ARTICLE

PARENTAL ALIENATION, GENDER BIAS, AND HYPOCRISY IN THE CALIFORNIA FAMILY LAW COURTS

CARRIE LEONETTI*

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* Associate Professor, University of Auckland School of Law. The author is an inactive member of the State Bar of California and lectured in the Forensic Psychiatry Fellowship Program at the Oregon Health Sciences University.

ABSTRACT

This Article examines the punishment of women who have experienced family violence when they attempt to protect their children from violent fathers. It documents how violent men make claims of "parental alienation" in the California family law courts to deflect and cover up their violence. It documents the ways that the system that is rigged to silence and discredit protective mothers and is entrenched with gender bias. It concludes that the "alienation" concept has become a tool for denying the existence of intimate partner violence and child abuse and neglect, leading to the persistence of gender-based violence against women and a violation of the principle against gender discrimination.

> *"If you are neutral in situations of injustice, you have chosen the side of the oppressor."*
>
> — Desmond Tutu[1]

INTRODUCTION

In 1782, Anna Göldi was beheaded in Switzerland.[2] As luck would have it, she was the last woman executed for witchcraft in Europe.[3] It is now widely accepted that witchcraft never existed and that women like Göldi were the victims of patriarchy and expendability.[4] In Göldi's case, history now accepts that she was falsely accused of witchcraft by a man with whom she had an affair, to stop her from revealing their liaison.[5]

This Article examines the modern-day equivalent of the witch hunt: the persecution and punishment of women who have experienced family violence (FV)[6] when they attempt to protect their children from violent fathers, who claim

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[1] *Desmond Tutu 1931 – South African Anglican Clergyman*, *in* OXFORD ESSENTIAL QUOTATIONS (Susan Ratfcliffe ed., Oxford Univ. Press 6th ed. 2018).

[2] *See* Ben Panko, *Last Person Executed as a Witch in Europe Gets a Museum*, SMITHSONIAN MAG. (Aug. 29, 2017), https://www.smithsonianmag.com/smart-news/last-witch-executed-europe-gets-museum-180964633/.

[3] *See id.*

[4] *See* Selaelo Thias Kgatla, *Addicts of Gender-Based Violence: Patriarchy as the Seed-bed of Gendered Witchcraft Accusations*, 46 STUDIA HISTORIAE ECCLESIASTICAE, no. 3, 2020, at 1, 1–9.

[5] *See "Last Witch in Europe" Cleared*, SWISS INFO (Aug. 27, 2008, 3:26 PM), https://www.swissinfo.ch/eng/-last-witch-in-europe—cleared/662078.

[6] "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 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

that the natural fear and estrangement of their children due to their use of violence is caused by their mothers' hostility instead. Like Göldi's accuser, the men who make claims of "parental alienation" (PA) in the family courts attempt to deflect and cover up their own crimes.[7] Like the victims of the witch hunts of the Middle Ages, the women who are accused are powerless to stand up to a system that is rigged to silence and discredit them and is entrenched with gender bias. The "[PA] concept has become a tool for [denying]" the existence of intimate partner violence (IPV) and child abuse and neglect (CAN), leading to the persistence of gender-based violence against women and ongoing violations of the internationally recognized principle against gender discrimination.[8]

The United States has a responsibility under international human rights law to take all measures necessary to prevent violence against women and children. The United Nations High Commissioner on Human Rights has declared that "the failure to address [IPV] and [CAN] in custody rights and visitation decisions is a form of violence against women and their children and a violation of the human rights to life and security that could amount to torture."[9]

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, noting that "not enough attention is given to the interconnections between domestic violence and abuse and issues of child custody and parental relations."[10] The Special Rapporteur further expressed concern that family courts were ignoring IPV against women in determining child custody cases and penalizing women for reporting FV.[11] She explained:

> The vast majority of those accused of "alienating" their child while alleging abuse are women. Consequently, many women victims of violence and abuse face double victimization as they are punished for alleging abuse, including by losing custody or at times being imprisoned. . . . These dynamics often allow parents to be intimidated, coerced or forced by their abusive ex-partners and pressured by the courts to withdraw their allegations of abuse or to agree to a specific custody arrangement. In many instances, when given the risk of losing contact with their children and the high impunity [of] the violence committed by their partner, women end up

abuse and coercive control. The Article prefers "FV" to "DV" because DV can refer either only to IPV or to all forms of FV and can therefore be ambiguous.

[7] *See generally "Last Witch in Europe" Cleared*, *supra* note 5.

[8] *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*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (Dec. 15, 2022), https://www.ohchr.org/en/calls-for-input/2022/call-inputs-custody-cases-violence-against-women-and-violence-against-children.

[9] *See id.*

[10] *Id.*

[11] *Id.*

> withdrawing their allegations or not reporting at all. According to experts, in many cases, the perpetrators of violence have deliberately inflicted violence on their children as a continuation of the violence inflicted on their partner . . . [as] a continuation of the attempt and process of controlling the target (i.e. the mother).[12]

The Special Rapporteur went on to describe several factors that explain "the regular and widespread dismissal of IPV history and incidents by family courts," including "harmful gender stereotypes and discriminatory gender bias among family law judges."[13] She explained:

> A very powerful bias, shared by many welfare and judicial systems, is that the right of a father to maintain contact with his children should override any other consideration. This is often justified with reference to the "the best interest of the child[,]" so that it is argued that the child's best interest is to maintain contact with their father under all circumstances, even if the father has been abusive towards the mother or the child.[14]

This research entails a systematic review of the PA construct in the California family law courts and demonstrates the prevalence of the gender discrimination described by the Special Rapporteur in child-custody and restraining-order proceedings in California. Part I reviews the social science literature about coercive control and documents the lack of expert understanding of FV in the family law courts and the way that it contributes to the inability of court personnel to recognize nonphysical forms of violence like coercive control and psychological abuse. Part II documents how the family law courts conflate an absence of corroboration with falsity and then conclude that victims have made "false" allegations out of vindictiveness. Part III documents how the family law courts shift the blame for the consequences of FV from the perpetrator to the victim by characterizing abuse as mutual conflict, treating disclosures of FV as evidence of hostile intent, viewing protective actions as evidence of malice, and pathologizing victims' fears of abuse. Part IV demonstrates how abusive fathers use PA claims tactically to shift responsibility away from their behavior and continue coercive control over mothers post-separation. Part V documents how the lack of FV expertise and reliance on PA pseudo-psychology in the family law courts create a breeding ground for unconscious biases and gender stereotypes. Part VI then compares two recent custody cases in the California family law courts to demonstrate the gendered double standard that PA theory creates for women in custody determinations. This Article concludes that the family law courts are discounting and ignoring children's claims of CAN because the idea that they are "false" is consistent with implicit gender associations rather than valid forensic investigation.

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[12] *Id.*
[13] *Id.*
[14] *Id.*

I. The Inability to See Coercive Control and Psychological Abuse

A. *Social Science Research*

Around the globe, as many as one in three women experience FV.[15] In many abusive relationships, victims are subjected to coercive control through a variety of psychological tactics, including fear, intimidation, emotional and financial abuse, destruction of property, harm to pets, social isolation, entrapment, economic abuse, threats of child abduction, and rigid gendered expectations.[16] Survivors report that the psychological harm inflicted by their partners is "more damaging than the physical injuries," even in cases of severe physical violence.[17]

Social science research documents the inability of family courts to recognize and respond appropriately to coercive control.[18] A recent study funded by the United States Department of Justice (DOJ) notes:

> High rates of domestic violence exist in families referred for child custody evaluations. These evaluations can produce potentially harmful outcomes, including the custody of children being awarded to a violent parent, unsupervised or poorly supervised visitation between violent parents and their children, and mediation sessions that increase danger to domestic violence victims. Past research shows that domestic violence is frequently undetected in custody cases or ignored as a significant factor in custody-visitation determinations. Previous research also indicates that violence—and its harmful effects on victims and children—often continues or increases after separation.[19]

The study found that court personnel lacked knowledge about DV, noting that "[j]udges, child custody evaluators, and others involved in determining custody

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[15] *See id.*

[16] *See* Judy L. Postmus, *Analysis of the Family Violence Option: A Strengths Perspective*, 15 AFFILIA 244, 245–47 (2000); Melissa Platt et al., *A Betrayal Trauma Perspective on Domestic Violence*, *in* VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS 185, 196 (Evan Stark & Eve S. Buzawa eds., 2009).

[17] *See* Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 418 (2019); *see also* Mary Ann Dutton et al., *Court-Involved Battered Women's Responses to Violence: The Role of Psychological, Physical, and Sexual Abuse*, 14 VIOLENCE & VICTIMS 89, 101–02 (1999); Mindy B. Mechanic et al., *Mental Health Consequences of Intimate Partner Abuse*, 14 VIOLENCE AGAINST WOMEN 634, 649–50 (2008); Maria Angeles Pico-Alfonso, *Psychological Intimate Partner Violence: The Major Predictor of Posttraumatic Stress Disorder in Abused Women*, 29 NEUROSCI. & BIOBEHAV. REVS. 181, 189 (2005).

[18] *See* Evan Stark, *Rethinking Custody Evaluation in Cases Involving Domestic Violence*, 6 J. CHILD CUSTODY 287, 298, 312 (2009).

[19] DANIEL G. SAUNDERS ET AL., CHILD CUSTODY EVALUATORS' BELIEFS ABOUT DOMESTIC ABUSE ALLEGATIONS: THEIR RELATIONSHIP TO EVALUATOR DEMOGRAPHICS, BACKGROUND, DOMESTIC VIOLENCE KNOWLEDGE AND CUSTODY-VISITATION RECOMMENDATIONS 4 (2011).

and visitation arrangements may simply be unaware of the factors that indicate actual or potential harm."[20] The study also found:

> Evaluators' theoretical orientation appears to play a role in shaping their evaluations. An analysis of custody records of DV cases in one city showed that evaluators who viewed "power and control," as opposed to family system dynamics or psychoanalytic factors, as the basis for DV, were more likely to recommend parenting plans with higher levels of safety.[21]

Consistent with this American research, in *Combatting a Dangerous American Export*, I documented how the personnel of the New Zealand Family Court lack expertise in the psychology of family dynamics and FV, which makes them susceptible to the junk scientific construct of PA.[22] I explained: "This lack of specialized expertise creates a knowledge vacuum that demands to be filled, leaving court personnel primed to fill in the lack of expert knowledge with expert nonsense."[23] In *Endangered by Junk Science*, I similarly documented how the personnel of the New Zealand Family Court lack an expert understanding specifically of the dynamics of coercive control and psychological abuse.[24]

B. *Missing Coercive Control in the California Family Law Courts*

Court personnel in California demonstrate a similar lack of expert understanding of FV and the dynamics of coercive control. Custody cases in California often show clear signs of coercive control, identifiable to an expert with an evidence-based understanding of the phenomenon, which the judges and court evaluators fail to recognize.[25] For example, in *In re M.M.*, Mother described Father, who had a lengthy history of DV, as "intensely controlling," claiming that he regularly resorted to violence and had "a grim temperament."[26] She testified that he made death threats toward her and Child and created a climate of fear for Child.[27] She explained that he was "dishonest, manipulative, disrespectful and violent," and knew "how to mask and control his emotions."[28]

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[20] *Id.* at 19.

[21] *Id.* at 24.

[22] *See* Carrie Leonetti, *Combatting a Dangerous American Export: The Need for Professional Regulation of Psychologists in the New Zealand Family Court*, UCLA PACIFIC BASIN L.J. (forthcoming 2023) [hereinafter Leonetti, *Dangerous American Export*].

[23] *Id.* (manuscript at 32).

[24] *See* 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, 17, 19 (2022) [hereinafter Leonetti, *Endangered by Junk Science*].

[25] *See, e.g.*, *In re* M.M., No. B259253, 2015 WL 8770107, at *1–2, *7 (Cal. Ct. App. Dec. 14, 2015); A.G. v. C.S., 201 Cal. Rptr. 3d 552, 556–57 (Ct. App. 2016); Jason P. v. Danielle S., 215 Cal. Rptr. 3d 542, 553–56 (Ct. App. 2017).

[26] 2015 WL 8770107, at *7.

[27] *Id.*

[28] *Id.*

Child described Father as having "horrible anger issues," and was "terrified" when she stayed at Father's house because "he was always yelling" at his parents.[29] She reported that Father would have a "smile on his face" after he hit her.[30] Child and her foster parents reported that Father and his parents were stalking them in their home, and the foster parents reported that Child seemed scared when she saw Father.[31] The foster parents expressed that they did not understand how the court had gotten the "notion" that Child was "being unreasonably angry at [Father]."[32] Despite all this evidence, however, the family law court failed to identify Father's death threats, stalking, verbal abuse, and enjoyment of harming Mother as a pattern of coercive controlling behavior and a form of DV. The Court of Appeal then did the same by affirming the trial court's decision.[33]

In *A.G. v. C.S.*, when Children were eight, six, and four, Mother and Children went to their Maternal Grandparents' house for Mother's Day.[34] When they were late to return, Father became upset and angry.[35] Four days later, Mother fled to a DV shelter with Children.[36] She filed a request for a domestic violence restraining order (DVRO) against Father, alleging that he had sexually, verbally, and emotionally abused her and psychologically abused Children.[37] She offered evidence that Father constantly threatened to throw her out of the house and told her that she would never see Children again.[38] He controlled her, denied her access to food, forced her to remove her panties to prove that she had not had sex with anyone else, photographed her while showering without her consent, and forced her to make sex videos, which he used as blackmail.[39] Father threatened to take Children back to his home country of Mexico.[40] Father threatened Children and hit them with a belt.[41] Mother tried to offer evidence from a neighbor that she appeared at the neighbor's home and told her that Father had just attempted to strangle her, but the family court ruled the evidence inadmissible.[42]

[29] *Id.*
[30] *Id.* at *8.
[31] *Id.* at *10.
[32] *Id.*
[33] *Id.* at *7–10, *17–22.
[34] 201 Cal. Rptr. 3d 552, 556–57 (Ct. App. 2016).
[35] *Id.* at 559.
[36] *Id.* at 556.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 568.

Incredibly, the court denied Mother's request for a temporary restraining order, finding that she did not describe the abuse in sufficient detail.[43] This baffling ruling is one that only a judge with no understanding of DV could make. Mother describes jealous surveillance and coercive control,[44] which bear a strong statistical relationship to severe and even lethal violence.[45] The court convened a hearing to determine whether to issue a long-term DVRO.[46] Mother testified that Father was controlling and angry and once "grabbed her neck with both hands" in front of Oldest Child.[47] A neighbor testified that she heard Father cursing at Mother.[48] She also testified that, when Mother was at her house, Father would peer through her window and drive by repeatedly to check on Mother.[49] The court denied Mother's request for a DVRO, finding that she failed to "establish a specific, credible incident of abuse."[50]

The trial court's failure to identify Father's dangerous coercive control was repeated on appeal.[51] The Court of Appeal for the Fourth District noted: "Mother offered no additional testimony of any kind of abuse in support of her allegations."[52] This finding is baffling: that strangulation, sexual abuse, stalking, surveillance, physical abuse, and psychological abuse were somehow not "enough" evidence to warrant protection for Mother and Children.[53]

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[43] *See id.* at 556.

[44] *See id.* at 556, 568; Platt et al., *supra* note 16, at 197.

[45] *See* EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 2–3, 115–16 (2007) [hereiniafter STARK, COERCIVE CONTROL]. Stark notes that:

> A[] . . . controversial presumption implicit in the question [of why women stay with abusive partners] is that exercising the option to leave will reduce a victim's chance of being hurt or killed. In fact, around 80% of battered women in intact couples leave the abusive man at least once. These separations appear to decrease the frequency of abuse, but not the probability that it will recur. Indeed, the risk of severe or fatal injury increases with separation. Almost half the males on death row for domestic homicide killed in retaliation for a wife or lover leaving them. As we've also seen, a majority of partner assaults occur while partners are separated. So common is what legal scholar Martha Mahoney calls "separation assault" that women who are separated are 3 times more likely to be victimized than divorced women and 25 times more likely to be hurt than married women.

