

Testimony to the New York State Senate
Standing Committees on Judiciary and on Children and Families
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My name is Bandy Lee. I am a forensic psychiatrist and violence expert who taught at Yale School of Medicine and Yale Law School for seventeen years before transferring to Columbia University and Harvard Medical School. I am cofounder of the Violence Prevention Institute and president of the World Mental Health Coalition. I have served as an expert consultant for several states including New York, Connecticut, Massachusetts, Alabama, and California, and for several countries including Ireland and France, on prison reform and violence prevention programming. I helped author the United Nations Secretary-General's chapter on "Violence against Children" in 2007 and have led a project group for the World Health Organization's Violence Prevention Alliance since 2011. I am a recipient of the National Institute of Mental Health's National Research Service Award and author of the textbook, *Violence* (Lee, 2019), over 100 scientific articles and chapters, and over 300 opinion articles on issues related to violence prevention. My clinical practice specializes in treating violent offenders, and I have served as an expert witness for criminal and civil courts in approximately seventy cases and for family court in approximately two dozen cases.

As wars are being waged in Europe and in the Middle East, it is important to note that wars are waged in households every day. We know, at least, that the trauma and the mental health effects are equally severe. For many women and children, the home is the most dangerous and deadliest place to be. That family courts are failing to recognize domestic abuse, but routinely sending children to their abusers and severing contact with their primary caregivers, is currently one of the greatest human rights emergencies on U.S. soil—especially since this has lifelong and intergenerational repercussions.

Yale Law School's Robert Cover said: "Interpretations in law ... constitute justifications for violence" (Cover, 1986). Nowhere is this truer than in family courts, and nowhere is the application more deadly, arbitrary, and unnecessary.

Family court judges are granted wide "discretion" with the law, initially with good intentions, but the lack of oversight and the power to conduct all proceedings in secrecy have—much like the prison system I have studied—led to disastrous results. That a world of brutality and violence flourishes not only in prisons behind concrete walls, but also in courts of law behind sealed records and gag orders, is disturbing beyond anything I have witnessed in my 25 years of forensic practice—especially since innocent children are primary victims.

The statistics are stark. Three-quarters of women in the United States who are killed by their abusers are murdered after they leave the abusive relationship. Of the approximately 100,000 contested child custody cases each year in the United States, a vast majority are actually domestic violence cases involving the most dangerous individuals our society produces. Abusive fathers are more than twice as likely to seek sole custody of their children than non-abusive fathers, and family courts award them joint or sole custody almost three-fourths of the time (Resource Center on Domestic Violence: Child Protection and Custody, 2023). Many fathers who are thus granted

custody kill their children, such that a sizeable portion of the nation's child murders by parent are the result of placement by family courts.

The Center for Judicial Excellence (2023) has tracked over 940 children murdered by a divorcing or separating parent over a fifteen-year period in the United States. A detailed study of 175 child murders by fathers in relation to contested custody showed that family courts had in many cases given the access they needed to murder their children, over the objections of the mother (Bartlow, 2017). For every murder, there are many more suicides, and for every death, there are hundreds of injuries that require medical attention. Yet, these numbers are an undercount, as near-universal record concealment, sometimes against the litigants themselves, makes it virtually impossible to track the true number of child murders family courts enable.

Deaths are only the extreme end, since the “soul murder” that children endure with the experience of abuse is unseen from the outside. More than 58,000 children a year are ordered into unsupervised custody by their physical or sexual abuser following divorce in the United States (Silberg, 2008). These children are maximally exposed to lifelong psychological and physical illness, substance abuse, relationship problems, vulnerability to future abuse, as well as decades of loss of life, according to the highly-respected, federally-funded nationwide Adverse Childhood Experiences (ACE) study (Felitti et al., 2002).

Not only that, in a disproportionate number of family court cases, the “protective parent” loses custody for simply bringing up the abuse, thus stripping the children not only of their primary attachment figure and primary support, but the number one mitigating factor that could help them heal from the abuse. The result is that there is no greater tragedy for growing children, no greater loss for loving parents, and no greater danger to societal safety—as we are breeding the next generation of perpetrators.

Family courts' denial of abuse allegations is highly consequential, since child abuse and neglect are extremely common. According to the Centers for Disease Control and Prevention (CDC), one in five Americans were sexually molested as a child, one in four were beaten by a parent to the point of leaving a mark on the body, and one out of eight witnessed their mother being beaten. Five children die per day from abuse in the United States, and four will have involved a parent. Almost one in three abused and neglected children will later abuse their own children, continuing this terrible cycle of abuse—and family courts may be a contributor to worsening trends (Friedman, 2019).

