

Judicial Response to Court-Assisted Child Murders

by R. Dianne Bartlow, Ph.D.

Editor's Note: In this prodigious coverage of the grisly reality of children who are murdered by their abusive fathers, investigative journalist Dianne Bartlow provides an eloquent overview of her interviews with family court judges from 21 states. Ms. Bartlow launched her study in reaction to a jaw-dropping report that, over a two-year period (2009-2011), 175 children were murdered by fathers who had been accused of domestic violence. The author gives a narrative of the responses given by judges from jurisdictions that had experienced at least one of those child homicides. As you will learn, at least some of these judges had, as a result of these tragedies, developed a more realistic and nuanced understanding of the dynamics underlying male battering as it manifests in child custody cases. Thankfully, some reported their jurisdiction developing enhanced procedures or at least an intention to improve their practices in handling DV cases, so that future recurrences of child murder—which is, of course, the worst imaginable outcome of a child custody cases—could be prevented.

“Every day I have DV cases where I say, ‘I hope I’m making the right decision for everybody involved here.’”

—Judge Tara Reilly¹

INTRODUCTION

The murder of a child is one of the worst abuses imaginable. When the footprint of the family court system is seen to contribute to an innocent child’s demise, it is all the more shocking when one considers that courts are, in theory, designed to dispense justice and protect the public. Judges, well-meaning in many cases and who are otherwise committed to their professions, for the most part, can also consciously and sometimes unconsciously permit and contribute to the endangerment of children in cases that involve domestic violence (DV) and

¹ Telephone interview with Judge Tara Reilly, June 15, 2011.

child custody. Drawing on the work of Joan Meier on DV child protection, attorney Lois Schwaeber indicates there is an alarming pattern nationwide of awarding custody to abusive parents.² Psychologist Mo Therese Hannah and DV advocate Barry Goldstein have drawn attention to the legal injustices suffered by battered mothers in the nation's family courts in their ground-breaking book *Domestic Violence, Abuse, and Child Custody*, referring to the practice as the "dirtiest little secret in America."³ Two recent books⁴ and news stories⁵ chronicling the deaths of too many children who were placed with abusive parents, or were allowed visitation with them, are illustrative of a pattern that indicates justice is not being served in preventing more child tragedies. A major U.S. Department of Justice study demonstrates how inadequate training of evaluators and other court professionals, and other outdated practices lead to harmful outcomes for children in DV custody cases.⁶

The investigative study detailed in this chapter was inspired by an article that documented news stories about 175 children who were murdered in a recent two-year period by abusive fathers involved in contested custody cases.⁷ The chapter seeks to learn what the custody courts are doing in response to these tragedies and the new research that is available in order to better protect children in the future.

In 1994, Anne Scripps Douglas was murdered by her husband at her home in Bronxville, NY. Ms. Douglas had obtained an order of protection but was rebuffed in her efforts to extend the order to keep him out of her home. The judge in the case received severe public criticism for failing to help the victim. Thereafter, the judges in Westchester County met to discuss

² Lois Schwaeber, "Recognizing Domestic Violence: How to Know It When You See It and How to Provide Appropriate Representation," in 1 *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues* 2-21 (Mo Therese Hannah & Barry Goldstein eds., 2010) [hereinafter *Domestic Violence, Abuse, and Child Custody*].

³ Barry Goldstein & Mo Therese Hannah, "Introduction," in *Domestic Violence, Abuse, and Child Custody*, *supra* note 2, at xxix.

⁴ See Phyllis Chesler, *Mothers on Trial: The Battle for Children and Custody* xiv, 76 (2011). Chesler argues that not only are battered women losing custody to batterers in record numbers, but children are also being brainwashed by fathers while mothers are being falsely accused of brainwashing them. She indicates even children who have been sexually abused are given to abusive fathers. Thus, when fathers fight for custody, they win. Challenged mothers remain custodially vulnerable—no matter how maternally fit they are, according to Chesler. See also *Domestic Violence, Abuse, and Child Custody*, *supra* note 2.

⁵ See <http://dastardlydads.blogspot.com/>.

⁶ Daniel G. Saunders, Kathleen C. Faller & Richard M. Tolman, *Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations* (Oct. 31, 2011), <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf> [hereinafter Saunders' study]. (The findings in the Saunders' study should not be taken as findings from the National Institute of Justice, which is part of the U.S. Justice Department. Nevertheless, their selection of Dr. Saunders and his colleagues for the grant and review of their work supports its credibility.)

⁷ Dastardly Dads BlogSpot, *175 Killer Dads: Fathers Who Ended Their Children's Lives in Situations Involving Child Custody, Visitation, and/or Child Support* (USA) (Feb. 25, 2011), <http://dastardlydads.blogspot.com/2011/02/175-killer-dads-fathers-who-ended-their.html>.

their responses to this tragedy and decided to make it easier for other potential victims to obtain needed protection.⁸

The complexity of the family court structure can make it difficult to pinpoint one agent working in the system as the culprit behind these child tragedies; however, family court judges can be the last stop in declaring a child's fate in the cases that come before them and, therefore, bear a great degree of responsibility for the fate of an innocent child.

This chapter centers on best practices and reforms family court judges are implementing in twenty-one states where children were murdered in the two-year period from 2009 to 2010, stemming from DV and contested custody cases. The chapter also focuses on the framework the judges interviewed for this study use in making decisions around DV and child custody, and the impediments that arise and obscure DV in the cases that come before them.

METHODS

This study performed research and telephone interviews on family court practices in jurisdictions where child murders occurred. The Dastardly Dads Blogspot,⁹ which chronicles cases of children who were murdered by abusive fathers involved in contested custody cases, was used in determining which states, counties, and family courts in those jurisdictions might be helpful in shedding light on court responses to child murders in their communities. News stories were used to verify the child murders discussed by the Dastardly Dads Blogspot. Forty judges or their court representatives were interviewed.¹⁰

Not all of these child tragedies were the result of a family court ruling in the specific jurisdiction where the murder occurred, but all involved some dimension of DV. In one case, a custody order had been issued in one state but the child was murdered in another state. In another case, the child murder and the custody case occurred in different counties. Still, an effort was made to interview judges in those courts in jurisdictions related to the child murder to see what measures they were taking to prevent future child murders.

In light of ethical considerations, the aim was not to ask judges about any specific case involving child murders in their jurisdictions, although some judges did discuss some of those cases. While the judges interviewed may have been aware of specific child tragedies in their jurisdictions, this study did not warrant or conflate that awareness with their overseeing any of the cases being researched. However, some bench officers did speak candidly about the kinds of cases that come before them.

⁸ Barry Goldstein, *Scared to Leave Afraid to Stay: Paths From Family Violence to Safety* 61 (2002).

⁹ See *supra* note 5.

¹⁰ The judges and their representatives interviewed were from the states of Arizona, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Missouri, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, and Wisconsin.

Letters of request to conduct telephone interviews pertaining to child murders that occurred in 2009 and 2010 were sent out via regular mail, e-mail, and facsimile to family court judges in the jurisdictions that were part of this study. A number of the judges responded that they would be unable to participate in the study either because they felt it was inappropriate or, in one case, considered the request to be harassment. In a number of cases, judges in the jurisdictions where the child tragedies occurred simply did not respond. On the other hand, the judges who were interviewed were most helpful in articulating their courts' best practices around DV and child custody in addition to, in some cases, responding with their thoughts on the new research¹¹ and an openness and desire to learn more about how their practices could be enhanced by the new research. While child murders stemming from contested DV custody cases were committed in many jurisdictions nationwide, this study only includes those states where judges or their representatives were available to be interviewed.

STATE RESULTS

Arizona

In 2009, there were two cases involving child murders in the Arizona counties of Coconino and Maricopa. Coconino County Superior Court Integrated Family Court Coordinator Wendy Kasprzyk-Roberts discussed the murder of three-year-old Teigan Peters by her father, who was described as "despondent and possibly suicidal as a result of a recent divorce and determination of the custody of his daughter," in a *NAZ Today* article,¹² and explained that while the murder of Teigan Peters occurred in Coconino County, the case went through the Maricopa County Arizona (Mesa/Phoenix) system.¹³ Judge Fridlund-Horne is the sole judge representing the county's Integrated Family Court, and the aim of the integrated family court is to promote a "one family, one judge" approach in order to reduce conflicting orders and enhance the ability of the judge to assess what the family needs.¹⁴

In a 2009 Maricopa County case, a five-year-boy was killed by his father. The mother of the child had objected to the custody arrangement three months prior to the death of her son and reportedly filed a request to obtain sole custody after custody had been awarded to the father the previous summer.¹⁵

In 2010, two other tragedies involving children were reported in Maricopa County. In one case, a mother of two children, who were allegedly murdered

¹¹ Id.

¹² Quoted in "Coconino County Sheriff's Detectives Investigate an Apparent Murder Suicide at Jacob Lake," *NAZ Today* (June 22, 2009), http://www.naztoday.com/news/flagstaff/coconino-county-sheriff-s-detectives-investigate-an-apparent-murder-suicide/article_98698139-2d84-5697-8390-f4b5b3dc582c.html.

¹³ E-mail correspondence with Wendy Kasprzyk-Roberts, Mar. 8, 2012.

¹⁴ See http://www.coconino.az.gov/index.aspx?NID=560_.

¹⁵ See http://blogs.phoenixnewtimes.com/valleyfever/2010/11/phoenix_dad_convicted_of_murde.php; see also <http://dastardlydads.blogspot.com/>.

by their father, had been struggling for years to have her kids, according to writer Dan Neligh. The parents had joint custody of the children but were undergoing a divorce.¹⁶ The father Andre Leteve was apparently worried that the mother was going to move to Florida with the boys.¹⁷

At this writing, there is no information from judges in these latter Arizona jurisdictions about any reforms they might be implementing in light of these murders.

California

In 2009, there were two cases of child tragedies in California: one in El Dorado County and the other in Ventura County. In 2010, there were seven cases involving child tragedies in the counties of Los Angeles, Orange, Riverside, Sacramento, and San Bernardino.

In San Bernardino County, reporter David Keck indicated, “For the second time in two weeks, a Victor Valley man has shot his son and then himself.” Keck reported that “Detectives believe Jesus Roman Fuentes was divorced from the boy’s mother” and, “had taken the boy for a visit and failed to return him to his mother at the specified time of 4:30 p.m.” Keck noted, “The killing comes little more than a week after a Pinon Hills man, Stephen Garcia, 25, shot and killed his infant son, Wyatt, and then killed himself.”¹⁸

In the latter case, the mother Katie Tagle, petitioned Judge Robert Lemkau’s court on an ex parte order to protect her son, but Judge Lemkau said he believed she was “lying,” and he kept the visitation orders in place along with the scheduled mediation sessions.¹⁹

According to San Bernardino County Judge Tara Reilly, there is a lot buried in the file on the Tagle case, but, “Nobody should come into our courts expecting to be called a liar even when they do” appear to be disingenuous.²⁰ She recalled a few cases in her jurisdiction where children were killed by a mother, by a mother’s boyfriend, and by a father.

¹⁶ See Dan Neligh, *New Details Emerge in Killing of Scottsdale Boys* (Apr. 6, 2010), <http://www.azfamily.com/news/Details-emerge-in-murder-of-young-boys-89741672.html>.

¹⁷ Jose Zavala & Ofelia Madrid, *Scottsdale Police: Father Who Killed Sons Was Divorcing* (Mar. 31, 2010), available at <http://www.azcentral.com/news/articles/2010/03/31/20100331-scottsdale-dad-divorce-shooting.html>.

¹⁸ See David Keck, “Man Shoots Son, Self,” *Hesperia Star* (Feb. 10, 2010), available at <http://www.hesperia.com/article/20100209/NEWS/302099976/0/SEARCH?template=printart>.

¹⁹ Cara Tabachnick, “Failure to Protect: The Crisis in America’s Family Courts,” *Crime Report* (May 6, 2010), <http://www.thecrimereport.org/news/inside-criminal-justice/failure-to-protect-the-crisis-in-americae28099s-family-courts>; see also Cara Tabachnick, “When Fathers Kill Their Sons,” *Daily Beast* (May 5, 2010), <http://www.thedailybeast.com/articles/2010/05/05/fathers-who-kill-their-kids.html>. Mediation is inappropriate in DV cases, (see Joan Zorza, “Child Custody Practices of the Family Courts in Cases Involving Domestic Violence,” in *Domestic Violence, Abuse and Child Custody*, *supra* note 2, at 1-13–1-20), but courts often use mediation in these cases either because they fail to recognize the DV or do not understand the problem of engaging in mediation with an abuser.

²⁰ Telephone interview with Judge Tara Reilly, June 15, 2011.

Judge Reilly said statewide changes in the past few years have helped bench officers and parties who come to the court requesting restraining orders related to DV. One significant change is that hearings are now all recorded. Judges no longer sit in their chambers and hand a petition back to the bailiff denying the request. Judges now must state the reasons for denying restraining orders from the bench. "This allows the person requesting the order to offer additional information pertinent to the order," according to Judge Reilly. "And often when they do, if I was leaning toward not granting it, often-times when I get this supplemental information, it's very clear that I need to grant this restraining order. So that's one change statewide that's been quite helpful."²¹ Additionally, she stated that DV training is required for family law judges. The training and additional transparency from the bench have contributed to her knowledge of how best to avert the child tragedies that occurred in her jurisdiction.

She has seen far more incidents of adult victims of DV being killed than children as a consequence of DV, with the latter representing rare occurrences. Nonetheless, a child being murdered is a horrible tragedy. In one case, the father not only killed the child, but also himself in a murder-suicide. The mother had requested restraining orders against the father on three separate occasions. In all cases, the restraining orders were denied. The complexity of the case had to do with both petitioner and respondent hurling accusations against one another that included the mother showing evidence that the father was threatening her and was a danger to her and the children. On the other hand, the father presented evidence that the mother was provoking him with text messages showing the mother having sex with her new boyfriend.

The judges in this particular case wondered why, if the mother was so fearful of the father, she provoked an escalation of the violence. The result was that the judges decided the mother was an out-of-control individual who provoked his violence. Subsequently, the father took the baby on his visitation and killed the child and then himself. According to Judge Reilly, "It was horrible, absolutely horrible." The last judge to hear the case was so distraught that he took a leave of absence, was subsequently challenged in an election, and lost his job over the ruling.

