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**Custody Evaluations When There Are Allegations of Domestic
Violence:
Practices, Beliefs and Recommendations of Professional Evaluators**

Final Report submitted to the National Institute of Justice

by

New York Legal Assistance Group

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Project Personnel

The grantee was the New York Legal Assistance Group (NYLAG). Kim Susser, JD, Director of the Matrimonial & Family Law Unit, was involved in planning the project and had general project oversight. Data were collected by former NYLAG staff, Elana Bildner and Rebecca Grekin.

The team involved in developing the research methodology, coding and analysis of the data consisted of Michael Sean Davis, Ph.D., a clinical and research psychologist, Chris O’Sullivan, Ph.D., a social psychologist specializing in domestic violence research, and Hon. Marjory D. Fields, JD, a retired judge with 16 years of experience ruling on child protection, domestic violence, custody, and matrimonial cases in the Family and Supreme Courts in New York City.

April Kuchuk, Ph.D., a forensic psychologist, served as project adviser. She assisted in development of the proposal and the evaluator interview questionnaire, which she also piloted. Nancy Erickson, JD, an attorney who represents victims of domestic violence, has a Masters degree in forensic psychology, and has published on custody issues and psychological testing in domestic violence, helped develop the coding scheme, drafted sections of the literature review, and suggested interpretation of findings.

Project Advisers, attorneys specializing in domestic violence issues, provided feedback on hypotheses, methods and findings. They included:

- Liberty Aldrich, JD, Director of Domestic Violence and Family Court Programs at the Center for Court Innovation
- Dorchen A. Leidholdt, JD, Director of the Center for Battered Women’s Legal Services at Sanctuary for Families
- Emily Ruben, JD, Attorney-in-Charge, Brooklyn Neighborhood Office, The Legal Aid Society, Civil Practice
- Sharen Stapel, JD, and Anna Maria Diamanti, JD, successively Directors of Family Law Unit, South Brooklyn Legal Services

Claribel (Jolie) Picardo transcribed the interviews with evaluators. Traci Green, Ph.D, and Kimberly Martin, Ph.D., provided consultation on the data analysis strategies and implementation.

Additional volunteer assistance was provided by Jane Palmer, a doctoral student at American University and former director of the RAVE program in Atlanta, who assisted with coding custody evaluation reports, and by Heather Lasher, JD, an attorney with a Masters in Women’s Studies, who helped with recoding additional nuances of the custody evaluations related to “parental alienation.”

Abstract

Custody Evaluations When Domestic Violence Is Alleged: Practices, Beliefs and Recommendations of Custody Evaluators

Purpose

The purpose of this study was to investigate the impact of the beliefs and investigative practices of psychologists, psychiatrists and social workers who had been appointed by a court to evaluate families in disputed custody cases when there were allegations of domestic violence. Objectives were to examine the relationship between the evaluators' beliefs and practices and their recommendations for custody and visitation, and to examine how the evaluators' recommendations influenced case outcomes, including settlement agreements and court orders following trial.

The term "domestic violence" is used throughout this report to refer to intimate partner violence as defined by the United States Department of Justice Bureau of Justice Statistics: violence between adult intimate partners who are or were married to each other and are or were previously "boyfriend and girlfriend." In this study of custody and visitation disputes, all the intimate partners have a minor child or children in common. In addition, the term "domestic violence" is used in this report because the cases sampled were governed by New York Domestic Relations Law § 240 (1)(a), which requires that courts making custody and visitation decisions "must consider the effect of such [proven] domestic violence upon the best interests of the child..." The primary outcome of interest was the "parenting plan" recommended by the custody evaluator and in the final court order or settlement. The parenting plan refers to residential (physical) and legal custody, visitation time and conditions, and arrangements for transferring the children for visits.

Method

A sample of 69 cases was drawn from the case files of four New York City legal services organizations that specialize in representing domestic violence victims in civil legal proceedings, including custody and visitation litigation. Because of limited resources of the free and specialized legal services, the cases the organizations take are assessed and must meet certain criteria: there had to be serious need for legal representation (not necessarily the most physical violence), the case had to involve intimate partner violence, and child abuse or substance abuse could not be obvious confounding issues. To be included in the study, the court must have appointed a custody evaluator and the court must have issued a final order for custody and/or visitation.

Paralegals reviewed the attorneys' case files and extrapolated the facts and court histories into a data base. They also copied the court order appointing the custody evaluator, the evaluator's report to the court, and the final court order or settlement agreement. They redacted the names of the parties, their children and other private individuals and scanned the documents. The investigators then coded the court order appointing the evaluator and case outcome, and coded the evaluations with regard to the evaluator's practices, psychological testing, conclusions, and recommendations, and other factors.

Composite scores were created summarizing the thoroughness of the evaluator's investigation, the knowledge of domestic violence displayed by the evaluator in the report to the court, the evaluator's assessment of ongoing risk of domestic violence, and the safety of the parenting plan recommended by the evaluator. Parenting plan safety was rated according to the degree to which (1) the father's access to the children was limited (e.g., supervised visits vs. unsupervised visits with overnights), (2) contact between parents for exchange of the children was limited or protected, and (3) provisions for emergency communications were included. The parenting plan in the court order or settlement agreement was also coded for safety. Finally, the concordance between the parenting plan recommended by the evaluator and court order or settlement agreement was measured. Multivariate tests were conducted to identify significant predictors of the safety of the parenting plan recommended by the evaluator.

In addition, in-depth telephone interviews were conducted with 15 evaluators who had conducted evaluations included in the case-review study; 14 of them also completed written surveys. Qualitative analysis was conducted on the interview data.

Results

The parenting plans recommended by the evaluators did not differ significantly from those ordered by the courts. Parenting plans in settlements were significantly more similar to the evaluator-recommended plans (85% concordance) than were the court ordered plans (70% concordance), but both were highly correlated with the parenting plans recommended by the evaluators.

Surprisingly, settlement agreements and court ordered plans were similar in regard to the safety of exchange and visitation arrangements. The strongest predictor of the safety of the parenting plan recommended by the evaluator or ordered by the court was the evaluator's consideration of indicators of ongoing risk of domestic violence. Also significantly associated with the safety of the parenting plan was the evaluator's knowledge of domestic violence and use of a power and control model to analyze domestic violence. Neither the thoroughness of the evaluator's investigation (e.g., collaterals interviewed, documents reviewed), nor the severity of the abuse in the history of the relationship was predictive of the safety of the parenting plan. The quantitative data and the interviews of the evaluators revealed a wide range of beliefs about domestic violence and the child's best interest that affected the evaluator's conclusions and the court outcome.

Conclusions and Recommendations

Given the overwhelming influence of custody evaluators' conclusions on the court outcome, there should be greater consistency across evaluators: a family's fate should not depend on *which* evaluator is appointed. Recommendations include screening of court-appointed evaluators for knowledge of domestic violence and training of evaluators on risk factors for ongoing and potentially lethal violence. It is also recommended that courts conduct fact-finding regarding the domestic violence rather than relying on the custody evaluators to conduct investigations.

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Executive Summary

Project Overview

Custody and visitation cases are “sensitive, often volatile,” and “raise some of the most difficult issues before the courts” (Report of the Family Court Advisory and Rules Committee p. 170, 2006). As a result, when custody is disputed between parents, it has become increasingly common for the court to appoint custody evaluators to conduct an assessment of the family and to rely on that report in determining custody and visitation arrangements (Buehler and Gerard, 1995; Frankel, 2007). When the parties allege domestic violence, the evaluation takes on added importance: If one parent has abused the other, custody and visitation arrangements can create risks of further psychological and physical harm to the child and victimized parent.

Assessing and understanding intimate partner abuse (henceforth referred to as “domestic violence”) as a factor in custody and visitation determinations requires specialized knowledge. Such knowledge includes recognition of non-physical forms of abuse, such as social isolation, intimidation, financial abuse, and sexual abuse and of the power dynamics and inequality that arise from these forms of abuse; awareness of the high rate of concurrence of child abuse; the influence of victimization on the results of psychological tests administered to parents as part of evaluations; the cognitive, social, behavioral and health problems that can result from children’s exposure to domestic violence; and the ongoing risks of violence and stalking on the part of some perpetrators after the couple has separated.

Most custody evaluators are mental health professionals, not experts in domestic violence. Lacking specialized knowledge of the dynamics and impact of domestic violence, they may instead rely on overarching clinical theories, such as family systems, cognitive-behavioral, or psychodynamic perspectives, and perhaps knowledge of child development to inform their assessments and recommendations. Experts in domestic violence, however, regard many of these commonly utilized clinical theories as inappropriate for assessing domestic violence (Fagan et al., 1983) and prefer the power and control model (Dalton, 1999) as the most appropriate foundation for understanding the perpetration of domestic violence and its impact on the family.

Some evaluators apply the construct of Parental Alienation Syndrome (PAS), despite the rejection of PAS by professional organizations such as the American Psychological Association and the National Council of Juvenile and Family Court Judges and by domestic violence experts (American Psychological Association, 1996; Dalton, Drozd & Wong, 2006; Bancroft & Silverman, 2002). Furthermore, PAS is inadmissible as a psychological diagnosis in most family courts across the US (Hoult, 2006). Nonetheless, its influence survives in the form of a similar construct, referred to as “parental alienation,” which is frequently applied by custody evaluators and judges (Bruch, 2002).

At most, states may require professional degrees and licenses to serve the court as a custody evaluator but only one state requires expertise in domestic violence. The guidelines and standards for mental health professionals who conduct custody evaluations

issued by professional organizations, such as the American Psychological Association (2009), the Association of Family and Conciliation Courts (1994), as well as state psychology boards typically do not suggest that evaluators must have expertise in domestic violence. Shortcomings in the qualifications of evaluators create concerns about the influence of evaluators in custody and visitation cases involving allegations of domestic violence.

Anecdotal evidence of dire outcomes for battered mothers abounds, and there is a growing body of research examining these issues using surveys and other empirical methods. The primary purpose of this study is to contribute to the systematic investigation of outcomes of custody and visitation disputes when there is a history of domestic violence by examining the knowledge and beliefs about domestic violence that custody evaluators bring to their court-ordered task, how they investigate allegations, and how their recommendations influence court orders and settlement agreements.

Research Design

A case review study and an interview study were undertaken from August, 2007, through December, 2009 to answer these questions.

Case Review Study

The case review study was implemented through four private non-profit legal services agencies in New York City that provide free legal representation to domestic violence victims in civil proceedings including custody and visitation litigation. Staff at each agency reviewed computerized case lists and asked attorneys to identify cases that included custody evaluations. Sixty-nine cases involving custody or visitation issues that were litigated and resolved between 1997 and 2007 were identified for inclusion in the study. The custody and visitation cases were either part of a divorce proceeding in Supreme Court or resulted from petitions by one or both parents in Family Court. Court orders appointing the evaluators, custody evaluations, and settlement agreements or final orders were pulled from the attorney case files, copied, and redacted to remove all identifying information about the parties and other private individuals.

The paralegals entered into a data base the basic, non-interpretive legal and demographic information in the case file, such as the type of court in which the case was heard, arrests and criminal court actions, and family court proceedings and outcomes. They also provided an account of the abuse based on these records and the attorney's notes. From these descriptions, cases were given a domestic violence severity rating in each of four domains: physical abuse; threats; psychological, social, and financial abuse; and stalking.

A Coding Scale for Custody Evaluations with Domestic Violence (DV) Allegations was developed for rating the characteristics of the custody evaluations and the court outcomes. The coding scale consists of over 250 mostly dichotomous (Yes/No) items. Five primary summary variables – *Investigative Thoroughness, Demonstrated DV Knowledge, Current Safety Risk, Safety of Evaluator's Recommended Parenting Plan,*

and *Safety of Court Parenting Plan Safe* were created by applying scoring algorithms to appropriate subsets of these items.

Frequencies of all items from the Custody Evaluation Coding scale were calculated. Cross tabulations were conducted on items focusing on parental alienation, child or partner abuse, and evaluator custody recommendations. Primary study hypotheses focusing on knowledge of domestic violence and theoretical orientation, investigative thoroughness, current safety risk, and safety of the parenting plan were examined in bivariate and multivariate analyses.

Interview Study

Telephone interviews were conducted with custody evaluators who had completed evaluation reports for the cases in our case-review study. The purpose of the interviews was to obtain first-hand accounts of custody evaluators' professional background, experiences and beliefs, as well as their rationales and working methods in cases involving domestic violence allegations. An *interview guide* was developed to facilitate the consistent delivery of a semi-structured interview protocol consisting of 35 prompts and related follow-up questions. The interviews were digitally recorded and transcribed. A written *evaluator survey* was also developed to obtain more quantitatively oriented information from the evaluators who were interviewed about their experience, beliefs, and goals in cases involving DV allegations.

Sixteen of the 40 evaluators in our sample responded affirmatively to the recruitment inquiries; fifteen were interviewed and 14 completed and returned the survey. Descriptive statistics (means and percentages) for survey responses were calculated at the individual question level. Transcripts of the interviews were reviewed and themes identified with respect to the project's central questions, including what they view as the responsibilities of custody evaluators in cases involving allegations of domestic violence, how the evaluators identify and view domestic violence, what they consider convincing evidence that abuse has taken place, and how they factor domestic violence into their custody recommendations.

Results

Case Review Study

Frequencies and cross tabulations of individual items:

- ◆ *Relationships between Parents' Allegations of Domestic Violence and Other Variables.* In 37% of the cases, both parents alleged the other parent had been abusive, yet evaluators found such "mutual abuse" in only 2% of the cases. The evaluations were more likely to find that the father abused the mother if the documentary evidence in the case file, such as court or medical records, confirmed that he had (53%) than if there were no such records in the attorney's case file or if these records did not have evidence of abuse (8%). In 21% of the

cases where the case file contained documented evidence of the father's abuse of the mother, however, the evaluator did not conclude that the father abused the mother.

Residential Custody Outcomes and Predictors. Mothers were granted residential custody of at least one child in 79% of the cases and fathers were granted residential (physical) custody of at least one child in only 13% of the cases. (In the remaining cases, the petition was withdrawn, dismissed, or the evaluator did not make a determination about custody). Three factors were significantly associated with the father being granted residential custody: 1) the father already had residential custody; 2) the mother abused the child; and 3) the child was estranged from the mother (refused to interact with that parent). The mother was more likely to be granted residential custody if the evaluator found that the father had abused her and if the child was estranged from the father.

- ◆ *Relationship between Allegations of Domestic Violence and Child Abuse and Evaluators' Findings.* Mothers were more likely than fathers to allege domestic violence, but fathers were more likely to allege the mother abused the child. The evaluators more often agreed with mothers' allegations of both types of abuse than fathers' allegations. Most often, they agreed with mothers' allegations of domestic violence by the father. They agreed with less than half of the mothers' allegation that the father abused the child, however.
- ◆ *Parental Alienation Allegations and Evaluator's Findings.* Evaluators were significantly more likely to find alienation if the father alleged the mother was attempting to alienate the children against him (50% of the time) than when the father made no such allegation (22% of the time). Similarly, when a mother alleged that the father had alienated the children against her, the evaluator was significantly more likely to find alienation (75% of the time) than when the mother made no such allegation (23% of the time). That is, in at least a quarter of the cases, the custody evaluator found parental alienation even when the other parent made no such allegation.
- ◆ *Parental Alienation and Custody.* When the mother did not allege that the father had alienated the child against her, the evaluator recommended the father have custody 11% of the time, but when the mother did allege the father alienated the child against her, the evaluator recommended that the father have custody 42% of the time. This finding is inconsistent with conclusions reached by others, who find that parents believed to be alienating children against the other parent are penalized by losing custody and even visitation rights, and custody is awarded to the "friendly parent" who encourages involvement of the other parent.
- ◆ *Child Estrangement and Custody.* To explore the above finding, we conducted further review after the initial coding of the custody evaluations and outcomes. It appears that the primary influence on custody evaluators' recommendations and on court outcomes in this sample was not whether a parent was viewed as

attempting to alienate the child from the other parent, but the child's *estrangement* from a parent. That is, if the evaluator observed that a child refused to interact with a parent and expressed hostility to that parent in interviews with the evaluator, custody evaluators did not recommend that that parent have custody nor did courts award custody to that parent, regardless of the reason for the estrangement. Although there were varied reasons for children rejecting a parent, one implication is that when parents deliberately and successfully turned a child against the other parent, the "alienating" parent received custody. There was a correlation between the evaluator finding parental alienation and child estrangement: in 73% of the cases in which the evaluator found "parental alienation," the child was estranged from a parent. Including cases in which the child was estranged from a parent because of alienation as well as for other reasons, of the six cases in which the child was estranged from the mother, the father was awarded custody in half (as compared to 13% of all cases); of the nine cases in which children were estranged from the father, the mother was awarded custody in 100% (as compared to 79% of all cases).

Analyses with summary variables:

- ◆ *Factors Related to Safety of Parenting Plan:* Significant predictors of the safety of the parenting plan were *current safety risk* as measured by the number of risk factors noted by evaluators as present in the case, level of *DV knowledge* demonstrated by the evaluator in the evaluation, and evaluator use of the *power and control model*. All three of these predictive summary variables were significantly correlated with one another, suggesting that there was a single factor encompassing awareness of risk and competence in regard to domestic violence. No statistically significant associations were found between the safety of the parenting plan and other hypothesized predictors: investigative thoroughness, court setting, and severity of partner abuse.
- ◆ *Relationship between Evaluator and Court Parenting Plan:* A number of tests suggested a high degree of similarity between parenting plans recommended by evaluators and the court outcome. Item-by-item comparisons between evaluator-recommended and court-outcome parenting plans yielded a mean agreement rate of 75% across all common items. The safety scores of evaluator-recommended and court-outcome parenting plans were also highly correlated ($r = 0.49$; $p < 0.001$) and the mean safety scores of the two types of plans were not significantly different.
- ◆ *Relationship between Settlement Agreements and Court-Ordered Parenting Plans:* There were no statistically significant associations found between the likelihood of the parties reaching a settlement and the safety of the evaluator-recommended parenting plan, investigative thoroughness, severity of partner abuse, and current safety risk. There was also no significant difference found between the average safety of parenting plans reached by settlement and those

ordered by the court. On average, however, settlement plans were more similar to the plans recommended by evaluators than court ordered plans were to the evaluator plans.

Interview Study

Written Survey Findings

- ◆ The items that the majority of the evaluators endorsed most strongly were all related to the court ordering treatment for the perpetrator parent, the victimized parent, or children exposed to violence.
- ◆ Evaluators rated their priorities when conducting custody evaluations involving allegations of domestic violence as: (1) protecting children from violent, abusive, and neglectful environments; (2) protecting children from exposure to violence and conflict between parents; (3) holding perpetrators accountable, and (4) supporting the physical and emotional safety of the victimized parent.
- ◆ There seemed to be an inconsistency between the priorities expressed in the survey and the findings from the case review study. The survey findings suggest evaluators would be inclined to eliminate or at least severely limit contact between children and perpetrator parents, yet the recommended parenting plans often included extensive unsupervised visitation. It may be, though, that the evaluators who responded to our request for interviews were more likely to be knowledgeable about domestic violence and are not representative of all the custody evaluators in the case review study.

Findings of Telephone Interviews with Custody Evaluators (Qualitative Analysis)

- ◆ *Divergent approaches:* There was minimal consensus with respect to the methods, beliefs, and practices on which the psychologists and social worker interviewed professed to rely when conducting custody evaluations in cases involving allegations of domestic violence.
- ◆ *Evaluator role in custody cases involving domestic violence allegations:* Most evaluators think their role is to provide the court with informed expert opinion about which parent should have custody, how much visitation the parents should have and under what conditions, and the treatment needs of all family members. To fulfill this responsibility, most felt it was incumbent on them to assess whether the allegations of domestic violence were true.
- ◆ *Assessing the validity of domestic violence allegations:* Evaluators said they tended to rely most heavily on the consistency of accounts across sources and over time when attempting to assess the validity of claims of domestic violence. Most evaluators regarded children as a particularly useful source of reliable

information if they were skillfully engaged – although a few were reluctant to put children in that position. Clinical observation and available evidentiary records were also mentioned as important means of determining the validity of allegations.

- ◆ *Importance of domestic violence in custody and visitation recommendations:* Evaluators differed with respect to the role that credible or substantiated domestic violence by the father should play in determining the extent and type of his visitation with the children. Contrary to New York State statutes, some evaluators consider abuse of the mother irrelevant to visitation decisions as long as the father does not directly abuse the child – although, as one averred, they may consider “extremely brutal” abuse of the mother relevant. Most clearly believe that it is important for a child to have relationships and *time* with both parents, even if a parent perpetrated domestic violence. Only a minority of evaluators said they would be inclined to restrict children’s contact with their father because of his abuse of their mother. None mentioned that the law mandates consideration of domestic violence, not only child abuse, in deciding custody and visitation.
- ◆ *Causes of domestic violence:* Custody evaluators’ explanations for abuse of intimate partners usually identified multiple contributing factors, giving several reasons in different domains. These explanations included the motive of controlling the partner; social learning or modeling from the abuser’s own childhood; paranoid thinking, self-indulgence, narcissism and threats to self-image; and stress on the marital unit and nuclear family in contemporary American society.

Conclusions

- ◆ The primary finding was that the conclusions and recommendations in the custody evaluator’s report have a determining influence on the case outcome. In turn, the primary influence on the custody evaluator’s conclusions and recommendations for custody and visitation was the evaluator’s assessment of ongoing risks of serious intimate partner abuse. That assessment, however, is predicted by the custody evaluator’s knowledge of domestic violence and construction of intimate partner abuse as an issue of power and control.
- ◆ Situational, process, and case history factors, such as the thoroughness of the evaluator’s investigation or type of court (Family, Supreme, or Integrated Domestic Violence Court) did not predict the court outcome with respect to provisions in visitation and exchange arrangements that would protect the mother and child.
- ◆ Most surprising, the severity of the physical, emotional and social abuse in the couple’s history was not predictive of the safety of the parenting plan – regardless of the evaluator’s knowledge of domestic violence.

- ◆ The sum of the research findings suggest that the facts of the case have less influence on the final custody and visitation arrangements than the custody evaluator's understanding of domestic violence. As a result, when a custody case ends up in court, the fate of parents and children most often lies in the hands of the evaluator.
- ◆ Moreover, the descriptive data show wide variation across the evaluators in their awareness of and competence in assessing the critical issues in resolving custody disputes when there is a history of domestic violence. In less than a third of the cases the evaluator recommended safe exchange conditions.
- ◆ Because many disputed custody cases involve allegations of intimate partner abuse and the evaluator's knowledge of domestic violence has a significant impact on the case outcome, there is a clear need for requirements that custody evaluators have the knowledge necessary to recognize domestic violence in all its forms and to recognize the impact on victims and on children exposed to domestic violence. Also critical is that custody evaluators have an understanding of indicators of ongoing danger and safety provisions that can be incorporated into custody and visitation arrangements.

Recommendations

- Custody evaluators should be screened for knowledge of domestic violence dynamics, impact on children, and risk factors for ongoing abuse. Training should be offered and required not only on domestic violence but also on legal issues related to the evaluator's role and laws governing the court's requirements and options regarding custody and visitation in domestic violence cases.
- Courts should clarify in their orders appointing custody evaluators the scope of the assessment the evaluator is to conduct and whether the evaluator is to provide recommendations for custody and visitation in the report. The court's role as trier of fact must not be delegated to mental health personnel appointed to assess parenting capacity.
- Further research is needed on how courts and custody evaluators are defining and using the construct of "parental alienation" in assessing the child's best interest. The term was used in cases where a parent had apparently attempted to alienate the child from the other parent but the child was not, in fact, alienated (estranged) from that parent; it was used when the alienation was deliberate and without cause and when it was an unintentional result of the victimized parent's fear and concern. The terminology must first be clarified. This research must take into account child estrangement from a parent, identifying the causes of the estrangement and analyzing the court's response. Importantly, research should investigate the impact on children of custody and

visitation arrangements when a parent has been alienating the child from the other parent and when a child is estranged from a parent to clarify how courts might best respond to these dynamics.

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Custody Evaluations in Cases of Domestic Violence

Chapter 1

Problem and Overview of Project

Custody and visitation cases are “sensitive, often volatile,” and “raise some of the most difficult issues before the courts,” according Judith Kaye, the Chief Judge of the Courts of the State of New York (Report of the Family Court Advisory and Rules Committee to p. 170, 2006). When custody is disputed between parents, courts sometimes appoint a custody evaluator to conduct an assessment of the family. The purpose of the evaluation is to help the court determine the custody and visitation arrangements that would serve the child’s best interest, the standard for custody awards in all states (Buehler and Gerard, 1995; Frankel, 2007).

If the parties allege domestic violence, the evaluation can become more critical: flawed custody and visitation arrangements could put the child and victimized parent at risk of further psychological and physical harm; the victimized parent may be intimidated into surrendering custody. It has been estimated that as many as 50% of custody disputes involve domestic violence (Chandler, 1990; Keilitz, 1997). In one study, domestic violence offenders were found to be more likely than other fathers to seek custody (Liss and Stahly, 1993). Because of the importance of custody evaluations to the courts and the ultimate outcomes for children and parents, especially in cases of domestic violence (intimate partner abuse), it is critical to have a better understanding of how evaluations are conducted, what factors influence the evaluation, and the extent to which judicial decisions conform to the conclusions and recommendations of the evaluators.

In 48 states, courts are required to consider domestic violence in awarding custody and visitation (Family Law Quarterly, Custody Factors Chart, 2009). In some states, as in New York, these statutes require that domestic violence by one parent against the other be considered as a factor in awarding custody; in other states, there is a rebuttable presumption against awarding custody to a parent who has abused the other parent.

The appointment and choice of an evaluator may be proposed by the parties or by the attorney for the child or may be chosen by the court without input from the parties or their attorneys. Guidelines or standards for conducting custody evaluations have been issued by professional organizations such as the American Psychological Association (1994, 2009) and the National Council of Juvenile and Family Court Judges (2004, 2006), and government bodies, such as psychology boards (e.g., the New York State Board of Psychology, 1997). These guidelines, however, often do not address the issue of domestic violence. Standards for custody evaluators are rarely imposed by the courts: there are typically no requirements for evaluators other than, in some states, professional degrees and licenses (and some states do not even require advanced degrees). Few states require expertise in child development, child abuse, or domestic violence.

Assessing and understanding domestic violence as a factor in custody and visitation arrangements requires special expertise. For example, an abuser may appear calm and may be more convincing than a victim, who may appear anxious, depressed, and paranoid. Thus, the perpetrating parent may appear to be the more fit parent. The impact of exposure to domestic violence on the child may be evident in cognitive, social, behavioral, and somatic problems – possible responses of which the evaluator should be aware in assessing the child’s best interest. A child may express a preference for the perpetrating parent for a variety of reasons, such as identification with the more powerful parent, a sense that that parent is best equipped to protect the child or has greater ability to provide material benefits, fear of retaliation by the more dangerous parent, or effective manipulation of the child including denigration of the victimized parent.

To recognize the different presentations of abusers and victims and the range of reactions of children to exposure to abuse requires specialized knowledge. If an evaluator is assessing the validity of the allegations in order to understand the implications for parenting, the evaluator needs to be aware of the propensity of perpetrators of domestic violence to attempt to control their partners and children, be cognizant of the forms that domestic violence often takes including sexual abuse and patterns of non-physical abuse, including derogation and humiliation, social isolation and financial abuse, and obsessive jealousy expressed in accusations of infidelity used to justify denying the other parent access to the child. Above all, in the assessment of the child’s best interest, evaluators should be aware of the high frequency of child abuse by fathers who abuse their intimate partners.. Finally, evaluators who make recommendations to the court about custody and visitation should be aware of the sometimes heightened risk of violence after the couple has separated (American Psychological Association, 2005).

Child abuse is frequently a concurrent issue, and common in custody disputes are allegations of “parental alienation” – claims that one parent has turned the children against the other parent for baseless, vindictive reasons. Ascertaining the validity of accusations of child abuse and parental alienation, and how they should factor into determining the child’s best interest, becomes more complicated in the context of domestic violence and partner abuse. The victim may be naturally fearful of the perpetrating parent and convey that fear to their children, thereby unintentionally distancing the children from the other parent, or the children may be antagonistic to the perpetrating parent because of the abuse they have witnessed. The alleged perpetrator of domestic violence may argue that the claims of abuse are false and intended to alienate the children. On the other hand, domestic violence usually includes denigration of the victim and accusations of inappropriate behavior and children sometimes identify with the perpetrating parent in holding negative views of the victimized parent. These claims and counter claims and the basis of children’s reactions to each parent can be difficult to sort out from the bench. The presence of domestic violence and the frequently co-occurring allegations of child abuse may increase judges’ reliance on custody evaluators who can observe interactions between parents and children and interview children about what they have seen and heard.

Overview and Purpose

The primary purpose of this study was to learn about the knowledge and beliefs about domestic violence that custody evaluators bring to their court-ordered task, how they investigate allegations, and how their recommendations relate to court outcomes. To that end, we reviewed case files of legal service attorneys in New York City representing domestic violence victims in custody and visitation proceedings in which the court appointed a custody evaluator. We analyzed and coded the custody evaluators' reports to the court on a large number of dimensions, and compared the evaluators' recommendations to the case outcome (court order or settlement agreement). We also interviewed a subset of the evaluators who wrote the reports in our sample of cases.

The definition of domestic violence used by the attorneys who supplied the cases and adopted in the study is intimate partner abuse that constitutes a course of conduct exerting coercive control over the other parent (Stark, 2010; Dalton, Carbon & Oleson, 2003). This definition goes beyond discrete acts of physical assault and incorporates threats and intimidation, social isolation, sexual humiliation, and control and regulation of the partner's daily life (Stark, 2010). The cases sampled were governed by New York Domestic Relations Law § 240 (1)(a), which requires that courts making custody and visitation decisions "must consider the effect of such [proven] domestic violence upon the best interests of the child...."

Some of our aims were purely descriptive: What sorts of documents were available to the evaluators that would help them investigate claims of domestic violence and child abuse? Did they rely on these documents? Did they administer psychological tests to the parents and children? If so, to what end? Did their recommendations for sharing custody between the parents build in protections for the victimized parent? How often did custody evaluators recommend and courts grant custody or unsupervised visitation to alleged abusers?

We were also looking for relationships among variables, for example, between the evaluator's theoretical orientation and knowledge of domestic violence and the evaluator's recommendations for custody and visitation. We hypothesized that the more knowledgeable the evaluator was about domestic violence, and the more thoroughly the allegations of domestic violence were investigated, the safer the recommended parenting plan would be, in regard to the physical and psychological safety of the victimized parent and the children. We also expected the facts of the case to be influential: we anticipated that the severity of the partner abuse, especially physical abuse, and the better it was documented in the record (e.g., criminal convictions, medical records), the safer the recommended parenting plan would be. We hypothesized that there would be a close match between the evaluator's recommended parenting plan and the parenting plan in the settlement agreement or court order. We thought that the orders crafted by the judge would incorporate more protections for the victimized parent and more restrictions on the noncustodial parent's visitation than settlement agreements between parents.

Our primary expectation was that there would be a great deal of variability in the evaluations, the evaluators' responses to domestic violence allegations, their procedures, and their conclusions. An important concern regarding the appointment of custody evaluators and their influence on the court is that the courts are supposed to provide fair outcomes in accordance with the law. Integral to fairness is consistency in outcomes when the same or similar fact patterns exist.

Yet, even when evaluators are conscientious and responsive to the information they gather (including clinical observations), if they have disparate beliefs and levels of knowledge about domestic violence, they are likely to recommend different parenting plans. If some evaluators are not conscientious, or their recommendations are driven by theoretical models of family functioning that promote particular values inconsistent with empirical studies, the results can be devastating for the family. Mothers and fathers who need the court's intercession in deciding the fate of their children should be able to expect a reasonable outcome that is not dependent on the luck of the draw in the court-appointed evaluator.

Implications for Policy and Practice

Evaluators' knowledge of the dynamics of domestic violence, their assumptions regarding its effects on children and parental capacity, and the impact of their evaluations on custody decisions by courts and settlement agreements by the parents have significance for families nationally. As noted above, research suggests that up to half of disputed custody cases involve domestic violence. Furthermore, state statutes require courts to take domestic violence into account when deciding custody and visitation provisions in parenting plans.

Presented with cross-allegations and denials, judges are put in the difficult position of deciding the best parenting arrangement for children. Unable to observe directly the interactions of the parents and the parents with the children, many judges place great weight on the assessments of evaluators to gain insight into the family's history and dynamics. They may rely upon the evaluations to inform them about the validity of allegations of violence and optimal parenting plans. Given the potential impact of custody evaluations on children's physical and emotional safety when the court must intervene so critically in the child's fate, it is important to assess the relationships between evaluators' views and knowledge of domestic violence and their conclusions about the child's best interest.

The presence of domestic violence is an important factor in custody evaluations and custody decisions not only because of the potential impact on the child but also because of continued risk of harm and trauma to the victimized parent. A better understanding of the assumptions and theories underlying evaluators' reports when there are allegations of domestic violence is imperative to ensure that judges are able to make safe and appropriate custodial determinations. Although Fields (2010) has argued that custody evaluators should not assume the role of fact finders in determining the validity of

allegations of domestic violence, it is often the case that they assume that role and that courts rely on them to do so.

Lawyers representing domestic violence victims in custody and visitation cases and survivors themselves have reported that abusive parents have been granted primary custody of children, and victimized and/or protective parents have lost custody (Silverman, Mesh, Cuthbert, Slote, & Bancroft, 2004). They attribute such outcomes in part to custody evaluations that showed ignorance of the dynamics of domestic violence and that inappropriately introduced consideration of parental alienation into their assessments (Hoult, 2006). Even if ultimately the victimized parent secures sole custody, a flawed forensic report can lead to prolonged litigation which can, in itself, be harmful to children. Prolonged litigation may exhaust a victim's funds or stamina, leading her to settle for an outcome she feels is unsafe. Moreover, reports that fail to take a history of abuse into account or that dismiss the abuse – either viewing it as a temporary response to separation and disputed custody or a result of conflict that will be remedied by separation – often result in court orders for liberal unsupervised visitation.

Our hope is that this study is a step toward ascertaining whether there are indeed reasons for concern about custody evaluators' assessments in cases involving domestic violence. This study may alert judges and lawyers to variations in the reliability of evaluations in custody cases. Subsequent projects building on these findings could investigate whether developing best practice guidelines and requiring education or training for custody evaluators on domestic violence would sufficiently guard against these problems.

Chapter 2

Review of the Literature

There is a wide range of psychological and legal literature on custody evaluations, court outcomes, and the best interests of the child when there are allegations of domestic violence. Yet the research on these issues has many gaps. In this chapter, we review the legal and psychological literature on custody evaluations in cases of domestic violence.

The Impact of Domestic Violence on Children

A substantial body of empirical research demonstrates that exposure to domestic violence often has serious negative effects on children's mental and physical health, behavior, and cognitive and emotional development. In a review of the studies in 1999, Fantuzzo and Mohr summarized the findings: children exposed to domestic violence evinced more externalizing problem behaviors (generally aggression), internalizing problem behaviors (such as depression, anxiety, and bed-wetting), cognitive deficits (inability to concentrate, depressed verbal skills), and social difficulties with siblings and peers than children not exposed to domestic violence. Wolfe, Crooks, Lee, McIntyre-Smith and Jaffe (2003) conducted a meta-analysis of over 40 studies on the impact of domestic violence on children. They concluded that the effect of exposure to violence by one parent against the other is comparable to the effects of child abuse on a child's adjustment and development. It is not only witnessing, hearing or otherwise becoming aware of physical assaults on a parent that is disturbing to children. Children are also affected by threats and verbal abuse, and suffer from maternal stress and depression resulting from the father's abuse of the mother (Wolfe, Jaffe, Wilson and Zak, 1985), as well as the aftermath of severe injuries to the mother (O'Sullivan, Levin-Russell, King & Horowitz, 2006). New York State's law requiring the consideration of domestic violence in determining custody awards is premised on the research (see Legislative History section of NYS Domestic Relations Law 240 (1) (a)).

Separation of the parents may provide some respite for the children, but the potential for fear, anxiety, and conflict during custody litigation and when their parents come into contact to exchange the children for visits are continued stressors for children (Report of the American Psychological Association Presidential Task Force on Violence and the Family, 1996). An obvious concern when parents separate is the possibility of greater vulnerability of children when in the custody of a violent parent without the possibly protective presence of the other parent. The concern that an abusive parent is a poor role model continues. Finally, as will be discussed below, violence sometimes escalates when the parents separate.

