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COMMENTARY

Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse

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ABSTRACT. The purpose of this paper is to supplement the existing body of literature on judicial bias against protective parents who allege sexual abuse in contested custody/visitation cases. This is done by identifying specific patterns that emerge in the study of such protective

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parent cases processed in the family courts and child protective service agencies. A classification of case outcome is constructed from 300 cross-sectional and longitudinal protective parent cases studied by the Help Us Regain the Children Research Center. The authors' intent is not only to examine the patterns that emerge in protective parent cases, but to offer recommendations for policy changes in legislation to make the family courts and child welfare agencies more responsive to the needs of sexually abused children. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-342-9678. E-mail address: getinfo@haworthpressinc.com <Website: http://www.haworthpressinc.com>]*

KEYWORDS. Contested custody, false allegations, parental alienation syndrome, malicious mother syndrome, family court, child protective services, guardian ad litem, pedophilia

Prior to the mid-1970s, Western Society's response to incest was to consistently ignore and even suppress its occurrence. There is a long tradition of disbelieving women and children who claim to have been sexually assaulted by parents and other relatives, primarily fathers and stepfathers. Myers (1997) effectively demonstrates the remarkable tenacity over the last century-and-a-half of skepticism regarding allegations of child sexual abuse. He chronicled a cycle of eruptions of recognition into public and professional awareness, that were subsequently snuffed out by suppression and social amnesia. The series of eruptions commenced in 1857 with the published work of French physician Ambrose Tardieu and entailed the subsequent publication of Sigmund Freud's 1896 "Seduction theory" and Sandor Ferencai's 1932 paper titled "The Sexual Passion of Adults and their Influence on the Character Development and Sexual Development of Children." All of these "discoveries" of child sexual abuse were met with disbelief and hostility. Freud bowed to criticism of his initial beliefs and replaced his theory with the Oedipus complex, which explains neurotic symptoms as a result of childhood sexual fantasy rather than actual sexual abuse. Similar cycles of discovery and suppression in the complex history of sexual abuse awareness were also noted by other researchers (Olafson, Corwin, & Summit, 1993).

At mid-century, the now infamous Alfred Kinsey and associates reinforced the cultural minimization of incest by recognizing its existence but at the same time denying the damaging and sometimes devastating effects on its victims (Reisman, 1998). They even proclaimed value to a child in having a sexual relationship with his or her parent.

Myers (1997) calls 1975 "the great divide in the professional literature" (p.132). Before that year, professional writing on incest was predominantly skeptical. Then the feminist movement of the 1960s and 1970s in conjunction with the related modern era of child protection evoked a virtual explosion of writing sympathetic to victims of rape and sexual assault. Several years later, Russell (1983, 1986) demonstrated with her random sample of San Francisco women that serious and damaging incest is more prevalent than previously thought and appears to be increasing over time. Recent years have enjoyed unprecedented and sustained attention to incest by professionals, the media, and survivors.

Despite gains in the 1970s, 1980s, and 1990s in understanding and combating incest, the long tradition of skepticism continues to undermine the predominantly admirable and honest work of some judges, attorneys, doctors, and mental health professionals. In fact, the level of skepticism appears to be on the rise in the form of a backlash movement. Critics argue that child sexual abuse is over reported (Schetky, 1986; Wakefield & Underwager, 1988) and that deceptive parents and overzealous investigators can lead malleable children to make false allegations (Benedek & Schetky, 1987; Coleman, 1986; Gardner, 1992; Turkat, 1997). Furthermore, scientifically discredited psychological syndromes have been named to identify parents, mostly mothers, who are said to both unconsciously and consciously alienate their children from the other parent by brainwashing the children to believe that they were sexually abused by that other parent. In 1992, Gardner named the "Parental Alienation Syndrome," a creation couched in gender neutral language that in practice is virtually always attributed to women. Then in 1997, Turkat named the "Malicious Mother Syndrome," a blatantly sexist label ascribing to the mother actual culpability for making sexual abuse allegations. The "mean spirited" and "destructive" mothers affiliated with these syndromes are said to make false allegations of child sexual abuse, primarily in contested custody and visitation legal contexts, as a way of maliciously depriving their former spouses of the right to be with their children. Though the validity of these syndromes are sharply criticized by the American Psychological Association (1996) and by other researchers (Coukos & Smith, 1997; Myers, 1993), their use has the potential to threaten child safety when given validity in the courtroom, as demonstrated in the study below.