In responding to the notion that DV experts have recognized a disturbing trend nationwide, whereby custody is being awarded to abusive parents,²² and that batterers today are at least as likely if not more likely to win custody than are nonviolent fathers, a finding that matches those of the gender-bias studies conducted during the last quarter of the twentieth century,²³ she thought the assertion was probably true, and illuminates why educational courses pertaining to issues of DV should be required of bench officers who sit in family law.

²¹ Id.

²² Schwaeber, *supra* note 2.

²³ Zorza, *supra* note 19, at 1-8.

It is not sufficient for judges to take courses on how to hear a DV case; judges need to learn to identify DV, including the patterns and characteristics of batterers, and DV signs. Judges should be mindful of a husband or father who comes into court and presents as “smooth,” “articulate,” and “charismatic,” because judges might be prone to think, “Wow, what a great guy.” “There are some batterers, the ‘classic batterers,’ they sell very, very well in court. And they’re going to intimidate the hell out of the other side, and they’re gonna come across as the parent who’s got it all under control . . . we need to watch for that.”

On the other hand, “the woman standing there, very quiet, very meek, afraid to speak, doesn’t speak up in her own defense, and does not present well.” “A red light should go on in your head that this is very possibly a situation of a classic batterers’ pattern.”²⁴ Judge Reilly believes that training and education involved in fully understanding the patterns abusers use is important for judges in her county court.

“In the state of California, perpetuating DV in front of a child—even if you never lay hands on that child—or just having that child observe it is now considered child abuse.” To this end, individuals who come into her court must have the understanding that abusing children by exposing them to DV is against the law. “I must say that a hundred times a week to people in my courtroom and I watch their jaws drop. ‘You’re abusing your child by exposing your child to this violence. It doesn’t matter that you don’t touch the child; the fact that the child hears it or sees it is abuse.’”²⁵

While mediator recommendations are an important component to a judge’s decision regarding custody arrangements, Judge Reilly asserted that even though mediators are required to have DV training, not all have the same skill set. When she is not quite certain of a particular mediator’s skills, she pays closer attention to the recommendation. This scrutiny is motivated by the DV training she has taken, which she believes is absolutely crucial for bench officers.

In response to gender bias and the minimization of violence against women concerning the failure to take violations of restraining orders seriously, Judge Reilly stated, “I think that’s a true statement” and added that she is “shocked” at the many cases that come before her involving men and women where she issued a restraining order during an ex parte emergency hearing, and twenty-one days later, she issues a permanent order, and an impediment to that order is when law enforcement does not honor it. “[M]y jaw drops,” she said. She indicated she will have her court clerk make sure the order is in the California Law Enforcement Telecommunication System (CLETS), and if it is, she strongly encourages the victim to connect with the police division’s watch commander with regard to law enforcement enforcing an order of protection. “It infuriates us because we go through a lot to issue these orders . . . and my God, they’re meant to protect!”²⁶ Judge Reilly’s assertion is astonishing when

²⁴ Id.

²⁵ Id.

²⁶ Id.

one considers that a CLETS restraining order is imputed in a criminal law database that law enforcement officers throughout the county can access to verify that the order exists.

Judge Leonard Edwards is a representative from the Orange County Superior Court and a legal scholar engaged in issues of DV and child abuse. He was a contributor to the Elkins Family Law Task Force (2010) report, and a 1999 report produced by the National Council of Juvenile and Family Court Judges (NCJFCJ).²⁷ He is also the first recipient of the 2010 Leonard Edwards Champion of Peace Award (for whom the award is named) that is presented by the Santa Clara County DV Council. The award is designed to recognize the contributions that individuals make to promote peace and to stop family violence. For this award, individuals must have a demonstrated a commitment to peace in the family and community for twenty years minimally.

According to Judge Edwards, the family court system is “dysfunctional.”²⁸ He is very disappointed that communities are not coming together regarding DV, and the frustration motivated him to head a five-year project where “we put our words into action” to make a difference by holding monthly council meetings in thirteen different communities, including court systems where leaders in the community (including DV advocates and others) could stand collaboratively in support of children. While there are better efforts being implemented to prevent DV than thirty years ago, the changes have been incremental. One program he was involved in included DV advocate perspectives concerning the best ways police can respond to DV incidents, and each year he and the project participants have revisited the best practices pertaining to children who witness DV.

For fifteen years, he has organized a conference for every state to form a DV council, but there is a lack of leadership interest in this effort. Still, he believes what is beneficial is the practice in place through his program, which assesses contested custody, DV, and the protocols that prevent any case from proceeding forward into mediation. His program supports the parties, and usually the mother who is the victim, by encouraging them to participate in mediation only through what he calls the protocol of a shuttle mediation or telephonic mediation.

Twenty to thirty advocates and individuals from delinquency, dependency, and family courts, among others, participate in this effort so that the DV victims have support. There is also a committee made up of children who witnessed DV in the family.

Judge Edwards points out that “it takes bold leadership and considerable effort to overcome the inertia of legal practices and traditions that trace their

²⁷ See Elkins Family Law Task Force, *Final Report and Recommendations* (Apr. 2010), <http://www.courts.ca.gov/documents/elkins-finalreport.pdf>; National Council of Juvenile and Family Court Judges, *A Judicial Guide to Child Safety in Custody Court Cases* (2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

²⁸ Telephone interview with Judge Leonard Edwards, May 17, 2011.

roots to the Middle Ages,”²⁹ particularly within an adversarial system that does not benefit any of the parties.³⁰

For Sacramento Superior Court Judge James Mize, in spite of the challenges family court judges face, there is a lot they get right in the decisions they make surrounding child custody matters and divorce. He has a strong interest in DV and has taken scores of DV courses. He also taught DV courses for virtually every new family law judge in California. “I tend to be on the extreme with respect to DV. I preach . . . not just zero tolerance . . . but zero tolerance for the allegation of DV.”³¹

I tell judges and I tell the parties in my court, “I’ve got two choices right now, I can either make some orders that protect the children and protect the spouse or not.” If I make an order to protect the child and protect the spouse, and it turns out that there is no DV, that it’s all been a made up story for purposes of gaining an advantage in custody or something, then I have harmed a parent and harmed the child, too, by virtue of having a period of time where they have not had custody or unsupervised visitation for a period of three months, six months, maybe even nine months or longer. However, if I deny the DV restraining order or . . . I don’t make any changes in the custody, and there really is sexual abuse going on, there really is violence going on, then I may have killed a child. . . . With respect to those two choices . . . it’s easy for me to make that call. . . . I can always make up time to a father or a mother who has been denied child visitation for a period of time, but I can’t make up a child being beaten again or sexually abused after they thought possibly the matter was going to be resolved by going to court.³²

Balancing legislative mandates with decisions courts make regarding DV is not always easy. For example, California Family Code Section 3044 says an abuser cannot get custody until a significant time period passes subsequent to the DV, or until the abuser has completed a fifty-two-week course or is in a position to get custody back. In all cases, it is “extraordinary” for custody to be granted when there has been a DV offense. Judges are bound by this legislation, and as well intentioned as it is to combat DV, the legislation does not help judges ferret out the nuances of the custody cases involving DV. Judge Mize asked, “Who do we give the child to? The DV perpetrator or the meth addict?” His response to the notion there is a trend of awarding custody to DV

²⁹ Leonard Edwards, “Comments on the Miller Commission Report: A California Perspective,” 27 *Pace L. Rev.* 627, 639 (2007), available at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1137&context=plr>.

³⁰ *Id.*

³¹ Telephone interview with Judge James Mize, Mar. 21, 2012.

³² *Id.*

perpetrators was that this “simply doesn’t exist,” adding there is not a judge he knows of who would do that:³³

But they may do that if in fact the choice is between a DV perpetrator having a single episodic incident years earlier, and has appropriately taken courses and understood the consequences,³⁴ versus somebody who is much worse who didn’t do DV but is worse for the child because they’re in another brain world.³⁵

In response to concerns that women litigants are often given little credibility in family courts with regard to issues of DV, Judge Mize indicated, “I’m accepting the story at the beginning as true for purposes of my immediate court action period. . . . because the risk of making the choice in the wrong direction is much more serious than the risk of making it in the right direction.” There is no bias against women’s testimony since most of the complaints of DV are by women, and he grants those restraining orders 100 percent of the time. If anything, it is the opposite in his court and in the courts of judges that he has taught. He added there are cases where women and men lie about what happened and about the facts of their relations to gain advantage; however, “with respect to allegations of DV, the statistics always show that the probability of the DV actually being found after it’s been alleged, is just far, far, far greater by a great order of magnitude, than there is a finding later that the whole thing has been fabricated.”³⁶

³³ Judge Mize’s assessment is correct in that the judges interviewed for this study could not fathom the notion of deliberately sending children to live with an abuser. The more common problem is when the courts use flawed practices that result in minimizing or denying valid DV complaints. The finding in the Saunders’ study, *supra* note 6, that court professionals with inadequate DV training tend to believe the myth that women frequently make false allegations to gain an advantage, helps explain the frequency with which courts make findings against true DV complaints.

³⁴ An important element needed by court professionals is an understanding of DV dynamics. DV consists of tactics abusers use to maintain what they believe are their rights to control their partners. An isolated incident that is not part of this pattern and not committed to maintain control can be illegal and harmful but is not the kind of DV that places children at risk. Inadequately trained professionals often misunderstand the circumstances when an abuser commits physical abuse “only” once or a few times. A perpetrator does not need to do more because the victim knows what the abusive partner is capable of and what legal tactics the perpetrator of abuse uses sufficiently to coerce, control, and enforce obedience. Courts often reach mistaken conclusions that an abuser might have committed some DV in the past but is no longer dangerous. While this could happen in an individual case, it is extremely rare because an abuser’s belief system does not often change. Similarly, the research demonstrates that only accountability and monitoring (but not batterer programs, anger management, substance abuse, or mental health treatment) have been shown to create long-term change in abusers’ behaviors. Joan Zorza, *supra* note 19, at 1-11, argues “batterer intervention programs make no, or at best a 5 percent difference in ending men’s violence and more than double the rearrest rate for unemployed men who attend them.” She adds, “[T]he fact that these programs are the main court-imposed sanctions for wife beating is another indication that the system fails to protect women and children and still trivializes the violence against them.” This is another reason why court professionals would benefit from consulting with DV experts who understand DV dynamics.

³⁵ Telephone interview with Judge James Mize, Mar. 21, 2012.

³⁶ *Id.* This is an important point that is supported by research. Nicholas M.C. Bala et al., *Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper* (2001), available at http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/2001_4/pdf/2001_4.pdf.

In response to the notion that some mediators are inadequately trained, Judge Mize has not seen any mediators being dismissive or cavalier. Judges “are not advocates of a particular agenda; we are here to protect children and to determine the truth.” But there are cases where men and women will lie, and judges have to be open to it. The mental health professionals provide assistance in helping judges see the validity of the testimony. “We’re adamant about protecting DV victims here.” It is important to point out that family courts are protecting victims.

He said a major problem for battered women is that resources and services designed to help them are being dried up. “That’s the biggest shame.” Judge Mize added, “the more money we leave out for these services, hurts women and men.”³⁷

Los Angeles Superior Court Judge Zeke Zeidler indicated his primary focus has been on child protection. Child welfare and juvenile dependency has been his primary bench assignment. In some cases, there is an intersection with the family court where child welfare cases are considered.³⁸ One of his judicial colleagues, Los Angeles Superior Court Commissioner Jacqueline Lewis, put together a bench guide with protocols focusing on DV and dependency.

The Administrative Office of the Courts adopted the guide, which covers DV issues such as how to do a restraining order and differentiating between DV and anger management. This guide also helped to identify and distinguish which cases are violent altercations and examples of DV. The publication has since been replicated on the state level and for the NCJFCJ.

Judge Zeidler said, “There is a lot of training and education that goes on for both the bench bar and social workers.”³⁹ Every year the courts have a program called “Beyond the Bench,” to address the problem of DV, and, nationally, the NCJFCJ has various initiatives that deal with DV issues.

Judge Zeidler indicated that the main focus in the past couple of years in the Los Angeles dependency arena has been getting people to understand DV dynamics and how to spot what truly is DV as well as identifying what services the parents need so that orders can be issued for them to get anger management counseling or individual counseling.⁴⁰

Judge Zeidler asserted that the California Family Code Section 3044 stipulates a presumption against placing children with DV abusers. Commissioner

³⁷ Telephone interview with Judge James Mize, Mar. 21, 2012.

³⁸ Telephone interview with Judge Zeke Zeidler, Mar. 6, 2012.

³⁹ *Id.*

⁴⁰ People who need anger management training are unable to control their anger toward anyone, so they might assault a waitress, bank teller, or police officer. Most DV offenders have good anger management control and limit their offenses to their partners, and they will wait until there are no witnesses before hurting their victims. Mental health treatment can benefit many people, including abusers; however, DV assaults should not be conflated in all cases with mental illnesses on the part of the abusers. In fact, Joan Zorza suggests it is only in family courts where the victims and perpetrators are expected to “get along.” She asserts, “[c]ourts would never order bank owners and bank robbers to attend couples counseling to improve their communication skills and cooperativeness.” Zorza, *supra* note 19, at 1-12.

Lewis, who joined Judge Zeidler in the interview, suggested the law could be applied even without a conviction.⁴¹

Judge Zeidler said his court provided more of an emphasis on whether the victim's parents are able to adequately show that they can ensure the safety of the children rather than an emphasis on placing a child with an abusive parent. He said to this end, the Greenbook project⁴² is instructive. One of the significant recommendations "is that you shouldn't further abuse the victim and the children by taking the children away from the victim."⁴³

Commissioner Lewis stated, "I think we also need to realize that there are very few cases in here that have to do strictly with DV. Oftentimes people have mental health issues, substance abuse, and physical abuse issues. So all of that complicates the decision." The question is not just whether a victim parent can protect but "whether a child is safe in that home."⁴⁴

She said bench officers also "try to do training for judicial officers and lawyers about the different ways a batterer presents . . . in court." The perpetrator can seem "much more put together, calmer, etc., than a victim, and the education surrounding that hopefully helps the judiciary make better decisions versus just taking a look as to seeing who looks better on paper."⁴⁵

The training they conduct is mainly for judicial officers, and there is not a lot of changeover in Los Angeles, although statewide there is. In California every time a judge starts a new assignment, within six months to a year, that judge must take an overview course in the specific area of law over which the judge presides.