The high rate of co-occurrence of domestic violence and child abuse was established by national surveys of American families that Murray Straus and colleagues conducted over three decades ago (Straus, Gelles & Steinmetz, 1981). Straus (1990) reported that 50% of

parents who abused their partners also abused their children, but only 7% of parents who did not abuse their partners abused their children. Several studies have found concurrent child abuse in 40 to 60 percent of families in which domestic violence has been identified (Edleson, 1995; Herrenkohl, Sousa, Tajima, Herrenkohl, and Moylan, 2008; Saunders, 2003). Current research shows that when children are both physically abused and exposed to domestic violence, the harm is compounded, increasing the likelihood that they will experience a full range of psychosocial problems that will carry over into adulthood (Herrenkohl, et al., 2008).

Another line of research has examined the underlying reasons for the co-occurrence of domestic violence and child abuse (Edleson, 1995). Even in the absence of physical child abuse, the parenting style of men who abuse their partners has been shown often to be authoritarian and rigid, marked by the same controlling behavior that is associated with domestic violence (Bancroft and Silverman, 2002; Stark, 2007). Diane Baumrind (1967), who initiated the now widely-accepted construct of parenting styles, characterized authoritarian parents as not explaining the reasons for rules but expecting obedience without question; controlling their children through shaming and other emotional punishments; and discouraging the “give and take” necessary for effective parenting.

Risk of Domestic Violence and Child Exposure to Abuse Following Dissolution of the Relationship: Assessing Dangerousness

A critical factor in devising safe parenting plans is assessing the likelihood that a perpetrator of domestic violence will desist after the partnership has ended or, permanently tied through the children, continue to abuse the other parent physically and emotionally or through stalking and threats. The need to protect a victimized parent from post-separation abuse is evident from the findings of studies of shared custody and decision making when there has been violence, or even high levels of conflict. Surveys indicate that from 15% to 40% of women abused during a relationship will continue to be abused after separation (Hotten, 2001). In some cases, however, abuse begins with separation. Mahoney (1991) coined the term “separation assault” to refer to continuing or new incidents of physical abuse inflicted when the victim is attempting to terminate the relationship, during separation, and even following divorce.

There is no certainty in predictions about which perpetrators of domestic violence will desist, which will persist, and which will escalate, even to lethality. Our estimates do not reach a level of reliability that would justify their use in criminal cases, but a lower standard should be adopted when the safety of children and their custodial parents is at stake. There are some fairly reliable indicators of which men who have abused their intimate partners are more likely than others to continue to be abusive, or to pose extreme danger to their former partners, that should at least be considered when designing parenting plans.

The best predictor of future behavior is past behavior. Looking at someone’s history in all intimate relationships is the most reliable indicator of whether he will abuse current, former or future partners. Severe past abuse of an intimate partner demonstrates a

capacity for violence and is an indicator of risk that the perpetrator may repeat injurious assaults or escalate violence. To some extent, predictors of lethal risk differ from predictors of repeat non-lethal abuse. The strongest indicator of risk of lethality is whether the perpetrator of domestic violence has previously used a weapon against an intimate partner: a woman is 20 times more likely to be killed by a current or former intimate partner if he has previously threatened or assaulted her with a gun or other weapon (Koziol-McLain, Webster, McFarlane, et al. 2006). A behavior predictive of continuing partner abuse is whether the partner has previously violated court orders, especially orders of protection (Klein, 2009). Ignoring previous court orders such as protection orders also has negative implications for the likelihood that a person will follow custody and visitation orders.

In addition to past violence, research has shown that men who are obsessively jealous of their partners are more likely to escalate to lethality (Campbell, Webster, Koziol-McLain, Block, et al., 2003). Controlling behavior during the relationship is predictive of severe dangerousness – but only if the couple has separated (Campbell et al., 2003). Serious threats to kill also increase the likelihood that a woman will be killed by her current or former partner by a factor of 15 (Campbell, et al., 2003).

A behavioral indicator that has not emerged as a significant predictor in studies of intimate partner homicide or repeat abuse is whether the perpetrator accepts or denies responsibility for his offenses. There is no indication from research on batterer programs that offenders who admit or verbally take responsibility for their abuse are less likely to reoffend than those who persist in denial. The best predictor of whether offenders ordered to a batterer program will recidivate is their criminal history. (cf., Labriola, Rempel, and Davis, 2005). Alcohol and drug abuse are associated both with a higher likelihood of ever abusing an intimate partner and with persistence in domestic violence (Klein, 2009).

Finally, there are contextual factors that are associated with a higher likelihood of re-abuse of and lethal assaults on an intimate partner. Specifically, the period immediately preceding and following dissolution of a relationship is particularly dangerous (Sev'er, 1997; Tjaden & Thoennes, 2000). Leaving a relationship is generally considered a time of high risk for domestic violence victims because a victim's decision to separate threatens the power imbalance created by the abusive partner. Many domestic violence homicides take place after the victim has left the relationship (Sev'er, 1997). Suicide and murder of the intimate partner, as well as murder of the children, are much more likely after separation than during a violent relationship (Pagelow, 1993; Websdale, 1999). Stalking is also a factor in determining risk of lethality (McFarlane, Campbell, and Watson, 2002).

Another risk factor for separation assault is having children with the abusive ex-partner (Harrell and Smith, 1996). Carlson, Harris and Holden (1999) found that women with children were four times more likely to experience protection order violations than other women. On the basis of this and other research, Logan and colleagues argue that “women with children and women experiencing stalking by a violent partner need

additional attention, risk assessment, ongoing safety planning, and continued advocacy” (Logan, Shannon, Walker, and Faragher, 2007, p. 197).

Research on Joint Custody

Proponents of joint custody often rely on the research on “father absence.” This research compares the outcomes for children raised in two-parent families with those raised in households without fathers. Early findings suggested that children raised without fathers or father figures in their homes were more likely to live in poverty, fail to finish high school, be unemployed, and engage in delinquent behavior (Pardue and Rector, 2004). It is highly questionable whether those results apply to children whose fathers are absent because they abused the children’s mothers (Cattlet and Artis, 2004; Edleson and Williams, 2007). In particular, the quality of the abusive father’s parenting and the impact of abuse on the mother’s parenting may diminish the benefits of the father’s presence.

Many custody evaluators and courts have adopted the belief that joint custody is best for children (Dalton, Carbon, and Oleson, 2003), despite the fact that this belief is not supported by the current literature. Early results of longitudinal studies of children of divorce concluded that children who spent more time with the non-custodial parent fared best, but follow up on these children led to a revision of that conclusion, particularly when there was “high conflict” between the parents (Johnston, 1995). Reconsideration of the data led the researchers to conclude that children were having difficulties not because of lack of access to the non-custodial parent but because of exposure to the conflict before the parents divorced (Kelly, 1993). When the relationship between the parents has been characterized by high levels of conflict or domestic violence, frequent exchanges of the children and joint custody arrangements resulted in continuing conflict and verbal and physical abuse between the parents. Children in these situations demonstrated more emotional and behavioral problems than those who were less frequently exchanged between the parents (Johnston, Klein and Tschann, 1989; Saunders, 1998).

For couples who are unable or unlikely to develop a cooperative relationship, joint or shared custody is not a feasible solution and can be harmful to children. Even if parents are cooperative, it appears that having a strong relationship with one parent and a secure primary home is best for children. Children in joint custody arrangements exhibit less affection and support for their parents than children in sole custody arrangements (Zill, 1988; Donnelly and Finkelhor, 1992). Splitting time between two households and forcing joint parenting when cooperation is not possible is the worst outcome (Johnston and Campbell, 1993). Additionally, studies have found that conflict between the parents increases conflict between the children and both parents.

Case law in New York reflects the research establishing that parties in a high-conflict relationship should not be expected to engage in joint decision-making for a child (Bliss ex rel. Ach v. Ach, 1982; Braiman v. Braiman, 1978). Forcing them to do so places children in the middle of conflict and the long-term outcomes are worse for children in that situation who have only one present, active parent after a divorce (APA Report on

Family Violence, 1996). When the parties' relationship has deteriorated to the point that they cannot share information and one party makes repeated, unfounded accusations of abuse against the other, "[a]mple evidence supports the finding of acrimony making joint custody inappropriate" (Reisler v. Phillips, 2002).

In light of strong and consistent research findings that joint custody is not optimal for children, and is particularly problematic when there has been conflict between the parents or domestic violence, the persistence of this model as the preferred outcome among many of those who adjudicate or advise the court on custody cases is puzzling. One possible reason is that the benefits of having positive relationships with both parents are being conflated with equality of time with each parent. In fact, there is evidence that the quality of the relationship with the non-custodial parent is not dependent on the frequency or total amount of time with that parent (Johnston et al., 1989; Donnelly and Finkelhor, 1992). A positive relationship can be sustained through phone calls, letters and occasional visits, but a negative relationship is not improved by frequent in-person contact.

Harrison observes that, in the United Kingdom, the criminal justice response to domestic violence has improved, but post-separation visitation arrangements "remain dominated by pro-contact models that fail to take into account the impact of domestic violence" (2008, p. 381). Legal scholars have made similar observations. Joan Meier suggested that what she terms the "equality principal" leads judges and forensic experts to hold joint custody as an ideal standard of post-divorce parenting and to dismiss allegations of domestic violence as tilting the scales (2003). Accepting domestic violence allegations is seen as displacing the exercise of the court's discretion under the best interest standard with an implicit presumption of one party's unfitness (Meier, 2003).

Safety in Custody and Visitation Arrangements

Hardesty (2002) argued that the legal context that favors high levels of cooperation and preference for granting joint custody or custody to the "friendly parent" promotes a framework that is likely to require ongoing contact between the parents and increase the possibility of separation assault. The preference for co-parenting, in other words, is unlikely to result in custody and visitation orders that incorporate protections for a parent who has been and may continue to be a victim of physical abuse, stalking, psychological abuse and harassment by the other parent.

In 2007, the National Council of Juvenile and Family Court Judges and the Association of Family and Reconciliation Courts brought together researcher and practitioner experts from different fields to resolve issues pertaining to courts' interactions with families in which domestic violence has been identified or alleged (the Wingspread Conference). A report on the conference by Ver Steegh and Dalton (2008) included a continuum proposed by Jaffe, Crooks and Bala that ranges from co-parenting to no contact. Intermediate arrangements are parallel parenting, supervised exchange and supervised access p. 463-464). Plans to include different levels of parental access and contact between parents were recommended, with short-term monitored plans and long-term

plans. The report also repeats Janet Johnston's five rank-ordered principles of custody arrangements: 1) protect the child; 2) protect the victimized parent; 3) respect the right of both parents to live their own lives; 4) hold abusers accountable for their behavior; and 5) allow the child access to both parents. According to the report, Johnston advises that parenting plans should begin with the first principle and not move to the next unless the prior principle can be satisfied (Ver Steegh and Dalton, 2008, p. 464). For example, the child's access to both parents may not be feasible if it cannot be safe for the child or victimized parent.

Protections for the victimized parent during transfer of the children for visits with the non-custodial parent may include, ranging from least to most protective, exchange in a public setting or supervised by a family member, exchange at a police precinct, exchange supervised by a professional, and exchange that involves no contact between the parents (either via "third party transfer" or exchange at a supervised visitation center). Reducing the frequency of exchanges reduces opportunities for abuse. Restrictions on phone calls can reduce harassment and opportunities for emotional abuse and threats. Such restrictions that protect the victimized parent but maintain the relationship between the child and the other parent include a set time for the non-custodial parent to call the child or giving the child a cell phone to receive calls from the other parent. To reduce opportunities for verbal harassment, arrangements and changes in plans can be communicated through a third party.

Protections for the child during visits can include ascertaining whether the perpetrator of domestic violence is abusing a new partner and ensuring that the child is not alone with the parent and new partner. Limiting the time that children spend with the perpetrator of intimate partner violence is protective. At the safest, visits may be supervised, with the greatest safety provided by visits at a secure visitation center or supervised by a professional, such as a social worker.

Notably, all of these provisions impose limits on the non-custodial parent's access to the child. Assuming that the non-custodial parent is the perpetrator of domestic violence, contingencies can be built in to lift restrictions on access if there is evidence of compliance with court orders and a perceived reduction in risk to the victimized parent and child. These contingencies might include increasing the perpetrating parent's access to the child if that parent voluntarily completes treatment or completes court-ordered programs, such as anger management, a batterer program, a parenting program, drug treatment or a therapeutic program recommended by an evaluator.

Although courts have adopted such practices, lifting restrictions that protect the victimized parent and child based on program or treatment attendance or even completion is not empirically justified, however. There is no evidence to support the effectiveness of these interventions in reducing domestic violence. In regard to batterer programs, a strong body of quasi-experimental (Harrell, 1991) and experimental research (Dunford, 2000; Feder & Dugan, 2002; Maxwell, Davis & Taylor, 2010; Labriola, Rempel & Davis, 2005) and a meta-analysis (Feder & Wilson, 2005) shows that they are not effective in stopping those ordered to them from repeat domestic violence. Gondolf and colleagues analyzed data from his multi-site study by comparing recidivism rates of program completers with those of program drop outs. Bennett and colleagues

took the same approach with a data set from Michigan programs. Notably, this approach is *not* quasi-experimental: All the domestic violence offenders were assigned to the same condition, the batterer program whereas an experimental design would require that they be randomly assigned to the program or to an alternate sanction in order to detect the effect of the program. In sharp contrast to the experimental research that finds those assigned to batterer programs reoffend as often as those assigned to alternate sanctions, only the non-experimental research comparing program completers to program drop-outs finds that those who complete batterer programs are less likely to reabuse their partners (cf. Jones, D’Agostino, Gondolf & Heckert, 2004; Bennett, Stoops, Call, & Flett, 2007). As Rempel (2009) points out, such a comparison merely demonstrates that domestic violence offenders who comply with a court order to a batterer program are also likely to comply with other court orders -- including orders not to abuse their partners again and protection orders.

The authors of the non-experimental studies consisting only of men ordered to batterer programs without a control group attempt to compensate for the pre-existing differences between those who comply with the order and those who do not comply with the order by adopting statistical techniques that attempt to match them. These techniques cannot overcome the essential fact that drop-outs and completers are assigned to the same condition but respond differently, and that this different response is inherently related to the likelihood they will reabuse their partners. Overall, the evidence supports the conclusion that courts should not rely on any such programs to reduce the risk of intimate partner violence (Peterson, 2008). Before increasing a perpetrating parent’s access, therefore, courts could order an assessment to determine whether the perpetrating parent still poses a risk to the other parent or to the child.

Research on Visitation and Custody when Domestic Violence Has Been Identified

As noted above, the conflict between the need for victim safety and the benefits of continued parental contact between a perpetrator of intimate partner violence and his child requires visitation plans that provide safety for the victimized parent through secure transfers and possibly supervised contact between the perpetrating parent and the child. The literature indicates, however, that such provisions for safe contact are not typical case outcomes despite statutory requirements to consider domestic violence in awarding custody and visitation. Two studies found that judges felt that there was no situation that would justify denying the father visitation to protect the mother (Morrill et al. 2005). This finding is consistent with Rosen and O’Sullivan’s finding (2005) that, in 1600 cases in the New York City Family Courts in one year, the courts never denied a father’s petition for visitation when he was enjoined from contact with the mother by a protection order. Morrill et al. (2005) concluded that judges view physical and legal custody, and visitation structure and conditions, as “awards to be distributed or balanced between the litigants in an attempt to satisfy parties” rather than as “a range of tools to use ... to avert further incidents of violence.” (p. 1104).

Despite the negative impact of exposure to domestic violence on children, research shows that many mothers who have been abused by the father of their children want to keep the father involved in their children’s lives, as long as exchanges and visits can be done safely (Tubbs and Williams, 2007). Frequently, the children in these situations want to

maintain a relationship with their fathers (DeVoe and Smith, 2002). Some studies have found that children who have no contact with their violent fathers forget the violence, idealize the absent fathers and blame their mothers for the separation (Johnston and Campbell, 1993; Lieberman and Van Horn, 1998).

How much contact is best for children when their father has abused their mother is an empirical question that has yet to be fully investigated. It is a complex issue, depending on many factors, such as the severity of the violence, the child's trauma, the victim's fear, the age and developmental level of the child, the quality of the relationship between the child and parent before the custody dispute, and the risk of harm to the child and custodial parent. The studies cited above did not balance the child's wish for contact with the father against the possibility of negative effects of ongoing exposure to violence on the child and on the mother's psychological state and ability to parent. A meta-analysis of 17 studies of children's well-being and non-residential fathers' access to children in cases that did not involve domestic violence concluded that it is the quality of the relationship between the father and child rather than the frequency of contact that matters, and that frequency of in-person visits did not determine the quality of the relationship: a strong relationship could be sustained with monthly visits, while a poor relationship was not strengthened by weekly visits (Whiteside and Becker, 2000).

One study has taken into account the combined effects on the child's psychological well-being of both the severity of the father's violence before separation and the level of post-separation visitation. Stover and her colleagues assessed 50 preschool children whose fathers had abused their mothers (Stover, Van Horn, Turner, Cooper and Lieberman, 2003). Only three were having supervised visits with their fathers; 75% of the children who visited their fathers weekly had unsupervised overnight stays despite their young age (three to six years old) and the father's history of violence toward the mother. The children who had weekly visits with their fathers showed significantly less internalizing behavior (depression, anxiety, withdrawal, somatic and symptoms) than children who saw their fathers less infrequently or not at all, regardless of the severity of the father's violence. The children whose father's violence against their mother had been extreme showed more externalizing behavior problems (aggression and anti-social behavior), regardless of the amount of contact with their fathers in the past six months or year. Nonetheless, Stover qualifies the conclusions; the sample was small and outcome measures were limited. In addition, the sample was referred for therapy in part because of disturbed relationship between the mother and child that Stover reasons predated the separation. This study cannot be compared with other studies that did not focus on families with a domestic violence history and found that it was the quality of the relationship with the non-custodial father rather than the frequency of contact that mattered. Stover et al.'s study collapsed into one category children who had *no* contact and those who had infrequent contact over six months. It is possible or likely that some of those children had virtually no relationship with their fathers and that poor quality of relationship was confounded with frequency in this study.

Studies have found that a history of abusing the mother does not limit a father's access to his children. Research conducted in California has found that domestic violence offenders

are as likely as non-violent fathers to be granted custody in California (Liss and Stahly, 1993; Morrill, Dai, Dunn, Sung and Smith, 2005). Research conducted in New York City found that fathers subject to restraining or protection orders were more likely than other fathers to be granted court orders for visitation in New York City (Rosen and O’Sullivan, 2005). It should be noted that fathers not restricted by protection orders did not need court orders for visitation to have contact with their children and therefore may have dropped the petition and proceeded with visits, whereas fathers restrained by protection orders may have followed through on their petitions to avoid being found in violation of the protection order when exchanging the child with the mother for visits. The import of this study is simply that the court routinely granted visitation orders to fathers who were subject to protection orders because of their abuse of the mother. A subsequent study found that the severity of the violence and the child’s traumatic response were not associated with a higher likelihood of a New York City Family Court ordering visitation to take place at a secure visitation center (O’Sullivan, King, and Levin, 2006). In sum, non-custodial parents’ visits with their children are rarely time-limited, supervised, or prohibited when those parents have perpetrated domestic violence.

Research on judicial education on domestic violence suggests that it has an impact on custody decisions but not on visitation. Morrill et al. (2005) surveyed 60 judges who had issued custody and visitation decisions in six states and examined the effects of judicial education on their beliefs about the impact of domestic violence on children. Although judges who had received more education on domestic violence were more likely to grant sole physical custody to the mother, there was an inverse relationship with visitation: When custody was given solely to one parent by these judges, visitation was more often unrestricted. That is, there appeared to be an attempt at parity, with sole maternal custody balanced out by liberal visitation for the father instead of further protections for the mother’s and child’s safety. This finding supports Meier’s (2003) argument that courts over-emphasize parental equality and gender neutrality in the face of serious allegations. Harrison (2008) attributes the extremely low rate of refusals of fathers’ applications to Family Courts in England for contact with their children (less than 1%) to the “political objective” of reinforcing the position of the father in the “post-separation family” and promoting a “family values model” of shared parenting at the cost of continued safety needs of mothers.

Psychological Theories that May Be Applied in Custody Evaluations Involving Domestic Violence: Family Systems, Parental Alienation, and Power and Control

Most custody evaluators are mental health professionals, and are especially likely to specialize in family therapy, and sometimes in child development and pathology. They are rarely specialists in domestic violence. Mental health professionals may see “marital conflict” where domestic violence experts see abuse (Dalton et al., 2003). Family therapists often subscribe to family systems theory, according to which conflict arises from the dynamic within the family. In this view, each member plays a role in causing the conflict. Implicitly, this model assumes that the partners have equal power to determine the course of the relationship and to influence the other partner’s behavior. Conversely, experts on domestic violence maintain that violence arises in a relationship with unequal power and that victims have little influence over the abuse (Hansen &

Harway, 1993; Dalton, 1999). Stark (2010) maintains that there is a symbiotic relationship such that social norms of gender inequality fuel abuse and that abuse creates unequal power.

According to Hansen (1993), family systems theory is inappropriate for assessing or responding to domestic violence. By conflating conflict and abuse, it attributes domestic violence to “reciprocal interactions” within the family system, ignoring all aspects of families other than communication and interactions between the parents, and between the parents and children. It does not include the legal, social and political systems or contexts within which families exist; differences in size and strength, financial resources, social status, and political power between men and women; or the history of criminal conduct by the abusive spouse. Family systems theory “direct[s] the focus away from the violence and fail[s] to address” the safety needs of weaker family members (Hansen, 1993, p. 80). Furthermore, family systems theory is incompatible with criminal laws that define acts of domestic violence as crimes, including marital rape, and civil protection order remedies that provide protection for victims and restrain the actions of violent spouses. Finally, family systems theory places equal blame for domestic violence on the victim and perpetrator.

Another theory that, although widely discredited, continues to play a role in custody disputes is that of the “Parental Alienation Syndrome” (PAS), a construct created by a psychiatrist who claimed an affiliation with Columbia University (Gardner, 1991; Williams, 2001). Gardner framed PAS as pathological behavior of a parent who deliberately manipulates the children to “poison” them against the other parent, so that the children would resist contact with that parent. Gardner proposed that the children needed to be protected from the alienating parent and custody should instead be awarded to the alienated parent. Mothers who had been abused by the fathers of their children or whose children had been abused by their fathers and who sought to protect the children by limiting or avoid visitation were accused of PAS and, in some cases, lost custody to the abusive fathers (Hoult, 2006). Parental Alienation Syndrome was discredited and is generally not accepted in courts throughout the United States (Hoult, 2006). Nonetheless, the term “parental alienation” is used frequently in regard to children and divorcing parents, is still frequently referenced in custody disputes; the “alienated child” is a subject of concern to the courts and custody evaluators.

In concert with the belief that it is best for children to have strong relationships with both parents, the seemingly more benign but conceptually related construct of the “friendly parent” is sometimes incorporated into statutes and case law as one of the factors to be considered under the child’s best interest. Under the “friendly parent” construct, along with other considerations, custody should be awarded to the parent more likely to support the other parent’s role in the child’s life. When applied to domestic violence cases, in which a victimized parent may have legitimate safety reasons for wishing to limit the former partner’s access to the children, a preference for the friendly parent reduces the probability of the victim being granted custody and increases the probability of the abuser being granted custody (Zorza, 1992). These provisions are widespread and routinely applied across the United States with only a small number of states exempting domestic violence cases from the provision (Dore, 2004).

Finally, the dominant perspective among advocates for battered women is the “power and control” model. This analysis is attributed the Domestic Abuse Intervention Project

(DAIP) in Duluth, Minnesota, and is commonly referred to as the “Duluth Model.” Ellen Pence and her colleagues at DAIP created the “Power and Control Wheel” in 1984 to capture the tactics experienced by women living with violent male partners and to use as a teaching tool in their batterer program. The wheel has spokes with the characteristics of different forms of violence or abusive tactics, including physical and sexual violence; coercion and threats; intimidation and emotional abuse; isolation; minimizing, denying and blaming; using children; using male privilege; and economic abuse. As Pence described it, the prevailing model previously was the “cycle of violence,” which made intimate partner abuse sound episodic. A victim persuaded her that the abuse was ongoing and affected all aspects of the couple’s life. At the center of the wheel are the words “power and control,” denoting the motivation for the abuse.

The Power and Control Wheel is pervasive, displayed at programs for victims and offenders across the country and used as a training tool for advocates and law enforcement. The U. S. Office on Violence Against Women defines domestic violence as a "pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner" (“About Domestic Violence,” OVW). The “Duluth Model” (the term actually refers to a coordinated community response to domestic violence, but is often taken to refer to the curriculum of the batterer program) is a gendered theory of intimate partner abuse, finding the causes in institutionalized patriarchy, male entitlement and socialization of boys and girls (Pence and Paymar, 1993). This model finds the source of violence against women in social hierarchies and economic structures rooted in history and found in cultures around the world. In addition to rejecting the conceptualization of intimate partner abuse of women as cyclic, the power and control model is inconsistent with explanations based in mental illness and personality disorders.

Typologies have been proposed that are consistent with the power and control model in analyzing domestic violence as an issue of control exercised through many forms of abuse above and beyond physical violence, and in construing domestic violence not as discrete acts of abuse but as a constant exercise of dominance. Under one construct, true domestic violence follows a pattern of “intimate terrorism,” which is distinguished from “common couple violence.” The latter might be a single incident of physical assault in the context of a fight. Intimate terrorism is deemed to be more common, to be more likely to be one-sided, to include emotional abuse, and to escalate (Johnson, 1995, 2000; Johnson & Ferraro, 2000). Somewhat similarly, Dalton et al. (2003) draw a distinction between “conflict-initiated” and “control-initiated” violence. The latter constitutes an abusive relationship with a full range of controlling behaviors, including threats, humiliations and insults, dangerous driving, sexual coercion, social isolation, and financial control and deprivation, which are not prompted by conflict. They contend that custody evaluators and courts must recognize the distinction between a history of conflict and a history of abuse, which involves much more than violence, to construct parenting plans that serve the children.

Finally, Evan Stark (2007) proposed a model of “coercive control.” This model is probably the elaboration that best captures the essential elements of the original power

and control model. Stark describes the way in which sexual degradation, intimidation, isolation and other forms of regulation of daily life are interwoven with physical abuse to effect domination of the partner. He argues that too much attention has gone to the most injurious physical assaults, undermining the effectiveness of the response to domestic violence (2010). In fact, constant less severe physical abuse – slaps and shoves that may not qualify as crimes but only as lower level offenses – serves to maintain the coercive control by keeping the victim in a chronic state of subjugation and entrapment. When a woman and even her children then respond with fear and depression to a relatively minor incident, they are seen as exaggerating and overreacting. The routine nature of the deprivations (restrictions on food, money, dress, transportation, speech and socializing) is difficult to substantiate in court yet has a cumulative and often devastating psychological impact. It is exactly this sort of more subtle and more difficult to document pattern of control that the legal service organizations that provided the cases in this study factor into their decision to accept a case: the need for legal advocacy is often greater when the abuser has *not* inflicted severe physical injury. When the abuser has committed severe physical violence and the victim has documented injuries, it requires less skilled and knowledgeable legal representation to persuade the court that the statute governing visitation and custody in domestic violence cases must be applied to the case.

The typologies that construct domestic violence as a pattern of behavior involving power and control tend to distinguish between true and dangerous intimate partner abuse and more transient and less serious incidents of violence. Two other distinctions among types of intimate partner abuse have not elicited consensus among experts, particularly in regard to their danger and seriousness. Some would categorize as less serious and not indicative of future danger “situational violence.” In this view, a particularly stressful and enraging situation, such as a custody fight, may trigger an uncharacteristic outburst including physical assault and threats to kill. According to proponents of the distinction, this sort of situation-dependent violence may be mutual and, although usually episodic, may become frequent and physically dangerous. Some view it as the most common form of domestic violence (Johnson, 2005). Distinguishing features are that it does not involve pervasive control, nor is it gendered. Under this view, violence that occurs in the context of separation may be situational and therefore not only does it not characterize the history of the relationship, but also it does not indicate that one partner has been unequally victimized and may be incapacitated. Most importantly, it does not portend danger.

In contrast, others believe that “separation violence” is an indicator of danger. Hardesty (2002) adopts Mahoney’s (1991) term of “separation assault” to refer not only to violence that continues or escalates a pattern of abuse during the relationship in the context of separation and afterwards but also to violence that begins with separation. Hardesty argues that *when* abuse happens in the course of a relationship or its dissolution is not a distinguishing feature and cautions against dismissing situational violence. Reviewing the literature, Hardesty notes that those who cannot accept rejection may engage in stalking and lethal threats. Separation violence is particularly relevant to custody disputes because the victim negotiates custody in a state of fear and intimidation, and may surrender to their partners more time and access than they believe is best for their children in the interest of keeping themselves and their children safe. Threatening

women with loss of custody can make them surrender child support. Finally, post-divorce parenting is compromised if the victim is threatened and harassed and continues to live in a state of fear. Clearly, despite the similar terminology, situational violence in the context of separation and separation assault are very different constructs. It is critical in the context of custody disputes to distinguish the two.

Research on Custody Evaluations

Research on custody evaluations has utilized two methodologies: surveys of custody evaluators to find out what they say that they do, and archival studies of custody evaluations to see what the evaluators have done. The first study utilizing survey self-report methods was published by Keilin and Bloom in 1986. It was followed by Ackerman and Ackerman's articles in 1996 and 1997, LaFortune and Carpenter's in 1998, and Bow and Quinnell's in 2001. All four surveys revealed that custody evaluators put "alienation" high on their lists of disfavored behaviors and that they use the MMPI-2 more often than any other psychological test. The surveys included few questions relating to domestic violence.

A later survey of custody evaluators specifically asked about evaluators' practices in cases involving allegations of domestic violence (Bow and Boxer, 2003) and concluded that custody evaluators use appropriate professional methods to investigate cases involving domestic violence. Erickson and Zorza (2005), however, questioned whether Bow and Boxer's positive appraisal of custody evaluators' methods took into account the evaluators' failure to consider the effects of domestic violence on the victims and child witnesses to abuse. For example, 25% of respondents indicated that they held joint interviews with the victim and perpetrator, yet Bow and Boxer did not note that this practice ignores the power inequities between victims and their abusers, is likely to yield misleading impressions, and is considered dangerous by domestic violence experts.

In addition, the study's reliance on the custody evaluators' self-reported practices raises the possibility of inaccuracies in observations of one's own behavior. Thus, such surveys relying on self-perception should be supplemented by studies that review actual evaluations. Adopting archival methods to discover what evaluators have actually done, another study found that "evaluators frequently neglected assessment of domestic violence and child abuse" (Horvath, Logan, and Walker, 2002, p. 562) and that "evaluators... do not explore domestic violence as a way of attending to the child's safety interests" (Logan, Walker, Jordan, and Horvath, 2002, p.735).

The discrepancies between the findings of Bow and Boxer and those of Logan and her colleagues are striking. They might be attributable to the geographical scope of the research, with the survey utilizing a national sample while the case review study drew on evaluations from a single county. It is also plausible that the difference can be attributed to methodology, with a survey suffering from biases due to impression management by the evaluators and inaccuracies in reporting their own practices. Logan et al.'s study may be unique in using archival methods to assess custody evaluations in cases involving domestic violence.

Psychologists frequently administer psychological tests to the parents in custody disputes (Ackerman & Ackerman, 1996, 1997; Bow & Quinnell, 2001; Horvath et al., 2002; Keilin & Bloom, 1986; LaFortune & Carpenter, 1998). The four early surveys of custody evaluators revealed that the revised Minnesota Multiphasic Personality Inventory (MMPI-2) was used by a majority of evaluators in a majority of their cases (Bow, 2006). Keilin and Bloom (1986) reported that about 70% of their respondents used the MMPI-2 and did so about 88% of the time. Ackerman and Ackerman (1997) reported that about 91% of their respondents reported using the MMPI-2 and did so about 92% of the time. In a survey of custody evaluators specifically asking about their practices in cases involving allegations of domestic violence, Bow and Boxer (2003) reported that about 75% of their respondents indicated they administered psychological tests to the parents, but they did not report on the specific tests used. Their respondents claimed, however, that they ascribed relatively little weight to the results of such tests.

Horvath and colleagues found that evaluators who were court employees were much less likely to administer tests than private evaluators, but even the private evaluators (75% of whom were doctoral level psychologists) administered psychological tests to the parents about 53% of the time (Horvath, Logan & Walker, 2002). More evaluators used psychological testing when the case involved domestic violence (24%) than when the case did not (14%), but that difference was not statistically significant (Logan, Walker, Jordan, & Horvath 2002).

More recently, Bow and colleagues surveyed 89 experienced custody evaluators who use psychological testing in their evaluations to determine how these evaluators chose the tests they used, how often they used them, and the purposes for which they used them (Bow, Gould, Flens, & Greenhut, 2005a). Consistent with previous surveys, they found that more respondents (91%) used the MMPI-2 than any other test. The evaluators' primary purposes in testing were (1) "ruling out psychopathology" (97%), (2) "assessing personality functioning" (89%), (3) analyzing "parental strengths and weaknesses" (63%), and (4) testing or generating hypotheses (57.3%). A minority used it to confirm hypotheses (37%) or determine "parenting capacity" (33%) (Bow et al., 2005a).

A number of concerns have been raised about the use of psychological testing in custody cases in general and in cases involving domestic violence in particular. One concern raised by Bow and colleagues simply involves proper administration, interpretation and use of the tests. Bow, Flens, Gould, and Greenhut (2005b) compared the evaluators' self-reported procedures with the instructions of the MMPI-2 manual (Butcher, Dahlstrom, Graham, Telegen & Kaemmer, 1989; Butcher et al., 2001). Two of the many errors reported by Bow et al. will be mentioned here. Although the manual advises that the correct way to handle a situation where the validity scales indicate a "fake good" profile is to re-administer the test, advising the parent to be honest, only 14% indicated they followed that procedure. Normative data specific to the child custody context have been developed for the MMPI-2; however, only 55% of respondents reported using those criteria in interpreting the scores.

Another concern is the admissibility of evidence based on psychological testing, following the Supreme Court's decision in *Daubert* (1993), setting standards for the empirical basis of evidence but leaving the decision in the hands of the judge. In Bow et al.'s (2005b) survey of custody evaluators, the vast majority of respondents averred that the tests would pass the Daubert standards for admissibility. Scholars, however, have criticized the use of psychological tests in custody evaluations on the basis of insufficient empirical validation and other deficiencies (Brodzinski, 1993; Erickson, Lilienfeld, & Vitacco, 2007; Groth-Marnat & Horvath, 2006; Melton, et al., 2007).

Finally, there are potential problems in the use of psychological tests in regard to domestic violence cases specifically. Focusing on the MMPI-2 as the most widely used test, results for victims can be misleading. Research has shown that battered women may be diagnosed with serious pathology when, in fact, their elevated scores on subscales can be attributed to the abuse; that is, the symptoms should be viewed as within the range of "normal responses" to a situation rather than as true indicators of psychological disorders. In particular, women who are being or have been abused by their intimate partners may suffer from PTSD, anxiety, depression and paranoia (Erickson, 2005; Morrell & Rubin, 2001; Rosewater, 1985).

In regard to perpetrators of intimate partner violence, there is no abuser profile (APA, 1996) and none of the commonly used psychological personality tests can "diagnose" an abuser (Otto & Collins, 1995; Craig, 2001). In fact, psychological testing of many batterers does not reveal any psychopathology (Holtzworth-Munroe & Stuart, 1994). Consequently, the abuser may appear more psychologically stable than his victimized partner (Bancroft & Silverman, 2002).

Standards for Custody Evaluations

Custody evaluations have been criticized on many levels. Some critics believe that problems with custody evaluations can be alleviated by careful training of evaluators. One state, California, requires custody evaluators to take training on domestic violence to be eligible for court appointment (Bow and Boxer, 2003). The Chief Judge of New York State convened the Matrimonial Commission to recommend improvements regarding the administration of divorce litigation in New York. The Report of the Matrimonial Commission (2006) urges the adoption of statewide standards of minimum qualifications of evaluators, training and periodic review. Other critics urge courts to preclude custody evaluators from making recommendations regarding which parent should have custody and how visitation should be structured (Tippins and Wittman, 2005). A survey of New York State judges by the Matrimonial Commission (2006) found that 34% thought no recommendation should be made as to the ultimate issue in the case because a recommendation from an expert would constitute an abdication of judicial authority, but 37% responded that a recommendation should be made because the expert was the most knowledgeable.

Criticisms of custody evaluation methods led the American Psychological Association (APA) to issue its first guidelines in 1994; those guidelines were revised in 2009. The

APA has not, however, conducted studies on whether the guidelines improved custody evaluations. The American Academy of Child and Adolescent Psychiatry, the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts have also issued guidelines for custody evaluations. Like the APA, none of these organizations has studied the effectiveness of their guidelines in improving the quality of custody evaluations or their implementation, nor does any of these organizations have any sanctioning power over custody evaluators.

