

Case No. A166521

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO**

KATHERINE KEELER-HODGETTS,
Petitioner and Appellant,

v.

BRANDON TSUKROFF,
Defendant and Respondent.

Appeal from the Superior Court for Alameda County
Hon. Stephen Pulido, Judge, Case No. HF21102556

**APPLICATION FOR PERMISSION TO FILE BRIEF OF
FAMILY VIOLENCE APPELLATE PROJECT, *ET AL.*, AS
AMICI CURIAE IN SUPPORT OF APPELLANT AND
PROPOSED BRIEF OF *AMICI CURIAE***

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for *amici curiae* Family Violence Appellate Project, *et al.*, certify that there are no interested entities or persons that must be listed in this certificate under Cal. R. Ct. 8.208.

Dated: February 8, 2024

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**To the Presiding Justice of the First District Court of
Appeal, Division Two:**

Pursuant to Rule 8.200 of the California Rules of Court, proposed *amici* Family Violence Appellate Project (“FVAP”), Child Abuse Forensic Institute, Calegislation, California Protective Parents Association, California Women’s Law Center, Desert Sanctuary, Inc., Family Violence Law Center, Hariett Buhai Center for Family Law, Jenessee Center, Lassen Family Services, Inc., Los Angeles Center for Law and Justice, Network for Victim Recovery of D.C., Project: PeaceMakers, Inc., Public Counsel, Queen’s Bench Bar Association, Stopping Domestic Violence, Women Lawyer Association of Los Angeles, and Professor Jane Stoever respectfully request leave to file the attached *amici curiae* brief in support of appellant, Katherine Keeler-Hodgetts.

**APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICI
CURIAE*¹**

FVAP and *amici* in the attached proposed brief identify and dispel two misconceptions about victim behavior that the trial court relied on in concluding that Ms. Keeler-Hodgetts was not credible in establishing her sexual abuse allegations. In so doing, the brief seeks to explain that the points found as dispositive by the trial court—Ms. Keeler-Hodgetts’ failure to raise the allegations earlier and her agreement to joint legal and physical

¹ No individual or entity monetarily contributed to the preparation or submission of this brief.

custody with the abuser—are not rational bases on which to base a credibility determination because they ignore the realities of a victim of abuse who is in a custodial dispute with the abuser. This case thus illustrates the critical need for appellate guidance on the making of credibility findings of a sexual abuse victim.

Specifically, this brief argues that the Courts of Appeal should thoroughly review the rationality of trial courts' explicitly stated grounds for victim credibility determinations and should vacate rulings, like the instant one on appeal here, that rest on credibility determinations that plainly reflect myths, biases, assumptions, and expectations that well-documented research has already debunked.

INTERESTS OF AMICI CURIAE

FVAP is a California and Washington state non-profit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP also files amicus briefs in cases, like this one, that have the potential to impact survivors throughout the States we serve. FVAP's work contributes to a growing body of case law

that provides the safeguards necessary for survivors of abuse and their children to obtain relief from abuse through the courts.

We are joined in filing this brief by the following domestic violence and legal advocacy organizations and experts:

Child Abuse Forensic Institute is a resource and referral organization created to assist litigants in family violence cases in California.

Calegislation is a resource center that provides consumer privacy information with a focus on public safety in the areas of domestic violence, sexual assault and stalking. Based in California, the center provides educational information to consumers, legislators, and governmental agencies and is part of a national information sharing network of domestic violence and privacy advocates.

California Protective Parents Association (“CPPA”) strives to protect children from incest and family violence through research, education and advocacy. CPPA seeks to improve and reform family court to ensure that children are not placed at risk because of unsafe custody and visitation decisions.

The **California Women’s Law Center (“CWLC”)** is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women.

Desert Sanctuary Inc. is a comprehensive domestic violence shelter program in a very remote and rural part of the northern Mojave Desert. Desert Sanctuary Inc. has been

providing domestic violence services and support in the Barstow area since 1982.

Family Violence Law Center is a 501(c)(3) nonprofit organization and works to end family violence in Alameda County through violence prevention education as well as providing support and legal and counseling services for survivors of domestic violence.

The **Harriett Buhai Center for Family Law** is among the largest and few non-profit firms exclusively dedicated to providing comprehensive free family law assistance to very low-income victims of domestic violence in California.

