



Fall 2012 – Newsletter of the NOW Family Law Ad Hoc Advisory Committee – SPECIAL REPORT

Dear NOW Leaders and Members,

The purpose of the Family Law Committee Newsletter is to provide continuing education about current news and information regarding the ongoing crisis for mothers and children in family courts. We hope you find the information we share with you of value as you go about your work on behalf of women and their families, and you are encouraged to share it with members of the public.

This Special Report of the NOW Family Law Ad Hoc Advisory Committee focuses on the destructive ability of abusive parents (usually the father) – aided by fathers' advocacy groups or fathers' rights groups – to deny the protective parent (usually the mother) custody of minor children. Discussed in this issue is how abusers deny custody, and the damage it causes to a half million or more children exposed to continuing physical, psychological and sexual abuse.

We agree with the Leadership Council on Child Abuse & Interpersonal Violence, as well as other anti-domestic violence and child welfare organizations that this phenomenon constitutes a national public health crisis. Discussed in this issue is how abusers are using family courts to deny custody to protective parents and the damage this causes to a half million or more children exposed to continuing physical, psychological and sexual abuse.

General Information

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation web site at this link. <http://www.nowfoundation.org/issues/family/>. There are additional materials on the chapters-only web site at www.now.org.

The Family Law Advisory Ad Hoc Committee brochure is available at this link:
<http://www.nowfoundation.org/issues/family/familylawbrochure7-08final.pdf>

"The average professional--not to mention the average person--often doesn't 'see' what's going on when a woman is being 'abused' by her partner. That's because most people think it looks like a man hitting or harming or killing his wife. More often, it takes the form of a man taking all the money, refusing to pay child support, and filing for custody of the kids. That scenario is far more common, and much more devastating, than that which most people picture when they hear the term 'abuse.'" Mo Hannah, co-founder of the Battered Mothers Custody Conference.

NOW Resolutions on Fathers' Rights, Family Courts, PAS

The National Organization for Women recognized many years ago that the so-called fathers' rights movement would have negative consequences for protective mothers and their children. A 1996 resolution (below) reveals the serious concern that activists had about what was happening in family courts; another resolution in 2006 focuses in on the dangers of a particular method of abuse in family court -- the accusation of a so-called Parental Alienation Syndrome.

FAIRNESS IN COURTS DEALING WITH FAMILY MATTERS

1996

WHEREAS, an estimated 40% to 50% of men who frequently abuse their spouses also seriously abuse their children (Finkelhor, 1990; Gondolf and Fisher, 1991; Walker and Wolovick, 1994); and

WHEREAS, nearly three-fourths of all spousal assaults nationwide involve separated or divorced victims (House Hearing, Violence and the Law, 1987); and

WHEREAS, abusive fathers often ask for custody in order to gain control in divorce cases (American Psychological Association Study on Family Violence, 1996); and

WHEREAS, women seeking relief from domestic violence through divorce are often required to give primary or joint custody of their children to the abuser due to gender bias in the courts (Minnesota Supreme Court Justice Rosalie E. Wahl, 1993);

THEREFORE, BE IT RESOLVED that state and local National Organization for Women (NOW) chapters are encouraged to take steps to make the justice system and the public aware of this trend by working with existing women's shelters and court advocates to establish court watches, document cases of court gender bias, document cases of abusers gaining custody and issue press releases;

BE IT FINALLY RESOLVED that state and local NOW chapters be encouraged to take steps to change the justice system, protect women and children from domestic violence by calling for review of suspect judges, work to recall or defeat judges that do not treat domestic violence as a serious issue, and lobby for laws that require courts to take domestic violence into account when determining custody.