Some legal scholars have gone beyond criticizing the methods of custody evaluators and their recommendations to call for eliminating the use of custody evaluations. Their reasons include but extend beyond the inappropriateness of using a psychological approach to assess for domestic violence (e.g., O'Donohue & Bradley, 1999). Others suggest simply limiting the level of inferences that custody evaluators make in their reports, never straying too far from fairly concrete observations. For example, Tippins (2005) distinguishes between custody evaluators drawing conclusions based on their interviews and observations that can help inform the court, on the one hand, and extrapolating from questionable theories to support specific recommendations for custody and visitation, on the other.

Diagnosing and “Treating” Perpetrators of Domestic Violence to Protect Children

In addition to granting petitions for visitation and custody to perpetrators of intimate partner violence, courts have sometimes included requirements that abusers seeking custody and visitation complete batterer programs (Edleson, et al., 2003; National Council of Juvenile and Family Court Judges, 2004, 2006). As noted earlier, research using experimental designs with true control groups (Davis, Taylor and Maxwell, 2005; Dunford, 2000; Feder and Dugan, 2002; Labriola, Rempel and Davis, 2008)) and meta-analysis of these experiments (Feder and Wilson, 2005) show that court orders to batterer programs have little to no effect on recidivism. (Also, as noted earlier, research comparing program drop outs to completers, although apparently persuasive to many practitioners, cannot demonstrate program effectiveness because it cannot control for all the pre-existing differences between those who choose to complete the program and those who drop out and reoffend [Rempel, 2009]). Feder and Dugan (2002) suggested that a program that does not reduce recidivism can be more than innocuous; it can be dangerous if it gives courts false confidence that the program participant has been rehabilitated and no longer poses a danger to the victimized parent or the children.

“Fatherhood” educational programs teaching the negative effects on children of exposure to domestic violence are being proposed as a new way to help fathers stop abusing the mothers of their children with the goal of allowing the fathers to play a large role in their children’s lives safely (Arean and Davis, 2007). These programs have not undergone the controlled studies necessary to evaluate their effectiveness in reducing continued violence against former partners and the children. Including the impact on children in batterer program curricula has not been demonstrated to have a significant effect. The single experimental study to evaluate a fatherhood curriculum for domestic violence offenders showed no decrease in recidivism as compared to a standard batterer program curriculum,

which other studies had already shown not to decrease re-arrests (Safe Horizon, 2005). In addition, a study comparing “social fathers” with biological fathers in batterer programs (N=464) found that, although the biological fathers expressed more concern about the impact of their violence on their children, “biological fathers were no more likely than social fathers to report intentions to stop their violence or otherwise take action to mitigate the harm of IPV exposure to their children. The findings suggest that fathers’ statements of concern may be poor indicators of their intentions to refrain from abusive behavior” (p. 1179).

Summary of Literature Review

This review of the literature suggests that a number of problems confront courts and custody evaluators when there have been allegations of domestic violence in a custody dispute. A particular problem is conflicting goals with regard to the best interest of children. There is tension between the goals of ensuring that the child has strong relationships with both parents and protecting victims of domestic violence and children from ongoing exposure to harm. There appears to be a preference in courts for joint custody, or at least granting fathers liberal time with their children, despite evidence that the level of cooperation between parents required by visitation arrangements that follow from these preferences is usually not feasible. The increased conflict and potential for violence between the parents is unhealthy for children.

The intent of state statutes that require consideration of domestic violence in awarding custody and visitation are undermined if courts are awarding liberal visitation to “balance” giving victims primary custody. Constructs of “parental alienation” and the “friendly parent” can also diminish the protections of these statutes for victims and children when victims’ safety concerns are taken as hostility toward the other parent and unreasonable resistance to the other parent’s relationship with their children.

Despite the complexity of disputed custody cases, especially when there are allegations of domestic violence, there are no required qualifications of custody evaluators other than professional degrees, and no required training on domestic violence, except in California. The literature supports the argument that it is necessary for an evaluator assessing families in disputed custody cases to be knowledgeable about the impact of abuse on the victimized parent, the relationship between perpetrating domestic violence and child abuse, parenting styles of perpetrators, and, importantly, the indicators of risk of future violence to both the child and victim parent. Finally, at this juncture, the research does not support the court ordering abusers to programs for domestic violence perpetrators in the context of custody and visitation proceedings as a means of ensuring the safety of mothers and children.

Chapter 3

Method

Case Review Study

The case review study¹ was undertaken to examine systematically the content and role of forensic evaluations used in custody cases involving allegations of domestic violence.

Participating Legal Service Organizations

Four legal service organizations from the New York City metropolitan area participated in the study. These agencies were the Center for Battered Women's Legal Services at *Sanctuary for Families*, the *New York Legal Assistance Group*, *South Brooklyn Legal Services*, and the *Legal Aid Society* (LAS) of New York. They all either exclusively represent domestic violence victims or prioritize domestic violence cases. The Center for Battered Women's Legal Services at Sanctuary for Families (SFF), which serves all five counties of New York, represents victims of domestic violence in Family Court, with a smaller number of matrimonial cases in Supreme Court. Some of the lawyers serve as assigned counsel under standards of indigence established by the court. New York Legal Assistance Group (NYLAH) also represents domestic violence victims in all five counties of New York City, but has flexible income requirements for services. NYLAG's cases are a mix of Supreme Court and Family Court cases. South Brooklyn Legal Services (SBLS) serves indigent clients from Brooklyn only, primarily in Family Court. Finally, the Legal Aid Society (LAS) provides legal services to indigent clients in all five boroughs of New York City, but their cases in this study came only from Brooklyn with a mix of Family and Supreme Court matters.

Sample Restriction

Clients seeking the services of these agencies are initially screened for domestic violence and financial eligibility. Each of these specialized domestic violence agencies takes cases in which they are convinced there is a history of intimate partner abuse in the sense of a pattern of coercive control. Because of high demand for these free legal services, the agencies are forced to take only the most serious cases – as defined not by the level of violence but those most in need of legal advocacy to secure custody or safety for the

¹ Institutional Review Board

A case review study and an interview study were conducted as part of this project. The Institutional Review Board (IRB) of the *Center for Court Innovation* (CCI) approved an exemption for the case review study, the research protocol for the interview study, and granted the appropriate privacy certificates. All IRB materials were approved by NIJ's Human Subjects Office on June 23rd, 2008.

victim and children. For example, a case with documented severe and injurious physical abuse might be considered a case in which specialized legal advocacy is not needed: such a clear-cut case for protections for the mother and children does not require advocacy by an attorney expert in domestic violence. A case in which the abuse has been less physical, more subtle and controlling, or one in which the victim has language barriers or impairments that compromise her ability to participate effectively in the litigation, is viewed as having greater need for legal services from one of these organizations. In addition, the domestic violence litigation specialists do not take cases in which substance abuse by either parent is likely to be a serious issue, nor cases in which maternal child abuse is a confounding factor.

Legal Context of the Study

In New York State, there are two types of courts that utilize custody evaluations: the Supreme Court, which has exclusive jurisdiction over divorces including custody and visitation determinations; and the Family Court, which lacks jurisdiction over divorces, but has jurisdiction over custody and visitation issues -- including when parents are separated before divorce actions are commenced and after divorces are granted, and in cases in which the parents are not married. Within the Supreme Court, under a recent innovation, there are Integrated Domestic Violence (IDV) Courts that combine the powers of the Supreme Court to grant divorces with the powers of the Family and Criminal Courts. To be heard in an IDV Court, a case must involve both criminal charges and civil issues such as custody and visitation, a family offense case or a divorce.

With a Family, Supreme and IDV Court in each of New York City's five counties (boroughs), our sample of cases could have been heard in any of 15 courts. Custody evaluators may be appointed by the judge deciding a custody matter. The attorney appointed to represent the children (formerly called a "law guardian" in New York State but now called "attorney for the child") or the parents may request the appointment of a custody evaluator, or the court can decide to appoint one without a request. Any of them may also suggest a particular evaluator. The judge also has the discretion to refuse to appoint an evaluator. In New York City, only psychologists, psychiatrists, and social workers may be appointed as custody evaluators.

Several New York State statutes and rules governed by case law are relevant to our methodology: 1) By statute, domestic violence is a factor to be considered in determining the child's best interest; 2) by rule of law, Parental Alienation Syndrome is not admissible but friendly parent provisions have been established and 3) also by rule of law, joint physical custody is prohibited: primary residential custody must be awarded to one parent. In our coding of evaluations, we considered any visitation arrangement that allocated 40% or more of the child's time to the non-custodial parent to be "shared" custody.

Case Identification and Redaction Procedures

At each agency, a staff person (paralegal, intern, or other at the discretion of the agency) culled through case lists and attempted to identify cases containing a custody evaluation. Frequently, they had to rely on the memories of former and current staff attorneys to identify cases for the study. To qualify for inclusion in the study, custody cases needed to be part of a custody or visitation case in Family or IDV Court or part of a divorce proceeding in Supreme or IDV Court. The custody evaluation needed to have been completed in the previous ten years (approximately when the NYS statute requiring the consideration of domestic violence in determining the child's best interest was adopted).

When a qualifying custody evaluation was identified, it was pulled from the case file, copied, and redacted to remove information that identified the case or the parties. The case number was redacted and, instead of names, each individual referenced was assigned a code indicating their relationship to the case, such as father, mother, male child aged six, female child aged three, paternal grandmother, male child's teacher, mother's boyfriend, or father's therapist. The redacted copy of the report was then given to researchers for rating purposes as described below.

Data Extraction

From the attorney's extensive case files, the data collectors also cataloged basic, non-interpretive legal and demographic information. This information included the number and type of prior family court petitions and orders; police domestic incident reports and complaints and any photographs depicting injuries/property damage; criminal court cases (charges, convictions); criminal and civil orders of protection, and whether they were temporary or final; court-ordered investigations to assess child well-being and child protective services investigations and findings; prior custody and visitation orders; an overview of the case, including whether the child was exposed to incidents of abuse; and, for each of the pertinent documents in the file, whether the evaluator had those documents. Finally, the orders and settlement agreements contained in the file were noted. See Appendix A for the list of factors extracted from the file. This information was entered into a data base that was later merged with coding data as described below.

Rating of Case Domestic Violence Severity

A simple coding scheme was used to rate the severity level of the violence directed against the mother by the father as documented in the case file. Based on only the objective sources in the case file, four types of abuse (*physical abuse, psychological/social/economic abuse, threats, and stalking*) were rated on a 0 to 3 scale, where 0 = no abuse, 1 = mild abuse, 2 = moderate abuse, and 3 = severe abuse. The assignment of severity levels was roughly based on the classifications in the Revised Conflict Tactics Scale (Straus and Douglas, 2004) and drew more particularly on a severity scale developed for the domestic violence risk assessment evaluation (RAVE)

study (Campbell, O’Sullivan, Roehl and Webster, 2005). See Appendix B for the coding scale used for rating domestic violence severity level based on case file documentation.

Custody Evaluation Coding Scale Development

A *Coding Scale for Custody Evaluation with Domestic Violence Allegations* was developed to document the investigatory practices and domestic violence-related knowledge and beliefs utilized and relied on in the evaluation process.

Item Generation.

To begin, Drs. Davis and O’Sullivan drafted an initial set of items documenting: (1) the type and content of the court-order authoring the evaluation and background case information; (2) elements of the evaluator-recommended and court-ordered parenting plans, and (3) seven categories of items representing what we believed to be key investigatory practices and beliefs of custody evaluations in cases involving allegations of intimate partner violence. Items were presented in a dichotomous (Yes/No) format to reduce rater interpretation and facilitate efficient coding. In drafting items for inclusion in the coding scheme, all team members attempted to craft items that were: (1) based on the literature and their expert knowledge; (2) not potentially biased with respect to gender, ethnic, economic, religious, or other groups; (3) worded unambiguously; (4) no more than 10 words whenever possible, and (5) able to minimize the use of single negatives, as well as avoid double negatives and the use of local legal terms to allow generalizability across courts and states.

The initial set of questions was distributed to the larger research team, which included Dr. April Kuchuk, Judge Marjory Fields, and Kim Susser, Esq., as part of a systematic review process. Using a 5-point Likert-scale, where 0 = “not at all” and 4 = “extremely,” team members were asked to rate each proposed item with respect to how “important” it was to include in the coding scheme. Team members were also asked to suggest any additional items they thought were important for better representing a particular topic area, as well as provide comments or wording suggestions for improving existing items and ensuring conformity with the above criteria. Nancy Erickson, another attorney specializing in domestic violence custody litigation who also has a Masters in forensic psychology participated in the generation and editing of items. Using the average importance rating and team comments as a guide, items were edited or eliminated and ultimately reduced from approximately 300 to 250 candidate items by Drs. Davis and O’Sullivan.

Pilot Study and Inter-rater Reliability.

This version of the coding scale developed with these methods was used in a preliminary pilot study. Four raters, Justice Fields and Drs. Davis, O’Sullivan, and Kuchuk, each rated the same 3 randomly selected cases (N=12 cases) from the evaluation sample. While completing the rating, raters were asked to identify items they believed that failed to capture interpretable information about a given case. In addition, Fleiss’s Kappa was used to assess the reliability of agreement among the raters. Kappas ranged from -.33 to 1.0. Forty percent of the items had a perfect Kappa of 1.0, indicating perfect agreement;

27% had Kappas > .6 and < .8., indicating substantial agreement; 11% had Kappas > .4 and < .6, indicating moderate agreement; 16% had Kappas > .2 and < .4, indicating fair agreement; 2% had Kappas > .0 and < .2, indicating slight agreement, and 3% had Kappas < 0 indicating poor agreement. Items that were deemed to yielding uninterpretable data by any rater or that had a Kappa < .3 was either eliminated or revised. For items in the *Notes Abuse Risk Indicator* category, the dichotomous (Yes/No) code was replaced with a multi-dimensional code (No Mention/Notes Absence/Notes Presence/Expresses Concern) to improve the coding scheme’s sensitivity in capturing the evaluator’s awareness not only of the presence or absence of risk indicators but also the significance of the factors. See Table 3.1 for descriptions of the rating categories and representative items, and Appendix D for the final rating scale used in the study.

Table 3.1. Evaluation Coding Scale Item Content

Rating Categories	Content of Items	Sample Item
Order for Evaluation & Background of Case (47 items)	Documents type of order authorizing the evaluation & background case information	“Which parent has legal custody (prior to evaluation)?” (Mother/Father/Joint/Divided)
Attributions for Causes of DV (9 items)	Documents how causes of DV are viewed and described in evaluation	“Abuse viewed as an anger management or impulse control problem?” (Y/N)
Use of Psychological Tests & Assessments (12 items)	Documents how and why psychological testing was used in the evaluation	“Psychological test results were used to confirm link between psychological disorders and partner abuse?” (Y/N)
Investigates Psychological, Medical, & Substance Abuse History of Family Members (34 items)	Documents whether, and if so, how and why psychological, medical, and substance abuse history of parents and children was factored into evaluation	“Medical records and history were used to detect Mother’s health problems related to DV?” (Y/N)
Notes Primary Aggressor Indicators (9 items)	Documents extent to which indicators of primary aggression were assessed in evaluation	“Does the evaluation mention which parent provides a clearer, more specific and consistent account of violent incidents?” (Y/N)
Notes Abuse Risk Indicators (15 items)	Documents extent to which risk of dangerousness factors were assessed in evaluation	“Shows obsessive possessiveness of mother?” (No Mention/Notes Absence/Notes Presence/Expresses Concern)
Notes Non-Physical Forms of DV (7 items)	Documents extent to which evaluation assesses non-physical forms of DV	“Does the evaluation mention if Father used social isolation tactics against Mother?” (Y/N)
Assesses Children’s Exposure to DV (21 items)	Documents extent to which children’s exposure to DV is assessed as part of evaluation	“Assessed children for particular symptoms or signs know to be associated with exposure to DV?” (Y/N)
Appropriately Selects & Applies Theoretical Perspectives (7 items)	Documents theoretical perspective evidently applied in evaluation	“Does the evaluation appear to draw on a family systems’ perspective?” (Y/N)
Elements of Evaluator Recommended/Suggested Parenting Plan (42 items)	Documents elements of parenting plan suggested or recommended in evaluation	“Does the evaluation recommend or suggest no overnight visits with Father?” (Y/N)

Elements of Parenting Plan in Court Order or Settlement <i>(42 items)</i>	Documents elements of parenting plan included in court order or settlement	<i>“Does the evaluation recommend or suggest no overnight visits with Father?” (Y/N)</i>
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Case Rating

Using redacted copies of the order for the evaluation (order appointing the evaluator), the custody evaluation report to the court, and the final order or settlement, and consulting data extracted from the case files, one of four raters coded each of the 69 cases in the sample with the Evaluation Coding Scale. The raters included Drs. Davis and O’Sullivan, Judge Fields, and a new project rater, Jane Palmer. For training purposes, Ms. Palmer was asked to rate a series of cases previously completed by one of the primary team members. The results were compared and the rater received feedback and clarification on discrepant items until an approximately 80% correspondence level was achieved.

Analysis

Frequencies of individual items on the Custody Evaluation Coding Scale are reported as the percentage of cases in which the target item was scored affirmatively as present (i.e., “Yes”). Bivariate analyses (chi square and Tau B) were conducted on individual items focusing on parental alienation, child or partner abuse, and evaluator custody recommendations and presented as cross-tabs to examine specific item-level hypotheses relating these variables to case outcomes. The primary study hypotheses focusing on DV-related knowledge and theoretical orientation, investigative thoroughness, current safety risk, and parenting plan safety were examined in bivariate and multivariate analyses as appropriate. For continuous outcomes, multiple linear regression (GLM) and Pearson’s correlation were used, while for dichotomous outcomes, multiple logistic regression was used.

Interviews with Custody Evaluators

To complement the case reviews, interviews were conducted with custody evaluators to obtain first-hand accounts of custody evaluators’ background and beliefs, their perspective on custody disputes in general and those involving domestic violence in particular, their experience with and thoughts about allegations of domestic violence, child abuse and parental alienation, and their procedures when conducting assessments of parenting and the child’s best interest in cases involving domestic violence allegations.

Development of Interview Guide

An interview guide was developed to facilitate the consistent delivery of the semi-structured interview protocol. Drs. Davis and O’Sullivan drafted approximately 100 preliminary questions representing each of the key conceptual domains identified in the literature review for the case review study. These questions were then distributed to the larger research team, consisting of Dr. Kuchuk, Judge Marjory Fields, Kim Susser, Dorchon Leidholdt, and Liberty Aldrich, as part of a systematic review process. Using a

5-point Likert-type scale, where 0 = “not at all” and 4 = “extremely,” team members were asked to rate each proposed question with respect to how “important” it was to include in the evaluator interview. Team members were also asked to suggest any additional questions they thought were important for better representing a particular topic area, as well as provide editorial comments or wording suggestions for existing questions. Using the average importance rating and team comments as a guide, questions were edited and ultimately reduced to approximately 35 questions and related prompts and follow-ups by Drs. Davis and O’Sullivan. Using this version of the interview, a series of mock interviews were conducted among team members, resulting in a final set of revisions aimed specifically at improving timing and question flow. See Appendix C for the interview guide used in the study.

Evaluator Survey

To complement the telephone interviews, which mostly involved asking a series of open-ended questions, a survey was developed as a means of collecting more quantitative information directly from evaluators about their thinking processes and working methods. Survey development procedures were similar to those used for the interview guide as described above, except the range of topics was far more limited. For the survey, evaluators were asked to provide quantitative information about their background and experience, including the number of evaluations completed for the family and supreme courts, with and without allegations of domestic violence. Using a Likert-type scale (*1=strongly agree/very important; 5=strongly disagree/unimportant*) evaluators were asked to rate the strength of their beliefs with respect to the value and advisability of pursuing particular rehabilitation options for domestic violence perpetrators, as well as the importance of different goals evaluators customarily set for themselves when conducting custody evaluations, and to list the psychological tests they have used when conducting evaluations involving possible domestic violence. See Appendix E for the evaluator survey used in the study.

Procedures

Contact information for the custody evaluators who had been appointed by the court to conduct evaluations for the cases in the case review sample were collected from their reports to the court and internet searches were conducted for contact information for those for whom the contact information was missing or whose contact information was outdated. To recruit them for the interviews, we sent introductory letters or emails, followed up by phone calls. This outreach was conducted to 42 custody evaluators. Evaluators who responded favorably to these inquiries were sent an informed consent form to review and sign and return by fax if they remained interested in the study. Those willing to participate were interviewed over the phone by Drs. Davis or O’Sullivan. The average interview lasted approximately one hour. At the conclusion of the interview, evaluators were sent the survey described earlier to complete. Once they returned the survey, they were paid \$75 for their participation. The interviews were digitally recorded and transcribed. Only a coded ID assigned to each custody evaluator was associated with transcripts. The transcripts were reviewed to ensure no personally identifying

information about clinical cases was inadvertently revealed by evaluators. No such information was identified.

Analysis

Evaluator survey data are reported as means and percentages for individual categorical responses at the individual question level. Transcripts of the interviews were reviewed and responses to questions that might illuminate statistical findings were tabulated (for example, since evaluators frequently utilized psychological testing even when the court did not order it and there were no mental health issues raised, what explanations did they give for psychological testing?). Major themes were identified in regard to the following issues:

- ◆ The theoretical orientations and assumptions about domestic violence that evaluators bring to custody evaluations when there are allegations of domestic violence
- ◆ The sources of information custody evaluators utilize when investigating allegations of domestic violence
- ◆ The criteria that evaluators use in assessing the validity of domestic violence allegations
- ◆ The criteria that evaluators use in assessing the impact of domestic violence on the development and well-being of the children
- ◆ The degree to which domestic violence appears to influence custody and parenting access recommendations in general
- ◆ Whether evaluators see their role as providing recommendations to the court or merely information and insight

Word Count. For illustrative purposes, a word count was performed on evaluator responses to questions deemed central to the main investigative goals of this project – namely, how evaluators *go about assessing domestic violence allegations* and how they *understand and explain the causes of domestic violence*. All evaluator responses from each of the transcribed interviews addressing these themes were collated and placed in two separate documents according to topic. Words representing common parts of speech or that were deemed otherwise non-germane were deleted. The documents were then submitted to a graphical word count generator that gives greater prominence to words that appear more frequently in source text.

Chapter 4

Results of Case Review Study

Case Demographics

Case Information

A total of sixty nine (N=69) case files were identified and included in the case review study. Fifty-six percent of the cases came from SFF, 19% from SBLs, 16% from NYLAG, and 8% from LAS. Seventy-eight percent of the cases were adjudicated in Family Court, 16% in Supreme Court, and 6% in an Integrated Domestic Violence (IDV) Court. Reflecting both population density of the boroughs and the catchment areas of the legal service organizations that provided the cases, 49% of the cases were from Brooklyn courts, 23% from the Bronx, 19% from Queens, 7% from Manhattan, and 3% from Staten Island. A lawyer was appointed to represent the child in all but one of the cases. Of the 69 cases, the final order describing the outcome of the cases was not included in the file and could not be secured from the court by the attorney for the mother or was otherwise missing (e.g., the case was dismissed, withdrawn, or otherwise did not contain a final order) in 9% of the cases, thereby reducing the number of cases with documented outcomes to 63.

Evaluator Information

Forty evaluators conducted the custody evaluations and wrote the forensic reports for the 69 cases included in the study. Seventy-seven percent of the evaluators had a PhD in clinical psychology, 10% held a clinical social work degree (CSW) or identified themselves as licensed clinical social workers (LCSW), 7% were psychiatrists (MD), 5% held a PsyD, and 1% held a Masters in Counseling (MS). The cases in our sample handled by each evaluator ranged from 1 to 9; the mean number of cases per evaluator was 1.7, and the mode and median number of cases per evaluator was 1.

Information Sources and Document Types

Fifty-seven percent of evaluators listed the documents they reviewed and the interviews they conducted. Table 4.1 below shows the type of documents included in the case files and the frequency with which they were referenced by the evaluator.

Table 4.1 Type of documents available and referenced by evaluator

Document type	Available in attorney's file (n=69)	Evaluator referenced (n=69)
CPS investigation+	78%	44%
Child's medical record	35%	7%
Child's school record+	27%	17%
Police complaint (DIR)-	75%	20%
Mother's medical record+	19%	3%
Supervised visitation report+	39%	27%

+ Sources evaluators consider reliable or informative (n=14)

- Sources evaluators consider unreliable or uninformative (n=14)

Frequencies of Individual Items in Coding of Evaluations

Tables 4.2-4.14 below show the percentage of endorsements of all the items included in the evaluation coding scale.

Court Order for the Evaluation

All of the evaluations in our sample were court ordered, frequently at the request of the attorney for the child. We had copies of the court order appointing the evaluator in 40 cases (58%). The majority of these orders (61%) provided no direction to the evaluator in regard to the scope of the evaluation. The only issues mentioned with any frequency were custody and visitation. Domestic violence, substance abuse and mental illness were specifically mentioned in less than 10% of the orders as issues that the evaluator was to examine, and child abuse and neglect were mentioned as issues in only 2% of the orders.

Sources that the evaluator was directed to access typically included the parents and children (at least 80%). Over a third of the orders mentioned "other sources as needed" without specifying those sources; 22% of the orders specified that the evaluator should talk to other relatives. The "Other Relative" coding referred most often to stepparents or current partners of the parents and grandparents. Only 16% directed the evaluator to review records.

Table 4.2 Frequencies for Specifications in Court Order for the evaluation

<i>Does the order for the evaluation specify the scope of the investigation (beyond evaluate re: visitation and custody dispute)?</i>	39% PERCENT YES
<i>The order specifies the scope of the investigation in the following areas:</i>	
Domestic Violence	10%
Child Abuse	2%
Child Neglect	2%
Parental Alienation	8%
Substance Abuse	8%
Mental Illness	10%

<i>The order specifies the scope of the investigation in regard to the following sources:</i>	
Both Parents	84%
Children	80%
Other Relatives	22%
Other interviews specified	14%
Records of Any Sort	16%
Other Sources "As Needed"	35%

Current Allocations of Residential and Legal Custody

At the time of the evaluation, one of the parents usually had residential (physical) custody, either de facto or by a previous court order. If there was no court order or the previous order did not specify legal custody, legal custody was coded as residing with the parent who had physical custody.

Before the evaluation, mothers overwhelmingly had residential custody (81%), but the children were living with their father in 19% of the cases. Slightly more fathers had legal custody. Legal custody was shared or divided in 8% of the cases.

Table 4.3 Residential and Legal Custody at the Time of the Evaluation

<i>Which parent has residential custody (at time of evaluation)?</i>	
Mother	81%
Father	19%
Shared	0%
Other	0%
<i>Which parent has legal custody/decision-making authority (at time of evaluation)?</i>	
Mother	72%
Father	21%
Joint	7%
Divided	1%

Evaluators' Investigative Strategies and Thoroughness

In these sections of the evaluation coding, we looked at the sources of information that the evaluator utilized to assess the best interest of the child. Did the evaluator attempt to secure medical and psychological records of the mother, father and child and the children's school records, and/or to talk to the doctors, therapists and teachers? We coded documents reviewed, including police reports and records of Criminal, Family and Supreme Court, and whether these records were referenced in the report. Some evaluators listed all documents reviewed and interviews conducted in the front of the report, and then did or did not draw on them in their report narrative. Others provided no

such lists in their report and whether they reviewed the documents could only be determined from references to them in the narrative.

We considered which interviews were conducted and whether collateral interviews involved relatives or friends of the father or mother or neutral parties, such as a teacher. We looked at whether children were interviewed apart from their parents, and whether observations were conducted of each parent with the child or children and whether home visits were conducted. Finally, we noted whether psychological tests were conducted on each parent and child. Then we coded how it appeared the evaluator was using the tests, judging by the interpretations made from test results and how the evaluator referenced test results in the conclusions.

Table 4.4 Evaluators' Attempts to Secure and Review Documents and/or Professional Contacts and use of information

<i>It is clear the evaluator was able to review the psychological/psychiatric records of:</i>	
Mother	6%
Father	10%
Children	6%
<i>It is clear the evaluator was able to talk to or received letter from current or previous therapists of:</i>	
Mother	22%
Father	15%
Children	21%
<i>Psychological/psychiatric history information was used to:</i>	
Help understand the impact of domestic violence on Mother	16%
Help understand the impact of domestic violence on children	16%
Detect mental health problems possibly related to Father's DV risk factors	25%
<i>It is clear the evaluator was able to review the medical records of:</i>	
Mother	6%
Father	10%
Children	6%
<i>It is clear the evaluator was able to talk to medical physician of:</i>	
Mother	7%
Father	4%
Children	19%

<i>Medical records/information about medical history was used to:</i>	
Detect Mother's health problems related to DV	4%
Detect children's health problems related to DV	10%
Detect Father's health problems possibly related to increased risk for DV and lethality	7%
<i>It is clear the evaluator reviewed the substance abuse history of:</i>	
Mother	33%
Father	45%
<i>It is clear the evaluator attempted to assess current substance abuse of:</i>	
Mother	18%
Father	24%
<i>It is clear that the evaluator made efforts to secure and review information from the following objective sources:</i>	
Police reports	28%
Family and/or Supreme Court records	62%
Criminal Court &/or IDV Court records	22%
Child's school records	32%
Mother's school/work records	6%
Father's school/work records	3%
<i>Collateral interviews</i>	
Evaluator conducted any collateral interviews	77%
Mean # collateral interviews	3.6
Evaluator interviewed mother's friends, relatives, advocates	62%
Evaluator interviewed father's friends, relatives, advocates	54%
<i>Observed each parent interacting with children</i>	73%
<i>It is clear that the evaluator:</i>	
Referenced the civil court record (including IDV) in considering allegations of DV	55%
Referenced the criminal record (including IDV) in considering allegations of DV	36%
Attempted to corroborate aspects of DV allegations as part of collateral interviews	55%

Use of Psychological tests

In our sample of evaluation reports, psychological testing was used in less than half the cases. Fathers were tested slightly more often than mothers, and parents were tested twice as often as children (see Table 4.5 below). The tests were never ordered by the court specifically. The most frequent rationale for testing the parents was that the other parent alleged or the evaluator suspected mental issues. The primary use of the tests was to evaluate parenting capacity. Although few evaluators showed awareness of how abuse might affect the mother’s test results, they did not draw conclusions from the test unless they confirmed clinical observation.

Table 4.5 Evaluators’ Use of Psychological Tests

<i>Did the evaluator use standardized psychological tests?</i>	
Conducted psychological testing of child	24%
Conducted psychological testing of father	47%
Conducted psychological tests of mother	44%
<i>Reasons for psychological testing of parents:</i>	
Court ordered	0%
Prior psychological/psychiatric diagnosis or treatment of either parent	14%
Mental health issues suspected by evaluator	22%
Mental health issues alleged by other parent	23%
Yes to any above reasons	30%
<i>Psychological test results were used to:</i>	
Evaluate parenting capacity	33%
Confirm link between psychological disorders and partner abuse	15%
Draw conclusions without using supporting data from real-life behavior	5%
Assess credibility of self-report data through validity scales	14%
Evaluation demonstrates understanding of how DV may affect psychological test results of Mother	11% (20% of those who tested Mother)

Allegations of Intimate Partner Abuse, Child Abuse, and Parental Alienation, Substantiation, and Evaluators’ Conclusions about the Allegations

As can be seen in Table 4.6 below, mothers were more likely than fathers to allege that their partner was abusing them (93% vs. 43%), but mothers were much more likely to be

believed by the evaluator (evaluators concluded that the mother had abused the father in only 3% of the cases).

In all of the cases in our sample, the attorney for the mother believed she had been abused by the father, but 25% of the cases did not have documentation of the abuse in the form of medical records of injuries, criminal court conviction or a finding in family court. Evaluators did not always conclude that the father had abused the mother when the abuse was substantiated in the record of abuse. (The next section of this chapter shows bivariate analyses of these variables.)

Fathers more often alleged that the mother had abused the child or had alienated the child against him than mothers made allegations of child abuse and parental alienation by the father. As with partner abuse, the evaluators more often found the father abused the children than the mother. They found both fathers and mothers equally often alienated the children against the other parent – but they found mothers alienated the children against the father far less often than fathers alleged they had.

Table 4.6 Allegations of IPA, Child Abuse/Neglect and Alienation and Findings

Intimate partner abuse	
<i>Allegation that IPA was committed by:</i>	
Mother	43%
Father	93%
<i>Record (criminal, medical, family court finding) indicates DV > mother</i>	75%
<i>Evaluation concludes that intimate partner abuse was committed by:</i>	
Mother	3%
Father	63%
Child Abuse	
<i>Child abuse or neglect alleged by:</i>	
Mother	42%
Father	55%
<i>Evaluation seems to find substantiation of child abuse or neglect by:</i>	
Mother	10%
Father	22%

Alienation	
Father alleged mother alienated children against him	40%
Mother alleged father alienated children against her	18%
Evaluation found alienation by either parent	32%
Mother's desire to restrict Father's contact with children attributed to unreasonable hostility or pathology	18%
Child's reluctance to see Father attributed to the Mother alienating the child against Father	12%
Child's reluctance to see Father attributed to his abusiveness	25%

Evaluators' Beliefs, Attitudes and Interpretations

We coded how the evaluators viewed domestic violence, including how they framed the problem (e.g., as "conflict" vs. abusiveness), what they believe causes domestic violence, attributions of responsibility for abuse and victims' and perpetrators' descriptions of the violence, as well as the evaluator's apparent theoretical perspective in interpreting the violence.

Almost two-thirds of the evaluations showed skepticism about the father's denial or minimization of his abusiveness, while about 40% viewed the mother's allegation with some skepticism (see Table 4.7). Few evaluators found the failure of any witness to corroborate the abuse as evidence the allegation was fabricated. As shown in Table 4.8, the majority of evaluators considered the abuse to be the responsibility of the more violent person, but about a third described it as interpersonal conflict and a third viewed it stemming from a lack of impulse control or anger management.

Table 4.7 Evaluators' Interpretation of Information

Father's denials or minimization of abuse are viewed as possible defensiveness	57%
Mother's allegations of abuse are minimized, ignored, rejected, or seen as exaggerated	38%
Evaluator views purported witness's failure to corroborate DV as evidence of false allegations	7%
Evaluation appears to draw on a family systems' perspective	12%
Evaluation appears to draw on a psychodynamic perspective	10%
Evaluation references power and control as DV dynamic and views abuse as instrumental	23%

Table 4.8 Evaluators’ attributions for intimate partner violence in the case under review (causation)

Abuse viewed as an anger management or impulse control problem	33%
Mother seems to be faulted for contributing to pattern of abuse by father	16%
Abuse presented as stemming from a communication problem between parents	9%
Abuse described as “conflict” between parents	31%
Abuse is seen as the primary responsibility of the more violent person	58%
Abuse is seen as a pattern of mutual violence	6%
Abusiveness viewed as a voluntary (chosen) behavior of the Father	37%
Substance abuse viewed as cause or sine qua non of DV	1%

Understanding domestic violence requires comprehending that it is not restricted to physical abuse, but includes emotional and psychological abuse, financial abuse, social isolation, threats and intimidation, and harassment and stalking. The items in Table 4.9 tapped into the demonstrated awareness of typical patterns of intimate partner abuse.

Table 4.9 Notes Non-Physical Forms of Abuse

<i>Does the evaluation mention if Father:</i>	
Violated any court orders in this case or other cases	27%
Has been emotionally abusive toward Mother	65%
Has been controlling of Mother	53%
Used social isolation tactics against Mother	25%
Falsely accused Mother of having affairs, being promiscuous, or flirting with other men	28%
Initiated petitions and/or litigation to control and/or harass Mother	27%

We used a number of items to assess whether the evaluation was attentive to factors that might indicate which parent’s account of the abuse is more accurate and would allow a determination of the primary aggressor, as shown in Table 4.10. The three factors that evaluations took into account in assessing credibility of allegations of domestic violence and the primary aggressor were denial and rationalization of violence, clarity and consistency of accounts of violence, and whether an order of protection had been granted to one parent against the other.

Table 4.10 Evaluation Notes Presence of Indicators of Accuracy of Parents’ Reports and Primary Aggressor

<i>Does the evaluation mention:</i>	
Which parent denies, minimizes, obfuscates, or rationalizes incidents	66%
Which parent provides a clearer, more specific and consistent account of violent incidents	59%
The relative size and strength of each parent	10%
If injuries are likely to have been caused by aggressive vs. defensive acts	12%

If the violent acts of one party exceed those of the other	41%
If the injuries of one party exceed those of the other	18%
Whether either party has had a prior order of protection issued against them by current partner	65%
If either party had a prior order of protection against them by a previous partner or other party	7%
Does evaluation take at face value Father's blame-shifting explanation for why incidents occurred	9%

Implications of Abuse for Parenting, Custody and Visitation

We used three sets of items to code the evaluation in regard to awareness of the impact of exposure to domestic violence on children; the relevance of abuse to father's parenting and the impact of victimization on the mother's parenting; and indicators of ongoing risk.

