

**Family Court Outcomes in U.S. Custody Cases with Abuse and Alienation Claims**

BY JOAN MEIER, J.D.

For the  
**APSAC VIRTUAL COLLOQUIUM**  
 September 22, 2020

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**Brief Bio**

- ▶ Professor of Law, George Washington University Law School
- ▶ Director, National Family Violence Law Center at GW
- ▶ Founder, Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)\*

\*Was at DV LEAP from 2003 - 2019

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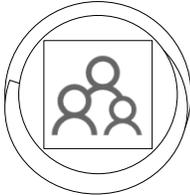
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**Why this Study?**

- ▶ Founded DV LEAP in 2003 to focus on appellate advocacy for abuse survivors and the DV field
- ▶ Within two years, were inundated with requests for help in custody/abuse cases
- ▶ Found parental alienation label was regularly used to discount mothers' allegations of adult or child abuse; extremely difficult to disprove it
- ▶ Child abuse allegations were particularly problematic and led to worst outcomes for mothers/children




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Sought national, objective data to shed light on how alienation claims are affecting abuse adjudications in family courts

**HYPOTHESES:**

- (i) Courts are skeptical of mothers' abuse claims, resulting in losses of custody
- (ii) Alienation cross-claims fuel the rejection of abuse claims and mothers' custody losses
- (iii) Alienation theory in these cases is highly gendered

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**Pilot study**

*Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 Law & Inequality 311 (2017)

Studied 240 electronically published cases – all with parental alienation cross-claims

Not federally funded; less rigorous method

Findings similar to full study, but not in all respects; no comparison between alienation and non-alienation cases

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**NIJ STUDY**  
Award to GWU, 2014

**DATASET:**

All **electronically published** court opinions 2005-2014 (10-year period)

All private custody cases involving abuse or alienation claims

Comprehensive search string netted over 15,000 cases - narrowed to **4338**

Over 100 codes (including sub-codes)

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**RESEARCH TEAM**

Joan Meier, JD, Principal Investigator  
 Sean Dickson, MPH, JD, Consultant\*  
 Jeff Hayes, PhD, Statistician (IWPR)  
 Leora Rosen, PhD, Consultant  
 Chris O'Sullivan, PhD, Consultant

*\* Deep thanks to Sean Dickson for his interdisciplinary and statistical expertise and translation skills*

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**Overview of presentation**

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**1.**

**PARADIGM CASES**

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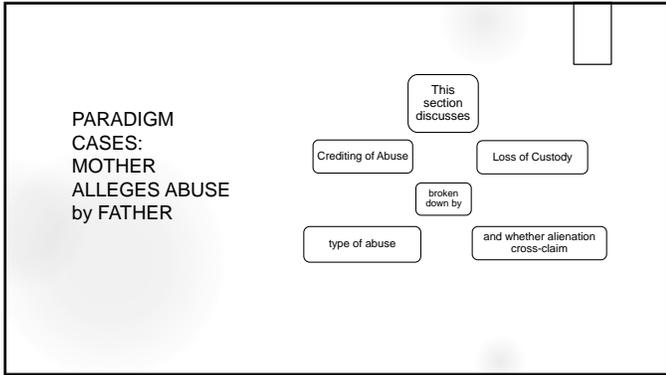
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PARADIGM CASES

Key Findings:

- ▶ Courts credit Mothers' reports of Fathers' abuse less than half the time
- ▶ Courts are far less likely to credit child abuse claims than partner violence (DV)
- ▶ Alienation cross-claims dramatically reduce rate of crediting of abuse - especially child abuse
- ▶ Child abuse allegations and alienation defenses put Mothers at highest risk of losing custody

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CREDITING OF ABUSE CLAIMS

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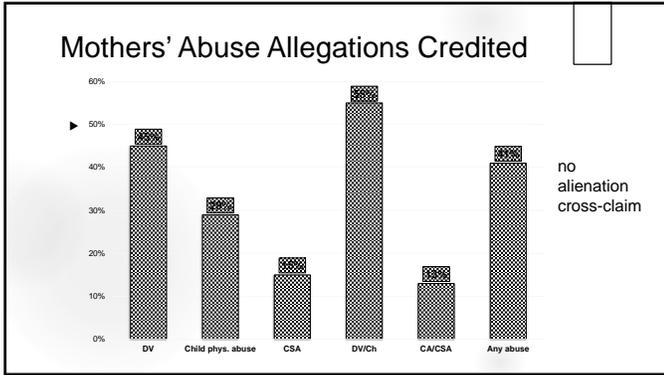
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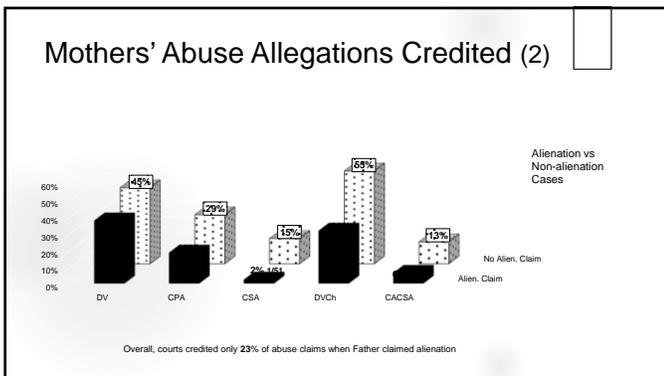
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### Impact of Alienation Cross-Claim

