLENCE, ABUSE, AND CHILD CUSTODY: LEGAL STRATEGIES AND POLICY ISSUES 13-1, 13-3 (Mo Therese Hannah & Barry Goldstein, eds., 2010); Thea Brown et al., *The Child Abuse and Divorce Myth*, 10 CHILD ABUSE REV. 113, 117 (2001).

41. See Brown et al., *supra* note 40, at 1118 (explaining that most allegations post-separation are valid).

42. See DANIEL G. SAUNDERS ET AL., U.S. DEP'T JUST., CHILD CUSTODY EVALUATORS' BELIEFS ABOUT DOMESTIC ABUSE ALLEGATIONS: THEIR RELATIONSHIP TO EVALUATOR DEMOGRAPHICS,

Among evaluators, the belief that allegations of domestic violence are usually false was part of a constellation of beliefs, including beliefs that false allegations of child abuse and parental alienation by DV survivors are common. DV educators need to provide accurate information on: the rates and nature of false allegations and alienation; the ways in which survivors are reluctant to co-parent out of fear of future harm; the mental health consequences of DV; and the importance of understanding coercive-controlling forms of violence.<sup>43</sup>

Even criminal courts regularly espouse this myth. For example, in *People v. Sullivan*,<sup>44</sup> the Court of Appeal for the Sixth District stated: “[t]he concept that a parent would encourage a child to lie in a divorce proceeding is commonly understood.”<sup>45</sup>

Consistent with this social-science research, in *Sub Silentio Alienation*, I documented the “Myth of False Allegations” in the New Zealand Family Court, explaining that “PA theory is based on the belief that false allegations of child abuse are common in the wake of parental separation, when they are not.”<sup>46</sup> This same phenomenon is prevalent in the California family courts. For example, in *In re Marriage of Idelle C., Ovando C.*,<sup>47</sup> the family law court dismissed CSA allegations, finding Mother’s evidence to be “not very convincing at all” and beneath the “dignity” of the court.<sup>48</sup>

In *McRoberts v. Superior Court*,<sup>49</sup> Children reported multiple episodes of CSA by Father to the court-appointed evaluator.<sup>50</sup> Nonetheless, the evaluator determined that the Children were “not telling the truth about father’s alleged molestation.”<sup>51</sup> The evaluator opined that

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BACKGROUND, DOMESTIC VIOLENCE KNOWLEDGE AND CUSTODY-VISITATION RECOMMENDATIONS 6–8 (2011).

43. *Id.* at 14.

44. *People v. Sullivan*, No. H023715, 2003 WL 1785921 (Cal. Ct. App. Apr. 3, 2003).

45. *Id.* at \*14.

46. Carrie Leonetti, *Sub Silentio Alienation: Deceptive Language, Implicit Associations, Cognitive Biases, and Barriers to Reform*, 62 WASHBURN L. REV. 285, 289 (2023) [hereinafter “Leonetti, *Sub Silentio Alienation*”].

47. *See In re Marriage of Odelle C., Ovando C.*, No. B146948, 2002 WL 1764181 (Cal. Ct. App. July 31, 2002).

48. *See id.* at \*2.

49. *See McRoberts v. Super. Ct.*, No. B234877, 2012 WL 2317714 (Cal. Ct. App. June 19, 2012).

50. *See id.* at \*3–5.

51. *Id.* at \*9.

there was a “very small likelihood Children were actually sexually molested” by Father, even though a pediatric examination revealed that one girl had genital warts on her vagina and anus.<sup>52</sup> The basis for the evaluator’s conclusion that Children’s disclosures of CSA were false was that they were “matter of fact” and contained details that the evaluator thought seemed “contrived,” although the evaluator gave no explanation of how he distinguished “contrived” disclosures from true ones.<sup>53</sup> With regard to Children’s genital warts, he relied on Father’s claim that he had never had genital warts.<sup>54</sup> Not only was this claim obviously self-serving and made without medical documentation, it was irrelevant. According to the American Centers for Disease Control and Prevention (“CDC”), “[a] person with HPV can pass the infection to someone even when they have no signs or symptoms.”<sup>55</sup>

The evaluator testified that his “research” indicated the HPV virus that caused the girls’ genital warts “could have been transmitted in a non-sexual away [*sic*].”<sup>56</sup> This conclusion is scientifically fallacious. The CDC classifies HPV as a sexually transmitted infection (STI).<sup>57</sup> The CDC explains that “[y]ou can get HPV by having vaginal, anal, or oral sex with someone who has the virus. It is most commonly spread during vaginal or anal sex. It also spreads through close skin-to-skin touching during sex.”<sup>58</sup> Anogenital warts are an indicator of CSA in forensic examinations, particularly when they occur in children over the age of three.<sup>59</sup>

The evaluator offered an exculpatory hypothesis for Children’s repeated disclosures of CSA, opining Father’s “tickling of the girls might have been misinterpreted. It is possible father accidentally touched the girls’ ‘private parts’ without any intention to derive any sexual pleasure from it.”<sup>60</sup> The evaluator offered this opinion even though the family law court had previously ordered Father to stop

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52. *Id.* at \*4.

53. *See id.*

54. *See id.*

55. *HPV Basic Fact Sheet*, CDC, <https://www.cdc.gov/std/hpv/stdfact-hpv.htm> (last reviewed Apr. 12, 2022).

56. *McRoberts*, 2012 WL 2317714, at \*4.

57. *See HPV Basic Fact Sheet*, *supra* note 55.

58. *Id.*

59. *See Amy Swerdlin et al., Cutaneous Signs of Child Abuse*, 57 J. AM. ACAD. DERMATOLOGY 371, 388–89 (2007).

60. *McRoberts*, 2012 WL 2317714, at \*5.

tickling the girls because they previously reported that it made them uncomfortable.<sup>61</sup>

The evaluator's discrediting of Children's perceptions of Father's conduct demonstrates a profound lack of understanding about CSA. First, social-science evidence indicates that victims of CSA are not "mistaken" in their interpretations.<sup>62</sup> It also demonstrates the suggestion that perceptions of abuse as mistaken, confused, or "imagined" is a common tactic by CSA perpetrators to discredit victims.<sup>63</sup>

Second, "tickling" and "wrestling" are well established grooming mechanisms CSA perpetrators employ to gradually sexualize contact with children.<sup>64</sup> Anne-Marie McAlinden (2006) explains that "[t]he use of touch is particularly important as this determines whether or not the child is receptive and begins the process of desensitization – gradually the abuser will escalate boundary violations of the child's body which eventually culminates in enticing the child to acquiesce to engaging in sexual activity."<sup>65</sup>

The family law court adopted the evaluator's recommendations, finding no "independent substantial corroboration" of CSA and explaining that the girls' genital warts could not be "tie[d] to" Father.<sup>66</sup> It is unclear from this finding whether the court believed some sex offender other than Father may have given the girls the STI or did not believe that genital warts were an STI.

On appeal, the Court of Appeal for the Second District upheld these findings, concluding there was "substantial evidence" to support the trial court's determination that there was "no substantial independent corroboration of the allegations of sexual molestation against father" because the girls' disclosures were delayed and "there was no medical evidence of sexual abuse."<sup>67</sup>

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61. See *id.* at \*2.

62. See generally Emma. Davies, et al., *Facilitating Children to Give Best Evidence: Are There Better Ways to Challenge Children's Testimony?*, 34 CRIM. L.J. 347 (2010) (addressing the ability of a child victim to testify).

63. See *id.* at 354; Emma Davies et al., *In the Interests of Justice? The Cross-examination of Child Complainants of Sexual Abuse in Criminal Proceedings*, 4 PSYCHIATRY, PSYCH. & L. 217, 223 (1997); Helen L. Westcott & Marcus Page, *Cross-Examination, Sexual Abuse and Child Witness Identity*, 11 CHILD ABUSE REV. 137, 141 (2002).

64. See Anne-Marie McAlinden, *Setting 'Em Up': Personal, Familial and Institutional Grooming in the Sexual Abuse of Children*, 15 SOC. & LEGAL; STUD. 339, 347 (2006).

65. *Id.*

66. See *McRoberts*, 2012 WL 2317714, at \*7.

67. *Id.* at \*9.