NOW TO DENOUNCE SO-CALLED PARENTAL ALIENATION (SYNDROME)

2006

WHEREAS, the term Parental Alienation Syndrome (PAS) was created by the psychiatrist, Richard Gardner. It is used as a tactic in courts by litigating attorneys as a defense strategy for batterers and sexual predators that purports to explain a child's estrangement from one parent, or explains away allegations against the estranged parent of abuse/sex abuse of child, by blaming the protective parent; and

WHEREAS, there are no data to support PAS; and

WHEREAS, mothers are primarily pathologized and blamed for interfering with their children's attachment to their fathers and PAS is used by many evaluators and courts to discount children's fears in hostile and psychologically abusive situations as a form of entrapment, keeping the child from the protective parent; and

WHEREAS, abuse is continued via the court system thru a series of ruthless assaults from all angles strategically planned over time by an abuser, his criminal-divorce-personal injury attorneys and PAS therapists to fully discredit, blame and control a protective parent with the sole purpose of hiding abuse, infidelity, finances and to "win" possession of the child(ren), while proponents of PAS profit; and

WHEREAS, as documented in the PBS film, *Breaking The Silence, The Children's Stories* there are epidemic levels of abuse and dysfunction in our courts system where espoused judges repeat Richard Gardner's unsubstantiated doctrine and make binding recommendations in conjunction with PAS therapists and PAS attorneys; and

WHEREAS, the newly revised, 2006 edition of "Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide," published by The National Council of Juvenile and Family Court Judges, includes a strong statement condemning the use of PAS which it calls a "discredited" syndrome that favors child abusers in custody determinations;

THEREFORE, BE IT RESOLVED, that the National Organization for Women (NOW) denounces Parental Alienation Syndrome and recommends that any professional whose mission involves the protection of the rights of women and children denounce its use as unethical, unconstitutional, and dangerous.

"Fathers' Rights" Activism

The following information presents NOW Foundation's views about fathers' rights groups and how their agenda harms the lives of mothers and their children during and after custody disputes. We wish to educate mothers, activists and the public about the adverse impact these groups have on protective mothers and children through their power to mislead and to control.

Background

Groups Differ in Focus - First, a note of clarification: fathers' custody activists or fathers' rights groups focus on divorce, custody and alleged gender discrimination in the courts; as opposed to the men's liberation groups who contend men are victims of gender inequality in general as the women's rights movement has grown. In our view, the term "fathers' rights" is misleading as no legal rights are denied to men because they are men or fathers. Additionally, we question calling the activism of those who promote fathers' custody a "movement." It is essentially a collection of small groups and networks across the U.S. and abroad who communicate primarily through the Internet. Activist numbers are relatively small, but their impact in family court proceedings has become significant and harmful to women.

Backlash Against Social Change - The so-called fathers' rights or men's rights movement began as a backlash against what some fathers perceived as unfair sole custody awards to mothers and the assignment of child support responsibilities to non-custodial dads. Additionally, the expansion of shelters, social services and legal aid for battered women, together with better job opportunities for women, made escape from a violent marriage easier for women, enabling many to obtain a divorce and seek custody of minor children. As with other major societal revolutions, gains made by the feminist movement and women's bid for equality prompted a backlash by men who felt threatened by changing roles.

Fathers' custody advocacy or "fathers' rights" groups first organized in 1960 with the founding of Divorce Racket Busters in California. This was a protest against California state laws which the organizers said discriminated against men in alimony and child support and in the presumption of maternal custody. These groups soon expanded into other states, changing their name to Divorce Reform in 1961. More recently, there are a number of different names the groups organize themselves under - a quick Google search will turn up quite a few websites of fathers' rights or men's right activists.

Reaction to Stronger Enforcement of Child Support Orders - Certain social developments are credited with fueling the growth of fathers' custody advocacy groups. One key development was stronger government enforcement of child support orders, beginning in the late 1980s. State enforcement programs pursued parents who were negligent in paying child support, issuing orders to garnish wages or taking other actions to assure support payments. Prior to stronger enforcement efforts, many families headed by mothers barely survived when fathers failed to pay child support over many years. When child support orders were more widely enforced and when payments began to be ordered through the courts or other government programs, some fathers objected and found a way to avoid these payments. Their solution: switch custody of minor children from the mother to the father.