Table 4.11 Impact on Children of Exposure to Domestic Violence

<i>The evaluator*:</i>	
Attempted to assess child's exposure to DV	63%
Asked Father about children's exposure to DV	44%
Asked Mother about children's exposure to DV	66%
Assessed children for particular symptoms or signs known to be associated with exposure to DV	31%
Assessed or considered the possibility that children could be fearful of Father	51%
Assessed or considered the possibility that children could be concerned about safety of Mother	31%
Discussed negative psychological impact of DV on children	34%

* Note that percentages indicate percentages of *evaluations*, not *evaluators*, as some evaluators conducted multiple evaluations.

Overall, the evaluators show the most awareness of the relevance of abuse to the father's parenting ability – although less than half of the evaluations evinced such awareness. About a quarter of the evaluations indicated that victimization could have a negative impact on the mother's parenting ability, and another quarter indicated that the mother's fear and anxiety reflected negatively on her parenting ability. Mothers were rarely faulted for failing to protect the children from the father, but a quarter of the evaluations held her partially responsible for the emotional impact on children.

Table 4.12 Relevance of Abuse to Parenting Ability

<i>The evaluator:</i>	
Considers relevance of DV to Father's parenting ability	46%
Considers the negative impact that ongoing DV can have on Mother's parenting	27%
Considers that achieving safety may improve/restore Mother's parenting abilities	22%
Holds Mother at least partially responsible for impact of DV on children	24%
Holds Mother at least partially responsible for psychological or emotional impact of DV on children	24%
Blames Mother for failing to protect children from Father	6%

Views Mother’s anxiety and fear of Father as reflecting negatively on her parenting capacity	24%
Holds Father fully responsible for impact of DV on children	25%

The most commonly noted risk factor was the mother’s continuing fear – but this factor was more often mentioned as an obstacle to co-parenting than as an indicator of the father’s likelihood of continuing or escalating his abuse (see Table 4.13). One risk factor that was noted by the majority of evaluations was that the father blamed the mother for his abuse. This factor seemed to have particular salience for the evaluators because they believed that he was less likely to cease to be abusive if he failed to take responsibility for the behavior. Even more important to the evaluators was the belief that the father was unstable and unable to control his anger.

The last column captures whether the evaluation mentioned the risk factor at all. We felt it was important to note whether an evaluator displayed awareness of the risk factors for post-separation abuse. Therefore, if an evaluation mentioned that a particular risk factor was absent, we wanted a way to give that evaluation “credit” for awareness of signs of danger even if the particular case did not display that risk factor.

Table 4.13 Awareness of Indicators of Ongoing Danger

<i>Evaluation notes that father..</i>	Risk Factor Present or a Special Concern	Risk Factor Mentioned as Absent
Threatened suicide?	7%	9%
Threatened to kill Mother?	26%	1%
Threatened to or used a weapon in any previous assault	15%	0%
Owens a gun or has access to other lethal weapon?	6%	0%
Committed prior violence that resulted in serious injury?	13%	0%
Shows obsessive possessiveness of Mother?	24%	0%
Blames Mother for his own behavior?	54%	0%
Has a history of mental illness, especially thought disorder, paranoia, or personality disorder?	22%	12%
Has a history of substance abuse?	34%	8%
Expresses a high degree of depression, rage, or extreme emotional instability?	49%	13%
Is experiencing other highly stressful life events?	28%	1%
Threatened or attempted to abduct the child?	27%	1%
Engaged in stalking or harassment?	27%	1%
Violated a no contact order of protection?	28%	0%
Has or continues to be a source of fear and/or intimidation for Mother?	60%	6%

Another set of items with a similar purpose coded whether the evaluator collected and correctly interpreted information related to the future safety of the mother and children.

Table 4.14 Assessment of Safety of Mother and Children

<i>Evaluation...</i>	
Assessed or considered Mother's concern for own safety	43%
Construes Mother's concern for safety as resistance to Father's involvement with children	23%
Based inferences about safety of family members primarily on observed interactions	32%

Evaluators' Recommendations, Settlements and Court Orders

Finally, we scored each of the evaluations on their recommendations on the parenting plan. Specific factors were physical and legal custody; visitation time and conditions for the non-custodial parent; specifications for emergency communication between the parents; recommendations for treatment for each parent and the child; whether custody or visitation was conditioned on treatment or behavior; and orders of protection. We scored the case outcome on the same factors, whether by judicial decision or settlement agreement between the parents. The case outcome was determined by the judge in 49% of the cases, by settlement agreement between the parents in 43%, the petition was withdrawn or the case was dismissed in 6%, and we did not have final orders in 3%.

Table 4.15 Evaluators' Recommendations and Court Outcome Parenting Plans

<i>Residential Custody</i>	<i>Evaluation Recommended:</i>	<i>Court Outcome (Ct. order/ settlement)</i>
Mother	79%	77%
Father	16%	13%
Shared/split	3%	6%
<i>Legal Custody</i>		
Mother	72%	69%
Father	13%	10%
Joint	7%	12%
Divided	7%	9%
<i>Unstructured</i>		
Flexible/liberal parenting schedule to be determined by parents	19%	9%
<i>Mother's Safety</i>		
Seeks to avoid direct parent-parent contact	31%	34%
Specifies procedures for communicating emergency information that do not involve direct parent-to-parent contact	12%	15%

Encourages the issuing of/issues order of protection?	2%	18%
Restricts frequency of exchanges?	39%	38%
<i>Safety of Exchanges:</i>		
Take place at neutral, public sites?	20%	29%
Supervised by third party?	28%	17%
Take place via 3rd party with no contact between parents?	10%	11%
Take place at a police precinct?	6%	12%
<i>Child Safety during Visits</i>		
Supervision of Father's time with children by a non-family member?	23%	10%
Limiting length of time Father has with children to a few hours per week?	18%	10%
No overnight visits with Father?	35%	13%
Ignore the expressed preferences of the children with respect to parental visitation?	17%	28%
Prevent Father from taking children out of the area without consent?	18%	14%
Allow Father unsupervised visits with children?	58%	41%
Express concern about exposing children to violence against others?	9%	56%
<i>Treatment & Ongoing Monitoring</i>		
Father to complete an anger management program	6%	5%
Father to complete a batterer program	7%	2%
Father to complete a parenting program	21%	2%
Father to receive therapy	46%	4%
Father to take ongoing, random drug and alcohol tests	6%	9%
Mother to complete a parenting program	13%	0%
Mother to receive therapy	47%	2%
Mother to take ongoing, random drug and alcohol tests	2%	6%
Child to receive therapy or other form of treatment due to DV	43%	2%
<i>Conditions of Father's Access</i>		
Requires that father participate in any form of treatment or education program to increase access to the children or lift conditions without other re-evaluation of safety and change	13%	10%

Include specific goals and behavioral criteria other than completion of treatment or education to be assessed as a condition for increasing Father's access to the children	23%	6%
Require that Father demonstrate evidence of change of behavior toward Mother as a condition of greater access to children	7%	3%
<i>Reducing Father's parental access or increasing supervision of visitation if:</i>		
Child is distressed or traumatized during visits with Father	11%	0%
Father threatens Mother's life?	3%	0%
Father threatens to abduct child?	0%	0%
Father hits or injures Mother?	2%	0%
Father engages in criminal behavior?	2%	0%
Father fails drug/alcohol testing or otherwise evidences ongoing substance abuse problems?	6%	0%
Flexible/liberal parenting schedule to be determined by parents	19%	9%

*Percentages do not always add up to 100% due to rounding or because ratings could not be made due to missing or insufficient information.

Cross Tabulations of Individual Items

To understand the relationships between some of the coding frequencies, we conducted a limited number of cross tabulations. In some cases, we conducted tests for statistical significance, but the primary purpose of the two-way comparisons was to form a clearer picture of the data in such areas as:

- ◆ relationships among the parents' allegations of abuse by the other parent, the evaluator's findings, and the record
- ◆ the factors associated with the evaluator recommending, and the father being awarded, residential custody
- ◆ the relationship between each parent's allegations and the evaluator's findings; and
- ◆ parental alienation allegations by each parent, the evaluator's findings, and child estrangement.

Relationships between Parents' Allegations of Domestic Violence and Other Variables

How often did both parents allege domestic violence?

In 37% of the cases, both parents alleged the other parent had been abusive. Fathers rarely alleged the mother had abused them if the mother hadn't also alleged abuse (4%),

but mothers often alleged abuse by the father when he did not allege abuse (56%). This relationship was not significant.

Table 4.16 Father Alleged that Mother Abused Him by Mother Alleged Father Abused Her

Father Alleged Mother Abused Him	Mother Alleged Father Abused Her		
	<i>No</i>	<i>Yes</i>	Total
<i>No</i>	3%	56%	59%
<i>Yes</i>	4%	37%	41%
Total	7%	93%	100%

How often did the evaluator find that the mother abused the father and the father abused the mother?

Evaluators found both parents abused the other (“mutual abuse”) in only 2% of the cases, in contrast with the 37% of cases in which there were mutual allegations.

Table 4.17. Evaluator found Mother Abused Father by Evaluator found Father Abused Mother

Evaluator Found Mother Abused Father	Evaluator Found Father Abused Mother		
	<i>No</i>	<i>Yes</i>	Total
<i>No</i>	36%	61%	97%
<i>Yes</i>	1%	2%	3%
Total	37%	63%	100%

How often did the evaluator not conclude that the father abused the mother when the record showed evidence that the father abused the mother?

Evaluators were more likely to find that the father abused the mother if records (criminal records, medical records and family court findings) in the case file supported the allegation that he did (53%) than if the file did not have documentary evidence of abuse (8%). In 21% of the cases where the coders found the files contained documentary evidence of abuse of the mother, the evaluator did not conclude that the father abused the mother. This point is made only to understand the data. Not all evaluators reviewed the records, and they tended to review the Family or Supreme Court records more than the criminal court records, police records, or medical records where the coders were most likely to find evidence substantiating the allegations. Also, in a few cases, the evaluators only conducted clinical interviews of the parents and children and made observations;

they were not tasked with overall evaluation, including record reviews and collateral interviews.

Table 4.18 Evaluator finds Father Abused Mother by Record Shows Father Abused Mother*

Evaluator Found Father Abused Mother	Record Shows Father Abused Mother		
	<i>No</i>	<i>Yes</i>	<i>Total</i>
<i>No</i>	17%	21%	38%
<i>Yes</i>	8%	53%	61%
<i>Total</i>	25%	74%	100%

* Chi Square (2 df) = 8.89, p<.05

Factors Associated with Fathers Being Granted Residential Custody

Mothers were granted residential custody far more often than fathers, with the evaluators recommending that the mother have residential custody in 79% of the cases, and the final order or settlement granting the mother residential custody in 77% of the cases. We were interested in the correlates of the father being granted residential custody. The low frequency limited the valid tests we were able to run.

Father had custody before the evaluation

One factor that was significantly associated with the father obtaining residential custody was that the child was already living with him.

Table 4.19 Father had Residential Custody before the Evaluation by Father Granted Residential Custody in Final Order/Settlement

		Final Order: Father Residential Custody			Total
		No order	No	Yes	
Pre-evaluation	No	9.3%	83.3%	7.4%	100.0%
Father residential custody	Yes	7.1%	57.1%	35.7%	100.0%
Total		8.8%	77.9%	13.2%	100.0%

Fathers were significantly more likely to secure residential custody at the conclusion of the case if the children were living with him when the evaluation was conducted: Chi square (2 df) = 7.77, p<.05.

Role of child abuse findings in father being granted residential custody

Another factor was the evaluator finding that the mother abused the child.

Table 4.20 Evaluation Found Substantiation of Child Abuse or Neglect by Mother as a Function of Father Granted Residential Custody

		Order Father Residential Custody (n=69)		
		No final custody order*	No	Yes
Mother's Child Abuse Substantiated	No	8.3%	81.7%	10.0%
	Yes	14.3%	42.9%	42.9%
Total		9.0%	77.6%	13.4%

* If the petition was withdrawn or the case was dismissed, there was no final order in the file. In addition, in some cases we were unable to secure a copy of the final order.

Fathers were significantly more likely to be granted residential custody if the evaluator found that the mother had abused the child: chi square 6.50 (2 df), $p < .05$. When the father was found to have abused the child, the father was granted residential custody in only one case, and was not in 12 cases.

Role of intimate partner abuse in father being granted residential custody

The mother was found to have abused the father in only two cases; in both cases, the mother was granted residential custody. The relationship between the evaluator finding that the father abused the mother and the father being granted custody was also non-significant, although it appeared that fathers were more likely to be granted residential custody when the evaluator did *not* find he abused the mother (24% of those cases) than when the evaluator found he did abuse the mother (7%). The reason this difference may not have reached statistical significance could be due to a lack of statistical power: there were only nine cases in our sample in which the father was awarded residential custody. Framing the question in terms of the mother's custody when the evaluator found the father abused the mother avoids that problem.

Table 4.21 Evaluator found that the father abused the mother as a function of final order grants mother residential custody

		Mother Granted Residential Custody			Total
		No final order	No	Yes	
Evaluator found Father abused Mother	No	8.0%	28.0%	64.0%	100.0%
	Yes	9.5%	4.8%	85.7%	100.0%
Total		9.0%	13.4%	77.6%	100.0%

Mothers were more likely to be granted residential custody in the final order or settlement if the evaluator found that the father abused her: chi square 7.29 (2df), $p < .03$.

Relationship between Mothers’ and Fathers’ Allegations of Partner and Child Abuse and Evaluators’ Findings

In interviews, custody evaluators often said that women allege domestic violence or child abuse by the father to gain a tactical advantage in the custody dispute or divorce. Evaluators said they were particularly suspicious if the allegations cropped up only at the time of the custody case. The evaluators noted that fathers are now trying the same tactics, learning them from their lawyers and other sources.

In this section, we looked at how often evaluators found credible mothers’ and fathers’ allegations that they were abused by their partners, that the other parent abused the children, and that the other parent alienated the children.

Table 4.22 Mothers’ and Fathers’ Allegations and Evaluators’ Findings

<i>Allegations</i>	Evaluator Did Not Find (as % of allegations)	Evaluator Found (as % of allegations)
Mother alleged father abused her (n=62)	39%	61%
Father alleged mother abused him (n=28)	96%	4%
Mother alleged father abused child (n=27)	59%	41%
Father alleged mother abused child (n=36)	81%	19%
Mother alleged father alienated child against her (n=12)	25%	75%
Father alleged mother alienated child against him (n=26)	50%	50%

As the table above shows, mothers were more likely than fathers to allege domestic violence, but evaluators usually believed the mother’s allegation and almost never believed the father’s. When the mother alleged the father abused the child, the evaluators more often did not find child abuse (59%) than found it. When the father alleged the mother abused the child, however, the evaluators were even less likely to find child abuse (81%). Fathers were more likely to allege parental alienation than mothers. When the mother alleged parental alienation by the father, the evaluator agreed three-quarters of the time, but they believed father’s allegations only half the time. Thus, in all cases, the evaluators were more likely to agree with mothers’ allegations than fathers’. They were more likely to *agree* with the mother’s allegation than not, except in the case of child

abuse. They were more likely to *disagree* with the father’s allegations than not, except in the case of parental alienation.

Relationship of “Parental Alienation” to Evaluator’s Recommendations and Final Order for Residential Custody

We expected that when an evaluator found a parent had attempted to alienate the child from the other parent – discouraging the child from having a relationship with the other parent – the putatively “alienating” parent would be at a disadvantage when it came to custody. If the evaluators want to encourage children to have relationships with both parents, it would seem that they would reward parents who encouraged a relationship with the other parent and would punish parents who were “unfriendly” to the other parent.

We therefore tested whether the evaluator would be more likely to recommend that the father be granted residential custody if the evaluator found the mother was attempting to alienate the child from the father and less likely to recommend the father get custody if he was believed to be attempting to alienate the child from the mother. We found the opposite: Evaluators recommended that custody go to the father 40% of the time if they believed the father was alienating the child against the mother and only 10% of the time if they believed the mother was attempting to alienate the children from the father. (See Table 4.21). This difference was not statistically significant, however – probably because of the small number of cases of fathers receiving custody combined with the small number of cases in which the evaluator found alienation. We also ran these tests looking at the *court outcome*, as opposed to the evaluator’s recommendation. The results were again non-significant, although they approached significance ($p < .10$).

Table 4.23. Evaluator’s recommendation that custody be awarded to the father as a function of evaluator finding parental alienation.

Alienation attempted:	Does Not recommend Custody to Father	Recommends Custody to Father
By Father	60%	40%
By Mother	90%	10%
Neither*	81%	13%

* In 6% of the cases in which there was no perceived attempt at alienation, the evaluator did not make a custody recommendation.

We then examined parental *allegations* of alienation, as opposed to the evaluator’s perception of whether a parent had actually engaged in alienation. (See Table 4.22.) In this case, one comparison reached statistical significance: Evaluators were significantly more likely to recommend that the father have physical custody if the mother alleged he had alienated the children against her. Evaluators were less likely to recommend paternal custody if the father alleged the mother had alienated the children against him but the difference was not significant ($p = .224$). In this case, again, the pattern was the opposite of what we expected from the literature: the evaluator was more likely to recommend

custody to the father if he was accused of alienating the child, rather than awarding the child to the friendly parent.

4.24 Evaluator’s recommendation for custody to father as a function of parental alienation allegations

Allegations of parental alienation:	Recommend father not have custody (as % of allegations)	Recommend father have custody (as % of allegations)	No recommendation (as % allegations)
Father did not allege PA	73%	19%	7%
Father alleged mother alienated children against him	88%	11%	0%
Mother did not allege PA	84%	11%*	5%
Mother alleged father alienated children against her	58%	42%*	0%

* Chi square = 7.128 (2 df), p<.03.

Stopped here making hand out on tables.

Because these comparisons tended to be the opposite of our predictions, in that it appeared that the parent who attempted to alienate the children against the other parent was more likely to be granted custody, we decided to pursue this question further. We looked at cases in which children were estranged (actually alienated, whether or not the alienation was attributed to a parent’s efforts) from one parent or the other.

Parental alienation allegations, the evaluator’s findings, and child estrangement

The issue of “parental alienation” is frequently raised in discussion of disputed custody cases. It is a complicated issue, and ill defined. The term parental alienation usually refers to a child rejecting a parent *because* the other parent has intentionally turned the child against the other parent without reason. We saw instances of that process in the custody evaluations we coded, such as a father who told his children that their mother killed their grandmother (before they were born) and the children parroted that falsehood to the evaluator, or a child who told the evaluator that he did not love his mother because she did not love his father, and she “stole” money from their joint bank account.

We found in reading the evaluations, however, that critical elements of the definition were often missing. Sometimes evaluators used the term when the evaluator felt one parent was trying to undermine the child’s relationship with the other parent but the child was not, in fact, alienated from the other parent – attempted alienation to no effect. To

draw a distinction between parental alienation and alienation of the child, we adopted the term “child estrangement” when a child did not want to have a relationship with a parent. Evaluators also used “parental alienation” when the alienation was completely unintentional and when it was based in reality (protecting the child) rather than hostility or maliciousness. For example, one evaluator used the term alienation when a mother was not deliberately attempting to turn the child against the father but, the evaluator noted, was perhaps unconsciously communicating to the child her fear of the father. That is, there seemed to be ambiguity in the way the term was used in regard to which parent was referenced in the term “parental alienation” – the parent who is causing the alienation (alienation *by* a parent) or the parent whom the child is rejecting (alienation *from* a parent).

When the team originally coded the custody evaluations, we simply noted whether the evaluator found parental alienation (yes/no) without noting which parent the evaluator felt was attempting to turn the child against the other parent. Two of us subsequently reviewed all the evaluations again to capture more distinctions. In the tables below, we note the parents’ roles when the evaluator found alienation and whether the child was, in fact, estranged.

Table 4.25 Parental Alienation and Child Estrangement

	Frequency	Percent
Evaluator found alienation	22	32%
<u>Which parent attempted alienation:</u>	Frequency	Percent of all cases (n=68)
Both	1	1%
Father	10	15%
Mother	10	15%
Neither	47	69%
Child is estranged from a parent	16	23%
<u>Parent child is estranged from</u>	Frequency	Percent of all cases (n=68)
Father	10	15%
Mother	6	9%
Neither	51	75%
Stepfather	1	1%

As noted above, when we looked at the effects of attempted alienation and allegations of alienation on the custody evaluator’s recommendation for custody, the only significant relationship we found was that when the mother alleged the father had alienated the child against her, the evaluator recommended the father have custody 42% of the time. The key to this one significant finding may lie in the results when we use estrangement as the

predictor variable. Estrangement is correlated with but not identical to attempted alienation.

In this test, we found that child estrangement is significantly related to the evaluator’s recommendation regarding residential custody: Chi square (6 df) = 13.32, $p < .05$. The evaluator was significantly more likely to recommend that the father have residential custody when the child was estranged from the mother than when the child was not estranged from the mother, and significantly more likely to recommend that the mother have custody when the child was estranged from the father than when the child was not estranged from the father.

Table 4.26 Evaluator’s Recommendation that Father Have Residential Custody as a Function of Child’s Estrangement

		Evaluator’s Residential Custody Recommendation		
		No Rec	Mother	Father
Which parent is child estranged from?	Father	.0%	90%	10%
	Mother	.0%	33%	67%
	Neither	6%	82%	12%
	Stepfather	0%	100%	.0%
Total		4%	79%	16%

This pattern was more pronounced in the court order or settlement outcome: Fathers were never granted residential custody if the child was estranged from him, and, as above, fathers were granted residential custody in 67% of the cases in which the child was estranged from the mother. These differences were significant: chi square = 18.67 (6 df), $p < .01$.

Summary: Predictors of Residential Custody

In the bivariate statistical tests reported in this section, we found three significant factors that are associated both with the evaluator recommending that the father be granted residential custody and with the court granting the father residential custody: 1) the father already had residential custody; 2) the mother abused the child; and 3) the child was estranged from the mother.

There were two factors that increased the already high likelihood that the mother would be granted primary residential custody: the mother was more likely to be granted residential custody if the evaluator found the father had abused her and if the child was estranged from the father.

Analyses with Summary Variables

To facilitate more formal hypothesis testing, scoring algorithms drawing on the Evaluation Coding Scale items and case file data were developed to create summary

scores for the main variables of interest in this study. For illustrative purposes, a sample scoring algorithm for *Investigative Thoroughness* is shown below:

Investigative Thoroughness

Medical Records

IF (Reviews Medical Records of Mother = Yes) **THEN** PosMedRecords = +1
IF (Reviews Medical Records of Father = Yes) **THEN** PosMedRecords = +1
IF (Reviews Medical Records of Children = Yes) **THEN** PosMedRecords = +1
TotMedRecords = PosMedRecords

Review of Objective Sources

IF (Reviewed Police Records = Y) **THEN** PosObjectSource = +1
IF ((Father Criminal Record = Y) AND (Reviewed Police Records = N) **THEN** NegObjectSource = +1
 ...
IF (Referenced Civil Court Record = Y) **THEN** PosObjectSource = +1
IF (Collateral Interview Corroborates DV = N) **THEN** NegObjectSource = +1

TotObjectSource = (PosObjectSource – NegObjectSource)

Substance Abuse

IF (Assesses Current Substance Abuse of Mother = Y) **THEN** PosSubAbuse = +1
IF (Assesses Current Substance Abuse of Father = Y) **THEN** PosSubAbuse = +1
 ...
TotSubAbuse = PosSubAbuse

InvestigativeThoroughness = ... + TotMedRecords + TotSubAbuse + ... TotObjectSource

Based on the Chapter 2 Literature Review and a similar iterative feedback approach used for developing individual coding items as described above, summary scores were created for five primary variables: *Investigative Thoroughness*, *Demonstrated DV Knowledge*, *Current Safety Risk*, *Evaluator Parenting Plan Safety*, and *Court Parenting Plan Safety*. The operational definitions for each of these variables are shown below in Table 4.14, while the specific scoring algorithms can be seen in Appendix F.

Table 4.27 Operational Definitions of Primary Summary Variables

<i>Domain Name</i>	<i>Operational Definition</i>
Investigative Thoroughness	Demonstrates use of objectives sources of information and documentation, such as police, court, or school records, and investigates relevant background information, such as substance abuse and psychological histories, in assessing risk factors and validating DV allegations
Demonstrated DV Knowledge	Demonstrates knowledge of common dynamics of families in which DV has occurred, such as symptoms of children’s exposure to DV, perpetrators’ tendency toward victim-blaming explanations, and possible impact of DV on victims’ parental functioning.
Current Safety Risk	Number of warning signs suggesting ongoing risk of abuse, such as prior history of violence, access to lethal weapons, stalking, and father’s suicidal ideation, mentioned in the evaluation as present in

	the case
Evaluator Parenting Plan Safety	Extent to which the parenting plan recommended by the evaluator limits the father’s access to the children and protects the mother during exchanges, and includes general safety contingencies and provisions
Court Parenting Plan Safety	Extent to which the court parenting plan, as determined by settlement or the court, limits the father’s access to the children, protects the mother during exchanges, and includes general safety contingencies and provisions.

DV Severity.

In addition to the primary summary variables, a severity of abuse score was created for the purposes of these analyses. Based on the ratings made from the case file documentation, these scores take into account all forms of intimate partner abuse, including physical violence, psychological/social/economic abuse, threats, and stalking. As exposure to physical abuse represents the primary risk factor to children and is the most frequently prosecuted form of abuse, physical abuse was weighted more heavily in the analyses. Specifically, DV severity was calculated as:

$$DVSeverityScore = \sum (PhysicalAbuse * 2) + PsychosocialAbuse + Threats + Stalking$$

Outlying Evaluator Variable.

An *outlying evaluator variable* was created to take into account the potential clustering of cases done by the same evaluator. Although it would have been preferable to try to account for any variation within- and between- evaluators, this approach was not possible because the preponderance of evaluators reviewed only one or two cases. The alternative approach used to address this issue was the creation of the *outlying evaluator variable*, whereby all evaluators who reviewed a high number of cases in the sample (>5) were placed in a separate category. Based on this criterion, two evaluators (one who reviewed 9 and the other who reviewed 6 cases in the sample) were categorized as outliers by this variable, which was subsequently included in all multivariate analyses. That this variable had no statistically significant effect in any of the models suggests there is no discernable difference between the outlying evaluators and the other evaluators included in the sample, and this variable will thus not be referenced in the results below.

Factors Related to Parenting Plan Safety

It was hypothesized that safer parenting plans would be associated with evaluator utilization of the power and control model, higher demonstrated evaluator knowledge of domestic violence, higher investigative thoroughness, and higher current safety risk. It was also hypothesized that the relationship between parenting plan safety and these dimensions would be moderated by court setting and partner abuse severity – specifically, that parenting plan safety would be higher in cases that involved more severe abuse, especially physical abuse, and that were adjudicated in Family or IDV Court as opposed to Supreme Court where divorces are heard. Multiple linear and logistic regression analyses were used to examine these relationships. Evaluations rated as

drawing on the *power and control model* resulted in significantly safer evaluator parenting plans ($F = 8.71, p = 0.004$). Court parenting plans approached statistical significance in regard to safety if the evaluation explicitly referenced power and control ($F = 3.67, p = 0.06$). Evaluations with higher levels of *demonstrated DV knowledge* were associated with safer evaluator parenting plans ($F = 15.75, p < 0.001$) and court plans ($F = 14.73, p < 0.001$). Evaluations with higher levels of *current safety risk* as noted in the evaluations were also associated with safer evaluator parenting plans ($F = 20.07, p < 0.001$) and court plans ($F = 10.70, p = 0.002$). No statistically significant association was found between the parenting plan safety and any of the other hypothesized predictors: investigative thoroughness, court setting, and severity of partner abuse.

Table 4.28 Predictors of Safety of the Parenting Plan

	Safety of Evaluator Parenting Plan <i>F value</i>	Safety of Court Parenting Plan <i>F value</i>
<i>Current Safety Risk</i>	20.07***	10.70**
<i>Evaluator DV Knowledge</i>	15.75***	14.73***
<i>Power and Control</i>	8.71**	3.67+
<i>Investigative Thoroughness</i>	1.06	1.89
<i>Court Setting</i>	1.30	0.34
<i>Severity of Partner Abuse</i>	0.81	1.64

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$; + $p < 0.10$

Note: The N for the evaluator plan and court plan analyses was 61 and 63, respectively.

To assess the extent to which the variables associated with the safety of the parenting plan were interrelated, Pearson’s correlations were conducted. As shown in the matrix below, all three variables were highly correlated.

Table 4.29 Pearson Correlations of variables predicting safety of parenting plan in settlement agreement or court order

	Current Safety Risk	Power & Control	DV Knowledge
Current Safety Risk	1.00	0.44***	0.66***
Power & Control	0.44***	1.00	0.59***
DV Knowledge	0.66***	0.59***	1.00

*** $p < 0.001$;

Note: The N for the correlations was 69.

Relationship Between Evaluator Recommendations and Court-Outcome Parenting Plans

It was hypothesized that the parenting plans recommended by the evaluators and those contained in the final court order (including settlements approved by the court) would be similar. This relationship was examined directly from three different perspectives. First, an item-by-item comparison was conducted between evaluator-recommended and court-outcome parenting plans. Percentage agreement across all 42 common items ranged from a minimum of 3% to 100%, with a *mean agreement rate of 75% (SD = 21%)*. A Pearson correlation coefficient was also computed to assess the relationship between the Safety of the Evaluator-Recommended Parenting Plan and the Safety of the Court-Outcome Parenting Plan. There was a *strong positive statistically significant relationship* between the evaluator and court safety scores ($r = 0.49; p < 0.001$). Finally, paired t-tests were used to examine potential *differences* in the average safety of evaluator-recommended and court-outcome parenting plans. *No statistically significant difference emerged* between the overall safety of *evaluator-recommended* and *court-outcome parenting* plans.

Table 4.30 Tests of Similarity between Evaluator-Recommended and Court-Outcome Parenting Plans

	Safety Score ¹	Percent Agreement ²	Intercorrelation ³
Evaluator Parenting Plan (N = 63)	M = 5.6, SD 2.7	M = 75%, SD = 21%	r = 0.49
Court Parenting Plan (N = 61)	M = 5.5, SD = 2.2		

¹ No statistically significant difference between mean safety scores for evaluator and court parenting plans

² Percent of item-by-item agreement between evaluator and court parenting plans across all common items

³ Pearson's correlation between evaluator and court safety scores: $p < 0.001$

Relationship between Settlement and Court-Ordered Parenting Plans

We hypothesized that there would be differences between parenting plans determined by settlement and those ordered by the court – specifically, we expected that cases involving less safe evaluator-recommended parenting plans, more severe partner abuse, and higher current safety risk would be less likely to be resolved through settlement, while cases undertaken with more investigative thoroughness would be more likely to result in settlements. Multiple linear regressions were used to examine these relationships. No statistically significant associations were found between the likelihood of the parties reaching a settlement and any of the following possible correlates or predictors: the safety of the evaluator-recommended parenting plan, investigative thoroughness, severity of domestic violence, and current safety risk.

It was also hypothesized that the parenting plans would be less safe in cases decided by settlement than those ordered by the court when the parties did not reach an agreement. T-tests were used to examine this relationship. *No statistically significant difference was found between the safety of parenting plans determined by settlement and those*

ordered by the court. Finally, it was hypothesized that parenting plans laid out in settlements would adhere more closely to evaluator-recommended parenting plans than would court ordered plans. T-tests were used to examine these potential differences. There was a **statistically significant difference** between parenting plans in settlement agreements and those ordered by the court in their **level of agreement with evaluator-recommended parenting plans** [$t(42) = 2.92; p = 0.005$]: **settlement plans were more similar on average to the evaluator’s recommendation** (M = 85% correspondence rate) than court-ordered plans (M = 70% correspondence rate).

Table 4.31 Tests of Difference between Settlement and Court-Ordered Parenting Plans

	Safety Score ¹	Agreement with Evaluator Plans ²
Settlement Plans (N = 29)	M = 5.9, SD = 2.6	M = 85%, SD = 10%
Court Ordered Plans (N = 34)	M = 5.1, SD = 1.7	M = 70%, SD = 25%

¹ The difference between mean safety of settlement and court-ordered plans was not statistically significant

² The difference between mean agreement of settlement and court-ordered plan with evaluator plan was statistically significant: $t(42) = 2.92; p = 0.005$

Chapter 5

Results of Interview Study

Evaluators

Sixteen (N=16) evaluators responded to the recruitment inquiries. Fifteen were interviewed and 14 completed and returned the survey (including one who was not interviewed). All of those participants had conducted the evaluation of at least one case included in the case review study. The evaluators interviewed are not representative of all the evaluators who wrote reports, however, judging by superficial indicators. Half the evaluators interviewed were women, whereas only a third of the evaluation reports reviewed were written by women. We were not able to interview the evaluators who conducted the most evaluations in the case review study.

Survey Results

Evaluators who completed the survey estimated that they have conducted between 5 and 500 custody evaluations (M = 167) throughout their career, and that about 60% involved allegations of domestic violence. See Table 5.1.

Table 5.1. Evaluator survey results (N =14)

Questions	Mean Response	Minimum	Maximum				
Evaluations Conducted							
1.) Total number of custody evaluations done for family courts	112	5	500				
2.) Total number of custody evaluations done for supreme court	55	0	500				
3.) Number of custody evaluations for family courts that had allegations of domestic violence	60	5	300				
4.) Number of custody evaluations for supreme court that had allegations of domestic violence	33	0	300				
Views of Rehabilitation of DV Perpetrators							
<u>Rating Scale</u> 1=Strongly Agree, 2=Somewhat Agree 3=Undecided 4=Somewhat Disagree, 5=Strongly Disagree	Mean Response	Percentage (%)					
		1	2	3	4	5	
1.) DV perpetrators can be rehabilitated	2.3	14	57	14	14	0	
2.) It is important to try to maintain and rebuild the child's relationship with the perpetrator parent	2.3	14	57	14	14	0	
3.) The court should recommend treatment for the perpetrator parent	1.5	57	36	7	0	0	
4.) The court should order the perpetrator to participate in an anger management program	2.4	36	21	21	14	7	
5.) The court should order the perpetrator to participate in a	1.6	57	29	14	0	0	

batterer program						
6.) The court should order the abuser to participate in a parenting program	1.7	43	43	14	0	0
7.) The court should order a victimized parent to participate in treatment	1.6	57	29	7	7	0
8.) The court should order the victimized parent to participate in a parenting program	2.3	29	29	29	14	0
9.) The court should order trauma treatment for children exposed to violence	1.6	64	14	14	7	0
10.)The court should liberalize visitation (i.e., longer visits, overnights visits, end supervision of visits) when its recommendations or orders for treatment have been followed	3.1	7	21	36	21	0
11.)The court should reassess the perpetrator parent’s behavior before liberalizing visitation.	1.1	86	14	0	0	0
Evaluation priorities						
<u>Rating Scale</u> 1=Very Important, 2=Important 3=Moderately Important 4=Of Little Importance, 5= Unimportant	Mean Response	Percentage (%)				
		1	2	3	4	5
1.) Allow children access to both parents	2.0	15	38	31	8	0
2.) Hold perpetrators accountable for their abusive behavior	1.2	85	8	0	8	0
3.) Support the physical and emotional safety of a victimized parent	1.5	64	29	0	7	0
4.) Limit the state’s role in directing the lives and parenting decisions of victimized parents	3.2	7	21	29	29	14
5.) Protect children from violent, abusive, and neglectful environments	1.1	86	14	0	0	0
6.) Ensure that children are able to maintain a relationship with the non-custodial parent	2.2	15	38	38	8	0
7.) Avoid depriving a child of a parent because one parent is hostile toward or fearful of the other	2.4	15	38	23	23	0
8.) Protect the child from exposure to conflict and violence between parents	1.4	57	29	0	0	0

There are a few notable revelations in these frequencies, including tensions among the items they endorsed most strongly and inconsistencies between the priorities the evaluators expressed in the survey and the recommendations of the larger group of evaluators. There were four items with which the majority of evaluators agreed strongly; all involved the court ordering or recommending treatment for the perpetrator parent (and a batterer program), the victimized parent, and children exposed to violence. These four items were: 1) the court should recommend treatment for the perpetrator parent; 2) the court should order the perpetrator to participate in a batterer program; 3) the court should order the victimized parent to participate in treatment; and 4) the most favorably regarded, with 64% strongly agreeing, the court should order trauma treatment for children exposed to violence.

It appears that the priorities of the evaluators interviewed, based both on the mean importance and the percentage finding the principle very important or important, are:

- 1) protecting children from violent, abusive and neglectful environments (100%);
- 2) protecting children from exposure to violence and conflict between the parents (86%);
- 3) holding perpetrators accountable (93%); and
- 4) supporting the physical and emotional safety of the victimized parent (93%).

Assuming that the evaluator found that domestic violence was indeed an issue in a family, this set of priorities would suggest limiting if not eliminating contact between the parents and not giving a parent who perpetrated intimate partner violence unsupervised and extensive visits. This response contrasts with the parenting plans recommended by the evaluators in the case review.

