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# The Experience of Abused Women With Their Children's Law Guardians

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In-depth unstructured interviews are conducted with previously abused divorced mothers about their experience with law guardians of their children. Interviews are transcribed and their content analyzed using ATLAS.ti software. Nine themes clustered in the following three groups emerge: perceived performance of law guardians; perceived shortcomings of the system, which provides a context for interaction with law guardians; and emotional effects on women. These themes are discussed and illustrated, and implications for practice are suggested.

**Keywords:** *abused women; law guardians; qualitative research*

Throw a law guardian in there, and you're gonna have all the more problems.

*D., a mother of three*

After years of abuse at the hands of her husband, Mrs. B. and her two children, ages 4 years and 1 week, were abandoned by him. When he returned 4 years later and instituted custody proceedings, neither the court-appointed law guardian nor anyone else in the legal system focused on the wishes of the children, much less on their "best interests." This was evidenced by the law guardian's failure to learn about the family. He spent little or no time with the mother and children, made no effort to speak with those who did know the family (such as teachers, family members, clergy, or their pediatrician), and did not initiate or facilitate an evaluation by social service or mental health professionals. As newcomers to the system, Mrs. B. and her social worker (one of the authors, E.R.), were quite surprised by the law guardian's performance. However, ensuing discussions with other professionals (chiefly, lawyers and social workers) and women in similar custody disputes indicated that although this behavior was unacceptable according to available guidelines for law guardians, such failure to follow guidelines was not at all unusual. This ignited our interest in exploring the complex world of law guardians and gave birth to the current study.

**Authors' Note:** The authors wish to thank the women of Voices of Women (VOW), without whose courage this study would not have been possible.

Both divorces (Kreider & Fields, 2002) and reports of domestic violence (Rennison & Welchans, 2000; Tjaden & Thoennes, 2000) have been frequent in recent decades. Currently, more than one million children are involved in divorce litigation each year, and 100,000 custody battles take place in American courtrooms (Turkat, 2000). More than a million violent offenses are committed annually by intimate partners, typically (85% to 95% depending on the definition and measurement method) involving male perpetrators with female and child victims (Erickson, 2000; Mitchell & Corbon, 2002; Rennison & Welchans, 2000; Tjaden & Thoennes, 2000).

One mechanism developed to ensure protection of children in the context of their parents' divorce is the appointment of law guardians.

Most jurisdictions by statute have now provided for either mandatory or discretionary appointment of some type of legal representative for children in custody cases, with guardians ad litem who may or may not be attorneys filling the shoes in the majority of those. (Ducote, 2002, p. 109)

In New York, the appointment of a law guardian in custody cases is discretionary. Nevertheless, there is a growing tendency to favor the appointment of a law guardian when there are minor children. In 1962, law guardianship was statutorily authorized, and in 1994, the New York Bar Association developed standards, which albeit not officially adopted, are widely used for purposes of informing practice and training of law guardians. In the majority of cases, a law guardian is appointed by the court, although options of an attorney who is paid by the parents or pro bono volunteers also exist (Erickson, 2000).

Law guardians have a dual role: providing protection for the best interests of the child and advocating for the child by presenting his or her wishes to the court (Fields, 1994). This duality may be challenging when there is a conflict between the child's wishes and her or his best interests according to the law guardian's judgment. Haralambie (1998) comments on this challenge: "During the past 30 years, children's advocates have debated whether the proper role of attorneys who represent children is to represent the child's expressed wishes or to act as a traditional guardian ad litem" (p. 42).

Stuckey (1996), a professor of law at the University of South Carolina and an expert on family law, states that

role definition issues [re law guardians] include uncertainty and inconsistency about the general responsibilities of guardians ad litem for children and about the specific tasks they are expected to perform. The universally acknowledged responsibility of guardian *ad litem* is "to represent the best interests" of children who are involved in litigation. Beyond this general charge, the responsibilities of guardians ad litem and the rules governing their relationships with their wards are not commonly stated with sufficient specificity in legislation or appointment orders. Even when these matters are made clear, courts and legislatures are inconsistent in defining society's expectations of

guardians ad litem for children. Guardians ad litem are frequently assigned conflicting responsibilities, for example, to determine and pursue the best interests of children, to be advocates for children, and to serve as investigators for courts. (p. 1786)

Brandes (2001), as well as reports of special committees and task forces appointed in some states (e.g., Wisconsin, Minnesota, Massachusetts, and Washington), also comment on the lack of clarity and suggest exploring issues related to the performance of law guardians (Sappenfield & Shannon, 2001).

In addition to the aforementioned problems, the law guardianship system lacks universal rules for various states or even counties within the state. For example, the system in New York City differs from that of Nassau County, which borders it. To further complicate matters, in some counties, both not-for-profit organizations such as the Legal Aid Society and a panel of private lawyers provide services, which may lead to a two-tier system with different services available. Consequently, varied policies and procedures leave both consumers and those trying to evaluate the system confused.

In an effort to resolve this issue, the New York Bar Association established an advisory committee (New York State Bar Association [NYSBA], 1999) to develop clear guidelines for law guardians. According to the working definition developed by this committee, the law guardian's main role is to represent the child's wishes unless the law guardian is convinced that the child lacks the capacity for knowing and judging her or his best interests or fails to recognize harmful consequences of her or his wishes.