Groups Promote Litigation, Legislation to Favor Dads - Fathers' custody advocacy groups now lobby state legislatures, file class action suits, picket court houses, and monitor judges' decisions through court watches. These groups have poured energy and funding into passing state laws that promote a joint custody preference and prevent a custodial parent from moving to another community, without sufficient safeguards in cases of domestic violence. As divorce rates and the incidence of single-parenthood rose, the 1990s saw the emergence of new and larger organizations like The National Fatherhood Initiative (NFI), founded in 1994. NFI has received hundreds of millions in federal funds to conduct a number of "responsible fatherhood" programs, addressing the widespread problem of absent fathers. NFI programs that receive grant support also conduct "healthy marriage" courses, provide for programs that help establish paternity, collect child support, and provide non-residential parents with access to their children. Some of these programs, no doubt, provide important and needed services, but there have been reports of several of the federally-funded supervised visitation programs managed by fathers' custody advocates that have been active in limiting access by non-custodial mothers and requiring substantial fees for their services.

Labeling Protective Parent Mentally Ill To Deny Custody

Promoting An Accusation of Mental Illness - The role of these activists, NOW Foundation believes, serves to give permission to abusive men to continue their abuse of women through the courts.. They have extensively promoted the use of an accusation against the protective parent of "parental alienation syndrome" -- which has been embraced in numerous family courts across the country as well as abroad.

"Parental Alienation Syndrome" Is Junk Science - The so-called parental alienation syndrome or disorder (and sometimes referred to as "malicious mother syndrome") has not been empirically-tested and is not a mental health disorder. The National Council of Juvenile and Family Court Judges (NCJFC) denounced the theory as "junk science" and at least four states have passed legislation to curtail its use in custody cases involving allegations of domestic

violence, according to Newsweek magazine (Sept. 28, 2006). The NCJFC and the American Bar Association have deemed PAS/PAD inadmissible in court. Essentially, according to the PAS promoters, the protective parent who accuses her/his ex-spouse of harming their child(ren) is deemed mentally ill --- solely by virtue of the accusation of abuse. If the child fears the accused parent – allegedly due to the protective parent’s manipulations, the child is said to also suffer the same mental illness of PAS. Absurdly, the PAS theory holds that the protective parent and child can only be “cured” of their “disease” by being totally separated, with the child placed in exclusive custody of the feared parent.

Custody Activists Urge Courtroom Tactics to Discredit Mothers - Fathers' custody advocacy groups tell the media and the public that their main goals are to provide education, support, and advocacy to men with issues of custody, access, child support, and false accusations of domestic violence and child abuse. In actuality, this is a benign description of fathers' custody activists who counsel men in ways to challenge custody and child support orders and to press for series of motions to keep ex-wives in court and drain them of their resources. Additionally, they help connect fathers with friendly lawyers and court officials who will build cases against protective mothers alleging a mental disorder (the so-called parental alienation syndrome or disorder), with the ultimate objective of reducing or eliminating child support obligations and switching custody. It is abusive ex-spouses (usually fathers) who pursue these courtroom tactics, often to discredit accusations of domestic violence and child abuse. Pedophilia is a factor in some challenged custody cases where the abusive parent wishes to maintain control and access to the minor child. The accusation of “parental alienation syndrome” is very useful in deflecting attention from the abuse charges and focusing on allegations that the accuser is mentally ill.

Courts Biased Against Women Who Report Violence - Extensive use of the internet has empowered fathers' custody advocates and provided a means for abusive parents to prevail in challenged divorce and child custody cases. Many protective mothers -- and a few protective fathers -- have lost custody to the other parent, even when that parent's violent behavior has been documented and made available to the court. It is most often that a father who is violent and/or controlling -- frequently lacking in conscientious and responsible behavior -- that is the more powerful partner in family court. The adversarial nature of the U.S. judicial system tends to favor those with financial resources and those who use power and influence to win -- regardless of the welfare of children and the ex-spouse. There still exists in many family courts a not-so-subtle bias against women who claim abuse in a marital relationship and to extend to men an unjustified benefit-of-the-doubt about charges of bad behavior. As a result, we are seeing more fathers win in contested child custody cases, frequently leading to continued abuse and impoverished mothers who can't do anything about it. Many advocates for mothers who have lost custody to documented batterers and child abusers fear that the rate of child abuse and molestation has increased as more offenders have been granted child custody.