The appellate court's findings also demonstrate a lack of evidence-based knowledge about CAN. First, children often disclose CAN to an adult after multiple episodes of abuse.<sup>68</sup> Children who are sexually abused by family members often fail to disclose abuse because of fear, loyalty to the abuser, or a belief that they contributed to the abuse; and they recant if they realize an earlier disclosure has caused a crisis in their family.<sup>69</sup> Because children are often confused and embarrassed by CSA, they tend to disclose in a manner that can appear unconvincing to a non-specialist.<sup>70</sup> Their disclosures can be tentative, contradictory, and minimizing.<sup>71</sup> One reason for the high incidence of repeated CAN is children's reluctance to disclose to a trusted adult promptly.<sup>72</sup> Unfortunately, the myth that delayed reporting is an indicator of fabrication is a common misconception in the judicial system.<sup>73</sup> In reality, CSA is typically perpetrated by a familiar person, lacks physical evidence, and results in delayed disclosures to an adult.<sup>74</sup> As Jaffe and Geffner explain, "[w]hen the children feel safe or

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68. See *Characteristics and Outcomes of Childhood Abuse*, AUSTL. BUREAU OF STAT. (June 5, 2019), <https://www.abs.gov.au/articles/characteristics-and-outcomes-childhood-abuse>; NICO TROCMÉ ET AL., PUB. HEALTH AGENCY OF CAN. CANADIAN INCIDENCE OF REPORTED CHILD ABUSE AND NEGLECT 7 (2010).

69. See Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177, 178–79 (1983).

70. See Jill S. Levenson & John W. Morin, *Risk Assessment in Child Sexual Abuse Cases*, 85 CHILD WELFARE 59, 63 (2006).

71. See Teena Sorenson & Barbara Snow, *How Children Tell: The Process of Disclosure in Child Sexual Abuse*, 70 CHILD WELFARE 3, 5 (1991).

72. See Melissa Ming Foynes et al., *Child Abuse: Betrayal and Disclosure*, 33 CHILD ABUSE & NEGLECT 209, 211 (2009); see also Irit Hershkowitz, *Delayed Disclosure of Alleged Child Abuse Victims in Israel*, 76 AM. J. ORTHOPSYCHIATRY 444, 445–49 (2006) (discussing the reasons to delayed disclosures in child abuse victims); Elizabeth B. Rush et al., *Disclosure Suspicion Bias and Abuse Disclosure*, 19 CHILD MALTREATMENT 113, 114–15 (2014) (discussing the reluctance of children to report abuse in both physical and sexual abuse cases)

73. See Meaghan C. Danby et al., *Factors Influencing the Perceived Credibility of Children Alleging Physical Abuse*, 29 PSYCHIATRY, PSYCH. & L. 456, 458 (2022); Jonathan M. Golding et al., *The Believability of Repressed Memories*, 19 LAW & HUMAN BEHAV. 569, 585–88 (1995); Joanna D. Pozzulo et al., *Factors Affecting Juror Decisions in Historic Child Sexual Abuse Cases Involving Continuous Memories* 37 CRIM. JUST. & BEHAV. 951, 955 (2010); Rita Laura Shackel, *The Beliefs Commonly Held by Adults About Children's Behavioral Responses to Sexual Victimization*, 32 CHILD ABUSE & NEGLECT 485, 486 (2008); David Bruce Sugarman & Sue Boney-McCoy, *Impact of Expert Testimony on the Believability of Repressed Memories*, 12 VIOLENCE & VICTIMS 115, 116 (1997).

74. See Rush et al., *supra* note 72, at 115–16.

have been removed from the perpetrator, they may then disclose such allegations.”<sup>75</sup>

Second, as explained *supra*, the girls’ STIs were medical evidence of CSA.<sup>76</sup> Non-penetrative CSA rarely causes physical injury, so corroborating medical evidence is rare in CSA cases.<sup>77</sup>

The Court of Appeal noted: “Mother’s allegations of sexual molestation thus rest entirely on the statements [that the girls] made to mother, [their doctor], [the court evaluator] and others.”<sup>78</sup> The Court found that it was within the trial court’s discretion to “reject[] the veracity of their allegations.”<sup>79</sup> This statement is breathtaking in its insensitivity and lack of an evidentiary basis. The girls consistently reported CSA to multiple trusted adults over years.<sup>80</sup> One had an STI that can be transmitted without penetration or exchange of bodily fluids. There was nothing to dispute their accounts other than Father’s self-serving denials and the courts’ folklore about the relationship between parental separation, delays in disclosures, and credibility (which themselves are not evidence in the legal sense or evidence-based in the social-science sense). In a civil proceeding where the standard of proof is preponderance of evidence, it is inexplicable that both courts would find Father’s mere denials were sufficient to tip the balance in favor of the evaluator’s conclusion that the girls “in all likelihood” were not abused.<sup>81</sup>

The Court of Appeal invoked the talisman of the evaluator’s “experience” in defending this baseless conclusion. As I explained in greater detail in *Sub Silentio Alienation*, experience is not synonymous with expertise, reliability, or accuracy.<sup>82</sup>

The Court of Appeal also relied on the fact that the Los Angeles County Department of Children and Family Services (“DCFS”) did not initiate dependency proceedings, taking their failure to do so as evidence that they “apparently came to the same conclusion” that the

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75. Jaffe & Geffner, *supra* note 28, at 381.

76. See *McRoberts v. Super. Ct.*, No. B234877, 2012 WL 2317714 at \*3 (Cal. Ct. App. 2012).

77. See KATHLEEN COULBORN FALLER, CHILD SEXUAL ABUSE: INTERVENTION AND TREATMENT ISSUES 22 (1993) (“It is . . . important to appreciate that for the majority of sexually abused children there are no physical findings.”).

78. *McRoberts*, 2012 WL 2317714, at \*9.

79. *Id.*

80. See *id.* at \*1–6.

81. See *id.* at \*9.

82. See Leonetti, *Sub Silentio Alienation*, *supra* note 46, at 309.

girls were fabricating their claims of CSA.<sup>83</sup> The failure of DCFS to initiate dependency proceedings did not necessarily indicate that the Department did not believe the girls' claims. Child protection agencies decline to initiate dependency proceedings for children for many reasons, including for resource reasons when they are already under the jurisdiction of the family court.<sup>84</sup> Even if DCFS disbelieved the girls, that was not a reliable indicator that they were correct. The failure of child protection agencies to act adequately on evidence of CAN is well established.<sup>85</sup> As Levenson and Morin (2006) explain: "Previous allegations that were not substantiated should never be dismissed out of hand as 'false' or 'fabricated,' but should be explored to determine why they were not confirmed. Many cases are unsubstantiated . . . because not enough evidence is obtained to rule a case as confirmed."<sup>86</sup>

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83. See *McRoberts*, 2012 WL 2317714, at \*9 ("The DCFS . . . came to the same conclusion after [one of the girls] indicated . . . she was not sure if father actually molested her or she simply imagined it.").

84. See Hannah Dreyfus, *In the Child's Best Interests*, PRO PUBLICA (Aug. 19, 2023), <https://www.propublica.org/article/both-parents-agree-child-is-being-harmed-who-will-courts-believe>.

85. See generally Michael Durfee & Deanne Tilton-Durfee, *Multiagency Child Death Review Teams: Experience in the United States*, 4 CHILD ABUSE REV. 377 (1995) (discussing findings that at least 2000 children a year are killed by their parent or caretaker in the United States); David Gough, *The Literature on Child Abuse Fatalities: A Bibliography*, 4 CHILD ABUSE REV. 389 (1995) (listing literature regarding where to find and examine child abuse fatalities); see, e.g., Jaclyn Cosgrove, *How the Child Welfare System Failed Noah Cuatro*, L.A. TIMES (Aug. 20, 2021, 5:30 AM), <https://www.latimes.com/california/newsletter/2021-08-20/essential-california-august-20-2021-essential-california> (providing an account of how the welfare system failed to prevent kiling of a four-year-old boy); Conor Friedersdorf, *In a Year, Child-Protective Services Checked Up on 3.2 Million Children*, THE ATLANTIC (July 22, 2014), <https://www.theatlantic.com/national/archive/2014/07/in-a-year-child-protective-services-conducted-32-million-investigations/374809/> ("2.5 million of those kids were declared 'non-victims.' Another 686,000 were 'abused' or 'neglected.' And an estimated 1,640 kids died as a result."); *The Disturbing, Heartbreaking Reality of Child Protective Services Caseworkers*, CBS NEWS (June 14, 2019, 7:37 AM), <https://www.cbsnews.com/news/child-protective-services-workers-disturbing-heartbreaking-reality/> ("discussing how "hundreds of American children known to Child Protective Services die of maltreatment every year"); Editorial, *The Observer View on Failures of the Child Protection System*, THE GUARDIAN (Apr. 24, 2022, 1:00 AM), <https://www.theguardian.com/commentisfree/2022/apr/24/observer-view-failures-of-child-protection-system> (noting the failures of the child welfare system in Britain).