Although some mothers do abuse their children, a fact the professional literature often fails to adequately acknowledge (Corwin, 1989), far more children are sexually abused by their fathers. Accordingly, the non-offending parent struggling to protect the child from abuse is often, but not always, the mother (Pennington, 1995). Protective parents are defined as those who enter the judicial and child protective service system seeking protective measures against their spouse, former spouse or partner, to shield their child from continued abuse.

Today when a parent believes his/her child is being sexually abused by the child's other parent, he/she can either confront a sympathetic and just court system, eager to assist in the protection of the child, or he/she can face a far more grim fate. In the latter, when the system fails to be responsive to parents' quest for assistance, they may be subjected to a series of hapless occurrences: First, a "no-win" situation in the courts. If they do nothing, the child continues to be abused and the parents are at risk of being charged by the state child protective services with "neglect" for failure to take action to protect the child. If they speak up, even with the support of psychological and/or medical documentation, they may risk penalization from the court and child welfare system that perceives them as "vindictive"; their chance of retaining custody is severely diminished (Keating, 1988). Second, a fierce backlash extends beyond the family court system. The parents risks ostracism, in varying degrees, from their family, neighbors, friends, church, and workplace. In extreme cases, the ostracism leads to an indelible stigma, an ascription of a master status–"crazy person"–which subordinates all other identifying characteristics (e.g., professional, church member, employee et al.) to this one status (Johnson, 1995 p. 168). Third, studies show molestation recurs at a rate of 57% within the first year of the initial incident; the rate of recidivistic abuse further increases over a three-to-five-year span (Quick & Siciliio, 1989). As a result, each time abuse recurs, the protective parent is again faced with the proverbial "no win" situation; the cycle of being discredited and ostracized then repeats itself.

The purpose of this paper is to supplement the existing body of literature on judicial bias against protective parents who allege sexual abuse in contested custody/visitation cases (Apel, 1988; Armstrong, 1993; Corwin, Berliner, Goodman, Goodwin, & White, 1987; Haralambie, 1992; Hecht Schafran, 1986, 1987; Keating, 1988; Myers, 1997;

Neustein & Lesher, 1999; Pennington, 1993, 1995; Pennington & Woods, 1990; Rosen & Etlin, 1996; Schonberg, 1992; Schudson, 1992; Whitcomb, 1992; Wright Dziech & Schudson, 1989) by identifying specific patterns of response by the family court and child welfare system. The authors' intent is to not only examine these patterns but offer recommendations for national policy changes and legislation to make family courts and child welfare agencies more responsive to the needs of sexually abused children.

A brief overview of the data on national reporting of sexual abuse in contested custody and visitation cases is presented below in order to put this study of judicial responses to protective parents' reports of sexual abuse in perspective. Consider first that in the mid-1980s an estimated 15% of divorces between parents involved custody or visitation disputes. A study of the incidence of child sexual abuse allegations in contested custody/visitation cases was conducted around that time by The Association of Family and Conciliation Courts (Thoennes, Pearson, & Tjaden, 1988). Nationwide research concluded that fewer than 2% of contested custody/visitation court cases included sexual abuse allegations. Forty-eight percent of those cases involved a mother who brought accusations against the child's father, and in another 6% of the cases the mother had accused her second husband of having abused her child from her first marriage. Sixteen percent of the cases involved a father having made the accusation: in 10% of the cases he had accused the mother's new male partner, and in 6% of the cases he had accused the mother herself of abuse. The remaining allegations were made against other family members, friends, and acquaintances. Thoennes et al. (1988) commented on the 2% of contested custody/visitation cases in terms of validity of allegations:

> . . . half of the allegations were believed by the investigators to be true. In another 17% of the cases, determination of the validity of the allegation could not be made with any degree of certainty. Comments from the evaluators suggest that some of these cases probably did involve abuse, while others probably did not. The remaining third of the cases was not believed to involve abuse. However, in most of the latter cases in which an evaluator offered an opinion, the allegation was believed to have been made in good faith. In other words, although the reporting party's concerns might not be borne out, in a majority of cases they were perceived to be genuine suspicions . . . . (p. 17)

Several years later an updated study employing the same research methods yielded similar findings (Thoennes & Tjaden, 1990). In addition, a comprehensive literature review of the published research on false allegations made during custody and visitation proceedings showed a low rate of false reporting of child abuse (Coulborn Faller, Corwin, & Olafson, 1993).