Contested Child Custody Cases Often Involve Abuse - While not all fathers who ask the courts for custody of their children are abusive to the children or their mothers, a sizeable percentage of them are. Their attempts to gain custody are, in many instances, a continuation of the abusive tactics of power and control that existed in the marriage or relationship. A 1997 study by the National Center for State Courts (NCSC) received responses from 124 courts around the nation estimating the proportion of custody and visitation disputes that involve domestic violence. Fifty-seven percent of these courts estimated the proportion to be less than one-quarter of the caseload, but about 37 percent put the proportion between a quarter and one-half. Courts have only fairly recently begun to systematically identify domestic violence in custody cases and some estimates may be conservative. A closer look at samples of disputed

custody or visitation cases in Baltimore, Las Vegas and Louisville by the NCSC found that about one-quarter of the cases in Baltimore and Louisville involved some evidence of domestic violence, while the level of domestic violence was more than twice that rate in Las Vegas.

Susan Keilitz et al, "Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers," NCSC Publication Number R-202

Levels of Abuse Higher than Official Reports - The actual level of domestic violence is, of course, significantly higher than what will be found in the court record, as in many, if not most, cases there is no public record of the domestic violence. The NCSC study mentioned above noted that a significantly higher percentage of the responses to mediation questionnaires revealed domestic violence than was evident in the actual court files. In contested cases (where settlement agreements are not reasonably reached), most fathers get custody due to their financial advantage. The father's demeanor, versus that of the mother's is perceived by the judge as being calm, whereas the mother's demeanor is perceived as being overly emotional or even hysterical due to her fear of losing her children. A father's accusation of the mother's mental illness (parental alienation syndrome or disorder) is increasingly being used to counter the mother's claim of violence and to prejudice the court against awarding custody to the mother.

Research Indicating that the Majority of Cases that Go To Court as "High Conflict" Contested Custody Cases Have a History of Domestic Violence, compiled by Prof. Joan S. Meier, Esq., George Washington University Law School. <http://www.leadershipcouncil.org/1/pas/Meier.html>

Abusive Parents Usually Win in Challenged Custody Cases

Summaries of more than 150 studies of child custody cases in numerous states compiled by the Leadership Council on Child Abuse & Interpersonal Violence reveal that over several decades an alarming trend has emerged. That is, for cases in which child custody is challenged, it is often the father who is ultimately given sole or joint custody of children – including cases where there is evidence of domestic violence and child abuse. The Leadership Council list, "Are 'Good Enough' Parents Losing Custody to Abusive Ex-Partners?", includes studies that find fathers are awarded sole custody even though they were not involved in child care activities prior to divorce. In many cases, the accusation by the father of the mother alienating the child(ren) figured in courts awarding the custody to the father.

An overview by the author, Stephanie Dallam R.N., M.S.N., notes that "Research indicates that custody litigation can become a vehicle whereby batterers and child abusers attempt to extend or maintain their control and authority over their victims after separation. Although, research has not found a higher incidence of false allegations of child abuse and domestic violence in the context of custody/visitation, officers of the courts tend to be unreasonably suspicious of such claims that all too often custody decisions are based on bad science, misinterpretation of fact, and evaluator bias."

One review, appearing in the Family Law Quarterly in 1996, found in a survey of 201 psychologists from 39 states who conducted custody evaluations that domestic violence was not considered by most to be a major factor in making custody determinations. "Conversely, three-quarters of the custody evaluators recommended denying sole or joint custody to a parent

who “alienates the child from the other parent by negatively interpreting the other parent’s behavior.”” Ackerman, M.J., & Ackerman, M. C. (1996). Child custody evaluation practices: a 1996 survey of psychologists. *Family Law Quarterly* 30, 565-586.

Joan Meier surveyed the 2001 case law and identified 38 appellate state court decisions concerning custody and domestic violence. She found that 36 of the 38 trial courts had awarded joint or sole custody to alleged and *adjudicated* batterers. Two-thirds of these decisions were reversed on appeal. Meier, J.S. (2003) Cases included repeated convictions of domestic assault by the father, choking of a mother which led to hospitalization and arrest of the father, breaking of the mother’s collarbone in another incident and many more such incidences in cases cited in the article. Yet, fathers were given custody. Meier, J.S. (2003). Domestic violence, child custody, and child protection: Understanding judicial resistance and imagining the solutions. *American University Journal of Gender, Social Policy, and Law*, 11, 657-731.