The Administrative Office of the Courts in California has an entire DV training section that is conducted by a leading advocate expert who runs the training every other year in a three-day intensive session. "Bobbie Welling [the trainer] is amazing, and she pushes the subject at every given opportunity; at every Juvenile Law Institute we have sessions on it," according to Commissioner Lewis. While there are other national training modules, "very few states I have found, if any, have the kind of training within the state that California does."⁴⁶

Other court efforts include monthly brown bag sessions open to all the judges and attorneys with assistance from the DV advocate community. The training is not only designed for the judiciary, but for lawyers as well. "I'm working with the Department of Children and Family Services to set up a training module in their academy on DV."⁴⁷ Judge Zeidler echoed the contention

⁴¹ Telephone interview with Commissioner Jacqueline Lewis, Mar. 6, 2012.

⁴² Susan Schechter & Jeffrey L. Edleson, *Effective Intervention in Domestic Violence and Child Maltreatment: Guidelines for Policy and Practice* (1999), available at <http://www.thegreenbook.info/documents/Greenbook.pdf>.

⁴³ Telephone interview with Judge Zeke Zeidler, Mar. 6, 2012.

⁴⁴ Telephone interview with Commissioner Jacqueline Lewis, Mar. 6, 2012.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

that social workers and attorneys must also be included in DV training, and it is critical to make programs available for the perpetrator and the victim of DV.

Commissioner Lewis recently conducted training on DV cases in Mississippi and was shocked there was no related program in place to deal with matters of intervention or provisions for DV support groups. “I mean, I was amazed by that and that’s true of many, many states . . . we are actually far ahead of the curve as much as I think we are sometimes behind it.”⁴⁸

The training Commissioner Lewis conducts includes advocates from the shelters, who share information on both shelter and batterers programs. Partnering with DV advocates for the training has not always been easy and, in fact, has been challenging. “The point of view of child welfare versus the DV advocates can sometimes be so opposed that trying to get those two systems to talk to each other is sometimes a challenge.”⁴⁹ Still, the partnership is one that is crucial in combatting DV.

Retired Orange County Superior Court Judge Michael Naughton suggested that violent and abusive behavior is not always predictable, even when competent mental health professionals are involved.⁵⁰ In one Orange County case, reporter Sean Emery stated that a man, woman, and an eight-year-old girl were killed in an apparent murder-suicide at a Fountain Valley Home. The husband reportedly was angered by a custody dispute and shot his wife and daughter. Ultimately, he also took his own life.⁵¹ Judge Naughton, who previously served as a criminal attorney, indicated that necessary reforms include determining whether weapons are involved in DV cases that come before him, since he believes the vast majority of homicides involve firearms.

Judge Naughton suggested that attending seminars was important, and he had worked to increase DV training through the dedicated DV Court,⁵² which is designed to better assist DV victims and their children as well as to enhance treatment and the accountability of batterers.⁵³

Judge Naughton has not observed abusers gaining custody of children and pointed to California Family Code Section 3044 whereby an individual who has perpetrated DV is not someone who has the best interests of the child. Section 3044 forbids judges from granting custody of children to abusers. The DV presumptive factor is to be used in considering the best interests of the child. He was adamant in his assertion that the California Family Code mitigates against giving custody to the abuser but did indicate he could not speak to the priorities of other jurisdictions.⁵⁴

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Telephone interview with Judge Michael Naughton, June 2, 2011.

⁵¹ Sean Emery, *Girl, 8, Among Three Dead in Murder-Suicide* (Aug. 21, 2013), <http://www.ocregister.com/articles/childe-274761-woman-home.html>.

⁵² Telephone interview with Judge Michael Naughton, June 2, 2011.

⁵³ Superior Court of California, County of Orange, Amended Administrative Order No. 06/2 (May 7, 2007), available at <http://www.occourts.org/general%2Dpublic/notices/general/ordermo0602.pdf>.

⁵⁴ Telephone interview with Judge Michael Naughton, June 2, 2011.

Judge Naughton said that no institution is perfect, and family courts were not the exception, but for the most part, judges try to do the right thing. Regarding Parental Alienation Syndrome (PAS), he indicated that he did not know anyone who believes in the theory and that he wondered about its founder (the late Dr. Richard Gardner).⁵⁵ Regarding mental health professionals who are inadequately trained, he said these individuals must show evidence that they are indeed adequately trained and are using up-to-date literature.⁵⁶

When asked about gender bias in the courts, Judge Naughton suggested that half of the judges on his family court panel are women, that California set the “gold standard” for bench officers, and that the state can be viewed as a model for effective family court operations for the nation.

Colorado

In 2010, there were two reported tragedies involving children in the Colorado counties of Jefferson and Logan. Three-year-old Alexis McClain was allegedly slain by her father Mark Weeks and stepmother Ginger Weeks. Mark Weeks was awarded full custody of Alexis in 2009 after what the biological mother, Kim McClain, said was a contested custody with “a long story.”⁵⁷ She believes the guardian ad litem (GAL) was responsible for the recommendation that gave custody to Mark Weeks, even after Ms. McClain reported his abuse of the child. She was considered a bad parent because she did not have a place of her own; at the time of the custody hearings, she was living with her father.⁵⁸ She stated, “I need justice for my angel and again to stop others from going through what she went through.”⁵⁹ This was a case where custody deliberations occurred in San Diego, CA, but the murder was committed in Colorado. A bench officer in Colorado provided no comments, but a San Diego judge made some statements.

With reference to reforms, San Diego County Superior Court Judge Maureen Hallahan indicated the legislature recently made major changes that will increase litigation time and expenses while causing the divorce process to be more adversarial.⁶⁰ She said it is time for the government to implement a reform in the family law system in order to shift the emphasis from litigation, as the dominant practice, to mediation and collaborative divorce.

Like many of the bench officers interviewed, Judge Hallahan was open to hearing about new research on DV and child custody that could be helpful. “We are trying to make changes in the courts because child safety is very

⁵⁵ See Paul Jay Fink, “Parental Alienation Syndrome,” in *Domestic Violence, Abuse, and Child Custody*, supra note 2, ch. 12.

⁵⁶ Telephone interview with Judge Michael Naughton, June 2, 2011.

⁵⁷ *Mother of Slain Toddler Picks Up Child's Ashes* (July 23, 2010), <http://www.thedenverchannel.com/news/24353185/detail.html>.

⁵⁸ Facebook correspondence with Kim McClain, Mar. 28, 2011.

⁵⁹ Id., Mar. 29, 2011.

⁶⁰ Telephone interview with Judge Maureen Hallahan, May 18, 2011.

important to us as it is in all places in California.” She added, “And we are aware that training plays a big, pivotal role in making changes.”⁶¹

Florida

There were five child tragedies in Florida in 2009 and six cases in 2010. Chief Judge William Parsons of the Seventh Judicial Daytona Beach Circuit Court indicated there are two jurisdictions regarding DV and child custody:

We have DV petitions that are available for people who have either been victims of DV or have a rational fear that they may become victims of DV. A parent can bring those for themselves or their children, or the action could be brought by guardians. And it is designed to restrain both temporarily and permanently the person who is harmful or threatening to be harmful.⁶²

These petitions are used regularly throughout his jurisdiction, and throughout the state of Florida. “The thinking is DV petitions deal with people who have an intimate relationship, and those are best handled by the judge who does most of that work.” Judge Parsons added, “In our civil courts, judges handle repeat violence injunctions” that “are usually stranger injunctions where there is not an intimate relationship.” They are also involved with overseeing issues of sexual and dating violence. “It’s not uncommon for there to be children” who are “victims of all three of those things.” It is tougher to get an injunction on a repeat violence case as it requires two episodes of misdemeanor violence, one within the last six months, or two episodes of stalking. “There has to be some stalking with evidence of malice for that to be granted.”

As far as changes to the structure, the judges are consulted by people who are making changes, and they have input, but we pretty much have to deal with the legislative structure that’s in place in the practices we have in the courts. I’m not sure we have a lot of say or input other than suggestive input as far as changes in the existing system. The problem is we have thousands and thousands of injunctions; most of those . . . result in no action being taken by the courts at all because the allegations are not adequate to support an injunction, and yet we’re all aware . . . there are people out there . . . with violent propensities that can do great danger, and sometimes the victim can’t articulate their position well enough for it to be comprehended. It’s a topic of regular conversation among my peers, in the sense you can read between the lines, so you can get some sense in these things. That’s a very unreliable way to get there.⁶³

⁶¹ Id.

⁶² Telephone interview with Chief Judge William Parsons, Mar. 6, 2012.

⁶³ Id.

Some people get help from lawyers in drafting their petitions and, as a result, they are much more able to articulate a rational basis for their fear. There are also some programs the court system sponsors in which the clerks help pro se litigants fill out their petitions related to injunctions. “They can answer questions to a point, but there is a line you tread on where if you help someone too much, you’re really in the practice of law. And that line is a blurry line for most people.”⁶⁴

Judge Parsons recommended speaking with Judge John Alexander from the Seventh Judicial Circuit who presides over the unified family court in St. Augustine, FL. Judge Alexander has witnessed the horror of DV. His cousin was beaten to death by her boyfriend, and he lost one of his DV supervisors, only forty-four years of age, to a DV murder when her husband slit her throat.⁶⁵

Judge Alexander explained complications that occur when a petitioner files a case without an attorney. “So that is the scary thing: a judge’s ruling is only in proportion to the quality of evidence a judge takes in.” He added, “The incompetence of many petitioners to handle their own cases,” which he likened to the incompetence of laypeople attempting to perform their own brain surgeries, “is misguided even if they watch a myriad of court-related television shows featuring judges who may give the impression that petitioners are ‘assured’ that their filings will be successful.” “They expect a judge to relax the rules of evidence and procedure for them and to guide them on how to improve their case,” but Judge Alexander added, “It really mixes the role of the judge because am I supposed to be their attorney and their judge? Or am I supposed to call balls and strikes and make a ruling based upon the evidence?”⁶⁶

Judge Alexander noted, “these cases scare every judge and you’ll see a lot of judges who don’t want to do family [court] because they’re concerned that something will happen” as a result of a ruling. One judge in his district, which includes Daytona, denied the petitioner’s pleading when her case lacked proof, according to the judge in question, “and the lady got murdered afterwards.” That case generated media attention from the Fox show *The O’Reilly Factor*, which questioned why the judge did not protect the victim; “the problem is we have to make a call based on the evidence presented.” Judge Alexander added, “I don’t really get a chance to say, ‘Well I don’t think you proved [the case] but I really do believe [the violence] happened.’”⁶⁷

The evidentiary standard in Florida is that a domestic or a repeat violence injunction case must be proven by substantial evidence. “It’s a real mess, and

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Telephone interview with Judge John Alexander, Apr. 30, 2012.

⁶⁷ Id.

it's very scary so I really try to kind of use the bully pulpit and say 'you may not think you need an attorney but I *know* you need an attorney.'"⁶⁸

Judge Alexander strongly encourages DV victims to consult a free-of-charge lawyer available in his jurisdiction, especially when they are making a filing on behalf of a child. The Violence Against Women Act (VAWA)⁶⁹ provides him with the opportunity to give a first-time continuance to any petitioners who indicate they want to get a lawyer to help present their cases. "A lot of times the men are howling mad" that first-time continuances are granted, even though most attorneys in Judge Alexander's court know that is a standard procedure he uses. In addition to the free-of-charge lawyer, his court provides volunteer legal aid attorneys.⁷⁰

A temporary injunction that is legally sufficient is needed in DV cases. Toward that end, the unified family court Judge Alexander operates allows him to see, at a glance, other cases the plaintiff is involved in regarding dependency or probate, for example, which provides what he sees as a more holistic view of the individual and the cases he oversees. Individual plaintiffs must complete a form describing this information, which has the added benefit that their cases can be routed to the judges handling these kinds of issues. "We're pretty much ahead of the curve . . . in Florida."⁷¹

"There's no straight answer on this; if a woman files an injunction against a man saying he's beat her, or threatened to kill the children, I call DCF (Department of Children and Families)." As a judge, he is a mandatory reporter, and he lets opposing parties know that he is the one who will call DCF, if there are threats involving the safety of children. Not all judges call the DCF hotline on behalf of children. But he indicated that where there is an allegation that children witness the abuse of the parents, or are victims of abuse themselves, he is the one who makes the hotline call. Judge Alexander's hotline calls to DCF are not anonymous, even though such calls normally are. He explained that he wants the parties, and particularly the alleged abusers in his court, to know this is his standard practice.⁷²

What Judge Alexander has learned from the child tragedies is derived in part from the DV his division participates in, which is centered on the dynamics of power and control. Aside from the availability of abuse shelters for victims, a lot remains the same. He added, people still abuse other people, attempt to use power and control to dominate victims, put them down, and engage in violence.

Judge Alexander looks for indicators of such violence, including the role that alcohol or drugs play, and he wants to know which parent can best protect the child. If he feels the child is at risk, he will remove the child from that parent.

⁶⁸ Id.

⁶⁹ Pub. L. No. 103-322, 108 Stat. 1796 (1994).

⁷⁰ Telephone interview with Judge John Alexander, Apr. 30, 2012.

⁷¹ Id.

⁷² Id.

“I know a spanking of the hand on the buttocks versus an extension cord whipping from the neck to the ankle. You get educated pretty quick.”

Another key is not rotating judges in and out of family court. Judge Alexander explained that in a lot of jurisdictions where a judge can handle civil, criminal, or family court matters, judges are put into family divisions who do not want to be there. He suggested these judges do not like or care about family court specifically “and don’t want to listen to what we hear in family court.” He sees this as one of the most counterproductive elements in family court that now represents a trend.