Jenessee Center is the oldest domestic violence intervention program in South Los Angeles. Through its emergency shelter, transitional residence program, and drop-in center, Jenessee Center provides culturally sensitive services to transition families from crisis to self-sufficiency through a range of programming including education, counseling, housing assistance, and advocacy through a courthouse-based clinic, LAPD DART partnership, and in-house legal team.

Lassen Family Services, Inc. is a domestic violence/sexual assault crisis agency committed to ending abuse in its community through prevention, healing, advocacy, safety, education, compassionate intervention, and effective partnerships with local community and social service agencies that will support and empower the participant's journey to success.

The mission of **Los Angeles Center for Law and Justice (“LACLJ”)** is to secure justice for survivors of domestic violence, sexual assault and human trafficking and empower them to create their own future. Located in East Los Angeles, LACLJ is a 33-person non-profit law firm serving survivors throughout Los Angeles County. LACLJ’s primary practice areas are family law and immigration. However, LACLJ strives to provide clients with holistic legal services and has both a robust criminal justice advocacy and appellate practice. Through its integrated legal/social worker service model, LACLJ Community Care Advocates provide supportive services such as education, safety planning, accompaniment, and linkages to other service providers as part of the legal team. LACLJ is committed to a trauma-informed and culturally-responsive workplace and service provision.

The **Domestic Violence Legal Empowerment and Appeals Project (“DV LEAP”)** is a project of **Network for Victim Recovery of DC**, a unique nonprofit organization whose local and national advocacy on behalf of crime victims spans acute response through litigation. Adding to this broad spectrum of critical services, DV LEAP makes the law work for domestic violence survivors through appellate advocacy, technical training, and policy initiatives. DV LEAP is the sole national appellate program in the United States providing survivors pro bono representation and advocacy to fight unjust trial outcomes and protect their rights. DV LEAP’s amicus briefs in state and federal courts, as well as in the United States Supreme Court,

advance judicial understanding of the law's critical role in protecting domestic violence survivors.

PeaceMakers is a Domestic/Intimate Partner Violence (DV/IPV) victims' agency, which handles both Department of Children and Family Services court ordered classes and electronic filing of Domestic Violence/Intimate Partner Violence Temporary Restraining Orders for victims; therefore, any and all court cases and/or appeals is prevalent to PeaceMakers operations of servicing victims.

Founded in 1970, **Public Counsel** is the largest pro bono public interest firm in the country, dedicated to advancing equal justice under the law by delivering free legal services to the most vulnerable members of our community. Public Counsel works closely with victims of violence and families involved in dependency court proceedings through its Children's Rights Project and the Audrey Irmis Project for Women's and Girls' Rights.

Queen's Bench Bar Association, formed in 1921, is a non-profit voluntary membership organization made up of attorneys, judges and law students that seeks to foster professional and social relationships among women lawyers and to promote equality and opportunity for all women through education, programs, and community outreach. Queen's Bench seeks to advance the interests of women in law and society and plays an integral part in furthering the progress of women in the legal profession throughout the Bay Area and beyond.

With the overall goal of promoting non-abusive behavior in today's world, **Stopping Domestic Violence** is a California-based domestic violence victim service organization that provides free, no-cost, wide-ranging services (including shelter, transportation, health care, education, food, clothing, advice, support, guidance, technology, and communication) to all affected by domestic violence.

Women Lawyers Association of Los Angeles is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, improving the status of women in our society including their exercise of equal rights and reproductive choice.

Professor Jane Stoever is a faculty member at the University of California, Irvine School of Law (UCI). She has extensive experience representing abuse survivors, teaching domestic violence law clinics, and engaging in scholarship in the areas of domestic violence law, family law, and feminist legal theory. As the Director of the Domestic Violence Clinic at UCI, Professor Stoever and her students represent abuse survivors in civil, criminal, and immigration cases as they seek to increase their clients' safety and autonomy. Professor Stoever is also the Director of the UCI Initiative to End Family Violence, which unites faculty from 21 departments at UCI and community partners in research and clinical interventions in family violence. She also co-chairs the Orange County Domestic Violence Death Review Team. Professor Stoever previously taught at

Georgetown University Law Center, American University
Washington College of Law, and Seattle University School of
Law.