Reduces likelihood of **any abuse** being believed by a factor of 2

Reduces likelihood of **child abuse\*** being believed by a factor of almost 4 (3.9)

\*Includes all cases with any child physical or sexual abuse claims. This finding is driven primarily by CSA cases.

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Child Sexual Abuse Claims

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Child Sexual Abuse Claims

Only **ONE** claim out of 51 was believed, when alienation was cross-claimed

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What does objective research say?

"results from the literature suggest that between one half and three fourths of sexual abuse allegations in divorce are true (Faller 2003)

Only 12% of Canadian child maltreatment reports during custody litigation were intentionally false; most false claims were by noncustodial parents (Trocme & Bala 2005)

In study of 9000 U.S. cases, 50% of CSA reports in custody cases considered valid; 33% false; 17% undetermined. (Thoennes & Tjaden 1990)

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# MOTHERS' CUSTODY LOSSES

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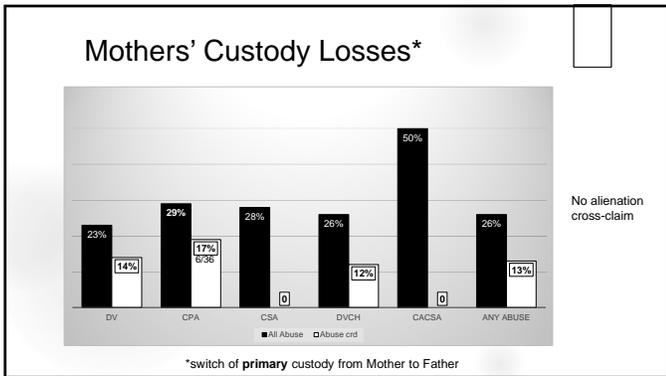
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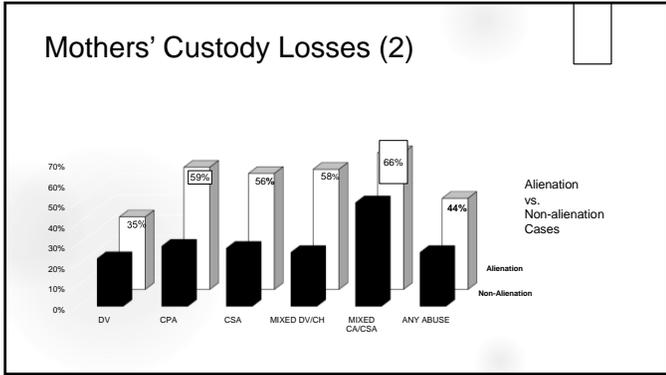
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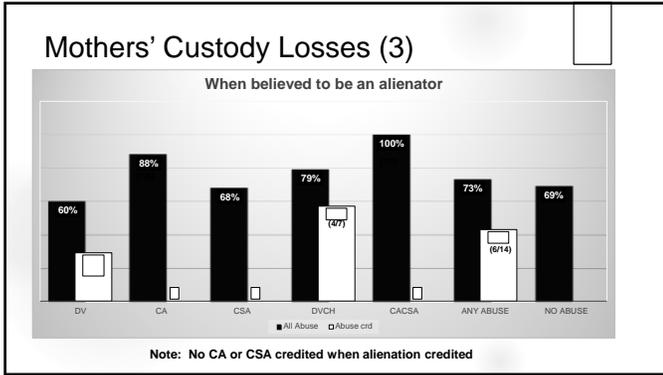
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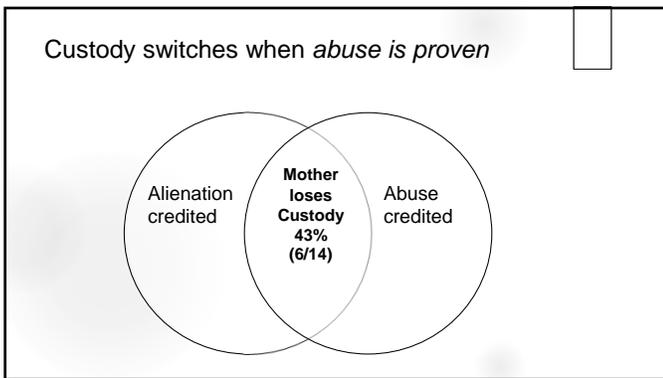
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### Power of alienation defense to effect custody switch to fathers