Child abuse not only affects the current levels of violence in society but has measurable impacts on the levels of heart disease, cancer, obesity, high blood pressure, mental illness, substance abuse, crimes, suicides, and life expectancy (Petruccelli et al., 2019). The economic cost of child abuse and neglect in the United States was estimated at 592 billion dollars in 2018 (Klika et al., 2020).

In spite of all this, a U.S. Department of Justice-commissioned study found that “domestic violence is frequently ... ignored as a significant factor in determinations of custody and visitation” (Saunders et al., 2011). Indeed, pervasive family courts practices of knowingly granting the abusive parent primary custody or unprotected parenting time have tragically not only gone undetected—but have become increasingly extreme in unchecked abuses. Furthermore, biases

against women, children, and allegations of abuse endemic in family courts help dangerous individuals, especially men, to weaponize the courts as instruments to further their abuse. Family courts have essentially crafted a subculture that sharply deviates from the mainstream, quickly turning child custody disputes into a surreal, upside-down situation where abuse does not exist, violence against children is “good”, and attempts to protect them is a sign of “mental illness.”

Tactical theories designed to defeat mothers and children reporting abuse, such as “parental alienation,” thrive nowhere else but in family courts. This hypothesis, originally based not on research but on the personal biases of Richard Gardner, has been debunked scientifically and denounced by reputable medical, psychiatric, and psychological associations—as well as the World Health Organization and, most recently, the United Nations (2023). Yet, this “pseudo-concept” continues to dominate as a strategy abusers use to manipulate family courts and is being exported internationally at alarming rates. It enables the abuser to portray that child sexual, physical, and psychological abuse is made up and the children rejecting him are “coached” by the primary caregiver to “alienate” him, rather than being a survival mechanism against his harmful actions.

According to a notable study by Dr. Joan Meier (2020) of 240 electronically published court opinions, when courts believe a father’s claim of alienation, fathers win about 95 percent of the cases regardless of whether or not the mother claimed abuse. If there were domestic violence reports, they won almost three-fourths of cases, and were especially successful with child sexual abuse reports (four-fifths). Indeed, the study found that courts disbelieved 94 percent of the child sexual abuse reports when, in fact, studies have repeatedly established that not only is deliberate false reporting rare—as little as 0.1 percent (U.S. Department of Health and Human Services, 2010)—but that child abuse is greatly underreported. False allegations of “parental alienation,” on the other hand, are almost exclusively on the part of the abuser.

As a result, whether through ignorance or willful blindness, bad decisions have become the norm in family courts. A major National Institute of Justice-sponsored family court outcomes study came to the astonishing conclusion that if all family court custody decisions were reversed, they would be more correct (George Washington University, 2018). A cottage industry of lawyers and poorly-qualified “experts”, backed by abuser groups (which call themselves men’s rights or father’s rights groups) has developed because in domestic violence cases, the abusers usually control the money, and it is more lucrative to help the abusers. The most dangerous abusers use children as pawns to torment protective parents or to gain child support, seize marital assets, and even incarcerate protective parents, with shockingly high rates of success.

Deferring to family courts as ultimate arbiters, law enforcement, schools, hospitals, and child protective agencies regularly abbreviate or omit their own investigations, such that the usual protective measures are disabled (Dreyfus, 2023). Yet, unlike criminal courts, family courts seldom adhere to the law, let alone follow due process, with few consequences (Summers, 2023). The greatest casualties are the children, who suffer immeasurably and not only lose the opportunity ever to reach their full potential but in large part become the next generation of angry murderers and rapists, not to mention destroyers of their own lives.

What is the solution? Leaving family court reform to court officials has been unproductive, since insurmountable financial incentives at 60 billion dollars per year—greater than the revenue of all the other courts combined—have hampered progress. Instead, there needs to be significant judicial oversight at nationwide scale, and New York State has the opportunity to become a model. It may occur in the form of transparency, accountability, journalistic reporting, and expert whistleblowing of actual courtroom experience. Absolute immunity must not be allowed where there is corruption, fraud, and felony-level crimes such as kidnapping and complicity in murder. Judges and their court-appointed personnel must be indictable like everyone else when they cause the deaths of children and the mothers (or fathers) who try to protect them, which has been allowed to occur at alarming rates (Goldstein, 2013; Thomas, 2023). A system of impunity, abuse of power, and self-imposed secrecy needs to be eliminated, while a commission or an interdisciplinary working group may be established to make specific legislative recommendations for checks and balances. The United States still has a robust judicial system that rivals any in the world; family courts should not become the crack that crumbles the edifice.

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