To meet their obligations, law guardians are expected to perform the following activities:

1. Obtain and thoroughly examine and analyze all available and relevant court documents including "any prior cases involving the family." This means that in custody cases, when there is a history of domestic violence, all papers that address divorce or paternity issues should be reviewed (Erickson, 2000, p. 834).
2. Interview and observe the children to ensure that all the relevant information for making the best decision for their interest is clear. The standards for law guardians (NYSBA, 1999) specifically emphasize that the law guardian develop and maintain ongoing relationships with the children rather than speaking to them once or twice, to ensure that the court receives an authentic and full picture, free of pressure or harassment. This is not an easy chore, particularly for those children traumatized by living in an environment characterized by domestic violence. They may fail to trust anybody and are reluctant to share information or their feelings.
3. Conduct (or use a social worker to conduct) home visits to assess the appropriateness of the conditions in the child's current home and any potential living environment (NYSBA, 1999).
4. Interview relatives, teachers, child care personnel, and anybody else who has information about the child (NYSBA, 1999).
5. Provide children with information about the processes, their meaning, and their potential implications for the children's life (NYSBA, 1999).

Performing these tasks requires law guardians to make an assessment of a child's mental and emotional capacity despite a lack of relevant professional training in these areas (e.g., in psychiatry, psychology, or social work).

Law guardianship in the context of domestic violence presents special challenges (Erickson, 2000; Stuckey, 1996). The law guardian has the responsibility of determining if domestic violence took place, assessing its effects on children, getting parents' input (which may be based on parents' wishes rather than the child's needs), and recommending appropriate visitation arrangements and types of support needed to ameliorate the effects of the abuse on the child.

Because of these complexities, considering domestic violence in custody debates has been increasingly required, and the role of law guardians was expanded in 1996 (Spitzer, 2002). Forty-six states have adopted some regulatory scheme for addressing a history of domestic violence when custody is at issue. Ten states adopted the position that it is not in the best interests of the child to be in sole or joint custody of an abuser, and 34 states, including New York, mandate that domestic violence be taken into consideration in custody decisions (Levin & Mills, 2003). This reflects the recognition that children who witness abuse and live in violent homes, even when they are not directly abused, are at increased risk of impaired cognitive, emotional, and social development; trauma; fear; anxiety; sleep disturbances; depression; helplessness; guilt; and somatic symptoms (Erickson, 2000; Levin & Mills, 2003).

Furthermore, given the high correlation between spouse abuse and child abuse and the evidence that when a victim tries to leave or actually leaves, the abuser often transfers his abuse to the children, doubts have been raised regarding parental fitness of abusers. Awarding custody or unsupervised visitation to abusers may well endanger the welfare of children (e.g., Saunders, 1994). Therefore, it is important that in cases of domestic violence, an evaluator with expertise in this field be appointed to protect children.

In spite of its importance, there is a dearth of empirical research regarding the performance of law guardians and children's outcomes in custody cases in general and when domestic violence is involved in particular. There are, however, a few exceptions. The Wellesley History of Battered Mothers Project (Cuthbert et al., 2002) used a combined quantitative/qualitative approach to develop a comprehensive picture of the treatment of battered women in court from a human rights perspective. The researchers interviewed battered mothers individually, surveyed advocates, facilitated survivors' and advocates' focus groups, and interviewed judges, guardians ad litem, and other state actors. They found evidence of severe human rights violations in family court, including failure to protect women and children from abuse.

Specifically, they cited evidence of mishandling child sexual abuse allegations, failure to investigate complaints of abuse and to protect children by recommending unsupervised visitations or custody to abusers, regularly exercising biases against battered mothers, and preferring the version of the abusers with whom they sometimes

had social relationships. They also blamed mothers for alienating children from their fathers.

With the exception of the Wellesley study, which has been criticized and controversial, most of the available knowledge reflects the views of legal experts. A study by the National Council of Juvenile and Family Court Judges (Hofford, Bailey, Davis, & Hart, 1995) showed that "custody evaluators and guardians ad litem were the professionals least trained about domestic violence of any actor in the civil justice system" (p. 220). Law guardians tended to marginalize domestic violence as an issue in custody decisions, often not differentiating vindictive behavior in the context of a couple's discord from legitimate concerns by nonabusive parents regarding their own and their children's safety. However, courts tended to heavily depend on their recommendations, consequently contributing "to the detriment of battered women and children" (Hofford et al., 1995).

This study contrasts to a survey of 29 district court judges, 78 attorneys, 72 law guardians, and 6 case management officers in Maine (Beyea & Alessandro, 2003). Respondents in the Maine survey viewed significant benefits for appointment of law guardians for children in contested court proceedings and concluded that law guardians effectively represent the interests of children in family court, assist the court in making custody decisions, assist in resolving issues and settling conflicts, and expedite the legal process.

Ducote (2002), a nationally recognized expert in child advocacy in more than 28 states, documented serious systemic problems in the functioning of law guardians. These problems include lack of clear role definition and guidelines, insufficient selection criteria (the modest fee affects the process of self-selection of those who choose this field of practice), absence of appropriate preparation and training, and inadequate supervision, accountability, and oversight of role performance.