METHODS

Help Us Regain the Children Research Center, founded in January 1988, received referrals of protective parent cases from mental health practitioners, attorneys, child advocacy centers, women's organizations, grass roots groups, and legislative offices. Over 1,000 telephonic and written complaints were made to the Center. Three hundred of these complaints conformed to the criteria for inclusion in this qualitative study of judicial responses to protective parents' complaints of child sexual abuse made in the family courts. To be included in the study, the parent was required to supply court records, including transcripts, motions, cross motions, decisions, orders, appeals, abuse/neglect petitions, removal orders, and forensic reports. This study was cross-sectional, representing each region of the United States, and longitudinal in that each case was followed continuously as it progressed through the system over the years. The criminal courts were outside of the purview of this study focusing exclusively on civil remedies.

FINDINGS AND DISCUSSION

The cases were organized into three categories by case outcome. Those categories, their association frequencies and percentages, and their criteria for inclusion follow.

Negative Case Outcome (60 Cases, 20% of Database)

The child was placed in the primary legal and physical custody of the allegedly sexually abusive parent. The initial trauma of the sexual assault was compounded by a subsequent sexual abuse injury. The

child showed signs of damage that may entail, inter alia, a sexually transmitted disease; vaginal and/or anal scarring; and psychiatric disturbances such as suicidal behavior, self-mutilation, dysthymia, pyromania, and sexually aggressive behavior toward other children. Psychiatric sequelae were also noticed which may include severe eating disorders (anorexia nervosa and/or bulimia) and dissociative reactions.

Moderate Case Outcome (210 Cases, 70% of Database)

The child was placed in the joint physical (and possibly legal) custody of the allegedly sexually abusive parent and the protective parent, or was placed in the sole custody of the protective parent with the provision of generous, unsupervised overnight visitation with the allegedly abusive parent that includes weekends, holidays, and summer vacations. The child showed signs of low self-esteem, a sense of helplessness, depression, and self-blame that extended in some instances to the school environment, manifested by poor academic performance and social maladjustment.

Positive Case Outcome (30 Cases, 10% of Database)

The child was placed in the primary legal and physical custody of the protective parent. The child was allowed only supervised (by a responsible and trained professional, as opposed to a member of the offending parent's family) visitation with the allegedly abusive parent. The child did not appear traumatized by the visitation. However, although nothing clinically significant was manifested in the child, there were occasional bouts with minor depression and evidence of mild adjustment disorders particularly when the child was confronted with the normal stressors of school and social life.

The factors that determined case outcome were the following: education and training of the judge (or willingness to become educated) with regard to child sexual abuse issues; posture and disposition of the guardian ad litem on issues associated with representing an allegedly abused child; accuracy and sophistication of validation methods employed by the child protective service caseworkers; validity and reliability of research methods used by court-appointed experts when their opinions were heavily weighed in determining accuracy of abuse

allegations; and the competency of trial attorneys in adducing evidence, advancing a legal theory, and making persuasive arguments to the court for the protection of the child from further acts of sexual abuse.

CASE EXAMPLES

The following cases were selected for their demographic uniformity: all cases shared the same socio-economic status, absent any distinguishing social characteristics, such as political influence, access to the media, a history of substance abuse, mental illness, or a criminal record.

Negative Case Outcomes

Case One: Kentucky

A Lexington, Kentucky nurse, studying for her Ph.D. in clinical psychology, lost custody of her then nine-year-old daughter to an allegedly sexually abusive former spouse in August, 1994 when a biased judge, supported by a guardian ad litem hostile to the mother, deemed the mother "unfit," solely based on her purported vindictiveness toward her ex-spouse by alleging he abused their daughter. During a Christmas week visit with the mother, following the transfer of custody to the allegedly offending parent, the child threatened suicide if she were to be returned to her father at the end of this week-long visit with her mother.

The mother immediately consulted with several mental health experts as well as her own counsel. The professionals unanimously urged the mother not to send the child back to the father under these circumstances. The mother's counsel set an emergency hearing date before the local family court judge. The guardian ad litem raised objections on the record to the admission of evidence of the child's suicidal state, contending the mother presumably cajoled the witnesses into taking a stand disfavoring return of the child to the father.