CONCLUSION

Proposed *amici* represent the interests of intimate partner sexual violence victims in California and offer a perspective on the issues presented in this case that has not been fully or adequately briefed by the parties. Given the nature of the *amici* organizations and the work they do, *amici* are uniquely situated to assist this Court in resolving the issues presented.

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**PROPOSED BRIEF OF FAMILY VIOLENCE APPELLATE
PROJECT, *ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF
APPELLANT**

INTRODUCTION

This case provides the Court with an opportunity to correct two misconceptions about sexual abuse victims that continue to infect courts' credibility determinations. While trial courts have extensive discretion in credibility determinations, they are not permitted to make irrational assessments based on "a singular vision of how an abused woman should act." (*Vinson v. Kinsey* (2023) 93 Cal.App.5th 1166, 1176.) *Amici* seek to bring to the Court's attention extensive social science research and legal scholarship demonstrating that intimate partner sexual abuse victims may act in the exact ways that the trial court in this case believed undermined the victim's account of sexual abuse.

Here, the trial court denied Appellant Katherine Keeler-Hodgetts' request for a domestic violence restraining order against Appellee, her former partner Brandon Tsukroff. To reach its conclusion, the trial court disbelieved Ms. Keeler-Hodgetts' allegations of sexual abuse by Mr. Tsukroff. According to the trial court, Ms. Keeler-Hodgetts was not believable because she (i) had not previously reported or alleged the sexual abuse in the parties' prior legal proceedings and (ii) agreed to shared legal and physical custody of her and Mr. Tsukroff's two minor daughters.

Contrary to the trial court's assumptions, delay in reporting sexual abuse and consenting to a shared custody arrangement are reasonable responses by sexual abuse victims. This Court has previously recognized that delayed reporting is

common among sexual assault victims. The reasons are many, including fear of retaliation, fear of the legal system, feelings of guilt and shame, and privacy concerns. Similarly, some sexual abuse victims consent to shared custody because of fears of their abusive partners and the legal system. They also may consent because of strong pragmatic concerns and views about family.

So long as courts continue to rely on misconceptions about victims in making their credibility determinations, the risk of incorrect assessments of sexual abuse victim’s credibility, or “credibility discounting,” is especially great.² And because most civil protection order disputes in family court turn on individual credibility, credibility discounting can result, as happened here, in the improper denial of restraining order requests. To avoid this error in future cases and maintain fair access to legal relief, this Court should use this case to raise awareness of two misconceptions that result in the unjustified credibility discounting of sexual abuse victims.

DISCUSSION

I. The Trial Court Relied on Two Misconceptions About Sexual Abuse Victims in Disbelieving Ms. Keeler-Hodgetts’ Testimony of Sexual Abuse.

The trial court found that Ms. Keeler-Hodgetts was not entitled to a domestic violence restraining order because she did

² Legal scholar Deborah Tuerkheimer developed the term “credibility discount” to describe the criminal legal system’s failure to credit women’s reports of sexual violence due to misconceptions. Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount* (2017) 166 U.Pa. L.Rev. 1.

not demonstrate a past act of abuse under the Domestic Violence Prevent Act (“DVPA”), Family Code § 6200 *et seq.* (2AA0499.) Among other evidence and testimony presented, Ms. Keeler-Hodgetts sought to demonstrate a past act of abuse by testifying about Mr. Tsukroff’s angry rages and violent threats between 2010 and 2017 and his separate sexual abuse of her between 2013 and 2017. (2AA0499-2AA0502.)

The trial court found that the rages were “not disputed” but did not amount to abuse under the DVPA.³ (2AA0499, 2AA0508.) The trial court also found that Ms. Keeler-Hodgetts did not establish her allegations of sexual abuse by a preponderance of the evidence. (*Id.*) Specifically, the trial court did not find Ms. Keeler-Hodgetts’ sexual abuse allegations credible because she (i) had not previously reported or alleged the sexual abuse in any pleading prior to May 2022, and (ii) agreed to shared legal and physical custody of her and Mr. Tsukroff’s two minor daughters. (2AA0502-2AA0505.)

As explained herein, social science research and legal scholarship—some of which has already been recognized by this Court as well founded—dispels these preconceived beliefs.