Consequently, there have been calls for better training, mentoring, and supervision of guardians (Gelinis, 2001) or abolition of their role in private custody cases (Ducote, 2002). Currently, a proposal for federal legislation (Protective Parent Reform Act 42, United States Code §5105a, developed by Ducote) is seeking to limit the role of law guardians to advocating for the wishes of the child, abolishing their role of assessing the best interests of the child, subjecting them to evidence rules, and requiring that only professionals with specialized training and experience in child abuse, child neglect, or domestic violence be appointed by courts to conduct evaluations of cases (R. Ducote, personal communication, January 10, 2004).

Consumers' perspectives on law guardians are rare. Anecdotal information suggests that the activities required of law guardians as described earlier are often neglected in cases that involve domestic violence (e.g., Erickson, 2000; E. Rosenberg, n.d.). The current study was designed to contribute to the slim body of knowledge by exploring the experience of women who have been abused and subsequently divorced and whose children had law guardians.

## Method

Conceptually, this study has been informed by the constructionist approach, which seeks to document lived experiences by participants in their own voices. Because this is a little researched field that involves sensitive issues and complex multidimensional social phenomena, a qualitative research method is indicated (e.g., Ruegger, 2001). Built on an inductive approach, this type of research allows discovery and gaining understanding of life events and their meaning through the eyes of those experiencing them (Berger, 2004; Padgett, 1998). Of the diverse range of purposes of qualitative research (for a detailed discussion of these purposes, see, e.g., Drisko, 1997), this study's focus is on providing a thick description of shared experiences.

To familiarize ourselves with diverse aspects of child guardianship, we conducted a critical review of the literature and interviewed lawyers with expertise in law guardianship, advocates, and law guardians. We learned about the topic, issues, and terminology pertaining to law guardians (Padgett, 1998). We attended conferences about law guardianship, interviewed relevant stakeholders, and organized a conference, to which more than 100 law guardians, judges, social workers, and consumers were brought together to dialogue about law guardianship issues. We listened to all these diverse voices and documented the experiences that were shared with us. Following these preparations, we conducted in-depth interviews in the tradition of qualitative research.

## Sample

Ten women who were abused and subsequently divorced were identified, both through agencies that serve and advocate for abused divorcing mothers (6 women) and through snowball sampling (i.e., each interviewee was asked to refer other women who met the research criteria; 4 women). This sampling procedure is sensitive to two sources of selection bias. First, because some participants were recruited through agencies whose mission is to promote the cause of abused women, women with negative experiences may have been overrepresented. Second, snowball sampling is prone to sample bias, particularly when the sample size is only 10.

To enhance the study's validity, the strategy of negative case testing was attempted (Johnson, 1999). This strategy involves locating and examining cases that disconfirm the observed pattern of data (Berg, 2004). Accordingly, to secure a balanced voice, efforts were made to actively seek out women with positive experiences. These efforts included reaching out to law guardians to refer "positive cases" that they encounter, asking study participants for referral of positive cases, and announcements at several large, relevant professional conferences. However, these deliberate efforts to recruit women with positive experiences were unsuccessful, and no such women were identified. In spite of failing to obtain women with positive

experiences for the current sample, the authors continue these recruitment efforts for future studies.

The 10 women interviewed were from New York City (Manhattan, Queens, and Brooklyn) and Suffolk and Nassau counties on Long Island. The law guardian system in these counties varies in method of recruitment, pay, other work law guardians do, and the length of their involvement with clients. Women varied in ethnic, religious, educational, and professional backgrounds. At the time of the study, they were divorced 1 to 5 years ( $M = 2.5$ ,  $SD = 1.91$ ), after having been married for 7 to 21 years ( $M = 13$ ,  $SD = 5.62$ ) and had one to five children, ages 2 to 24 ( $M = 14.2$ ,  $SD = 5.98$ , for first child;  $M = 12.6$ ,  $SD = 4.76$ , for second child;  $M = 6.5$ ,  $SD = 6.19$ , for third child; and one woman had a fourth child, age 2).

## Procedure

Potential participants were each contacted by telephone by one of the authors to explain the goals and procedures of the study. Women who agreed to take part were then contacted by an interviewer to set up an appointment.

## Data Collection

Open-ended, unstructured interviews were conducted. Such interviews do not include a predetermined list of questions. Rather, probes are developed and questions generated in response to an interviewee's narrative (Berg, 2004). According to this principle, interviews started with a general question: "Tell me about your experience with your children's law guardian." This was followed by neutral probes to help interviewees elaborate on their narrative. Some examples include the following: "Can you tell me more about that?" "Can you give me an example?" "What do you mean?" or "How did it happen?" In responding to the interviewer's questioning and probing, participants iterate their life narrative, putting their experience into words.

Experienced social workers, including one of the authors (R.B.) and doctoral candidates who were trained in interviewing for this specific study, conducted the interviews. The professional background of interviewers was of utmost importance to ensure sensitivity to signs of distress and ability to monitor probing in a way that would not compromise participants' emotional well-being or the integrity of the process. The interviewers were also available to participants for postinterview support and knowledgeable about referral, if indicated. With women's permission, interviews were recorded and transcribed by the interviewer, who also provided their impressions and reactions in the form of field notes. Interviews lasted approximately 2 hr. They were conducted in respondents' homes or offices or in private offices provided by researchers when women were concerned about revealing their addresses.