Id. at 115–16; *see also* Deborah J. Anderson, *The Impact on Subsequent Violence of Returning to an Abusive Partner*, 34 J. COMPAR. FAM. STUD. 93, 107, 109 (2003); Yolanda C. Haywood & Tenange Haile-Mariam, *Violence Against Women*, 17 EMERGENCY MED. CLINICS N. AM. 603, 605 (1999).

[46] *A.G.*, 201 Cal. Rptr. 3d at 556.

[47] *Id.* at 556–57.

[48] *Id.* at 557.

[49] *Id.*

[50] *Id.*

[51] *Id.* at 568–69.

[52] *Id.* at 557.

[53] *See id.* at 556–57, 568–69.

Father complained to the Family Court Services (FCS) mediator that "Mother had a history of leaving with the children without his knowledge or consent."[54] This is typical of IPV victims, who, on average, successfully leave their perpetrators after five to seven attempts.[55] A prior history of trying to get away and returning is a textbook sign of the entrapment that characterizes coercive controlling relationships, but the California courts appeared unable to recognize that.[56] Instead, the family court used Mother's prior attempts to escape Father's violence against her, basing its order granting Father sole custody of Children in part on Mother's "history of running away with the children."[57]

At the custody hearing, the evidence established that Father was controlling and prevented Mother from attending school or working.[58] Mother attested that, three years earlier, "Father pushed her into a corner during an argument and began strangling her" in front of Oldest Child.[59] She testified that, one year before they separated, Father made her sign an agreement saying that he would have full custody of Children as a condition of allowing her to live in the family home.[60] She also testified that Father disciplined Children by hitting them.[61]

It was undisputed that Mother attended Children's doctor's appointments and school meetings and organized their birthday parties and Father did not.[62] Father testified that Mother had "mental issues."[63] Mother explained that she was just "fighting for my boys."[64] Despite all this evidence of Father's violence, the family court granted him sole custody of Children.[65] The court doubly punished Mother for its own failure to recognize coercive control, noting: "Mother has taken the children under claim of domestic violence but at trial was unable to prove (those allegations)."[66]

In *Jason P. v. Danielle S.*, Father, actor Jason Patric, a well-connected and high-profile sperm donor, sought to establish that he was Child's legal parent

[54] *Id.* at 560.

[55] *See* Melissa Davey, *The Most Dangerous Time*, GUARDIAN, https://www.theguardian.com/society/ng-interactive/2015/jun/02/domestic-violence-five-women-tell-their-stories-of-leaving-the-most-dangerous-time (last visited Apr. 23, 2023).

[56] *See id.*; STARK, COERCIVE CONTROL *supra* note 45, at 115–16; *A.G.*, 201 Cal. Rptr. 3d at 560.

[57] *A.G.*, 201 Cal. Rptr. 3d at 560.

[58] *Id.* at 557.

[59] *Id.* at 557–58.

[60] *Id.* at 558.

[61] *Id.* at 559.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *See id.* at 557–60.

[66] *See id.* at 561.

and thus to establish joint legal and physical custody of Child.[67] Father and Mother had an on-again/off-again relationship for years.[68] In public interviews, Mother reported several instances where Father psychologically and physically abused her.[69] He grabbed her wrists and slammed her head into a wall.[70] The following day, he called Mother and told her that he loved her for the first time, consistent with typical cycle-of-violence conduct.[71] After she failed to put on the lid tightly, Father threw a jar of almond butter at her, and then "hit her in the face with a land-line phone, causing contusions and bruises that lasted more than a week."[72] He fractured his hand after punching a wall in a rage.[73] Father consented to Mother using his sperm to get pregnant but made it clear that he was not interested in co-parenting with her.[74] When Child was one year old, Father told Mother that he wanted to be in a relationship again, but he continued to insist that he did not want anyone to know that he was Child's father.[75] When she suggested that, at some point, they should tell Child, Father became angry, yelling and verbally abusing her.[76] He regularly used anti-Semitic epithets against Mother, who was Jewish.[77] He threatened never to let Mother see Child again.[78]

Mother tried to end the relationship, but Father continued to show up at her house, demanding to be allowed in.[79] Mother became increasingly concerned about Father's abusive behavior and use of his biological relationship to Child to control her.[80] She began to fear not just physical violence but also that Father would take Child from her.[81] When she told Father that she wanted to end their relationship, he threatened that if she was "breaking up" with him she needed

[67] *See* 215 Cal. Rptr. 3d 542, 546 (Ct. App. 2017); *see also* Vanessa Grigoriadis, *Tempest in a Test Tube: Jason Patric's Brutal Custody Battle*, ROLLING STONE (July 15, 2014, 7:25 PM), https://www.rollingstone.com/culture/culture-news/tempest-in-a-test-tube-jason-patrics-brutal-custody-battle-172430/amp/.

[68] *See Jason P.*, 215 Cal. Rptr. 3d at 547–48.

[69] Grigoradis, *supra* note 67.

[70] *Id.*

[71] *See id.*; Parveen Azam Ali & Paul B. Naylor, *Intimate Partner Violence: A Narrative Review of the Feminist, Social and Ecological Explanations for Its Causation*, 18 AGGRESSION & VIOLENT BEHAV. 611, 612–13 (2013) ("The cycle of violence is often predictable and consists of three phases: tension building; abuse or explosion; and honeymoon or remorse forgiveness.").

[72] Grigoriadis, *supra* note 67.

[73] *Id.*

[74] *See id.*; *Jason P. v. Danielle S.*, 215 Cal. Rptr. 3d 542, 542, 548 (Ct. App. 2017).

[75] *See* Grigoriadis, *supra* note 67.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *See Jason P. v. Danielle S.*, 215 Cal. Rptr. 3d 542, 554 (Ct. App. 2017).

[81] Grigoriadis, *supra* note 67.

"to be prepared to spend a lot less time with" Child because he was "going to go for full custody."[82] Father used his publicity to mount a massive media campaign, smearing Mother and taking their fight public.[83] He publicly disparaged Mother as a "spoiled girl."[84] Mother sent Father an email saying that she did not want to deny Child a relationship with him and suggesting that, if he wanted a role in Child's life, he begin by "taking him on outings" by himself.[85] She noted that Father had not been around for much of Child's life and suggested that he was suddenly "trying to log in as many hours as possible" with Child to make a case for custody and "assert control over" her and Child.[86] Father filed to establish paternity and custody of Child the following day.[87] At the time, Father had never owned a car seat or a crib, changed Child's diaper, bathed Child, or had overnight care of Child, but he demanded, among other things, that Mother change Child's surname to his.[88] The family court initially found that Father was a sperm donor and therefore precluded from establishing paternity.[89]

After the family court decision, Father began to harass Mother, calling, texting, and sending threatening emails to her.[90] He also sent threatening emails to Mother's father, a friend, and Child's nanny.[91] Mother obtained a DVRO against Father.[92] In granting the DVRO, however, the family court found that Father did not commit DV against Mother but rather merely committed harassment, so the court restrained Father from stalking or harassing Mother but did not issue a stay-away order.[93] Father continued to insist that he had a right to contact any person whom he believed had "lied" about the custody case and continued to harass Mother's friend and father, so the family had to renew Mother's restraining order.[94]

The Court of Appeal for the Second District reversed the family court's denial of Father's petition to establish paternity.[95] On remand, the family court found that Father was Child's presumptive parent.[96] The family court also found that Father failed to rebut the presumption against custody for any parent who had

[82] *Jason P.*, 215 Cal. Rptr. 3d at 554.
[83] *See generally* Grigoriadis, *supr*a note 67.
[84] *Id.*
[85] *Jason P.*, 215 Cal. Rptr. 3d at 554.
[86] *Id.*
[87] *Id.*
[88] *See* Grigoriadis, *supra* note 67.
[89] *See Jason P.*, 215 Cal. Rptr. 3d at 555.
[90] *See id.*
[91] *See id.*
[92] *Id.*
[93] *Id.* at 555–56.
[94] *See id.* at 556.
[95] *Id.* at 555.
[96] *See id.* at 556.

perpetrated DV.[97] The court found, however, that "the domestic violence in this case did not involve any physical violence and instead consisted of [Father]'s inappropriate verbal harassment."[98] The decision emphasized the importance of understanding "the form that the domestic violence took."[99] The judge concluded that, in light of the "nature" of the DV, the successful completion of individual counseling by Father and participation in joint counseling by both Father and Mother would be sufficient to rebut the presumption.[100]

This conclusion is concerning for several reasons.[101] First, under California's Domestic Violence Prevention Act, DV "is not limited to the actual infliction of physical injury or assault."[102] It includes threatening and harassing behavior.[103] The court's artificial distinction between physical violence and other forms of DV was archaic and inconsistent with the policy choices made by the California Legislature.[104] Second, from a risk-assessment standpoint, stalking, intimidation, and harassment are higher risk behaviors, particularly for lethal FV, than physical violence.[105] Third, standard psychological therapy, either individual or relationship counseling, is not only not an effective intervention for DV, but it is often counterproductive and dangerous.[106] The only validated

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[97] *Id.*

[98] *Id.*

[99] *Id.* at 564.

[100] *Id.* at 556.

[101] *See id.*

[102] CAL. FAM. CODE § 6203(b) (2022).

[103] *See id.* at § 6320(a) (2022).

[104] *See id.* at §§ 6203(b), 6320(a); *Jason P.*, 215 Cal. Rptr. 3d at 564.

[105] *See* Anderson, *supra* note 45, at 93, 107–09 (documenting how DV perpetrators who view victims' attempts to leave as disobedience increase their violence, including lethal violence); N.Z. PSYCH. SOC'Y, SUBMISSION ON BEHALF OF THE NEW ZEALAND PSYCHOLOGICAL SOCIETY ON THE REVIEW OF THE FAMILY VIOLENCE LAW 15 (Sept. 18, 2015), http://www.psychology.org.nz/journal-archive/Family-Violence-Law-Review-Submission.pdf (explaining that men who stalk their former partners after separation are the "most dangerous").

[106] *See* Michele Bograd & Fernando Mederos, *Battering and Couples Therapy: Universal Screening and Selection of Treatment Modality*, 25 J. MARITAL & FAM. THERAPY 291, 291 (1999); Lisa M. Gauthier & Alytia A. Levendosky, *Assessment and Treatment of Couples with Abusive Male Partners: Guidelines for Therapists*, 33 PSYCHOTHERAPY 403, 403 (1996); Brian Jory, *The Intimate Justice Scale: An Instrument to Screen for Psychological Abuse and Physical Violence in Clinical Practice*, 30 J. MARITAL & FAM. THERAPY 29, 29 (2004); Jeffrey L. Todahl et al., *A Qualitative Study of Intimate Partner Violence Universal Screening by Family Therapy Interns: Implications for Practice, Research, Training, and Supervision*, 34 J. MARITAL & FAM. THERAPY 28, 29 (2008). *But see* Sandra M. Stith et al., *Effectiveness of Couples Treatment for Spouse Abuse*, 29 J. MARITAL & FAM. THERAPY 407, 407 (2003) (arguing that couples therapy could be an effective DV intervention but that more data is needed).

"treatment" for DV is specialized counseling designed for DV perpetrators provided by evidence-based providers.[107]

The court order provided that Mother would have sole legal custody of Child for six months followed by joint custody, provided that Father undergo six months of counseling to "help[] him to develop tools to deal with his anger and frustration."[108] The court also appeared to assume that gradually increasing Father's unsupervised contact with Child would somehow allay the risks that his violence posed, although there was no basis for this assumption.[109] Finally, the family court failed to recognize that litigation abuse itself is a form of FV, particularly in the circumstances of the *Jason P.* case, in which Father's aggressive custody litigation began only after Mother spurned his romantic advances.[110]

On appeal, the Court of Appeal for the Second District "[found] no error" in the family court's conclusion that, "in light of the absence of evidence of physical violence," completion of "a batterer's treatment program was not necessary to rebut the presumption [against awarding custody to a DV perpetrator], and instead that completion of a program of counseling to address the kind of harassment involved in this case was sufficient."[111] The "kind of harassment involved in this case" was DV.[112] A DV treatment program, therefore, was precisely the type of treatment that Father needed.[113] Furthermore, describing the family court's order that Father get individual therapy and joint therapy with Mother as "a program of counseling" to address Father's violence was disingenuous.[114] There was no "program," no performance requirements, and no metrics for completion.[115]

P.M. v. S.S. was another sperm-donor custody case.[116] Mother had only wanted Father to serve as a sperm donor, and they had a Known Sperm Donor Agreement prior to Child's birth.[117] When Child was two-and-a-half years old,

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[107] *See* ROSEMARY HUNTER & ADRIENNE BARNETT, FJC DOMESTIC ABUSE COMM., FACT-FINDING HEARINGS AND THE IMPLEMENTATION OF THE PRESIDENT'S PRACTICE DIRECTION: RESIDENCE AND CONTACT ORDERS: DOMESTIC VIOLENCE AND HARM 51 (2013) (explaining that domestic violence prevention programs "have been carefully developed and validated").

[108] Jason P. v. Danielle S., 215 Cal. Rptr. 3d 542, 556–57 (Ct. App. 2017).

[109] *See id.*

[110] *See id.* at 554; Emmaline Campbell, Note, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 53–57 (2017).

[111] *Jason P.*, 215 Cal. Rptr. 3d at 565.

[112] *Id.*

[113] *See id.*; *see* sources cited *supra* notes 106–107.

[114] *Jason P.*, 215 Cal. Rptr. 3d at 565.

[115] *See id.*

[116] No. D078381, 2022 WL 2352986 (Cal. Ct. App. June 30, 2022).

[117] *See id.* at *1.

however, Father sued Mother for shared custody.[118] When Child was five, Mother filed a complaint with police and moved for a DVRO against Father, alleging that he had sexually abused Child and told Child that he was going to kill Mother and Grandmother.[119] In support of her application, Mother offered extensive evidence of Father's years-long history of coercive control.[120] She alleged that, when Father found out that he was not on Child's birth certificate, he got angry, screamed at her at the hospital, made sexist comments, threatened to kill her, took her car keys, and did not give them back for a month.[121] She offered evidence that Father revealed to many people that she conceived Child using an egg donor.[122] When Child was two and visiting Grandmother in India, Father, who had no custody rights regarding Child, travelled to India and threatened and harassed Grandmother, demanding to see Child.[123] When Grandmother refused, Father applied for a court order to force Child's return to the United States, which was denied because Father lacked standing to make the application.[124] Six months later, Father was caught trespassing at Mother's condominium complex.[125] When Child was four and Mother agreed to shared custody, after two years of Father's aggressive custody litigation, Father screamed obscenities at her in the courthouse and she overheard Father bragging to his lawyer about "dragg[ing] this case out" to punish Mother.[126] Mother also testified that he lurked outside her door and refused to leave her condominium complex, in violation of the custody order, which required him to wait at the curb when he handed over Child.[127] Father's alleged actions constituted coercive control and litigation abuse.

Father engaged in self-serving denials of the IPV.[128] He denied ever having abused Child or making threats against her or Mother.[129] He acknowledged that he had an "argument" with Mother in the hospital on the day that Child was born but claimed that he took Mother's car keys when he left the hospital by accident.[130] He testified that he returned her keys "[m]aybe a few days later."[131] He admitted travelling to India and hiring a lawyer to "try to see" Child.[132] He

[118] *See id.* at *2.
[119] *See id.*
[120] *See id.* at *2–3.
[121] *See id.* at *2, *2 n.1, *8.
[122] *See id.* at *8.
[123] *See id.* at *2.
[124] *See id.*
[125] *See id.* at *3.
[126] *Id.*
[127] *See id.* at *17.
[128] *See id.* at *7–8.
[129] *See id.*
[130] *Id.* at *7.
[131] *Id.* at *18 n.9.
[132] *Id.* at *7.

admitted to showing up at Mother's condominium complex without invitation.[133]

Despite Mother's significant evidence of Father's coercive control and threatening conduct, the court found that Mother failed to establish that Father had perpetrated "any act of abuse" against her.[134] On appeal, Father sought what were essentially punitive damages against Mother, the primary financial supporter of Child, for wasting his time with her allegations.[135] Mechanisms that allow FV perpetrators to obtain court costs and legal fees from FV victims who oppose unsafe joint custody arrangements can obviously serve as a deterrent to victims seeking help and protection.