86. Levenson & Morin, *supra* note 70, at 69–70.



In *In re M.M.*,<sup>87</sup> when Child was three, Father was convicted of DV after he bit Mother.<sup>88</sup> Despite Father's criminal conviction, in her report ten years later, the court custody evaluator described Father's criminal conduct as "alleged[]."<sup>89</sup>

A concerned party reported to DCFS that Father had been inflicting DV on Mother in the presence of Child.<sup>90</sup> Mother reported that Father had pushed, pinched, and bitten Child.<sup>91</sup> A few months later, DCFS received another referral after Child reported Father took her into the bathroom during a monitored visit and touched her vagina.<sup>92</sup> DCFS concluded the allegation was "unfounded," although there was no indication as to the basis for that conclusion.<sup>93</sup> The court custody evaluator later emphasized the visitation monitors did not witness the CSA (which allegedly occurred in a bathroom).<sup>94</sup> Father's visits were reinstated, without monitoring, after he insisted Mother "coached" Child to make a "false allegation."<sup>95</sup>

*Ellis v. Lyons*<sup>96</sup> demonstrates a concerning contrast between the way the California courts and the Massachusetts courts treat victims' evidence.<sup>97</sup> In *Ellis*, Mother resided in Massachusetts, and Father resided in Southern California.<sup>98</sup> When Child was eight, parents agreed to share custody, with Child residing primarily with Mother and spending most of her school holidays with Father.<sup>99</sup> When Child was thirteen, she was spending her spring break with Father when he punched his brother-in-law in the face repeatedly and threatened to slap Child.<sup>100</sup> Child fled from the flight, shut herself in an upstairs bathroom, and called 911.<sup>101</sup> When Father found Child, he took her cell phone and only agreed to return it to her if she promised not to call

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87. See *In re M.M.*, No. B264040, 2015 WL 8770107 (Cal. Ct. App. Dec. 14, 2015).

88. See *id.* at \*6.

89. *Id.*

90. See *id.* at \*1.

91. See *id.* at \*3.

92. See *id.*

93. See *id.*

94. See *id.* at \*4.

95. See *id.* at \*6.

96. See *Ellis v. Lyons*, 206 Cal. Rptr. 3d 687 (Cal. Ct. App. 2016).

97. See *id.* at 688.

98. See *id.*

99. See *id.*

100. See *id.* at 689.

101. See *id.*

911 again.<sup>102</sup> Child reported to Mother that she was “really scared,” and Mother was concerned for Child’s safety.<sup>103</sup>

Mother applied for a DV abuse prevention order in Massachusetts.<sup>104</sup> Child testified that she had been fearful of Father since the altercation and was afraid to be in a room with him, he was “a very intimidating person,” and she was afraid that Father would spank or slap her.<sup>105</sup> Child was shaking and crying during her testimony.<sup>106</sup> Mother testified that Child had nightmares and that Mother believed that Child’s fear was real.<sup>107</sup> Father explained that he “only” threatened to slap Child because she was “yelling at him and making disrespectful comments.”<sup>108</sup> The Massachusetts court issued the abuse prevention order finding Child was credible and in reasonable fear of imminent personal injury from Father.<sup>109</sup> The court found that Father, whom the judge characterized as a “sizeable” man, “locked her [up], [took] away her cell phone, and threatened to slap or spank her.”<sup>110</sup>

The California family court decided the Massachusetts abuse prevention order, which was due to expire shortly, “was improperly issued.”<sup>111</sup> The California court criticized the Massachusetts court for making “a finding that [Child’s] fearful because she said, ‘I’m fearful,’ and then she cried.”<sup>112</sup> The court’s criticism is baffling. It is hard to imagine why the California judge believed the Massachusetts judge was not “thorough” by hearing Child’s description of abuse and noting the emotional effect that it had on her. Instead, the California court found Child’s “statement that she’s afraid of her father is [Child’s] way of achieving a modification or elimination of his custodial rights and visitation rights.”<sup>113</sup>

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102. *See id.*

103. *See id.* at 690.

104. *See id.*

105. *See id.*

106. *See id.* at 691.

107. *Id.*

108. *Id.*

109. *See id.* at 690–91.

110. *Id.* at 691.

111. *Id.* at 692.

112. *Id.* at 693.

113. *Id.* at 694.

In *P.M. v. S.S.*, Mother's application for a DVRO was triggered by Child's reports of sexual abuse while visiting Father.<sup>114</sup> San Diego County Child Welfare Services ("CWS") determined that the evidence of CSA was inconclusive even though Child repeated her allegations of CSA to a social worker.<sup>115</sup> Child had previously disclosed CSA to a board-certified child abuse pediatrician and her child therapist.<sup>116</sup> The therapist made at least three reports to CWS that she suspected that Child was being abused by Father.<sup>117</sup> The pediatrician offered expert evidence on Mother's behalf.<sup>118</sup> She testified that Child disclosed CSA to her and she found child's disclosures to be credible but there was never any way to be certain about whether children's disclosures were true.<sup>119</sup> The therapist also offered evidence about Child's disclosures and testified that she did not believe that Child had been coached.<sup>120</sup> Mother offered evidence about Child's disclosures of CSA and changes in her behavior after she started having unsupervised contact with Father.<sup>121</sup>

Child testified several times in the family court about Father's physical and sexual abuse.<sup>122</sup> She testified that Father began to sexually abuse her when she was five or six by climbing on top of her in his bed and putting his hands under her underwear and that he got an erection when he touched her.<sup>123</sup> She testified that Father "was always angry at her and never displayed any kindness toward her."<sup>124</sup> She testified about Father slapping her repeatedly beginning when she was about seven or eight years old.<sup>125</sup> She testified about Father repeatedly "digitally penetrat[ing]" her while she showered.<sup>126</sup> She testified about Father slapping her face and scratching her arms while trying to drag her into his bedroom.<sup>127</sup>

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114. See *P.M. v. S.S.*, No. D078381, 2022 WL 2352986, at \*2 (Cal. Ct. App. June 30, 2022).

115. See *id.* at \*3-4.

116. See *id.* at \*4.

117. See *id.* at \*7.

118. See *id.* at \*4.

119. See *id.* at \*5-6.

120. See *id.* at \*6-7.

121. See *id.* at \*8.

122. See *id.* at \*11.

123. See *id.*

124. *Id.*

125. See *id.*

126. See *id.*

127. See *id.*

Despite the evidence from Child, Mother, and Mother's experts, the court determined that Mother failed to establish that the FV had occurred.<sup>128</sup> The court emphasized Mother's allegations occurred in the "context" of the parties' "custody dispute" and Mother had been present when Child made her disclosures to the pediatrician and therapist.<sup>129</sup> The court evaluator opined that Child's disclosures of CSA "did not comport with any type of reality."<sup>130</sup> The court found Child and Mother "were not credible witnesses."<sup>131</sup> The court based its findings in part on the fact Child previously failed to disclose Father's CSA and made inconsistent statements about when/whether she told Mother about the CSA,<sup>132</sup> which, as discussed *supra*, were not evidence-based reasons for disbelieving Child's disclosures.<sup>133</sup>

### C. Underestimation of the Harm Caused by CAN

In *Endangered by Junk Science*, I documented the New Zealand Family Court's failure to understand the harm that FV causes to children and their caretakers and the impact it has on child safety.<sup>134</sup> Validated social-science literature demonstrates that children who are exposed to violence suffer from a host of adverse physical, psychological, and cognitive impacts later in life.<sup>135</sup> Trauma accumulates over the course of childhood and early adulthood, so its impact is cumulative and dose specific.<sup>136</sup> The more exposure that children have to

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128. *See id.* at \*15.

129. *See id.* at \*10–11.

130. *Id.* at \*15.

131. *See id.* at \*17.

132. *See id.*

133. *See supra* notes 78–81 and accompanying text.

134. *See generally* Carrie Leonetti, *Endangered by Junk Science: How the New Zealand Family Court's Admission of Unreliable Expert Evidence Places Children at Risk*, 43 CHILD'S LEGAL RTS. J. 17 (2022) [hereinafter Leonetti, *Endangered by Junk Science*] (analyzing procedural failures within the New Zealand Family Court system).