## Data Analysis

Interviews were transcribed and content analyzed. Analysis was conducted by the researchers using ATLAS.ti software. A preliminary code book was developed by a team that included the principal co-investigators and two research assistants, both of whom were doctoral candidates and experienced social workers. The team performed several rounds of independent analysis of a portion of one interview, followed by a team discussion to develop a consensus-based codebook. Once a basic codebook was developed, the rest of the interviews were analyzed, and additional categories evolved throughout the process of coding and analysis.

The analysis focused on the content of the transcribed interviews and did not address sociolinguistic aspects. Therefore, notations about pauses or emotional expressions (laughter, sighing, and pitch and tone of voice) and such aspects as sequences and proximity of certain topics in women's narratives, which may indicate existing unconscious associations and streams of thoughts, were not included. Consequently, the analysis addresses the content of the narrative and fails to analyze the process of narrative construction.

Following Strauss and Corbin (1990), interviews were coded in three phases. In the first phase of "open coding" (called abstraction by Lang, 1994), all interview transcripts were read to identify the ideas relevant to the research question and to formulate initial codes. The data were identified, labeled, and generalized (i.e., compared to other texts with the same code, following Lang, 1994); a codebook was developed and the dimensions of the identified codes were described, compared, and conceptualized. One hundred and sixteen preliminary codes were defined, using codes named by the coder or "in vivo" coding (i.e., using phrases from the interview). Examples of such codes were "being blamed" (10 women), "not being understood" (6 women), and "feeling excluded" (6 women).

In the second phase, "axial coding" was performed and hypotheses about relationships among the original 116 codes were formulated inductively (i.e., how codes were associated with each other and with the research question). Finally, core themes were identified and a model regarding the links between themes was developed.

## Findings

The content analysis yielded nine specific themes clustered in three groups. The first group refers to the perceived performance of law guardians and includes perceived level of law guardians' expertise and professionalism, support of abusers, biases and inequality, and mother bashing. The second group refers to aspects of the system, which provides a context for interaction with law guardians and includes being trapped, financial difficulties, and hostile environment and process. The third cluster refers to emotional effects of the above. In spite of the diversity of the women

in terms of their class, race, ethnicity, and age, as well as the differences of systems in various counties, the same themes dominated women's experience. These themes are discussed and illustrated in the following section.

## Perceived Performance of Law Guardians

*Perceived level of the law guardian's expertise.* D., a mother of two boys and a girl, recounts, "The law guardian who was assigned on an emergency basis was very good. She was astute, she understood, she interviewed R. [the child] and she got it immediately." However, most women experienced law guardians as lacking understanding of the characteristics of abusers and the dynamics of abusive relationships, lacking knowledge regarding child development and parental roles, and lacking training in cultural diversity. For example, one participant reported that

they are really not trained. They don't have a degree in psychology. They are not psychologists. They don't know what to do or say or how to handle children. . . . They don't know. The only experience this man [the law guardian] had was being a grandfather.

Women felt that law guardians failed to judge situations appropriately and made suggestions that were not in the best interests of children. For example, one law guardian reportedly recommended a father's unsupervised visitation with his children despite an incident in which he abused the children so badly in public that the police, who were called by witnesses, summoned the mother to come pick them up. Allegedly, the law guardian's reasoning was that more visitations would help this father and his children to become closer and, consequently, the father would refrain from hitting them.

Law guardians were often seen as being manipulated by the abusers. A common report was that the law guardian allowed fathers to control negotiations and joint meetings. AA, a divorced mother explains:

The law guardian would just let him [the abusive ex-husband] go on, and when I finally speak up, she shut me up. And I wasn't quite sure ever if she was just trying to accommodate him because he was the more difficult of the two of us, or she really did not understand the abuse dynamics, or if she was more on his side.

Furthermore, women felt that ex-husbands managed to recruit law guardians' collaboration in forcing their wishes on their former spouses. Mothers felt that they were expected to accommodate more than their ex-husbands regarding rules, routine, discipline, and educational issues (e.g., which TV programs children should be allowed to watch, types of clothes children should wear, demands for chores, curfew, and schedules, such as bed time). Mothers perceived the law guardians' behavior as coercive, forcing them to act against their own best judgment to follow their abuser's

demands and continuing patterns of control that characterized the marital relationship. For example, an African American mother reported being pressed by the law guardian to move her daughter from a racially mixed school, in which she was doing well academically and socially and where she was happy, to an all-white school to accommodate the demands of the girl's White father.

Law guardians were perceived to be unaware of the effects of abuse on children. One law guardian allegedly recommended granting sole custody to a father who was reported to threaten the woman's lawyer in the courtroom and demonstrated out of control behavior that required marshals to restrain him.

Women felt that lack of knowledge about child development led to giving children an amount of power that was not age appropriate. Children were reportedly allowed to make decisions beyond their cognitive skills. AA reported that the law guardian

did not understand that it wasn't my job as her mom to make sure that she [the 9-year-old daughter] had a wonderful time at any given minute. It was my job to make sure she learned how to become a competent adult, which required her doing chores.

This was echoed by RB, a mother of four, who reported that her children's law guardian "had absolutely no understanding of basic child development. What children of different ages should and shouldn't be capable of articulating, capable of feeling."

*Perceived level of professionalism.* Although the exception rather than the rule, some women did report positive experiences for their children and/or themselves. MA, a mother of a 6-year-old, reported that "both guardians seemed to be very supportive of my daughter. They gave her their cards and said that she could speak to them and seemed to accommodate her."