In *Murr v. Ingels*, Father had a history of making CAN allegations against both Mother and his prior partner with Shasta County and Siskiyou County Child Protective Services (CPS), most of which were false or at least unsubstantiated.[136] While these CPS reports were all anonymous, it appears from the case history that both CPS and the family law court believed that Father was the source of these allegations.[137]

Father was caught loitering outside of Mother's home in violation of a criminal protective order.[138] He pleaded guilty to violating the protective order and was sentenced to probation.[139] At the custody hearing, the court nonetheless found that there was no evidence that Father had committed DV.[140] Mother reported to CPS that Father was videotaping and harassing Child during visits and leaving threatening messages on her phone, in violation of the restraining order.[141] She gave evidence that Father had arranged for her mail to be forwarded to him, was stalking and threatening her, was mentally and emotionally abusing Child, and was not paying child support.[142] She testified that Father "came to [her] home and beat on [her] doors and windows screaming [her] name and demanding [she] let him in."[143] Father "harassed and threatened Mother via voicemail and Facebook messages," threatened to kill her, harassed

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[133] *See id.*

[134] *Id.* at *18.

[135] *See id.* at *22 n.14.

[136] No. C087789, 2020 WL 7639219, at *2–3 (Cal. Ct. App. Dec. 23, 2020). CPS determined that the first allegation that Mother had physically abused Father's son from a prior relationship was unfounded. *Id.* at *2. CPS determined that the second allegation that his son's mother was physically abusing him was unfounded. *Id.* at *3. CPS determined that the third allegation that Mother and her partner were emotionally abusing her partner's children was inconclusive. *Id.*

[137] *Id.*

[138] *Id.* at *1.

[139] *Id.*

[140] *Id.*

[141] *Id.* at *3.

[142] *Id.*

[143] *Id.* at *5–6.

her family and friends while trying to find her, contacted Child's school, and used his job at the post office to divert her mail, all in violation of the protective order.[144] Despite this volume of evidence of Father's coercive control, abuse, and high-risk behavior, the family court "noted there were no DV findings in its" files.[145]

II. CONFLATING LACK OF SUBSTANTIATION WITH EVIDENCE OF FALSITY

FV complaints are hard to substantiate.[146] A core feature of DV is that it is "domestic"—it occurs largely in private, where the victim and perpetrator are the only witnesses.[147] It is crucially important that systems responders recognize the distinction between allegations that cannot be proven and allegations that are untrue.[148] Epstein and Goodman explain that the lack of independent corroboration does not mean that allegations of FV are false, but rather, "it simply means that insufficient additional information exists beyond the parent's testimony."[149]

Unfortunately, however, as I previously documented in *Endangered by Junk Science*, in family courts, initial findings that FV allegations are unsubstantiated "morph[] over time from a failure of proof to evidence of [protective parents'] pathology," and "the unspoken mechanism for this morphing [is] PA."[150] For example, in *In re M.M.*, the family law court emphasized that the district attorney (DA) had declined prosecution of Child's sexual abuse allegations for insufficient evidence.[151] This reliance was particularly concerning given the weakness of the basis for the DA's decision: that Child had an "extensive history with the family law court," Child had not made any additional disclosures, and Father denied the allegations, which together "create[d] a reasonable doubt" about Father's guilt.[152] The DA's decision is better classified as a discretionary (and arguably cowardly) unwillingness to prosecute a serious crime on the basis solely of the complainant's evidence rather than an exoneration of Father.[153] It also demonstrates the cross-institutional snare in which victims find themselves: the DA used the existing family-court proceedings as a reason not to prosecute

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[144] *Id.*

[145] *See id.* at *7.

[146] *See generally* Epstein & Goodman, *supra* note 17.

[147] *Id.* at 404–05; *see also* Tamara L. Kuennen, *Private Relationships and Public Problems: Applying Principles of Relational Contract Theory to Domestic Violence*, 2010 BYU L. REV. 515, 521–26 (2010) (outlining the history and roots of domestic violence law).

[148] Epstein & Goodman, *supra* note 17, at 431 n.137.

[149] *Id.*

[150] Leonetti, *Endangered by Junk Science*, *supra* note 24, at 56.

[151] No. B259253, 2015 WL 8770107, at *5 (Cal. Ct. App. Dec. 14, 2015).

[152] *See id.* at *5, *16.

[153] *See id.*

Child's complaint, and the family court used the DA's refusal to prosecute Child's complaint as evidence against her in the custody proceedings.[154]

In *A.G.*, Children told the CPS social worker that they feared Father and did not want to see him because he hit them.[155] When CPS failed to talk to Father, finding that the evidence lacked outside corroboration, particularly in police records, CPS closed the investigation as "inconclusive."[156] This is concerning. By this logic, allegations of CAN that are first brought to the attention of CPS rather than police or any first report of CAN could never be substantiated. Children's credible reports of abuse, particularly when corroborated by physical injuries, should be sufficient to substantiate abuse. Otherwise, what is the benefit of a specialized agency for protecting children? The CPS caseworker told the court mediator that "she found no evidence of abuse."[157] At the custody hearing, there was also evidence that Children were afraid of Father, claiming he spanked them and left marks and bruises on them.[158] On appeal, however, the Court of Appeal for the Third District noted that "government investigators could not find any evidence supporting the accusations. A social worker found no evidence of abuse."[159] The court concluded that there was insufficient evidence to support the allegations of abuse.[160]

Similarly, in *A.S. v. C.A.*, the Fourth District Court of Appeal scolded a protective Mother for "continuing to insist with the police, [the Orange County Social Service Agency], and even the Irvine mayor that father was abusing [Child], even in the face of numerous investigations failing to substantiate her claims" and "persist[ing] in believing" Child's disclosures of CAN.[161] In *P.M.*, the Fourth District upheld the trial court's factual findings that Mother's attempt to seek assistance from the appropriate agencies and the family court after Child disclosed that Father was sexually abusing her was not a good-faith response to the disclosures.[162]

This is the compounding harm of family courts' incompetent handling of claims of CAN by protective parents, which I previously documented in *A Little Knowledge Is a Dangerous Thing*.[163] In the first instance, the court finds that the protective parent failed at an evidentiary burden of proof to establish the

[154] *See id.*

[155] A.G. v. C.S., 201 Cal. Rptr. 3d 552, 560 (Ct. App. 2016).

[156] *Id.*

[157] *Id.* at 561.

[158] *See id.* at 561, 565.

[159] *Id.* at 565.

[160] *Id.*

[161] No. G052341, 2017 WL 1506755, at *8 (Cal. Ct. App. Apr. 27, 2017).

[162] No. D078381, 2022 WL 2352986, at *22 n.13 (Cal. Ct. App. June 30, 2022).

[163] *See* Carrie Leonetti, *A Little Knowledge Is a Dangerous Thing: Custody Evaluators and the Pop Psychology of "Parental Alienation" in the California Family Law Courts*, U.S.F. L. REV. (forthcoming Spring 2023) [hereinafter Leonetti, *A Little Knowledge*] (on file with author).

CAN by a preponderance of the evidence.[164] By the second instance, that evidentiary failure has morphed into a bad-faith fabrication of claims and an unwillingness to "support" a child's relationship with a potentially dangerous parent.[165]

III. BLAMING AND SHAMING

Cases in the family law courts exhibit a pattern of shifting blame for FV to the victim. Caprioli and Crenshaw document the role that victim blaming plays in transferring the perpetrator's responsibility for FV to the victim and "creating distance from an uncomfortable topic such as sexual abuse or assault."[166] This Part outlines the patterns visible in the California courts, including: (1) minimizing FV or characterizing abuse as mutual conflict; (2) treating disclosure of FV as evidence of hostile intent; (3) viewing protective actions as evidence of malice; and (4) pathologizing victims' fears of abuse.

A. *Minimizing and Mutualizing Conflict*

Consistent with this social science research, in *Sub Silentio Alienation*, I documented the "Myth of 'Mutual Conflict'" in the New Zealand Family Court, explaining: "PA theory is based on the belief that family violence is mutual 'conflict' between the parties, even when one parent is a predominant violence perpetrator and the other the primary victim."[167] The California family courts also fall prey to this myth when they minimize the harm caused by FV and mutualize FV by failing to recognize the primary role that the perpetrator plays. For example, in *F.T. v. L.J.*, when Child was one, Mother intentionally burned his arm with a curling iron to "teach him a lesson."[168] Mother pleaded guilty and was convicted of battery of Child.[169] Rather than recognizing Mother's conduct as child abuse, however, the court-appointed psychologist described it as a mere error in judgment, opining that Mother's "actions in burning [Child] reflected, at best, rash impulsivity, profound insensitivity, and severe misjudgment. However, the current data does not suggest broader abusive intent."[170] The court record provides no indication of the "data" on which these conclusions, which minimized the violence, were based.[171]

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[164] *See id.* (manuscript at 16–44, 62).

[165] *See id.*

[166] Sarah Caprioli & David A. Crenshaw, *The Culture of Silencing Child Victims of Sexual Abuse: Implications for Child Witnesses in Court*, 57 J. HUMANISTIC PSYCH. 190, 195 (2017).

[167] Carrie Leonetti, *Sub Silentio Alienation: Deceptive Language, Implicit Associations, Cognitive Biases, and Barriers to Reform*, 62 WASHBURN L. REV. (forthcoming 2023) (manuscript at 6) [hereinafter Leonetti, *Sub Silentio*] (on file with author).

[168] 123 Cal. Rptr. 3d 120, 124 (Ct. App. 2011).

[169] *Id.* at 124–25.

[170] *Id.* at 125 (alteration in original).

[171] *See id.*

In *In re M.M.*, the court evaluator characterized "the parents' marriage [as] marked by intense, daily conflict."[172] She characterized Child's scratches and bruises from Father's violence as "decidedly minor and superficial."[173] When Mother filed for a restraining order after Father allegedly made enraged death threats against her and Child, the family law judge found that Father "yelled and used vulgarity" but that Mother's allegations of FV were "not credible."[174] Showing no concern for Father's violence, the judge threatened Mother, remarking: "[T]he child's viewpoint [may have been] been colored by parental alienation by the [mother], . . . [a]nd I think if that is the case, it will have consequences."[175] The court evaluator described Father's history of FV as "an anger problem," but insisted that "he was not violent."[176] Throughout their comments, the evaluator and judge both mutualized and minimized the violence, shifting blame from the FV perpetrator and onto the victim mother.[177]

In *Crystal H. v. Shawn H.*, the family court described Father's repeated rapes and strangulations of Mother as "some very wrongful acts as to his wife" and "bad things," but declined to accurately describe the conduct as "rape," "forcible sodomy," "strangulation," or "death threats."[178] At one hearing, the court stated: "This father is not going to lose all visitation just because there w[ere] a couple of hours where he was on a different floor in the house *doing something he shouldn't have done*."[179] The "something he shouldn't have done" was raping and strangling Mother, but the court described it as a minor marital foible.[180]

In *Ellis v. Lyons*, Father got into a physical altercation with his brother in front of Child, which included Father punching Uncle in the face repeatedly.[181] Father also threatened to slap Child.[182] The family court downplayed the violent fight as "unfortunate."[183] Both the family court and the Court of Appeal for the Second District repeatedly described the fight as an "incident," refusing to characterize it as violence or an assault.[184] Additionally, they emphasized that the altercation lasted for less than a minute, no one was injured, and Father later apologized to Child for threatening to slap her.[185] The court's choice to

[172] No. B259253, 2015 WL 8770107, at *6 (Cal. Ct. App. Dec. 14, 2015) (internal quotations omitted).

[173] *Id.* at *7.

[174] *Id.* at *6.

[175] *Id.*

[176] *Id.* at *5, *15.

[177] *See id.* at *5–6, *15.

[178] No. D061388, 2013 WL 2940952, at *3, *8 (Cal. Ct. App. June 17, 2013).

[179] *Id.* at *13 (alteration and emphasis in original).

[180] *See id.* at *3, *8, *13.

[181] 206 Cal. Rptr. 3d 687, 689 (Ct. App. 2016).

[182] *Id.*

[183] *See id.* at 694.

[184] *Id.* at 689, 694.

[185] *See id.*

emphasize these details suggests that the court believed that Child witnessing her father commit a violent assault and being threatened with violence was somehow not abusive, terrifying, or traumatic.[186]

In *A.S.*, even though Father had a substantiated history of DV, the court evaluator mutualized the parents' conflict, characterizing the parents' "coparenting relationship" as "conflictual."[187] She recommended joint custody and that both parents participate in "a coparenting class and coparenting therapy."[188]

In *Jason P.*, the family court found it in Child's "best interest to reduce the level of conflict between his parents" by slowly transitioning Child from Mother's care through "joint legal custody and a step-up parenting plan."[189] The court also declared that "[b]oth parents demonstrated some deficits in their respective abilities to be protective and supportive of [Child] emotionally" because the anger between them "was palpable."[190] The court found that Mother's DVRO against Father had been issued because of Father's "anger," which caused him to engage in "conduct."[191] The court's characterization of Father's violence and harassment as mutual "conflict," or rather its inability to recognize that the "anger" and "tension" were not "conflict" but the perpetration of FV by a primary perpetrator (Father) on a primary victim (Mother), was typical but disappointing, as was its repeated minimization of his use of violence to dominate and control Mother as "anger."[192] The family court also characterized Father's threats, intimidation, and harassment of Mother as "simple insistence together with disrespectful language" that was "not appropriate" for co-parenting.[193] Courts do not issue DVROs because of "anger," "simple insistence," or disrespect.[194] They issue them because of stalking, intimidation, and violence.[195] Father exhibited textbook coercive control.[196] However, the court blamed Mother for "contribut[ing] to the communication difficulties" between her and Father by failing to respond to Father's "reasonable inquiries."[197] This is a classic articulation of victim blaming in the FV context; the court is essentially saying to Mother: "Look what you made him do." On appeal, the Second District again minimized Father's

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[186] *See id.*

[187] A.S. v. C.A., No. G052341, 2017 WL 1506755, at *1–2 (Cal. Ct. App. Apr. 27, 2017).

[188] *Id.*

[189] Jason P. v. Danielle S., 215 Cal. Rptr. 3d 542, 556–57 (Ct. App. 2017).

[190] *Id.* at 563–64.

[191] *Id.* at 564.

[192] *See id.* at 547–56, 563–64.

[193] *Id.* at 564.

[194] *See id.* at 565; *see also* CAL. FAM. CODE §§ 6301, 6211, 6203 (2023).

[195] *See* CAL. FAM. CODE §§ 6301, 6211, 6203(a)(4), 6320(a) (2023).

[196] *See Jason P.*, 215 Cal. Rptr. 3d at 564; *see also* Postmus, *supra* note 16, at 244–45; Platt, *supra* note 16, at 193, 196–98.

[197] *See Jason P.*, 215 Cal. Rptr. 3d at 564.

violence and mutualized responsibility between the parties, referring to Father's violence as "animosity shown by the parties in this litigation."[198]

In *P.M.*, the Court of Appeal for the Fourth District adopted Father's characterization of screaming at Mother in the hospital, making derogatory sexist comments about her, and threatening to kill her immediately after she had given birth to Child, as a "heated debate."[199] In *Murr*, the court similarly excused Father's stalking and threats against Mother, characterizing them as mere "behaviors and actions" and finding:

> In this case the Washington court granted protection orders for mother in relation to father due to behaviors and actions he took in trying to locate her, including Facebook postings. Circumstances demonstrate that these behaviors occurred after [Mother] had absconded with the parties' daughter, and after [Father] had sought assistance from law enforcement to locate [Daughter].[200]

In each of this string of cases, courts minimized FV behavior by adopting the perpetrator's framing and treating both parties as mutually responsible.