There are several possible reasons, which are not mutually exclusive, for the inconsistency between the priorities expressed in the survey versus those in the recommended parenting plans. One is that the evaluators surveyed are not representative of the evaluators whose cases we reviewed. It is likely that those who agreed to participate in the interview were more interested in domestic violence and make it more of a priority in their evaluations. The evaluators we were able to reach and who agreed to be interviewed were more likely to be women. We found only one significant difference between the evaluations conducted by men and those conducted by women: the women's evaluations were more likely than men's to frame abuse as a power and control issue. Another possible explanation for differences between the case review and interview studies is that there are discrepancies between what people say they do and what they actually do. Finally, it is also possible that the evaluators apply certain criteria in their evaluations only when they agree with the allegation of domestic violence. In the evaluators' reports to the court in our case review sample, they did not always find convincing evidence of domestic violence or did not focus on it in their evaluations of actual cases. Conversely, in interviews they may generalize about false allegations of domestic violence, child abuse and alienation, but they apparently found the mothers' allegations mostly valid in the cases they reviewed.

Interview Findings

As can be seen from the percentages of agreement and priorities in the table above, for all but six of the 19 items, there was a minority of 7% (1) to 46% (6) of the evaluators who took the opposite position of the other evaluators. This divergence of views makes it difficult to summarize the interviews since there was rarely consensus on any point. At the same time, it supports our hypothesis that evaluators vary widely in their approach and orientation, leading to inconsistent outcomes for families bringing their custody dilemmas to the courts.

Characteristics of the Evaluators Interviewed

As noted above, the evaluators who participated in the interview study were not representative of the evaluators included in the case review study, mostly in that proportionately more women were interviewed and we suspect that those most interested in domestic violence were more motivated to participate in the study. Therefore, the qualitative interview data are useful to elucidate the thinking behind different positions apparent in the quantitative data but the rates of agreement with these positions in the interview sample are not meaningful.

The evaluators we interviewed had been conducting custody evaluations for New York City courts for an average of 13 years, with a range of 5 to 35 years. Consequently, the depth of their experience varied widely, ranging from five to “almost a thousand evaluations over about 20, 25 years,” as one evaluator said in his interview.

Themes of the Interviews

Of the questions the evaluators were asked, the following yielded answers that were most useful in explicating the quantitative data and otherwise providing insight into processes and outcomes of forensic evaluations. The questions do not necessarily correspond to questions in the semi-structured interview guide; rather, they correspond to the issues raised by the evaluators when they were asked those questions.

The interview responses below are organized under three major themes, with subtopics organized under each of these major themes:

I. How do you define domestic violence? How do you assess allegations of domestic violence for validity?

A. How often is it alleged? How many allegations are false?

Most said that domestic violence is alleged in many or most custody cases they have been appointed to evaluate. Overall, most found that a minority of the cases they had evaluated actually had domestic violence -- according to their criteria. One evaluator, however, found that there was intimate partner abuse in 90% of the cases she has evaluated. Variations in this estimate were sometimes attributed to personal qualifications: One man had worked on a small number of cases and only a couple involved domestic violence allegations but he suspected he might not be chosen for such cases; conversely, one woman speculated that she was appointed primarily in cases involving domestic violence because of her expertise.

Definitions could also affect the estimate of false allegations. For example, one evaluator said that he had one or two cases that were “really brutal.” Another evaluator blamed the field, saying that the high rate of domestic violence allegations in the cases he worked on (“80%”) was “pathetic,” meaning that domestic violence has become too broadly defined. For this evaluator, it is not simply physical violence but the context – the intention of the

perpetrator and what the “so-called victim” did before -- that determines whether there was actually domestic violence. He excludes from his definition of domestic violence context-dependent abuse, which he contrasts with a stable trait of aggression that is expressed not only with one intimate partner but also with other women and with men. Another took a more sympathetic view of unfounded allegations of domestic violence, finding them to stem from love-hate relationships dissolving with some physical interaction, rather than a strategy of false allegations to gain advantage in a custody dispute or actual domestic violence.

Clearly, the evaluators had different thresholds for categorizing what had gone on in the relationship as domestic violence. We did not ask for their definitions, but definitions tended to emerge in response to a question about types of abuse. Most answered by describing what they considered to be the most severe or dangerous forms of abuse, sometimes in regard to the child’s welfare.

B. What is your implicit or explicit typology of domestic violence?

For a third of the interview participants, controlling behavior was either the primary indicator of domestic violence or of the most serious abuse. Several responded that controlling and intimidating behavior is “worse” than physical abuse. For example, two said that chronic verbal abuse and controlling behavior is more serious than a single incident of physical abuse years ago. Another two stated that controlling behavior, even without physical abuse, is serious because of the impact on children, and yet another said that without controlling behavior, it does not constitute domestic violence.

In contrast, other evaluators took most seriously abuse characterized by rage, sadism or loss of control in generalized aggression. One felt that cycles of apology and repeated physical abuse and abuse that had a sadistic edge were the most dangerous, and another said that attacks justified by righteous rage signaled danger. The pervasiveness of the violence rather than physical abuse is the important factor to some evaluators:

Especially if the parents are not living together, unless you have a parent who has a history of violence in all sorts of situations, lashes out, is a very scary kind of person...with the children and adults, frankly, the fact that the father may have beaten up the mother a couple of times, I don’t consider that to be a very relevant variable...I’d rather look at actually how the parent has behaved with the child...if a kid is ten years old and his father...was never totally out of control and did harm, yet had some knock-down fights with the mother and the father is not living with the mother, I’m not that concerned. It’s not a major priority.

Two averred that those abusers who deny what they did are more dangerous than those who acknowledge their abuse. Two mentioned a continuum of abuse, with one saying she did not have a typology, “DV is DV.” She also discussed the difficulty of predicting which abusers will escalate the severity of their physical abuse and which will simply persist at a constant level. Several said that it was not the abuse that increased

seriousness but co-occurring features, with three mentioning substance abuse and two adding the child witnessing the abuse. (Interestingly, New York State law does not require that a child *witness* domestic violence in order for it to be considered in a determination of the child's best interest.)

C. What do you consider convincing evidence that abuse has taken place?

1. Documents that are useful or not

Two said police reports are not helpful because they merely repeat the victims' allegations, and one said they were particularly helpful. Several identified "court-ordered investigations" – investigations conducted by case workers at the Administration for Children's Services that are typically ordered by Family Court in disputed custody cases before the evaluator is appointed – as spotty in quality but useful when they were done carefully.

Two evaluators stated that it was not their job but the responsibility of the criminal court to determine if there was domestic violence – yet both told anecdotes that suggested that relying on criminal court convictions did not work. One stated:

I'm not there to do the criminal piece...the Criminal Court can actually say there wasn't any DV...[but] I did the testimony in court on a horrendous DV case – it was a custody/visitation case... and the Criminal Court let this guy off. Yet the Family Court judge, after everything that was written, my testimony, and of course his acting out in court... there's a lifetime Order of Protection and he will not see his children until he gets appropriate treatment.

(Courts in New York State cannot issue a lifetime order, however.) The other evaluator had a slightly different experience with the same sort of outcome in regard to relying on the criminal court to make determinations. The evaluator said, in one case, he was not taking the allegations of domestic violence into account because the criminal court had not found the father guilty of the alleged crimes. The mother then explained that the standard of evidence was higher in Criminal Court than in Family Court – she had photographs of her injuries that were not admissible in Criminal Court. He agreed with the mother that there was sufficient evidence for the Family Court to make a finding. He said in the future he would have to rethink his reliance on criminal convictions as the primary determination of whether domestic violence occurred.

2. Children as truth-tellers

Although once again there was a divergence of views, the one response that approached consensus was that children are reliable reporters of what has gone on in the home. (One disagreed, saying that children usually side with the mother.) What the evaluators look for when interviewing children varied, however, with three mentioning the child's affect, particularly identifying anxiety, and three relying on the child's "big ears," as one put it.

3. Consistency across sources and time

Another criterion mentioned by six of the evaluators for assessing the legitimacy of allegations of partner abuse was consistency. For some, consistency meant congruence across sources of information. One who spends a great deal of time investigating said the details are most informative about the truth of allegations. For others, consistency of the parents' accounts over time was the indicator of veracity. One evaluator said she has learned to delay her report because she finds the truth emerges over three or four months. Another evaluator framed the same point in the opposite way – inconsistency over time, along with an insincere manner, suggests duplicity.

4. Investigative and/or clinical skills

Some evaluators described their role as “detectives” or investigators. Two said that role was not appropriate for them but became necessary: “...if you say ‘investigation’ that really, one would think, should be the realm of the police, the authorities, but it isn’t...You have to make sure you get the facts.” Another reasoned that psychologists were ideally trained to the “detective work” of collecting and interpreting data and marshaling evidence to support their conclusion because of their experience writing and defending a doctoral dissertation. Along the same lines, one said the judge has to “try the facts,” but the evaluator can get out in the field. This evaluator described collateral interviews with people in the neighborhood who reported “hearing the husband scream the most disgusting things, ...and if the wife’s narrative is compelling and it’s detailed and it doesn’t sound rehearsed – you begin to develop the sense that this is quite probably true.” Another stated that, although he did become a detective, he assumed that the court appointed evaluators because of their clinical skills. Therefore, although he reviewed the records provided to him, in the end he relied on his interviews with the parents; most of the evaluators concurred.

D. Time spent on evaluations

Clearly related to the question of *what sort of evidence* the evaluators felt they needed to assess the veracity of domestic violence allegations is *how much time is required* to make that assessment. Given the range of views expressed as to whether the evaluator’s role is to serve as ‘detective’ or only to offer their clinical skills in interviewing, it is to be expected that the amount of time spent on custody evaluations also ranges widely. The average time spent on a custody evaluation ranged from 15 hours to 50 hours. The most time evaluators reported ever spending on any evaluation ranged from 35 hours to 100 hours.

Importantly, however, most did not feel it takes longer to conduct a custody evaluation if there are allegations of domestic violence than if there are not. They said that there are other factors that determine the length of time spent on the evaluation, such as the number of children, the complexity of the case, and whether they had to testify in court. Three disagreed, with one saying it took more time to tease out false allegations, another that there are more documents to review, and the third that it took more time to explore the history of the relationship.

E. Psychological testing

In the context of how the evaluators determine the accuracy of domestic violence allegations, they were asked whether and for what purpose they use psychological tests of the parents. Two of the interview participants were social workers (not a different proportion from those who conducted the evaluations in the case review study) and said they could not administer tests. Nine of the 11 evaluators who answered this question do routinely use psychological tests, with eight using the Minnesota Multiphasic Personality Inventory (MMPI) and one using the Personality Assessment Inventory (PAI).

Most were clear that there is no test that can identify whether someone is a perpetrator of domestic violence: “The role of testing in these evaluations [is] somewhat controversial because they don’t have direct measurements of parenting...and we don’t have specific inventories for domestic violence either, or for violence.” Rather, they used the tests to confirm their impressions from interviewing the parents, especially the fathers. Six of the nine evaluators who said they use the MMPI mentioned this purpose:

Rather than saying, “Gee, I found something on the MMPI and that tells me that this person is either lying or has a major aggression problem or has psychopathic tendencies,” I think the MMPI can help, as additional data, to help confirm the impressions I’m getting from other sources.

Specifically, they used the MMPI to confirm clinical observation of relevant response patterns in alleged abusers: “impulsivity, mental instability, those are kind of tips for giving credibility to the domestic violence.” All noted that the test results can only confirm what they have otherwise observed but not finding confirmation is not significant. One quoted, “Absence of evidence is not evidence of absence.”

They often mentioned the validity scales in particular: “mainly what I seem to use [the MMPI] for is...a reliability check. There are a lot of validity scales and a lot of validity subscales which are very useful...a high score on being phony on the test doesn’t guarantee they were phony in the interview... it’s another piece of data.”

The evaluators were asked in particular whether a parent being the victim of domestic violence affected interpretation of test results. Interestingly, one referred to research by Rosewater and Erickson showing particular patterns of responses to the MMPI among victims of domestic violence and another referred to a recent article on the impact of traumatic stress on the MMPI, although he had not read it. This one continued to talk about the MMPI results confirming other characteristics of a victim that he noted in his interview with her, and went on to generalize that he finds domestic violence allegations more plausible when the victim downplays it than when she is more assertive and angry:

...they’re very by and large more self-effacing...this woman’s profile tended to be extremely eager to please...she was just simply compliant and cooperative...I don’t think anything was unusual about her MMPI profile other than very...average. But because she indicated a couple of issues, I

then spoke to her employers...In fact, there had been a number of people at work suspecting it. So the father's MMPI profile turned out to be highly aggressive, very likely to act out.

This perspective was not unique: "You know, sometimes the victim's profile will come back that the person's kind of detached, low self-esteem, passivity, and then that will lend credence to the domestic violence allegations."

Conversely, one evaluator found the MMPI could confirm his suspicion that the alleged victim was fabricating her accusations of abuse:

...we're also looking for of course...the credibility of the mother who's making the allegations...an accuser who does not come across as very genuine in the interview,...a person who does not tell a cohesive story, a person who on psychological testing comes out as highly histrionic, perhaps paranoid...a little bit of additional psych testing casting doubt on veracity of the mother could push things in another direction.

Some evaluators are opposed to testing.

I do a little mostly to just be able to say I did it in a courtroom. There's no testing out there – despite the fact that a lot of my colleagues really do a lot of testing – that has any significant correlation with trying to predict what's best for children. It's basically useless..."

This evaluator went on to say that 70% of the time the MMPI merely shows that the parties are trying to demonstrate that they are better than they actually are (sometimes termed "faking good" or giving a socially desirable response). She also uses the Parent-Child Relationship Inventory, although it is a "worthless test." Another evaluator said she used to administer the MMPI but stopped because she found it not useful.

F. Word count of domestic violence assessment process interviews

For illustration purposes, a word count was conducted on the combined evaluator responses to questions about their processes for assessing domestic violence allegations. The most frequently cited words were "children," "parents," "people," "know," "think," "get," and "look. As shown in Figure 5.1, these results graphically illustrate the analysis of the interview contents described above – namely, that in assessing the validity of domestic violence allegations, evaluators are likely to rely heavily on the interviews of family members and other *people*, especially the *children* involved in the case, as well as their own clinical detective work (i.e., "look," "see," "get," "know") in interpreting the results and meanings of these interviews.

the family and how that might contribute to stress in the family and if it's attributed to DV.”

2. Causes or roots of intimate partner abuse.

Following the question about theoretical orientation, we asked whether the evaluators modified their application of a theory when evaluating a case involving domestic violence. This question led most interviewees to explain how they viewed the roots of and motivation for abusing an intimate partner. As will be seen below, an evaluator's understanding of the *causes* of domestic violence is related to their assessment of the parenting ability of an abuser and ongoing danger to the other parent and/or child. For example, if the evaluator believes that a stable personality disorder causes a person to abuse his partner, that tendency is not likely to change and will affect his parenting. If the evaluator believes that intimate partner abuse is caused by a dynamic between two individuals, they will infer that the perpetrator is not likely to abuse a new partner and the child is not in danger.

The explanations for why people abuse their intimate partners tended to be multi-faceted, with each evaluator providing several reasons in different domains. It was in answer to this question that the evaluators were most likely to mention the motive of controlling the partner. One was puzzled that there was not just one answer to this question: “I guess I would keep in mind the power and control piece...DV has its own theoretic perspective, and I guess I would use that.” She then asked, “Not everybody uses that or not everybody's heard about that?” Told that not everyone uses it, she seemed astonished, asking how a domestic violence case could be understood at all without referencing that construct, noting that the Duluth power and control wheel had been around for decades.

A few attributed domestic violence to social learning or modeling. Two noted paranoid thinking in that the abuser sees himself as the victim of his partner. Along the same lines, several noted a form of narcissism, variously describing it as, “self-indulgence,” “under-control of emotions” and, as a third explained, “when there is a threat to the self-image, they smack someone around” and do not feel anxiety. One evaluator who identified his theoretical orientation as psychoanalytic started with a sociological model that ended with an explanation that was most consistent with a family systems model.

We have a nuclear family in an atomized society and there's a huge amount of loading on the needs placed on the nuclear family. There's less extended family support, there's less community support, there's less religious affiliation. So I think there's an awful lot of stress placed on the marital unit...We're seeing the [divorces]...where there's much more high conflict and tension. And there are loyalty issues in terms of the children and so forth and so on. So in a certain way it's a breeding ground for potential violent interactions...it's perhaps why in certain ways I might tend to minimize and maybe sometimes overlook domestic violence because that phrase implies a kind of aggressor and victim, which I think is probably in these custody cases somewhat less the case.

Finally, three delineated theories relating to the victim. They disavowed blaming the victim, although that inference appears inescapable. When asked about their theory of domestic violence in particular, whether they modified their usual theoretical orientation, one said that victims, repeating a history of abuse and neglect, make choices in their partners. Another, also citing the victim’s history, said the victim is not at fault for the abuse but is responsible for not leaving the abusive partner and could stop the abuse. The third attributed perpetuation of domestic violence to some victims only. This evaluator said he found that some victims have gotten healthy and are ready to move on, typically with other relationships, but others, locked in bitterness and the need for retribution, participate in the continuation of the abuse.

As shown in Figure 5.2 below, the graphical word count for evaluator responses to questions about the causes of domestic violence shows “history,” “violence,” “children,” “guy,” “dangerous,” “situation,” “background,” “need,” “early,” “behavior,” “personality,” and “control” as the most prominently represented words. One interpretation of these results is that they illustrate the idea that evaluators conceive of domestic violence as stemming from situational, historical factors (e.g., “situation,” “background,” “early”), which manifest themselves in the need for control (i.e., “control,” “need”) and other destructive and deeply-ingrained behavioral patterns (e.g., “violence,” “dangerous,” “behavior,” “personality”).

Figure 5.2. Graphic representation of word frequencies in evaluators’ explanations of domestic violence



B. How do the evaluators balance protecting the child (and the victimized parent) with maintaining the child's relationship with a parent who perpetrates violence?

1. Is it important for a child to have contact with a father who had abused the child's mother?

Most of the evaluators interviewed answered in the affirmative, sometimes with qualifications. One simply said that a child needs two parents, and another that it is important that a child come to terms with the abusive parent's deficiencies. A few who distinguished between partner abuse and child abuse felt that abuse of the adult partner did not put the child at risk. One asserted that domestic violence and child abuse are separate matters and a child is not endangered by the former. The other stated that the parents had to work through their problems and put the child first by cooperating. One agreed with an exception: the child should maintain a relationship with the father unless his violence against the mother was extreme. One who felt that it was important for the child to maintain a relationship with a father who abused the mother was clear that domestic violence is always relevant to parenting, believing that partner abuse *is* child abuse. The latter two stated explicitly or implied ("non-toxic exposure") that visits should be supervised.

Of those who answered that it was *not* important for the child to maintain a relationship with a father who abused the child's mother, one said the father should be kept away from the child, except for very structured visitation; two said there should be no contact – unless the father demonstrated empathy for the child and was remorseful; and a fourth said the child should be protected from the father's intimidation.

2. Would you ever recommend no visits with a parent who had abused the other parent?

When we phrased essentially the question somewhat differently, over half said there were some circumstances under which they *would* recommend no visits. Two noted that the courts order visits anyway. One evaluator was discussing how the courts disfavor the equivocal or tentative conclusions that a psychological evaluation is likely to produce, saying that the judges have an impossible task determining the best situation for the child, but also "There's this *parents rights* nonsense...some sort of legal standards you have to show that the mother is *really* bad before you turn a kid over to a grandparent. Where the father has a better shot...things like this." This evaluator was not alone in expressing discomfort with the court's enforcement of parental rights (see below, under supervised visitation).

The reason given by one evaluator for recommending some sort of contact was to prevent the child from demonizing the father.

I think it's better for a child to -- even if let's say a parent has been very violent towards the other parent --...maintain some kind of relationship with that parent, for various reasons, than to cut them off entirely. Of course making sure there's safety, but to maintain a relationship...I don't think it's

healthy for a child – for anybody – to develop a sense of everything’s split between good and evil.

Another reached the same conclusion based on the *opposite* concern – idealizing the absent father:

I think it is better if the child has some exposure to this person so that it’s not that they’ve been deprived and also it prevents the fantasy from developing that: *Oh, if Daddy would only come rescue me everything would be beautiful.* Which is the fantasy that develops in people that have no contact with their real parents. Fairy godmother or fairy godfather is going to suddenly come and I don’t think encouraging that is in the child’s interest.

More typically in this group of mental health professionals, they would recommend resumption of contact with a perpetrating parent following individual therapy and therapeutic program interventions for the father, such as anger management.

3. What about the mother’s safety?

Only a few of the evaluators were concerned about the mother’s safety, with one recommending no visits with the father to protect the mother, another recommending supervised transfer of the child between the parents, and the third recommending that the abuser not know where the mother and child were living, with third party transfer.

4. When would the evaluator recommend supervised visitation?

As one might expect from the previous answers, some evaluators suggested that visits should be supervised only in particularly egregious cases, variously including abusers who had committed particularly severe domestic violence (but only after a batterer program and therapy), those who lack self-control, or a father who badgers the child for information about the mother. One said that the supervision requirement should be lifted if the perpetrator takes treatment to heart. Others suggested that visits with a domestic violence perpetrator should always be supervised -- but should only take place if the child had a strong bond with the perpetrating parent and that parent was motivated to change. Two others simply said a child should not be alone with a perpetrator of intimate partner violence.

One took an unusual stand that is worth quoting simply because of her vehemence in questioning the wisdom of forcing children into even safe supervised visits with a father whose violence they have witnessed. She began with the comment, “Every child has the right to have two parents, but I think that [whether that means] healthy parents is a question,” segued into a discussion of alienation, and concluded:

I don’t believe in re-traumatizing children and many of these children who go on these supervised visits are re-traumatized over and over again, because they’re

scared. They don't know what's going to happen. And there's reasons for that – there's reasons for them being scared and being anxious and being fearful. And the courts don't hear that, all they know is that every parent has a right to see their child.

5. What about treatment? Can that change the picture?

There was considerable pessimism among our interview participants about the effectiveness of interventions or treatment for perpetrators of intimate partner abuse. Some said that perpetrators should be ordered to anger management although it doesn't work, and others said they should not be so ordered because it "doesn't work." They were more hopeful about therapy generally, but felt that it is ineffective when it is court ordered and the patient is not really interested or in denial. Two felt that legal interventions and consequences were more effective in the absence of motivation. Others were not so sanguine about interventions, recommending anger management, a batterer program (and *not* anger management), therapy, or substance abuse treatment either for a year or "until they get it."

The evaluators generally felt that treatment for a mother who had been abused was a good idea, but the reasons fell into two equally popular but opposing categories. Half of those who recommended therapy for the mother saw her as participating in the perpetuation of abuse. They recommended variously assertiveness training, therapy because she was enabling, or therapy because she was provocative and needed anger management. This group also tended to recommend parenting skills training. These perceptions and recommendations are consistent with a family systems orientation.

The other half tended to express regret that therapy was more helpful for the victim than for the perpetrator of domestic violence both because victims are more amenable to treatment than offenders and because treatments for the psychological effects of abuse, trauma and depression, are more effective than treatments for aggression. The children would benefit if the victim had therapy because depression impairs parenting. They also felt that information on domestic violence would be helpful to the victim's healing and avoiding abuse in the future.

III. Parental Alienation

A. How often is it alleged? By whom? How often are allegations valid?

Most of the evaluators interviewed said that allegations of parental alienation are an issue in custody cases – particularly in those cases that result in the court appointing a custody evaluator. In the experience of two evaluators, however, such allegations are infrequent.

The evaluators were evenly split between those who said mothers more often made the allegation and those who said fathers did. The response of one evaluator to this question may explain this split as a shift, consistent with our quantitative data:

I think it's quite common on both sides...I didn't see it as much earlier, years ago it was usually the mother who would do it. But now I see fathers who are either coached by their attorneys or are reacting proactively so that it doesn't happen to them. They're trying to get in there before the woman does.

There was virtually no concurrence among evaluators about what parental alienation is, its causes or the validity of allegations. Three related it to domestic violence, but in very different ways. The simplest explanation was that children become estranged from their fathers because they "hate" the abuse. Another finds that mothers usually want their children to have a relationship with the father despite his history of abusing her – unless the abuse is ongoing. The third gave the most complete explanation but not the clearest. In her view, mothers who have been the victim of the father's violence fight visitation and attempt to alienate the child from the father but there is no reason for the mothers to take this course. Her view was that the mothers should rely on the court to keep the child safe.

Three other evaluators found the allegations are mostly false but again, there was no agreement about the impact of false allegations on the children. One said children align themselves with the mother and lie to the evaluator. Another pointed out that children rarely fall for alienation tactics by their parents. A third said that some mothers falsely allege child sexual abuse in the context of a custody battle.

Some presented it as a continuum.

I think it ranges all the way from sort of unconscious pulling the kid onto your side, which I think is probably inevitable and universal for everybody without extreme effort to avoid it, to... coaching or even threatening - *you better say this or I'll never see you again*. So I see it on a continuum...I don't see it as *either* there is parental alienation *or* there is not parental alienation. To what extent and how is that manifested.

At one end of the continuum, the evaluator gave the example of a mother who was truly concerned about her son spending time with his father, whom he had not seen in five years and who was mentally ill. The evaluator agreed that the mother had a valid point, but he disagreed that it would be bad for the child to get to know his father. He considered this instance a case of unconscious alienation. He also said that parental alienation allegations that are made without any basis used to be rare but are becoming more common as people learn to make such allegations to their advantage.

One evaluator bemoaned the impact on evaluators of false allegations:

I think the saddest thing, the most disturbing thing is that real issues such as domestic violence and sexual abuse are used manipulatively by parents trying to interfere with the relationship between the child and the other

parent. And so that's very disturbing because domestic violence is a real issue but I think what happens is that a custody evaluator can even become cynical and skeptical and...it can lead to skepticism and to viewing domestic violence lightly.

Many were concerned about the children who were estranged from a parent because of the other parent's effectiveness at alienating the child. All had experienced extreme cases, where the child was completely resistant to visiting the noncustodial parent, and they found those cases "sad" and irredeemable: "usually they've been going on for so long by the time they get to me,... there's not much I can do to intervene," said one evaluator, and another commented:

I think it's very sad; it's very hard to tease apart and sometimes the parent who's alienating the child from the other parent is very successful at it. Sometimes it's gone on for so many years. There's not much that can be done.

Another clarified first that *Parental Alienation Syndrome* is inadmissible, yet he found alienation in almost every case:

But clinically it's absolutely the case, you often have parental alienation and when it's *in deep*, so to speak, when it's entrenched or baked in like a lasagna - it's absolutely immovable. In the cases that we end up with by the way, for the therapeutic supervised visitations, it's almost hopeless

IV. What is the evaluator's role? What best prepared them for this role?

A. Role and Primary Tasks

Most said that they do make recommendations to the court about the best parenting plan, and that if the judge instructs them not to, the outcome they feel is best is clearly indicated by their conclusions. Three evaluators said they did not make recommendations.

Responses to questions about their priorities were categorized into three primary goals, with equal numbers of evaluators endorsing each goal.

1) "Child safety" was a goal, including physical and psychological safety. Two added diametrically opposite conditions to this goal: one added to child safety that maintaining a relationship with the father was a goal, and another added the goal of maintaining the victimized parent's physical and emotional safety.

2) Reducing conflict between parents: Some evaluators' first response to this question was that their role was to reduce conflict between the parents. Two believed they could achieve this goal through their recommendations for treatment and parenting plans by

“enabling a civil and cooperative relationship between the parents,” in the words of one. Another believed that peace was achieved by “keeping the parents apart.”

3) Some evaluators also believed their role was to determine the best parent, which one evaluator defined as the parent that puts the child first. This evaluator noted that a father who continues to abuse the child’s mother is not putting the child’s needs ahead of his own.

B. Best preparation for conducting custody evaluations in cases involving domestic violence

Most commonly, the evaluators mentioned their background in working with children. Two had worked as child abuse investigators and several had conducted clinical evaluations in child abuse cases. One had supervised visits and from that experience gained a sense of the intractability of the problem. Three had extensive training in domestic violence specifically, but others who admitted they did not have a background in domestic violence still felt qualified: “I’m not an expert on domestic violence but I’ve certainly dealt with it in terms of working...I worked in foster care.” Two acknowledged that they have not been as attentive to domestic violence as they should be.

Summary

Most evaluators think their role is to provide the judge with information and their expert opinion about which parent should have custody, how much visitation the other parent should have and under what conditions, and the treatment needs of all family members. In order to do so, those we interviewed felt it was incumbent to assess the truth of allegations about domestic violence. They tended to rely most heavily on consistency of the evidence – with some finding that evidence in records and collateral interviews, and others finding consistency, or lack of it, in the parents’ accounts of the relationship. Children were usually – although not always – viewed as a source of truthful accounts. Evaluators sometimes described how they were able to elicit accurate information from children, despite the children’s initial reluctance to say anything bad about a parent or initial responses that led the evaluator to conclude they had been coached (such as three children of different ages using the exact same words). Thus the evaluators might be divided into two types – those who rely on their clinical skills and those who take a factual or investigative approach.

Where they differed most clearly and importantly was in what role they believe a finding that a father has abused the mother should play in the extent and type of visitation with the father. Some evaluators consider abuse of the mother irrelevant if there is no child abuse – perhaps unless the father’s assaults on the mother are extremely brutal. Most often, they feel it is important for a child to have relationships with both parents, and to know a parent even if that parent is severely flawed. A minority of evaluators would restrict contact with the father.

How they defined and explained domestic violence certainly played a role in what sort of parenting plan they would recommend, with those who adopted a power and control model expressing concerns about intimidation of the child and ongoing risks for the mother. Others saw fathers who perpetrated domestic violence as self-indulgent. Among those we interviewed, emotional abuse was seen as particularly serious, with some evaluators less concerned about the mother's or child's safety if there had been occasional physical abuse. This assessment is surprising in light of the fact that, in the courts, physical violence is usually seen as more serious than emotional abuse. Perhaps, though, psychologists are more oriented toward emotional factors than criminal acts. Another plausible explanation is that they tended to dismiss occasional or "situational" physical violence and to be more concerned about chronic abuse, and emotional abuse may be perceived as a constant. There were, however, evaluators who focused instead on physical abuse, reserving their concern for cases of extreme, brutal or sadistic, violence.

The interviews overall reinforced the finding from the case review analysis that there is a great degree of variability among evaluators with regard to many important aspects of custody cases. Areas of disagreement include how they define domestic violence, what they consider serious domestic violence, and above all, what sorts of parenting plans they consider best for the child – whether the mother's emotional and physical safety should be taken into account, whether men who abuse the mother of their children poses a risk to the child, and whether it is best for a child to have a relationship with a parent with such a history.

Their understanding of their role varied from trying to facilitate a cooperative relationship between the parents to recommending a plan that would keep the parents apart. As in the quantitative findings, the explanatory model the evaluators adopted was influential – those who were knowledgeable about domestic violence tended to adopt a power and control model and drew different conclusions about the child's best interest.

Chapter 6

Conclusions and Recommendations

Study Strengths and Limitations

An important strength of this study is that it utilized data from actual cases, rather than only asking evaluators and judges what they do. The latter approach can present an idealized picture of their responses to domestic violence. Although the difficulty of accessing the cases limited our sample size, the richness and depth of the data allows insights into the complexity of the cases and the evaluators' assessments. A second strength was the multidisciplinary research team, which included research psychologists and clinical psychologists with experience as custody evaluators, a judge and family law attorneys, a forensic psychologist, a policy maker and many experienced legal advocates.

The cooperation of legal services agencies specializing in providing free civil legal assistance to victims of domestic violence gave the study unusual access to extensive case records. These agencies screen the cases they take, ensuring that the study sample had convincing evidence of domestic violence, and that child abuse by the mother or substance abuse by either parent were not confounding problems plaguing the family.

One set of limitations stems from methodological issues. The sample was much smaller than we had anticipated based on the estimations of the legal services providers that cooperated with the project. We had expected to sample 200 cases, but were able to gather full information on less than half that number. The cases were also more difficult to access than we expected they would be. Each organization had different filing and tracking systems that did not allow easy identification of cases that met our criteria and, at some agencies, the cases were scattered across different sites. Also, the extrapolation of the facts of the cases turned out to be much more time consuming and difficult than we anticipated, as did the coding of the evaluations. (A single case might have 10 large files that would fill a small table, so it took the paralegals hours to extract the basic information about each case.) Even with the smaller sample, we were taxed in terms of time and staffing to complete the reviews and coding of the cases we secured.

Similarly, we were not able to interview all the evaluators we had hoped to contact. In particular, the fact that two evaluators conducted a quarter of the evaluations in our sample of cases was a problem for analysis and generalizability of data. It is a sign that the skilled lawyers representing the victims in our sample of cases were sometimes successful when they suggested the appointment of a particular evaluator whom they knew to be knowledgeable about domestic violence. Unfortunately, we were unable to schedule an interview with the evaluator with the most reports in our sample.

Avoiding subjectivity in the coding of the evaluations was a challenge. We had planned to analyze records of abuse of the mother (e.g., criminal convictions of the father or medical records) and the child (e.g., findings of child abuse investigations) in two ways: all documents or notes in the attorney's file, and documents that the evaluator reviewed.

This discrimination between what could be known by the evaluator and what was actually known by the evaluator proved impossible because many did not list or otherwise reveal the sources of information they reviewed, particularly documents.

Another set of limitations relates to generalizability of the findings. Our data came from one state. State statutes shape the practices and responses of the courts and judicial training requirements are likely to differ across states. New York is also atypical in providing free legal representation in civil cases. Custody evaluators may also be paid by the court if the parents are unable to pay, and that feature may also be unusual. In addition, there are local judicial cultures. Outcomes in New York City may be different from those in other parts of the state, especially “upstate,” a region that encompasses the western reach of the state to the Pennsylvania border and the northern mountains bordering Canada. These areas tend to be more conservative politically and more rural; judges are less likely to specialize in domestic violence. The New York metropolitan area has relatively rich resources. For example, battered women’s agencies often have staff attorneys who assist clients in civil legal proceedings, including custody and visitation litigation as well as orders of protection. In other respects, conducting this sort of study is more difficult in New York State. Compared to other states, New York allows extremely limited access to court records, especially Supreme Court matrimonial records and Family Court records. All the cases we were able to access were those of lawyers specializing in representing victims of domestic violence.

The fact that we only had access to cases of attorneys specializing in representing domestic violence victims imposed three limitations on the study. The cases were screened by the agencies, both to ensure they were serving the population that it is their mission to serve, and to provide services to those in greatest need because demand exceeds their capacity. One consequence is that we cannot determine how evaluators would respond to cases with more equivocal evidence of intimate partner violence or confounding issues of drug abuse and maternal child abuse. These limitations nonetheless allowed us to compare evaluations of cases that are fairly clear and straightforward across evaluators.

A more severe limitation of sampling cases in which victims were represented by agencies specializing in domestic violence is that our sample probably has a positive bias on the outcomes of the cases: the victims had strong and informed legal advocacy. As noted above, they also could have some influence on selection of the evaluators. For these reasons, the findings in this study represent the best case scenarios in regard to outcomes for victims of domestic violence in disputed custody cases. Therefore, it is the processes, rationales and influence of the custody evaluators that constitute the more important findings, not the simple frequencies. Furthermore, the fact that joint residential custody was not an option in these courts makes it appear that the mothers were more successful than they are in other states and also makes it appear that they were more successful than they actually were because, although they usually secured primary residential custody of the children, visitation arrangements could give the fathers nearly equal time with the children. Therefore, the important finding in regard to custody and visitation was the safety of the parenting plan for the mother and the child – whether it

provided protections to the mother in regard to transfer of the children and communications and whether it provided protections to the child in regard to visits with the father.

Discussion of Major Findings

Tests of Hypotheses

Settlements vs. Court-Determined Parenting Plans

We had hypothesized that the parties would settle if there was less violence, if the custody evaluator recommended a less restrictive (less safe) parenting plan, and if the evaluator did not note ongoing risks. None of these relationships held. Safety of a parenting plan was defined as limiting the father's access to the children, protecting the mother during exchanges, and including general safety contingencies and provisions. Contrary to our hypothesis, there was no difference in the overall safety of the parenting plans ordered by the court following a trial as compared to the plans arrived at by settlement. (We were unable to distinguish between settlements that were reached during a trial – perhaps as a result of the evaluator's testimony or other testimony – and settlements that were reached before the case went to trial.)

The only significant difference between the court-ordered plans and the plans in settlement agreements is that the settlements conformed more closely to the evaluator recommended plan (85% agreement) than the court-ordered plans (70% agreement). The finding that settlements did not differ from court-ordered parenting plans on our major outcome variables is important in itself. It also simplifies presentation of the other findings because they apply equally to court-ordered parenting plans following a trial and parenting plans in settlements.