I think the most respective use of a judge’s judicial power is in family court. It’s not in civil court; it’s not in criminal court. I mean I can change custody on a snap. I can give makeup time on visitation with a snap of my hand. I can put people in jail immediately for not paying child support. I was an old prosecutor; I’ve handled a lot of criminal cases, a lot of child abuse cases as a prosecutor, and a lot of sexual assaults on children when I was a prosecutor back in the ’80’s. But I would rather be in family court.⁷³

Every judge has strengths and weaknesses. Although he was a successful criminal court judge, Judge Alexander believes his strength is in family court. It is an arena that he enjoys working in.

Judge Alexander is highly adverse to tactics used when a perpetrator of violence or a victim attempts to vacate an injunction he has ordered. He said that once a perpetrator is ordered into a batterers program, mandated to take a parenting class, or to have a psychological evaluation done and then does not comply, or when a victim wants to drop an injunction, he will not consider vacating the injunction before compliance. He reminds litigants of the seriousness of the allegations and the reason for the issuance of the order. When a victim makes such a request in light of noncompliance, that raises concern for him, particularly in regard to the parental capability of that individual. “So the judge has got to be tough on both sides.”

How can anyone have confidence when you’re not equally applying the law? Victims need to have a safety plan in place in the event the violence reoccurs. I mean this is just from being in the fire all these years. I’ve had guys that have intimidated the woman to try to drop the injunction after I’ve already entered it, and I’m like listen buddy the bullying is already over. I’m the bully now . . . [H]ere’s what I want you to do or, you’re not going to see your child.⁷⁴

Judge Alexander disagreed with reports from DV experts of a disturbing trend nationwide of awarding custody to abusive parents; he wondered what

⁷³ Id.

⁷⁴ Id.

the basis for the contention was, given the preponderance of evidence he demands in his court. “Does that mean that a judge awarded custody to an abusive person just because you said it and didn’t prove it? I work as a unified family court judge, so if someone’s being abusive, I’ve taken testimony about that. I’ve made factual findings. It either did or did not occur.”⁷⁵

Judge Alexander believes that a unified family court system can aid in solving these problems; he recounted a case where an abuser in his court asked for custody of the children, which was denied, because an adult child testified to his abuse. To do the opposite would be inconsistent with the findings that he made when the young man in this case had been abused. “So I don’t agree with that. I think the unified family court solves that problem. I’ve already made findings about this family.” Outside of these circumstances, the judge was flabbergasted that an abuser would get awarded custody, particularly without complying with a court order to seek psychotherapy or other help. “It would be inconsistent.” He could not recollect any occasion when he awarded custody to individuals who abused their children. In comparison, there were a few hundred cases where he awarded custody in the opposite direction; to the nonabusive parents.⁷⁶

Judge Alexander recounted a Southern California case he was involved in where children were abused, and the judge in that jurisdiction gave custody to the abuser. In that case, the judge issued an arrest warrant for the mother, even though the state of California secretary of state had authorized her to move to Florida for her own safety. Subsequently, both secretaries of state, for Florida and California, agreed to give the mother a new identity. Judge Alexander said, “the California governor didn’t give a darn” and issued an arrest warrant pursuant to the family court ruling, even though that court had not considered the criminal court’s finding regarding the abuser. “And, I had to rule that two of the governor’s warrants were invalid.” In the process, the mother spent a year in jail. An agent of the federal government arrested the mother and jailed her in another county to avoid his rulings. Subsequently, she was forced to go back to California.⁷⁷

Judge Alexander did not release the child for extradition to California because the testimony from the child was that the father had “threatened to kill his mother and threatened to kill his stepmother,” who the perpetrator was married to at the time.⁷⁸

The California court issued the warrant against the mother, even though the father was on felony probation, and, subsequently, a California prosecutor even filed complaints against Judge Alexander and the then attorney general of the state of Florida. Still, Judge Alexander remained firm on his decision because the testimony from the child in the case indicated DV was apparent.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

Finally, Los Angeles gave up on the case, and the trial against the mother resulted in a hung jury.

Even though Judge Alexander ordered her release, the victim was taken to another county and had to spend three years in jail. He added that the perpetrator came to Florida to fight the injunction for the child's extradition but failed to appear for the hearing. According to Judge Alexander, there is still an outstanding warrant for the perpetrator's arrest pertaining to an order stipulating he must successfully complete a batterers program he was ordered to attend.

In that case, Judge Alexander's ruling was based on interference with custody and child abduction, and he indicated his court found that the victim was not a fugitive because the secretary of state of California gave her permission to leave. Additionally, the victim was given a new name and identity in order to get a new drivers' license for her protection to avoid the abuser. "I was having none of it. I said that this woman is a victim, not the perpetrator, and why are we doing this on behalf of somebody with a felony warrant on him." The case went on for seven years and finally ended with a mistrial. Subsequently, the felony charges against the mother were dropped.⁷⁹

Case management is important to the enforcement of court orders. Judge Alexander stipulated that he wants to know if mandated classes he has ordered any party to attend have been completed; whether children who are a part of any case are in need of any counseling or therapy; and, in addition, how they are they handling the divorce.

"[I]f I find out either parent is talking bad about the other parent in front of the child then . . . they get a stern lecture right up front . . . I had one redneck guy tell me one time, 'I don't do it, but my girlfriend does, but you didn't tell her.' I say, 'well, buddy, you're responsible for what your girlfriend does.'" In Judge Alexander's estimation, children suffer when both parents speak negatively about one another in the children's presence.⁸⁰

Judge Alexander holds quarterly meetings for his Family Law Advisory Group (FLAG). The meetings are a component of the unified family court and are similar to what some other judges do throughout the country. The FLAG includes mental health professionals, child experts, business evaluators, accountants, lawyers, and visitation supervisors, who come to court to discuss the latest trends.

Given a high turnover rate for these individuals, the meetings help Judge Alexander ascertain who the new mental health professionals in town are, including psychologists, child custody evaluators, parenting coordinators, and mediators, who he might interface with in family court. The goal is to educate them on how his family court operates with regard to the kinds of rulings he tends to make.

⁷⁹ Id.

⁸⁰ Id.

In the process of hearing divorce, dependency, and delinquency cases, these introductions to any new court agents, who Judge Alexander may not know otherwise, before they testify in court, are crucial. “We talk about what we can do to make our family court more efficient and protect the needs of children and families.” He feels these court agents, after much discussion in such meetings, “always . . . make good recommendations” that can be implemented if feasible.⁸¹

Court operations are always a work in progress, and thus evaluations by court agents should not be conducted unless they have first reviewed what the court ordered and why the ruling was made. A psychological evaluation should not be conducted unless the evaluator first understands what the court ordered in the case and why an order was made. Judge Alexander advises the evaluator what he is looking for with specific references to the safety of the children for time sharing and the related component of unsupervised visitation, if this is an element of an order.

Some forty to fifty individuals are invited to the quarterly meetings, and all are encouraged to engage in the discussion. Judge Alexander hopes attorneys involved in these discussions will be proactive in asking about, for example, the hours of operation for a particular visitation center, if that is a component of an order. He added, “what if I’m rotated out” (of family court), “is my successor going to keep having these meetings? And have this free flow of information?”⁸²

Judge Alexander believes these meetings are imperative to hold not only for family court, but also for dependency and delinquency courts as well. Critical questions revolve around balancing the harm, if a child does not see a parent, with the risk of visiting a parent who has a substance abuse problem with how a child might decompensate on certain emotional issues, if denied supervised visitation with a parent who is not clean of cocaine yet. “I used to be against that, but now . . . I’m always learning . . . this is a journey not a destination, . . . but if I don’t stay in family [court] and I rotate to another division, I lose a lot of this institutional knowledge.”⁸³

Judge Alexander does not see his position as being one of a dictatorship, particularly when there are many lawyers who he sees as having very good ideas on best practices in family court, with the exception of a few “scoundrels” that are part of any profession. All in all, according to Judge Alexander, these court players know his chief objective is to protect children.

It is imperative that victims present adequate evidence pertaining to the abuse. In one case Judge Alexander presided over, a police officer took a statement from the perpetrator who confessed to being abusive, but the victim failed to call the police officer to testify. The judge explained in that case, the victim said she was unaware she would need to do that. “So sometimes just

⁸¹ Id.

⁸² Id.

⁸³ Id.

having that reality talk with victims” is important. “I expect you to do your job, I’ll do my job, I’ll work hard, but I expect the lawyers and the litigants to do their job and, that’s the way this system works. It breaks down when they don’t, when the judge won’t do his job or her job or when the litigants don’t do their job.” Subsequently, “the judge is limited in what they can do.”⁸⁴

The cases where Judge Alexander wishes more evidence was readily available are among those that he worries about the most. Cases where the evidence presented suggests neither party is worthy of having the children are a major concern. “What’s the lesser of two evils?”⁸⁵

Judge Richard Howard⁸⁶ presided over the criminal case against Spencer Tyson Weaver. In that case, a two-month-old boy, Tamarri Weaver, was murdered by his father Spencer Tyson Weaver.⁸⁷ The judge could not discuss the case, but he said it was one that was quickly expedited and that Weaver’s history of violence and a criminal record played a major role in the outcome of the case.⁸⁸

Children are terrorized when they witness abuse, and when they witness a father or stepfather terrorizing and degrading their mother, that violence can eventually become acceptable behavior for the children to model. Judge Howard suggested that boys may learn to hate their mothers for putting them in a violent situation, and girls, out of fear, potentially learn not to do anything that angers the perpetrators. While he is sensitive to the plight of victims of DV, and believes more judges are becoming sensitive to the DV issue, some judges who are over sixty years of age have a hard time understanding why some victims do not leave their abusers. He said, “Women keep coming back to men because they have nowhere else to go,” particularly when there is a dependence on the abuser economically, and where children are involved.⁸⁹

When asked about reforms his court is undertaking, Judge Howard indicated that he knew of a judge who refused a restraining order requested by a woman because she worked at a Hooter’s restaurant. In that case, the woman was killed. Where a person works should not be part of the framework for judges in making decisions on whether to issue a restraining order.

Age more than gender contributes to judges’ decisions. “These older judges have a lot of misconceptions, and younger judges are being better trained to deal with DV.” Prevention is the key to ending DV, and education should start in elementary school. “There is an escalating pattern of abuse; most abuse is motivated by alcohol, meth, and coke. It is the man’s

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Telephone interview with Judge Richard Howard, April 11, 2011.

⁸⁷ *Deputies Arrest Father for the Death of His Infant Son in Citrus County* (Feb. 20, 2010), <http://www.wtsp.com/news/local/story.aspx?storyid=125638>.

⁸⁸ Telephone interview with Judge Richard Howard, Apr. 11, 2011.

⁸⁹ Id.

inadequacy with himself that he is battling against, so he lashes out to make himself feel better.”⁹⁰

Lee County Circuit Judge Tara Paluck said judges follow “the letter of the law” and local statutes in regards to DV. Unless assigned to a committee or commission, judges are not in charge of reforms—legislators are. Regarding gender bias in family law courts, there are commissions and training that are designed to eliminate bias in the courts.⁹¹

Judge Keith Cary, who is also from the Twentieth Judicial Circuit, said he was not at liberty to discuss what the courts have learned from the child murders because the legislature was in session.⁹² However, he said the courts have acknowledged “somewhat” that there is a problem in the court system. The judge pointed out that DV is a serious matter that plays a big part in custody cases. Court decisions are based on what is best for the child. To this end, he has, on numerous occasions, spoken to the child or children. He sees many divorce cases that involve child custody issues where DV is sometimes raised. His court has a DV unit where DV advocates help victims with housing, and with filling in petitions and other legal forms. The court does not provide experts, but parties who wish to can bring in their own professionals. In these latter cases, the court helps individuals who cannot afford their own professional experts by providing the experts with a reduced fee of \$35–\$55.00 per hour.

Georgia

In a 2010 Decatur, GA, case, a five-year-old boy was allegedly murdered by his father, Gary DeToma Jr., who was embroiled in a contentious divorce and custody battle with the mother, Melanie DeToma.⁹³ DeKalb County Judge Janis Gordon indicated there is a Weighing Accountability Through Compliance Hearings program that includes a six-month DV component similar to a batterers program; however, what is unique is that it is mandatory for abusers to meet monthly with a judge.⁹⁴ The program is designed to help abusers manage their anger. Once perpetrators are convicted of DV, they are required to complete the Stop Abusing Family Education (S.A.F.E.) program, which includes three months of DV classes while they are in custody. Judge Gordon indicated that abusers must continue to take S.A.F.E. classes for an additional three months after they are released from prison.

In deciding custody cases, one or two counts of DV are considered misdemeanors. However, when an abuser is arrested three times for incidents stemming from DV, the case goes to the district attorney; it is then considered

⁹⁰ Id. While substance abuse can reduce inhibitions and thus increase the severity of a physical attack, it is the abusers’ belief system that causes DV. Someone who would not consider abusing their partner while sober should not be conflated with such abuse as a routine occurrence while under the influence.

⁹¹ Telephone interview with Judge Tara Paluck, May 13, 2011.

⁹² Telephone interview with Judge Keith Cary, May 22, 2011.

⁹³ See <http://www.justice4caylee.org/t7419-gary-detoma-jr-5-yo-2010-decatur-ga>.

⁹⁴ Telephone interview with Judge Janis Gordon, Apr. 18, 2011.

a felony. In this latter case, the arrest can be used against a parent in a custody dispute. When asked why two counts of DV are not substantial enough to cause a judge to rethink custody, she responded that one person must be deemed to be the overwhelming aggressor by police and that two incidents of domestic disputes wean out the notion that the occurrence was a single occurrence that simply got out of hand.

Ayonna Johnson, director of legal services for the Women's Resource Center in Decatur, GA, admitted that "there are many holes in the system" that include "visitation loopholes."⁹⁵ She added, "The fact that the custodial parent still has to meet with the abuser to exchange the kids shows you that." Johnson recommends that courts err on the side of caution in DV cases in order to protect children. But she also noted that Georgia courts have discretion and are "a little behind on that aspect." According to Johnson, a child witnessing DV should be enough to keep an abuser away from the other parent, but "unfortunately it isn't" in cases where there may not be signs of physical abuse. If the victim seeks a protective order in response to DV, that does not constitute a physical assault, so the court won't order the children to be kept away from the abuser. Courts simply have to change and adapt their laws to protect women and children.