Eight women reported experiencing at least one instance of nonprofessional, unfair, inefficient, questionable, punitive, and unethical practices by their children's law guardians. This included failure to interview children, to collect sufficient information, to return children's calls, or to appear in court on scheduled dates. In addition, participants reported selective omission of information from reports; misquoting, distorting, and presenting false information; making irrational recommendations; demanding payment for services that were not provided; developing social relationships and colluding with perpetrators (i.e., abusive fathers of their children clients); sending children inappropriate messages; and demonstrating negative attitudes toward mothers.

Five women reported that law guardians collected only partial data, were superficial, took "shortcuts," and failed to develop a comprehensive picture. Although they are supposed to interview the children, law guardians were often reported to have only brief and casual contact with children (e.g., during a break in a baseball practice or game) or none at all. One mother reported that

the law guardian met them the day before the custody trial. . . . He called and made me meet him at a McDonald's, on a Sunday before the custody trial started on Monday so he could at least tell the judge he had met them.

Some law guardians were reported to decline children's requests to meet with them:

they [two girls, ages 11 and 12] were faxing him [the law guardian] letters, describing to him abuse that happened on a particular visitation, imploring him to please make a decision so they wouldn't have to go. And he refused to answer their letters . . . they would occasionally leave him voice mails asking him to call them back. He would refuse to call them back. . . . He just never had any contact with them.

In addition to refusing to listen to children, law guardians were reported to be insensitive to their wishes. In one case, a law guardian allegedly insisted that a girl go live with the father, despite her expression of extreme fear because of previous incidents of abuse.

In those instances in which law guardians were reported to have collected comprehensive data, two issues were raised by women. First, the process was experienced as intrusive and insensitive. For example,

they don't tell you when they're coming. They just come. Whenever they want. It seems that he came several times when I was not home. So you never know when they're coming. They just pop up at any time. They just knock on my neighbor's doors.

Second, as another woman noted, nonprofessional personnel did the actual questioning. For example, in her case, she was interviewed by a person who supplements his job as a sales clerk by conducting investigations.

Five interviewees felt that the information they provided was distorted by the law guardians. A typical example came from a mother who stated,

Anything I said however constructive, however factual, would be twisted around. It was almost like there was this preconceived notion that fathers are the better parents. So we're going to take all information that comes in and we're going to use that twist on it and we're going to modify that information however we have to make it follow.

One participant felt that the law guardian made selective use of information, such as insisting on a third evaluation within 3 years (to be conducted by a specific forensic evaluator) and then declining to use it.

Six participants felt that law guardians demonstrated disrespectful attitudes toward mothers and sabotaged their parenting. For example, one mother said, "He [the law guardian] was incredibly arrogant . . . like well, I know everything and I know family law, and I've represented children before and all of you parents are basically whacked in the head."

Overall, the feeling that law guardians “did not want to be bothered” was heard repeatedly in interviews, as was the sense that he or she “just wanted me and my case to go away.”

*Support of abusers.* Law guardians were perceived as supporting abusers by minimizing reports about their abusive behavior and placing the interests of fathers over those of children. Seven women reported that at times the safety and well-being of the children were compromised to meet fathers’ requirements. In one case, a law guardian was satisfied with an 8-year-old girl’s expressed preference for living with her father, which was primarily related to the fact that the father did not set limits (e.g., bedtime and spending). In another example, a woman reported that the law guardian persuaded an investigating agency not to substantiate a report of abuse by the father:

He [the law guardian] said, “Oh, I’m involved. I’ll take care of it. Oh, the father didn’t mean to throw the child across the room. It wasn’t intentional so you shouldn’t substantiate abuse” [the woman has copies of the report with this quote from the law guardian]. . . . So not only did he not represent the children’s best interest. He really went out of his way to protect the abuser.

In another instance, a mother reported that her 6-year-old daughter described “feeling a stone from his body” when her father took her to his bed. The law guardian’s alleged response to this report was that “he is just a loving father. This is normal.”

*Biases and inequality.* Women reported experiencing discrimination because of their gender, cultural background, and lifestyle. Discrimination because of gender was reported by all women in this study. Law guardians were described as failing to maintain a balanced approach to both parents, for example, by presenting a report regarding mother’s but not father’s mental health. All women reported that although law guardians had lengthy and frequent meetings with fathers, mothers had minimal or no such opportunities. For example, D. recounts that one of her children’s law guardians never talked to her out of court, although they occasionally had a dialogue in the court waiting room: “But it was always on the fly because she was always running somewhere.”

Four women complained of being scrutinized much more than their ex-husbands. Their credibility was challenged, and they were expected to document every detail. They believed that their ex-husbands were much less watched, their abusive actions often minimized, disregarded, or even justified, while they were applauded for anything positive that they did for and with their children.

Discrimination because of cultural background was reported by an African American, two Latinas, and a White immigrant woman. The African American mother, a PhD psychologist, stated,

When I said stuff like that [about the need for cultural sensitivity in law guardianship] I was looked at like I was green. Like I was just giving some excuse as opposed to speaking on the basis of a strong foundation in research and clinical experience with children of color.