Correspondence between evaluator-recommended parenting plans and court-outcome parenting plans.

Our hypothesis that custody evaluations have a nearly determining influence on the outcomes for a family was confirmed. Effectively, when a custody evaluator is appointed, these psychologists, psychiatrists and social workers are driving the judicial outcomes in the disputed custody cases involving allegations of domestic violence, whether that outcome is reached through a settlement agreement or judicial order. This conclusion is supported by the high level of concurrence between the parenting plan recommended by the evaluator and case outcome. In particular, there was no statistical difference between the evaluator's recommendations and the court outcome with regard to the safety of the parenting plan for the victimized parent and for the child.

Determinants of Safety of Parenting Plans

Parenting plan safety was a summary score incorporating elements that would protect the mother during exchanges and the child during visits, and included safety provisions for contingencies. Most surprising, the safety of the parenting plans did not appear to be affected by the characteristics of the case: that is, when the domestic violence had been more severe, the parenting plans were no more protective of the mother or child than if the physical and emotional abuse, threats and stalking had not been so severe. Furthermore, the majority of evaluators did not incorporate into their reports consideration of the following known indicators of continuing danger on the part of a domestic violence perpetrator: access to a weapon, threats on the mother's life, suicide threats, stalking, obsessive jealousy, past violations of orders of protection, and threats to abduct the child or past abductions.

The more the evaluator incorporated consideration of case or perpetrator characteristics associated with potentially lethal violence into the evaluation of the family, the safer the evaluator-recommended parenting plan and the parenting plan ultimately adopted were. Overall, our findings suggest that neither the severity of the history of domestic violence nor the presence of ongoing risk may influence the outcome in many cases – depending on the evaluator. This finding is alarming.

As a corollary of the hypothesis that the parenting plans would reflect the history of violence, we expected that more thorough investigations by the evaluators would result in safer parenting plans. From reading the custody evaluations and interviewing evaluators, we learned that some evaluators interview the parents and children, and perhaps administer some psychological tests, completing the evaluation and the report to the court in 20 to 30 hours. Others review the family's civil and criminal court history, talk to doctors, track down and interview many collateral sources, conduct home visits, and spend up to 70 hours evaluating a family. Yet there was no difference in the safety of the parenting plans in the evaluators' recommendations or court outcomes as a result of thoroughness of their investigation.

Instead of these empirical factors of severity of past abuse, indicators of ongoing danger, and investigative thoroughness influencing case outcomes, it was characteristics of the *evaluators* that predicted the safety of the parenting plan. Regardless of the case history, the most restrictive or protective parenting plans recommended by the evaluators and adopted by the court were those in which the court evaluator: 1) demonstrated knowledge about domestic violence, 2) considered power and control dynamics in domestic violence cases, and 3) discussed risk factors for ongoing violence. These three predictors of safer parenting plans were correlated, indicating that knowledge of domestic violence incorporates the power and control model and concern with such predictors of post-separation assault and dangerousness as stalking and obsessive possessiveness or violations of no-contact orders. The single best predictor of the safety of the final parenting plan was the degree to which evaluators noted ongoing risk factors. It should be noted that the evaluators' assessment of current risk was positively correlated with

severity of past partner abuse ($r = .29$), but the relationship was not statistically significant.

Another hypothesis was that the outcomes would be extremely variable, depending on which evaluator was appointed by the court. This hypothesis was supported by two findings discussed above. First, the high level of concordance of the evaluator's recommended parenting plan not only with the parenting plans resulting from settlements but also those ordered by the court following trial shows the influence of the evaluator on the outcome. Second, the primary determinant of the safety of the parenting plan was the degree to which the evaluator noted ongoing safety risks, and that feature was associated with the evaluator's knowledge of domestic violence and adoption of a power and control model. About a quarter of the evaluators referenced power and control dynamics in their evaluations.

This variability hypothesis was further supported by the interviews with evaluators, where widely divergent views were expressed on a number of issues with the potential to influence their assessments and recommendations. One critical difference lay in their definitions of domestic violence and the type of intimate partner abuse they found most dangerous to the child's well-being. Some were concerned primarily with emotional abuse and less concerned with physical abuse, especially if it was sporadic or "situational," whereas others were most concerned about "brutal" and "sadistic" acts.

Variability is also found in responses to interview questions about the relevance of domestic violence to parenting. On the one hand, two of the custody evaluators whom we interviewed expressed the belief that perpetrating domestic violence was irrelevant to being a good parent; on the other hand, one evaluator expressed the belief that domestic violence *is* child abuse, and yet another felt that domestic violence was evidence of self-indulgence and a failure to put the child's welfare first and therefore reflected poorly on parenting ability.

Divergent views of the dynamics of domestic violence also affect the sort of parenting plans that evaluators recommend. Several evaluators that we interviewed regard domestic violence as a form of conflict that will be alleviated when the parents are ready to "move on," in particular victims who play a provocative or perpetuating role in the abuse. Some believe that the majority of allegations of domestic violence are fabricated and others believe they are more often underplayed. Inevitably, professionals bringing these different beliefs to their court-appointed task will reach very different conclusions.

Descriptive Findings

Further insight into some of the influential factors described above with regard to our hypotheses can be derived from simple frequencies, cross-tabs and interviews. Few of the evaluators we interviewed had specialized knowledge of domestic violence. They mostly felt their expertise derived from knowledge of child development. In sharp contrast, one evaluator had taken the initiative to attend a 40-hour training for custody evaluators on domestic violence in California, where statutes require such training; she

planned to return for further training. Another was familiar with the literature on domestic violence and referred to it in her interview. Others felt their knowledge was gained through experience. Two acknowledged in interviews that they paid insufficient attention to domestic violence in their evaluations.

Theoretical Orientation

As a premise validated in the literature, we considered a family systems model to carry risks of victim blaming when applied to analysis of domestic violence dynamics, and a “power and control” model to be the consensus analysis of experts in domestic violence. Most of the evaluators we interviewed said that they did not apply theoretical leanings they used in private practice to custody evaluations but were “data driven,” as one evaluator expressed it. Accordingly, we found that explicit theoretical leanings were evinced in less than half of the evaluations, with 23% adopting a power and control model, 12% applying a family systems perspective and 10% a psychoanalytic perspective. Evaluations that explicitly evinced a family systems model, however, were significantly more likely than others to refer to domestic violence as “conflict.”

Child Exposure to Violence Against the Mother, Child Abuse and Neglect and Parental Alienation

Most of the evaluations demonstrated concern about the child’s exposure to abuse of one parent by the other. Two-thirds asked the mother about such exposure, yet more than half (54%) did not consider the relevance of domestic violence to the father’s parenting ability. Nearly a quarter of the reports reflected the belief that the mother’s anxiety and fear of the father reflected negatively on her parenting ability.

It was common in this set of cases for parents to accuse each other of child abuse and neglect: 55% of fathers alleged the mother abused the child and 42% of mothers alleged the father abused the children. Interestingly, the evaluations were much more likely to make findings consistent with the mother’s allegations. Evaluations found child abuse by the father in 22% of the cases and by the mother in 10% of the cases. Although the evaluators consistently agreed with the mothers’ allegations of child abuse by the father more often than they agreed with the fathers’ allegations of child abuse by the mother, they nonetheless more often found the mothers’ allegations of child abuse by the father to be unfounded. (Note, however, that the legal service organizations from which we secured our sample do not take custody cases in which either child abuse by the father without domestic violence allegations or child abuse by the mother is the predominant issue, referring them to other legal service providers). In all the cases in which the evaluation found substantiation that the father abused the child, the evaluation also found that the father abused the mother.

Similarly, the evaluators were more likely to agree with the mothers’ allegations of domestic violence than with the fathers’, consistent with Johnston et al.’s findings (Johnston, Lee, Oleson, & Walters, 2005). Evaluators also agreed with mothers’ allegations that the father was attempting to alienate the children against her more often

than with fathers' allegations of alienation. Taken together, these three findings demonstrate that the mothers' allegations are more likely to be substantiated than the fathers' in this sample of cases. Yet in the interviews, many evaluators expressed the belief that mothers fabricate allegations of intimate partner abuse, child abuse and parental alienation in the context of a custody dispute.

Roughly 40% percent of fathers alleged that the mother attempted to alienate the children against them; less than half as many mothers alleged attempted alienation by the father. Thus there were allegations of parental alienation attempts in half the cases. Evaluators found the allegations correct in almost a third of all the cases – yet children were estranged from a parent in only half of those cases. That is, evaluators were finding “parental alienation” twice as often as they were finding the child was actually alienated (estranged) from a parent. Apparently, then, the term is often used to describe the parents' actions, rather than the child's resistance to contact with a parent.

We did not find support for the hypothesis that the “friendly parent” was more likely to be granted custody. When the child was, in fact, estranged from the mother, the father was usually granted custody. Thus, the father who succeeded in alienating the child from the mother was granted custody. When the child was estranged from the father – whether that estrangement was attributed to the mother's alienation attempt or the father's own actions and relationship with the child – the mother was more likely to be granted custody. Still, the evaluations often concluded that cooperative parenting was best for the child and therapy for the child and estranged parent was recommended to further the goal of cooperation. It was also recommended for mothers who were reluctant to co-parent because they were afraid of the father, as well as for fathers who were believed to be abusive. Joan Meier aptly summarized the current situation in a note she distributed to explain an appeal she filed in 2010 in Washington DC's District Court:

“While the theory known as ‘parental alienation syndrome’ has been so thoroughly critiqued and debunked that it is becoming rarer in family court, it has been replaced by references to ‘parental alienation’...The latest approach seems to be that evaluators will claim that while the children are alienated from a noncustodial father for many reasons (even including the father's behavior), increased paternal contact is still necessary to remedy the alienation.” (Meier, 2010)

Psychological Testing

A question of interest was whether and how psychological testing is used to assess parenting capacity and domestic violence. Testing was almost never ordered by the court and slightly less than half the evaluations utilized psychological tests, most commonly administering the MMPI to parents. In interviews, evaluators usually noted that there is “no test for domestic violence.” Instead, evaluators tended to use psychological testing to help confirm or disconfirm their own clinical impressions about the dynamics of the case, presence of disorders, and the credibility of the parties' overall narratives and testimony. They appeared to use tests more to confirm their impression of the father as

capable of domestic violence (e.g., lack of impulse control and aggression) than to validate their impression of the mother.

Evaluation Recommendations for Custody and Visitation

The evaluations recommended that the mother have residential custody in 79% of the cases and the father have residential custody in 16%, with 3% having shared custody. Note that these numbers are the evaluators' recommendations, not the court outcome, but those numbers are essentially the same since the evaluators' recommendations appeared to determine the court outcome. This finding is inconsistent with results of studies in other states, sometimes using selected samples and finding high frequencies of fathers being awarded custody in disputed custody cases, which often involve domestic violence. One reason for the discrepancy is that these studies often collapse joint custody with sole custody to the father, but New York, by case law, generally precludes joint custody. Also, the strongest findings in the literature of the mother losing custody to the father appear to be when the mother alleges the father sexually abused the children (cf. Neustein & Leshner, 2005), which was not an issue in our sample.

The more telling issue in our study is the access of the non-custodial parent. The evaluations recommended arrangements to avoid direct contact between the parents in less than a third of the cases. Nearly two-thirds of the evaluations recommended that the children have unsupervised visits with their fathers. Protections during visits were limited. Only slightly more than a third recommended that the children not have overnight visits with their father and only about a quarter of the evaluations recommended supervision of the father's visits with his children by a non-family member. Professional supervision of visits was recommended in only half the cases in which evaluations found the father abused the child.

Evaluations infrequently recommended programs such as anger management, batterer programs and parenting skills classes, but recommended therapy for mothers, fathers and children around 45% of the time. Completion of programs or compliance with recommendations for therapy was not linked by the courts to increasing the non-custodial parents' access to the children. Generally, the court orders did not include contingencies for increasing or decreasing access.

Conclusions

This study involved analysis of case files, reports of custody evaluators, and case outcomes in 69 contested custody cases in New York City Family and Supreme Courts involving domestic violence allegations, and interviews with 15 custody evaluators. The central case outcome variables were the safety of the parenting plan recommended by the evaluator and the safety of the parenting plan in the settlement agreement or court order. Parenting plan safety was defined in terms of the extent of limitations on the father's access to the children, extent of protections of the mother during exchanges of the children, and safety provisions for contingencies.

The primary finding was that the conclusions and recommendations in the custody evaluator's report have a determining influence on the case outcome. In turn, the primary influence on the custody evaluator's conclusions and recommendations was the evaluator's assessment of ongoing risks of serious domestic violence. That assessment was predicted by the custody evaluator's knowledge of domestic violence and construction of domestic violence as an issue of power and control. Disturbingly, the severity of the physical, emotional and social abuse in the couple's history did not predict the safety of the parenting plan. This finding confirmed the conviction of the attorneys who facilitated this study that what happens in court too often depends on the custody evaluator, not the facts of the case. It also confirms their observation that some evaluators, and courts, do not view a few incidents of physical abuse, no matter how severe, as constituting domestic violence. Some evaluators view such incidents as merely "situational," driven by conflict between the parents, stress, or provocation by the victim.

Contrary to our hypotheses, the thoroughness of the evaluator's investigation did not appear to influence outcomes, nor does the severity of the history of abuse in the relationship. Also contrary to our hypothesis, settlements did not differ significantly from court-ordered outcomes with regard to safety of the parenting plan. In sum, the facts of the case and situational variables had less influence on the final custody and visitation arrangements than the evaluator's knowledge of domestic violence, particularly indicators of ongoing danger, and orientation. The fate of parents and children, when a custody case winds up in court and the court appoints a custody evaluator to assist in its decision, lies in the hands of the evaluator. Which evaluator is appointed and how that evaluator views domestic violence may not have so much influence on which parent is granted custody in New York City cases, but will determine how much time the non-custodial parents spends with the couple's children and under what conditions, and the amount of contact and cooperation between the parents required by the parenting plan.

The descriptive portrait of the data set suggests that about one third of the evaluations viewed domestic violence as conflict between the parents and about a third attributed domestic violence to a lack of impulse control or poor anger management. Most evaluations recommended custody and visitation arrangements that would not protect the mother and children from further abuse. Depending on the evaluator, outcomes can range from the mother losing custody to the children having brief supervised visits with their father.

Recommendations for Policy, Practice and Research

Many disputed custody cases involve allegations of domestic violence by both parents. Because the evaluator's knowledge of domestic violence had an overwhelming impact on the case outcome, the results indicate the need for a requirement that custody evaluators be informed about research on domestic violence dynamics, its impact on victims and children, effectiveness of treatment, risk indicators, and safety in parenting plans. The high level of concordance between evaluators' recommended parenting plans and court

outcomes is a reason for concern. Judges should be taking a greater role in arriving at independent judgments about the history of domestic violence and the best custody and visitation outcomes for the family.

Recommendations for Policy and Practice

Our primary recommendations are standardization of practice and ensuring the appointment of evaluators knowledgeable in the area of domestic violence. Both these aims can be accomplished in different ways. We recommend that training be required, but in the interim, judges could screen evaluators to ensure that they are familiar with risk factors for potentially lethal violence. We also recommend that the courts rely less on custody evaluators and make more independent decisions based on the judge's own assessment of the record, which often contains information that the evaluator does not have or that they cannot assess. On the positive side, evaluators gave greater weight to emotional abuse, a factor that the courts are more likely to disregard.

Recommendations to Judges and Court Administrators

First, courts must attend carefully to the background, training, and knowledge of the evaluator. Because allegations of domestic violence are a component of a substantial percentage of disputed custody cases, and even more families may have a history of domestic violence than is initially known to the court, the court should require familiarity with research on and clinical aspects of domestic violence perpetration and victimization of *all* custody evaluators chosen to assess families. State court administrative offices can also mandate training for judges and set standards for judges in appointing evaluators.

An alternative is the development of web-based training modules for custody evaluators and for judges. Given the tight schedules and geographic dispersion of both judges and evaluators, a web-based training might have the greatest likelihood of actual utilization. Completion of the online training could be a requirement for eligibility for court appointments for evaluators.

Second, in line with case law and legislation, we would recommend that courts make their own assessments of whether domestic violence has been committed by one family member against another. Not only is it easier for judges to access and more appropriate for them to interpret civil and criminal court proceedings and outcomes than for psychologists, judges can hold trials. Trials are a mechanism available to the court to seek the truth and settle disputes.

The concordance between the evaluators' recommendations and court outcomes is discomfiting – especially since the evaluators varied greatly in the degree to which they reviewed the criminal and civil court records. Courts should make independent interpretations of the record in regard to the history of violence in the family and ongoing risks to parents and children. The evaluator's report is supposed to be just one source informing the outcome, and not to replace the court's judgment, as appears to have happened most often in this data set. It is incumbent upon judges to ensure a child's

safety – and that of the child’s parents. If the primary determinant of variations in court orders is not criminal and family court records – when they exist – or even the family’s history uncovered by the evaluator, but the evaluator’s knowledge about domestic violence, it does not appear that courts are typically exercising independent judgments as they should be according to the role of the judiciary and the law.

The Matrimonial Commission of the New York State Unified Court System, in a 2006 report to the Chief Judge of New York, recommended that judges adopt a format for the order appointing the custody evaluator that specifies which issues the evaluator is to investigate, requires that the evaluator list all documents and persons consulted, and allows the judge to check boxes to indicate whether the evaluator should make recommendations regarding custody and whether the evaluator should make recommendations on other identified issues. Many of the orders we reviewed were written before this report was issued, but few of them had the level of specificity of the recommended model. Most were a few lines. We recommend that judges adopt the model appointment format and that the Office of Court Administration work to ensure that it is universally used by judges. Public review of a de-identified sample of court orders appointing evaluators might have the desired effect of ensuring compliance.

Evaluators seem often to be unclear about whether they should make specific recommendations for visitation schedules and conditions. Some judges are clear that they do or do not want such recommendations. Given the complex and life-altering decisions that judges have to make in custody cases, it is understandable that they want to defer to experts. Custody evaluators also have the advantage of spending extensive time with each of the parties alone and with their children, interviewing neighbors, teachers, doctors and therapists, and should have additional insights. Nonetheless, it is the responsibility of the court to assess the facts and to consider additional sources of information beyond the custody evaluator’s report and testimony. Therefore, we believe that it is more appropriate for custody evaluators to present conclusions without recommending a specific parenting plan. In any case, when the court appoints an evaluator, there must be clarity as to the court’s preference and the evaluator’s willingness to comply with that preference. That is, we found that some custody evaluators are not inclined to make specific recommendations even when that is the judge’s preference, but other evaluators do and therefore try to lead the court to a particular outcome even when they are instructed not to make a recommendation.

Recommendations for Legislators

States can legislate that custody evaluators complete training in domestic violence, as California has. It is important that the training include empirical information on the impact of domestic violence on children, the psychology of the perpetrator and of the victim, the validity of psychological testing in domestic violence cases and – above all – risk factors for post-divorce abuse and lethal assault. The training on domestic violence should be offered by specialists, including people who have published in the field and have otherwise substantiated their expertise. In New York, our legal advisers suggest

that the New York State Office for the Prevention of Domestic Violence may be best qualified and situated to offer the training or review the curriculum.

New York has recently enacted legislation requiring judges to state on the record how any findings regarding domestic violence influenced their decisions on custody and visitation. Other states might consider such legislation. We hope that, in following this law, judges make a written record that can be reviewed.

This new legislation, as well as our recommendation about inducing judges to use the Matrimonial Commission's model order appointing the evaluator, should introduce more transparency in how and why decisions are reached in regard to custody and visitation awards when there is domestic violence. The model order includes a directive that the evaluator turn over notes and data upon an appropriate request for discovery. A statement of findings should go far in elucidating the rationale behind a particular determination. It appears from our data that it is not common for battered women to lose custody of their children in New York City as may happen elsewhere (Meier, 2003). Nonetheless, there are cases in our data set that have seemingly egregious outcomes, such as one in which the custody evaluator gave no credence to plausible and somewhat substantiated allegations of domestic violence, gave custody to the father and recommended therapy for the mother to overcome her delusional recollections of sexual abuse, and another in which the evaluator appeared to credit the child's developmentally implausible accusations against the mother (would a six year old understand a joint bank account?), similar to accounts of attorneys advocating for domestic violence victims in New York City in which mothers lose custody and are granted little or no visitation when the evaluator invokes parental alienation or discredits domestic violence allegations. The fact that such cases are statistically uncommon does not diminish the fact that these exceptions are tragic for and unfair to the mother and potentially damaging to the child.

The lack of transparency in New York State Supreme Court is usually represented as a necessary protection for the families. Yet even statistical data on custody and visitation awards (and maintenance) are unavailable. Other states have more openness with regard to court records related to divorces. We are not aware of any consequences that befall the litigants from such openness in other states where, for example, researchers have been able to document the impact of domestic violence allegations on custody decisions or the impact of judicial training (cf. Morrill et al., 2003). There would seem to be many advantages. Our recommendation is that the New York State Office of Court Administration undertake a review of other states' policies and their consequences. We suspect that litigants might gain more than they lose and the courts would also benefit. Just as consistency across evaluators is desirable and would be advanced by more sharing of information, so it is with courts and judges.

One of the recommendations of the Matrimonial Commission Report (2006) is that statewide standards be established regarding the minimum qualifications, training and periodic review of court-appointed custody evaluators. Given the power of custody evaluators over court outcomes, it would seem to be a responsibility of the court administration to ensure that such minimum standards are met.

Recommendations for Evaluators

The evaluators we interviewed seemed to be unaware of how others conduct their evaluations. Some expressed curiosity and a sense of isolation; others made negative assumptions about their colleagues, not necessarily supported by our research. State psychological associations and other forums might be utilized to develop more shared knowledge and practices.

Many of the evaluators we spoke to work many hours, more than they are paid for by the court. They are a conscientious if diverse group. Yet it is incumbent upon them to do more – to keep up with the literature, to learn about not only child development and pathology but also the rich and growing empirical literature on domestic violence. Custody evaluators also need training in the law mandating the consideration of domestic violence in custody determination. In addition, they appear often to be unaware of the limits of the court's authority to mandate treatment and programs. Such training can be provided by judges or lawyers. A short course on the law and custody evaluations might be offered by the court administration for custody evaluators for free continuing education credits, as an incentive.

A simple corrective for the evaluations is that they should list their sources. The busiest evaluators nonetheless seemed to be able to identify each document reviewed and person consulted or interviewed at the beginning of the report, and then to cite the relevant source when making an observation or drawing a conclusion. Others list the sources they consulted in the beginning of the report, but it is unclear in the rest of the report where or even whether they utilized those sources in making inferences. Some do not list the sources at all. The first practice seems the most professional, justifiable and useful.

Recommendations for Attorneys

Attorneys representing victims of domestic violence can also take steps to increase the likelihood that the court takes into account the relevant social science in the final order in three ways. First, they can participate in the choice of evaluator to ensure that the evaluator is knowledgeable about domestic violence. Second, they can familiarize themselves with the most credible research and utilize that information to conduct an effective cross-examination of the evaluator when necessary. They can consult with domestic violence experts, including other evaluators, to assist them in their review of the custody evaluation and development of effective cross-examination. In the event they find the evaluation deficient in its recognition or analysis of domestic violence, they can request fees for an alternate expert either to conduct another assessment or to evaluate the initial report.

Recommendations for Research

Our recommendations for research fall into four categories: methodological recommendations; evaluation of training; research on the courts; and psychological research.

Methodology

One recommendation is to conduct a “pipeline study,” mimicking recruitment strategies to be used in the actual study, to get an accurate assessment of the sample size before developing the study design.

Impact of Training

A useful study would be to evaluate the training on domestic violence that custody evaluators must complete to be eligible to conduct custody evaluations for California courts. As New York introduces its legislatively mandated training on domestic violence for attorneys for the child (formerly called law guardians) – who, unlike custody evaluators, are appointed in almost all disputed custody cases – there is an opportunity to evaluate the impact of the training (e.g., using a pre- post implementation design), beyond the sort of satisfaction survey that is often used in evaluating training.

If our recommendation for web-based training is followed, researchers should be involved in the development of the curriculum and the training should be evaluated with regard to implementation, utilization, and impact.

Research on Courts and Judicial Decision-Making

The current study provided no insight into how judges handle similar cases when they do not appoint a custody evaluator. We might ask the same questions in such cases. What is the judge’s level of knowledge of domestic violence? What sort of evidence do judges find convincing that there was domestic violence? How do they assess risks of ongoing violence, stalking and harassment? In addition, the use of custody evaluators should be examined from the judges’ perspective. When judges do appoint custody evaluators, what do they look for in an evaluator and an evaluation? What other sources do they consult? What might lead them to construct a final order that deviates substantially from an evaluator’s recommendations?

Legislation recently passed in New York requires judges to put on the record how findings of domestic violence influenced their decisions on custody and visitation. These records, however, need not be written. These records – if they were accessible – could provide important data about the assumptions and beliefs that guide judges’ decisions. A study examining the relationships between the courts’ findings and the decisions would be of great value. Although the lack of public or researchers’ access to court decisions would inhibit such research, it would also be interesting to compare outcomes before and after the law goes into effect to provide an assessment of whether the requirement of putting this information on the record might have altered the impact of the provision that domestic violence be considered in custody and visitation decisions.

Psychological Research

Further research should be conducted on the impact on children of different levels of contact with fathers whom they have witnessed abusing their mother. This investigation should take into account the recency and severity of the abuse, the type of abuse, the child's age and developmental level, as well as the parenting style of abusers.

Another topic that needs further exploration is the phenomenon that evaluators refer to as "parental alienation." In this case, policy research is needed. This concept needs clarification. For example, should it apply to cases in which the mother unconsciously communicates fear to the child? Child estrangement is a problem that troubled evaluators of all perspectives. Once it was entrenched, they felt there was no intervention. In our sample of cases, there were children who refused to spend time with their mothers, even in the presence of a therapist. The fathers were advised to support the child's relationship with the mother but it seemed unlikely that they would do so, as they were instrumental in the child's estrangement from the mother in the first place. In one case, the father had convinced the children to lie to the evaluator about their mother abusing them and had secured a temporary custody order. The children eventually admitted the truth and custody was returned to the mother – but the father had unsupervised visitation every weekend. How courts should deal with this sort of situation is a vital question that should be informed by psychological research.

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APPENDIX A: CASE REVIEW DATA EXTRACTION FACTORS

CASE DATA PRE EVAL
<p>1) Case ID</p> <p>Agency (NYLAG/SFF/SBLS/LAS) Borough (M/Q/K/X/R) Court (FAM/SUP/IDV) Judge (text) Date of eval 01/01/2008 Eval ID (write in full name) Credential (PHD/MSW/LSW/CSW/MD)</p>
<p>2) Legal Presentation</p> <p>Legal Rep of father (PRIVATE, 18B, AGENCY, DK) Law Guardian (Y/N) LG TYPE (PRIVATE, 18B, AGENCY) GAL (Y/N) GAL for whom (M, F, C1, C2, ETC. NA) GAL type (18B, PRIVAET, RELATIVE, VOLUNTEER)</p>
<p>3) Documents Checklist</p> <p>COI (#) Forensic Evaluator received? (#/DK/NA) DIR/COMPLAINT/POLICE REPORT (#) Forensic Evaluator received? School records (#) Forensic Evaluator received? Child Med Record (#) Forensic Evaluator received? Mother Med Record (#) Forensic Evaluator received? Father Med Record (#) Forensic Evaluator received? Child Psych Record (CPR) (#) Forensic Evaluator received? CHILD PSYCH RECORD - by whom (tex) CHILD PSYCH RECORD - purpose (text) Mother Psych Record (MPR) (#) Forensic Evaluator received? Mother Psych Record - by whom (text) Mother Psych Record - purpose (text) Father Psych Record (#) Forensic Evaluator received? Father Psych Record - by whom (text) Father Psych Record - purpose (text) Supervised visitation report (#) Forensic Evaluator received?</p>
<p>4) Add'l docs not listed on forensic eval</p> <p>Add'l mats given to Evaluator (Y/N) Contact info by mother's atty Substantive info by mother's atty Contact info provided by father's attorney Substantive info provided by father's attorney Contact info provided by Law Guardian</p>

Substantive info provided by Law Guardian

5) Non-crim court family offense prior to forensic

1 Fam Off Petition filed by mother (Y/N)
Forensic received? (Y/N/DK/NA)
OP granted? (Y/N/DK)
Date granted (3/12/2008)
Court granted (FAM, SUP, IDV)
Borough (M, Q, K, X, R)
Temp/Final (TOP/FOP)
If final: On Consent or FINDING (C/F)
If final: Duration
Stay Away or Refrain from (S/R)
Children included or subject to visit order (Y/N/S)
No contact (phone, 3rd party, etc.) (Y/N)
Exclude from home (Y/N)
Do not interfere w/custody (Y/N)
Surrender firearms (Y/N)
Suspend firearm license (Y/N)
Other special conditions (text)
Violation filed? (Y/N)
Violation dispo? (text)
2 Fam Off Petition filed by mother (Y/N)
Forensic received? (Y/N/DK/NA)
OP granted? (Y/N/DK)
Date granted (3/12/2008)
Court granted (FAM, SUP, IDV)
Borough (M, Q, K, X, R)
Temp/Final (TOP/FOP)
If final: On Consent or FINDING (C/F)
If final: Duration (years)
Stay Away or Refrain from (S/R)
Children included or subject to visit order (Y/N/S)
No contact (phone, 3rd party, etc.) (Y/N)
Exclude from home (Y/N)
Do not interfere w/custody (Y/N)
Surrender firearms (Y/N)
Suspend firearm license (Y/N)
Other special conditions (text)
Violation filed? (Y/N)
Violation dispo? (text)
1 Fam Off Petition filed by father (Y/N)
Forensic received? (Y/N/DK/NA)
OP granted? (Y/N)
Date granted, or if not granted, date filed (eg 3/12/2008)
Court granted (FAM/SUP/IDV)
Borough (M, Q, K, X, R)
TOP or FOP?
Violation of OP filed? (Y/N)
Dispo? (write in)

6) Prior non-divorce custody order 1

Exists? (Y/N)
Forensic received? (Y/N/DK/NA)
Court issuing (FAM/IDV)

Date order issued Borough (M, Q, K, X, R) Judge issuing: (text) Emergency/temporary: Y/N Phys custody to whom? M/F/J Legal custody to whom? (M/F/J) Violation filed? (Y/N) Violation dispo? (text)
7) Prior non-divorce custody order 2 Exists (Y/N)? Forensic received? (Y/N/DK/NA) Court issuing (FAM/IDV) Date order issued Borough (M, Q, K, X, R) Judge issuing: (text) Emergency/temporary: Y/N Phys custody to whom? M/F/J Legal custody to whom? (M/F/J) Violation filed? (Y/N) Violation dispo? (text)
8) Prior non-divorce visitation order 1 Exists? (Y/N) Forensic received? (Y/N/DK/NA) Term (01/01/07 - 01/01/08) or Date of Order Transfer (UNSUP, PUBLIC, PRECINCT, AGENCY, 3rd PARTY SUP Visit (UNSUP, FAM SUP, AGENCY, PROF, ACS) Frequency of visits (1x week, 2x week, 3x week etc.) Duration of visits (hours or days) Overnight (Y/N) Violation of vis filed? (#) Parent filing? (M/F) Outcome? (write in)
9) Prior non-divorce visitation order 2 Exists? (Y/N) Forensic received? (Y/N/DK/NA) Term (01/01/07 - 01/01/08) or Date of Order Transfer (UNSUP, PUBLIC, PRECINCT, AGENCY, 3rd PARTY SUP Visit (UNSUP, FAM SUP, AGENCY, PROF, ACS) Frequency of visits (1x week, 2x week, 3x week etc.) Duration of visits (hours or days) Overnight (Y/N) Violation of vis filed? (#) Parent filing? (M/F) Outcome? (write in)
10) Divorce Exists? Y/N Forensic received? (Y/N/DK/NA) Date of divorce (3/12/2003) Court (SUP/IDV) Borough Judge (write in full name)

Plaintiff (M/F)
Grounds (DRL NUMBER)
Custody terms included? (Y/N)
Physical custody to whom (M/F/J)
Legal Custody to whom (M/F/J/NA)
Custody terms (other conditions -write in)
Visitation included? (Y/N)
Visit frequency (NA/undefined/1x week/2x week/3x week/1x month, 2x month)

Visit duration (hours or days -- #)
Supervised exchange (Y/N)
Supervised visit (Y/N)
Violation of vis filed? (Y/N)
Outcome of violation petition? (write in)

11) Criminal History before Forensic

Forensic received? (Y/N/DK/NA)
Defendant (M/F)
Charge 1:
Charge 2 (if any):
Contempt: Y/N
Arrest? (Y/N)
Disposition (CONVICT, ACQUIT, ACD, DISMISS)
Date of disposition (3/122008)
If convicted, charge 1 convicted of:
If convicted, charge 2 convicted of:
Convicted of contempt? (Y/N)
Incarceration? (length)
Probation? (length)
Restitution (\$ amount)
Conditions (write in)
Crim OP? (Y/N)
Duration?
Protected party? (M/F/C)
TOP or FOP?
Stay away (Y/N)
No contact (Y/N)
Kid(s) included or on separate orders (Y/N)
OP subject to visitation or family court orders (Y/N)
Court (crim/idv)
Borough

12) Crim OFF2

Forensic received? (Y/N/DK/NA)
Defendant (M/F)
Charge 1:
Charge 2 (if any):
Contempt: Y/N
Arrest? (Y/N)
Disposition (CONVICT, ACQUIT, ACD, DISMISS)
Date of disposition (2008)
If convicted, charge 1 convicted of:
If convicted, charge 2 convicted of:
Convicted of contempt? (Y/N)
Incarceration? (length)

Probation? (length)
Restitution (\$ amount)
Conditions (write in)
Crim OP? (Y/N)
Duration?
Protected party? (M/F/C)
TOP or FOP?
Stay away (Y/N)
No contact (Y/N)
Kid(s) included or on separate orders (Y/N)
OP subject to visitation or family court orders (Y/N)
Court (crim/idv)
Borough

13) Child abuse/neglect proceedings & investigations

ACS investigation 1: Y/N
Forensic received? (Y/N/DK/NA)
Year
Parent being investigated (m/f)
Allegation: A/N
Contained DV: (Y/N)
Finding (INDICATED/UNFOUNDED)
ACS Investigation 2
Forensic received? (Y/N/DK/NA)
Year
Parent being investigated
Allegation (A/N)
Allegation contained DV: (Y/N)
Finding (INDICATED)
1 Article 10 Case filed? (#)
Forensic received? (Y/N/DK/NA)
Year (most recent)
Respondent parent? (m/f)
Abuse or neglect? (a/n)
DV related? (Y/N)
Finding (A/N)
Finding DV related? (Y/N)
Child placement? (Y/N)
Supervision or services? (SUP, SER, BOTH, NA)
2 Article 10 Case filed?
Forensic received? (Y/N/DK/NA)
Year
Respondent parent? (m/f)
Abuse or neglect? (a/n)
DV related? (Y/N)
Finding (A/N)
Finding DV related? (Y/N)
Child placement? (Y/N)
Supervision or services? (SUP, SER, BOTH, NA)

14) Final custody or visitation order post forensic report

Settlement or judge issues decision/order? (S/D)
Date of order
Physical custody to whom? (M/F/J)
Legal custody to whom? (M/F/J)

Conditions or subject to? (write in)
Visitation of non-custodial (Y/N)
Visit frequency (NA/undefined/1x week/2x week/3x week/1x month, 2x month)

Duration of visits (hours or days - #)
Supervised (Y/N)
Supervised by: (UNSUP, FAM SUP, AGENCY, PROF, ACS)
Transfer conditions: (UNSUP, PUBLIC, PRECINCT, AGENCY, 3rd PARTY SUP)

CASE DATA POSTEVAL

1) Case ID

Agency (NYLAG/SFF/SBLS/LAS)
Borough (M/Q/K/X/R)
Court (FAM/SUP/IDV)
Judge (text)
Date of eval 01/01/2008
Eval ID (write in full name)
Credential (PHD/MSW/LSW/CSW/MD)

2) Post report events pre final order

Visitation modifications (Y/N)
Specify modification: (write in)
More time? (Y/N)
Visitation suspended? (Y/N)
Add supervision of visit? (Y/N)
Eliminate supervision of visit? (Y/N)
Missed excessive visits (Y/N)
Drug / alcohol abuse (Y/N)
Failed to return child after visit (Y/N)
Bad report on visits (Y/N)
Other bad act affecting visitation (write in)
New COI (#)
Indicated ACS report (Y/N)
Change custody? (Y/N)
To whom? (M/F)
Other issue

3) Crim Allegations post report

Defendant (M/F)
Charge 1:
Charge 2 (if any):
Contempt: Y/N
Arrest? (Y/N)
Disposition (CONVICT, ACQUIT, ACD, DISMISS)
Date of disposition (2008)
If convicted, charge 1 convicted of:
If convicted, charge 2 convicted of:
Convicted of contempt? (Y/N)
Incarceration? (length)
Probation? (length)
Restitution (\$ amount)
Conditions (write in)
Crim OP? (Y/N)

Duration?
Protected party? (M/F/C)
TOP or FOP?
Stay away (Y/N)
No contact (Y/N)
Kid(s) included or on separate orders (Y/N)
OP subject to visitation or family court orders (Y/N)
Court
Borough

4) Child abuse/neglect

ACS investigation 1: Y/N
Year
Parent being investigated (m/f)
Allegation: A/N
Contained DV: (Y/N)
Finding (INDICATED/UNFOUNDED)
1 Article 10 Case filed? (#)
Year
Respondent parent? (m/f)
Abuse or neglect? (a/n)
DV related? (Y/N)
Finding (A/N)
Finding DV related? (Y/N)
Child placement? (Y/N)
Supervision or services? (SUP, SER, BOTH, NA)
Affect custody? (Y/N)

5) Family Offense Petition filed by Mother

1 Fam Off Petition filed by mother (Y/N)
OP granted? (Y/N/DK)
Date granted (1/1/2008)
Court granted (FAM, SUP, IDV)
Borough (M, Q, K, X, R)
Temp/Final (TOP/FOP)
If final: On Consent or FINDING (C/F)
Stay Away or Refrain from (S/R)
Children included or subject to visit order (Y/N/S)
No contact (phone, 3rd party, etc.) (Y/N)
Exclude from home (Y/N)
Do not interfere w/custody (Y/N)
Surrender firearms (Y/N)
Suspend firearm license (Y/N)
Other special conditions (text)
Violation filed? (Y/N)
Violation dispo? (text)
1 Fam Off Petition filed by father (Y/N)
OP granted? (Y/N)
Year granted (eg 2008)
Court granted (FAM/SUP/IDV)
Borough (M, Q, K, X, R)
TOP or FOP?
Violation of OP filed? (Y/N)
Dispo? (write in)

6) Living situation affecting custody

Parent moved? (M/F/N)
Problem in mom's home: Y/N
Problem in dad's home: Y/N
New partner: (M/F/N)
Problem w grandparents or other relatives Y/N
Other living sit'n (write in)

7) Physical or mental health issue affecting custody/vis

Mother mental health issue (Y/N)
Rx (write in)
Father mental health issue (Y/N)
Rx (write in)
Mother physical health issue (Y/N)
Rx (write in)
Father physical health issue (Y/N)
Rx (write in)
Other physical or mh issue

8) Divorce

Date of divorce (2003)
Court (SUP/IDV)
Borough
Judge (write in full name)
Plaintiff (M/F)
Grounds (DRL NUMBER)
Custody terms included? (Y/N)
Physical custody to whom (M/F/J)
Legal Custody to whom (M/F/J/NA)
Custody terms (other conditions-write in)
Visitation included? (Y/N)
Visit frequency (NA/undefined/1x week/2x week/3x week/1x month, 2x month)

Visit duration (hours or days -- #)
Supervised exchange (Y/N)
Supervised visit (Y/N)
Violation of vis filed? (Y/N)
Outcome of violation petition? (write in)

EXTRA OPS

Agency (NYLAG/SFF/SBLS/LAS)
Borough (M/Q/K/X/R)
Court (FAM/SUP/IDV)
Judge (text)
Date of eval 01/01/2008
Eval ID (write in full name)
Credential (PHD/MSW/LSW/CSW/MD)
3 Fam Off Petition filed by mother (Y/N)
Forensic received?
OP granted? (Y/N/DK)
Year granted (2008)
Court granted (FAM, SUP, IDV)
Borough (M, Q, K, X, R)
Temp/Final (TOP/FOP)

If final: On Consent or FINDING (C/F)
Stay Away or Refrain from (S/R)
Children included or subject to visit order (Y/N/S)
No contact (phone, 3rd party, etc.) (Y/N)
Exclude from home (Y/N)
Do not interfere w/custody (Y/N)
Surrender firearms (Y/N)
Suspend firearm license (Y/N)
Other special conditions (text)
Violation filed? (Y/N)
Violation dispo? (text)
4 Fam Off Petition filed by mother (Y/N)

Forensic received?