Family courts are routinely tasked with making credibility determinations, particularly in the context of resolving requests

³ *Amici* agree with appellant that the trial court erred in finding the undisputed rages were not abuse as defined by the DVPA, (see Fam. Code § 6203 subd. (a)(3),(4)). This brief, however, is pertinent only to the trial court’s credibility findings relating to sexual abuse.

for civil protection orders.⁴ These “[c]redibility determinations carry both benefits and risks, including introducing unintended gender biases or misperceptions of predictors of veracity.”⁵ Here, the trial court’s determination that Ms. Keeler-Hodgetts lacked credibility as to her sexual abuse allegations demonstrates what legal scholars and social scientists have detailed for some time: Family law courts commonly respond to women’s reports of intimate partner⁶ sexual violence by discounting their credibility.⁷

Research suggests that this credibility discounting stems from beliefs in traditional gender roles; misconceptions about what domestic violence victims look like, how victims behave after assaults, and how they recount their experiences; and a willingness to believe claims of ulterior motives for reporting domestic abuse.⁸ Indeed, the California Supreme Court has recognized that “it is common for people who have been physically and mentally abused to act in ways that may be

⁴ Epstein & Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences* (2019) 167 U.Pa. L.Rev. 399, 403-405.

⁵ Mindthoff, et al., *How Social Science Can Help Us Understand Why Family Courts May Discount Women’s Testimony in Intimate Partner Violence Cases* (Fall 2019) 53 Fam. L. Q. 243, 250.

⁶ Throughout the brief the terms intimate partner violence, domestic violence, and domestic abuse are used with the same meaning, and include acts of sexual abuse within an intimate partner relationship. (See, e.g., Fam. Code §§ 6203, 6211.)

⁷ See, e.g., Epstein, *supra* note 4, at 399; Mindthoff, *supra* note 5, at 243; Tuerkheimer, *supra* note 2, at 3.

⁸ Mindthoff, *supra* note 5, at 247-48.

difficult for a layperson to understand.” (*People v. Riggs* (2008) 44 Cal.4th 248, 293.)

II. Sexual Abuse Victims Delay Reporting Abuse to Third Parties for Numerous Reasons.

The trial court concluded that it was “not credible” that Ms. Keeler-Hodgetts first disclosed Mr. Tsukroff’s sexual abuse of her to the court in a May 2022 filing. (2AA0503.) Contrary to the belief that a sexual abuse victim would not delay in reporting the abuse, however, many victims choose to wait to report or simply do not report at all.⁹ Indeed, it is common: At least one study found that 2 out of 3 sexual assaults are not reported.¹⁰ Moreover, research shows that victims assaulted by perpetrators known to the victim, as is the case here, delay reporting much longer than victims who are assaulted by strangers.¹¹

In recognition of these facts, the California Supreme Court explicitly rejected the presumption “that it is natural for the victim of a sexual assault to complain promptly following the assault.” (*People v. Brown* (1994) 8 Cal.4th 746, 758.) As the

⁹ See, e.g., Epstein, *supra* note 4, at 401; Gravelin, et al., *Blaming the Victim of Acquaintance Rape: Individual, Situational, and Sociocultural Factors* (2018) Front Psych. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6348335>> (as of Jan. 19, 2024).

¹⁰ See Rape, Abuse & Incest National Network (RAINN) Website, *The Criminal Justice System: Statistics* <<https://www.rainn.org/statistics/criminal-justice-system>> (as of Jan. 26, 2024).

¹¹ Schafran, *Barriers to Credibility: Understanding and Countering Rape Myths* (2005) 1, 10 <<https://www.legalmomentum.org/library/barriers-credibility-understanding-and-countering-rape-myths>> (as of Jan. 31, 2024).

Supreme Court explained, this presumption “has been discredited substantially in contemporary times. The overwhelming body of current empirical studies, data, and other information establishes that it is not inherently ‘natural’ for the victim to confide in someone or to disclose, immediately following commission of the offense, that he or she was sexually assaulted.” (*Ibid.*; see *Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558, 585 [recognizing “that traumatized rape victims often do not promptly report that they have been raped, or do so only long after the event, and sometimes never disclose the fact”].)

Despite this recognition that delayed reporting—or never reporting—is common for sexual assault victims, the trial court’s ruling demonstrates that the credibility discounting of sexual abuse victims persists. This discounting of sexual abuse victims makes particularly little sense given that domestic abuse “is quintessentially a secretive offense, shrouded in private shame, embarrassment and ambivalence on the part of the victim, as well as intimacy with and intimidation by the perpetrator.” (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1313.)