There must be initiatives to improve laws, "but passing them is another thing." "A reform in the law would mean that the courts are admitting they were at fault for a decision, and it is still too soon after the Gary DeToma Jr. murder to know if they will take steps to change the laws."⁹⁶

Illinois

In 2009, there were three cases involving child tragedies in Illinois, and one was reported in 2010. In one 2009 case, a Peoria County jury ruled that the death of a fourteen-month-old child was a homicide.⁹⁷ One report indicated that Erica Meece had suffered skull fractures and was hemorrhaging when police responded to the scene. The father, Jeff Meece, was holding a baseball bat and breaking windows.⁹⁸ In a second 2009 case, the father drowned his eighteen-month-old son in a bathtub after feeding the boy antipsychotic medication.⁹⁹ In the third case, the father, Michael Connolly, was found dead along with the two sons he was accused of abducting.¹⁰⁰

⁹⁵ Telephone interview with Ayonna Johnson, Apr. 7, 2011.

⁹⁶ Id.

⁹⁷ *Coroner: 14-month-Old's Death Ruled Homicide* (Oct. 1, 2009), http://www.pantagraph.com/news/local/article_5ac0f2e0-af13-11de-b6af-001cc4c03286.html.

⁹⁸ Id.

⁹⁹ Steve Schmadeke, *Judge: Dad Insane When He Drowned Child* (May 9, 2011), http://articles.chicagobreakingnews.com/2011-05-09/news/29526206_1_nathan-esi-clara-esi-mental-health.

¹⁰⁰ See *Family, Friends Mourn Dead Brothers* (Mar. 3, 2009), <http://abc7chicago.com/archive/6735331/>.

Eleventh Judicial Court Judge Charles Reynard expressed interest in the new research¹⁰¹ and indicated that not all judges are privy to this information.¹⁰² Any research would be more valuable to bench officers if it helps to settle the matter and gives judges something concrete that they can embrace.¹⁰³ Judges in his court discussed problems associated with orders of protection that they are attempting to improve upon, and his court is “a work in progress.”

In a 2010 Chicago case, a mother who was fleeing DV was slain by her husband along with their infant child and two nieces.¹⁰⁴ Nineteen-year-old Twanda Thompson, who was seven months pregnant at the time of the slaying, had left Madison, WI, where she and James Larry were granted joint custody of the seven-month-old in a paternity case.¹⁰⁵

First Judicial Administrative District Chief Judge Jeffrey Kremers, in Wisconsin, stated that his state has a homicide review that looks at cases similar to Thompson’s, with the goal of finding ways to prevent such tragedies.¹⁰⁶ Some courts may lack DV training and understanding, but not in Wisconsin. He has been a NCJFCJ faculty member since 1999, and he and several of his colleagues have attended DV seminars and continue to receive training in this area. As part of his work for the NCJFCJ, he was involved in writing a successful grant proposal that recognizes the importance of DV training. This was done in association with a San Francisco family violence prevention project that helps to teach judges about DV. Judge Kremers indicated that he is interested in learning about new research pertaining to DV.

Indiana

In Indiana, there were two child tragedies in 2009 and two more in 2010. Judge Christopher Newton is a Vigo County Superior Court judge who indicated that his state and county are cognizant that DV is a growing problem.¹⁰⁷ His district received a grant to fund a bench officer’s time to attend a San Francisco, CA, conference about DV and child custody, and he was the judge selected to attend. While his court does not have a great deal of experience in dealing with DV issues, Indiana Code Section 31 allows judges to take DV into consideration when making custody decisions.

¹⁰¹ Telephone interview with Judge Charles Reynard, May 26, 2011.

¹⁰² See *supra* notes 2–5 and accompanying text.

¹⁰³ Telephone interview with Judge Charles Reynard, May 26, 2011.

¹⁰⁴ *Tragedy Touches Madison, Chicago; Man Arrested After Deadly Rampage* (Apr. 15, 2010), http://host.madison.com/wsj/news/local/crime_and_courts/article_7a338144-47c8-11df-a5aa-001cc4c002e0.html?mode=image.

¹⁰⁵ Don Babwin, *Man in Custody After Rampage; Killed a Woman and Three Children* (June 15, 2010), http://www.huffingtonpost.com/2010/04/15/man-in-custody-after-ramp_n_538810.html.

¹⁰⁶ Telephone interview with Judge Jeffrey Kremers, May 16, 2011.

¹⁰⁷ Telephone interview with Judge Christopher Newton, May 2011.

Kansas

In 2009, there were two cases of child tragedies in Kansas. In the Topeka case, a former city official from Missouri, who had lost his post subsequent to being charged with assaulting his wife, was suspected of killing her and two of their children. James Kraig Kahler was also being held on suspicion of attempted first-degree murder in the shooting of his estranged wife Karen Kahler's grandmother, Dorothy Wright. He was also scheduled for trial in Columbia, MT, on a DV offense stemming from an altercation with his wife.¹⁰⁸

Shawnee County Third Judicial District Judge Jean Schmidt indicated that she was very aware of problems relating to DV and that her court is making progress in this area by gaining knowledge in part from participating in related conferences and classes.¹⁰⁹ She teaches new judges in her district and subscribes to many court magazines to keep abreast of the literature.

Kentucky

There was one Kentucky case of a toddler being slain in 2009. Subsequently, the City of Lawrenceburg agreed to pay the mother a \$250,000 settlement. It was based in part on a federal judge's ruling that the city failed to train and supervise its police officers. Reporter Ben Carlson indicated that Candice Dempsey's son, Cole Frazier, was removed from her custody in May 2009 by Lawrenceburg police and handed over to his father, Timothy Frazier. Two weeks later, Mr. Frazier killed the toddler and then himself. According to Carlson, "The catalyst of the lawsuit was an emergency protection order issued by a Nelson County judge, which Timothy Frazier provided to police to take custody of his son." The order did not authorize a change in custody, but an employee at the Nelson County Clerk's office falsely told the officers that it did, resulting in the toddler being taken from the mother.¹¹⁰ No judge involved in the case was available, but Candice Dempsey, the mother, said her life had been destroyed.¹¹¹

Louisiana

In 2009, there was one case of a child tragedy; and in 2010, there were two documented cases in Louisiana. Family Court of East Baton Rouge Parish Judge Pam Baker indicated that where child custody is concerned, if there is a finding of family violence, the perpetrator is only permitted to have supervised visitation, which is conditioned on the perpetrator's participation in,

¹⁰⁸ See Dean Praetorius, *James Kraig Kahler Allegedly Murdered Family Following Wife's Lesbian Affair* (Aug. 19, 2011), http://www.huffingtonpost.com/2011/08/19/james-kraig-kahler-murder_n_930714.html.

¹⁰⁹ Telephone interview with Judge Jean Schmidt, 2011.

¹¹⁰ Ben Carlson, *Slain Toddler's Mom Awarded \$250,000 in Lawsuit vs. City: Federal Judge Rules City Law in Training, Supervising Police Officers* (Dec. 22, 2010), <http://www.theandersonnews.com/content/slain-toddler%E2%80%99s-mom-awarded-250000-lawsuit-vs-city>.

¹¹¹ Facebook correspondence, Apr. 12, 2011.

and completion of, a treatment program designed specifically for batterers.¹¹² The way the program works is that if a judge finds a history of DV, the perpetrator is to have no contact until the treatment program is completed. After completion, the perpetrator can have supervised visitation.

This process is undermined when the other parent wants the perpetrator to remain involved with the children. This occurs out of fear, concern of losing child support, or for other economic reasons; so the victim will not press charges. The custodial parent needs help in raising the children. “If the other parent isn’t seeing the children at all, it’s leaving the entire burden on them” to care for the children. The custodial parent might think that if the perpetrator has no contact with children, “they are most likely to disappear and not pay child support.” This is one reason why victims stay as long as they do in abusive situations.¹¹³

In some cases, the abusive parent alienates the children from the victim, which Judge Baker says makes it difficult for that parent to control the children when they are older. There is a “pretty good chance that judges and many of the parents are not following the law,” which stipulates no contact and visitation until completion of a batterers program and, only supervised visitation subsequent to that. “It all really depends on whether you are in a district that has a specialized family court, and if they don’t then they are less likely to be aware of the law and less likely to issue the custody order that complies with it.”¹¹⁴

In her jurisdiction, mediation is not ordered for cases involving DV. The most dangerous period for women involved in custody cases is right after the orders are issued. There have been orders generated in her court that did not stem from her own division; in one case a temporary order was denied and the husband killed his wife.

Laws do not necessarily end the violence in cases where a temporary order of protection is denied and then the abuser kills the petitioner, or in cases where an order of protection is granted and the victim is still killed. Judge Baker noted one case where, on the day of the hearing, the defendant found the petitioner in the parking garage and put a knife to her throat.

Judge Baker oversaw a case where the victim, who was a mother, was granted an order of protection against an abusive partner but then moved back in to cohabitate with him. The mother subsequently started using drugs and alcohol, which Judge Baker believed was directly tied to his abuse; however, over the next several years, there was no abusive behavior exhibited by the husband. “It’s an awful situation” because the mother is endangering the children and the husband filed against her for attacking him. “I had to give him the children on a temporary basis because there was no one standing here ready to take these kids; they are in danger with her, so, in that particular case, I’m in a terrible position.” Judge Baker said she felt awful

¹¹² Telephone interview with Judge Pam Baker, Mar. 15, 2012.

¹¹³ *Id.*

¹¹⁴ *Id.*

about this case and has attempted to help the mother with resources. "I just want her to get well so it won't be permanent, but I can't give children to a drug addict."¹¹⁵

Judge Baker did not believe abusers are receiving custody of children, except in the example that she described, but she would not be surprised if possibly older judges and others who do not understand DV would. "The batterers can come in and be very personable and professional and show no violence in other areas of their life," which is the reason she believes awareness about DV must continually be pushed until everyone becomes enlightened and informed. She added, "Without some type of other circumstances, I don't know why you would be awarding custody to a batterer . . . you should never even give joint custody even when you are in a situation where you can give visitation," because DV is about control.¹¹⁶

Education is the key for family court judges. Judge Baker often conducts seminars where she writes out petitions for protection with facts that are distributed to participating judges. She asks them which petitions they would and would not grant, and gets different responses. She then shows a clip from the movie *Enough*, featuring actress Jennifer Lopez, where an abusive husband with financial means attempts to manipulate the court in a custody battle. After seeing the clip, many judges want to change their vote. "It's all about education."¹¹⁷

The reason some victims do not have better outcomes when they go to court is they do not present well or behave badly, even though they are good people. There is a program, where the funding may be cut, that involves law students representing the petitioners; and there is a battered women's program. Judge Baker advises the students to tell their clients to be mindful of their behavior in court because a judge might not believe they are indeed afraid of their abusers, and thus "they need to tone down that behavior a little bit" because challenging or arguing with their abusers might be interpreted as not being afraid.

Michigan

In 2010, there were four cases of child tragedies reported in Michigan. Chief Judge of the Ottawa County Probate Court Mark Feyen, who specializes in cases involving children, said that in western Michigan, there is a very active DV coalition that consists of DV advocates, judges, prosecutors, treatment providers, and others who are looking at DV from a systemic standpoint.¹¹⁸ He is consistently looking at procedures and policies and ways to shed a greater light on DV.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Telephone interview with Judge Mark Feyen, May 9, 2011.

“In my opinion courts have a continuing obligation to monitor these cases very closely and promote the safety of the children,” according to Judge Feyen. For a number of years, there were federal DV grants from the Department of Justice that could be used by judges. It is “incredibly important” for court agents to know what DV is. Part of his concern is funding cuts for DV training. “If that money goes away, there will be less and less available on DV issues.”¹¹⁹

Karen Shervin, who works for Wayne County Circuit Court Chief Judge Pro Tem Lita Popke, said there have been no real reforms pertaining to DV and gender inequality in the court.¹²⁰ “We have a tremendous case load here, and we are simply trying to keep up with the docket, addressing DV through specific cases.” She referred me to Amy Clark, the judicial assistant for Wayne County Circuit Court Judge Connie Marie Kelley, as Ms. Clark is working with the new DV grant.

Amy Clark noted, “We see a lot of things that are horrendous here in the courts, but we haven’t really done anything specific with it.”¹²¹ The DV grant is in response to the growing perceptions of DV as a nationwide epidemic. “We hope to provide professional assistance” modeled on the Center for Court Innovation (CCI) in New York City, which promotes an integrated DV court that handles criminal DV cases, family issues, and civil protective orders all in one place. “State to state, each court is different; some states handle civil protective orders one way, and some handle them differently.” Clark noted that one of the problems faced by survivors of DV is when an ongoing family case is in one location and a criminal case in another. She explained that in Michigan, there is a district court that handles civil cases not related to criminal concerns, while the circuit court handles bigger disputes.

A lot of criminal courts list a DV-1 as a misdemeanor, but homicides are not called DV homicides, even though 50 percent of women killed in the United States are killed by intimate partners. She noted that the CCI model is dedicated to specialized courts and developing specific ways to deal with DV cases, since they are very different from other abuse cases. Clark is involved with the family court and civil protection orders, but the goal is to be able to detect the “fatality factors” in cases that will become dangerous and pick them off early.¹²²

One problem is that in custody proceedings, although DV is considered along with other factors, it can be weighted quite differently by different judges. She noted, “Another huge problem for victims of DV is that the batterer controls the resources, isolates them, and prevents them from working. We are trying to help solve problems like this from within the system.”¹²³

¹¹⁹ Id.

¹²⁰ Telephone interview with Karen Shervin, Apr. 5, 2011.

¹²¹ Telephone interview with Amy Clark, Apr. 5, 2011.

¹²² Id.

¹²³ Id.

Missouri

In 2010, there were three reported child tragedies in Missouri. Circuit Court of Jackson County Family Court Administrative Judge Justine Del Muro said that while there is no movement afoot to reform her family court in Kansas City, her jurisdiction “is continuously assessing and evaluating methods and procedures to ensure the safety of children.”¹²⁴ “Our family court relies on the state children’s division and guardian ad litem appointed for the child who are charged with making recommendations to the court as to what is in the best interest of the child.”¹²⁵

New Jersey

In 2009, there were two reported cases of child tragedies in New Jersey, and in 2010, there was one documented case. Essex County Judge Harry Cassidy, who is also the Assistant Director, Family Practice Division, suggested the court has service trainers from the state who examine orders pertaining to DV.¹²⁶ Judge Cassidy indicated the statutes his court adhere to are tied to prevention, and they use risk assessment to see if a custody case has any indication of DV.