The court, rather than consider the issue of the child's troubled psychological state, ruled to hold the mother in contempt of court without affording her a hearing on the child's mental state. The judge then proceeded to issue a six-month suspended jail sentence for failure

to return the child to the father. Notwithstanding her grave concerns over the child's apparent suicidal disposition, he ordered the mother to return the child to the father, and suspended her visitation privileges with her child indefinitely.

The mother, although cut off from seeing her child as a result of the court's termination of her visitation, still maintained contact with school teachers and several parents of her daughter's friends. When these third parties made reports to the child protective services about the child's deteriorating condition–manifested by her recurrent suicidal ideation and several instances of self-inflicted injuries to her arms and legs–they were referred to the child's guardian ad litem. No investigation of these complaints were made by the ad litem.

The mother, herself, continuously petitioned the court to permit counseling for her daughter. The guardian ad litem strenuously objected to the child's receipt of mental health counseling. The judge, following the guardian ad litem's recommendation that the child not receive counseling, not only denied the mother's multiple requests, but he repeatedly threatened to enforce the suspended six-month jail sentence if she were to continue to ask for relief. In chambers, during an off the record legal conference, the judge, in response to the mother's counsel's request that the child receive psychotherapeutic intervention, called the mother "recalcitrant." Outside the courtroom, while the former husband openly railed against the mother ("there goes that bitch") right in the presence of the child, the guardian ad litem was unmoved.

Discussion

This first example of a negative case outcome demonstrates how an incompetent or biased guardian ad litem contributed to a young girl's chronic mental deterioration. Since the passage of the federal Child Abuse Prevention and Treatment Act of 1974, amended in 1976 (42 U.S.C. §§ 5101 et seq.), the states are required to provide representation to children involved in family court proceedings where allegations of abuse or neglect arise. The guardian ad litem may be an attorney or a court-appointed special advocate. The role of the guardian ad litem is to obtain a "first hand" clear understanding of "the situation" and the needs of the child, and to offer recommendations to the court concerning "the best interests of the child" (Hatchett, 1998).

However, the lack of established standards for guardians ad litem in our nation's family courts leaves abused children vulnerable to the vagaries of their court-appointed counsel. Research conducted by the National Center on Women and Family Law concluded that "generally there are no standards, no requirement of neutrality, and no guarantee that it is the child's best interests that are being represented" (Pennington & Woods, 1990, p. 16) (emphasis supplied). An examination of the appointment process of guardians ad litem and their relationship with the court at least partly explains their actions that can be counterproductive to guarding the best interests of the child. The general complaints can be broken down into two categories. First, the appointment process is often based upon a personal relationship between the court and the ad litem that is independent of the ad litem's professional qualifications. Second, because the ad litem may be more concerned with preserving his or her personal relationship with the court, the child/client may receive inadequate representation. "It is not unusual for the ad litem to even take a position contrary to the best interests of the child" (Neustein, Burton, & Quirk, 1993, p.19). Considering the current weaknesses in our nation's guardian ad litem practices, it should come as no surprise when guardian ad litem services are poorly rated (Hatchett, 1998).

Case Two: Nebraska

A Grand Island, Nebraska bank teller, in training for a managerial position, lost custody of her then four-year-old son in 1990 after she made a sexual abuse complaint against the child's father with the Adams County Child Protective Services. In contrast to the prior illustration, this mother first lost custody of her child to the state foster care system, where the child was kept for over three months, and then lost custody to her former husband upon the child's transfer out of foster care.

The child protective services justified its actions of removing the child from the protective parent by charging her with "emotional neglect," solely premised on her purportedly "misguided" focus on the sexual abuse of her child. The state's case against the mother was noticeably devoid of charges of deprivation of food, clothing, shelter, education, and medical care, the grounds cited in the Nebraska child welfare codes for deeming a parent neglectful in the first place.

The mother's report of sexual abuse to the child protective services was based on the child's report to his mother of acts of molestation (e.g., fondling of genitals) committed by the father. In the absence of medical evidence to corroborate the child's accounts, the mother became an easy target to be charged with neglect by the state, notwithstanding the fact that even a purportedly "false" or "unsubstantiated" charge of abuse does not constitute neglect as defined by statutory guidelines and case law precedent.

The school authorities reported to the Adams County Child Protective Services that the boy was found to be perpetrating serious sexual offenses upon his fellow classmates at the time he was living with his father. The state removed the boy from the father's custody, placed him back into foster care, and then transferred him to an in-patient psychiatric facility where he stayed for over six weeks. The boy was returned to his father's custody upon discharge from the hospital. Additional episodes of sexually aggressive behavior occurred at school necessitating child protective service intervention resulting in three in-patient psychiatric confinements. During this time, the state never sought to consider placement of the child back into the mother's custody because she was found by the court to have "neglected" her son by making a purportedly false report of sexual abuse.