She further reported the law guardian was "looking at me as this black radical that he painted me to be just because I am dressed in African attire." A mother of British origin, who did not abide by American dress standards and preferred shoes over sneakers for her 6-year-old daughter, reported that this choice of attire was cited by the law guardian as an example of poor mothering.

*Mother bashing: The mothers as a source of all evil.* As S. reports,

at least I was lucky. At least they [the law guardians] were nice and respectful to me. I've heard horror stories from people in the courtroom. And I've seen it. I've seen how people were treated by the other law guardians.

Unfortunately, S.'s positive experience appeared to be atypical among the sample in the current study. Six mothers reported experiencing law guardians as punitive and judgmental, while withholding credit for positive outcomes. They experienced being blamed for neglect, alienation, and coaching. For example, AA first met her daughter's law guardian when her ex-husband sought custody and accused her of medical neglect after the daughter was found to suffer from ringworm:

She was with him [the father] when she got ringworm, but that did not seem to matter to the law guardian. I was to blame. I felt like I got no credit for being the stability for her. . . . I got more blame for it. She got this and she got that [illness] on my watch. Well she is on my watch 90% of the time, so a lot of what normally happens to a kid would happen under my watch.

She also felt blamed by the law guardian for compromising her daughter's well-being by raising her on a vegetarian diet in spite of the fact that medical tests indicated the child's good health.

RS recounted being blamed for causing alienation between her ex-husband and her 17-year-old daughter, who refused to buy her father a gift for Father's Day. As RS explained,

she is a bright girl, she has her own mind. He did not have a relationship with her for years because he was never around and then I am being blamed for her refusal to connect with him. If I would have said to her at that point to be good to her father like I did on many previous occasions, she would have thought me to be ridiculous because she knew the situation and saw his behavior.

Another woman reported, "It's the mom's fault once again. He [the evaluator] said, 'I don't believe what the child is telling me. So she [mother] must be coaching him [the child].'"

## Aspects of the System

*The trap: Damned if you do and damned if you don't.* Women reported that the current system often led to Catch-22 situations, and they found themselves in a bind. M., who suspected sexual abuse of her 6-year-old daughter, explained the dilemma:

If I know about the abuse and do not report him, I may lose custody in juvenile court because I neglect to protect her; if I report him and demand supervised visitation, I may lose custody in family court because I will be blamed for parental alienation.

This sentiment was echoed by other mothers: "The more you report about abuse of the children by the father, the more the court punishes you."

Another mother found herself in a different no-win situation. Both she and her daughter have dual citizenship and carry two passports. To prevent her from leaving the country with the girl, the law guardian supported her husband's demand to confiscate the girl's British passport, but

the British Embassy says I can't relinquish my daughter's British passport, I have to send it back to them. And my lawyer said if I do that, the court is going to hold me in contempt and take my daughter from me because I will be preventing justice from taking place.

*Financial aspects of law guardianship.* Typically, divorce impoverishes women, often leaving husbands in a better financial situation than wives (Bogolub, 1995). Nevertheless, law guardians reportedly tend to recommend and judges to enforce financial arrangements that do not take this reality into consideration. In one case, a mother who eventually won custody of her four children was forced to split the \$50,000 cost of the law guardian: "The fact that he has assets of 2 million and I have assets of almost nothing did not matter; they said we have to split all the legal fees." She also stated that the judge permitted a foreclosure on the house, which the woman and her current husband own together to cover the fee, thus making her current husband liable.

Women also reported that law guardians demanded additional or repetitive costly evaluations by specific professionals (allegedly chosen on the basis of their personal and social relationships with the law guardians) and insisted that parents pay equally despite significant discrepancies in income. A strategy reportedly used by a number of fathers was filing an endless stream of motions, forcing women to pay huge legal fees, and thus draining their financial resources and bankrupting them. As a result, women were forced to take loans, amass debts, and borrow huge sums of money from family and friends.

Because of the aforementioned difficulties, women reported inability to afford payment to lawyers and felt forced to represent themselves, compromising access to professional legal representation.

*Hostile environment and process.* With one exception of a woman reporting the availability of a special room with toys where the law guardian can interview children, participants viewed the court environment as hostile and the process as exclusionary. One woman stated, "Family Court in District X is the innermost circle of hell." Another woman gave a graphic description:

There are people sobbing and crying and scared for their lives and their husbands are threatening them. And women yelling for the guards to come because this guy is going to clobber her, I mean like . . . sometimes I've been a bodyguard because these abusive men come in waiting to see the judge and yelling "I'm going to kill you" and throwing stuff and hot coffee at all of us . . . also as you are waiting to be seen by the judge, these criminals are waiting to be seen by the judge. There are juvenile delinquents. There are all sorts of people. There are people being handcuffed and being brought in as prisoners. It was a very scary feeling.

Two structural sources of confusion have been reported. First, women often simultaneously have divorce cases in Supreme Court and custody and visitation cases in Family Court. At the same time, consolidating all the issues into one judicial process may be very costly because in Supreme Court women have to pay for law guardianship services. D., a mother of three, reports,

Well, we had a divorce action when my children's father brought a petition and while we were in Supreme Court deciding the divorce action, this problem with the visitation schedule came up and the visitation had been scheduled in the Family Court . . . the judge offered that we consolidate the two businesses because having three things going in three different courts can devastate families . . . and my lawyer thought that was a good idea. . . . So he pushed even though we could end up getting socked for a bill for three law guardians.