Social science research has uncovered numerous reasons for sexual abuse victims’ delayed reporting of sexual assault, including, but not limited to, fear of retaliation, the legal system, and re-traumatization; feelings of guilt and shame; and privacy concerns.¹² To help dispel the trial court’s misconception that

¹² See, e.g., Brinig, et al., *Perspectives on Joint Custody Presumptions as Applied to Domestic Violence Cases* (2014) 52 Fam. Ct. Rev. 271, 276-277; Schafran, *supra* note 11, at 9-12;

sexual abuse victims would not delay reporting their abuse, *amici* discuss some of these reasons below.

A. Sexual abuse victims delay reporting abuse because of fear of retaliation, the legal system, and re-traumatization.

Victims may not report sexual assault because they fear retaliation by the perpetrator.¹³ The target of retaliation could be the survivors, their children, or any other family members. Victims with children may be concerned that disclosing sexual abuse “will trigger the involvement of child protective services and potential removal of the children.”¹⁴

Another fear that influences sexual abuse victims’ reporting decisions is fear of the legal system. To start, many victims are afraid that actors in the legal system will humiliate or blame them if they decide to report sexual violence.¹⁵ And with good reason, as social science shows that sexual abuse victims “encounter doubt, skepticism, or disbelief in their efforts

Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions* (1991) 24 U.C. Davis L.Rev. 1013, 1029-1031.

¹³ Schafran, *supra* note 11, at 10; U.S. Dept. of Justice, *Victimization Not Reported to the Police, 2006-2010* (Aug. 2012) at p. 1.

¹⁴ Brinig, *supra* note 12, at 277.

¹⁵ Schafran, *supra* note 11, at 11-12; see Belknap, *Rape: Too Hard to Report and Too Easy to Discredit Victims*, 16 *Violence Against Women* 1335, 1338 [explaining that “rape victims still face significantly poor treatment by the police and courts”]. The misperceptions that affect the credibility determinations of sexual abuse victims are present in both the criminal and civil legal systems. Mindthoff, *supra* note 5, at 244-250.

to obtain justice and safety from judges and other system gatekeepers.”¹⁶ Sexual abuse victims feel the impact of this credibility discounting and so, to keep their credibility intact, decline to report from the start.¹⁷ This fear of not being believed is heightened by several pervasive “rape myths,” including that a romantic relationship equals sexual consent for all time and that married women falsely accuse their husbands of rape for retribution.¹⁸ It is therefore unsurprising that sexual abuse that occurs during romantic relationships is rarely disclosed.¹⁹

Other victims do not report sexual assault because they want to avoid the “grueling” experience of trial.²⁰ In family court, for example, domestic abuse victims often represent themselves and “lack access to the kind of corroborative evidence that would strengthen their cases or to the knowledge about the rules of evidence that would enable them to submit corroborative evidence, thus leaving courts to make decisions solely based on credibility assessments.”²¹ This requires victims to testify publicly about traumatic events a few feet away from their

¹⁶ Epstein, *supra* note 4, at 405; see Tuerkheimer, *supra* note 2, at 3-5 [describing problem of credibility discounting for sexual assault survivors generally].

¹⁷ Tuerkheimer, *supra* note 2, at 11.

¹⁸ Namian, *Hypermasculine Police and Vulnerable Victims: The Detrimental Impact of Police Ideologies on the Rape Reporting Process* (Fall/Winter 2018) 40 Women’s Rts. L. Rep. 80, 98-99.

¹⁹ Jaffe, et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes* (2003) 54 Juv. & Fam. Ct. 57, 59.

²⁰ Torrey, *supra* note 12, at 1029-1030.

²¹ Mindthoff, *supra* note 5, at 246.

abusers. Reporting sexual assaults also requires victims to relive the trauma as they respond to inquiries from the court and the other party.²²

B. Sexual abuse victims delay reporting because of feelings of guilt and shame.

Oftentimes sexual abuse victims are made to feel responsible for the assaults they have endured.²³ They feel shameful about what occurred.²⁴ They also worry about people blaming them for the assault.²⁵ These concerns are well founded. Sexual assault victims often suffer in their personal relationships after reporting because those close to the victims blame them, deny the incident, or otherwise have a negative reaction to the disclosure.²⁶

C. Privacy concerns also cause delays in reporting sexual abuse.

Sexual abuse victims also delay reporting because they are afraid of losing their privacy.²⁷ One study showed that 71% of sexual assault victims were concerned about their families knowing they had been sexually assaulted.²⁸ Sixty-eight percent were worried about people outside their families knowing.²⁹

²² See Namian, *supra* note 18, at 82-83; Torrey, *supra* note 12, at 1029-1030.