B. *Believing and Disclosing FV as Evidence of Hostility*

In *Sub Silentio Alienation*, I documented the "Myth That Safety Concerns Are 'Hostility.'"[201] I explain:

> PA theory insists that parents always have an obligation to "support" and "encourage" children's relationship with their other parent, and it makes no exception for when the other parent is violent or unsafe. The theory insists that, if one parent expresses concern about a child's safety in the care of the other parent, that concern is neither genuine nor founded.[202]

Joan Meier has documented similar phenomena in American family courts, noting that "PA thinking deflects courts' attention away from women's and children's abuse allegations and encourages courts to essentially shoot the messenger."[203]

These phenomena are prevalent in the California family law courts. For example, in *A.S.*, the court evaluator articulated that Mother had "a fixed belief" that Child's reports of Father's CAN were true and had "a pattern of discounting information" that refuted her belief in Child's reports while failing to "speak to

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[198] *See id.* at 565.

[199] P.M. v. S.S., No. D078381, 2022 WL 2352986, at *18 n.9 (Cal. Ct. App. June 30, 2022).

[200] *See* Murr v. Ingels, No. C087789, 2020 WL 7639219, at *7 (Cal. Ct. App. Dec. 23, 2020) (alterations in original).

[201] Leonetti, *Sub Silentio*, *supra* note 167 (manuscript at 7).

[202] *Id.* (footnote omitted).

[203] Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 GEO. L.J. 835, 839 (2022).

father for clarification."[204] However, reporting a child's disclosures of CAN to the perpetrator for his "clarification" is an inherently dangerous and inappropriate response: it exposes the child to retaliation from the perpetrator, and places the protective parent in the position of investigating or adjudicating a potential dispute between the child and the perpetrator if the perpetrator denies the allegations. The evaluator recommended that the court prohibit Mother from making CAN allegations that were not "substantiated" in the future and that the court suspend Child's contact with her if she did.[205] This recommendation is particularly problematic considering that Mother was relaying Child's reports of CAN, which she believed, to the appropriate authorities (Social Services and the police).[206] The evaluator gave no indication of how Mother was meant to predict whether future disclosures by Child would be substantiated.[207] In addition, the potential chilling effect of punishing disclosures of "unsubstantiated" CAN is intolerable in a system that is supposed to prioritize vulnerable children's safety.[208] The court nonetheless followed both recommendations.[209]

The court's analysis is contrary to California's public policy around reporting suspected CAN. Adults to whom children disclose CAN and child sexual abuse (CSA) should take those disclosures seriously and make reports of concern to child-welfare agencies or the police.[210] According to the California Department of Social Services, "[c]ommunity members have an important role in protecting children from abuse and neglect. If abuse is suspected, a report should be filed with qualified and experienced agencies that will investigate the situation."[211] Yet protective parents who disclose suspected CAN face the possibility that such disclosures will be used against them in future custody disputes.[212]

C. *Protective Actions as "Evidence" of Malicious Intent*

Courts also use efforts by parents to respond to suspected CAN against them as evidence of bad faith or malice. In *Endangered by Junk Science*, I documented the way the New Zealand "courts treated . . . appeals, renewed applications, and additional evidence of violence by protective parents as psychological abuse of [c]hildren."[213] Similar phenomena occur in the California family law courts. For example, in *Idelle C. v. Ovando C.*, one court

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[204] A.S. v. C.A., No. G052341, 2017 WL 1506755, at *4 (Cal. Ct. App. Apr. 27, 2017).

[205] *Id.* at *6.

[206] *See id.* at *1–2.

[207] *Id.* at *6.

[208] *See id.*

[209] *Id.*

[210] *See Child Protective Services*, CAL. DEP'T OF SOC. SERVS., https://www.cdss.ca.gov/reporting/report-abuse/child-protective-services (last visited Apr. 23, 2023).

[211] *Id.*

[212] *See A.S.*, 2017 WL 1506755, at *6.

[213] Leonetti, *Endangered by Junk Science*, *supra* note 24, at 55.

evaluator opined that Mother "attempted to interfere with" Child's relationship with Father and was "unhappy to be told that her daughter ha[d] not been sexually abused."[214] Another noted that Mother "identifie[d] herself as [Child's] 'advocate' and 'protector.'"[215] She incredibly concluded that Mother's protective behavior was as detrimental to Child's best interests as Father's CSA.[216] Moreover, she accused Mother of "perpetuating" a "'victim' role" for Child and being too enmeshed with her.[217] The trial court criticized Mother for continuing to believe that Father sexually abused Child and "repeat[ing] her sexual abuse allegations" on television and radio programs.[218]

In *In re M.M.*, the family law court concluded that Mother alienated Child in part because Child was carrying $120 and two cell phones, one of which was concealed inside her pants, when she disclosed Father's ongoing abuse to the police.[219] The court also emphasized that, when Department of Children and Family Services (DCFS) initially informed Mother about Child's CSA allegations against Father, Mother was "very emotionally shaken" and kept remonstrating about how much she loved Child.[220] The court gave no explanation as to why it would be suspicious for a mother who discovered that her child was being sexually abused to be distraught, proclaim love for the child, and provide her with a means of escape from a future act of abuse.[221] While there is probably no "normal" way for a parent to respond to the discovery of CSA, this certainly seems to be well within the range of typical responses.

In *A.S.*, the court evaluator's PA "evidence" included Child's statement that he told Mother what happened with Father because Mother wanted to know if Father hurt him, Mother examining Child for bruises, Mother contacting the Irvine mayor "villifying [sic] father and asking for assistance," and Mother's "unconditional belief" in Child's reports of CAN.[222] Each of these cases display a pattern of misconstruing evidence of care and concern for children.

These dangerous conclusions are unsupported by social science evidence. According to *A Judicial Guide to Child Safety in Custody Cases*, from the National Council of Juvenile and Family Court Judges (NCJFCJ):

> At-risk parents may advocate for limited or supervised contact between the abusive parent and the child; their reasons may not be clearly or easily articulated. Any allegations of abuse, whether made by the at-risk parent or the child, should be taken seriously. Often when viewed through the lens of abuse and coercive control, though, the case comes into focus. It is

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[214] No. B146948, 2002 WL 1764181, at *6 (Cal. Ct. App. July 31, 2002).

[215] *Id.* at *8.

[216] *Id.* at *8, *14.

[217] *Id.* at *8.

[218] *Id.* at *9–10.

[219] No. B259253, 2015 WL 8770107, at *1 (Cal. Ct. App. Dec. 14, 2015).

[220] *Id.* at *5.

[221] *See id.*

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

> important that abusive parents' access to their children occur only in safe environments or when safety of both the child and the at-risk parent can be ensured.[223]

By penalizing mothers for acting protectively in response to their children's disclosures of CAN, the family law courts are imposing a double punishment: first, by failing to believe the disclosures and, second, by using such disclosures against mothers in further family court decisions.

D. *Pathologizing Victims' Fears*

Courts often pathologize victims' fears rather than respond appropriately to cases of abuse. The pseudo-science of PA "assumes that a child's fear of contact with a parent is 'developmentally regressive' and the result of 'influence' by the child's other parent rather than a realistic and protective response to the rejected parent's violence or poor parenting."[224] The dangers and impact of PA are well-documented:

> [I]f children make allegations of abuse (physical or sexual) against their father during separation, divorce proceedings, or shortly thereafter, and the mother believes them, she may be "diagnosed" with parent alienation syndrome. This label becomes evidence of her mental instability and parental unfitness, so custody may then be awarded to the alleged abuser. This circular argument has actually been used in many custody disputes to remove custody from one parent, usually the mother, on the basis of testimony from supposed mental health professionals who are called in as "expert witnesses," without any other evidence of inappropriate or poor parenting.[225]

The American Psychological Association (APA) has previously reported:

> Psychological evaluators not trained in domestic violence may contribute to [the process of disadvantaging the nonviolent parent] by ignoring or minimizing the violence and by giving inappropriate pathological labels to women's responses to chronic victimization. Terms such as "parental alienation" may be used to blame the women for the children's reasonable fear of or anger toward their violent father.[226]

A DOJ-funded study similarly explains: "Practitioners who apply parent-alienation syndrome (PAS) or parent-alienation disorder formulations tend to

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[223] JERRY J. BOWLES ET AL., NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 7 (2008).

[224] Leonetti, *Dangerous American Export*, *supra* note 22 (manuscript at 41).

[225] 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, 379–80 (George W. Holden, Robert Geffner & Ernest N. Jouriles eds., 1998) (citations omitted).

[226] AM. PSYCH. ASSOC., REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 100 (1996).

automatically label a parent as an 'alienator' without a thorough investigation of the allegations."[227]

Examples of this pathologizing abound in family cases in California. In *Idelle C.*, a court evaluator characterized Mother as obsessively focused on Child's reports of CSA.[228] The court characterized Mother as "mentally disordered" and found that she was causing severe emotional harm to Child because she was "attempting to ruin [Child]'s relationship with" Father by believing and responding protectively to Child's disclosures.[229] In *McRoberts v. Superior Court of Los Angeles County*, the court-appointed evaluator also accused Mother of being "hypervigilant" about CSA.[230] In *A.S.*, the evaluator recommended that Mother "participate in therapy to help her develop discernment with respect to her fears."[231] The court ordered Mother to undergo psychological counseling with a psychologist who had "expertise" in PA.[232] There is no such "therapy" to help a FV victim stop holding *legitimate* fears that a FV perpetrator will commit additional acts of violence, particularly not when the perpetrator has denied the violence and blamed the victim. There is no such thing as psychological expertise in PA, given that it has been expressly rejected as a diagnosis by the World Health Organization (WHO),[233] the American Psychological Association,[234] the American Psychiatric Association,[235] the

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[227] SAUNDERS ET AL., *supra* note 19, at 23 (citations omitted).

[228] Idelle C. v. Ovando C., No. B146948, 2002 WL 1764181, at *7 (Cal. Ct. App. July 31, 2002).

[229] *Id.* at *10.

[230] No. B234877, 2012 WL 2317714, at *1 (Cal. Ct. App. June 19, 2012).

[231] A.S. v. C.A., No. G052341, 2017 WL 1506755, at *2 (Cal. Ct. App. Apr. 27, 2017).

[232] *Id.* at *6.

[233] In 2019, the WHO removed the terms "parental alienation" and "parental estrangement" from the 11th Edition of its *International Classification of Diseases*. *See Parental Alienation*, WORLD HEALTH ORG., https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation (last visited Apr. 23, 2023). The WHO issued an explanatory note stating: "During the development of ICD-11, a decision was made not to include the concept and terminology of 'parental alienation' in the classification, because it is not a health care term. The term is rather used in legal contexts, generally in the context of custody disputes in divorce or other partnership dissolution." *Id.* The WHO expressly disclaimed endorsement of the term "parental alienation" due to concerns about "the misuse of the term to undermine the credibility of one parent alleging abuse as a reason for contact refusal." *Id.*

[234] *See* AM. PSYCH. ASSOC., *supra* note 226, at 40 ("Although there are no data to support the phenomenon called parental alienation syndrome, in which mothers are blamed for interfering with their children's attachment to their fathers, the term is still used by some evaluators and courts to discount children's fears in hostile and psychologically abusive situations.").

[235] *See* Julie Doughty & Margaret Drew, *History of the Parental Alienation Belief System*, *in* CHALLENGING PARENTAL ALIENATION: NEW DIRECTIONS FOR PROFESSIONALS AND PARENTS 21, 34 (Jean Mercer & Margaret Drew, eds., 2022).

Association of Clinical Psychologists in the United Kingdom,[236] and the American Professional Society on the Abuse of Children (APSAC).[237] Given PA's round rejection by medical experts, the court's order was the equivalent of ordering Mother to undergo medical treatment for Sorcery Denial Syndrome because she persisted in claiming that she was not a witch.[238]

In *Gay v. Terpko*, the court-appointed custody evaluator subjected Mother, who believed Child's reports of Father's sexual abuse, to the Minnesota Multiphasic Personality Inventory (MMPI).[239] She testified that Mother's MMPI score was "consistent with individuals who tend to be immature, self-centered, narcissistic, manipulative, and lacking insight. Persons with [Mother]'s personality profile can show a pattern of not recognizing their own contribution to their life circumstances, and viewing the actions of others as the cause of their problems."[240] For more than a decade, best practices for court evaluations in cases involving allegations of FV and SV have dictated that general personality instruments like the MMPI are inappropriate.[241] Instead, in FV cases, evaluators should use DV-specific instruments.[242] Not only did the court evaluator in *Gay* pathologize Mother's legitimate fears about child safety and reframe them as personality issues, the court did not realize that its evaluator was not following best practices.[243] The court not only adopted the evaluator's findings and recommendations but also ordered Mother into therapy with a therapist chosen by the evaluator, disparaging Mother's existing therapist.[244] The court ordered that Mother could not have any contact with Children until the "therapeutic team" (the court custody evaluator and the director of a for-profit "reunification" program) deemed Mother "ready for reintegration in the children's lives."[245] It is horrifying that the court condoned the court evaluator's vilification of Mother's character, disparagement of her qualified personal therapist, and determination of Mother's fitness to see her own children based

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[236] *See* ASSOC. OF CLINICAL PSYCHS. U.K., THE PROTECTION OF THE PUBLIC IN THE FAMILY COURTS 1–2 (2021) (expressing concerns about "psychological experts" who have recommended the removal of children from mothers based on inappropriate diagnoses, though not naming PA explicitly).

[237] *See* AM. PRO. SOC'Y ON THE ABUSE OF CHILD., APSAC POSITION STATEMENT: ASSERTIONS OF PARENTAL ALIENATION SYNDROME (PAS), PARENTAL DISORDER (PAD), OR PARENTAL ALIENATION (PA) WHEN CHILD MALTREATMENT IS OF CONCERN 4 (2022).

[238] *See* A.S. v. C.A., No. G052341, 2017 WL 1506755, at *6 (Cal. Ct. App. Apr. 27, 2017).

[239] *See* No. A148641, 2019 WL 1614521, at *1, *3 (Cal. Ct. App. Apr. 16, 2019).

[240] *Id.* at *5.

[241] *See* Nancy S. Erickson, *Use of the MMPI-2 in Child Custody Evaluations Involving Battered Women: What Does Psychological Research Tell Us?*, 39 FAM. L.Q. 87, 87–89 (2005).

[242] *See* SAUNDERS ET AL., *supra* note 19, at 11, 47, 89, 132.

[243] *See id.*; *Gay*, 2019 WL 1614521, at *3, *5.

[244] *See Gay*, 2019 WL 1614521, at *2, *5.

[245] *Id.* at *5.

on pop psychology and poor practices.[246] This thought-reform project violates both the code of ethics for psychologists in California and Mother's basic human rights.[247] The strong ethical and human rights based objections to the use of psychological "therapy" to advance thought reform are part of why California banned gay conversion therapy in 2012.[248]

In *Murr*, the court found that Mother, the victim of FV inflicted by Father, was "fixated on her own beliefs and perspectives, without any regard[] for factual findings and determinations that have been made by this court."[249] The court explained that Mother "remembers all 'perceived' wrongs that have ever transpired between herself and [Father] (during their short marriage), she consciously distorts conduct and attitudes, she rigidly assert[s] what she perceives as her rights and only her rights and excuses any conduct on her behalf. She exhibits 'narcissistic' parental traits."[250] The court further encouraged Mother "to seek counseling, including a psychological evaluation that could assist her in confronting her mental health and behavior issues that have led to her relentless course of action which conflicts with reality and facts," opining that "Mother's behaviors are obsessive and concerning."[251] The court concluded: "Mother is not a psychologically or emotionally healthy parent."[252] Together these cases demonstrate a pattern of viewing FV disclosures as evidence of emotional and mental instability by protective parents and using that evidence to penalize them in custody decisions.

IV. TACTICAL CLAIMS OF PA BY FV PERPETRATORS

The social science literature documents not only that there is no scientific validity to PA theory, but that the theory is frequently misused by abusive fathers against protective mothers as part of a "child abuse backlash" by groups of accused perpetrators who claim that they are innocent.[253] It cautions that the concept can be dangerous, particularly when it gives license to the suggestion that children's views should be rejected or when it is used to support custody

[246] *See id.* at *2–3, *5.

[247] *See* Leonetti, *Dangerous American Export*, *supra* note 22 (manuscript at 47–48).

[248] *See* 2012 Cal. Stat. 6569, ch. 835.

[249] Murr v. Ingels, No. C087789, 2020 WL 7639219, at *4, *10, *13, *18 (Cal. Ct. App. Dec. 23, 2020) (alteration in original).