There are protocols in place to take action against DV suspects so that offenders are not given custody of children. Judge Cassidy said there is no gender bias in his courts, and raising allegations of DV does not weigh negatively against victims, even when no proof of a DV offense is raised. He said his court will still look into such allegations. The court partners with the New Jersey Coalition for Battered Women to make sure their information is up to date. DV is not tolerated in his court, and he adheres to the New Jersey Prevention of Domestic Violence Act¹²⁷ and VAWA.¹²⁸

No mutual orders are issued unless an attorney in a divorce matter requests it. Judge Cassidy said forty thousand restraining orders are processed each year, and parties are not forced into mediation if DV is involved. The court will stop mediation proceedings in the event of a power imbalance.

His court can improve by making highly supervised visitation programs more available, indicating that the community has to play a pivotal role in order for this to work. More funds are needed to provide health services and resources from other organizations for victims. “We are highly committed to protecting children,” Judge Cassidy claimed. Funding is key in providing the best services along with greater involvement from community-based organizations.¹²⁹

¹²⁴ Personal correspondence with Judge Justine Del Muro, Mar. 6, 2012.

¹²⁵ *Id.*

¹²⁶ Telephone interview with Judge Harry Cassidy, May 19, 2011.

¹²⁷ See <http://www.judiciary.state.nj.us/family/dv.htm>.

¹²⁸ *Id.*

¹²⁹ Telephone interview with Judge Harry Cassidy, May 19, 2011.

Like many of the judges interviewed, Judge Cassidy said that education pertaining to DV is valued and welcomed. He mentioned two conferences on DV and child abuse that the court has participated in, which focused on ways to identify DV signs and best practices for responding to related incidents.¹³⁰ Judges are trained to have a better understanding of high-conflict DV cases; one hardship he believes judges face in dealing with high-conflict cases is that they are not always aware of some of the nuances involved. In some cases, the issue of DV may not be raised, and since they are unaware of any preexisting violence in a given case, it is difficult for judges to do anything that could prevent further harm. As a result, he said, the court has learned to take a closer look at custody cases and which parent will receive custody.

Assistant Chief for the New Jersey Administrative Office of the Courts Family Practice Division David Broselli¹³¹ oversees VAWA and Access and Visitation grants, and coordinates policy updates and compliance to the *Domestic Violence Procedures Manual*.¹³² He suggested that New Jersey courts have developed new standards on these cases with an eye to the Green-book initiative.¹³³

Judge Cassidy mentioned that DV victims can have a DV advocate situated inside the courtroom. He noted that technology has aided New Jersey courts in discerning DV, in addition to a federal registry available through the Internet that judges can access with regard to court records and any pending changes bench officers should be made aware of.¹³⁴

New Mexico

In 2010, there was one documented case of a murder-suicide involving children in New Mexico. In this case, a father was suspected of shooting and killing his ten- and twelve-year-old sons before turning the gun on himself. Friends of the family suggested Melvin Martinez was recently divorced and had commented that he would never let another man raise his children.¹³⁵ Santa Fe County First Judicial District Court Judge Mary Marlowe-Sommer said her court follows the Family Violence Act that is reviewed for probable cause in any petition that is filed.¹³⁶ If a petition is granted, and a temporary order of protection is served, the parties must abide by it, and the courts must follow the statute. She indicated that if the DV continues after the order of protection has been issued, the violator will spend over a year in jail—but not before she goes through the order thoroughly point-by-point with the

¹³⁰ Id.

¹³¹ Telephone interview with David Broselli, May 5, 2011.

¹³² *State of New Jersey, Domestic Violence Procedures Manual*, (Oct. 9, 2008), available at <https://www.judiciary.state.nj.us/family/dvprcman.pdf>.

¹³³ See Schechter & Edleson, *supra* note 42.

¹³⁴ Telephone interview with Judge Harry Cassidy, May 19, 2011.

¹³⁵ Vic Vela, *Details Emerge in Murder-Suicide* (July 9, 2010), <http://www.abqjournal.com/news/state/092336203777newsstate07-09-10.htm>.

¹³⁶ Telephone interview with Judge Mary Marlowe-Sommer, May 19, 2011.

respondent, so that the consequences of violating the order is clear. The victim is urged to call law enforcement if the order is not followed, even if the abuser uses a family member to make contact with the victim. What is important is that orders be taken seriously. According to Judge Marlowe-Sommer, her court is consistently engaged in training seminars around DV and keeps abreast of related literature.

New York

In 2009, there was one documented child tragedy, and there were two cases in 2010 in New York. Janet Fink, Deputy Counsel for the NY State Office of Court Administration spoke on behalf of Administrative Judge Edwina Richardson-Mendelson, for the Family Court of New York City.

Fink indicated former state senator Stephen Saland worked to pass several bills related to DV.¹³⁷ These are provisions to minimize emotional harm to child victims, requiring courts to consider certain risk factors to the victim, and requiring stricter regulations for the purchasing of a firearm with certain misdemeanor crimes including DV, among other measures.¹³⁸

Since the late 1990s, NY law does not allow an individual to be granted custody if that person is convicted of DV—both against a child and/or the other parent. Fink pointed out that the “legal framework is pretty clear”; Section 240 of New York Domestic Relations Law requires the court to consider the effect of DV on the best interests of the child, together with other factors and circumstances the court deems relevant. DV training is key to understanding the power differentials that exist in DV cases. Judges have to be mindful that the abuser can be a “champion manipulator,” with the victim appearing to be hysterical because she is about to watch her kid go to a man who is capable of abuse. “Judges must take this into account.”¹³⁹

Fink credits Chief Judge Judith Kaye for her pioneering work beginning in 1995 on DV; one of the primary goals was to create a family violence task course that takes place each spring. The effort includes a mandatory seminar on DV and is required for all civil, criminal, and matrimonial judges. Judge Kaye integrated the family, criminal, and matrimonial courts into one court (the Integrated Domestic Violence Court) to make it more conducive to the cases the court hears.¹⁴⁰

In referencing one NY case in which a father with a history of DV killed his son during a court-ordered visitation,¹⁴¹ Fink emphasized this was a case that should not have gone through mediation, based on provisions and presumptions associated with the Uniform Child-Custody Jurisdiction

¹³⁷ Telephone interview with Janet Fink, May 13, 2011.

¹³⁸ See <http://www.nysenate.gov>. See also <http://www.nysenate.gov/senator/stephen-m-saland>.

¹³⁹ Telephone interview with Janet Fink, May 13, 2011.

¹⁴⁰ See <http://www.courts.state.ny.us/ip/domesticviolence/keyprinciples.shtml>.

¹⁴¹ *Remembering Hunter Resch* (Feb. 15, 2010), http://rochester.ynn.com/content/top_stories/496106/remembering-hunter-resch/.

and Enforcement Act. Specifically, Section 3428 stipulates that jurisdiction should be declined on the ground of unjustifiable conduct.¹⁴²

According to Fink, when a murder-suicide does occur pertaining to a contested child custody case in the court's jurisdiction, the New York City Domestic Violence Fatality Review Committee, which was started in 2005, reviews the case. It then informs the legislature when making new laws, and professionals use the information in training for DV cases.

Law enforcement is supposed to find out who the primary aggressor is and arrest that person, even when both parties are accusing each other. Similar to bench officers, law enforcement has to go through extensive training for DV. The New York Office for the Prevention of Domestic Violence State Agency (NYOPDV) helps to train them and can train judges as well.

In responding to whether judges who see patterns of abuse seek changes in the system, Fink suggested that the NY court system has been proactive over the years in terms of seeking legislative changes. While an important change did not come from the judges directly, it was the governor who helped to pass a major DV law that revived and made permanent the Task Force to Review Domestic Violence Fatalities.¹⁴³ The task force is part of the NYOPDV. It is currently being formulated "and that's reform. We had one that was temporary, and many states have them, and that's a way on a regular basis [for] looking at . . . those tragedies and saying what can we do at the systemic level." In her view, "Certainly, judges should be proactive in making systemic changes; that's one of their roles."¹⁴⁴

Ohio

In 2009, there were three tragedies involving children in Ohio and one in 2010. Cuyahoga County Court of Common Pleas, Division of Domestic Relations, Administrative Judge Diane Palos, inherited a top job at a court mired in turmoil.¹⁴⁵ Before Judge Palos was appointed, the high court made ninety recommendations citing the court's "failure to resolve contested divorces within recommended time frames and the practice of some judges to assign trouble-filled cases to visiting judges and to hold fragmented trials and hearings."¹⁴⁶

Judge Palos said that she, like most judges in Ohio, belongs to the Association for Domestic Violence and Education as well as the NCJFCJ.¹⁴⁷ She added that "we've turned a lot of things around" in her court due to the hard work of her staff and aides, despite a significant reduction in court employees, which she is working to build back up.

¹⁴² See Patricia M. Hoff, *The Uniform Child-Custody Jurisdiction and Enforcement Act*, *Juvenile Justice Bull.* Dec. 2001, , <http://www.ncjrs.gov/pdffiles1/ojdp/189181.pdf>.

¹⁴³ See <http://www.opdv.ny.gov/professionals/fatalrev/nysdvfrteam.html>.

¹⁴⁴ Telephone interview with Janet Fink, Dec. 5, 2012.

¹⁴⁵ James F. McCarty, *Judge Diane Palos Assumes Leadership of Cuyahoga County Domestic Relations Court* (Jan. 6, 2010), http://blog.cleveland.com/metro/2010/01/post_182.html.

¹⁴⁶ *Id.*

¹⁴⁷ Telephone interview with Judge Diane Palos, May 8, 2011.

The economy, particularly in Ohio, has added stress to the court. “The number of people unrepresented who come in for a DV protection orders . . . has doubled in the last two years.” She pointed out that depleted funding means less shelters can be operated; there is less support for mental health, less Medicare money for children, and less Medicaid funding. When people lose their jobs and are unemployed, they tend to drink more and are more likely to become violent.¹⁴⁸

In addressing the issue of whether judges who see patterns of abuse in the cases that come before them would seek changes in the system, Judge Palos suggested that one hurdle for judges hearing the cases is that they cannot seek out evidence; rather, they can only take what evidence is presented to them.¹⁴⁹ Education is key, and while she believes most judges are educated, training must be ongoing. Training about DV is a facet of a judge’s duty that he or she ought to be diligent about. “[A] judge can’t necessarily say, ‘You’re the wrong expert. I have to get the right expert.’” She said the bottom line to this process is that evaluators should have training as well so that less misinformation comes from the witness. “[I]f the lawyers and the parties hire the wrong witness, and that witness testifies, that’s the only evidence the judge has.” Judges cannot suggest they want another witness. She added that prior to trial, there are some ways the judge could actually ask for an expert to be appointed; however, most people who come to court do not have enough money to have two or three different experts; and once a jury is in place and the trial under way, even if the “wrong person testifies and says the wrong thing, then that’s the evidence that you have.” Judges must be educated at the judicial level, and, in turn, they must educate the bar.¹⁵⁰

Courts in Ohio attempt to do their best to be “gender neutral,” and they favor shared parenting.¹⁵¹ She added that making such determinations is not simple because judges must consider the degree of DV involved.¹⁵² “If you’re talking about coercive control and a pattern of violence, the answer . . . would be absolutely not,” in considerations pertaining to shared parenting. The complication arises when a parent who has been victimized by DV “believes the other parent is a good parent or, isn’t going to hurt the children” with regard to shared parenting, and thus, judges will not stop them from making such decisions, if that is what they want, but she suggested that judges in these cases “ask hard questions. I think good courts do.” These determinations are

¹⁴⁸ Telephone interview with Judge Diane Palos, Dec. 11, 2012.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Telephone interview with Judge Diane Palos, May 8, 2011. It should be noted that shared parenting is never appropriate in DV cases. The Saunders’ study, *supra* note 6, notes that abusers use shared parenting access to harass and stalk their victims and decision-making authority to maintain control. In many cases, victims are pressured to cooperate with their abusers, and courts use mental health professionals to force the cooperation considered necessary for shared parenting. These practices are harmful to children.

¹⁵² Telephone interview with Judge Diane Palos, Dec. 11, 2012.

complicated in divorce cases where coercive control issues are not present or violence implicated, and then a fight that gets physical ensues and one party “pushes the other or slaps the other,” or “throws something, those people could probably still get shared parenting,” but they need healing and therapy, which requires some degree of time. Still, Judge Palos insisted, “You never send people to mediation who have any kind of . . . domestic violence,” where coercion is implicated.

Judges are “fact servants” when it comes to deciphering patterns of abuse, particularly given that each case is different. She has participated in DV and VAWA trainings, and is familiar with the current literature in the field; what is problematic “is that if I have a bad lawyer or no lawyer, and somebody doesn’t present the right evidence, I don’t have evidence. All I have are allegations, which may or may not be true in a court of law.”¹⁵³

Judge Palos believes family law and nonviolent cases should be mediated or resolved in nonlitigious ways, utilizing the help of social workers and DV advocates. In contrast, a trial would be necessary where DV is present and there is a coercive person involved. She suggested in the latter case, the coercive individual would not likely agree to refrain from seeing the children or refrain from being abusive. “Those cases . . . do end up being tried, and so mistakes are made” but “not because judges aren’t aware but because the evidence isn’t there.”¹⁵⁴

In addressing the need for judges to be better trained, utilizing the current research in the field that could help judges better discredit experts who recommend shared parenting when abuse or allegations of parental alienation are raised, Judge Palos said, “I think most . . . people know that Gardner’s Parental Alienation theory (PAS) has been debunked.” She said she honestly could not imagine that anyone would not know the theory was discredited, but she added, “it’s true that people are not always aware of everything” and “don’t always get the whole picture.” In this scenario, training would be important; however, she noted that “the people who need the training don’t come, and the people who know what the trainer’s going to say are the first ones in the front row.” She suggested that adding a component of required DV training for family courts could be helpful. The main reason judges may not understand the context surrounding the DV cases that come before them may be attributed to a lack of training but also lack of evidence presented in court, which can be compromised if the victim of DV loses credibility. “The victim can get up and lie about something, like where she’s living, or how much money she makes, and then it taints her whole testimony.” It is true that judges make decisions that, from an advocate’s standpoint, might be deemed a “terrible travesty,” but from a lawyer’s standpoint, the victim did not have

¹⁵³ Id.

