Comments of Paula Werme, Esq. (retired) on this Committee's Inquiry

I had a conversation with a friend in a different state about a year ago. She made the most interesting observation. Paraphrased, it went like this: "I used to volunteer at a DV call center. I thought I could recognize abuse in my own marriage. He is the most controlling person I have ever met. I didn't see it for years." She recently finalized her divorce, and told me "I'm leaving with pretty much nothing of any substance, except myself and my soul, which are pretty much whole for the first time in a decade." I am happy for my friend's success at breaking away.

You may think that child custody and domestic violence are unrelated. I assure you that they are very much related. I spent a great deal of time in the last three years studying the dynamics of narcissistic and sociopathic domestic violence. I probably now have 1/3 as many hours into the study of this as I have under my belt from law school. I read books, watched many, many hours of youtube videos of experts in the field, and read online articles, including research articles from the field of psychology, research into court outcomes published in family law journals, and a couple of publications from the National Council of Juvenile and Family Court Judges. I know if I find an interesting abstract from Hein online, and I don't want to pay their high prices to buy the article, I can contact the author to see if they will provide it to me. Most do. I wish I had time to do more research. I have other hobbies as well.

I have some major take-aways from this much reading and research and my legal experience:

First, domestic violence comes to the attention of the Family Division in three very different ways, and often with three very different results. One is DV Petitions. The current state of the law is abysmal here, and I know you are working on solutions for that. I do have one suggestion. I attended a judicial zoom training seminar held for DC Family Court judges last year. The focus was on the judges learning the signs of the model of domestic violence perpetrators, "coercive control." "Coercive control" has been defined and criminalized in the UK based on psychological research. Various states are moving toward putting the definitions in the law regarding domestic violence. CT, I believe, is one such state; Hawaii is another one that has put it into their definition of DV. The DC judicial seminar further encouraged judges to look at the information on it, educate themselves, and do what they could to recognize coercive control in their own court rooms until the DC statutory law catches up to the model. I assure you that can be done right now – across the board – in custody cases, DV cases, and DCYF cases. Coercive control is really important. There may be no physical violence at all in a relationship until the abuser murders the victim. It matters. If it was defined and implemented into NH DV law, this committee would not be here today, searching for answers.

"Coercive" behavior or "control" is mentioned 40 separate times in the NCJFCJ's publication "Judicial Guild to Child Safety" in the context of custody proceedings. It was published in 2008, so the concept is hardly in its infancy, yet it post-dates the implementation of RSA 173-B. It is mentioned in the context of fashioning supervised visitation for abusive or controlling parents, consideration of contempt motions, warning judges not to put the protective parent in the position of committing contempt to protect a child, non-violent coercive measures such as non payment of support, etc. Hawaii defined it in the DV law in 2020. I give the definition they enacted here as an example:

§586-1 Definitions. As used in this chapter:

"Coercive control" means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights, whereby the "coercive control" is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

(1) Isolating the individual from friends and family;

(2) Controlling how much money is accessible to the individual and how it is spent;

(3) Monitoring the individual's activities, communications, and movements;

(4) Name-calling, degradation, and demeaning the individual frequently;

(5) Threatening to harm or kill the individual or a child or relative of the individual;

(6) Threatening to publish information or make reports to the police or the authorities;

(7) Damaging property or household goods; and

(8) Forcing the individual to take part in criminal activity or child abuse.

I think you could easily conclude this committee would not be meeting here addressing this crisis if this was the law in NH.

I have read transcripts of some of the above described behavior done in NH court room without sanction by a judge. Judges can strongly control their court rooms if they would do so without any change in the statute.

I have also witnessed perpetrators in NH using the courts and the judges themselves to inflict harm on their victims. And courts can be fully cooperative – sometimes out of ignorance, but I do believe that – let's face it – the kind of person that wants to be a judge can be narcissistic themselves. The bar, the Supreme Court and the JCC has to hold judges who misuse their power to account.

Just one instance - financial abuse is abuse. It does no good to hold perpetrators of physical violence to account in the DV statutes or the criminal courts, and hand them the keys to the bench by not sanctioning them for violations of court rules – court discovery rules, permitting late filings, not bringing financial records to hearings on contempt of support. To do so is to permit financial abuse under the nose of the court. It emboldens the abusers.

The National Council of Juvenile and Family Court Judges talks about this behavior in the booklet on child safety in custody hearings.

"Abusive parents generally have carefully manufactured a situation that facilitates and, in their minds, justifies their behavior. When the justice system fails to hold abusive parents accountable, especially when their behavior has been revealed to the court, it reinforces their belief that there are no real consequences for their actions. Because the

abusive parent now sees the court as a collusive partner, he or she may have no reason to think that the court will hold him or her accountable to obey any of its orders. **This result puts both the child and the at-risk parent in an extremely dangerous position**." [Emphasis added.]