²³ See Torrey, *supra* note 12, at 1030 fn. 78; Gravelin, *supra* note 9, at 4-5.

²⁴ Torrey, *supra* note 12, at 1030.

²⁵ *Id.* at 1030 n. 78; Schafran, *supra* note 11, at 10.

²⁶ Torrey, *supra* note 12, at 1030.

²⁷ Schafran, *supra* note 11, at 11.

²⁸ *Ibid.*

²⁹ *Ibid.*

Apart from themselves, victims also do not want to expose their families to public shame.³⁰ Recognizing that they face stigma from the disclosure of sexual assault, many victims find that it is “in their best interest” to conceal the incident and try to continue their lives as if it had not occurred.³¹

III. It Is Common for Intimate Partner Sexual Abuse Victims to Agree to Shared Custody Arrangements with the Person Who Abused Them.

At first blush it may seem to be a contradiction that some women sexual abuse victims want their children to maintain a relationship with the children’s fathers (*i.e.*, the intimate partner abuser) after the relationships end.³² Indeed, according to the trial court, it was “simply not credible” that Ms. Keeler-Hodgetts would agree to shared custody if her sexual abuse allegations were true. (2AA0504; see 2AA0503 [sexual assault allegations “incredulous” because Ms. Keeler-Hodgetts has always supported shared custody].)

There are many reasons, however, why sexual abuse victims such as Ms. Keeler-Hodgetts agree to shared custody arrangements with their abusive former partners. These include: “to avoid instigating retaliatory abuse against them or the children (fears) and to avoid prolonged involvement in the court system (fears) as well as to share parenting tasks after divorce

³⁰ Brinig, *supra* note 12, at 277.

³¹ Schafran, *supra* note 11, at 11.

³² Hardesty & Ganong, *How Women Make Custody Decisions and Manage Co-parenting with Abusive Former Husbands* (2006) 23 J. of Soc. & Personal Relationships 543, 550.

(pragmatic concerns) and alleviate guilt and worries about their children no longer having two parents in the home (family ideology).”³³ As discussed below, each of these factors may, alone or in combination, compel a sexual abuse victim to agree to joint custody.

A. Sexual abuse victims agree to shared custody arrangements because of fear.

Fear may influence sexual abuse victims’ decisions to agree to shared custody arrangements.³⁴ Research shows that some mothers leaving abusive relationships fear being hurt, or even killed, if they pursue sole custody of their children.³⁵ They also may fear that the father would harm or kidnap the children if they did not agree to shared custody.³⁶ As a result, abused

³³ *Id.* at 558-559.

³⁴ *Id.* at 558.

³⁵ *Id.* at 550-551.

³⁶ Hardesty, *supra* note 32, at 551; Ver Steegh & Davis, *Calculating Safety: Reckoning with Domestic Violence in the Context of Child Support Parenting Time Initiatives* (2015) 53 *Fam. Ct. Rev.* 279, 285; see Center for Judicial Excellence, *Child Safety First: Preventing Child Homicides During Divorce, Separation, and Child Custody Disputes* (July 17, 2023) at p. 5 [documenting more than 940 child murders by divorcing, separating or court-involved parental figures and concluding that “divorce or separation is the most lethal time for family members suffering under domestic violence and coercive control”] <<https://centerforjudicialexcellence.org/2023/07/17/cje-releases-child-safety-report/>> (as of Jan. 30, 2024); Alltucker, *A child dies every 6 days amid custody fights, family court lapses. Advocates want change.*, USA Today (July 17, 2023) <<https://www.usatoday.com/story/news/nation/2023/07/17/child-deaths-during-custody-battles/70383774007/>> (as of Jan. 30, 2024).

women “may feel compelled to capitulate on important issues that are contrary to the best interest of the child.”³⁷ Put differently, they may comply with custody demands to avoid experiencing further abuse.³⁸ Some women may also fear “protracted hostile negotiations over the children” after they gain the courage to leave their abusive partners.³⁹