135. *See* Emily A. Greenfield, *Child Abuse as a Life-Course Determinant of Adult Health*, 66 MATURITAS 51, 52–53 (2010) (discussing studies done on long term health consequences of child sexual abuse); B.B.R. Rossman, *Longer Term Effects of Children's Exposure to Domestic Violence*, in DOMESTIC VIOLENCE IN THE LIVES OF CHILD.: THE FUTURE OF RSCH., INTERVENTION, AND SOC. POL'Y 35–65 (Sandra A. Graham-Bermann & Jeffrey L. Edleson, eds., 2001).

136. *See* Sherry Hamby, et al., *Recognizing the Cumulative Burden of Childhood Adversities Transforms Science and Practice for Trauma and Resilience*, 76 AM. PSYCH. 230, 232–33 (2021) (describing the dose-effect (cause & effect) relationship between trauma and negative health conditions).

traumatic events and/or the more severe the trauma, the greater the impact on well-being later in life.<sup>137</sup>

Nonetheless, the California family courts, like the New Zealand Family Court, tend to underestimate the harm caused by CAN, particularly when balancing it against the perceived harm to children from losing regular contact with violent parents. For example, in *In re M.M.*, after the court evaluator recommended sole custody to Father despite his documented history of physical and verbal abuse of Child, DCFS filed an information asserting that they had concerns regarding the court evaluator's report.<sup>138</sup> In their view, the evaluator did not adequately consider the evidence that Father had difficulty managing his anger and had repeatedly used physical force against Child.<sup>139</sup>

#### D. Failure to Perform Evidence-Based Risk Assessment

Researchers have designed a California-specific risk assessment for child abuse called the California Family Risk Assessment, but it appears that the family courts in California do not use it in their risk judgments. Instead, consistent with the poor practice of family courts globally, the courts employ intuitive risk judgments based on idiosyncratic factors with no evidence validation. For example, in *Idelle C.*, despite Child's repeated disclosures that Father was sexually abusing her, the family law court concluded in a single, conclusive sentence that Child was not "in any way at risk" in Father's sole custody.<sup>140</sup>

In *McRoberts*, the Court of Appeal for the Second District acknowledged there was a "possibility" that Father, who had been awarded sole custody of Daughter with no communication to Mother, sexually abused her.<sup>141</sup> The Court, therefore, had to "consider the risk" that Father would abuse her again while she was in his sole custody.<sup>142</sup> The Court found the risk of re-offense was "very unlikely" because Father's household was "crowded", Child was "hypervigilant regarding sexual abuse" because of Father's past abuse of her, and Child

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137. *See id.* at 233–34.

138. *See In re M.M.*, No. B259253, 2015 WL 8770107, at \*10 (Cal. Ct. App. Dec. 14, 2015).

139. *See id.*

140. *See In re Marriage of Odelle C., Ovando C.*, No. B151991, 2002 WL 1764181, at \*10 (Cal. Ct. App. July 31, 2002).

141. *See McRoberts v. Super. Ct.*, No. B234877, 2012 WL 2317714, at \*10 (Cal. Ct. App. June 19, 2012).

142. *Id.*

had “access” to a therapist and nurse outside of Father’s household.<sup>143</sup> This conclusion is shocking in its callousness and lack of evidence basis. The single greatest risk factor for future CSA is past CSA.<sup>144</sup> Levenson and Morin (2006) explain that past allegations should be considered a risk factor for future CSA, regardless of whether they were “substantiated.”<sup>145</sup> Child sex offenders are opportunistic and predatory. They employ “grooming” strategies to disarm potential observers and convince them they are not capable of CSA.<sup>146</sup> The court’s actions in awarding Father sole custody of Child after disbelieving her reports of CSA and crediting Father’s denials fed into this grooming process because a perpetrator’s level of accountability for the use of violence, including their readiness to change and an understanding of the impacts of violence on the children, are crucial determiners of future risk.<sup>147</sup> As Levenson and Morin explain:

Any individual with a history of sexual assault is capable of repeating that behavior. Until such an individual admits the problem and genuinely addresses it through successful completion of a qualified treatment program, there ordinarily will be little reason to believe that his or her risk for reoffending is significantly diminished. Offenders who . . . are unwilling to relinquish their denial of their offenses and their sexual deviance have a poor treatment prognosis.<sup>148</sup>

The fact that other people lived in the house was wildly insufficient to protect Child from additional predation. The majority of CSA occurs within children’s homes, many of which are “crowded.”<sup>149</sup> As Levenson and Morin (2006) explain:

It is clear that any sex offender who is living with children should be considered at increased risk for reoffense. This type of living arrangement should be cautiously considered and allowed only after the offender has engaged

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143. *Id.*

144. See Levenson & Morin, *supra* note 70, at 69.

145. See *id.* at 69–70.

146. See *id.* at 64.

147. See Robert Geffner, et al., *Conducting Child Custody Evaluations in the Context of Family Violence Allegations: Practical Techniques and Suggestions for Ethical Practice*, 6 J. CHILD CUSTODY 189, 195–99 (2009).

148. Levenson & Morin, *supra* note 70, at 74–75 (internal citations omitted).

149. See *McRoberts v. Super. Ct.*, No. B234877, 2012 WL 2317714, at \*10 (Cal. Ct. App. June 19, 2012).

successfully in a qualified sex offender treatment program and when a non-offending adult lives in the home to supervise contact at all times. “Supervised” contact implies that the chaperone believes past sexual abuse occurred, recognizes the potential for future harm, and understands the importance of close supervision. Supervised contact between sexual perpetrators and potential victims should always occur within the eyesight of a chaperone who believes that the potential for sexual abuse exists, that careful supervision is critical, and that protective intervention may become necessary.<sup>150</sup>

“Crowded” clearly did not meet these criteria. They also explain: “Conversely, risk is increased when offenders have unsupervised access to children and their behavior has not been sanctioned. Risk would likely be greatest, then, in cases where an abuser is living with children, court-ordered restrictions have not been imposed, or no sanction for the abuser’s past behavior exists.”<sup>151</sup>

In addition, Child repeatedly reported Father’s sexual abuse prior to the sole custody award, and no one believed her or took actions to protect her.<sup>152</sup> The Court’s assumption that, when Father abuses her again after he has been awarded sole custody of her for thirty days as a penalty for her last reports of abuse, she will report yet again into a system that has failed to hear and protect after her prior disclosures was, frankly, insane.

In *A.S. v. C.A.*,<sup>153</sup> the court evaluator found Father was “hypermasculine, distrustful, [and] irritable” and Mother was “dependant [*sic*], insecure, indecisive, fearful, distrusting, and prone to anxiety and depression.”<sup>154</sup> These “diagnoses” are concerning as they reflect a lack of understanding about risk assessment. Hypermasculinity, paranoia, and irritability are well-established risk factors for aggression.<sup>155</sup>

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150. See Levenson & Morin, *supra* note 70, at 72 (internal citations omitted).

151. *Id.* at 73 (internal citations omitted).

152. See *McRoberts*, 2012 WL 2317714, at \*3.

153. *A.S. v. C.A.*, No. 08D011523, 2017 WL 1506755 (Cal. Ct. App. Apr. 27, 2017).

154. *Id.* at \*2.

155. See generally N. Zoe Hilton & Grant T. Harris, *Predicting Wife Assault: A Critical Review and Implications for Policy and Practice*, 6 *J. TRAUMA, VIOLENCE & ABUSE* 3 (2005) (discussing traits and risk factors associated with domestic violence); Dov Cohen et al., *Insult, Aggression, and the Southern Culture of Honor: An “Experimental Ethnography”*, 70 *J. PERSONALITY & SOC. PSYCH.* 945 (1996) (analyzing hypermasculinity and its correlation to aggression); Kristen Matson, et al., *Gun Enthusiasm, Hypermasculinity, Manhood Honor, and Lifetime Aggression*, 28 *J. AGGRESSION, MALTREATMENT & TRAUMA* 369 (2018) (documenting the link between hypermasculinity, manhood honor

Conversely, being “dependant [*sic*]”, fearful, and prone to anxiety and depression placed Mother at higher risk of experiencing violence.<sup>156</sup> The victim’s assessment of the likelihood of a recurrence of FV is one of the best predictors of additional violence.<sup>157</sup>

#### E. Distrusting and Silencing Children’s Voices

In *Sub Silentio Alienation*, I documented the “Myth of “Undue Influence” and Children’s Desire Not to Be Heard” in the New Zealand Family Court, noting:

PA theory asserts that children want to be forced to have contact with violent parents even when they say that they do not, and that children who express fear of contact with one parent should be disbelieved. The theory asserts that any time a child expresses fear of or resistance to contact with a parent, that resistance is a sign that their other parent has exerted undue influence over them, regardless of the rejected parent’s history of maltreatment or violence. Even in cases involving family violence, the theory rejects the possibility that the parent’s infliction of violence is the cause of the child’s fear of them.<sup>158</sup>

This same myth dominates fact finding in the California family courts.