When Fathers cross-claim alienation:

They have almost 3 (2.9) times the odds of taking custody from mothers alleging any kind of abuse than when they do not cross-claim alienation

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## SELECTED GENDER COMPARISONS

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GENDER  
Key Findings

1.  Alienation's power as a claim is gendered overall.
2.  It is an effective defense for fathers accused of abuse but not for mothers accused of abuse.
3.  Alienation's effect is *not as clearly gendered* in non-abuse cases; and when alienation is proven, custody outcomes are comparable

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**In general, alienation claims are more powerful for fathers than mothers**

Across all alienation cases (with and without abuse claims):

- ▶ When fathers accused mothers of alienation, they took custody away in 44% of cases.
- ▶ When mothers accused fathers of alienation, they took custody in only 28% of cases.

**That is, mothers accused of alienation have double the odds of losing custody compared to fathers accused of alienation.**

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### Regression analyses

- ▶ When mothers accuse fathers of any kind of child abuse and fathers cross-claim alienation, mothers are roughly 2.5 times more likely to lose custody.
- ▶ In other words, mothers' custody losses are predicted to increase from 32% to 52% when they are alleging any kind of child abuse and the father responds with an alienation claim.
- ▶ However, when fathers accuse mothers of any type of abuse and the mothers cross-claim alienation, this does not affect fathers' rates of custody loss.

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### Possible Gender Parities

1. **When courts believe the alienation claim:**  
Fathers and mothers lose custody at identical rates (71%).
2. In **non-abuse cases (n = 267)** :  
Although fathers lost custody to mothers less (28%) often than mothers lost custody to fathers (39%), the numbers are too small for statistical significance.

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### Alienation findings: Something for everyone?

- ▶ The gender differences in abuse/alienation cases are **consistent with the abuse field's critique:** Alienation in abuse cases appears to be gendered and effectively denies mothers' (and children's) claims of paternal abuse
  - ▶ AND
- ▶ The **relative gender parity in non-abuse cases**, as well as in abuse cases where alienation is **validated**, support the argument that alienation is not necessarily gendered, and both women and men claim it.
- ▶ I have seen a few such (gender-reversed) cases.




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## GALs and EVALUATORS

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### Guardians Ad Litem (GALs)

- ▶ With a GAL present, mothers are 3-5 times more likely to lose custody, especially when alleging physical child abuse or mixed physical and sexual child abuse
- ▶ GALs have no statistically significant impact on protective fathers' likelihood of losing custody.

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### Evaluators

When an evaluator is present, mothers are 2.5 – 6.5 times more likely to lose custody, particularly when alleging child physical abuse or mixed CPA/CSA

Evaluators have no statistically significant impact on protective fathers' loss of custody.

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The net effect is. . .

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**GALs, Evaluators Exacerbate Gender Differences**

Unfavorable outcomes for mothers (and children) are exponentially increased when GALs and evaluators are in the case:

- ▶ Mothers alleging any type of abuse are ordinarily more than twice as likely to lose custody as fathers; with a GAL/Evaluator, they are **3.7- 5.4** times more likely to lose custody than fathers.
- ▶ *Mothers alleging child abuse* are over 3 times more likely to lose custody than a father; with a GAL/Evaluator, they are well over **6** times as likely to lose custody.

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**STUDY LIMITATIONS**

- ▶ The study does not demonstrate that courts' rejections of abuse claims are necessarily wrong; only that they are the norm.
- ▶ The study contains primarily cases that were appealed, which may not be fully representative of trial court decisions that are not appealed.\*
- ▶ Our categorization of cases as "abuse" and "non-abuse" cases was a function of the judicial opinions. It is possible there were abuse or alienation claims that were not mentioned in some opinions.

\*Among the several hundred trial court opinions we netted, mothers' custody losses were fewer, compared to the cases which went to appeal; gender differences were consistent with the rest of the dataset

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FOLLOW UP / QUESTIONS?



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*And if you'd like to be on the NFVLC e-list, please email me.*

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