Read that again. Bad judicial decisions themselves put children and DV victims at extreme risk. Judges must do better to understand the dynamics of abuse, or they will remain bad judges. You have to acknowledge that as part of your recommendations.

That abusive behavior includes failure to comply with discovery, failure to pay child support, multiple ex parte motions, asking to pay bills directly in lieu of support, as well the usual abusive patterns of calling the victim crazy, and alleging parental alienation without a scintilla of evidence. It's a huge piece of the puzzle. Not hearing a motion for contempt of court ordered support for more than a year makes the court the financial abuser. It happens, far more frequently than some are willing to admit. A Motion for Contempt of a support order should automatically trigger OCSE involvement in the case. If you look for the other behaviors in the context of a court case, you can find it. Educate yourselves.

I have heard horror stories. I am aware that there are women in NH that desperately want to get out of abusive relationship, but they know full well the current court practices in failing to protect their children, particularly the very young. They are afraid to seek protection because they know the DV laws are so bad. They stay for years in these relationship because they don't trust the court to do their job at protecting them or their children. At times, those people end up coming to the court's attention anyway – via a police report concerning DV and children. THAT method of court involvement frequently involves the trauma of having your children removed from your care.

DCYF pretty much has a cookie-cutter approach to all of their cases. Psyche assessments and counseling for the parent(s) - doesn't matter if it because of violence or hoarding leading to unsafe living conditions. They can do a lot better than that. There can be orders for DCYF workers to help the victims get address confidentiality, file DV petitions, and return the children to the non-offending parent with child support ordered in the context of the DCYF case. A program to teach victims the actual dynamics of abuse can be offered – by DCYF or other DV advocates, and participation in that can be considered for dispositional orders. I would not waste much time on the abusers themselves. Most abusers have a personality disorder that is not amenable to change, even with counseling. Make orders of protection against them. . . if the Child Protection Act requires efforts at reunification, order the counseling, but work toward harder toward reunification with the abused victim by showing them the dynamics of what happened to them, so they can change. DCYF needs to start treating victims of DV as victims and not perpetrators of abuse. Protect them and their children from the abuser. Social workers should be referring them to victim services, so they can seek DV order, address confidentiality, and other protections. I watched CPS hearings in MN for a week in 2003. I saw the judge make child protective services pay for furniture storage for an abused woman so she would not lose everything while she was transitioning away from the abuser. The judge made absolutely clear to the woman she intended to return her children the minute she secured safe housing and a protection order. Judges can refer cases to the Office of Child Support Enforcement in a DCYF case. They should be able to order support from one parent to another in that context as well. Yes – some tweaks need to be made to the child protection act to accomplish this, such as changing RSA 169-C:4 – that strips jurisdiction away for regular custody cases while a DCYF case is going on. Social Workers aren't lawyers, (believe me,

I KNOW – I've REGULARLY heard stories of DCYF workers mis-quoting the law to parents) – but improvements can be made. It won't happen if DCYF treats the victims as if they are the perpetrators – they have the inherent power to give real help, simply not the imagination or will to do so. Someone please give them the will. They will have to study other states child protection systems to find the imagination they lack.

Although I was unable to attend the hearing on January 21, 2022, I attaching to and making a part of my statement the following document:

The PhD thesis of Ann-Marie Moynahan, entitled "Structural Violence in the NH Family Court System: an autoethnographic exploration." I am attaching a copy of it to this email.

The thesis is written about her divorce experience in the NH Family Court. Although Dr. Moynahan has made several conclusions in her thesis, the conclusion that struck me as most relevant was

> "The predominant pattern that emerged in this study is the existence of structural violence within the New Hampshire family court system that enables those within the system to act in the best interests of themselves and those employed by the system. This inherent systemic flaw enabled ethical issues and questionable practices to prevail repeatedly despite negative outcomes harming our family. Patterns of judicial decisions inflicting harm emerged as the case progressed over time.
>
> **Predictable orders.** As the case was prolonged, it became easy to predict the outcome of the judge's orders, independent of the content of his orders. The judge's orders would repeatedly and predictably promote additional time in court. More court time translates into billable hours for court affiliates and a secure caseload for the judge. Regardless of the issues decided in the orders, the ongoing orders became structured to keep our family embroiled in the court process.
>
> **Patronizer favoritism.** The second pattern of predictability is patronizer favoritism. Based on the judge's orders there could be an inclination to conclude the judge is biased against women. While judicial bias against women may be observable in some aspects of this matter, the results of this study are more conclusive when looked at in the context of the judge rewarding the father for patronizing the system. This is evident through orders favoring the father and reinforcing the father's negative behaviors by awarding him legal fees throughout the matter. Awarding the father legal fees, no matter how small the amount, sends the message to the father he is right and I am wrong, further encouraging the father to return to court for additional psychological reassurance and validation with the added benefit of attacking me, blaming me and having the judge punish me. Patronizer favoritism contributes to intractable New Hampshire family court conflict in this matter. Over time, the outcome of the judge's orders became predictable. More time in court and rewards to the father for patronizing the system was likely to and in fact did occur throughout the matter. It is easy for patronizer favoritism to remain undiscovered because when outcomes are undesirable litigants and others may believe the issue is gender bias. Unfortunately, this perception of bias enables patronizer favoritism to hide in plain sight."