For five years, the child continued to be transferred between his father's custody and foster care until, with continued reports of sexual abuse made by the child, he was placed in foster care indefinitely. Then in 1998, at age 12, the child was suddenly returned to his mother by default: the state relinquished the child to the mother's custody, stating that the father had divorced himself from all interest in the boy. The mother reported that the child continually exhibited highly disruptive behavior–aggressive outbursts, pyromania, head banging, and contumacy, necessitating full-time supervision.

During the lengthy litigation the mother was ridiculed by the caseworker for demonstrating presumably "obsessive-compulsive" behavior. For example, her pleas for protection of her child in the form of successive letters to child protection services were misconstrued as indicia of a "disturbed" woman obsessed with her child. The judge, himself, seized on the psychiatric label ascribed to the mother as a "paranoid-delusional" and referred to her in his chambers as the "paranoid" rather than by name. This case demonstrates how the child protective service worker is another critical component of the judicial

system, besides the guardian ad litem, that can adversely affect the welfare of the sexually abused child.

Discussion

Child Protective Services around the country increasingly issue neglect petitions against protective parents who fail to corroborate their charges with medical findings. Even in some cases when there is medical evidence and it is the physician, and not the parent, who files a report of abuse with the child protective services, the parent is charged with neglect and loses custody of the child to the foster care system (Neustein et al., 1993). While published reports on the occurrence of medical evidence in child sexual abuse cases show that in approximately 85% of these cases there is no physical evidence (De Jong & Rose, 1989; Kerns, 1981), the protective parent is, nevertheless, penalized for making claims of sexual abuse uncorroborated by medical findings.

A partial explanation for why child protective services agencies charge the protective parent with neglect when an allegation of sexual abuse is made is that child protective service workers have been found to be more skeptical of children's claims of sexual abuse than is warranted by the research on the actual rate of false reports (Everson & Boat, 1989). The state's attempt to justify their removal of the boy to foster care was demonstrated by their presentation of testimony claiming the mother was "obsessed" with issues of sexual abuse characteristic of persons with paranoid disorders. Ironically, somewhat later in the testimony this same expert witness conceded that the child's sexually aggressive behavior toward other children raised serious questions about his exposure to sexuality. This paradoxical reasoning, wherein the state child welfare agencies acknowledged a child to be displaying sexually aggressive behavior, or other classical symptoms suggestive of having been exposed to sexual abuse, but yet maintained that the mother suffered from "paranoia" about sexual abuse related issues, was found in numerous cases nationally (Neustein et al., 1993).

One of the policy-oriented questions posed by this sort of case pivots on the use of publicly funded foster care. When weighing the concern for the child's emotional well-being, often compromised by a sudden removal to a foster home, against the merits of utilizing foster care as a neutral setting for validating sexual abuse, Family Court Judge Michael K. Ward in Harrison County, Mississippi, came to the conclusion that no longer

than 72 hours is appropriate for keeping a child away from the protective parent when attempting to verify abuse claims (Ward, 1992). Longer stays in foster care, as in the case above, raise important issues of whether foster placement is being used to penalize the protective parent, assist the allegedly abusive parent in seeking custody, and to cover up abuse by keeping the protective parent away from the child in a controlled setting.

Moderate Case Outcome

Case Three: Nevada

A Reno, Nevada nurse lost sole custody of her two young sons, then ages two and four, in June 1993 after refusing to allow visitation with the father, whom she was convinced had sexually abused them on a recent visit. The mother appealed to the state child protective services for help and found herself confronted with the same rash actions present in the illustrations of negative case outcomes (i.e., an abrupt removal of her children to foster care and a charge of neglect leveled against her). However, although the case resembled negative case outcomes from the way it started out, it turned out to have a somewhat better outcome.

Following placement of the children in foster care for over three months, the court awarded joint custody to the protective parent and the allegedly abusive parent: the children spent two weeks out of the month with their mother, and the other two with their father. The children complained to their mother of recurrent abuse suffered while under their father's care. The mother's counsel was told by the judge in an off the record legal conference that if any additional abuse reports would be made by the mother, she'd be completely stripped of all custodial rights to her children. In fact, at the request of the guardian ad litem, the mother was forced to sign a stipulation, stating the abuse issue had been permanently resolved, as the precondition for gaining partial custody of her children.