[250] *Id.* at *4 (alteration in original).

[251] *Id.* at *7.

[252] *Id.* at *10.

[253] *See* Michelle Bemiller, *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts*, 5 J. CHILD CUSTODY 228, 229–31 (2008); Thea Brown et al., *The Child Abuse and Divorce Myth*, 10 CHILD ABUSE REV. 113, 113–18 (2001); Joan S. Meier, *U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What Do the Data Show?*, 42 J. SOC. WELFARE & FAM. L. 92, 92–93 (2020).

changes.[254] The APA Presidential Task Force on Violence and the Family reported that "mothers were losing custody cases in which there were concerns about [DV] because abusive fathers were able to convince the court that the mothers were engaged in alienating behaviours."[255] Janet R. Johnston has documented how fathers use PA claims as a tactic to continue coercive control over mothers post-separation, noting:

> Allegations of PAS and PA have become a legal strategy in numerous divorce cases when children resist contact with a parent. Largely on the basis of the formulation and recommendations of [Richard] Gardner, attorneys have vilified the aligned parent and argued for court orders that are coercive and punitive, including a change of custody to the "hated" other parent in severe cases.[256]

The NCJFCJ warns against the application of PA theory, particularly in cases involving FV allegations:

> The discredited "diagnosis" of PAS (or an allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the children's responses by acting in violent, disrespectful, intimidating, humiliating, or discrediting ways toward the child or the other parent.[257]

As Trey Bundy explains: "For parents countering allegations of child abuse, parental alienation is a powerful tool."[258]

FV perpetrators in California appear to deploy PA theories in precisely this way. For example, in *Daniel v. Daniel*, twelve-year-old Child wrote an essay in school disclosing his ambivalent feelings about Father because Father hit and slapped him and forced him to go places against his will, causing him to have an "emotional hole inside" that he did not think would ever go away.[259] School personnel referred the essay to the school psychologist who met with Child and, based on their conversation, reported the incident to DCFS.[260] DCFS advised Mother that, if she did not seek an order suspending Father's visitation with

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[254] *See* Carol S. Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, 35 FAM. L.Q. 527, 527–34 (2001).

[255] N.Z. PSYCH. SOC'Y, *supra* note 105, at 18.

[256] Janet R. Johnston, *Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce*, 31 J. AM. ACAD. PSYCHIATRY & L. 158, 158 (2003).

[257] JERRY J. BOWLES ET AL., *supra* note 223 at 13.

[258] *Bitter Custody*, REVEAL NEWS, at 22:28 (Mar. 9, 2019), https://revealnews.org/podcast/bitter-custody/.

[259] No. B174755, 2005 WL 1515414, at *1 (Cal. Ct. App. June 28, 2005).

[260] *Id.*

Child, they would do so.[261] Mother sought immediate suspension of Father's visitation.[262] The family law court initially "awarded Mother temporary physical custody of [Child], suspended Father's visitation, and ordered that" Child be interviewed by a court evaluator.[263] Child told both a DCFS investigator and the court evaluator that Father had abused him for most of his life, that he was afraid of Father, and that he asked Mother not to seek a suspension of Father's visitation because he was afraid of retaliation.[264] He also told the evaluator that he and his father "had difficulty finding things to discuss;" Father hit, slapped, pushed, and called him names as a form of discipline; and, even if Father were to change, he would not be ready to see him because of the past harm that he inflicted.[265] The evaluator believed that Child's fears were "genuine" and recommended a suspension of all contact between Child and Father.[266]

Father denied the abuse.[267] He specifically "denied ever calling [Child] names" or abusing him physically "but admitted that he once slapped [Child] on the 'butt.'"[268] Father testified that Mother had caused Child's "alienation" from him by telling him negative things about him.[269] He asked the court to appoint a psychological evaluator to give "expert input" on "the issue of parental alienation."[270]

The family law court rejected Father's claims and found that he physically and emotionally abused Child.[271] While it is a relief that the court rejected Father's claims in this one case, courts credited these claims under almost identical circumstances in many of the other cases discussed in this Article. The amorphous and subjective nature of these determinations—whether a child's fear is the result of the abuse of a FV perpetrator or the "alienating behaviors" of a protective parent—is so inherently unreliable and untestable that it creates an irresistible temptation for batterers at least to attempt to convince a court to label protective actions as PA. In *Daniel,* the court evaluator conceded that Child's disclosures of abuse and fear of Father "'of course' could be consistent with 'a child who has been suffering from the effects of parental alienation'" and that the "strained relationship between [Father] and [Child] pose[d] a substantial danger to the best interests of Child."[272] It is hard not to suspect that if Father

[261] *Id.*
[262] *Id.*
[263] *Id.* at *2.
[264] *Id.* at *2, *8.
[265] *Id.*
[266] *Id.* at *2.
[267] *Id.*
[268] *Id.*
[269] *Id.* at *2, *4.
[270] *Id.* at *3–4.
[271] *Id.* at *4, *8.
[272] *Id.* at *4 n.1, *8.

had drawn a different judge or evaluator, Child had been a few years younger, or Mother had presented slightly worse and Father slightly better on the witness stand, the court would have reached the opposite conclusion, given that much of the court's decision turned on the luck of the evaluator's determination that Child's fears of Father were "genuine" (presumably as opposed to implanted by Mother).[273]

By contrast, in *In re M.M.*, Father's tactical claims of PA succeeded in deflecting Child's repeated disclosures of physical and sexual abuse.[274] Father told the court evaluator that "he believed mother had waged a 'campaign to marginalize him as a parent and alienate him from [Child].'"[275] When DCFS interviewed Father during an investigation of Child's latest round of disclosures when she was twelve, Father immediately informed DCFS that he and Mother "had been engaged in 'custody issues'" since Child was three and that the "problem" was that Mother was trying to "alienate" Child from him.[276] He insisted that Mother's "emotional instability" and "parental alienation" were the source of the breakdown in his relationship with Child.[277] Father claimed that Child's distress at being in his custody was "highly exaggerated."[278] Father denied that he engaged in a physical struggle with Child but offered no explanation for the physical injuries that she sustained, which were consistent with her account of events.[279] The family court and Court of Appeal both ultimately credited his version of events and granted him custody.[280]

Abusive parents may even use PA pseudo-science to attempt to evade paying child support. Evading child support obligations is a form of financial abuse and coercive control because refusing to support a child punishes a victim parent by harming their child.[281] For example, in *County of San Diego v. P.B.*, Mother and Father had joint custody of Child.[282] When Child was ten, there was what the Court of Appeal for the Fourth District blithely described as an "incident at a restaurant," which ended in Father's contact with Child being reduced to supervised visitation.[283] Child was afraid of Father and said that he did not want to see him.[284]

An FCS counselor prepared a report in connection with Mother's and Father's custody dispute, in which the counselor minimized Father's abuse at the

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[273] *See id.* at *2, *8.

[274] *See generally* No. B259253, 2015 WL 8770107 (Cal. Ct. App. Dec. 14, 2015).

[275] *Id.* at *7.

[276] *Id.* at *4.

[277] *Id.* at *5.

[278] *Id.* at *4.

[279] *See id.* at *5.

[280] *See id.* at *21.

[281] *See generally* Platt et al., *supra* note 16, at 196.

[282] 269 Cal. Rptr. 3d 914, 916 (Ct. App. Oct. 8, 2020).

[283] *See id.*

[284] *See id.* at 916–17.

restaurant by characterizing it as a "mistake."[285] The counselor engaged in the usual armchair pop psychology of the family court, opining that "the child is not able to psychologically see himself as a separate person from his mother."[286] The counselor predicted that, if Father's abusive episode at the restaurant had not occurred, Child "would have had to find some other reason to reinforce his (mother's) view of the father."[287]

Mother agreed to "reunification therapy" between Father and Child, but Child refused to attend the therapy and threatened suicide if forced to attend, a turn of events that the Court of Appeal minimized as therapy "not going as planned."[288] Father filed a motion in the family court "to switch custody and to eliminate the mom completely," arguing that Mother had "brainwashed" Child, and acted as "a 'restrictive gatekeeper' who would 'go to no end to keep this child away from the dad.'"[289] Father apparently did not see the irony of accusing Mother of PA while simultaneously asking the court to "eliminate" her "completely" from Child's life.[290] Father also argued that he should not be required to pay child support based on a calculation that Child was in Mother's care for more than fifty percent of the time.[291] His theory was that he should not have to "pay" for the time that he felt he was entitled to have with Child even if Child was residing with Mother because it was Mother's "fault" that Child was no longer in their joint custody.[292] Father claimed that Mother "interfered" with his visitation time and "failed to support" his reunification with Child.[293] The family law court granted Father's request to pay no child support, adopting Father's arguments and reasoning that it was "a case of alienation and interference of custody and visitation" and the court was calculating Father's child support based upon the "timeshare" that "should have been."[294]

Child attended reunification therapy with Father but refused to go to visits with him.[295] For several years, outside of a few therapy sessions, Father made almost no attempt to contact Child other than mailing him one birthday card.[296] The family court found that it was unclear whether Child's estrangement from Father was the result of "intentional actions by Mother" but also referred to

[285] *See id.*
[286] *See id.* at 917.
[287] *Id.*
[288] *See id.*
[289] *Id.*
[290] *See id.*
[291] *Id.*
[292] *See id.*
[293] *Id.* at 917–18.
[294] *Id.* at 918.
[295] *Id.*
[296] *See id.* at 919.

Mother's actions as "horrific."[297] The court expressed no such "horror" at Father's refusal to pay a fair share of Child's maintenance.[298]

V. GENDER BIAS

Multiple scholars have connected PA claims to broader issues of gender discrimination. Thea Brown and her collaborators document how CAN myths are partially driven by the same gender bias behind rape myths that purport that women make false allegations to "gain leverage" over men.[299] Leigh Goodmark documents the way courts dismiss the evidence of women who have experienced violence due to gender bias.[300] Lisa Cromer and Jennifer Freyd also explore how hostile sexism correlates with disbelieving CSA disclosures.[301] They explain:

> Given the current findings, it seems that sexist attitudes relate to the social acceptability of aggression, or sexual entitlement, of men, regardless of victim gender and that hostile sexist attitudes relate to suspiciousness about abuse claims. Further, the relationship between sexist attitudes and reduced ratings of abusiveness suggests that sexist beliefs may diminish the perceived harm to victims of sexual crimes.[302]

They conclude: "Sexism influenced judgments of abusiveness and believability."[303] In the same vein, Deborah Epstein and Lisa Goodman note that the "insidious stereotype of women as unreliable-to-hysterical distorters of the truth has quietly overtaken the justice system, where women witnesses tend to be disbelieved more than their male counterparts."[304] They document: "The cultural assumption that women tend to be improperly motivated by an outsized concern for financial, material, or child custodial gain—and the related assumption that women simply lack full capacity as truthtellers—are longstanding and deeply held."[305] They explain:

> Judges tend to conclude, typically with no evidence other than the perpetrator-father's uncorroborated assertion, that women are fabricating abuse allegations as part of a strategic effort to alienate the children from

[297] *Id.* at 923 n.10.

[298] *See generally id.*

[299] Brown et al., *supra* note 253, at 117–18.

[300] *See* Leigh Goodmark, *Telling Stories, Saving Lives: The Battered Mothers' Testimony Project, Women's Narratives, and Court Reform*, 37 ARIZ. STATE L.J. 709, 710–27, 745–51 (2005).

[301] Lisa DeMarni Cromer & Jennifer J. Freyd, *What Influences Believing Child Sexual Abuse Disclosures? The Roles of Depicted Memory Persistence, Participant Gender, Trauma History, and Sexism*, 31 PSYCH. WOMEN Q. 13, 20 (2007).

[302] *Id.*

[303] *Id.*

[304] Epstein & Goodman, *supra* note 17, at 435.

[305] *Id.* at 454.

> their father. The mother's experience of abuse is turned on its head to support the perpetrator's claim that he is the better parent.[306]

Consistent with this research, in *Sub Silentio Alienation*, I documented how the New Zealand Family Court's lack of FV expertise and reliance on PA pseudo-psychology create a breeding ground for unconscious biases and gender stereotypes.[307] I explained:

> The invisible "alienating behaviors" divined by court psychologists to be causing children's rejection of fathers align with prevalent gender stereotypes. The psychologists in these cases offer evidence that these women are emotionally unstable, vindictive, manipulative, hysterical, narcissistic, and dishonest, while characterizing men, many of whom have documented histories of FV, as stoic, loving, stable victims.[308]

These phenomena are common in the California family law courts. For example, in *Vorce v. Arthur*, the court characterized Mother as "angry, unstable and manipulative."[309] In *Idelle C.*, one evaluator characterized Mother as "quite manipulative," "not forthright," and "extremely controlling."[310] A second evaluator characterized her as "aggressive" and "persistent."[311] A third evaluator characterized Mother as "manipulating" and "intrusive."[312] In *In re M.M.*, the court evaluator characterized Mother as "irrational" and "aggressive."[313] In *Murr*, the family court judge explained he had "substantial concern regarding the mother's emotional and mental state and stability given her vindictive and unrelenting behaviors, that are not supported by evidence."[314] Neither the family courts nor the appellate courts recognize this language as having loaded gendered overtones or coinciding with misogynistic stereotypes about women.

One of the most disturbing findings of this research is the overwhelmingly gendered nature of PA theory in California courts. In conducting this research, I reviewed every appellate court decision reviewing a family law judgment in which a parent was accused of alienation or found to have "alienated" a child from their other parent, regardless of whether the family law judge used the term PAS, PA, or "alienation." As discussed in greater detail in *Sub Silentio Alienation*, with the international debunking of PA, family courts have shifted

[306] *Id.* at 431.

[307] *See generally* Leonetti, *Sub Silentio*, *supra* note 167.

[308] *Id.* (manuscript at 35).

[309] Nos. C042379, C043706, C043715, 2004 WL 1732709, at *3 (Cal. Ct. App. Aug. 3, 2004).

[310] Idelle C. v. Ovando C., No. B146948, 2002 WL 1764181, at *6 (Cal. Ct. App. July 31, 2002).

[311] *Id.* at *7.

[312] *Id.* at *8.

[313] No. B259253, 2015 WL 8770107, at *10 (Cal. Ct. App. Dec. 14, 2015).

[314] Murr v. Ingels, No. C087789, 2020 WL 7639219, at *5 (Cal. Ct. App. Dec. 23, 2020).

their terminology to obscure their ongoing use of the construct.[315] This Article, therefore, treats any finding that a child's fear or rejection of contact with one parent stemmed from the conduct of the other parent, whether that conduct was deliberate or unintentional, as a finding of PA.

This resulted in a dataset of thirty-eight cases in which a parent was accused of PA.[316] In thirty-three of the thirty-eight PA cases, the parent accused of "alienating" the child(ren) was the mother.[317] In other words, close to ninety percent of the accused alienators were women and close to ninety percent of the claimed victims of alienation were men. In at least twenty-five of the thirty-three cases in which a mother was accused of PA, the father also faced DV

[315] *See* Leonetti, *Sub Silentio*, *supra* note 167 (manuscript at 10–35).

[316] *See* cases cited *infra* note 317.