And: "*Structural violence and judicial discretion in the New Hampshire family court promote intractable conflict, which prevents parents from meeting basic needs for their families, causing them harm"*

I was so impressed with the thesis, I wrote a critique. I have never published it anywhere but I do quote a relevant excerpts below. In the critique, I noted that I thought RSA 461-A:12 – the needing permission of the court to move – is unconstitutional on its face." It figures in some abuse related custody cases, including hers. I wrote

> " RSA 461-A:12 was, and it was the major point of litigation. Moreover, it was the major method of the power of the judge to control her, causing inability of the woman to work for a multi-year divorce proceeding. Her money, intended to be spent on acquiring a PhD, was instead transferred to the court, the father in fines and attorney fees, the Guardian ad Litem, and the judge, court appeal fees, lawyer fees, leaving a once-financially comfortable woman with a life plan almost homeless. The judge proscribed where she could SLEEP for years. . . . . Had [the judge] been related to her or in a relationship with her – his behavior fit into the NH definition of "domestic abuse." Repeatedly, and over a period of many years, his behavior devastated the life of the PhD candidate (now a PhD)." [Note – she never named the judge. I'm not sure it was a man.]

Abolish RSA 461-A:12. Just delete it from the statute. Aside from being unconstitutional and a statutorily sanctioned method to abuse domestic abuse survivors, it hurts parents that move across the county line or the state line or across the country for job opportunity as well. I would think it is less common issue these days anyway in the context of the pandemic work place changes.

Parental Alienation in the NH Courts.

I'm entirely unsure how parental alienation got into the family courts in the first place. There are probably few judges sitting on the bench that realize this, but I am unaware of any NH Supreme Court case that considered the merits of the theory after a Kumho Tire Hearing or made a ruling on its admissibility in court. Yet, NH courts are ordering reunification "therapy" - a therapy that that is not covered by insurance – in violation of RSA 461-A, III, it frequently impoverishes the victims of DV and the protective parents, regardless of whether the court finds that abuse or domestic violence occurred. These orders traumatize both victims of DV and children. Courts can and do order changes of custody when it doesn't work – handing the children to the abusers – and in violation of RSA 461-A:6, IV(a), even if the court finds the abuse occurred. The justification seems to be in in RSA 461-A, 2. It is worth reading:

> I. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, **unless it is clearly shown that in a particular case it is detrimental to a child**, to:
> (a) Support frequent and continuing contact between each child and both parents.
> (b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.
> (c) Encourage parents to develop their own parenting plan with the assistance of legal

and mediation professionals, unless there is evidence of domestic violence, child abuse, or neglect.
(d) Grant parents and courts the widest discretion in developing a parenting plan.
(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.
II. This chapter shall be construed so as to promote the policy stated in this section.

The part I bolded above seems to be what the courts are ignoring. The purpose is NOT to reunify children with abusive parents when there are safety considerations. Courts can't and don't order services in custody cases designed to correct the conditions leading to abuse and neglect as they do in child abuse and neglect petitions. They CAN make orders in custody cases protecting children unless and until abusers address their own behaviors in therapy. I suggest that this be new norm. I also suggest adding one word to that part of the statute. "Because children do best when both parents have a, **loving,** stable and meaningful involvement in their lives, it is the policy of this state . . ."