Whereas this custodial arrangement is far from acceptable, the two weeks each month that the children resided with their mother served to neutralize, to some extent, the trauma of the abuse. When the children returned from their father they manifested sleep disturbances, enuresis, and mild depression. These symptoms subsided after a few days in the mother's care. The court, however, did not permit counseling for the children in spite of the mother's numerous petitions for psycho-

therapeutic intervention. The children's guardian ad litem opposed each of the mother's petitions for counseling, claiming the abuse issue had already been resolved. Sadly, the mother was forced to abandon her efforts to secure mental health counseling for her children because she was told by the court that such efforts contravened the terms of the stipulation. If the stipulation were to be violated, the mother would have lost those two weeks out of each month to care for her children.

Case Four: Arkansas

A Little Rock, Arkansas librarian lost custody in May, 1990 of her then seven-year-old daughter to foster care and subsequently to the father when she petitioned the court to suspend the father's visits following the childs disclosure of being molested by him. The child's claims were corroborated on the court record by the mother's witness, a well recognized authority in the state. The father's own experts were, nevertheless, effective in persuading the judge that the mother suffered from "paranoid delusions" regarding the abuse.

The mother's motions to the court for restoration of custody were all denied. At times, the court even claimed they had no available hearing dates to consider her motions. The father often frustrated the mother's attempts to visit her child, yet he was not held in contempt nor was he compelled to obey the terms of the visitation order. The protective mother was forced to endure persecution during the judicial process: she was decried by the child protective service worker as "fat" and similarly accused of being "undisciplined" because of her weight gain during the court proceedings.

When the father had a job transfer to another state, the venue of the case changed to the new locality where the father resided. In July, 1995 the new judge, apparently not operating under any biases regarding molestation issues, heard testimony from the child, then twelve years of age and legally entitled to express a visitation/custody preference. As a result of the child making strong statements to the judge asserting her desire to live with her mother, the court modified the custody order and restored the legal and physical custody to the mother. The father agreed to forfeit his visitation rights, displaying a severely diminished interest in the child. Although the child is now living with the mother, and has no contact with the allegedly abusive father, the case was classified as a moderate case outcome, rather than a positive case outcome, because the sexual abuse trauma suffered by the child forced to live with her allegedly abusive

father during her formative years of development caused her to exhibit many classical symptoms of The Child Sexual Abuse Accommodation Syndrome, including helplessness, low self-esteem, depression, and self-blame (Summit, 1983).

Positive Case Outcome

Case Five: Wisconsin

A Green Bay, Wisconsin businesswoman, with modest means, lost temporary custody of her two young sons, then ages three and five, in March, 1992 to their allegedly sexually abusive father. The custody transfer was made following an emergency show cause order brought by the father alleging the mother brainwashed the children against him by making a report to the state social services about sexual abuse. The judge assigned a guardian ad litem and set the case on the calendar for a trial to begin a few months later.

The guardian ad litem was so unreservedly hostile to the mother than she sneered at her in court. Outside the courtroom she engaged in jocular and garrulous exchanges with the allegedly abusive father within obvious earshot of the mother. The ad litem's position was to make the temporary custody award to the father a permanent one, while giving the mother severely limited visitation privileges. The guardian ad litem acted as de facto counsel for the father by putting on witnesses favorable to the father and diligently cross-examining the mother's own witnesses. The father's attorney was virtually mute during the proceedings. The protective mother was not only hindered by this conspicuously hostile guardian ad litem, but by the Child Protective Services caseworker as well who testified the mother should not get custody, claiming she was "neglectful" because her children were "programmed" to believe they were sexually abused.

On the face of it, it appeared this case would produce the same adverse results as the negative case outcomes discussed above. The outcome was indeed positive for the sole reason that the judge, who initially awarded temporary custody to the father, was able to be educated about child sexual abuse issues. The protective mother hired a seasoned trial attorney and a team of competent expert witnesses although her financial situation was not any better than the other cases discussed above. The credibility of the Child Protective Service's caseworker and the other witnesses favoring the father were effectively impeached. As a result, the mother was

awarded sole custody; the father was allowed supervised visitation. The protective mother was placed in charge of choosing the supervisor. The children displayed minimal signs of emotional and behavioral disturbance, which included short-term concentration problems in school.