Apart from fear of their abusive partners, some domestic abuse victims may agree to shared custody because they fear the legal system. People who are abusive often use the legal system as another tool to perpetrate abuse. They, for example, might prolong a custody dispute to drain the victim’s finances.⁴⁰

Agreeing to joint custody may not only avoid this further abuse but also the embarrassment and shame which often results from sharing violent and personal details in court.⁴¹ As one survivor explained:

I was terrified of going to court. I was horrified at what a custody battle would bring. Get me into a courtroom where they’re going to grill me and ask me questions and say horrible things, and it’s frightening. I don’t like that grilling; it is very reminiscent of what he did to me for many, many years.⁴²

Even if victims of sexual abuse are willing to engage with the legal process, they may fare no better—or potentially do even

³⁷ Ver Steegh, *supra* note 36, at 285.

³⁸ Watson & Ancis, *Power and Control in the Legal System: From Marriage/Relationship to Divorce and Custody* (2013) 19 Violence Against Women 166, 167.

³⁹ Hardesty, *supra* note 32, at 550.

⁴⁰ Watson, *supra* note 38, at 167-168.

⁴¹ Brinig, *supra* note 12, at 277.

⁴² Hardesty, *supra* note 32, at 551-552.

worse—in court.⁴³ As discussed, courts often discount abuse because of their reliance on misconceptions about how survivor’s “ought” to act. Additionally, sexual abuse allegations are difficult to prove,⁴⁴ and may not even be considered by the decision maker.⁴⁵ These rational fears of the legal system understandably result in some abused mothers agreeing to joint custody to avoid resolving the custody issue through a legal proceeding.

B. Sexual abuse victims agree to shared custody arrangements because of pragmatic concerns and family ideology.

Sexual abuse victims may also agree to joint custody because of pragmatic concerns, such as “[c]oncerns about time, money, and energy.”⁴⁶ Mothers may be concerned about adequately providing for their children without the assistance of another parent, particularly if they work full-time or have health concerns.⁴⁷

Custody decisions are also influenced by sexual abuse victims’ family ideologies.⁴⁸ Traditional family ideology regards the nuclear family structure—a mother, a father, and children—as the optimal family environment for children’s growth. All

⁴³ See *ibid.*

⁴⁴ Jaffe & Crooks, *Understanding Women’s Experiences Parenting in the Context of Domestic Violence: Implications for Community and Court-Related Service Providers* (2005) Violence Against Women On-line Resources 1, 9.

⁴⁵ Brinig, *supra* note 12, at 277.

⁴⁶ Hardesty, *supra* note 32, at 552.

⁴⁷ *Id.* at 552-553.

⁴⁸ *Id.* at 553.

other family forms are viewed as inferior.⁴⁹ Mothers who share this ideology may therefore agree to shared custody because they want to maintain some semblance of the two-parent family structure. They also may have “guilt over breaking up a two-parent family” and worry about “the effects of divorce and [their children] growing up ‘without a father.’”⁵⁰ They may feel that “any father is better than no father.”⁵¹ In addition, they may have hope that their ex-partners will change and become better fathers for their children.⁵²

Besides the two-parent ideology, the prevailing ideology of motherhood may influence survivors’ decisions about custody arrangements as well. The prevailing ideology of motherhood mandates that mothers commit themselves to the well-being of others.⁵³ Women are also instructed from an early age to contemplate the impact their choices may have on others.⁵⁴ As a result, when making custody decisions, women “reported feeling responsible for facilitating father–child contact after divorce and

⁴⁹ *Id.* at 559.

⁵⁰ *Id.* at 553; see Salem & Dunford-Jackson, *Beyond Politics And Positions: A Call for Collaboration Between Family Court and Domestic Violence Professionals* (2008) 46 Fam. Ct. Rev. 437, 437.

⁵¹ Jaffe, *supra* note 44, at 3.

⁵² Arean & Mederos, *Fathering After Violence: Working with Abusive Fathers in Supervised Visitation* (2008) 1, 15
<http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/fathering_after_violence.pdf> (as of Jan. 31, 2024).

⁵³ Hardesty, *supra* note 32, at 559.