¹⁵⁴ Id.

credibility. “So the question always is if you lose credibility on one issue, are you lying just about that or are you lying about everything?”¹⁵⁵

Amidst these limitations, it is important to empower DV victims.¹⁵⁶ Any person in a DV case who is not represented by an attorney might see a DV coordinator for assistance in her court.¹⁵⁷ The court reforms Judge Palos has implemented have been associated with obtaining federal grants to implement the VAWA provisions. Implementing VAWA will help mothers and fathers receive counseling, supervised visitation, and, anger management.¹⁵⁸ To this end, the VAWA Grant Judge Palos received aided her in providing additional support staff for the “dedicated” magistrate in her court.¹⁵⁹ Victims must have an advocate at the front end of their cases, in addition to a case manager at the back end, according to Judge Palos, who is assisted by a legal aid attorney who helps her on cases involving people with low income or who are experiencing DV. This aide also conducts DV trainings,¹⁶⁰ which are constantly updated to reflect new findings.¹⁶¹

Another key court reform the judge is implementing is a lethality assessment program that will aid her in determining whether a victim is at risk of being killed. Her case manager is receiving lethality assessment training; a lethality assessment questionnaire will eventually be given to everyone involved in DV cases. Strangulation, coercive control, and stalking are among the indicators used by the lethality assessment in discerning whether a real threat of violence needs to be circumvented. “We’re going to have everybody who touches a DV case in our court trained on that,” Judge Palos said, pointing out that having the extra team of social workers, advocates, and case managers will make a huge difference in trouble shooting these cases. “We’ll know who needs a sheriff standing in the room during the hearing, maybe.”¹⁶²

Oregon

In 2010, there were three cases involving child tragedies in Oregon. Multnomah County Circuit Court Judge Nan Waller said that her court is always interested in what research shows in terms of the practices and policies that need to be put forth toward equitable and fair decisions.¹⁶³ Her court has a family law committee that actively looks at the protocols that should be addressed about DV, in order to best meet the needs of litigants and devise more consistent policies. To this end, her court is always looking for new

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Telephone interview with Judge Diane Palos, May 8, 2011.

¹⁵⁸ Id.

¹⁵⁹ Telephone interview with Judge Diane Palos, Dec. 11, 2012.

¹⁶⁰ Id.

¹⁶¹ Telephone interview with Judge Diane Palos, May 8, 2011.

¹⁶² Telephone interview with Judge Diane Palos, Dec. 11, 2012.

¹⁶³ Telephone interview with Judge Nan Waller, May 19, 2011.

information, and most of the judges are members of the NCJFCJ, which distributes related reports on a regular basis.

Where DV is involved, the court operates on a consolidated and integrated family court model. The court oversees the Family Abuse Prevention Act¹⁶⁴ restraining orders, juvenile cases, delinquency, dependency, and termination of parental rights. There is also a DV criminal adult court. The judges consolidate cases involving a single family to prevent conflicting orders being issued by different judges. Doing this is ultimately more respectful to the family. All court judges in Judge Waller's jurisdiction handle DV related issues.

Pennsylvania

In 2010, there were two child tragedy cases in Pennsylvania. Dauphin County Judge Jeannine Turgeon of the Common Pleas Court said that "sometimes, bad things happen in situations where it would appear from initial petitions that the danger is exaggerated" in DV cases.¹⁶⁵ In the cases she has handled, she erred on the side of safety and granted related temporary orders pending a hearing.

Judge Turgeon indicated that there were no reforms her court was working on. She believed that even as the research pertaining to DV is available, most judges are not trained in addressing DV issues. "What we need is mandatory education on these topics, and our Supreme Court has yet to issue a rule requiring it." She supports changing present court practices to address new DV research findings but could not say if other judges in her court would. "Each judge runs their own court."¹⁶⁶

Franklin County Court of Common Pleas Thirty-Ninth Judicial District Judge Carol Van Horn stated that it is crucial for petitioning parties to reference a complaint of DV or abusive parenting if either has occurred, particularly if a limit to custodial contact is requested of the court.¹⁶⁷

The court system in Franklin County has three excellent agencies: Law Offices of Women in Need, Franklin County Legal Services, and Mid-Penn Legal Services. Judge Van Horn said that these agencies "employ some of our best custody attorneys that work collaboratively and are well aware of DV issues." Some of the attorneys teach classes on DV and custody issues. "We also have wonderful support for pro se clients through our bar association, which encourages pro bono work." She added that "[c]linics are run on a regular basis to assist individuals with pro se filings, and forms are posted on websites for easy use." Additionally, "Access to the court is provided each

¹⁶⁴ See *Family Abuse Prevention Act Benchmark* (2012), http://courts.oregon.gov/OJD/reference/Documents/FAPA_Benchmark.pdf.

¹⁶⁵ Telephone interview with Judge Jeannine Turgeon, May 13, 2011.

¹⁶⁶ *Id.*

¹⁶⁷ E-mail correspondence with Judge Carol Van Horn, May 2, 2011.

and every week for parties initiating custody actions to get an order in place confirming the custodial arrangements of the parties.”¹⁶⁸

“Unfortunately, sometimes individuals do horrible things.” Judge Van Horn also noted that when children are killed by parents who themselves subsequently commit suicide, this does not imply failure on the part of the court system, particularly when no complaint of DV had been made.¹⁶⁹

South Carolina

In South Carolina, there was one child tragedy in 2009 and one in 2010.

South Carolina Office of Administration Family Court Representative Cody Lidge suggested that a bill was filed dealing with joint custody.¹⁷⁰ He said it would require parents to submit a parenting plan, particularly in contested custody cases.¹⁷¹ He indicated there was an interest on the state level to eliminate mutual orders of protection but that the state statute still allows for the issuing of these orders.¹⁷²

Judges cannot do much else other than follow state statutes and laws, and that is what judges in his court do.¹⁷³ The 2007 Family Court Reform Act¹⁷⁴ is indicative of one policy that suggests no frivolous actions filed by an attorney for any party wrongly accusing the opposing party is permitted. Lidge added that South Carolina has a no-tolerance child abuse policy.¹⁷⁵

Texas

In 2009, there were two documented cases of child tragedies and four others in 2010 in Texas. Guadalupe County Second Twenty-Fifth District Judge W.C. “Bud” Kirkendall said that when allegations of DV and child abuse are raised, it can be hard for judges to know who is telling the truth; usually the violence has escalated to the degree that the cases become “high-conflict custody cases.”¹⁷⁶ He said that “in these cases, we try to do a number of things to minimize contact between parties.” This might include requiring contact only via e-mail and via websites through which the court can monitor the parties’ contacts, in order to implement an injunction or protection order. They might also require law enforcement officers to be present at the exchange of children for visitation. The court also suggests parenting coordinators, family law attorneys, and social workers who may be of benefit to the cases. Judge Kirkendall suggested that DV cases are difficult to deal with because of the issue of “proof.”

¹⁶⁸ Id.

¹⁶⁹ Id.

¹⁷⁰ H 4614 (1), adopted June 18, 2012.

¹⁷¹ Telephone interview with Cody Lidge, Mar. 28, 2012.

¹⁷² Id.

¹⁷³ Telephone interview with Cody Lidge, May 18, 2011.

¹⁷⁴ Family Court Hearing Officer Act; Family Court Reform Act of 2007; Family Law Mediation Act of 2007, S 196; *see* http://www.scstatehouse.gov/sess117_2007-2008/bills/196.htm.

¹⁷⁵ Telephone interview with Cody Lidge, May 18, 2011.

¹⁷⁶ Telephone interview with Judge W.C. Kirkendall, May 16, 2011.

When asked if he witnesses standard abuser tactics, such as seeking custody to punish the mother to maintain control, using custody as a harassment vehicle, making unfounded child protective claims, and attempting to manipulate the children,¹⁷⁷ Judge Kirkendall observed, “Yes, we see this a lot in these kind of cases, and one of the ways we see this is when the father has a higher income.” If a father threatens to prolong the case with a jury trial that is “exponentially more expensive” for parties, and if the victim does not have the same income level, an economic disadvantage is at play favoring the abuser.¹⁷⁸

Regarding the connection between economic advantage and abusers winning and restricted visitation to the protective mother in these cases, Judge Kirkendall indicated, “The Texas Supreme Court is suspicious of child support if it falls under the guidelines, and therefore if this seems to happen when mothers have restricted access, we are very suspicious.”¹⁷⁹

Harris County 245th District Family Court Judge Roy Moore indicated that he has observed cases where physical DV was not present, but other forms of abuse were, such as an abuser sending violent text and e-mail messages.¹⁸⁰ After a court hearing in one case, he limited the father’s physical access to the mother and children. His court has in place a secure way for victims to exit the building to prevent any escalation of violence after a hearing.

Judge Moore noted one case of a father who, after a hearing, caught up with the mother and children on the freeway and shot himself in front of them. Judge Moore has observed an increase in DV cases involving financial abuse. In many of these cases, the victims were married less than ten years, and so the alimony award was insufficient to support them.

Drug use often complicates a clear view of DV. Judge Moore indicated that in one of his cases, it came out in court that a mother had a drug abuse problem, but in that case, the ramifications of DV were not apparent. In that case, the mother’s drug use was later found to be the result of DV.

A batterers program is one project that has been implemented to deter violence. Judge Moore indicated he is always looking for tools to aid victims, and his court collaborates with the Texas Council on Family Violence.

In the training programs and seminars he has attended, he sees mediation as a popular approach but believes in DV cases, mediation should not

¹⁷⁷ Zorza, *supra* note 19, at 14-18, argues that abusers are notorious in fighting for custody, even when they are not involved in previously providing much attention to their children. She states the most common way batterers retaliate against women for leaving an abusive relationship is through the vehicle of the family court. Court practices that include mediation, mutual orders of protection, gag orders, and allegations by abusers that mothers are alienating children from them are standard strategies abusers use to “promote and encourage courts to promote” court orders that abusers can ultimately use against victims, thereby increasing an abuser’s power and control over a victim.

¹⁷⁸ Telephone interview with Judge W.C. Kirkendall, May 16, 2011.

¹⁷⁹ *Id.*

¹⁸⁰ Telephone interview Judge Roy Moore, Aug. 12, 2011.

be mandated. Videos are now being used to show judges triggering points in abusive behavior, in an effort to further combat DV.

In the twelve months prior to August 2011, Judge Moore noted a 20 percent increase in pro se litigants coming into court; that directly affects courts because it takes more time for judges to deal with these cases. There are three thousand cases that come through his court monthly, with sixty thousand cases being filed yearly in Harris County; but when DV becomes a factor, it must be weighed heavily, and the state of Texas mandates the DV violence factor be used.¹⁸¹

Former Harris County 312th Family District Court Judge Roberto Hinojosa, now retired, explained that Texas has a liberal definition of DV.¹⁸² It can be applied to anyone in the home, whether family members or not. "We take DV very seriously." If an individual violates an existing order, the victim can call 911 so the perpetrator can be arrested and jailed. "It's very effective."

In one case, he denied custody to a father who, for cultural and religious reasons, subsequently murdered his children. "It broke my heart." He felt concern about the children in that case, with their having an appointed amicus attorney to represent them, along with the fact that he had no evidence that the father would murder his children.¹⁸³

In a similar case he oversaw, Judge Hinojosa pointed to an ex-police officer who lost custody and did not want to pay child support. "This resulted in his two babies being murdered under his care." However, "No court has any way of predicting this."¹⁸⁴ Judge Hinojosa suggested that denying visitation to fathers in custody cases causes, as illuminated by these two cases, "a whole new set of different problems."¹⁸⁵

Judge Hinojosa's court gives parents the opportunity to come up with solutions on their own, unless there is DV. "We have a very good system in this county." He noted that protecting children is key, and staff are available to help with the supervising process. This is not an easy feat, given the large numbers of cases to hear and difficulty in keeping tabs on all of them given the overload of cases. Still, he pointed out that the rate of DV in Texas is low and that the family law judiciary for the last twenty years has been predominantly female.¹⁸⁶

Texas law requires a twelve-hour DV training course every two to three years, according to Judge Hinojosa. The training is supervised by the Supreme

¹⁸¹ Courts are required to consider various factors when deciding custody and visitation, and DV is one factor required to be considered in all states.

¹⁸² Telephone interview with Judge Roberto Hinojosa, Apr. 10, 2011.

¹⁸³ *Id.*

¹⁸⁴ *Id.* The Saunders' study, *supra* note 6, recommends that court professionals receive training in risk assessment, which can help predict which abusers pose the greatest danger. DV advocates regularly engage in safety planning with their clients and could provide courts with important assistance, if courts were open to listening to DV experts.

¹⁸⁵ Telephone interview with Judge Roberto Hinojosa, Apr. 10, 2011.

¹⁸⁶ *Id.*

Court, and all judges from city and rural areas receive the same training to effectively assess cases.

Judge Orlinda Naranjo is another family court judge in Austin (Travis County), TX. She recounted a case involving Josh Powell, who investigators believed had killed his wife but never found the hard evidence needed to charge him. Thus, he was never charged or arrested for any crime. The maternal grandparents had custody when the alleged perpetrator, who had visitation rights, killed himself and his children in a fire.¹⁸⁷ In that case, issues of DV and child custody were central, and “the court is being scrutinized for what it did and didn’t do.”