Case Six: Indiana

A Bloomington, Indiana medical secretary, studying for her physician's associate degree, lost custody of her then seven-year-old daughter in November, 1994 to the parents of her allegedly sexually abusive former husband. Before the specified date for her to surrender custody of her child, she left the state and went to California with her daughter. There, she effectively secured the assistance of the local Child Protective Services who took legal custody of her daughter. Such action spared this mother from having to turn the child over to her former spouse's parents in Indiana. While the child remained in the temporary custody of the California social services, the mother launched a successful media expose of the Indiana child welfare and family court system for failing to protect her child.

Several months later, the Indiana courts, having suffered the embarrassment of this media blitz, offered to restore custody to the mother if she would return with her child to her home state. The mother secured a proactive attorney in Indiana who obtained a written order from the court, stating the custodial arrangements, before allowing the mother to return home. In February, 1995, the mother was awarded sole custody of her daughter; the father subsequently voluntarily terminated his parental rights. The child shows no signs of maladjustment to date.

CONCLUSIONS AND RECOMMENDATIONS

Identification of the specific patterns of judicial responses to protective parents' complaints of child sexual abuse cases is the first step toward an effective overhaul of a system, found in a number of cases to be unresponsive to the needs of sexually abused children. This current study examined the interplay of judges, guardian ad litems, caseworkers and forensic experts in cases where sexual abuse claims were raised during child custody proceedings. The purview of this study was civil, not criminal. A future study that examines the response of the criminal justice system to parents' charges of abuse can be useful.

Recommendations for achieving a positive case outcome are predicated on a multifaceted strategy including competent legal representation, credible expert witnesses, and, when necessary, cultivating favorable media coverage while enlisting local politicians and court-watchers to monitor the case. The key factor is getting good legal counsel early in the case in order to help prevent ill-fated decisions and to establish a strong court record that can hold up on appeal if appellate remedies should become a necessary recourse.

There are, however, protective parent cases that appear immutable and intractable. Competent counsel, credible witnesses, and substantial evidence of molestation may not persuade a court to protect the child from the abuser. While many parents under these circumstances have opted to "run" with their children, living a tenuous and dubious existence as a fugitive, this is neither a permanent nor salutary solution. Many protective parents on the run do not last more than a few months to a year, at most, until they are caught by federal law enforcement agents. Their court situation is likely in most cases to worsen after they flee and are caught. They face federal kidnapping charges and contempt of court in addition to a custody battle. This ominous picture confronting protective parents presents an exigent situation necessitating well-organized lobbying efforts by mental health professionals, researchers and attorneys.

Whereas judicial discretion is not subject to regulation by the legislature, the actions of state social service agencies in protective parent cases are subject to legislative mandate. Their actions in helping to transfer custody to the allegedly abusive parent, by first removing the child from the mother for placement in foster care, as demonstrated in this study, can be curtailed by legislation and policy changes. For example, passage of a federal statute granting immunity to a protective parent from being charged with "neglect" by the child protective services (and subsequently penalized with the removal of the child to foster care) when making an abuse allegation against a spouse or former spouse, gives the parent the freedom to seek redress without risking the loss of custody. The conduct of guardians ad litem, likewise, can be regulated via federal statutes that specifically prohibit their acting as de facto counsel for the abusive parent by refusing to allow government funds to pay for biased expert witnesses chosen by the ad litem for the sole purpose of discrediting the protective parent (Neustein, 1995).

Policy recommendations on the proper methods of interviewing sexually abused children caught in custody battles can be made by the Department of Health and Human Services to be implemented by the local Child Protective Services throughout the country.

Similarly, the education of judges on how to question sexually abused children both in chambers and in the courtroom, how to recognize signs and symptoms of abuse in a child's behavior and mannerisms, and how to identify elements of backlash against protective parents in the testimony of expert witnesses, is sine qua non for the creation of a family court system responsive to the needs of abused children. A prototypal model of judicial education sponsored by The National Judicial Education Program, in collaboration with the American Bar Association Center on Children and the Law, can be implemented nationally to establish the proper protocol for assessing child abuse claims in contested custody litigation (Hecht Schafran, 1997).

The purpose of making recommendations for legislative redress, policy changes, and judicial training in this commentary on judicial responses to protective parents' complaints of abuse is to begin the process of exploring solutions to a problem well discussed in the professional literature for nearly two decades.

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