In addition, the roles of different players and procedures of the various judicial systems are unclear. One woman said,

The attorney is supposed to be their [the children's] voice; the law guardian is supposed to represent their best interest . . . one of the huge problems with the whole system is that their responsibilities are not very well defined.

AA said,

It was confusing. Despite getting my PhD in clinical psychology from the predominantly White, middle-class, Western system, I just found that I was confused all the time as to what people want from me and how I am supposed to represent myself.

Logistically, the process is experienced as poorly coordinated and slow. Women report that scheduled court dates are cancelled, and there are long hours and days of idle waiting in the hallways (for which lawyers are still paid) and loss of workdays. Although this does not affect only women, its impact on them is especially challenging because it requires complicated and expensive child care arrangements:

I'll never forget one time, there were like 100 people waiting to see this one judge, and there was this one woman who had a sick baby with 103 degrees temperature. We begged the security guard to speak to the judge to let this woman go. The baby is crying with fever. The mother is a nervous wreck. They didn't see the mother until 2 or 3 o'clock in the afternoon, and they are there since 8 o'clock in the morning, and they just don't care. They're heartless.

Although getting to see the judge is a slow and dragging process, once in court, women described being pushed through a process that did not allow the Family Court to get a comprehensive and in-depth picture of the issues: "I think that they don't have the time, in the Family Court to make proper decisions. And so they tend to gloss over certain aspects."

Women reported feeling excluded because all players in court (i.e., lawyers, law guardians, judges, and forensic evaluators) are familiar with each other and have a history of working and often socializing together:

This is a much inbred system in XX county . . . they all know each other. They all have to work with each other on other matters. There is a limited number of law guardians in the County, all reappointed all the time. There's a few that are really in with each other in court with the judges, there is a circle of them. Now I have been working for nearly two years for a family law attorney, and I come across all of these same people I saw, my law guardian, all the other ones. I deal with them all the time. They all meet at the Bar Association. They all socialize to the extent that their colleagues socialize . . . now they're on opposite sides, maybe in 2 months they will be on the same side.

The woman, on the other hand, remains "out of the picture" and feels transparent and invisible:

The judges and the law guardians when they are in court . . . they don't acknowledge you. They are only allowed to talk to your lawyer so they pretend that you are not there. When you are in court they don't let you talk and they don't talk to you . . . like you don't even exist. And there are many times that decisions are made in the courtroom that you don't even hear. You're sitting outside in the waiting room 2, 3 hours and you can't even hear how your lawyer represents you or how they came to their conclusion because you're not always involved in the trial.

This situation is further exacerbated when the husband is also a lawyer or powerful social figure in the community who has social relationships with the judicial world and is part of the "inner circle" from which the women are excluded.

In addition, as a result of a 2002 ruling in a New York court that immunized law guardians from being sued by parents for malpractice (Zeigler, 2002), there is a feeling of being "powerless prisoners," as one woman reported. "They [law guardians] can do anything and everything, or refuse to do anything and everything with no consequences."

## Emotional Effects

The aforementioned experiences taxed women emotionally. They reported feeling overwhelmed, hopeless, worn out, frustrated, fearful, depressed, anxious, angry, and powerless.

A dominant feeling was trepidation, related both to the environment of the court and to the potential outcomes of the process. The dread of a decision that could take their children away from them casts its shadow on the experience of all the interviewees and they live with constant worry.

Women also reported feeling powerless vis-a-vis the system, which they experienced as a bulldozer. "You have to be careful. You're at their mercy." Even accomplished, educated, and professional women who hold high positions expressed feeling helpless, dependent, and voiceless in their encounters with law guardians. AA stated,

So that whatever the law guardian says seems to be what the judge listens to . . . the judge only had the pieces of paper in front of him, and what the law guardian said to make decisions upon. And from what my lawyers have said, the law guardians have a lot of power in that situation.

Another woman described a situation in which the judge did not even get to see what the law guardian wrote and made her decision based on what the judge's secretary reported to be written in the law guardian's memo.

Women often became disillusioned, having entered the process hopeful, usually with the belief that they will have their day in court, their voice will be heard, and justice will be done: "I believed that you give them the facts, and they'll protect the kids."

Some mothers felt betrayed when seeking psychological help, sometimes following a recommendation of a law guardian, because this was reportedly held against them in custody, visitation, and child support decisions.

Feeling that both their own and their children's welfare is at stake creates negative emotional and psychological effects in mothers that may start a vicious circle of more negative outcomes for children, which may lead to more unsupportive responses from law guardians, which may intensify the pressure on mothers, and so on.

## Discussion

The findings of this study add to the slim body of knowledge about women's views of their experiences with law guardians. It is important to remember that this study does not describe an "objective" reality; rather, in the tradition of qualitative research in general and feminist research in particular, it documents the perceived reality of participants (Chafetz, 2004; Maynard & Purvis, 1995; Taylor, 1998).