[317] *Compare* K.B. v. G.B., No. C094762, 2022 WL 2900749, at *1 (Cal. Ct. App. July 22, 2022); P.M. v. S.S., No. D078381, 2022 WL 2352986, at *1 (Cal. Ct. App. June 30, 2022); M.M. v. R.B., No. A161934, 2021 WL 4843776, at *2–4 (Cal. Ct. App. Oct. 18, 2021); *In re* G.R., Nos. G059563, G059711, G059831, 2021 WL 2346303, at *4 (Cal. Ct. App. June 9, 2021); *In re* S.M., No. A160111, 2021 WL 1084478, at *1 (Cal. Ct. App. Mar. 22, 2021); *In re* B.A., No. B304196, 2021 WL 302631, at *1–2 (Cal. Ct. App. Jan. 29, 2021); *Murr*, 2020 WL 7639219, at *2, *9; County of San Diego v. P.B., 269 Cal. Rptr. 3d 914, 916–19 (Ct. App. 2020); Olin v. Olin, No. B295416, 2020 WL 1129852, at *3 (Cal. Ct. App. Mar. 9, 2020); Gay v. Terpko, No. A148641, 2019 WL 1614521, at *1 (Cal. Ct. App. Apr. 16, 2019); Jason P. v. Danielle S., 215 Cal. Rptr. 3d 542, 564 (Ct. App. 2017); A.S. v. C.A., No. G052341, 2017 WL 1506755, at *7–8 (Cal. Ct. App. Apr. 27, 2017); A.G. v. C.S., 201 Cal. Rptr. 3d 552, 559–66 (Ct. App. 2016); Ellis v. Lyons, 206 Cal. Rptr. 3d 687, 693 (Ct. App. 2016); Winternitz v. Winternitz, 185 Cal. Rptr. 3d 458, 461, 470 (Ct. App. 2015); *In re* M.M., 2015 WL 8770107, at *1; *In re* E.M., 175 Cal. Rptr. 3d 711, 719–20 (Ct. App. 2014); Crystal H. v. Shawn H., No. D061388, 2013 WL 2940952, at *5 (Cal. Ct. App. June 17, 2013); McRoberts v. Superior Ct. of Los Angeles Cnty., No. B234877, 2012 WL 2317714, at *1 (Cal. Ct. App. June 19, 2012); Mark T. v. Jamie Z., 124 Cal. Rptr. 3d 200, 207 (Ct. App. 2011); Torres v. Torres, No. B214980, 2010 WL 2739318, at *1 (Cal. Ct. App. July 13, 2010); *In re* Christopher C., 105 Cal. Rptr. 3d 645, 647 (Ct. App. 2010); Robert J. v. Catherine D., 91 Cal. Rptr. 3d 6, 11 (Ct. App. 2009); *In re* S.O., No. B195646, 2007 WL 4465519, at *7–8 (Cal. Ct. App. Dec. 21, 2007); *In Re* Troy B., No. B193681, 2007 WL 2660236, at *1–2, *6 (Cal. Ct. App. Sept. 12, 2007); Alvarez v. Alvarez, No. D048287, 2007 WL 1057029, at *3–5 (Cal. Ct. App. Apr. 10, 2007); Daniel v. Daniel, No. B174755, 2005 WL 1515414, at *2–4 (Cal. Ct. App. June 28, 2005); Vorce v. Arthur, Nos. C042379, C043706, C043715, 2004 WL 1732709, at *2 (Cal. Ct. App. Aug. 3, 2004); Steiner v. Hosseini, 11 Cal. Rptr. 3d 671, 677 (Ct. App. 2004); Idelle C. v. Ovando C., No. B146948, 2002 WL 1764181, at *8 (Cal. Ct. App. July 31, 2002); Lester v. Lennane, 101 Cal. Rptr. 2d 86, 94, 97 (Ct. App. 2000); Coursey v. Superior Ct. of Sutter Cnty., 239 Cal. Rptr. 365, 366–67 (Ct. App. 1987); Lewin v. Lewin, 231 Cal. Rptr. 433, 437–38 (Ct. App. 1986), *with* Inna A. v. Roman A., No. B311140, 2022 WL 3907568, at *3–6 (Cal. Ct. App. Aug. 31, 2022); *In re* H.M., No. G057128, 2019 WL 3522043, at *1 (Cal. Ct. App. Aug. 2, 2019); F.T. v. L.J., 123 Cal. Rptr. 3d 120, 127, 129, 135–38 (Ct. App. 2011); Yassin v. Aboutaleb, No. B205958, 2010 WL 4970285, at *1–3 (Cal. Ct. App. Dec. 8, 2010); Nair, Nos. C061097, C062004, 2010 WL 2330204, at *1, *6–8 (Cal. Ct. App. June 10, 2010).

allegations.[318] This represents seventy-five percent of accusations of PA against mothers, consistent with the social science research described in Part IV *supra*, documenting the ways accusations of PA are used tactically by DV perpetrators to divert attention from their violence. In seventy-one percent of the cases in which a court found that a mother had committed PA, the court stripped the mother of custody.[319] In contrast, the number of accusations of PA against fathers was staggeringly low—just five out of thirty-eight cases.[320] In three of the four cases in which the court found that a father had alienated the child from the mother, the court left the child in the father's custody—i.e., in seventy-five percent of the cases.[321] Thus, when women are found to have alienated their children from fathers, they usually lose custody, but when men are found to have alienated their children from mothers, they generally do not lose custody. In two

[318] *Compare P.M.*, 2022 WL 2352986, at *1; *M.M. v. R.B.*, 2021 WL 4843776, at *2–3; *In re B.A.*, 2021 WL 302631, at *1–2; *In re G.R.*, 2021 WL 2346303, at *2–4; *Murr*, 2020 WL 7639219, at *2, *9, *10, *13, *18; *Olin*, 2020 WL 1129852, at *1, *3, *7; *County of San Diego*, 269 Cal. Rptr. 3d at 916–19; *Gay*, 2019 WL 1614521, at *1–2; *Jason P.*, 215 Cal. Rptr. 3d at 555–56, 564; *A.S.*, 2017 WL 1506755, at *1, *7–8; *A.G.*, 201 Cal. Rptr. 3d at 556, 559; *Ellis*, 206 Cal. Rptr. 3d at 693, 690; *In re M.M.*, 2015 WL 8770107, at *1; *Crystal H.*, 2013 WL 2940952, at *5, *14; *McRoberts*, 2012 WL 2317714, at *1–4; *In re Christopher C.*, 105 Cal. Rptr. 3d at 647, 654; *Robert J.*, 91 Cal. Rptr. 3d at 8–11; *In re Troy B.*, 2007 WL 2660236, at *1–2, *6; *In re S.O.*, 2007 WL 4465519, at *1, *7–8; *Alvarez*, 2007 WL 1057029, at *3–5; *Daniel*, 2005 WL 1515414, at *2–4; *Vorce*, 2004 WL 1732709, at *1–4; *Idelle C.*, 2002 WL 1764181, at *1, *8; *Lester*, 101 Cal. Rptr. 2d at 90, 94, 95, 97, 115–16; *Lewin*, 231 Cal. Rptr. at 437–38, *with K.B.*, 2022 WL 2900749, at *1; *In re S.M.*, 2021 WL 1084478, at *1; *Winternitz*, 185 Cal. Rptr. at 461; *E.M.*, 175 Cal. Rptr. at 719–20; *Mark T.*, 124 Cal. Rptr. 3d at 207; *Torres*, 2010 WL 2739318, at *1; *Steiner*, 11 Cal. Rptr. 3d at 677; *Coursey*, 239 Cal. Rptr at 366–67.

[319] *Compare In re S.M.*, 2021 WL 1084478, at *4, *8; *In re B.A.*, 2021 WL 302631, at *1, *4–5; *Murr*, 2020 WL 7639219, at *1, *9–10, *19–20; *Gay*, 2019 WL 1614521, at *1–2, *6; *A.S.*, 2017 WL 1506755, at *1, *8; *A.G.*, 201 Cal. Rptr. 3d at 555, 560, 564; *Winternitz*, 185 Cal. Rptr. at 461–62, 470; *In re M.M.*, 2015 WL 8770107, at *1, *21; *McRoberts*, 2012 WL 2317714, at *1; *In re Christopher C.*, 105 Cal. Rptr. 3d at 650–51; *Robert J.*, 91 Cal. Rptr. 3d at 11; *In re Troy B.*, 2007 WL 2660236, at *1–2, *6; *Alvarez*, 2007 WL 1057029, at *1, *3; *Steiner*, 11 Cal. Rptr. 3d at 677; *Vorce*, 2004 WL 1732709, at *4; *Idelle C.*, 2002 WL 1764181, at *3, *17; *Lewin*, 231 Cal. Rptr. at 434, 437–38, *with K.B.*, 2022 WL 2900749, at *3, *9, *16; *P.M.*, 2022 WL 2352986, at *1, *19–20; *In re G.R.*, 2021 WL 2346303, at *13–14, *17–18; *Jason P.*, 215 Cal. Rptr. 3d at 564–65; *E.M.*, 175 Cal. Rptr. at 716, 725; *Lester*, 101 Cal. Rptr. 2d at 96, 126; *Coursey*, 239 Cal. Rptr at 366–71. In an additional case, the court reduced Mother's child support after finding that Mother "might have caused a rif[t] in the father/[child] relationship," but did not reverse her custody of Child. *See County of San Diego*, 269 Cal. Rptr. 3d at 916–19.

[320] *See Inna*, 2022 WL 3907568, at *6, *8, *16; *H.M.*, 2019 WL 2552043, at *1, *25–26; *F.T.*, 123 Cal. Rptr. 3d at 124, 127, 129; *Yassin*, 2010 WL 4970285, at *1–3, *6; *Nair*, 2010 WL 2330204, at *6–8.

[321] *Compare Inna A.*, 2022 WL 3907568, at *6, *8, *16; *H.M.*, 2019 WL 2552043, at *1, *25–26; *Nair*, 2010 WL 2330204, at *6–8, *with Yassin*, 2010 WL 4970285, at *1–3, *6.

of the three cases in which the court found that a father had obstructed a child's relationship with their mother but nonetheless did not reverse custody and order the child into the mother's care, the father was a DV perpetrator.[322] This means that, often, DV perpetrators who alienate children from victim mothers nonetheless get to keep custody of the children that they alienate while victim mothers who "alienate" children from perpetrator fathers do not retain custody.

On the one hand, this data demonstrating that mothers are far more likely than fathers to be accused of and found to be "alienating" is surprising given that social science evidence suggests the opposite, namely: that attempts to undermine the parenting of mothers is a common tactic of abusive fathers.[323] While false allegations of CAN are quite low overall, studies show that fathers are almost twice as likely as mothers to make false allegations during custody proceedings.[324] The fact that the California family law courts find behaviors that one would expect to be committed predominantly by men to be committed predominantly by women should be a red flag that it is over-identifying alleged abuse by mothers and under-identifying actual abuse by fathers.

On the other hand, the California courts' punitive reaction to women's reports of abuse is consistent with the broader social science literature about the "credibility gap" that women face in the justice system.[325] As Epstein and Goodman explain: "Women find their credibility discounted by the partners who abuse them, by the larger society in which they live, and by the gatekeepers of the justice and social service systems to which they turn for help."[326] They explain that women "face a legal twilight zone; laws meant to protect them, compensate them, and deter further abuse often fail in application, because women telling stories of abuse by their male partners are simply not believed."[327] They document how justice system actors unjustly discount women's personal

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[322] *Compare H.M.*, 2019 WL 2552043, at *1, *25–26; *Nair*, 2010 WL 2330204, at *6–8, *with Inna A.*, 2022 WL 3907568, at *6, *8, *16.

[323] *See* R. LUNDY BANCROFT ET AL., THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 150–60 (2d ed., 2012); *see also* STARK, COERCIVE CONTROL, *supra* note 45, at 20 ("When a woman attempts to end a relationship to escape abuse, the batterer may tell her that she is the one causing harm to the children because she is breaking up the family. If his abusive behavior drives his children away from him emotionally, he is likely to accuse the mother of alienating the children from him.") (internal citation omitted).

[324] *See* SAUNDERS ET AL., *supra* note 19, at 14; *see also* Nico Trocmé & Nicholas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 CHILD ABUSE & NEGLECT 1333, 1334, 1341 (2005).

[325] *See* Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 1–20 (2017) ("Although false reports of rape are uncommon, law enforcement officers tend to default to doubt when women allege sexual assault, resulting in curtailed investigations as well as infrequent arrests and prosecutions. Credibility discounts . . . are meted out at every stage of the criminal process . . . .").

[326] Epstein & Goodman, *supra* note 17, at 402.

[327] *Id.* at 403.

trustworthiness, based on negative cultural stereotypes about women and their motivations for seeking assistance.[328] A DOJ-funded study notes that various federal, state, and local commissions have documented gender bias in custody/visitation outcomes since the 1980s, concluding that negative stereotypes about women and a lack of understanding about DV seem to encourage judges to disbelieve women's allegations and accuse them of lying, blame them for the violence, and trivialize their experiences.[329] The authors note further patterns in judicial beliefs that drive inequitable results for women who have experienced DV:

> Beliefs in patriarchal norms (i.e., women have reached equality with men), a just world (i.e., the world is basically a just place), and social dominance (i.e., social hierarchies are good) were correlated with each other and with custody beliefs and recommendations. For example, patriarchal norms correlated with all of the custody-belief measures: DV is not important in custody decisions; fathers do not make false DV or child abuse allegations; and alleged DV victims make false allegations, alienate the children, and hurt the children because they resist co-parenting. More importantly, patriarchal norms were related to the five outcome measures, specifically: (1) recommendation for sole or joint custody to the perpetrator, (2) recommendations for unsupervised visits, (3) belief that sole or joint custody for the [perpetrator] would be in the child's best interest, (4) recommendation for unsupervised visitation for the father . . . , and (5) belief that mediation is beneficial for the couple . . . .[330]

Social science research also documents the gendered nature of PA findings.[331] Margaret Drew explains:

> "Parental alienation" is a term that describes one parent's attempts to undermine the relationship between the children and the other parent. While the term sounds neutral on its face, the application has a disparate impact on women. Partners who abuse claim alienation on the part of the mother as a way to discredit her allegations that the abusive partner poses a risk for the children.[332]

In sum, this study replicates the findings of decades of research into systemic responses to FV and concludes that women's claims of violence seem to be disbelieved and pathologized merely because they are being made by women.

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[328] *Id.* at 405.

[329] SAUNDERS ET AL., *supra* note 19, at 18.

[330] *Id.* at 11 (citations omitted).

[331] *See generally* Madelyn Simring Milchman, *Misogyny in New York Custody Decisions with Parental Alienation and Child Sexual Abuse Allegations*, 14 J. CHILD CUSTODY 234 (2017) (documenting the misogynistic role that PA plays in custody cases involving CSA allegations in the New York family courts).

[332] Margaret Drew, *Collaboration and Intention: Making the Collaborative Family Law Process Safe(r)*, 32 OHIO STATE J. DISP. RESOL. 373, 394 n.79 (2017).

VI. THE GENDERED DOUBLE STANDARD

The gendered nature of the family court's obsession with ferreting out putative PA by mothers becomes evident in the rare case in which a mother raises a claim that a father is alienating the children from her. The recent cases of *Inna A. v. Roman A.* and *In re H.M.* demonstrate the incredible double standard that exists for women in the family court.[333]

A. Inna A. v. Roman A.*: Fathers Never Alienate*

In *Inna A.*, Mother and Father separated when Son was thirteen and Daughter was twelve.[334] Each parent sought sole physical custody of one or both of Children with visitation to the other, although they ultimately agreed to joint legal custody of both.[335] After a period of fluctuating temporary custody arrangements, eventually Son lived full-time with Father, and the parties shared care of Daughter.[336]

Mother alleged that, when Children were with Father, he appeared to limit their cell phone access, making it hard for her to communicate with them.[337] Father denied this, claiming that he encouraged them to communicate with her.[338]

Mother testified that Father "called her names in front of [Children] and [Son] had started to mimic his disrespectful behavior."[339] She testified that Son was angry at her and refused to accept her calls.[340] Mother wanted to attend joint counseling with Son, but testified that Father refused to consent.[341] The court ordered Son to attend therapy with Mother, but Father refused to consent to the joint sessions or to the therapist sharing a report with the court.[342] Father "filed a complaint against [the therapist]" for "attempting to 'force' [Son] to participate in therapy with [Mother] before he was ready."[343] Rather than blaming Father for obstructing Mother's reunification therapy with Son, the court expressed frustration that "the therapy option" seemed to have "made things worse."[344]

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[333] *See generally* Inna A. v. Roman A., No. B311140, 2022 WL 3907568 (Cal. Ct. App. Aug. 31, 2022); *In re* H.M., No. G057128, 2019 WL 3522043 (Cal. Ct. App. Aug. 2, 2019).

[334] *Inna A.*, 2022 WL 3907568, at *1.

[335] *Id.*

[336] *Id.*

[337] *Id.*

[338] *Id.*

[339] *Id.* at *2.