For example, in *In re Marriage of Arthur*,<sup>159</sup> Father was a FV perpetrator, and Mother was not.<sup>160</sup> Children repeatedly expressed their desire to live with Mother, but their counsel nonetheless opposed even unsupervised visitation with Mother and advocated for Father to

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maintenance, and lifetime aggression in men); Conor J. O’Dea, et al., *Fight or Flight: Perceptions of Men Who Confront Versus Ignore Threats to Themselves and Others*, 104 PERS. & INDIV. DIFFERENCES 345 (2017) (exploring the relationship between masculine honor adherence and violent behavior); K. Daniel. O’Leary, et al., *Prevalence and Stability of Physical Aggression Between Spouses: A Longitudinal Analysis*, 57 J. CONSULTING & CLINICAL PSYCH. 263 (1989) (analyzing the prevalence of physical aggression between spouses and across genders); Dennis E. Reidy, et al., *Men who Aggress Against Women: Effects of Feminine Gender Role Violation on Physical Aggression in Hypermasculine Men*, 10 PSYCH. MEN & MASCULINITY 1 (2009) (examining the impact of gender roles on male aggression).

156. See *A.S.*, 2017 WL 1506755 at \*2.

157. See Hilton & Harris, *supra* note 155, at 7 (2005).

158. See Leonetti, *Sub Silentio Alienation*, *supra* note 46 at 290.

159. *In re Marriage of Jaclyn and Gerard Arthur*, No. 98FL03636, 2004 WL 1732709 (Cal. Ct. App. Aug. 3, 2004).

160. See *id.* at \*4.



have sole custody of them.<sup>161</sup> Children's counsel sought orders forcing Children to attend therapy with specified therapists who subscribed to the debunked theory of PA, to convince them that Father was safe.<sup>162</sup> Children continued to be desperately unhappy with Father and express their desire to live with Mother, but one therapist told their counsel that Son's depression was the result of Mother's failure to "encourage" Father's "role with the children."<sup>163</sup> Rather than advocate for Children's views, their counsel encouraged the court to further restrict Mother's contact to supervision and to continue to force them to live with Father.<sup>164</sup>

In *McRoberts*, the court-appointed evaluator opined that Children's disclosure of CSA by Father were "contaminated" by Mother, whom he characterized as "hypervigilant" about CSA and "obsessed with hostility" toward Father.<sup>165</sup> On appeal, the Court of Appeal for the Second District acknowledged that Daughter, who had been ordered to live in Father's sole custody, "appear[ed] to sincerely believe father sexually molested her and that he poses a danger to her."<sup>166</sup> The Court noted that being forced to live with Father for a month with no communication with Mother "might cause" her "strain," but nonetheless found the trial court's order was supported by "substantial evidence" that "monitored visits with father was simply not enough" to "salvage her relationship with her father."<sup>167</sup>

In *M.M.*,<sup>168</sup> Child told the custody evaluator Father was physically and sexually abusive. She disclosed he "kicked her a couple of times."<sup>169</sup> She told the evaluator that Father had sexually abused her "for as long as she could remember."<sup>170</sup> She disclosed that he "put his hands on her thigh [while] at the dinner table, put his hands under her clothing, and forced her to come into his bed."<sup>171</sup> She told the

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161. *See id.* at \*3.

162. *See id.* at \*6-7.

163. *See id.* at \*7.

164. *See id.* at \*6.

165. *See McRoberts v. Super. Ct.*, No. B234877, 2012 WL 2317714, at \*4 (Cal. Ct. App. June 19, 2012).

166. *Id.* at \*10.

167. *Id.*

168. *See In re M.M.*, No. B259253, 2015 WL 8770107, (Cal. Ct. App. 2015).

169. *Id.* at \*7.

170. *Id.* at \*8.

171. *Id.*

evaluator that Father threatened to kill her family members if she told anyone about the CSA.<sup>172</sup>

The day after the family court ordered Child into Father's sole custody, Child went to a movie with Father.<sup>173</sup> She told Father that she was going to the bathroom and never returned.<sup>174</sup> She called the police and made detailed disclosures of ongoing sexual abuse by Father.<sup>175</sup> She claimed Father fondled her breasts and vagina.<sup>176</sup> She said that she was afraid to return to Father's house because she was certain that he would continue to abuse her.<sup>177</sup> She told DCFS the day the family court "forced her" to go live with Father, he tried to push her into the bathroom to sexually abuse her, a struggle ensued, and she sustained scratches on her arms.<sup>178</sup> DCFS caseworkers observed scratches on Child's arms that were consistent with her report.<sup>179</sup> During the interview, Child was anxious, held a small prayer book tightly against her chest, and repeatedly stated that no one believed her.<sup>180</sup>

Child reported to a counselor that she did not want to have visitation with Father because he sexually abused her by touching her under her clothes and forcing her to stay in his bed when she was between the ages of six and ten.<sup>181</sup> She said she was afraid of Father and he had hit her and threatened her life.<sup>182</sup> During the DCFS investigation, Child reiterated that Father sexually abused her when she was between the ages of six and ten.<sup>183</sup> She reported that Father watched her shower, "lather[ed] soap all over her body and 'sometimes' penetrated her anus or vagina with his fingers" and he "forced her onto his bed, where he fondled her breasts and vagina."<sup>184</sup> She also reported that Father "had been highly critical of her for as long as she could remember," denied engaging in any wrongdoing, blamed Mother for

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172. *See id.*

173. *See id.* at \*4.

174. *See id.*

175. *See id.*

176. *See id.* at \*2.

177. *See id.* at \*4.

178. *See id.*

179. *See id.* at \*1-2.

180. *See id.* at \*4.

181. *See id.*

182. *See id.* at \*3.

183. *See id.* at \*4.

184. *Id.*

the breakdown in their relationship, and accused her of lying.<sup>185</sup> She reported that Father was angry and “yelled at her over trivial issues.”<sup>186</sup> She also reported that she had observed Father yell, scream, and have physically violent altercations with his parents.<sup>187</sup> Conversely, she expressed feeling safe and loved with Mother.<sup>188</sup> DCFS “evaluated out” the case<sup>189</sup>, which is an odd and inappropriate disposition under DCFS’s guidelines. DCFS is required to conduct investigations of all allegations of CAN.<sup>190</sup> They are only supposed to ‘evaluate out’ allegations if they do not constitute CAN, another agency (like the police) has exclusive jurisdiction over the allegations, or the allegations are duplicative of claims that are already the subject of an open investigation.<sup>191</sup> Examples of allegations that do not constitute CAN and therefore are appropriate for “evaluation out” include cases in which there is not a reasonable suspicion of CAN, where the abuser is not a parent, guardian, or caretaker of the child, juvenile delinquency by the child, poverty, or child mental-health issues.<sup>192</sup> It appears, however, the DCFS simply defaulted the investigation of Child’s alleged abuse to the family court.

The custody evaluator opined that Mother induced Child to make false allegations against Father “as part of an ongoing effort to alienate the child from her father.”<sup>193</sup>

The day after Child was ordered into Father’s sole custody, she disclosed to the police that Father “slapped her face and scratched her arms after she refused to enter his bedroom.”<sup>194</sup> According to the police, she was visibly afraid of Father.<sup>195</sup> When DCFS attempted to interview Father about the allegations, Father’s lawyer informed DCFS that Father was involved in an “ongoing custody dispute” with

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185. *Id.* at \*3.

186. *Id.* at \*4.

187. *See id.* (describing specific instances of father’s physical and verbal aggression).

188. *See id.* at \*3.

189. *See id.*

190. *See* STATE OF CAL., HEALTH & HUM. SERVS. AGENCY, & DEP’T OF SOC. SERVS., MANUAL OF POLICIES AND PROCEDURES: CHILD WELFARE SERVICES §31-101.1 (2016).

191. *See id.* §31-002 (defining licensing agency, the agency responsible for handling CAN allegations).

192. *See* STATE OF CAL. DEP’T. OF CHILD. & FAM. SERVS., CHILD PROTECTION HOTLINE POLICY GUIDE, [http://m.policy.dcfslacounty.gov/Src/Content/Child\\_Protection\\_Hotline.htm#Evaluating\\_Out\\_a\\_Referral](http://m.policy.dcfslacounty.gov/Src/Content/Child_Protection_Hotline.htm#Evaluating_Out_a_Referral) (last visited Aug. 23, 2022).

