

Failure to Protect: The Crisis in America's Family Courts

by Cara Tabachnick

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When a mother's bitter custody battle ends with the death of her child, something has gone terribly wrong with the system.

Wyatt Garcia was born in April 2009. Nine months later, he was shot and killed by his father, who then turned the gun on himself.

It might have turned out differently—if a family court judge had listened to Wyatt's mother.

Stephen Garcia, 25, a Pinon Hills, California contractor, had been allowed unsupervised visits with his son only a few days earlier by San Bernardino County Superior Judge Robert Lemkau, who was adjudicating a bitter custody battle between Garcia and the boy's mother, Katie Tagle. The judge had refused to take seriously her repeated warnings of her ex-boyfriend's violent and abusive behavior.

Shortly after Wyatt was born, she left Garcia after he hit her so hard during an argument about his video-game addiction that "he knocked me out" Tagle said. After she moved home to her parents, her ex-boyfriend began harassing her and her family when he learned she was dating again, and he filed a motion for custody of little Wyatt. In turn she filed three motions for an order of protection against Garcia, which were ignored: in the last motion she charged that he had threatened to kill her and their baby.

Judge Lemkau, however, chose to believe her former boyfriend's denials rather than the evidence she supplied of Garcia's threats—including e-mails, text messages and voice messages. Although no extenuating circumstances were raised in [court transcripts](#) of the

case, the judge simply accused Tagle of lying, and ordered that she turn Wyatt over to his father—with fatal results.



Katie and her sons Wyatt and Dakota

Tagle, 23, believes the odds against her and Wyatt were stacked the moment her case entered the emotional, chaotic world of the family court system.

“I was treated like a criminal, like a complaining woman,” she says.

The story of baby Wyatt Garcia is, sadly, not unusual.

In the nine months between June 2009 and April 2010, 75 children have been killed by fathers involved in volatile custody battles with their former partners, according to the [Center for Judicial Excellence](#), a court advocacy organization which has been tracking news articles of such deaths around the U.S. Based in San Rafael, California, the Center focuses on strengthening court integrity as well as improving public accountability of the judiciary.

Some recent examples from the dockets of Family Courts around the country:

- Teigan Peters Brown (3 years old), shot to death by his father during a court-ordered visit. (Arizona June 2009)
- Bekm Bacon (8 months), killed by father, who then killed himself during overnight visitation. (Idaho Feb 2010)
- Janyah Nicole Hale (1 year), father is charged with her death during an overnight visitation. He is a registered sex offender. (Alabama July 2009)

How did a system set up to protect families and children allow this to happen?

An investigation by *The Crime Report* shows such tragedies are the consequences of family court procedures that allow abusive spouses to manipulate the system and leave at-risk children at the mercy of prolonged, expensive court battles over custody. These

battles end all too often with a parent forced to share unsupervised custody with an abusive spouse.

The problems have been complicated by systemic flaws in the nation's family courts that have gone unaddressed far too long.

A Broken System

Lawyers, judges, psychologists and representatives of women's groups interviewed by *The Crime Report* describe a broken family court system that is already burdened with a heavy caseload and too few judges—many of whom are forced to rotate between cases—and in which serious criminal allegations of domestic or sexual abuse are routinely ignored. The crushing financial costs of pursuing long custody battles is an additional burden on indigent mothers, who get little or no legal support. The odds are particularly stacked against children at risk when the court battle revolves over “he said, she said” arguments.

The system has particularly failed parents—usually mothers—whose efforts to protect their children collide with an approach to custody issues that is based on narrow legal concepts of balance and fair treatment rather than psychological or medical evidence. “Courts assume mothers are orchestrating misinformation, instead of trying to protect their children,” said Kathleen Russell, director of the Center for Judicial Excellence.

The idea of family courts or dockets began with the best of intentions. Established in the early nineteenth century, they were designed to protect the equitable rights of both parents and children and protect the family. Too often, however, that creates a built-in conflict. Judges, as in the case of Katie Tagle, adopt a skeptical attitude towards abuse charges, which most often come from the mother, on the grounds that it is hard to distinguish fact from fiction in arguments between quarreling parents.

“The problem is that family court is not set up to protect children,” says [Joyanna Silberg, PhD](#), Executive Vice President of the Leadership Council. “It is set up with the intent of equitable division for families. And this presents an overwhelming paradigm: how can you equitably divide a child?”

And while the deaths of children are the public face of family court tragedies, the daily reality is that thousands of parents are trapped in prolonged court battles where they either lose their children to their alleged abuser, or are forced to share unsupervised custody.

Advocacy groups interviewed for this story reported receiving between 450 and 1,000 requests for help in contested custody battles this year. The National [Network to End Domestic Violence](#), a prominent national not-for-profit, says it is the biggest problem they are now facing. And the [Leadership Council on Child Abuse & Interpersonal Violence](#), an independent scientific organization, estimates that each year more than 58,000 children are ordered by family courts into unsupervised contact with physically or sexually abusive parents following divorce in the United States

Experts say abusers use the court system to exercise control over their former partner's lives, manipulating the players and risking the safety and well being of the children's lives the courts are sworn to protect.