[340] *Id.*

[341] *Id.*

[342] *Id.*

[343] *Id.*

[344] *Id.*

The court ordered visitation between Mother and Son and ordered Father to produce Son for the visits.[345] Visitation progressed for a few months, until Son stopped appearing for visits.[346] On one visit, he refused to come downstairs when Mother tried to pick him up for a visit.[347] Daughter became more hostile toward Mother and Mother's family, and began to say that she did not want to see Mother either.[348] Daughter yelled at Mother: "Dad hates you, we all hate you and I hate you."[349] At this point, a mother would be in terrible peril in the family court if this evidence were aligned against her, but, in contrast, the court simply recommended to Father that "the best thing to do is to tell your children that they are expected to go to the visits with their mother . . . ."[350]

Subsequently, Mother attempted to pick Children up at Father's home, but "they did not show up."[351] Daughter texted Mother to say she would not come.[352] Neither Son nor Father replied to attempts to communicate.[353] Children still had not started therapy because Father would not consent to the terms set by their new therapist.[354]

Mother claimed that Children would not see her because Father was manipulating and intimidating them.[355] The court ordered a custody evaluation and appointed an evaluator suggested by Father.[356] The evaluator observed that Children "idolized [Father] and mimicked his thinking and behavior, including his 'verbal demeaning' of [Mother]."[357] The evaluator did not make the typical recommendation when a mother is accused of "alienating" children, as demonstrated in Part V *supra*. Instead, the evaluator recommended that Father "use the fact his children idolize him to help facilitate the change in behavior of the children towards their mother."[358] The evaluator recommended that joint legal custody continue.[359]

By the time the court held the custody trial, Mother had not had meaningful contact with Children in more than a year.[360] Children testified, and their complaints seemed to reflect the thoughts of an emotionally abusive partner

[345] *Id.*
[346] *Id.*
[347] *Id.*
[348] *Id.*
[349] *Id.*
[350] *See id.* at *3.
[351] *Id.*
[352] *Id.*
[353] *Id.*
[354] *Id.*
[355] *Id.*
[356] *Id.*
[357] *Id.*
[358] *Id.*
[359] *Id.*
[360] *Id.* at *4.

more than those of typical teenagers.[361] Son complained that Mother was "'fake' and lied about 'little things;' had an 'attitude' and was 'a little demeaning;' treated him like a 'stranger;' argued with him about everything; had chosen her family over him; and took her 'family's side'" against him.[362] He testified that it was "okay" to violate the court's orders because they were "not right."[363] He testified that he had given his therapist a "whole list" of things that he did not like about Mother and that he thought that she needed to improve her "'attitude' 'on her own time.'"[364] Daughter expressed similar concerns about mother's "attitude," and offered a similarly lengthy list of suggested improvements.[365] She described visiting Mother as a "headache" and a "pain in [her] butt."[366] Importantly, both Children testified that they did not feel unsafe with Mother or need protection from her.[367]

Children's counsel argued that there was no "evidence of alienation" by Father.[368] He claimed that he could not "pinpoint exactly what led to the breakdown in the children's relationship" with Mother.[369] He argued that Children had made up their own minds about Mother and it was "kind of their thing now."[370] He asserted that "any visitation with mother would need to proceed incrementally."[371] He further advocated against intensive reunification therapy with Mother, believing that it would be counter-productive.[372]

The contrast between these arguments and the pro-contact arguments typically made by children's counsel when children resist contact with a violent father is striking. The court found that Children "took 'their cue from father'" and that he was "extremely influential over them," but nonetheless found that Father had not "alienated the children in the truest sense of the word," describing Children's rejection of Mother as "confounding."[373] The court gave no indication as to what "truest" PA was, although the cases and statistics in Part V *supra* suggest that it is committed only by women.

The court found that Children were "protective of their father," even though there was no evidence in the record that there was anything from which Father needed protection.[374] This finding was particularly galling given that when

[361] *See id.*
[362] *Id.*
[363] *Id.*
[364] *Id.*
[365] *Id.*
[366] *Id.*
[367] *See id.*
[368] *Id.* at *6.
[369] *Id.*
[370] *Id.* at *6, *10.
[371] *Id.* at *6.
[372] *See id.*
[373] *Id.* at *5–6.
[374] *Id.* at *6.

mothers are DV victims and their children feel justifiably protective of them, the family courts are quick to characterize their protective instincts as pathologically "enmeshed" and evidence of PA.[375]

The family court found that there was no "explicit and overt evidence that father [was] actively trying to undermine the relationship."[376] This finding is particularly incredible given that California family law courts regularly find that mothers have "alienated" children based on circumstantial evidence and baseless inferences about the "subconscious" influences that they purportedly have on their children.[377] When presented with concrete evidence that Father was demeaning Mother to Children and encouraging them to do the same, however, the court suddenly adopted an unprecedented "explicit and overt evidence" standard that has never been applied when a father accused a mother of PA.[378]

Despite uncontroverted evidence that Father insulted and demeaned Mother to Children, the judge found Children's reasons for refusing to visit Mother to be "credible" and explained that he did not "get the sense that they had been programmed."[379] The court found that Children's rejection of Mother was "disproportionate to the actual evidence of alienation."[380] The hypocrisy of this finding is incredible. Family courts often use evidence that children's rejection of their violent fathers is "disproportionate" to the fathers' violence to find mothers guilty of PA.[381] Yet, when there is concrete evidence of a father's intentional attempts to demean and disparage a mother to their children, and the mother has not committed FV, the court uses the "disproportionality" of the children's reaction against a finding of PA.[382] In both cases (rejection of nonviolent mother versus rejection of violent father), the court measures the "proportionality" of the children's reactions in comparison to the father's behavior, always finding that the father has not done anything to warrant "his" children being kept from him.[383] The double standard in *Inna C.* illustrates the true purpose of PA theory: to excuse men's poor parenting.[384] If children reject contact with a violent father, they have been "alienated" by their mother because their father's violence was not severe enough to justify his loss of his parental rights. If children reject contact with a nonviolent mother because their father psychologically abused and manipulated them to do so, they have not been "alienated" because their father's psychological abuse and manipulation were

[375] *See supra* Sections V.C.–V.D.

[376] *Inna A.*, 2022 WL 3907568, at *6 (alteration in original).

[377] *See* Leonetti, *A Little Knowledge*, *supra* note 163 (manuscript at 52–54).

[378] *See Inna A.*, 2022 WL 3907568, at *6; *see also* discussion *supra* Part V; cases cited *supra* note 317.

[379] *Inna A.*, 2022 WL 3907568, at *6.

[380] *Id.*

[381] *See* Leonetti, *A Little Knowledge*, *supra* note 163 (manuscript at 52–54).

[382] *See Inna A.*, 2022 WL 3907568, at *6.

[383] *See id.*; Leonetti, *A Little Knowledge*, *supra* note 163 (manuscript at 52–54).

[384] *See generally Inna A.*, 2022 WL 3907568, at *6.

not severe enough to justify his loss of his parental rights. PA is simply a means to an end: making sure that men never lose their right to parent, even when they perpetrate abuse against their children or their children's mother.

The *Inna C.* court concluded that the "evidence of alienation by [Father]" was not strong enough to warrant Mother's reunification proposal.[385] Again, the hypocrisy of this is stunning. As I demonstrated in *Pedaling Snake Oil and Profiting From Pain*, when mothers are accused of PA and fathers seek coercive reunification programs or even custody reversals, the courts do not require any concrete evidence that mothers' behaviors are causing the alleged PA.[386] They order coercive reunification simply because the children are rejecting their fathers, regardless of the reason.[387] Rather than scolding and punishing Father the way that courts scold and punish mothers who attempt to protect their children from dangerous fathers, the court encouraged Father "to set the right tone."[388] The court ultimately concluded that "it was in the best interests of the children not to force them to spend time with their mother" and decided to "eliminat[e] the actual structural requirements about visits."[389] The court encouraged Mother to continue to "invite" Children to contact and "not [to] take offense if they keep on saying no."[390] When Mother pointed out that she had been trying that strategy for more than a year without success, the court admonished her that "the impulse that we have as judges is to fix, do something. Sometimes the best thing to do is to do nothing and just let time and space give that."[391] The judge indicated that his goal in refusing to award any visitation to Mother was "maximum flexibility" for "everyone."[392] Given the history of California family courts with maternal PA, the judge's apathetic attitude toward Mother's total loss of relationship with Children, engineered by Father, is incredible.[393] The court also then immediately proceeded to clarify that its order, denying Mother any court-ordered visits with Children, was a final one.[394]

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[385] *Id.*

[386] *See* Carrie Leonetti, *Pedaling Snake Oil and Profiting From Pain: The Monetization of the Junk Science of "Parental Alienation" in the California Family Law Courts*, 27 QUINNIPIAC HEALTH L.J. (forthcoming 2023) (manuscript at 11–23) (on file with author).

[387] *See id.*

[388] *Compare Inna A.*, 2022 WL 3907568, at *5 (encouraging Father to support Children in their relationship with Mother, but brushing off evidence that Father undermined Children's relationship with her and failing to provide court-ordered supports to reunification), *with* discussion *supra* Part V (highlighting that mothers lose custody of their children much more often than fathers after a finding of PA).

[389] *Inna A.*, 2022 WL 3907568, at *6–7.

[390] *Id.* at *7.

[391] *Id.*

[392] *Id.*

[393] *See id.*; *supra* Part V.

[394] *Inna A.*, 2022 WL 3907568, at *8.

The family court ordered Mother into therapy but gave no indication as to the purpose of Mother's therapy.[395] Mother's problem was that her abusive former partner vindictively turned Children against her. That was not a psychological disorder. It was a tragedy.

The Court of Appeal for the Second District upheld the trial court's order finding that the trial court did not abuse its discretion in refusing to order visitation between Mother and Children.[396] The Court of Appeal acknowledged what it called "the children's internalization of their father's negative feelings toward their mother" but characterized the trial court's order as "giving these teenagers some 'psychological space'" to "'incubate the emotional bonds' between the children and their mother."[397] This pop psychology has no more scientific validity than the courts' usual pop psychology of PA. It creates an appearance of a court system willing to bring any pseudo-psychology that it can to bear when justifying maximizing men's access to children and restricting women's access.

The Court of Appeal disingenuously characterized the trial court's order as one for "unstructured visitation," when the family court in fact refused to order visitation.[398] The "unstructured visitation" was, in practice, no contact between Mother and Children.[399] The Court of Appeal explained that the basis for the trial court's decision was that Children's "strong negative feelings toward their mother . . . were disproportionate under the circumstances" and their "complaints" about Mother "did not seem to warrant their total rejection of her."[400] This is the textbook definition of PA.[401] The court noted: "The children's testimony, which the trial court found credible, brought to full light how deeply rooted the children's negative feelings toward [Mother] were."[402] While my prior writings make clear that I do not believe that the "textbook definition of PA" is scientifically valid, particularly for forensic usage, the California courts regularly employ it in situations in which children's "deeply rooted" reasons for rejecting a violent father are not disproportionate to the fathers' violence and do rationally warrant a total rejection of contact.[403] In cases in which a mother is accused of "alienating" children from a violent father, the children's "disproportionate" "strong negative feelings" toward, and

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[395] *Id.* at *6.

[396] *Id.* at *9.

[397] *Id.* at *10.

[398] *See id.*

[399] *See id.*

[400] *Id.*

[401] *See* Milchman, *supra* note 331, at 237–39.

[402] *Inna A.*, 2022 WL 3907568, at *10.

[403] *See, e.g.*, County of San Diego v. P.B., 269 Cal. Rptr. 3d 914, 916–19 (Ct. App. 2020); P.M. v. S.S., No. D078381, 2022 WL 2352986, at *1–3, *18–20 (Cal. Ct. App. June 30, 2022); *In re* G.R., Nos. G059563, G059711, G059831, 2021 WL 2346303, at *1–5 (Cal. Ct. App. June 9, 2021); *see also* SAUNDERS ET AL., *supra* note 19, at 11.

overblown complaints about, the father become exhibit A for stripping her children from her.[404]

When *In re H.M.* and *Inna A.* are examined side by side, the double standard for women and men in the family court is palpable.[405] In *Inna A.*, the court treated Mother's complete loss of a relationship with her children as an unavoidable turn of affairs through no fault of Father, even though she had never mistreated them and Children's statements suggested strongly that Father was disparaging Mother to Children and involving them in his complaints about her.[406]

Father's uncontroverted behavior in *Inna A.* would have been the death knell for any mother accused of PA.[407] He insulted and demeaned Mother in the presence of Children.[408] He obstructed joint therapy between Mother and Son.[409] In fact, the court quashed its therapy requirement without Mother and Children ever having had a single session.[410] Daughter reported that she and Father together hated Mother.[411] Father failed to respond to Mother's attempts to pick up Children for visits.[412] Unlike most fathers who successfully allege PA in the California courts, Mother had no history of FV or maltreatment of Children.[413] On the contrary, the facts suggest that Father was a coercive and controlling abuse perpetrator, but his intentional disruption of Mother's relationship with Children was condoned and regularized by the courts.[414] While counsel for children and court evaluators regularly advance PA theories in the family courts and advocate for forced contact between violent fathers and victim children, Children's counsel in *Inna A.* argued against a finding of PA against Father.[415] Court personnel also regularly advocate for custody reversals from protective mothers to violent fathers as a "cure" for PA, but Children's counsel

[404] *Compare Inna A.*, 2022 WL 3907568, at *10 (PA accusation against father minimized), *with* cases cited *supra* note 403 (PA accusations against mothers used to punish mothers despite allegations of FV by fathers).

[405] *See generally Inna A.*, 2022 WL 3907568; *In re H.M.*, No. G057128, 2019 WL 3522043 (Cal. Ct. App. Aug. 2, 2019).

[406] *See Inna A.*, 2022 WL 3907568, at *2–3, *10.

[407] *See generally id.*

[408] *See id.* at *2–3.

[409] *See id.* at *3.

[410] *Id.* at *2.

[411] *Id.*

[412] *Id.* at *6.

[413] *See id*. at *14 ("We agree there were no allegations or evidence of abuse, neglect, or other egregious behavior on [Mother]'s part."); *see also* discussion *supra* Part V.

[414] *See Inna A.*, 2022 WL 3907568, at *2–3.

[415] *See id*. at *6; *see also* Leonetti, *Pedaling Snake Oil*, *supra* note 386, at 11–23.

in *Inna A.* argued that minimal visitation with Mother was the ideal remedy for Father cutting Children off from Mother.[416]

While the courts' decisions in *Inna A.* are, on their surface, enlightened, they are horrifying for their gendered double standard. If the courts treated all children's views with this level of deference and respect, they might be commendable for their child-centeredness, but the courts' willingness to listen to children only when they align with abusive fathers and not when they align with victim mothers demonstrates something entirely else. Even the Court of Appeal described the trial court's order as "unorthodox."[417] Unfortunately, it failed to recognize that what gave rise to the unorthodoxy was gender bias.

B. In re H.M.*: Even When They Do, There Are No Consequences*

In *In re H.M.*, the family court granted custody to an abusive Father who alienated Child from victim Mother.[418] Mother and Father separated when Child was three, after Father abused Child and threatened to kill Mother.[419] Prior to separation, Father engaged in digital surveillance of Child's phone and threatened "to take [Child] from Mother if she left him."[420]

When Child was six years old, the family court awarded Mother and Father joint custody with parenting time shared equally.[421] Child yelled at Mother for calling the police on Father and taking him to court, information that he only could have learned from Father.[422] The following year, Father told Mother that he would not return Child to her for her scheduled parenting time.[423] Father blocked Child from visiting Mother for ten months until the DA obtained a recovery warrant.[424]

Mother moved for interim custody of Child and suspension of Father's visitation.[425] Child's counsel recommended primary custody to Father.[426] Father filed an application for sole legal and physical custody of Child, alleging that Mother was "making inappropriate medical decisions for [Child]."[427]

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[416] *Compare Inna A.*, 2022 WL 3907568, at *6, *with* Gay v. Terpko, No. A148641, 2019 WL 1614521, at *1–3 (Cal. Ct. App. Apr. 16, 2019); A.S. v. C.A., No. G052341, 2017 WL 1506755, at *1, *8 (Cal. Ct. App. Apr. 27, 2017).

[417] *See Inna A.*, 2022 WL 3907568, at *12.