OP granted? (Y/N/DK)
Year granted (2008)
Court granted (FAM, SUP, IDV)
Borough (M, Q, K, X, R)
Temp/Final (TOP/FOP)

If final: On Consent or FINDING (C/F)
Stay Away or Refrain from (S/R)
Children included or subject to visit order (Y/N/S)
No contact (phone, 3rd party, etc.) (Y/N)
Exclude from home (Y/N)
Do not interfere w/custody (Y/N)
Surrender firearms (Y/N)
Suspend firearm license (Y/N)
Other special conditions (text)
Violation filed? (Y/N)
Violation dispo? (text)

EXTRA VISIT ORDERS

Agency (NYLAG/SFF/SBLS/LAS)
Borough (M/Q/K/X/R)
Court (FAM/SUP/IDV)
Judge (text)
Date of eval 01/01/2008
Eval ID (write in full name)
Credential (PHD/MSW/LSW/CSW/MD)

1) PRIOR NON-DIVORCE VIS ORDER 3

Forensic received?

Term (01/01/07 - 01/01/08)
Transfer (UNSUP, PUBLIC, PRECINCT, AGENCY, 3rd PARTY SUP)
Visit (UNSUP, FAM SUP, AGENCY, PROF, ACS)
Frequency of visits (1x week, 2x week, 3x week etc.)
Duration of visits (hours or days)
Overnight (Y/N)
Violation of vis filed? (#)
Parent filing? (M/F)
Outcome? (write in)

2) PRIOR VISITATION ORDER 4

Forensic received?

Term (01/01/07 - 01/01/08)

Transfer (UNSUP, PUBLIC, PRECINCT, AGENCY, 3rd PARTY SUP) Visit (UNSUP, FAM SUP, AGENCY, PROF, ACS) Frequency of visits (1x week, 2x week, 3x week etc.) Duration of visits (hours or days) Overnight (Y/N) Violation of vis filed? (#) Parent filing? (M/F) Outcome? (write in)
3) PRIOR VISITATION ORDER 5 Forensic received? Term (01/01/07 - 01/01/08) Transfer (UNSUP, PUBLIC, PRECINCT, AGENCY, 3rd PARTY SUP) Visit (UNSUP, FAM SUP, AGENCY, PROF, ACS) Frequency of visits (1x week, 2x week, 3x week etc.) Duration of visits (hours or days) Overnight (Y/N) Violation of vis filed? (#) Parent filing? (M/F) Outcome? (write in)
DV HISTORY
1) Case IDE Agency (NYLAG/SFF/SBLS/LAS) Borough (M/Q/K/X/R) Court (FAM/SUP/IDV) Judge (text) Date of eval 01/01/2008 Eval ID (write in full name) Credential (PHD/MSW/LSW/CSW/MD)
2) DV History DV in docs Forensic saw: Forensic spoke to two DV shelter employees involved with case; otherwise, no docs mentioned DV in docs Forensic DID NOT see:
3) Child exposure to dv Child heard threats (Y/N) Child witnessed assault (Y/N) Child in mother's arms during assault Y/N Child in middle Y/N Child attempted to intervene Y/N Child overheard assault Y/N Child exposed to denigration of mother Y/N Child saw injuries Y/N
4) Child attitude toward parents Child physically aggressive toward mother or father? Child verbally aggressive toward mother or father? Child angry at mother or father? Child afraid of mother or father? Child attached toward mother or father? Child physically aggressive toward sibling or peers?

5) Other professionals' interpretations

Person 1: Name, credential, who he/she interacted with, ignores DV?, uses parental alienation or friendly parent language? Focus on the child's reactions?

Other comments?

Person 2: Name, credential, who he/she interacted with, ignores DV?, uses parental alienation or friendly parent language? Focus on the child's reactions?

Other comments?

Appendix B. Severity of Abuse Coding Scheme

Physical Abuse

3= beat up, hospitalized, threw down stairs, threw iron at, choked to point of leaving marks, stabbed, kicked with shoes on, punched in face, threatened with knife or gun, raped

2=destroyed property, broke down door, ransacked, threw on couch or bed or floor, pulled hair, dragged, locked in room, threw something that could cause minor but not severe injury

1=slapped, hit, pushed, shoved

Threats

3=threatened to kill her, threatened realistically, threatened to kill himself, threatened to abduct children, threatened to harm children

2=threatened to report to police or other authorities

1= threatened to hit

Psychological, social and economic abuse

3=separated from friends and family – social isolation; would not allow to work or took money; would not pay for children's medical visits and would not provide money;

2=cursed, verbally abused, threatened in front of child

1=yelled, screamed, called names

Stalking

3= followed her when separated, followed her after visits with children in car, tried to find out where she was living when in hiding, showed up at work, tried to find shelter

2= had others call her when he was obeying OP, staying away and not calling; phone harassment after separation

1= "harassed," called a lot, showed up at her workplace while still living together

*9=forensic did not see or no mention of docs in forensic and can't tell what forensic saw; also, in cases where there are numbers in one abuse column and not in another, the doc forensic saw was cursory and may mention just one incident in a history

Appendix C. Interview Guide

I. Background and Training

To start, I would like to get to know a little about your background.

1. Can you tell me about your education and training? (Prompt for doctoral and postdoctoral training, internships and residencies: what universities or institutes.)
2. And now tell me about your professional experiences. In what capacities have you worked, what sort of work have you done? (Prompt for private practice specializations, institutional affiliations, work in mental hospitals or clinics, etc. Particularly probe for work with ACS.)
3. How and when did you begin working with the courts? Do you do other types of evaluations for the court other than custody evaluations?
4. Have you gotten any specialized training for this work, such as training on legal issues, child development, parenting, psychological testing, or family violence? (Probe for *all* of the above.)
5. About how many custody evaluations have you done? For which courts? Do you especially do this work for one court or one judge? (Probe to make sure that you know whether this evaluator works primarily in family court or primarily in supreme court, or exclusively for family or supreme court, relative proportion of cases, and whether most work is done for the court in a particular borough or city-wide.)

II. Philosophy

1. Would you say you subscribe to any particular philosophy or theoretical orientation in your clinical work? For example, eclectic, existential, cognitive-behavioral, psychodynamic, object relations, family systems? If eclectic, can you give me some idea of the mix of theories or approaches you draw upon?
2. How do you think gender issues play out in custody cases? How about in regard to domestic violence?
3. Can you give me your reaction to the following constructs that have been applied to custody evaluations, especially in cases where either or both parties allege a history of violence by the other parent? (If you are not familiar with a particular construct, we'll just skip it.)
 - a. Family systems theory
 - b. Parental Alienation Syndrome
 - c. Power and control model
4. What do you think is the utility of psychological testing in custody evaluations, especially when there have been allegations of domestic violence by either or both parents? – testing of the parents, of the child?

III. Assessing validity of DV Allegations

1. How do you go about determining whether an allegation of domestic violence is legitimate? (Be sure to get information specifically about whether the following are used to determine validity:
 - a. Asking the alleged offender
 - b. Asking the alleged victim for details
 - c. Asking the child (beginning at what age?)
 - d. Examining criminal records
 - e. Examining civil court records
 - f. Asking collateral sources, e.g., relatives of each parent, social workers or therapists that may have been involved with the family or one parent
 - g. Other psychological evidence in regard to the accuser or alleged perpetrator (e.g., histrionic or paranoid, personality disorder, etc.)
 - h. Reviewing ACS investigation?
2. Is there anything in general, or in particular, that tips or has tipped the balance in terms of credibility of the allegation? Can you give me an example of a case in which you did not believe the allegation and why (without names, of course)? How about a case in which you did believe the allegation and why?
3. What do you do when both parents allege DV? Do you consider it your role to try to decide which parent is abusive or whether both are?

IV. Impact of DV on children

1. How do you think children are affected by exposure to domestic violence, depending on age and sex?
2. How do you determine whether a child has been exposed to physical and/or psychological abuse of one parent by the other?
3. How do you evaluate the impact of domestic violence on children, when you find the allegations credible?
4. Are there circumstances under which a child might be better off with the perpetrator having primary or full custody than the victim of domestic violence?
5. What do you think are the best ways to help children recover from physical violence by one parent against the other? Can the abusive parent help? How? Can the victimized parent help? How?
6. What do you think generally are appropriate visitation arrangements for a parent who has been violent against the other parent? Do you have any guiding principles?
7. Do you generally interview children when you do a custody evaluation? Or meet with them? Do you have a minimum age for meeting with children, or meeting with them alone?
8. In what ways do you explore allegations of domestic violence with verbal children (say 8-12)? With teen-agers? Or do you think it best not to discuss this issue with children? If so, please explain your thinking.

V. How DV influences evaluations and recommendations

1. When you find an allegation of DV credible, how does it influence the rest of your evaluation? What weight do you give it relative to other factors? (Probe for other factors that might have equal or greater weight.)
2. Do you make recommendations to the court as to the best visitation and custody arrangements, or suggestions? If so, what might you recommend when you find that the father has physically abused and emotionally abused the mother? If not, what would you find appropriate or advisable for the court to do?
 - i. Would you recommend therapeutic visitation?
 - ii. Would you recommend treatment for the father?
 - iii. Would you consider it important to maintain and rebuild the child's relationship with the father? Would you recommend gradually increasing visitation, given positive outcomes of interventions?
 - iv. Would you ever recommend denying visitation to an abuser?
 - v. Would you ever recommend granting custody to a parent who had a history of DV? [ASKED EARLIER. DECIDE WHERE.]
3. If one parent is very resistant to maintaining a relationship with the other parent for the sake of the child, or resistant to the child strengthening a relationship with the other parent, how do you factor that in? Do you explore the reasons? If the reason is fear of the other parent, does that play a role? If you cannot fathom the reason, would you be more likely to give custody to the other parent?

Appendix D. Coding Scheme for Evaluation Reports

Labels

ITEM

Case No (1-70)
Coder (D, K, O, F)

I. ORDER FOR EVALUATION & BACKGROUND OF CASE

Is there an order authorizing the evaluation? (Y/N)

Does the order for the evaluation specify the scope of the investigation? (Y/N)

I_1_OrderScopeOfEval

The order specifies the scope of the investigation in the following areas:

DV (Y/N)

Child Abuse (Y/N)

Child Neglect (Y/N)

Parental Alienation (Y/N)

Substance Abuse (Y/N)

Custody (Y/N)

Visitation (Y/N)

Mental Illness (Y/N)

Other (Y/N)

I_2_DV

I_3_ChildAbuse

I_4_ChildNeglect

I_5_ParentalAlienaton

I_6_SubstanceAbuse

I_7_Custody

I_8_Visitation

I_9_MentalIllness

I_10_Other

If other, specify (TEXT):

The order specifies the scope of the investigation in regard to the following sources:

Both parents (Y/N)

Children (Y/N)

Other relatives (Y/N)

Other interviews specified (Y/N)

Records of any sort (Y/N)

Other sources "as needed" (Y/N)

Does the order specifically restrict or narrow the evaluation in any way? (Y/N)

If yes specify (TEXT):

I_11_BothParents

I_12_Children

I_13_OtherRelatives

I_14_OtherInterviews

I_15_AnyRecords

I_16_OtherSources

I_17_OrderRestrictNarrowEval

Which parent has residential custody:

Mother? (Y/N)

Father? (Y/N)

Split? (Y/N)

Other? (Y/N)

I_18_MotherResidentialCustody

I_19_FatherResidentialCustody

I_20_SplitResidentialCustody

I_21_OtherResidentialCustody

If other, specify (TEXT):

Which parent has legal custody/decision-making authority:

Mother? (Y/N)

Father (Y/N)

Joint? (Y/N)

Divided/Split? (Y/N)

I_22_MotherDecisionMakingAuthority

I_23_FatherDecisionMakingAuthority

I_24_JointDecisionMakingAuthority

I_25_DividedDecisionMakingAuthority

Is intimate partner abuse alleged to have been committed by:

Mother (Y/N)

Father (Y/N)

Other (Y/N)

If other, specify (TEXT):

I_26_MotherAllegePartnerAbuse

I_27_FatherAllegepartnerAbuse

I_28_OtherPartnerAbuse

Does the record indicate there was DV?

DV against the mother indicated in record (Y/N)

Last incident of DV occurred more than 2 years before custody evaluation (Y/N)

I_29_DVAgainstMotherRecord

I_30_DVLastIncident

Does the evaluation seem to conclude that intimate partner abuse was committed by:

Mother (Y/N)

Father (Y/N)

Other (Y/N)

If other, specify (TEXT):

I_31_MotherCommitIntimateAbuse

I_32_FatherCommitIntimateAbuse

I_33_OtherCommitIntimateAbuse

Is child abuse or neglect alleged by:

Mother (Y/N)

Father (Y/N)

I_34_MotherAllegeChildAbuse

I_35_FatherAllegeChildAbuse

Other (Y/N) <i>If other, specify (TEXT):</i>	I_36_OtherAllegeChildAbuse
<u>Does the evaluation seem to find substantiation of child abuse or neglect by:</u> Mother (Y/N) Father (Y/N) Other (Y/N) <i>If other, specify (TEXT):</i>	I_37_MotherChildAbuseSubstantiation I_38_FatherChildAbuseSubstantiation I_39_OtherChildAbuseSubstantiation
Does Father allege Mother alienated children against him? (Y/N) Does Mother allege Father alienated children against her? (Y/N)	I_40_FatherAllegeMotherAlienatedChildren I_41_MotherAllegeFathreAlienatedChildren
Does the evaluation list the collateral interviews conducted? (Y/N) How many collateral interviews were conducted for the evaluation overall? (0 - 99) How many collateral interviews from Mother's side were conducted for the evaluation? (0 - 99) How many collateral interviews from Father's side were conducted for the evaluation? (0 - 99) (Evaluator lists documents reviewed? (Y/N)	I_42_EvaluatorListsInterviews I_43_EvaluatorConductCollateralInterviews I_44_EvaluatorConductMotherInterviews I_45_EvaluatorConductFatherInterviews I_46_EvaluatorListsDocsReviewed
II. ATTRIBUTIONS FOR CAUSES OF DV Abuse viewed as an anger management or impulse control problem? (Y/N) Mother seems to be faulted for contributing to pattern of abuse by father? (Y/N) Abuse presented as stemming from a communication problem between parents? (Y/N) Abuse described as "conflict" between parents? (Y/N) Abuse is seen as the primary responsibility of the more violent person? (Y/N) Abuse is seen as a pattern of mutual violence? (Y/N) Abusiveness viewed as a voluntary (chosen) behavior of the Father? (Y/N) Substance abuse viewed as cause or sine qua non of DV? (Y/N) Other attributions? (Y/N) <i>If other, specify (TEXT):</i>	II_1_AbuseAngerMgmtOrimpulseCtl II_2_MotherFaultPatternAbuse II_3_AbuseParentsCommunicationProblem II_4_ParentsProblemConflict II_5_AbuseViolentPersonResponsibility II_6_AbuseMutualViolencePattern II_7_AbuseFatherVoluntaryBehaviour II_8_SubstanceAbuseDVCauseOrSinequanon II_9_OtherAttributions
III. USE OF PSYCHOLOGICAL TESTS & ASSESSMENTS Number of psychological tests administered to children (0 - 99) <i>List all psychological tests administered to children used in the evaluation (TEXT):</i>	III_1_ChildTests
Number of psychological tests administered to mother (0 - 99) <i>List all psychological tests administered to adults used in the evaluation (TEXT):</i>	III_2_MotherTests
Number of psychological tests administered to father (0 - 99) <i>List all psychological tests administered to adults used in the evaluation (TEXT):</i>	III_3_FatherTests
<u>Reasons for psychological testing of parents:</u> Court ordered? (Y/N) There was prior psychological/psychiatric diagnosis or treatment of either parent? (Y/N) Mental health issues were suspected by evaluator? (Y/N) Mental health issues were alleged by other parent? (Y/N)	III_4_CourtOrdered III_5_PriorPsycheHistory III_6_MentalHealthEvaluator Suspect III_7_MentalHealthParentAllege
<u>Psychological test results were used to:</u> Evaluate parenting capacity? (Y/N) Confirm link between psychological disorders and partner abuse? (Y/N) Draw conclusions without using supporting data from real-life behavior? (Y/N) Assess credibility of self-report data through validity scales? (Y/N) Evaluation demonstrates understanding of how DV may affect psychological test results of Mother? (Y/N)	III_8_EvaluateParentCapacity III_9_ConfirmLink III_10_DrawConclusion III_11_AssessCredibility III_12_UnderstandsImpactOnMother
IV. INVESTIGATES PSYCHOLOGICAL, MEDICAL, & SUBSTANCE ABUSE HISTORY OF FAMILY MEMBERS Psychological Records	

It is clear the evaluator was able to review the psychological/psychiatric records of:

Mother? (Y/N)
 Father? (Y/N)
 Children? (Y/N)

IV_0_MotherPsychologicalRecords
 IV_1_FatherPsychologicalRecords
 IV_2_ChildrenPsychologicalRecords

It is clear the evaluator was able to talk to or received letter from current or previous therapists of:

Mother? (Y/N)
 Father? (Y/N)
 Children? (Y/N)

IV_3_MotherPsychologicalRecords
 IV_4_FatherPsychologicalRecords
 IV_5_ChildrenPsychologicalRecords

Psychological/psychiatric history information was used to:

Help understand the impact of domestic violence on Mother? (Y/N)
 Help understand the impact of domestic violence on children (Y/N)
 Detect mental health problems possibly related to Father's DV risk factors ? (Y/N)

IV_6_MotherDomesticViolence
 IV_7_DomesticViolenceChildrenImpact
 IV_8_FatherRecordsDVRiskFactors

Use of Medical Records

It is clear the evaluator was able to review the medical records of:

Mother? (Y/N)
 Father? (Y/N)
 Children? (Y/N)

IV_9_MotherMedicalRecords
 IV_10_FatherMedicalRecords
 IV_11_ChildrenMedicalRecords

It is clear the evaluator was able to talk to medical physician of:

Mother? (Y/N)
 Father? (Y/N)
 Children? (Y/N)

IV_12_EvaluatorTalkMotherPhysician
 IV_13_EvaluatorTalkFatherPhysician
 IV_14_EvaluatorTalkChildrenPhysician

Medical records/ information about medical history was used to:

Detect Mother's health problems related to DV? (Y/N)
 Detect children's health problems related to DV? (Y/N)
 Detect Father's health problems possibly related to increased risk for DV and DV lethality? (Y/N)

IV_15_MotherRecordsHealthProblems
 IV_16_ChildrenRecordsHealthProblems
 IV_17_FatherMedicalRecordsDVRisk

Substance Abuse History

It is clear the evaluator reviewed the substance abuse history of:

Mother? (Y/N)
 Father? (Y/N)

IV_18_MotherAbuseHistory
 IV_19_FatherAbuseHistory

It is clear the evaluator attempted to assess current substance abuse of:

Mother? (Y/N)
 Father? (Y/N)

IV_20_MotherCurrentAbuse
 IV_21_FatherCurrentAbuse

Review of Objective Sources

It is clear that the evaluator made efforts to secure and review information from the following objective sources:

Police reports? (Y/N)
 Family and/or Supreme Court records? (Y/N)
 Criminal Court &/or IDV Court records? (Y/N)
 Child's school records? (Y/N)
 Mother's school/work records? (Y/N)
 Father's school/work records? (Y/N)

IV_22_PoliceReports
 IV_23_FamilyCourtRecords
 IV_24_CriminalCourtorIDVCourtRecords
 IV_25_ChildSchoolRecords
 IV_26_MotherRecords
 IV_27_FatherRecords

It is clear the evaluator:

Referenced the *civil court record* (including IDV) in considering allegations of DV? (Y/N)
 Referenced the *criminal record* (including IDV) in considering allegations of DV? (Y/N)
 Attempted to corroborate aspects of DV allegations as part of collateral interviews? (Y/N)

IV_28_EvaluatorReferencedCivilRecord
 IV_29_EvaluatorReferencedCriminalRecord
 IV_30_EvaluatorAttemptCorroborateAspects

Interpretation of Information

Father's denials or minimization of abuse are viewed as possible defensiveness? (Y/N)
 Mother's allegations of abuse are minimized, ignored, rejected, or seen as exaggerated?
 Evaluator views purported witness' failure to corroborate DV as evidence of false allegations? (Y/N)

IV_31_FathersDenialDefensiveness
 IV_32_MothersAllegations
 IV_33_WitnessFailureFalseAllegation

VI. NOTES PRIMARY AGGRESSOR INDICATORS

Does the evaluation mention:

Which parent denies, minimizes, obfuscates, or rationalizes incidents? (Y/N)

VI_1_ParentDeniesIncidents

Which parent provides a clearer, more specific and consistent account of violent incidents?	VI_2_ParentViolentIncidents
The relative size and strength of each parent? (Y/N)	VI_3_ParentSizeStrength
If injuries are likely to have been caused by aggressive vs. defensive acts? (Y/N)	VI_4_InjuriesAggressiveDefensive
If the violent acts of one party exceed those of the other? (Y/N)	VI_5_PartyViolentActs
If the injuries of one party exceed those of the other? (Y/N)	VI_6_PartyInjuriesExceeds
Whether either party has had a prior order of protection issued against them by current partner? (Y/N)	VI_7_PartyProtectionOrderCurrentPartner
If either party had a prior order of protection by a previous partner or other party (Y/N)	VI_8_PartyProtectionOrderPreviousPartner
Does evaluation take at face value Father's blame-shifting explanation for why incidents occurred? (Y/N)	VI_9_FathesBlameExplanation

VII. NOTES ABUSE RISK INDICATORS

Apply following codes to each risk indicator below

The evaluation:

- N** = Makes **No** mention of risk indicator
- A** = Notes **Absence** of risk indicator
- P** = Notes **Presence** of risk indicator
- C** = Notes **Presence** of risk indicator *and* views it as a reflection of dangerousness or special Concern

Threatened suicide? (N/A/P/C)	VII_1_ThreatenedSuicide
Threatened to kill Mother? (N/A/P/C)	VII_2_ThreatenToMother
Threatened to or used a weapon in any previous assault? (N/A/P/C)	VII_3_ThreatenWeaponUse
Owns a gun or has access to other lethal weapon? (N/A/P/C)	VII_4_AccessGunLethalWeapon
Committed prior violence that resulted in serious injury? (N/A/P/C)	VII_5_PriorViolenceInjuries
Shows obsessive possessiveness of Mother? (N/A/P/C)	VII_6_MotherObsessivePossessiveness
Blames Mother for his own behavior? (N/A/P/C)	VII_7_FatherBlamesMother
Has a history of mental illness, especially thought disorder, paranoia, or personality disorder? (N/A/P/C)	VII_8_FatherMentalIllnessHistory
Has a history of substance abuse? (N/A/P/C)	VII_9_FatherSubstanceAbuseHistory
Expresses a high degree of depression, rage, or extreme emotional instability? (N/A/P/C)	VII_10_FatherExpressInstability
Is experiencing other highly stressful life events? (N/A/P/C)	VII_11_FatherExperienceStressFulEvents
Threatened or attempted to abduct the child? (N/A/P/C)	VII_12_FatherAbductChild
Engaged in stalking or harassment? (N/A/P/C)	VII_13_FatherEngageHarassment
Violated a no contact order of protection? (N/A/P/C)	VII_14_FatherViolatesNoContact
Has or continues to be a source of fear and/or intimidation for Mother? (N/A/P/C)	VII_15_FatherFearful

VIII. NOTES NON-PHYSICAL FORMS OF DV

Does the evaluation mention if Father:

Violated any court orders in this case or other cases? (Y/N)	VIII_1_FatherViolatedCourtOrder
Has been emotionally abusive toward Mother (Y/N)	VIII_2_EmotionalAbuse
Has been controlling of Mother? (Y/N)	VIII_3_FatherControllingMother
Used social isolation tactics against Mother? (Y/N)	VIII_4_FatherSocialIsolationTactics
Falsely accused Mother of having affairs, being promiscuous, or flirting with other men? (Y/N)	VIII_5_FatherFalselyAccusedMother
Initiated petitions and/or litigation to control and/or harass Mother? (Y/N)	VIII_6_FatherPetitionHarassMother
Made allegations of child neglect or abuse to child protective services to harass Mother?	VIII_7_FatherAllegeHarassMother

IX. ASSESSES CHILDREN'S EXPOSURE TO DV

Attempted to Assess Exposure

The evaluator:

Attempted to assess child's exposure to DV? (Y/N)	IX_1_ChildDVExposure
Asked Father about children's exposure to DV? (Y/N)	IX_2_EvaluatorAskedChildrenDVExposure
Asked Mother about children's exposure to DV? (Y/N)	IX_3_MotheraskedChildrensDVExposure

Looked for Signs of DV Exposure and Implications for Child

The evaluator:

Assessed children for particular symptoms or signs known to be associated with exposure to DV? (Y/N)	IX_4_ChildrenAssessedDVExposure
Assessed or considered the possibility that children could be fearful of Father? (Y/N)	IX_5_ChildrenFearfulofFather
Assessed or considered the possibility that children could be concerned about safety of Mother? (Y/N)	IX_6_ChildrenConcernMotherSafety
Discussed negative psychological impact of DV on children? (Y/N)	IX_7_DVPsychologicalImpactonChildren

Assesses Safety of Family

The evaluator:

Assessed or considered Mother's concern for own safety? (Y/N)	IX_8_MothersSafetyConcern
Construes Mother's concern for safety as resistance to Father's involvement with children?	IX_9_MothersConcernFathersInvolvement
Observed each parent interacting with children? (Y/N)	IX_10_ParentInteractChildren
Based inferences about safety of family members primarily on observed interactions? (Y/N)	IX_11_SafetyInferencesObservedInteractions
Quoted children's negative statement(s) about Father in report? (Y/N)	IX_12_ChildrenNegativeStatement

Considers Impact of DV on Parenting Ability

The evaluator:

Considers relevance of DV to Father's parenting ability? (Y/N)	IX_13_DVRelevanceFathersParenting
Considers the negative impact that ongoing DV can have on Mother's parenting? (Y/N)	IX_14_OngoingDVMothersParenting
Considers that achieving safety may improve/restore Mother's parenting abilities? (Y/N)	IX_15_SafetyImproveMothersParenting
Holds Mother at least partially responsible for impact of DV on children? (Y/N)	IX_16_ChildrenDVImpactMotherResponsible
Faults Mother for failing to protect children from witnessing abuse or exposure to violence? (Y/N)	IX_17_MotherFaultProtectChildren
Holds Mother at least partially responsible for psychological or emotional impact of DV on children? (Y/N)	IX_18_ChildrenDVImpactMotherResponsible
Blames Mother for failing to protect children from Father? (Y/N)	IX_19_ProtectChildrenMotherBlamed
Views Mother's anxiety and fear of Father as reflecting negatively on her parenting capacity? (Y/N)	IX_20_MothersAnxietyParentingCapacity
Holds Father fully responsible for impact of DV on children? (Y/N)	IX_21_DVImpactFatherResponsible

X. APPROPRIATELY SELECTS & APPLIES THEORETICAL PERSPECTIVES

Family Systems, Psychodynamic, Feminist/"Duluth"

The evaluator:

Appears to draw on a family systems' perspective? (Y/N)	X_1_FamiliesSystemPerspective
Appears to draw on a psychodynamic perspective? (Y/N)	X_2_PsychodynamicPerspectiveEvaluation
References power and control as DV dynamic and views abuse as instrumental? (Y/N)	X_3_DVPowerControlAbuseInstrumental

Parental Alienation

The evaluator:

Found parental alienation in regard to either parent? (Y/N)	X_4_ParentAlienation
Attributes Mother's desire to restrict Father's contact with children to unreasonable hostility or pathology? (Y/N)	X_5_MothersDesireHostility
Attributes child's reluctance to see Father to the Mother alienating the child against Father? (Y/N)	X_6_ChildsReluctanceAlienatingMother
Attributes child's reluctance to see Father as stemming from Father's abusiveness? (Y/N)	X_7_ChildsReluctanceFathersAbusiveness

XI. ELEMENTS OF EVALUATOR RECOMMENDED/SUGGESTED PARENTING PLAN

Does the evaluation include a recommended or suggested parenting plan? (Y/N)	XI_1_RecommendedParentingPlan
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Custody & Parenting Schedule

Which parent does the evaluation recommend or suggest have residential custody:

Mother? (Y/N)	XI_2_ResidentialCustody
Father? (Y/N)	XI_3_MotherResidentialCustody
Split? (Y/N)	XI_4_FatherResidentialCustody
Other? (Y/N)	XI_5_SplitResidentialCustody
	XI_6_OtherResidentialCustody

If other, specify (TEXT):

Which parent does the evaluation recommend or suggest have legal custody/decision-making authority:

Mother? (Y/N)	XI_7_MotherSoleCustody
Father (Y/N)	XI_8_FatherSoleCustody
Joint? (Y/N)	XI_9_JointLegalCustody
Divided? (Y/N)	XI_10_DividedLegalCustody

Does the evaluation encourage or allow a flexible/liberal parenting schedule to be determined by parents? (Y/N)	XI_11_FlexibleParentingSchedule
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Parental Safety & Exchanges

Do the evaluation recommendations or suggestions:

Seek to avoid direct parent-parent contact? (Y/N)	XI_12_DirectParentsContact
Specify procedures for communicating emergency information that do not involve direct parent-to-parent contact? (Y/N)	XI_13_EmergencyCommunicatingParents
Encourage the issuing of orders of protection? (Y/N)	XI_14_EncourageProtectionOrders
Restrict frequency of exchanges? (Y/N)	XI_15_FrequencyOfExchanges

The evaluation suggests that exchanges:

Take place at neutral, public sites? (Y/N)	XI_16_ExchangeNeutralSite
Should be supervised by third party? (Y/N)	XI_17_ExchangeChildrenThirdParty
Take place via 3rd party with no contact between parents? (Y/N)	XI_18_ExchangeParentsNoContact
Take place at a police precinct? (Y/N)	XI_19_ExchangePolicePrecint

Child Safety

Does the evaluation recommend or suggest:

Supervision of Father's time with children by a non-family member? (Y/N)	XI_20_NonFamilyMemberSupervision
Limiting length of time Father has with children to a few hours per week? (Y/N)	XI_21_FatherLimitingTime
No overnight visits with Father? (Y/N)	XI_22_FatherNoOverNightVisit

Do the evaluation recommendations or suggestions:

Ignore the expressed preferences of the children with respect to parental visitation? (Y/N)	XI_23_IgnoreChildrenPreferenceVisitation
Prevent Father from taking children out of the area without consent? (Y/N)	XI_24_PreventFatherTakingChildren
Allow Father unsupervised visits with children? (Y/N)	XI_25_FathersUnsupervisedVisits
Express concern about exposing children to violence against others? (Y/N)	XI_26_ExposeChildrenOthersViolence

Treatment & Ongoing Monitoring

Does the evaluation recommend or suggest that:

Father complete an anger management program? (Y/N)	XI_27_FathersAccessToChildren
Father complete a batterer program? (Y/N)	XI_28_FathersBattererConditionAccess
Father complete a parenting program? (Y/N)	XI_29_FahthersParentingConditionAccess
Father receive therapy? (Y/N)	XI_30_FathersTherapyConditionAccess
Father take ongoing, random drug and alcohol tests ? (Y/N)	XI_31_FatherDrugAlcoholTests
Mother complete a parenting program? (Y/N)	XI_32_MotherParentingProgram
Mother receive therapy? (Y/N)	XI_33_MothersTherapy
Mother take ongoing, random drug and alcohol tests ? (Y/N)	XI_34_MotherDrugAlcohol
Child receive therapy or other form of treatment due to DV? (Y/N)	XI_35_ChildTherapy

Conditions of Parental Access

Does the evaluation:

Require that Father participate in any form of treatment or education program to increase access to the children or lift conditions without other re-evaluation of safety and change? (Y/N)	XI_36_FathersEvidenceIncreaseAccess
---	-------------------------------------

Include specific goals and behavioral criteria other than completion of treatment or education to be assessed as a condition for increasing Father's access to the children? (Y/N)	XI_37_FathersAccessToChildren
--	-------------------------------

If yes, please specify nature of goals and criteria (TEXT):

Require that Father demonstrate evidence of change of behavior toward Mother as a condition of greater access to children? (Y/N)	XI_38_FatherBehaviourChangeToMother
--	-------------------------------------

Does evaluation recommend or suggest reducing Father's parental access or increasing supervision of visitation if:

Child is distressed or traumatized during visits with Father? (Y/N)	XI_40_FathersVisitingsuspension
Father threatens Mother's life? (Y/N)	XI_41_ChildTraumatized
Father threatens to abduct child? (Y/N)	XI_42_FatherThreatenMothersLife
Father hits or injures Mother? (Y/N)	XI_43_FatherThreatenChildAbduct
Father engages in criminal behavior? (Y/N)	XI_44_FatherInjuredMother
Father fails drug/alcohol testing or otherwise evidences ongoing substance abuse problems? (Y/N)	XI_45_FatherViolentCrimesConviction
	XI_46_FatherDrugAlcoholEvidences