"Family courts are trained to look for cooperative behavior," says Rob (Roberta) Valente, general counsel for the [National Network to End Domestic Violence](#), which is based in Washington D.C. "When someone raises an abuse allegation, the court sees it as uncooperative behavior. The result, advocates say, is that the abuser is able to manipulate the court, while a child's safety and well-being is placed at risk. Many judges are likely to view abuse complaints as a tactic to win custody battles. What the courts have failed to take into account but research has clearly shown time and time again, is that most of the cases that make it to trial in family court are high-risk abuse cases.

Compounding the problem is that judges, attorneys and custody evaluators have little or no training in detecting signs of abuse.

Just 20 per cent of the almost one million divorces and separations registered every year in the U.S. actually land in court. Most are settled in the pre-trial phase, according to [Prof. Janet Johnston](#) of San Jose State University, in research studies written for the journal, *The Family Court Review*.

But of the few who make it to a judge, over 75 percent of these cases are victims of some form of domestic or sexual abuse, according to a 1995 [paper](#) by Prof. Peter Jaffe of the University of Western Ontario, who studies children and violence in U.S. and Canadian court systems.

He Said, She said

Today's family courts have also been affected by the rise of the Fathers Rights movement. During the 1950s, family courts almost exclusively awarded custody to mothers. But complaints by fathers that their rights were ignored in custody battles led to a shift in the 1970s to awarding shared custody, on the grounds that it was in the best interest of the child to maintain a relationship with both parents.

Nevertheless, only a small percentage of high-conflict cases require judges to act as conciliators between parties locked in otherwise endless litigation. The majority involve mothers and children that are suffering from serious sexual or domestic abuse.

The [National Father Resource Center](#) disputes this, claiming that its member organizations report that 80 percent of mothers' abuse allegations are false. Although Canadian [research](#) from the University of Toronto studying false allegations in U.S. and Canadian custody cases has found that between one and two percent of mothers make false allegations, the fathers' rights argument has had a powerful impact. As shown by the Tagle case, courts don't want to hear the mothers' allegations.

"Historically, allegations of abuse and incest are [met] with a great deal of suspicion, and there is a tremendous resistance to hearing these types of allegations," said Eileen King,

director of [Justice for Children](#), a national non-profit that works to protect children involved in contested custody cases.



Deborah Hicks tells her story

Such resistance has already cost Deborah Hicks, 46, a former New York City television editor, six years of pain. In 2003, she filed for sole custody of her son, then three years old, when he came home from a visit to his father with suspicious signs of sexual abuse. There was reason to be worried. Her ex-partner had already been convicted of molesting a two-year old boy in Florida for which he served eight years in prison, and he was a registered sex offender in New York City. Despite her ex-boyfriend's record, the judges who heard the case (there have been two), decided they had to give a fair hearing to his denials.

She has already spent almost \$100,000 on the case, with no end in sight. Nevertheless, she still shares custody with her ex, and says, "I am not about to give up on my child."

Even for those mothers who can afford it, the battle can take a psychological toll. Even when the evidence of risk to their children seems impossible to deny, the family court system that has proven incapable of treating these high-conflict cases with the serious attention and professionalism they require.

Moreover, courts are now often swayed by a concept called "parental alienation syndrome" (PAS), coined by the late psychiatrist and psychoanalyst Dr. Richard A. Gardner in the 1980s to describe situations in which one parent is trying to turn the children against the parent during a divorce process. Dr. Gardner, a former professor of child psychiatry at the College of Physicians and Surgeons at Columbia University, testified in more than 400 child custody cases about its effect on children.

PAS has been seized by the Fathers Rights movement as a way to defend husbands and other male partners from what they consider unjust accusations, and it has received support from other psychologists, who deny that it allows genuine child abuse to go unpunished. "If attorneys, child care evaluators, and judges were all doing their job,

protective mothers wouldn't have anything to fear," says psychologist Amy J. Baker, author of *Adult Children of Parental Alienation Syndrome: Breaking the Ties that Bind*.

The concept has made little documented headway in the professional and legal field, and the syndrome has been used very rarely in legal precedent. PAS is not included in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, although the association is currently weighing whether to include it in the 2013 issue of the manual.

It may be ironic that efforts to give fathers more rights in custody cases have increased the odds against victimized mothers and children.

"When the pendulum swung to shared custody somewhere in the midst of that (fathers) movement, the safety of children was compromised," argues Helga Luest, founder of [Witness Justice](#), a group that helps heal victims of violence.

A Complex Web



Amy Leichtenberg and her sons Duncan and Jack

Tears fill Amy Leichtenberg's voice as she recounts the horrible months before her two young boys, Duncan and Jack Connolly, ages 9 and 7, were killed by their father last March. "I felt like I did everything right, I sat there, I didn't speak out of turn," she said of her courtroom experience. After a 20-year abusive relationship with her ex-husband Michael Connolly, she finally gathered the strength to leave him. But he wouldn't let her go. . Each time she moved her address, he showed up at her house. She got numerous orders of protection; he violated them repeatedly.