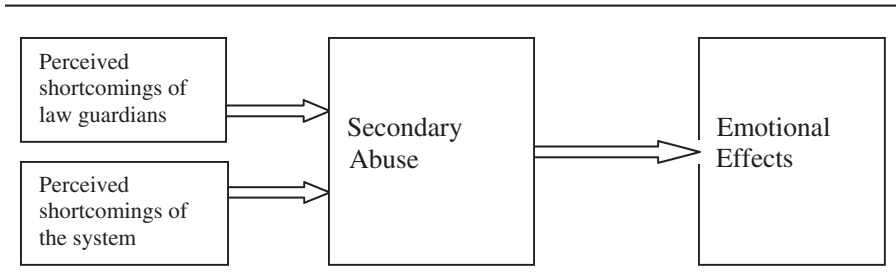
Findings should be interpreted with caution because of the nature and size of the sample (though common in qualitative research) as well as multiplicity of interviewers. The findings suggest that a combination of perceived shortcomings of the legal system and of the law guardians leads to an experience of secondary abuse for women. Study participants, previously abused in their marriage, reported suffering profound emotional effects from this secondary abuse. As Figure 1 shows, this model emerged from the content analysis.

Women saw the law guardianship system as suffering from unclear and inconsistent role definition and selection criteria, insufficient training, and low pay. Confusion is created by the fact that roles of law guardians vary between states and counties, as does the structure and available mechanisms for providing law guardianship services. Furthermore, in agreement with Ducote (2002), participants in this study cited inappropriate *modus operandi* of law guardians, such as *ex parte* communication with the judge. This creates a situation in which the judge, the lawyers, and the law guardian, who often have an ongoing relationship, create a network of mutual familiarity and comfort, from which the parents and children, about whose life decisions are made, are excluded. A dialogue between all stakeholders could result in a more user-friendly system, which provides jargon-free information about its structure, procedures, and available resources.

Two basic shortcomings of law guardians were perceived by participants: lack of professionalism and lack of expertise. Lack of professionalism was seen as stemming from an unethical stance, including manipulations of the process and distortions of information. Both sins of commission and of omission were reported. The former included perceived unfair, intrusive, and disrespectful attitudes and the latter failure to collect sufficient information (e.g., because of not interviewing children, teachers, and other professionals familiar with the children) and failure to produce full reports and appear for all scheduled court dates.

A lack of expertise in (a) the dynamics of abusive relationships, (b) child development, and (c) cultural diversity was perceived by participants. This perception is in agreement with Erickson (2000), who evaluated training of law guardians about the effects of domestic violence on children as insufficient, and Head (1998), who posits that the child's voice cannot be the deciding factor. These reported shortcomings in the law guardians' knowledge about topics that are of utmost relevance to their ability to properly perform their role are puzzling in light of the best efforts to provide them with relevant training. For example, in New York City, potential and

**Figure 1**  
**Perceived Shortcomings and Outcomes in Law Guardianship**



acting law guardians are carefully selected, trained, and supervised to ensure their being equipped with knowledge and skills necessary for the job (Weinberger, 2003). However, there seems to be a considerable gap between the perspectives of the women and that of the professionals involved in providing services of law guardianship. This discrepancy suggests the need for a comprehensive evaluation of the training, including curriculum, outcomes, and compatibility with consumers' needs.

The aforementioned perceived shortcomings of the system and law guardians are especially meaningful for the particular population that we studied. The women who participated in this study had a history of being in abusive relationships, a potentially traumatic experience. Consequently, they were hypervigilant to authoritarian, judgmental, and hierarchical systems and might have experienced a "secondary abuse" (S. D. Rosenberg et al., 2001) by the system that was designed to protect their children. It is also likely that they might have difficulties confronting and protecting their own and their children's rights vis-a-vis the judicial system.

Women perceived secondary abuse as coming in different forms: directly, by supporting or justifying the abuser, and indirectly, by allowing the abuser to continue the abuse within the system. Law guardians were almost unanimously portrayed as "not understanding," "nonresponsive," "dismissive," "disrespectful," "judgmental," "bad-mouthing," and "unwilling to be bothered." One interviewee summarized her experience in a sentence that echoes almost unanimously the reports of all participants, irrespective of the results of the custody decision: "I was always on the stand to be grilled about everything." Overall, the reports about experiences with law guardians have a surreal quality of "this cannot be happening." This response and the fact that the more naïve and optimistic women were when entering the system, the bigger the disillusionment, negate the likelihood that this experience is reflective of a transference reaction.

Along with the underlying feeling of derealization, most women reported additional negative emotions, including fear and anger. Unlike the tendency to internalize emotions and self-blame typical of women in abusive situations (Cascardi & O'Leary, 1992; Gelles & Harrop, 1989; Orava, McLeod, & Sharpe, 1996), our sample

did not display such self-deprecation. This may be explained by the fact that this group of women was able to leave abusive relationships as well as the fact that some of them received support from self-help and advocacy groups.

In a conference about “The Best Interest of the Child: Issues and Challenges in Law Guardianship,” cochaired by the authors in 2003, Justice Sondra Miller of the Appellate Division of the New York State Supreme Court emphasized that the courts need in-depth understanding of what is going on in the lives of families that struggle with divorce in the context of domestic violence. This study suggests that from the consumers’ perspective, law guardians failed to provide this understanding.

Because law guardianship is an authority-based system with almost unlimited freedom to make decisions that affect the women’s lives and have considerable immunity, it does not appropriately address the needs of these women, who feel that having freed themselves from abusive partners, they are now abused by the system.

They require services that recognize their perspectives and that work with them. A review of law guardians—their role definition, training, performance standards, supervision, and assessment—is necessary to find better ways for collaboration between law guardians, clients, and other helping professionals.

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