Judge Naranjo wondered whether DV flags existed in that case and, if so, whether the court saw these flags as an indication of a history of DV. “Those flags include physical and emotional abuse, and controlling behavior,” according to Judge Naranjo.¹⁸⁸

In the Josh Powell case, a social worker involved in the case was barred by the father from entering the family home. “When the social worker came, he grabbed the kids and brought them in”:

He then pushed the social worker out and within minutes had set the house on fire and killed the children. So when you think about that, you wonder, were there red flags that the court missed? And when you think of the supervision, if in fact they should have been supervised, does the court suggest they meet in a public setting like McDonald’s? Or should there be an entity providing that service? That’s one of the biggest problems that we have with these types of cases, the financial part of it. Who is going to pay for it?¹⁸⁹

As to whether there are any reforms that Judge Naranjo’s court is considering in light of these child tragedies, she replied, “No, there isn’t”:

We are not having that kind of discussion. We are not having the discussion of what are we looking for in these cases? Are we missing signs? Are we all doing the same thing? And we’re not all doing the same things. It varies from court to court. That’s probably not a good thing.¹⁹⁰

In responding to the assessment that DV experts have recognized a disturbing trend of awarding custody to abusive parents, Judge Naranjo said that Texas has a statute that specifically states a court “may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or

¹⁸⁷ Telephone interview with Judge Orlinda Naranjo, Apr. 3, 2012.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* Lundy Bancroft, Jay G. Silverman & Daniel Ritchie, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* 259 (2d ed. 2011). recommends that abusers be responsible for any expenses made necessary because of their abuse.

¹⁹⁰ Telephone interview with Judge Orlinda Naranjo, Apr. 3, 2012.

present child neglect, or physical or sexual abuse.”¹⁹¹ The court is to consider a history of family violence in determining whether to deny, restrict, or limit the possession of the child. “We are required to hear evidence of that history, but are the attorneys presenting it, or even recognizing it?” She wondered if judges are able to recognize family violence when they hear evidence presented that does not include physical abuse. “If they found there was a history of DV, I would think that most of my colleagues here would either require supervised visitation or that the individual[s] have treatment before they have sole managing conservatorship or possession without supervision,” according to Judge Naranjo.¹⁹²

One aid is the DV Prevention Program, which can run from twelve to thirty-two weeks, or pending the resolution of a recommended counseling program that is designed to examine underlying issues related to DV by the perpetrator.

In regard to concerns that experts relied on by family court often have little or no training, and the bench officers often do not know how to evaluate their expertise and who often have a limited number to choose from within their geographic area, in addition to the notion that most custody experts use tests that reveal little or nothing about parenting ability or DV, which results in especially harmful practices, Judge Naranjo indicated,

I would say that in a lot of the cases, you don’t see any expert testimony. No counselors, professional experts in the area . . . , what you’re seeing is probably police officers testifying. Occasionally, you will see a psychologist who does a psychological evaluation. Sometimes that issue is not even addressed . . . It may end up perhaps clouding the issue . . . Usually in a custody case, if there are issues of DV, the only people we may hear from other than the individuals are the police officers or other eyewitnesses.¹⁹³

Judge Naranjo added that occasionally, but not that often, attorneys will utilize the experts that may be available and who are proficient in this area. In any event, she indicated that if the relevant parties have attorneys, these agents would be the responsible entities for bringing in psychologists and other relevant professionals. She explained that, in her view, “It’s rare that the court orders . . . a psychological evaluation,” unless there are issues related to mental health or the stability of one of the parents. “But normally we don’t. In most cases, we don’t.”¹⁹⁴

In regard to PAS and the subsequent morphed friendly parent statute, assuming that the parent most aligned to promoting the other parent’s involvement

¹⁹¹ Tex. Fam. Code § 153.004(b).

¹⁹² Telephone interview with Judge Orlinda Naranjo, Apr. 3, 2012.

¹⁹³ Id.

¹⁹⁴ Id.

with the children is favored for custody regardless of whether DV is implicated, the judge responded, “We have the bill of rights for the children”:

I would say 95 percent of the cases become part of the court orders; where both parents are not to demean each other. That does not mean to me that a parent who alleged DV is demeaning that other parent. When we’re talking about these court orders, we mean that parents are not supposed to speak badly about the other parent in front of the child. They’re not paying child support, they’re not working, they’re not providing for you . . . they don’t love you, they’re not showing up, all of those things. But when you talk about DV, you don’t put that in the same category at all. It doesn’t fall under that. When one parent asserts that she’s just asserting these allegations because she’s trying to alienate the children from me. We view these allegations separate and apart from any claim of alienation . . . We see it and it might be that the perpetrator might allege alienation when what they are referring to is the other parent’s allegations of DV. All they’re trying to do is make me look bad in front of my kids. The court can look at the evidence and determine whether it’s DV or allegations of parent alienation when it’s not.¹⁹⁵

There is one judge who hears all the DV cases in her jurisdiction, but the cases do not all involve divorce or suits affecting the child. “In other words, those ones are when two individuals who have children but are not married and there’s a DV issue; they may be in the (DV court) but they’d get transferred to our court.” Judge Naranjo suggested her court would make the final determination. “If there are children involved, then, yes . . . The DV court judges end up hearing a lot of the misdemeanor, the assault issues, the criminal part of it.” These judges also rule on the initial emergency protective orders. “Most of the prosecutors, if they know that there’s ultimately going to be a custody issue, they’ll just go ahead and file the emergency protective order in our court.”¹⁹⁶

Judge Naranjo agreed with the assessment that as with mediation, mutual orders of protection give everybody the wrong message, conveying to the abuser that he can continue being abusive and that the court system believes his victim was also, or solely, at fault. It also tells the abuser that he need not accept responsibility for his abuse.

I probably would agree with that statement. There are times where I’ve thought a mutual order would have been beneficial. But, in the state of Texas, unless the laws changed very recently, we could not do mutual orders. If in fact somebody comes in requesting an emergency protective order, we couldn’t do that anymore. In a final divorce decree, we may have some of that language. That is the difference; those allegations that may arise in a protective court setting may end up in part of

¹⁹⁵ Id.

¹⁹⁶ Id.

the allegations in a petition of divorce or in a suit affecting the child–parent relationship. That changes the language we can use in a final decree. So you might see that as a mutual order of protection, that you can’t abuse each other, threaten each other, don’t destroy each other’s property or deplete the funds, etc. We have a lot of that language in every family case. It’s to protect the underlying safety of both parties. There are two systems working at the same time that might be a little different than other courts. We might have a protective order case going, and then you have a family law case going as well.¹⁹⁷

As to gender bias studies that found, in many cases involving DV, courts hold mothers to a higher standard of proof than fathers, Judge Naranjo was not sure she was in agreement with this assessment. “Not all cases are handled the same way.”¹⁹⁸

Judge Naranjo seemed to be in agreement with the notion that there is a misconception, for the most part, pertaining to a mother who primarily is responsible for domestic work within the home, which does not become an issue until the custody is contested. She explained,

That’s right, and what you see is that the mom does everything—takes the kids to school, to the doctor, she does everything. The father comes home late from work and maybe will attempt some of the school activities. The mom is primary caregiver, even when both parents are working. It’s a double duty. They expect that of the mother. On the other hand, dad is the provider, but there are two providers. Courts, for purposes of custody and possession and determining who’s going to get the primary custody, I look at who’s the primary caregiver.¹⁹⁹

In response to the act of inflicting more harm on a child being taken away from the primary caregiver, Judge Naranjo indicated,

I can tell you right now, that’s exactly right . . . I know your focus right now is on DV as it relates to the family dynamic and the issues of possession, custody of the children, but I can tell you that if there’s not those allegations, that’s still a concern to the court.²⁰⁰

The concern pertains particularly to those parents who have not used their parenting time to learn that effective parenting should not be conflated with seeing children three times a week. To the notion that when some fathers say they want to get more involved in their children’s lives, often it is to reduce whatever child support they might have to pay. Subsequently, some courts

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

²⁰⁰ Id.

may view this assertion as a positive for the father and hold another standard for the mother. Thus, the two parents are not judged the same.

There is some of that. I think that's accurate, and maybe that comes from seeing so many fathers who are not involved. Fathers who do not care whether we terminate their rights and have not been involved at all . . . But unless I'm terminating the rights or limiting access to the kids, they'll have to pay child support. We see so many fathers who don't want their children, so maybe we give more weight when a dad does want to assert more rights and access to their children.²⁰¹

Utah

In 2009, there was one documented case of a child tragedy and two other cases in 2010 in Utah. Utah State Fifth District Circuit Court Judge James Shumate explained that eighteen years ago, a committee was created to examine DV. Additionally, ten years ago, Utah created a committee to address DV and gender bias.²⁰² In instances of DV, a statement is taken at the scene, and the abuser is prosecuted with that evidence. Services are offered to victims immediately after an episode of DV, and if the perpetrator makes bail, the judge will automatically issue a "no contact" order. The court will then decide after a hearing, if the "no contact" order should stay.

Judge Shumate believes Utah is doing all it can to address DV and child custody, and he sees these as serious issues. Utah has been systematically addressing the problem of DV from arrest to adjudication since the inception of the initial creation of the committee, and custody is not given to a parent with a history of DV. Mutual orders of protection are never issued, but an order to "keep the peace" may be issued to the secondary party. He expressed surprise that some courts today are indeed issuing mutual orders of protection. According to Judge Shumate, Utah does have mandatory mediation; however, it is not used in cases where there is a history of DV.

Judges in Utah are required to have thirty hours yearly of training to eliminate many kinds of bias. He reported that he has received over six hundred hours of training over his twenty years in legal practice.

Virginia

In 2009, there was one documented case of a child victim in Norfolk County, VA, and, in 2010, there was another child murdered in Chesterfield County.

Judge Bonnie Davis, Chief Judge of the Chesterfield Juvenile and Domestic Relations District Court said that her court has come to realize the effect of DV on the children.²⁰³

²⁰¹ Id.

²⁰² Telephone interview with Judge James Shumate, May 16, 2011.

²⁰³ Telephone interview with Judge Bonnie Davis, May 16, 2012.

Judge Davis suggested that aside from murders, horrible maiming, or being maliciously wounded, if children scarred by DV survive an attempt on their lives, and make it through childhood and adolescence to become adults, the chances are high they are going to probably become involved in that same cycle of violence that they grew up with.

Judge Davis was unaware of any case in her court where children were victims of murder or attempted murders, but she did recall a case prior to the Christmas holiday a year ago where a mother and two children were killed by the mother's partner. In hindsight, she believes that case was handled by the Chesterfield Juvenile and Domestic Relations Court. "What is bothersome, and I think what we have learned, is that there needs to be more attention paid to requests for protective orders."²⁰⁴

It is sometimes difficult for judges to really know what went on, even if they have "a gut feeling" about the event. Judge Davis suggested that squaring that gut feeling with the legal standards can result in a judge not being able to enter the protective order, because it just has not risen to the required standard of proof. "So I think what we've learned is that there needs to be more support services in place for these women." She added that often, women who are not able to get a protective order simply give up.²⁰⁵

Complicating matters is when a preliminary protective order is issued and the female victim comes back to court seeking to withdraw her petition. "We've learned that we need to have more tools in our basket" in family court.²⁰⁶

Unless there is a lesser standard or burden of proof in place, the legal standard for issuing protection orders beyond those that are temporarily ordered will remain a difficult bar to overcome. "That's not something we can do. That would have to be the legislatures of each of the states."²⁰⁷

It is frightening to know that abusers can walk out of court without any protective order against them. Judge Davis recalled a case in which a fellow judge, who was the most reluctant in the courthouse to issue protective orders, discovered that as a result of one of his refusals, a man killed his female partner two days later.

Requests for protective orders are becoming "more frequent." During the week of Judge Davis's interview, the majority of the orders on her court's docket were preliminary protective orders where the petitioner self-represented and the respondents were not present. One judge hears the preliminary protective order, and two weeks later, another judge hears the request with both of the parties present. She added that sometimes even though both judges will compare notes as to what was said the first time in court, in comparison to the second time, "it doesn't even seem like the same case." She asserted that by the time judges hear both parties give their version of the event, "it's

²⁰⁴ Id.

²⁰⁵ Id.

²⁰⁶ Id.

²⁰⁷ Id.

difficult because, like every other case you don't know . . . in many cases who to believe," and in many of these cases, there are no witnesses.²⁰⁸

Judge Davis did not know if there is an alarming tendency awarding custody of children to abusers, but "it would be very naïve to say that it doesn't. I do think that it does." If a judge awards custody to an abuser, it is done "unwittingly," and only in the cases where there are gray areas.²⁰⁹

Additionally, how a victim presents in court is crucial; how a judge might see a victim is dependent in part on the perspective or background of the judge. "We really . . . work hard to be unbiased and to hear each case individually and make an assessment individually without any preconceived notion, . . . but of course . . . we are different people, we do come from different backgrounds."²¹⁰

Judge Davis's background is in private practice and as a prosecutor in the Juvenile and Domestic Relations Court, where she prosecuted cases in which one spouse had murdered the other—in one instance, in front of the children—and cases involving many kinds of sexual abuse. She also worked with DV cases for ten years. "My training is much more extensive in this area than some of the other judges, particularly those who sit in this court." She listens to all parties before making a decision. Sometimes she will find the alleged abuser not guilty or that there should be no protective order issued. However, she said that from her perspective when a victim (who is usually a woman) comes into her courtroom, immediately, there is an assumption "she's telling the truth."²¹¹

Judge Davis said the Virginia Supreme Court Office of the Executive Secretary offers training for judges in August and a voluntary program in the spring, which Judge Davis believes are effective in keeping judges abreast of information pertaining to family court matters.

In response to a question about judicial rotation and the notion that some family court judges are not desirous of presiding in family court, Judge Davis stated, "That is absolutely correct." Not every judge is desirous of being rotated out of family court, but in her court "it's two out of five who are in that category . . . so it's pretty sad, really."²¹²

CONCLUSION

The reports and articles chronicling atrocities against child victims of DV and child custody abuse presented in this chapter are troubling and saddening. These horrific cases of murder reflect reality. Who can ultimately insure the safety of these children, who are unable to secure it for themselves? Moreover, what more can family courts do to help prevent another child from ever being abused or killed? The terrain of family court is interconnected with

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ Id.

²¹¹ Id.

²¹² Id.

systems of law enforcement, government, mental health, war, and the economy. From this macro view, it is easier to understand the complexity of the issues related to DV and child custody that are presented in family court, with which judges routinely grapple. Providing one solution or easy fix for ending DV is beyond the scope of this chapter. This study raises many more questions in thinking about current practices. Observations of the judges interviewed for this chapter and what family courts and intersecting institutions can consider with some degree of urgency, particularly with regard to the murder of DV victims and their children in light of our current environment, are considered in Chapter 13.

AUTHOR'S NOTE

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