Every six or seven weeks, the couple was back in court, following a motion filed by Connolly for one reason or another. Representing himself, he would badger Leichtenberg on the stand. Yet despite his behavior, the court allowed him unsupervised access to his young sons.

“The ball was dropped in so many places,” said Leichtenberg. “Court was just one of them.”

That points to another problem. Once a family enters the family court system, other forms of protection of women and children often fall by the wayside. Typically, law enforcement agencies are reluctant to investigate abuse charges if they learn that the parties are involved in a custody battle, said Karen Borders, a former police officer and victim of a contested abuse case, who now runs an forensic risk assessment company called [Borders McLaughlin](#). Orders of protection that are filed in criminal court often don't make its way over to the civil system. Child protective services (CPS), which investigate allegations of child abuse, usually close or suspend a case if the child is involved in a custody battle, she said.

In the 450 high-risk custody evaluations her company investigated over the past five years, almost 90 percent of the children were abused.

“One of the things you see very often is when there is a custody case pending, child protection services, prosecutors and law enforcement will not take the charges seriously or be willing to investigate because they think it is about custody instead of a crime,” says [Barry Goldstein](#), co-author of *Domestic Violence, Abuse and Child Custody: Legal Strategies and Policy Issues*.

Decision-making in these highly volatile cases are left to an army of custody evaluators, guardians *ad litem* (volunteer lawyers who are assigned by the court to represent the child), and other members of the court who may not have experience in domestic violence issues.

Custody evaluators can be assigned by the court or hired by one of the parties. The cost, which can run from \$5,000 to \$20,000, can be picked up by the parent who hired the evaluator, or it can be split by both parties. The custody system is beset by charges of cronyism—arising from evaluators' employee relationship with the court—and incompetence. Advocates charge that evaluators are often poorly trained on how to handle or detect an abuser.

There is scant research on decision-making by custody evaluators and how they effect their cases. “Many child custody evaluators are not comprehensive (and) their work is not buttressed by collateral evidence,” says psychologist Eugenia Patru, who has worked as a custody examiner in Louisiana and Michigan for the past 30 years.

According to Patru, the difficulty of custody cases increases when domestic violence is an issue. “Most (evaluators) are not educated enough and just in for the money,” she says.

In the saddest irony of all, attorneys have learned to caution their clients not to reveal abuse allegations in custody cases since research suggests that such allegations can work against mothers fighting for custody. A National Institute of Justice-funded study found that 35 percent of mothers who alleged abuse got primary custody, while mothers who said nothing got custody 42 percent of the time.

Moreover, when abuse allegations are raised, judges tend to suppress or not enter the abuse into evidence, making it harder to try these cases at the appellate level. “Family courts don’t adequately deal with abuse by refusing to hear the evidence,” charges Joan Meier, director of the [Domestic Violence Legal Empowerment and Appeals Project](#), which provides legal representation at the appellate level, trains trial lawyers and has represented the domestic violence advocacy community in Supreme Court briefs.

Meier, a professor at George Washington University Law School who has been appealing contested custody cases for the past decade, says such suppression of evidence makes it very hard to overturn bad case precedent on appeal. Additionally, cases tend to be an intense financial and time drain, with the average case running over \$100,000 in costs and lasting eight years.

Signs of a Shift?

“There are thousands of good decisions being made by judges each day who err on the side of safety,” says Judge Janice Rosa, who sits on New York Supreme Court in the 8th Judicial District and is chair of the Family Violence Department Advisory Committee for [National Council of Juvenile and Family Court Judges](#).

Judge Rosa points to New York’s practice of appointing a separate attorney for the children as a best practice in sorting out custody cases. Another breakthrough idea has been integrated domestic violence courts. There are approximately 40 such courts in New York State, which has become the trendsetter in this area. These courts, which have civil and criminal jurisdiction, could offer women and children a way to get the protection they need.

In 2002, the [Office of Violence Against Women](#) developed and implemented a four-year demonstration initiative to examine promising practices in the field of supervised visitation and safe exchanges called Safe Haven.

Grants were awarded to four demonstration sites: the Bay Area, California; the City of Chicago, Illinois; the City of Kent, Washington; and the State of Michigan for four years. [Praxis International](#), a nonprofit research and training organization that works toward the elimination of violence in the lives of women and children, and oversaw these projects still offers technical assistance and advice for visitation centers.

Praxis International also partnered with [The Battered Women’s Justice Project](#) starting a two-year research project to determine a best model and legislation for Family Courts.

But the resources are not in place now for children and mothers who need a way to safety now. One of the more promising projects The ABA Child Custody and Adoption Pro Bono Project ended in August, 2008.

“For the moment, abused mothers who are trying to protect their children through the overworked family court system have the cards stacked against them,” says Silberg of the Leadership Council.

“I did everything right, and my children are in a cemetery now right now,” said Leichtenberg, who founded “In Loving Memory” to lobby for changes in legislation relating to the response of family court and law enforcement to abuse cases. “I have a lot of ‘what could have, what should have’ every day. But with my last breath, I will make sure they did not die in vain.”

Cara Tabachnick is news editor of The Crime Report. Additional reporting by John Jay Center on Media, Crime and Justice researcher Daonese Johnson-Colon