This is what the National Council of Juvenile and Family Court Judges say about parental alienation:

C. [§3.3] A Word of Caution about Parental Alienation34

Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation syndrome, or "PAS." The theory positing the existence of PAS has been discredited by the scientific community. 35 In Kumho Tire v. Carmichael, 526 U.S. 137 (1999), the Supreme Court ruled that even expert testimony based in the "soft sciences" must meet the standard set in the Daubert case. 36 Daubert, in which the court re-examined the standard it had earlier articulated in the Frye 37 case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. PAS does not pass this test. Any testimony that a party to a custody case suffers from the syndrome or "parental alienation" should therefore be ruled inadmissible and stricken from the evaluation report under both the standard established in Daubert and the earlier Frye standard. . . . **The discredited "diagnosis" of PAS (or an allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the child's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality**. **It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the child's responses by acting in violent, disrespectful, intimidating, humiliating, or discrediting ways toward the child or the other parent.** The task for the court is to distinguish between situations in which the child is critical of one parent because they have been inappropriately manipulated by the other (taking care not to rely solely on subtle indications), and situations in which the child has his or her own legitimate grounds for criticism or fear of a parent, which will likely be the case when that parent has perpetrated domestic violence. Those grounds do not become less legitimate because the abused parent shares them, and seeks to advocate for the child by voicing his or her concerns. [Emphasis added.]

There is little question that NH judges disbelieve or minimize evidence of abuse in the face of

allegations of parental alienation. Empirical research shows it is true nationwide. See the attached research paper by Joan S. Meier from George Washington University Law School, "Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations." From the paper,

> "These data powerfully affirm the reports from the field, that women who allege abuse - particularly child abuse - by a father are at significant risk (over 1 in 4) of losing custody to the alleged abuser. (Importantly, this rate applies even in cases where the fathers appear not to have claimed alienation to defeat the abuse claim.) Even when courts find that fathers have abused the children or the mother, they award them custody 14% of the time. In cases with credited child physical abuse claims, fathers win custody 19% of the time."

It should be noted that this is true in NH even though it is contrary to the plain wording of RSA 461-A:6, III and IV. NH judges regularly seek in the context of a custody matter – with their self-chosen evaluators – evidence of alienation. I've heard of judges telling protective parent that they "won't like the order" if they don't comply with harmful and confiscatory reunification therapy. The same judges don't know enough to ask the evaluator for coercive control evidence in the parent's relationship or with respect to the parental relationship with the child – so the full picture is rarely seen.

The guardian ad litem system is similarly flawed. Most GALs don't have psychological training, or extensive training in domestic violence. My first preference would be to abolish it. GALs - even attorney GALs - are easily charmed by narcissistic abusers. Abusers are skilled at making themselves appear to victims. The result is that GALs – trying to comply with what the judges want and the overarching purpose of the statute -also frequently ignore the parts meant to protect children and recommend dangerous custody arrangements.

The information is readily available – both in and out of court, if one looks for it. In the context of litigation, coercive control can look like failure to pay child support absent compelling economic change of circumstances, calling the other parents crazy, lying to the court – abusers can lie so much, they lie when they don't have to lie. They can do it quite convincingly. They have had lots of practice. Just once - I'd like to read a transcript or an order that tells the other side that they won't like the property distribution decision if they don't comply with financial discovery instead of threats to take children from their primary caretaker.

POLICE:

I know recently of a NH case where an incident of abuse was so bad, the town's (or perhaps the state police) SWAT team was called to the home. The perpetrator got away – no arrest at the scene. The police dutifully notified DCYF of the DV. The victim almost immediately crossed multiple state lines to get away – hurriedly packing things, abandoning the NH house, job, etc. By immediately, I mean the incident happened on a Friday, and she was states away from NH by Monday morning. The victim later became aware the perpetrator was arrested on unrelated charges in another state. Unbelievably, despite a VERY serious incident of felonious abuse, there was NO NH warrant out for the perpetrator. The police have to do their jobs in protecting victims of abuse as well. Calling DCYF and victim blaming in the context of a child protection matter is of little use if the victim can clearly see the police won't protect her. When the jails are full of domestic abusers in lieu of people with addiction problems, they will know they have succeeded. Yes, I know the groups overlap.

CONCLUSION:

WHILE my recommendation to change the DV statute so it includes the accepted definition of coercive control, this committee can and should go far beyond changing the wording of RSA 173-B or court forms. First and foremost, it should be looking at consideration of child safety as the first priority in making custody decisions. The statute should be crystal clear that it is the number one priority, and the other factors only come into play when child safety is ensured. You owe that to Joshua Savyon and Harmony Montgomery. Co-parenting should not even be considered if it presents a danger to the parent or to the child. Ream after ream of psychological book, videos, and on escaping the abuser talks about no-contact with the abuser as a safety mechanism, as well as for the mental health of the victims. Yet judges in this state openly berate victims in the context of custody cases, stating that their ability to promote a loving relationship between the child and the abuser is more important than the child's safety. Genetics don't create loving relationships. Loving creates loving relationships. Some people are incapable of it. Recognize that.

Fix this, please.

Respectfully submitted,

/s/

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