XII. ELEMENTS OF PARENTING PLAN IN COURT ORDER OR SETTLEMENT

Is there a court order or a settlement? (C/S)	XII_1_SettelmentCourtOrder
---	----------------------------

Custody & Parenting Schedule

Which parent is giving residential custody in the court order/settlement:

Mother? (Y/N)	XII_2_MotherResidentialCustody
Father? (Y/N)	XII_3_FatherResidentialCustody
Split? (Y/N)	XII_4_SplitResidentialCustody
Other? (Y/N)	XII_5_OtherRsidentialCustody

If other, specify (TEXT):

Which parent is given legal custody/decision-making authority in the court order/settlement:

Mother? (Y/N)	XII_6_MotherLegalCustody
Father (Y/N)	XII_7_FatherLegalCustody
Joint? (Y/N)	XII_8_JointLegalCustody

Divided? (Y/N)	XII_9_DividedLegalCustody
Does the court order/settlement encourage or allow a flexible/liberal parenting schedule to be determined by parents? (Y/N)	XII_10_FlexibleParentingSchedule
Parental Safety & Exchanges	
<u>Does the court order/settlement:</u>	
Seek to avoid direct parent-parent contact? (Y/N)	XII_11_DirectParentsContact
Specify procedures for communicating emergency information that do not involve direct parent-to-parent contact? (Y/N)	XII_12_EmergencyCommunicatingParents
Refer to the terms of an existing order of protection (Y/N)	XII_13_ReferExistingProtectionOrder
Vacate a prior order of protection (Y/N)	XII_14_VacatePriorOrderProtection
Restrict frequency of exchanges? (Y/N)	XII_15_RestrictExchangeFrequency
<u>Does the court order/settlement stipulate that exchanges:</u>	
Take place at neutral, public sites? (Y/N)	XII_16_ExchangeNeutralSite
Should be supervised by third party? (Y/N)	XII_16_ExchangeChildrenThirdParty
Take place via 3rd party with no contact between parents? (Y/N)	XII_17_ExchangeParentsNoContact
Take place at a police precinct? (Y/N)	XII_18_ExchangePolicePrecinct
Child Safety	
<u>Does the court order/settlement stipulate:</u>	
Supervision of Father's time with children by a non-family member? (Y/N)	XII_19_NonFamilyMemberSupervision
Limiting length of time Father has with children to a few hours per week? (Y/N)	XII_20_FatherLimitingTime
No overnight visits with Father? (Y/N)	XII_21_FatherNoOverNightVisit
<u>Does the court order/settlement:</u>	
Ignore the expressed preferences of the children with respect to parental visitation? (Y/N)	XII_22_IgnoreChildrenPreferenceVisitation
Prevent Father from taking children out of the area without consent? (Y/N)	XII_23_PreventFatherTakingChildren
Allow Father unsupervised visits with children? (Y/N)	XII_24_FathersUnsupervisedVisits
Express concern about exposing children to violence against others? (Y/N)	XII_25_ExposeChildrenOthersViolence
Treatment & Ongoing Monitoring	
<u>Does the court order/settlement stipulate that:</u>	
Father complete an anger management program? (Y/N)	XII_26_CourtFathersAngerManagement
Father complete a batterer program? (Y/N)	XII_27_CourtFathersBattererProgram
Father complete a parenting program? (Y/N)	XII_28_CourtFathersParentingProgram
Father receive therapy? (Y/N)	XII_29_CourtFathersTherapy
Father take ongoing, random drug and alcohol tests ? (Y/N)	XII_30_CourtFatherDrugAlcohol
Mother complete a parenting program? (Y/N)	XII_31_CourtMotherParentingProgram
Mother receive therapy? (Y/N)	XII_32_CourtMothersTherapy
Mother take ongoing, random drug and alcohol tests ? (Y/N)	XII_33_CourtMotherDrugAlcohol
Child receive therapy or other form of treatment due to DV? (Y/N)	XII_34_CourtChildTherapy
Conditions of Parental Access	
<u>Does the court order/settlement:</u>	
Require that Father participate in any form of treatment or education program to increase access to the children or lift conditions without other re-evaluation of safety and change? (Y/N)	XII_35_CourtStipulateFathersEvidenceIncreaseAccess
Include specific goals and behavioral criteria other than completion of treatment or education to be assessed as a condition for increasing Father's access to the children? (Y/N) <i>If yes, please specify nature of goals and criteria (TEXT):</i>	XII_36_TreatmentFathersAccessToChildren
Require that Father demonstrate evidence of change of behavior toward Mother as a condition of greater access to children? (Y/N)	XII_37_FatherBehaviourChangeToMother
<u>Does the court order/settlement stipulate reducing Father's parental access or increasing supervision of visitation if:</u>	
Child is distressed or traumatized during visits with Father? (Y/N)	XII_38_FatherVisitsChildTraumatized
Father threatens Mother's life? (Y/N)	XII_39_FatherThreatenMothersLife
Father threatens to abduct child? (Y/N)	XII_40_FatherThreatenChildAbduct
Father hits or injures Mother? (Y/N)	XII_41_FatherInjuredMother
Father engages in criminal behavior? (Y/N)	XII_42_FatherCriminalConviction
Father fails drug/alcohol testing or otherwise evidences ongoing substance abuse problems? (Y/N)	XII_43_FatherFailsDrugAlcoholEvidences

Appendix E. Evaluator Survey

Study ID:

A. Background and Experience

1. About how many total custody evaluations have you done for:

Family Courts ___
Supreme Courts ___

2. About how many custody evaluations involving allegations of domestic violence have you done for:

Family Court ___
Supreme Court ___

3. Please check off the boroughs in which you have done custody evaluations. Put an asterisk next to the borough or boroughs where you have done the majority of evaluations:

Bronx ___
Brooklyn ___
Manhattan ___
Queens ___
Staten Island ___

4. Are there particular judges who have heard the majority of your cases to which you have been appointed? If so, please list them here:

5. Are there particular attorneys or legal agencies that typically request that you be appointed to their cases? If so, please list them here:

B. Rehabilitation

We would like to get your thoughts and opinion about the value and advisability of pursuing rehabilitation in cases where one parent has been physically and emotionally abusive to another. Using the 1 to 5 scale below, where:

- 1= Strongly agree
- 2 = Somewhat agree
- 3 = Undecided
- 4 = Somewhat disagree
- 5 = Strongly disagree

Please rate the extent to which you agree with the following statements.

(Place your 1 to 5 rating next to each statement)

1. DV perpetrators can be rehabilitated
2. It is important to try to maintain and rebuild the child's relationship with the perpetrator parent
3. The court should recommend treatment for the perpetrator parent
4. The court should order the perpetrator to participate in an anger management program
5. The court should order the perpetrator to participate in a batterer program
6. The court should order the abuser to participate in a parenting program
7. The court should order a victimized parent to participate in treatment
8. The court should order the victimized parent to participate in a parenting program
9. The court should order trauma treatment for children exposed to violence
10. The court should liberalize visitation (i.e., longer visits, overnights visits, end supervision of visits) when its recommendations or orders for treatment have been followed
11. The court should reassess the perpetrator parent's behavior before liberalizing visitation.

C. Evaluation Priorities

Below are five common, sometimes conflicting goals evaluators attempt to achieve when conducting custody evaluations in cases involving domestic violence. Using the following scale, rate **how important you think each goal is to achieve** when doing these evaluations of this type:

- 1= Very Important
- 2 = Important
- 3 = Moderately Important
- 4 = Of Little Importance
- 5 = Unimportant

(Place your 1 to 5 rating next to each statement)

1. Allow children access to both parents
2. Hold perpetrators accountable for their abusive behavior
3. Support the physical and emotional safety of a victimized parent
4. Limit the state's role in directing the lives and parenting decisions of victimized parents
5. Protect children from violent, abusive, and neglectful environments
6. Ensure that children are able to maintain a relationship with the non-custodial parent
7. Avoid depriving a child of a parent because one parent is hostile toward or fearful of the other
8. Protect the child from exposure to conflict and violence between parents

D. Testing Preferences

1. Please list any psychological tests you have administered or requested to be administered to parents involved in custody evaluations:

2. Please list any psychological tests you have administered or requested to be administered to the *children* involved in custody evaluations:

3. Please list any tests you are *more* likely to use in cases involving DV and why:

4. Are there any tests you would be *less* likely to use in cases involving DV? If so, why?

Appendix F. Algorithms for Calculating Summary Scores of Coded Evaluation Items

INVESTIGATIVE THOROUGHNESS

Use of Psychological Records

It is clear the evaluator was able to review the psychological/psychiatric records of:

Mother? (Y/N)

IV_0_MotherPsychologicalRecords

Father? (Y/N)

IV_1_FatherPsychologicalRecords

Children? (Y/N)

IV_2_ChildrenPsychologicalRecords

It is clear the evaluator was able to talk to or received letter from current or previous therapists of:

Mother? (Y/N)

IV_3_MotherPsychologicalRecords

Father? (Y/N)

IV_4_FatherPsychologicalRecords

Children? (Y/N)

IV_5_ChildrenPsychologicalRecords

Psychological/psychiatric history information was used to:

Help understand the impact of domestic violence on

Mother? (Y/N)

IV_6_MotherDomesticViolence

Help understand the impact of domestic violence on children (Y/N)

IV_7_DomesticViolenceChildrenImpact

Detect mental health problems possibly related to

Father's DV risk factors ? (Y/N)

IV_8_FatherRecordsDVRiskFactors

Psychological Records

IF (IV_0_MotherPsychologicalRecords = Y) THEN PosPsychRecords = +1

IF (IV_3_MotherPsychologicalRecords = Y) THEN PosPsychRecords = +1

IF (E_MotherPsychRecord# > 0) AND ((IV_0_MotherPsychologicalRecords = N) AND (IV_3_MotherPsychologicalRecords = N)) THEN NegPsychRecords = +1

IF (IV_1_FatherPsychologicalRecords = Y) THEN PosPsychRecords = +1

IF (IV_4_FatherPsychologicalRecords = Y) THEN PosPsychRecords = +1

IF (E_FatherPsychRecord# > 0) AND ((IV_1_FatherPsychologicalRecords = N) AND (IV_4_FatherPsychologicalRecords = N)) THEN NegPsychRecords = +1

IF (IV_2_ChildPsychologicalRecords = Y) THEN PosPsychRecords = +1

IF (IV_5_ChildPsychologicalRecords = Y) THEN PosPsychRecords = +1

IF (E_ChildPsychRecord# > 0) AND ((IV_2_ChildPsychologicalRecords = N) AND (IV_5_ChildPsychologicalRecords = N)) THEN NegPsychRecords = +1

IF (IV_6_MotherDomesticViolence = Y) THEN PosPsychRecords = +1

IF (IV_7_DomesticViolenceChildrenImpact = Y) THEN PosPsychRecords = +1

IF (IV_8_FatherRecordsDVRiskFactors = Y) THEN PosPsychRecords = +1

TotPsychRecords = (PosPsychRecords – NegPsychRecords)

Use of Medical Records

It is clear the evaluator was able to review the medical records of:

Mother? (Y/N)	IV_9_MotherMedicalRecords
Father? (Y/N)	IV_10_FatherMedicalRecords
Children? (Y/N)	IV_11_ChildrenMedicalRecords

It is clear the evaluator was able to talk to medical physician of:

Mother? (Y/N)	IV_12_EvaluatorTalkMotherPhysician
Father? (Y/N)	IV_13_EvaluatorTalkFatherPhysician
Children? (Y/N)	IV_14_EvaluatorTalkChildrenPhysician

Medical records/ information about medical history was used to:

Detect Mother's health problems related to DV? (Y/N)	IV_15_MotherRecordsHealthProblems
Detect children's health problems related to DV? (Y/N)	IV_16_ChildrenRecordsHealthProblems
Detect Father's health problems possibly related to increased risk for DV and DV lethality? (Y/N)	IV_17_FatherMedicalRecordsDVRisk

Medical Records

IF (IV_9_MotherMedicalRecords = Y) THEN PosMedRecords = +1

IF (IV_12_EvaluatorTalkMotherPhysician = Y) THEN PosMedRecords = +1

IF (E_MotherMedRecord# > 0) AND ((IV_9_MotherMedicalRecords = N) AND (IV_12_EvaluatorTalkMotherPhysician = N)) THEN NegMedRecords = +1

IF (IV_10_FatherMedicalRecords = Y) THEN PosMedRecords = +1

IF (IV_13_EvaluatorTalkFatherPhysician = Y) THEN PosMedRecords = +1

IF (E_FatherMedRecord# > 0) AND ((IV_10_FatherMedicalRecords = N) AND (IV_13_EvaluatorTalkFatherPhysician = N)) THEN NegMedRecords = +1

IF (IV_11_ChildMedicalRecords = Y) THEN PosMedRecords = +1

IF (IV_14_ChildMedicalRecords = Y) THEN PosMedRecords = +1

IF (E_ChildMedRecord# > 0) AND ((IV_11_ChildMedicalRecords = N) AND (IV_14_EvaluatorTalkChildrenPhysician = N)) THEN NegMedRecords = +1

IF (IV_15_MotherRecordsHealthProblems = Y) THEN PosMedRecords = +1

IF (IV_16_ChildrenRecordsHealthProblems = Y) THEN PosMedRecords = +1

IF (IV_17_FatherRecordsHealthProblems = Y) THEN PosMedRecords = +1

TotMedRecords = (PosMedRecords – NegMedRecords)

Substance Abuse History

It is clear the evaluator reviewed the substance abuse history of:

Mother? (Y/N)	IV_18_MotherAbuseHistory
Father? (Y/N)	IV_19_FatherAbuseHistory

It is clear the evaluator attempted to assess current substance abuse of:

Mother? (Y/N)	IV_20_MotherCurrentAbuse
Father? (Y/N)	IV_21_FatherCurrentAbuse

Substance Abuse History

IF (IV_18_MotherAbuseHistory = Y) THEN PosSubAbuse = +1

IF (IV_19_FatherAbuseHistory = Y) THEN PosSubAbuse = +1

IF (IV_20_MotherCurrentAbuse = Y) THEN PosSubAbuse = +1

IF (IV_21_FatherCurrentAbuse = Y) THEN PosSubAbuse = +1

TotSubAbuse = PosSubAbuse

Review of Objective Sources

It is clear that the evaluator made efforts to secure and review information from the following objective sources:

Police reports? (Y/N)	IV_22_PoliceReports
Family and/or Supreme Court records? (Y/N)	IV_23_FamilyCourtRecords
Criminal Court &/or IDV Court records? (Y/N)	IV_24_CriminalCourtorIDVCourtRecords
Child's school records? (Y/N)	IV_25_ChildSchoolRecords
Mother's school/work records? (Y/N)	IV_26_MotherRecords
Father's school/work records? (Y/N)	IV_27_FatherRecords

It is clear the evaluator:

Referenced the <i>civil court record</i> (including IDV) in considering allegations of DV? (Y/N)	IV_28_EvaluatorReferencedCivilRecord
--	--------------------------------------

Referenced the <i>criminal record</i> (including IDV) in considering allegations of DV? (Y/N)	IV_29_EvaluatorReferencedCriminalRecord
---	---

Attempted to corroborate aspects of DV allegations as part of collateral interviews? (Y/N)	IV_30_EvaluatorAttemptCorroborateAspects
--	--

Review of Objective Sources

IF (IV_22_PoliceReports = N) THEN PosObjectSource = +1
IF (IV_23_FamilyCourtRecords = N) THEN PosObjectSource = +1
IF (IV_24_CriminalCourtorIDVCourtRecords = N) THEN PosObjectSource = +1
IF (IV_25_ChildSchoolRecords = N) THEN PosObjectSource = +1
IF (IV_26_MotherRecords = N) THEN PosObjectSource = +1
IF (IV_27_FatherRecords = N) THEN PosObjectSource = +1
IF (IV_28_EvaluatorReferencedCivilRecord=N) THEN PosObjectSource = +1
IF (IV_29_EvaluatorReferencedCriminalRecord = N) THEN PosObjectSource = +1
IF ((I_26_MotherAllegePartnerAbuse) OR (I_26_FatherAllegePartnerAbuse)) AND
(IV_30_EvaluatorAttemptCorroborateAspects = N) THEN NegObjectSource = +1

TotObjectSource = (PosObjectSource – NegObjectSource)

Interpretation of Information

Father's denials or minimization of abuse are viewed
as possible defensiveness? (Y/N) IV_31_FathersDenialDefensiveness
Mother's allegations of abuse are minimized, ignored,
rejected, or seen as exaggerated? (Y/N) IV_32_MothersAllegations
Evaluator views purported witness' failure to
corroborate DV as evidence of false allegations? (Y/N) IV_33_WitnessFailureFalseAllegation

Interpretation of Information

IF (IV_31_FathersDenialDefensiveness = Y) THEN NegInterpretInfo = +1
IF (IV_32_MothersAllegations = Y) THEN NegInterpretInfo = +1
IF (IV_33_WitnessFailureFalseAllegation = Y) THEN NegInterpretInfo = +1

TotInterpretInfo = NegInterpretInfo

InvestigativeThoroughness =

TotInterpretInfo + TotObjectSource + TotSubAbuse + TotMedRecords + TotPsychRecords

DEMONSTRATED DV KNOWLEDGE

Attribution Knowledge

Abuse viewed as an anger management or impulse control problem? (Y/N)	I_1_AbuseAngerMgmtOrImpulseCtl
Mother seems to be faulted for contributing to pattern of abuse? (Y/N)	I_2_MotherFaultPatternAbuse
Abuse presented as stemming from a communication problem between parents? (Y/N)	I_3_AbuseParentsCommunicationProblem
Problem between the parents described as “conflict”? (Y/N)	I_4_ParentsProblemConflict
Abuse is seen as the primary responsibility of the more violent person? (Y/N)	I_5_AbuseViolentPersonResponsibility
Abuse is seen as a pattern of mutual violence? (Y/N)	I_6_AbuseMutualViolencePattern
Abusiveness viewed as a voluntary (chosen) behavior of the father? (Y/N)	I_7_AbuseFatherVoluntaryBehaviour
Substance abuse viewed as cause or sine qua non of DV? (Y/N)	I_8_SubstanceAbuseDVCauseOrSinequanon

AttributionKnowledge

IF (I_1_AbuseAngerMgmtOrImpulseCtl = Y) THEN NegAttributeKnowledge = +1
 IF (I_2_MotherFaultPatternAbuse = Y) THEN NegAttributeKnowledge = +1
 IF (I_3_AbuseParentsCommunicationProblem = Y) THEN NegAttributeKnowledge = +1
 IF (I_4_ParentsProblemConflict = Y) THEN NegAttributeKnowledge = +1
 IF (I_5_AbuseViolentPersonResponsibility = Y) THEN PosAttributeKnowledge = +1
 IF (I_6_AbuseMutualViolencePattern = Y) THEN NegAttributeKnowledge = +1
 IF (I_7_AbuseFatherVoluntaryBehaviour = Y) THEN PosAttributeKnowledge = +1
 IF (I_8_SubstanceAbuseDVCauseOrSinequanon = Y) THEN NegAttributeKnowledge = +1

AttributeKnowledge = (PosAttributeKnowledge – NegAttributeKnowledge)

Looked for Signs of DV Exposure and Implications for Child

The evaluator:

Assessed children for particular symptoms or signs known to be associated with exposure to DV? (Y/N)	IX_4_ChildrenAssessedDVExposure
Assessed or considered the possibility that children could be fearful of Father? (Y/N)	IX_5_ChildrenFearfulofFather
Assessed or considered the possibility that children could be concerned about safety of Mother? (Y/N)	IX_6_ChildrenConcernMotherSafety
Discussed negative psychological impact of DV on children? (Y/N)	IX_7_DVPsychologicalImpactonChildren
Does evaluation take at face value Father’s blame-shifting explanation for why incidents occurred? (Y/N)	VI_9_FathesBlameExplanation

Looked for Signs of DV Exposure and Implications for Child

IF (IX_4_ChildrenAssessedDVExposure = Y) THEN PosDVExposureKnowledge= +1

IF (IX_5_ChildrenFearfulofFather = Y) THEN PosDVExposureKnowledge= +1

IF (IX_6_ChildrenConcernMotherSafety = Y) THEN PosDVExposureKnowledge= +1

IF (IX_7_DVPsychologicalImpactonChildren = Y) THEN PosDVExposureKnowledge= +1

IF (VI_9_FathesBlameExplanation = Y) THEN NegDVExposureKnowledge= +1

DVExposureKnowledge = (PosDVExposureKnowledge – NegDVExposureKnowledge)

DV Parenting Ability

Considers relevance of DV to Father’s parenting ability? (Y/N)

IX_13_DVRelevanceFathersParenting

Considers the negative impact that ongoing DV can have on Mother’s parenting? (Y/N)

IX_14_OngoingDVMothersParenting

Considers that achieving safety may improve/restore Mother’s parenting abilities? (Y/N)

IX_15_SafetyImproveMothersParenting

Holds Mother at least partially responsible for impact of DV on children? (Y/N)

IX_16_ChildrenDVImpactMotherResponsible

Faults Mother for failing to protect children from witnessing abuse or exposure to violence? (Y/N)

IX_17_MotherFaultProtectChildren

Holds Mother at least partially responsible for psychological or emotional impact of DV on children? (Y/N)

IX_18_ChildrenDVImpactMotherResponsible

Blames Mother for failing to protect children from Father? (Y/N)

IX_19_ProtectChildrenMotherBlamed

Views Mother’s anxiety and fear of Father as reflecting negatively on her parenting capacity? (Y/N)

IX_20_MothersAnxietyParentingCapacity

Holds Father fully responsible for impact of DV on children? (Y/N)

IX_21_DVImpactFatherResponsible

Considers Impact of DV on Parenting Ability

IF (IX_13_DVRelevanceFathersParenting = Y) THEN PosDVParentingKnowledge= +1

IF (IX_14_OngoingDVMothersParenting = Y) THEN PosDVParentingKnowledge= +1

IF (IX_15_SafetyImproveMothersParenting = Y) THEN PosDVParentingKnowledge= +1

IF (IX_16_ChildrenDVImpactMotherResponsible = Y) THEN NegDVParentingKnowledge= +1

IF (IX_17_MotherFaultProtectChildren = Y) THEN NegDVParentingKnowledge= +1

IF (IX_18_ChildrenDVImpactMotherResponsible = Y) THEN NegDVParentingKnowledge= +1

IF (IX_19_ProtectChildrenMotherBlamed = Y) THEN NegDVParentingKnowledge= +1

IF (IX_20_MothersAnxietyParentingCapacity = Y) THEN NegDVParentingKnowledge= +1

IF (IX_21_DVImpactFatherResponsible = Y) THEN PosDVParentingKnowledge= +1

DVParentingKnowledge = (PosDVParentingKnowledge – NegDVParentingKnowledge)

OverallDVKnowledge = DVParentingKnowledge + DVExposureKnowledge + AttributeKnowledge

CURRENT SAFETY RISK

Threatened suicide? (N/A/P/C)	VII_1_ThreatenedSuicide
Threatened to kill Mother? (N/A/P/C)	VII_2_ThreatenToMother
Threatened to or used a weapon in any previous assault? (N/A/P/C)	VII_3_ThreatenWeaponUse
Owns a gun or has access to other lethal weapon? (N/A/P/C)	VII_4_AcessGunLethalWeapon
Committed prior violence that resulted in serious injury? (N/A/P/C)	VII_5_PriorViolenceInjuries
Shows obsessive possessiveness of Mother? (N/A/P/C)	VII_6_MotherObsessivePossessiveness
Blames Mother for his own behavior? (N/A/P/C)	VII_7_FatherBlamesMother
Has a history of mental illness, especially thought disorder, paranoia, or personality disorder? (N/A/P/C)	VII_8_FatherMentalIllnessHistory
Has a history of substance abuse? (N/A/P/C)	VII_9_FatherSubstanceAbuseHistory
Expresses a high degree of depression, rage, or extreme emotional instability? (N/A/P/C)	VII_10_FatherExpressInstability
Is experiencing other highly stressful life events? (N/A/P/C)	VII_11_FatherExperienceStressFulEvents
Threatened or attempted to abduct the child? (N/A/P/C)	VII_12_FatherAbductChild
Engaged in stalking or harassment? (N/A/P/C)	VII_13_FatherEngageHarassment
Violated a no contact order of protection? (N/A/P/C)	VII_14_FatherViolatesNoContact
Has or continues to be a source of fear and/or intimidation for Mother? (N/A/P/C)	VII_15_FatherFearful

N = Makes **No** mention of risk indicator

A = Notes **A**bsence of risk indicator

P = Notes **P**resence of risk indicator

C = Notes Presence of risk indicator *and* views it as a reflection of dangerousness or special **C**oncern

CurrentSafetyRisk

IF ((VII_1_ThreatenedSuicide=C) OR (VII_1_ThreatenedSuicide=P))

THEN = CurrentSafetyRisk= +1

IF ((VII_2_ThreatenToMother=C) OR (VII_2_ThreatenToMother=P))

THEN CurrentSafetyRisk= +1

IF ((VII_3_ThreatenWeaponUse=C) OR (VII_3_ThreatenWeaponUse=P))

THEN CurrentSafetyRisk= +1

IF ((VII_4_AcessGunLethalWeapon=C) OR (VII_4_AcessGunLethalWeapon=P))

THEN CurrentSafetyRisk= +1

IF ((VII_5_PriorViolenceInjuries=C) OR (VII_5_PriorViolenceInjuries=P))

THEN CurrentSafetyRisk= +1

IF ((VII_6_MotherObsessivePossessiveness=C) OR (VII_6_MotherObsessivePossessiveness=P))

THEN CurrentSafetyRisk= +1

IF ((VII_7_FatherBlamesMother=C) OR (VII_7_FatherBlamesMother=P))

THEN CurrentSafetyRisk= +1

IF ((VII_8_FatherMentalIllnessHistory=C) OR (VII_8_FatherMentalIllnessHistory=P))

THEN CurrentSafetyRisk= +1

IF ((VII_9_FatherSubstanceAbuseHistory=C) OR (VII_9_FatherSubstanceAbuseHistory=P))

THEN CurrentSafetyRisk= +1

IF ((VII_10_FatherExpressInstability=C) OR (VII_10_FatherExpressInstability=P))

THEN CurrentSafetyRisk= +1

IF ((VII_11_FatherExperienceStressFulEvents=C) OR (VII_11_FatherExperienceStressFulEvents=P)) THEN

CurrentSafetyRisk= +1

IF ((VII_12_FatherAbductChild=C) OR (VII_12_FatherAbductChild=P))

THEN CurrentSafetyRisk= +1

IF ((VII_13_FatherEngageHarassment=C) OR (VII_13_FatherEngageHarassment=P))

THEN CurrentSafetyRisk= +1

IF ((VII_14_FatherViolatesNoContact=C) OR (VII_14_FatherViolatesNoContact=P))

THEN CurrentSafetyRisk= +1

IF ((VII_15_FatherFearful=C) OR (VII_15_FatherFearful=P))

THEN CurrentSafetyRisk= +1

CurrentSafetyRisk = CurrentSafetyRisk

Evaluator Parenting Plan Safety

Parental Safety & Exchanges

Do the evaluation recommendations or suggestions:

Does the evaluation encourage or allow a flexible/liberal parenting schedule to be determined by parents? (Y/N)

XI_11_FlexibleParentingSchedule

Seek to avoid direct parent-parent contact? (Y/N)

XI_12_DirectParentsContact

Specify procedures for communicating emergency information that do not involve direct parent-to-parent contact? (Y/N)

XI_13_EmergencyCommunicatingParents

Encourage the issuing of orders of protection? (Y/N)

XI_14_EncourageProtectionOrders

Restrict frequency of exchanges? (Y/N)

XI_15_FrequencyOfExchanges

The evaluation suggests that exchanges:

Take place at neutral, public sites? (Y/N)

XI_16_ExchangeNeutralSite

Should be supervised by third party? (Y/N)

XI_17_ExchangeChildrenThirdParty

Take place via 3rd party with no contact between parents? (Y/N)

XI_18_ExchangeParentsNoContact

Take place at a police precinct? (Y/N)

XI_19_ExchangePolicePrecint

Child Safety

Does the evaluation recommend or suggest:

Supervision of Father's time with children by a non-family member? (Y/N)

XI_20_NonFamilyMemberSupervision

Limiting length of time Father has with children to a few hours per week? (Y/N)

XI_21_FatherLimitingTime

No overnight visits with Father? (Y/N)

XI_22_FatherNoOverNightVisit

Do the evaluation recommendations or suggestions:

Ignore the expressed preferences of the children with respect to parental visitation? (Y/N)

XI_23_IgnoreChildrenPreferenceVisitation

Prevent Father from taking children out of the area without consent? (Y/N)

XI_24_PreventFatherTakingChildren

Allow Father unsupervised visits with children? (Y/N)

XI_25_FathersUnsupervisedVisits

Conditions of Parental Access

Does the evaluation:

Require that Father participate in any form of treatment or education program to increase access to the children or lift conditions without other re-evaluation of safety and change? (Y/N)

XI_36_FathersEvidenceIncreaseAccess

Include specific goals and behavioral criteria other than completion of treatment or education to be assessed as a condition for increasing Father's access to the children? (Y/N)

XI_37_FathersAccessToChildren

Require that Father demonstrate evidence of change of behavior toward Mother as a condition of greater access to children? (Y/N)

XI_38_FatherBehaviourChangeToMother

Does evaluation recommend or suggest reducing
Father's parental access or increasing supervision of
visitation if:

Child is distressed or traumatized during visits with Father? (Y/N)	XI_41_ChildTraumatized
Father threatens Mother's life? (Y/N)	XI_42_FatherThreatenMothersLife
Father threatens to abduct child? (Y/N)	XI_43_FatherThreatenChildAbduct
Father hits or injures Mother? (Y/N)	XI_44_FatherInjuredMother
Father engages in criminal behavior? (Y/N)	XI_45_FatherViolentCrimesConviction
Father fails drug/alcohol testing or otherwise evidences ongoing substance abuse problems? (Y/N)	XI_46_FatherDrugAlcoholEvidences

EvalFamilySafetyScore

IF (XI_11_FlexibleParentingSchedule = Y) THEN NegEvalFamilySafetyScore =
IF (XI_12_DirectParentsContact = Y) THEN PosEvalFamilySafetyScore = +1
IF (XI_13_EmergencyCommunicatingParents = Y) THEN PosEvalFamilySafetyScore = +1
IF (XI_14_EncourageProtectionOrders = Y) THEN PosEvalFamilySafetyScore = +1
IF (XI_15_FrequencyOfExchanges = Y) THEN PosEvalFamilySafetyScore = +1
IF (XI_16_ExchangeNeutralSite = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_17_ExchangeChildrenThirdParty = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_19_ExchangePolicePrecint = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_18_ExchangeParentsNoContact = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_20_NonFamilyMemberSupervision = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_21_FatherLimitingTime = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_22_FatherNoOverNightVisit = Y) THEN NegEvalFamilySafetyScore= +1
IF (XI_24_PreventFatherTakingChildren = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_25_FathersUnsupervisedVisits = Y) THEN NegEvalFamilySafetyScore= +1
IF (XI_36_FathersEvidencesIncreaseAccess = Y) THEN NegEvalFamilySafetyScore= +1
IF (XI_37_FathersAccessToChildren = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_38_FatherBehaviourChangeToMother = Y) THEN PosEvalFamilySafetyScore=+1
IF (XI_41_ChildTraumatized = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_42_FatherThreatenMothersLife = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_43_FatherThreatenChildAbduct = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_44_FatherInjuredMother = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_45_FatherViolentCrimesConviction = Y) THEN PosEvalFamilySafetyScore= +1
IF (XI_46_FatherDrugAlcoholEvidences = Y) THEN PosEvalFamilySafetyScore= +1

EvalFamilySafetyScore = (PosEvalFamilySafetyScore - NegEvalFamilySafetyScore)

Court Parenting Plan Safety

Parental Safety & Exchanges

Does the court order/settlement:

Does the court order/settlement encourage or allow a flexible/liberal parenting schedule to be determined by parents? (Y/N)

XII_11_FlexibleParentingSchedule

Seek to avoid direct parent-parent contact? (Y/N)

XII_12_DirectParentsContact

Specify procedures for communicating emergency information that do not involve direct parent-to-parent contact? (Y/N)

XII_13_EmergencyCommunicatingParents

Refer to the terms of an existing order of protection (Y/N)

XII_14_ReferExistingProtectionOrders

Restrict frequency of exchanges? (Y/N)

XII_15_FrequencyOfExchanges

The evaluation suggests that exchanges:

Take place at neutral, public sites? (Y/N)

XI_16_ExchangeNeutralSite

Should be supervised by third party? (Y/N)

XII_17_ExchangeChildrenThirdParty

Take place via 3rd party with no contact between parents? (Y/N)

XII_18_ExchangeParentsNoContact

Take place at a police precinct? (Y/N)

XII_19_ExchangePolicePrecint

Child Safety

Does the court order/settlement stipulate:

Supervision of Father's time with children by a non-family member? (Y/N)

XII_20_NonFamilyMemberSupervision

Limiting length of time Father has with children to a few hours per week? (Y/N)

XII_21_FatherLimitingTime

No overnight visits with Father? (Y/N)

XII_22_FatherNoOverNightVisit

Does the court order/settlement:

Ignore the expressed preferences of the children with respect to parental visitation? (Y/N)

XII_23_IgnoreChildrenPreferenceVisitation

Prevent Father from taking children out of the area without consent? (Y/N)

XII_24_PreventFatherTakingChildren

Allow Father unsupervised visits with children? (Y/N)

XII_25_FathersUnsupervisedVisits

Conditions of Parental Access

Does the court order/settlement:

Require that Father participate in any form of treatment or education program to increase access to the children or lift conditions without other re-evaluation of safety and change? (Y/N)

XII_36_FathersEvidenceIncreaseAccess

Include specific goals and behavioral criteria other than completion of treatment or education to be assessed as a condition for increasing Father's access to the children? (Y/N)

XII_37_FathersAccessToChildren

Require that Father demonstrate evidence of change of behavior toward Mother as a condition of greater access to children? (Y/N)

XII_38_FatherBehaviourChangeToMother

Does the court order/settlement stipulate reducing Father's parental access or increasing supervision of visitation if:

Child is distressed or traumatized during visits with Father? (Y/N)

XII_41_ChildTraumatized

Father threatens Mother's life? (Y/N)

XII_42_FatherThreatenMothersLife

Father threatens to abduct child? (Y/N)

XII_43_FatherThreatenChildAbduct

Father hits or injures Mother? (Y/N)

XII_44_FatherInjuredMother

Father engages in criminal behavior? (Y/N)

XII_45_FatherViolentCrimesConviction

Father fails drug/alcohol testing or otherwise evidences ongoing substance abuse problems? (Y/N)

XII_46_FatherDrugAlcoholEvidences

CourtFamilySafetyScore

IF (XII_11_FlexibleParentingSchedule = Y) THEN NegCourtFamilySafetyScore = +1

IF (XII_12_DirectParentsContact = Y) THEN PosCourtFamilySafetyScore = +1

IF (XII_13_EmergencyCommunicatingParents = Y) THEN PosCourtFamilySafetyScore = +1

IF (XII_14_EncourageProtectionOrders = Y) THEN PosCourtFamilySafetyScore = +1

IF (XII_15_FrequencyOfExchanges = Y) THEN PosCourtFamilySafetyScore = +1

IF (XII_16_ExchangeNeutralSite = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_17_ExchangeChildrenThirdParty = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_18_ExchangeParentsNoContact = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_19_ExchangePolicePrecint = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_20_NonFamilyMemberSupervision = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_21_FatherLimitingTime = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_22_FatherNoOverNightVisit = Y) THEN NegCourtFamilySafetyScore= +1

IF (XII_24_PreventFatherTakingChildren = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_25_FathersUnsupervisedVisits = Y) THEN NegCourtFamilySafetyScore= +1

IF (XII_36_FathersEvidencelIncreaseAccess = Y) THEN NegCourtFamilySafetyScore= +1

IF (XII_37_FathersAccessToChildren = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_38_FatherBehaviourChangeToMother = Y) THEN PosCourtFamilySafetyScore=+1

IF (XII_41_ChildTraumatized = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_42_FatherThreatenMothersLife = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_43_FatherThreatenChildAbduct = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_44_FatherInjuredMother = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_45_FatherViolentCrimesConviction = Y) THEN PosCourtFamilySafetyScore= +1

IF (XII_46_FatherDrugAlcoholEvidences = Y) THEN PosCourtFamilySafetyScore= +1

CourtFamilySafetyScore = (PosCourtFamilySafetyScore - NegCourtFamilySafetyScore)