193. *In re M.M.*, 2015 WL 8770107, at \*5.

194. *Id.* at \*1.

195. *See id.*

Mother, he believed that the allegations were false, and Mother was “responsible for the child conjuring up such allegations,” planting the seed of PA suspicions at the outset of their investigation.<sup>196</sup> Father told DCFS that his history of DV with Mother was mutual, she was “infuriated” by their divorce, and she was trying to turn Child against him as “a way of exacting revenge.”<sup>197</sup> When DCFS interviewed Child, she reported that the previous night Father tried to force her into his bedroom and “slapped her face and scratched her arms when she resisted.”<sup>198</sup> DCFS observed scratches on Child’s arms.<sup>199</sup>

Child testified that Mother had never spoken negatively about Father.<sup>200</sup> She said that she was “upset when the family court awarded Father temporary custody, [of her]” because “she did not want anything to do with him.”<sup>201</sup> At the recommendation of the court evaluator, the family court placed Child in foster care. Child was distraught and repeatedly expressed that she missed Mother.<sup>202</sup>

On appeal, the Court of Appeal for the Second District found the trial court’s order to remove the child from her mother’s custody was supported by substantial evidence.<sup>203</sup> In support of its decision, the Court noted that Child displayed “extreme anxiety,” including insomnia and stomach issues, “whenever she was forced to be in [Father]’s presence or discuss her allegations against him.”<sup>204</sup> The Court noted Child had an extreme stress reaction when the family court forced her into Father’s temporary custody the prior year and whenever she was forced to visit Father.<sup>205</sup> The Court also noted Child was emotionally exhausted, having breakdowns, and performing poorly in school.<sup>206</sup>

The Court of Appeal’s reasoning makes sense only if Child’s experiences, views, and wishes are completely ignored. Child made crystal clear that her distress, fear, and emotional breakdowns were the result of Father’s abuse and her disclosures not being believed.<sup>207</sup>

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196. *Id.*

197. *Id.* at \*2.

198. *Id.*

199. *See id.*

200. *See id.* at \*11.

201. *Id.*

202. *See id.* at \*10.

203. *See id.* at \*21.

204. *Id.* at \*19.

205. *See id.*

206. *See id.*

207. *See id.* at \*4.

Instead, the courts cherry picked Child's statements about her distress while ignoring her statements about the cause of her distress and crafted a "remedy" that left her worse off instead of better.

In *A.S. v. C.A.*,<sup>208</sup> when Child made repeated disclosures of CAN when she was in Father's care, the court evaluator found that his disclosures "were the result of wanting to please mother, taking sides with mother to avoid being placed in the middle of parental conflict, exposure to mother's demeanor and remarks, and mother's blatant mistrust and hostility towards father."<sup>209</sup> The evaluator recommended that the court prohibit Mother from questioning Child about CAN or "his experience with father."<sup>210</sup>

In *Murr v Ingels*,<sup>211</sup> Child expressed Mother was a loving parent and she wanted to remain with her and not be forced into the custody of her violent father. Awarding custody to Father anyway, the family law court noted: "Child victims of parental alienation are not aware that they are being mistreated and often cling to the favored parent, even when that parent's behavior is harmful to them."<sup>212</sup> The court did not include these findings in its judgment, but the clear implication of this passage was that the family law judge found Child's views unworthy of weight.

#### F. Incommunicado Custody Reversals as "Cure"

In *Endangered by Junk Science*, I documented how in the New Zealand Family Court, one "remedy" that the Court imposed for PA was stripping the child from the "alienating" parent and forcing them into the care of the abusive parent for "deprogramming", even though there is no scientific validation for the proposition this draconian solution to the mythological problem of PA is effective.<sup>213</sup> Neustein and Leshner (2005) and Joan Meier (2022) have documented a similar phenomenon in American family courts.<sup>214</sup> The California case law

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208. See *A.S. v. C.A.*, No. G052341, 2017 WL 1506755, at \*3 (Cal. App. Ct. Apr. 27, 2017).

209. See *id.* at \*3.

210. *Id.* at \*4.

211. See *Murr v. Ingels*, No. C087789, 2020 WL 7639219 (Cal. App. Ct. Dec. 23, 2020).

212. *Id.* at \*10.

213. See Leonetti, *Endangered by Junk Science*, *supra* note 134, at 33.

214. See AMY NEUSTEIN & MICHAEL LESHER, FROM MADNESS TO MUTINY: WHY MOTHERS ARE RUNNING FROM THE FAMILY COURTS AND WHAT CAN BE DONE ABOUT IT xxiii (2005); Meier, *supra* note 29, at 837–38 (discussing the prevalence of parent alienation theory in refuting child abuse claims).

demonstrates that California courts also deploy this draconian “solution” to the perceived problem of PA.

For example, in *McRoberts*,<sup>215</sup> the family law court awarded Father sole custody of Parents’ three younger children with no contact with Mother for thirty days and dissolved a DVRO against Father, even though the court acknowledged that it was an “extreme remedy” for Mother’s purported PA.<sup>216</sup> On appeal, the Court of Appeal for the Second Circuit found the court did not abuse its discretion by issuing the custody and visitation orders.<sup>217</sup>

In *A.S. v. C.A.*,<sup>218</sup> the court evaluator recommended immediately reducing Child’s time with Mother and switching Child’s custody from Mother to Father entirely if Mother continued to report Child’s disclosures of CAN to SSA.<sup>219</sup> It is hard to understand this type of one-way downward ratcheting of Mother’s time with Child as anything other than a punishment designed to discourage Mother from continuing to raise her concerns about Child’s safety with Father. Upholding the change in custody, the Court of Appeal for the Fourth District acknowledged that the change in custody was “somewhat drastic” for Child, but ultimately concluded that it was entirely predictable, as if the predictability of the family court employing a care reversal that could be traumatic to Child to punish Mother’s perceived transgressions somehow justified the “predictable” trauma.<sup>220</sup>

In *In re Marriage of Terpko*,<sup>221</sup> the court custody evaluator and Children’s counsel responded to Children’s disclosures of FV by urging “no other alternative exists but to remove the children from the custody of their mother and place them in the custody of their father.”<sup>222</sup> The family court found that leaving Children in Mother’s custody would be “the least traumatic solution” for them, but ordered the custody reversal anyway, reasoning that failure to traumatically tear

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215. See *McRoberts v. Super. Ct.*, No. B234877, 2012 WL 2317714 (Cal. Ct. App. June 19, 2012).

216. See *id.* at \*7, \*10.

217. See *id.* at \*1.

218. See *A.S. v. C.A.*, No. G052341, 2017 WL 1506755 (Cal. App. Ct. Apr. 27, 2017).

219. See *id.* at \*4.

220. See *id.* at \*8.

221. See *In re Marriage of Gay and Terpko*, No. A148641, 2019 WL 1614521 (Cal. Ct. App. Apr. 16, 2019).

222. *Id.* at \*2.

Children from their life-long primary caretaker and place them with a parent they feared would not “withstand appellate scrutiny.”<sup>223</sup>

#### IV. IGNORING CHILDREN’S CRIES FOR HELP

The recent case of *In re G.R.*<sup>224</sup> provides a disturbing example of the way the family law court repeatedly ignored the views of mature children in proceedings that were supposed to be about their welfare and best interests. After their separation, Mother and Father had fifty-fifty physical custody of their four children.<sup>225</sup> Father had anger-management and alcohol-abuse issues.<sup>226</sup> He would allegedly videotape Children when they were “in trouble” to show them later what they had done wrong.<sup>227</sup> Father was “consistently angry, dismissive, and sometimes profane” toward Mother.<sup>228</sup> All four children were diagnosed with depression.<sup>229</sup>

Children expressed that they did not want to go to Father’s house because of his emotional abuse, they were afraid of him, and they did not feel safe living with him.<sup>230</sup> They reported that Father was unpredictable, angry, and mean, had “a temper,” yelled and screamed at them often, slammed doors, and belittled and was unkind to Step-mother.<sup>231</sup> They reported Father got drunk and passed out.<sup>232</sup> They reported he grilled them about what they said to therapists and social workers.<sup>233</sup> They reported he commonly made disparaging comments about Mother.<sup>234</sup> One child reported Father would drive by Mother’s house surveilling her and would not allow Mother to participate in Children’s school events.<sup>235</sup>

Child One, who was eleven years old, had anxiety and suicidal ideation.<sup>236</sup> When she tried to discuss an issue with Father during a joint

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223. *Id.*

224. *See In re G.R.*, No. G059563, 2021 WL 2346303 (Cal. Ct. App. June 9, 2021).