[418] *See In re* H.M., No. G057128, 2019 WL 3522043, at *1, *10, *13, *17, *25–26 (Cal. Ct. App. Aug. 2, 2019).

[419] *See id.* at *10, *14.

[420] *See id.* at *14.

[421] *See* A.M.S. v. A.C.M., No. G051533, 2016 WL 3077937, at *1 (Cal. Ct. App. May 20, 2016).

[422] *See In re H.M.*, 2019 WL 3522043, at *15.

[423] *A.M.S.*, 2016 WL 3077937, at *1.

[424] *In re H.M.*, 2019 WL 3522043, at *14.

[425] *A.M.S.*, 2016 WL 3077937, at *1.

[426] *Id.* at *2.

[427] *Id.*

Father moved from Orange County to Lake Arrowhead with Child without requesting a move-away order and refused to give Mother or Child's counsel their new address.[428] Before receiving the report of the Orange County Department of Social Services (DSS), the trial court granted Father sole legal and physical custody of Child and granted him a relocation order to move to Lake Arrowhead.[429] The Court of Appeal for the Fourth District reversed the trial court's custody and relocation orders because they had been made without adequate notice to Mother, a full evidentiary hearing, or the DSS report.[430]

Child subsequently tested positive for benzodiazepine, and DSS took him into protective custody.[431] At the time, Father regularly took prescription benzodiazepine.[432] Mother believed that Father had given the drug to Child, but the juvenile court rejected her theory because Child was in her custody when he tested positive, even though Mother had no known access to benzodiazepine.[433] The juvenile court again awarded full custody to Father.[434] While the court did not explicitly find that Mother gave Child the benzodiazepine, "the fingers were pointed at her."[435]

Child was "resistant to Mother's affection and attempts to interact with him" during their supervised visits.[436] Child repeatedly told the DSS caseworker that he did not want to have visits with Mother, once saying he did not want to visit because she "was always taking Father to court and hurting him."[437] During visits, he repeatedly accused Mother of "poisoning" him, information that he likely gleaned from Father.[438] At one visit, he claimed that Mother had gone to jail because she hurt him.[439] Child refused to remain during visitation with Mother.[440] Father waited in the parking lot during the visits so that he could pick child up immediately if he wanted to leave.[441] Child missed one visit because Father took him out of town for the weekend.[442]

Seeking to refute the allegations, Mother took a polygraph test, which indicated that she was telling the truth when she denied giving Child the

[428] *See id.* at *3–4.

[429] *Id.* at *1, *5–6.

[430] *Id.* at *10.

[431] *See In re* H.M., No. G057128, 2019 WL 3522043, at *1 (Cal. Ct. App. Aug. 2, 2019).

[432] *Id.* at *18.

[433] *Id.* at *23–24.

[434] *Id.* at *23.

[435] *Id.*

[436] *Id.* at *2. At one visit, when Mother tried to hug Child, "he resisted and said it was an 'assault.'" *Id.*

[437] *Id.* at *2–3.

[438] *Id.*

[439] *Id.* at *3.

[440] *Id.*

[441] *Id.* at *4.

[442] *Id.* at *3.

benzodiazepine and that Father and Stepmother were the only people who could have given it to him.[443] Father repeatedly failed to bring Child to conjoint therapy sessions with Mother.[444] Child continued to accuse Mother of "poisoning" him during therapy sessions.[445] When Mother denied poisoning him, he asked her to "take a lie detector test" because "Dad took one."[446] The therapist told the DSS caseworker that he was "very concerned that [Child] was being told that Mother had poisoned him."[447] Child "continued to be very rude to Mother, identified his stepmother as his real mother, and continued to maintain that Mother was evil and had tried to poison him."[448] Child often parroted nearly verbatim negative things that Father had told the therapist and others about Mother.[449]

After Father pulled Child out of school and made plans to move with Child to Nevada, Mother finally received a hearing on her petitions for custody.[450] The reunification therapist testified during the hearing that:

> Father has not been cooperative with conjoint therapy. Seven therapy sessions were either cancelled or not held because Father did not bring [Child] to [his] office. This was disruptive of the therapy and suggested Father was not encouraging [Child] to have contact with Mother. Father insisted [the therapist] confirm appointments before bringing Child. Father once said that even if [the therapist] called to remind him about appointments, he would not bring [Child].[451]

The therapist gave his clear opinion that "parental alienation of Mother and [Child] has occurred. . . . [Child]'s attitude toward mother has deteriorated particularly after Father obtained custody."[452] He noted that Child "told Mother to shut up, has refused to listen to her, and will not share information about his school or sports activities."[453] The therapist attempted to describe coercive control to the family court, explaining: "Power and control are elements of domestic violence and, in hotly contested custody cases, one parent uses the same kind of power and control by keeping the child from the other parent."[454] The court noted: "Mother has always expressed willingness to try to coparent with Father. Father had not expressed to [the therapist] a willingness to coparent

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[443] *Id.* at *4, *24.
[444] *Id.* at *5.
[445] *Id.*
[446] *Id.* at *5, *8.
[447] *Id.* at *5.
[448] *Id.*
[449] *See id.* at *8–9.
[450] *See id.* at *6–7, *17.
[451] *Id.* at *7.
[452] *Id.* at *9.
[453] *Id.*
[454] *Id.* at *10.

with Mother, and [the therapist] did not believe that Father was willing to do so."[455]

The therapist recommended that Mother's visits be unmonitored and increased to shared custody.[456] Father had an angry outburst during the therapist's testimony, yelling: "This is my son. He has no right to say that."[457] When the therapist asked to be excused from the case because he was afraid of Father, the family court minimized Father's angry outburst, characterizing him as "upset" but not "physically aggressive."[458] Father denied moving out of Orange County without court authorization (even though he clearly had) and denied ever inflicting DV on Mother despite her previous restraining order against him.[459]

During his testimony, Father made excuses for why Child had missed so many of his therapy sessions with Mother and blamed the therapist and DSS caseworker for failing to make reminder calls to him.[460] Father proposed that Mother fly to Nevada once per month to visit Child.[461] Father admitted that, even though the court had ordered him not to talk about the case with Child, he had shown Child phone records "to prove Mother had lied about Father's telephone calls."[462] Twelve-year-old Child met with the judge and reported that he wanted to remain living with Father, whom he described as his "best friend."[463]

Ultimately, the juvenile court held that "Mother had not shown a change of circumstances justifying a change in custody."[464] The court found that Child faced "ongoing alienation" from Mother.[465] The court noted that Father's "hatred" of Mother was "palpable" and that he had "aligned" Child against Mother.[466] The court found that Father made negative statements about Mother to Child and allowed others to make negative statements.[467] The court noted that Father violated court orders and failed to prioritize Child's joint therapy with Mother.[468] The court commented, however, that Child felt "safer" with Father.[469] The court ordered that joint therapy and monitored visitation between

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[455] *Id.*

[456] *Id.*

[457] *Id.* at *11.

[458] *Id.*

[459] *See id.* at *12–13.

[460] *See id.* at *11.

[461] *See id.* at *12.

[462] *Id.*

[463] *Id.* at *17.

[464] *Id.* at *19.

[465] *Id.*

[466] *Id.*

[467] *See id.* at *20.

[468] *See id.*

[469] *Id.*

Mother and Child must resume "immediately" with the goal of transitioning to unmonitored visits, that Child must remain at the visits for the entire time, and that Child must not have a cell phone at the visits.[470]

The juvenile court held a review hearing six months later and found that Child had only two visits with Mother over that time, each one lasting only a few minutes because Child communicated with Father on his cell phone to pick him up.[471] At the review hearing, Father asked for permission to move with Child to Nevada.[472] Incredibly, DSS "supported Father's move-away request and again recommended the dependency hearings terminate with exit orders" enshrining full custody to Father.[473]

The juvenile court found that Child was "extreme[ly]" aligned with Father and never "had any meaningful individual therapy to deal with the . . . destruction of the parental bond with mother."[474] Similarly, Father had not undergone therapy related to his "palpable animosity toward Mother," their ongoing conflict, and the impact of their poor relationship on their Child and his maternal relationship.[475] The court expressed concern about Father's "prior history of violating court orders . . . and willing[ness] to disobey court orders if HE believes it is in the best interest of [Child]."[476] The court also expressed concern about Father's unwillingness to engage in co-parenting counseling with Mother, lack of support for Child's joint therapy and visits with Mother, and inability to recognize the value of Child's relationship with Mother.[477] Despite these substantial red flags, the court ordered that Child remain in Father's care.[478] Further, even though the court found that Mother posed no threat to Child, her visits with Child were to remain monitored.[479]

On appeal (for the third time), the Fourth District held that the trial court erred in failing to reconsider its custody order given Mother's new polygraph evidence because the suggestion that Mother administered the benzodiazepine was the basis for the order granting custody to Father.[480] The Court of Appeal noted: "[Child] has suffered parental alienation from Mother that has worsened so dramatically while he has been in Father's custody that he no longer wants to see Mother and is hateful toward her."[481] The court nonetheless concluded that "the change in custody sought by Mother would not be in [Child]'s best

[470] *Id.* at *20–21.
[471] *See id.* at *21.
[472] *See id.*
[473] *Id.*
[474] *Id.* at *22.
[475] *Id.*
[476] *Id.* (emphasis in original).
[477] *See id.*
[478] *See id.* at *21.
[479] *See id.* at *23.
[480] *See id.* at *1.
[481] *Id.*

interest."[482] The court noted: "[Child] is happy and secure in Father's custody. [Child] wants to remain living with Father. He feels safe with Father and described him as his 'best friend.' Nobody except Mother wants to change this custody arrangement."[483] This description applies to every "alienated" child stripped from a protective mother in the case illustrations from *A Little Knowledge Is a Dangerous Thing*.[484] Unfortunately, in cases in which mothers attempt to protect children from violent fathers, courts find the mothers to have committed PA and on that basis remove their children from their care.[485]

The Court of Appeal also noted that the juvenile court's order "reflect[ed] a justified belief and hope that reunification with Mother can and should be achieved without the risk of harm to [Child] that might arise from removing him from Father's custody."[486] While the court's "belief and hope" were aspirational, they do not seem to exist when mothers are accused of PA.[487] Avoiding a traumatic custody reversal for the purpose of punishing a misbehaving parent is a laudable goal; it is a shame that children found alienated by mothers do not get the same consideration.[488] In contrast, all that appears necessary for violent fathers to retain custody of their children is the slimmest possibility of spontaneous improvement.[489] As the Court of Appeal noted in *H.M.*: "It *might be* that [Child]'s alienation from Mother can be healed while [Child] remains in Father's custody."[490]

The contrast between *In re H.M.* and the PA case illustrations in *A Little Knowledge Is a Dangerous Thing* is striking.[491] In case after case, protective mothers were excoriated and punished for subconscious actions or genuine attempts to protect their children from harm.[492] By contrast, the Father in *H.M.* was a DV perpetrator who flagrantly disobeyed court orders and actively encouraged Child's hatred of Mother solely out of vindictiveness.[493] In *In re H.M.*, however, Father was rewarded for his use of Child as a pawn in a campaign of terror against Mother with full custody of him.[494] The only explanation appears to be that courts treat with urgency children's loss of relationships with fathers—even violent ones—and view as optional children's relationships with mothers—even safe ones.

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[482] *Id.*

[483] *Id.* at *25.

[484] *See generally* Leonetti, *A Little Knowledge*, *supra* note 163 (manuscript at 17–43).

[485] *See id.*

[486] *In re H.M.*, 2019 WL 3522043, at *25.

[487] *See* discussion *supra* Part V.

[488] *See In re H.M.*, 2019 WL 3522043, at *25–26; discussion *supra* Part V.

[489] *See In re H.M.*, 2019 WL 3552043, at *25–26.

[490] *Id.* at *26 (emphasis added).

[491] *See generally id.*; Leonetti, *A Little Knowledge*, *supra* note 163 (manuscript at 17–43).

[492] *See* Leonetti, *A Little Knowledge*, *supra* note 163 (manuscript at 17–43).

[493] *See generally In re H.M.*, 2019 WL 3552043, at *10, *14, *19, *25–26.

[494] *See id.*

C. *Third Party Bias*

Interestingly, the courts appear to be able to see the gender bias in other agencies that they fail to recognize in themselves. In *In re H.M.*, the Court of Appeal, while exonerating the juvenile court of any abuse of discretion, was more than happy to criticize DSS's partiality in dealing with Mother and Father, complaining:

> We are concerned about [DSS]'s role in repairing the relationship between [Child] and Mother. Bluntly put, [DSS] supports Father wholeheartedly and wants to end this case. . . . Despite the evidence of parental alienation, [DSS] at one point recommended terminating jurisdiction with exit orders. [DSS] supported Father's request to move to Nevada, a request which should have been rejected outright. [DSS] has described Father's inconsistent compliance with the case plan as "substantial" while describing Mother's compliance as "adequate" even though Mother has done every single thing asked of her. At the hearing, [the DSS caseworker] testified she was concerned that *Mother* had not resolved the issues bringing [Child] into dependency even though Mother had taken and passed a polygraph test and [DSS] acknowledged it did not know how the benzodiazepine had gotten into [Child]'s system. It seems to us, that for the relationship between [Child] and Mother to improve, and for these dependency proceedings to terminate successfully, [DSS] will have to accept its responsibility to see this matter to the end and treat Mother and Father with impartiality.[495]

It is unfortunate that the Court of Appeal was not similarly critical of the juvenile court's biased treatment of Mother.

D. *Psychological Abuse*

The most concerning aspect of *Inna A.* and *In re H.M.* is that they demonstrate rare examples of the type of "alienation" with which courts *should* be concerned—the kind that the American Psychiatric Association recognizes is pathological and can harm children.[496] The social science literature documents the use of post-separation contact with children by FV perpetrators to control and punish former partners by derogating them and disrupting their relationships with children.[497]

[495] *Id.* at *26 (emphasis in original).

[496] *See* AM. PSYCHIATRIC ASSOC., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 715–16 (5th ed. 2013) (explaining that "problems relating to family upbringing" can include "the negative effects of parental relationship discord (e.g., high levels of conflict, distress, or disparagement) on a child in the family"); *id.* at 719 ("Child psychological abuse is nonaccidental verbal or symbolic acts by a child's parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the child.").

[497] *See* PETER G. JAFFE ET AL., CHILD CUSTODY AND DOMESTIC VIOLENCE: A CALL FOR SAFETY AND ACCOUNTABILITY 39–40 (2003); Emma Katz et al., *When Coercive Control*

The perverse reality of the California family courts is that, when a FV perpetrator seeks custody of children who have experienced his violence and a victim mother attempts to protect them, courts are quick to accuse her of PA based solely on her children's reasonable fear of a violent father. However, when a psychologically abusive father intentionally turns his children against a mother with no history of abuse and encourages them to mimic his abuse of her, the courts are quick to defend the father's right to continue to have uninterrupted access to his child victims and to warp their attitudes about gender and abuse in ways that will cause them long-term harm. By the time of the appeal decision in *Inna A.*, another year and a half had passed since the trial court's refusal to order visitation between Mother and Child in the hope of creating "psychological space" for Child to want to see her.[498] Despite that "space," Child still had not had contact with Mother, but the Court of Appeal placed no weight on the failure of the trial court's "unorthodox experiment" in upholding it.[499] It appears that, in the California family law courts, it is not so much contact with both parents that is a priority, but rather contact with fathers.

CONCLUSION

The sheer magnitude of the gender imbalance in the California family law courts' PA findings strongly suggests that subconscious gender biases have driven much of the courts' decision making. It simply beggars belief that, if PA were the prevalent phenomenon that the court custody evaluations suggest, the phenomenon would be almost exclusively limited to mothers and "victimization" would be almost exclusively the province of fathers. Instead, it appears that in most of these cases, children's claims of CAN are being discounted and ignored because the idea that they are "false" is consistent with prevailing implicit gender associations rather than valid forensic investigation. The time has come for California to stop executing witches.

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[498] *See Inna A. v. Roman A.*, No. B311140, 2022 WL 3907568, at *10, *12, *14 n.12, *15 n.13, *16 (Cal. Ct. App. Aug. 31, 2022).

[499] *See id.*