⁵⁴ *Ibid.*

were hesitant to deprive their children of relationships with fathers.”⁵⁵

Both pragmatic concerns and views on family may thus affect a sexual abuse victim’s decision to agree to shared custody.

IV. The Trial Court’s Preconceived Beliefs Caused It to Improperly Discount Ms. Keeler-Hodgetts’ Testimony of Sexual Abuse.

Overly narrow views of how domestic abuse victims should act in response to abuse, including sexual abuse, like those demonstrated by the trial court here, continue to persist because “[f]amily court judges are afforded significant discretion in assessing the parties’ credibility” and “tend to receive little public scrutiny.”⁵⁶ In order to course-correct, the Courts of Appeal have brought to light misconceptions about domestic violence survivors that result in credibility discounting.

For example, in *Vinson v. Kinsey* (2023) 93 Cal.App.5th 1166, 1176-1177, the Court of Appeal rejected the trial court’s disbelief of the domestic abuse victim’s allegations that she feared her abuser would kill her. It explained that the trial court “adopted too cramped a view of how battered women should react to threats and abuse” despite evidence that “battered women differ in the type and severity of their psychological reactions to violence and abuse, as well as in their strategies for responding to violence and abuse.” (*Ibid.*; see also *K.L. v. R.H.* (2021) 70 Cal.App.5th 965, 984 fn. 11 [encouraging continued diligence and

⁵⁵ *Ibid.*

⁵⁶ Mindthoff, *supra* note 5, at 246.

education to guard against the misconception that a domestic abuse victim should present as “sweet, kind, demure, blameless, frightened, and helpless”]; *In re Ma.V.* (2021) 64 Cal.App.5th 11, 26 [same]; *In re I.B.* (2020) 53 Cal.App.5th 133, 156 [rejecting counsel’s arguments that sought to undermine the domestic abuse survivor’s testimony based on the myth of “helpless and weak battered women”].) After pointing out the “recognized difficulty of leaving an abusive relationship,” the Court of Appeal also rejected the trial court’s discounting of the victim’s fears because she delayed in seeking a restraining order. (*Vinson, supra*, 93 Cal.App.5th at pp. 1177-1178.)

The two misconceptions underlying the trial court’s credibility determination here diverge from the actual experience of most survivors, as documented in the research and scholarship discussed above. When courts discount nonconforming testimony as implausible, they risk incorrect credibility assessments that, in turn, result in the denial of warranted relief, such as a protective order, child custody order, or financial relief. As in *Vinson*, it is therefore appropriate for this Court to reject the trial court’s credibility determination and correct the misperceptions underlying it.

CONCLUSION

To further justice, California courts' credibility determinations regarding sexual abuse cannot be infected with preconceptions about the expected behavior of abuse victims. Yet the trial court's reasoning below reflected exactly such impermissible stereotypes, which were not supported by the facts of this case and have been disproven by robust social science findings. This Court should reject the trial court's reliance on these assumptions, as well as its credibility determinations predicated on them.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for *Amici Curiae*, pursuant to Rule 8.204 of the California Rules of Court, certifies that the foregoing is proportionally spaced and contains 3,873 words, as counted by the word count of the computer program used to prepare the brief.

Dated: February 8, 2024

ORRICK, HERRINGTON &
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PROOF OF SERVICE

I am a citizen of the United States, over eighteen years old, and not a party to this action. My place of employment and business address is Orrick, Herrington & Sutcliffe LLP, 405 Howard Street, San Francisco, CA 94105.

On February 8, 2024, I served true copies of the within Amicus Curiae Brief on the trial court and on the parties interested in this proceeding as follows:

On the Superior Court clerk for delivery to the trial judge, by directing preparation of a printed copy for mailing to:

Hon. Stephen Pulido
c/o Clerk of the Superior Court
Department 503
24405 Amador Street
Hayward, CA 94544

By U.S. Mail, First-Class Postage Prepaid: I am readily familiar with the firm's practice in this office of processing correspondence for mailing. Under that practice, such correspondence is placed in a sealed envelope and deposited with the U.S. Postal Service on that same day with first-class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed by me on February 8, 2024, at San Francisco, California.

/s/ Jennifer Cygnor

on counsel for each party:

Electronic service through TrueFiling: I am e-filing this document through the Court of Appeal's TrueFiling service. I am designating

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed by me on February 8, 2024, at San Francisco, California.

/s/ Nicole Payne