225. *See id.* at \*1.

226. *See id.* at \*2.

227. *See id.* at \*5.

228. *Id.*

229. *See id.* at \*1–2.

230. *See id.* at \*2–4.

231. *See id.*

232. *See id.* at \*3.

233. *See id.* at \*3–4.

234. *See id.* at \*5.

235. *See id.* at \*3.

236. *See id.* at \*1.

therapy session, he lacked empathy and argued with her feelings.<sup>237</sup> Child One reported that she was “stressed” when she had to go to Father’s house, cried “all the time” when she was there, he would not listen to her, and she thought about suicide “because she could not handle it.”<sup>238</sup> When she had to go to Father’s house, she cried, rocked back and forth, hyperventilated, pulled out her hair, and had a “major panic attack.”<sup>239</sup> She threatened to run away if she had to go to Father’s house.<sup>240</sup> Child’s therapist opined that Father’s behavior was causing her anxiety and depression.<sup>241</sup> Father discontinued Child One’s therapy and medication.<sup>242</sup>

Child Two, who was also eleven, was agitated, angry, sad, irritable, had trouble managing his anger and concentrating at school, and avoided participating in activities.<sup>243</sup>

Child Three, who was nine years old, was sad, tearful, had low self-esteem, difficulty concentrating, and lost interest in activities.<sup>244</sup> Child Four, who was eight years old, was sad, irritable, forgetful, she had difficulty concentrating and low self-esteem, and struggled with schoolwork.<sup>245</sup> Children’s therapist opined that Father contributed to Children’s anxiety and depression because of his “intense” and “angry” interactions with them.<sup>246</sup>

Father “was unwilling to accept any responsibility” for the way that Children felt about him.<sup>247</sup> He blamed Mother and Children’s therapist for Children’s fear of him, and he rejected Children’s diagnoses, preferring instead his own “research” and insisting Children had “age-appropriate behavioral issues.”<sup>248</sup> Father admitted he yelled at Children “frequently,” but insisted Mother was “abusing the children through parental alienation . . . .”<sup>249</sup> “Repeatedly, from his first meeting with the social worker to the jurisdictional hearing almost a year

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237. *See id.*

238. *Id.* at \*2.

239. *Id.*

240. *See id.*

241. *See id.*

242. *See id.* at \*1.

243. *See id.* at \*2.

244. *See id.*

245. *See id.*

246. *See id.* at \*5.

247. *Id.*

248. *Id.* at \*4.

249. *Id.*



later, the father complained of parental alienation and offered his own mental health diagnoses as to the mother and the children, sometimes in great detail.”<sup>250</sup>

Stepmother admitted Father “raise[d] his voice” and yelled at Children.<sup>251</sup> Father’s mother (Grandmother) expressed concern about his lying and anger toward Mother.<sup>252</sup> Father claimed Mother “extorted” Grandmother to say bad things about him.<sup>253</sup>

The Orange County Social Services Agency (“SSA”) filed a dependency petition alleging that Children “displayed symptoms of serious emotional harm as a result of their parents’ ‘conflictual and antagonistic behavior toward each other.’”<sup>254</sup> “The petition alleged that [Father] had failed to ensure appropriate treatment for [Children’s] mental health and emotional needs” and “lacked insight into how his conduct was contributing to [their] issues.”<sup>255</sup>

The family court ordered a Secure Continuous Remote Alcohol Monitor (“SCRAM”) device for Father and ordered Father to stop videotaping Children without their consent.<sup>256</sup> The court ordered that Child One reside with Mother and the other three children remain in joint custody.<sup>257</sup>

SSA filed a second dependency petition asking the court to remove Children from Father’s custody because Father recorded Children’s private teletherapy sessions.<sup>258</sup> The therapist reported that, when Children discovered Father was recording their sessions, Child Three whispered “that he was afraid and did not know what to do” and Child Two was “visibly shaken” and “scared.”<sup>259</sup>

Children continued to be anxious and scared of being at Father’s house.<sup>260</sup> Child One, “who by [this time was twelve years old], reported that she was doing well [in Mother’s care] and had no desire to have contact with . . . Father.”<sup>261</sup> Child Two, who was also twelve, expressed that he felt “intimidated, uncomfortable, and . . . scared” at

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250. *Id.* at \*5.

251. *Id.* at \*4.

252. *See id.*

253. *See id.*

254. *Id.* at \*1.

255. *Id.* at \*2.

256. *See id.* at \*3, \*5.

257. *See id.* at \*5.

258. *See id.* at \*6.

259. *Id.*

260. *See id.*

261. *Id.*

Father's house.<sup>262</sup> He reported that "[f]ather gets drunk often."<sup>263</sup> Child Three, who was ten years old, also reported being "scared" of Father because he was always grilling him about court matters.<sup>264</sup> Child Four, who was nine years old, reported that Father still got drunk.<sup>265</sup> SSA saw no reason for Children to be removed from Father's custody. Instead, their assessment indicated:

While the children express not wanting to go to their father's home or stating feeling uncomfortable around him, there have been no reports of physical abuse or neglect reported by the children toward their father. Based on the above concerns as well as overall safety assessment, it is recommended that the children continue in the care of the parents under joint custody and that the children's counseling/therapy be conducted in-office.<sup>266</sup>

This assessment is shocking and disappointing. Children had a right to be protected from all forms of abuse, not just "physical abuse or neglect."<sup>267</sup> Father got drunk and passed out in front of Children, screamed at Children, intimidated them, violated their privacy, criticized, ridiculed, and controlled them, and they were suffering from fear, anxiety, and depression as a result.<sup>268</sup> SSA was the agency tasked with protecting them from harm, and they advocated for them to be returned to the parent who was clearly harming them.

Child Three testified at the dependency hearing that he felt "sad" when he discovered Father was recording his therapy sessions because it was his "private time" and he talked to his therapist "about things he did not want his father to know."<sup>269</sup> He testified that he was always afraid at Father's house because he never knew what would "set his father off" and he was afraid that Father would retaliate against him for his testimony.<sup>270</sup>

Child Two also testified at the dependency hearing that Father had "a big temper" and he was scared when Father got drunk and

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262. *Id.*

263. *Id.*

264. *See id.*

265. *See id.*

266. *Id.*

267. *Id.*

268. *See id.* at \*7, \*9.

269. *Id.* at \*7.

270. *See id.*

mad.<sup>271</sup> He testified that Father “raise[d] his voice a lot,” got “super loud,” and directed his anger at Children by yelling at them, which was “super scary.”<sup>272</sup> He testified that he was also “scared about what Father would do if they had to go back to his house because he was testifying against living with him.”<sup>273</sup> He “wanted the court to know that for the last six or seven years, every time he goes to the father’s house he is ‘so stressed out’.”<sup>274</sup> Child Four “did not want to go to her Father’s house for the same reasons.”<sup>275</sup>

Incredibly, the SSA social worker, who had never done a home visit at Father’s house, “testified that the agency was not concerned about [CAN].”<sup>276</sup> Specifically, “[t]he social worker was aware of the minors’ feelings with respect to visiting their father and the reasons for it, but felt the solution was for the father to address that in counseling, which he was not doing at that time.”<sup>277</sup>

The juvenile court found that Father intentionally recorded Children’s therapy sessions, it was not the first time he engaged in non-consensual recording of Children, and it violated the court’s previous orders.<sup>278</sup> The court stressed it was a serious violation of Children’s privacy and found Father “just decided that his need to know what was going on in those sessions was more important than the children’s right to keep those conversations private.”<sup>279</sup> The juvenile court also found Children “were exhibiting extreme anxiety, depression and withdrawal” and experiencing “severe emotional damage.”<sup>280</sup> The court found Father had problems with “anger management,” a “dangerous lack of impulse control,” and had violated court orders.<sup>281</sup>

Incredibly, however, the court nonetheless found it was not necessary to remove Children from Father’s physical custody, preferring instead to engage in “a last-ditch effort” to keep Children in his custody.<sup>282</sup> The court minimized Father’s abusive behavior,

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271. *See id.*

272. *Id.*

273. *See id.*

274. *Id.*

275. *Id.* at \*8.

276. *Id.*

277. *Id.*

278. *See id.*

279. *Id.* at \*8–9.

280. *Id.* at \*9–10.

281. *Id.* at \*9.

282. *Id.* at \*10.

characterizing it as only involving Children's "lack of privacy" and Father's "behavior while drinking" and "poor judgment."<sup>283</sup> The court found the privacy violations would not repeat because Children were no longer engaging in tele-therapy and Father would no longer drink because the court had ordered the SCRAM testing.<sup>284</sup> The court expressed the "hope" that "counseling" could get Father to the point where he could "make good decisions rather than impulsive and inappropriate ones."<sup>285</sup>

When the juvenile judge found out Children were devastated by his decision, he patronizingly admonished:

I have to make decisions based on what I believe, based on the testimony, from the evidence is truly in the best interest of the children and often that's not necessarily what children think – even children of these kids' age think is in their best interest. . . . If this isn't resolved, if this isn't fixed, if this doesn't become positive, I'm [] obviously, going to be forced to make other decisions, but if the children can visit and spend time – custodial time with father and not be afraid, have positive relationships and have a positive experience in the father's home, that is what is in their best interest. And I say that – I say if. That's what we're going to see. And I expect everyone to do their very best in order to make this successful. We'll see if it's possible.<sup>286</sup>

Six weeks later, Children's counsel filed a new petition asking the court to remove Children from Father's custody.<sup>287</sup> Father had not installed the SCRAM device and became drunk to the point of almost passing out in front of Children again.<sup>288</sup> Children continued to feel afraid and unprotected at Father's house and to suffer from stress and anxiety.<sup>289</sup> Child One, on the other hand, was doing well in Mother's care and did not want to resume visits with Father.<sup>290</sup>

SSA's assessment stated that Children "voice[d] their wishes to not have to visit their father as they stated feeling

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283. *Id.* at \*9.

284. *See id.*

285. *Id.*

286. *Id.* at \*10.

287. *See id.*

288. *See id.*

289. *See id.*

290. *See id.*

he will not change his behaviors or attitude which may consist of raising his voice or making them feel anxious of being blamed for doing something wrong while in his care.”<sup>291</sup>

Once again however, SSA’s recommendation was “to maintain the status quo with regard to custody,” of Child One with Mother and the three younger children in the joint custody of both parents.<sup>292</sup>

Child Three testified again at the dependency hearing stating he did not want to be in Father’s joint custody anymore.<sup>293</sup> He testified that he felt scared and unsafe when Father was drunk because he did not know if he was going to “lash out for no reason” and he worried that, if there were an emergency like a house fire, Father would not be able to get them out safely.<sup>294</sup> He also testified that he missed Mother and Child One when he was at Father’s house.<sup>295</sup>

Child Four testified that she was afraid of Father when he was drunk because he might “throw something”.<sup>296</sup> Child Two testified that Father’s drinking made him “stressed out” and scared and caused him to lose his appetite.<sup>297</sup>

The juvenile court again rejected Children’s request for a change of custody.<sup>298</sup> The court noted:

It is clear to the court that the children have a legitimate and valid and real concern with regard to father’s drinking. It is also obvious to the court that [the father] doesn’t believe that. I guess that puts us in a difficult situation. I can only state in those plain and certain terms I believe that the children have a real legitimate concern with regard to [the father]’s drinking.<sup>299</sup>

Nonetheless, the court mutualized the blame for Children’s fear of Father, scolding:

The reason that this case is in dependency court is because [of] the parents’ inability to co-parent [and] to support each other . . . is causing emotional damage to the children. It is

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291. *Id.* at \*11.

292. *Id.*

293. *See id.*

294. *See id.*

295. *See id.*

296. *Id.* at \*12.

297. *See id.*

298. *See id.* at \*13.

299. *Id.*

both parents' fault in not being able to get on pages where they can coexist and co-parent their children that [has resulted in this matter being] in dependency court and this case will never leave dependency court until the parents get to that point.<sup>300</sup>

This was an incredible finding given the record before the court. Father was emotionally abusive.<sup>301</sup> He got drunk, yelled at Children, criticized them, and illegally surveilled them.<sup>302</sup> Children's problem was not Mother's "inability to . . . support" Father; it was Father's abusive behavior that caused them to feel unsafe in his care.<sup>303</sup> In typical PA fashion, the court gave no indication of how Mother was supposed to "support" her way around Father being a violent and unsafe parent.

Six months later, the juvenile court held a review hearing. Child One asked the court to discontinue her joint therapy with Father and expressed that she did not want to see Father.<sup>304</sup> SSA opposed Child One's request to terminate the joint therapy.<sup>305</sup> Children's counsel asked the court to remove Children from Father's custody and suspend Child One's joint therapy with him until Father "addressed his own issues" independently with a therapist.<sup>306</sup>

The court again insisted on mutualizing fault, finding that both parents "were placing the children at risk of future harm."<sup>307</sup> The court repeated the PA theory:

This case came into dependency court because of the parents' joint inability to cooperate with each other in coparenting their children. Their collective inability to get along has caused and continues to cause their children to suffer serious emotional damage and to be at substantial risk of suffering serious emotional damage if supervision is withdrawn.<sup>308</sup>

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300. *Id.*

301. *See id.* at \*2.

302. *See id.* at \*9.

303. *Id.* at \*13.

304. *See id.*

305. *See id.* at \*14.

306. *Id.*

307. *Id.*

308. *Id.*

The court denied Children's request to be removed from Father's custody, ruling that the evidence was insufficient to support removal.<sup>309</sup>

Children appealed the juvenile court's rulings repeatedly refusing to protect them from the harm they were experiencing in Father's custody, arguing that the court's repeated orders that Father wear a SCRAM device and continue treatment for anger management were insufficient to protect them.<sup>310</sup> They also argued that they had "repeatedly stated that they no longer want[ed] to be in their father's custody," but the juvenile court did not give adequate weight to their views and they remained "unprotected" from Father's abuse.<sup>311</sup>

The Court of Appeals for the Fourth District upheld the juvenile court's refusal to remove Children from Father's custody, holding that the juvenile court's "steps were entirely reasonable as an alternat[ive] to the drastic remedy of removal."<sup>312</sup> The Court insisted, all evidence to the contrary notwithstanding, that the juvenile court did not "shortchange[]" Children's "arguments or their feelings."<sup>313</sup>

SSA's and the courts' treatment of Children and their experiences, suffering, and wishes is heartbreaking. Rather than recognizing the role their procedures played in traumatizing Children, and rather than recognizing the harm that forced contact was causing them, the courts were determined to place the blame equally on both parents. They insisted that parental "conflict," rather than Father's abuse and their own callous indifference to Children's suffering, was the problem, relying on PA-inflected reasoning. The Court of Appeal insisted that Mother "lacked insight into how her own behavior was contributing to their problems" without identifying any specific harmful behavior in which she was engaging.<sup>314</sup> The Court found that Mother was attempting "to alienate the father" and had an "enmeshed co-dependent relationship with the children," a pop psychology diagnosis straight out of daytime talk television.<sup>315</sup> "Co-dependency" and "enmeshment" are not recognized disorders in psychiatry and do not appear in the *DSM-5*.<sup>316</sup> The Court described removing Children from Father's

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309. *See id.*

310. *See id.* at \*16.

311. *Id.* at \*17.

312. *Id.* at \*16.

313. *Id.* at \*17.

314. *Id.* at \*2.

315. *Id.*

316. *See generally* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (showing the absence of enmeshment and codependency from recognized disorders).

custody as a “drastic step,”<sup>317</sup> even though, as I previously demonstrated in *Parental Alienation, Gender Bias, and Hypocrisy in the California Family Law Courts*, the courts regularly remove children from the custody of protective mothers who are accused of PA.<sup>318</sup>

#### V. CONCLUSION

A striking feature of family law cases is the sheer volume of children’s suffering. They exhibit depression, anxiety, behavioral problems, and self-harm. The courts are quick to blame their parents for being “high conflict” and involving kids in their divorces. In many of these cases, however, it is the courts’ processes that are damaging these kids and inflicting lasting trauma. Stripping kids from loving and safe parents, forcing them into the custody of dangerous ones, and just simply not listening to them when they tell court personnel what they need to be safe is an inappropriate and retraumatizing response to their pleas for protection.

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317. See *In re G.R.*, 2021 WL 2346303, at \*1.

318. See Carrie Leonetti, *Parental Alienation, Gender Bias, and Hypocrisy in the California Family Law Courts* 32 Bos. UNIV. PUB. INT. L. J. 155 (2023).