Researchers at California State University, San Bernardino (CSU-SB), are conducting an ongoing national survey. Of the 100 self-identified protective parents who had completed the 101-item questionnaire (as of 2004), the study found that prior to divorce 94% of the protective mothers surveyed were the primary caretaker and 97% had custody at the time of separation. However, as a result of reporting child abuse, only 27% were left with custody after court proceedings; 97% of the mothers reported that court personnel ignored or minimized reports of abuse and 45% of the mothers were labeled as having Parental Alienation Syndrome. The summary notes that most parents lost custody in emergency ex parte proceedings (where they were not notified or present) and where no court reporter was present. Some 65% reported that they were threatened with sanctions if they “talked publicly” about their case. (!!)

The summary of the CSU-SB survey further notes that the cost of court proceedings was over \$80,000 and over a quarter of the protective parents reported being forced to file bankruptcy as a result of fighting for custody of their children. Eight-seven percent of the protective parents believe that their children are still being abused; however, 63% have stopped reporting the abuse for fear that contact with their children will be terminated. Eleven percent of the children were reported to have attempted suicide. Stahly, G. B., Krajewski, L., Loya, B., Uppal, K. German, G., Farris, W., Hilson, N. & Valentine, J. (2004). Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse. In **Disorder in the Courts: Mothers and Their Allies Take on the Family Law System** (a collection of essays), electronic download available on the California NOW store’s website, http://storecanow.org/products.php?prod_id=3 or purchase at <http://wwwcanow.org/store>

Scores of other studies summarized in this web publication report similarly appalling violations of due process, orders of custody of children to abusive parents, discrediting of protective parents, biased court personnel, and ongoing child abuse. In addition, a listing of gender bias reports from 43 states and seven federal districts are summarized; the full reports can be found on the webpages of Legal Momentum’s National Judicial Education Project, <http://www.legalmomentum.org/our-work/njep/njep-task-forces.html>

(Are “Good Enough” Parents Losing Custody to Abusive Ex-Partners?” by Stephanie Dallam – updated 2008 for the Leadership Council on Child Abuse and Interpersonal Violence, <http://www.leadershipcouncil.org/1/pas/dv.html>)

Men's Rights Extremists = Hate Groups

Hatred of Women a Common Theme - A number of leaders of fathers' custody advocacy groups are clearly misogynistic and use their Internet sites to exhort men to take action against ex-wives, using hate-filled language. More extreme men's rights activists (another term for fathers' rights activists) are identified as members of hate groups by the Southern Poverty Law Center in their Spring, 2012, Issue 145 of the Intelligence Report: The Year in Hate and Extremism, 2011. <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/a-war-on-women>. They are described as displaying virulent misogyny, spreading false anti-woman propaganda and applauding and even encouraging acts of domestic terrorism and extreme violence against women and children, up to and including murder.

Violent Actions Often Encouraged - The Intelligence Report article, "Leader's Suicide Brings Attention to Men's Rights Movement", notes that [Thomas] "Ball's suicide brought attention to an underworld of misogynists, woman-haters whose fury goes well beyond the criticism of the family court system, domestic violence laws, and false rape accusations. There are literally hundreds of websites, blogs and forums devoted to attacking virtually all women (or, at least, Westernized ones).... While some of them voice legitimate and sometimes disturbing complaints about the treatment of men, what is most remarkable, is the misogynistic tone that pervades so many. Women are routinely maligned as sluts, gold-diggers, temptresses and worse ... The common denominator among these diverse bloggers and activists is their resentment of feminism and females in general." Often the language encourages readers to take violent action to defend what they perceive to be a hatred and abuse by women of men.

Read What They Have to Say - A website, The Liz Library, contains examples of statements made by men's rights/fathers' rights activists that reveal the extreme hatred and denigration of women expressed by many of their spokesmen. Several of the individuals featured on those webpages are advocates for pedophilia. Additionally, the site features a list of various resources on family law issues. See <http://www.thelizlibrary.org/> and click on Collections, then Fathers' Rights.

Fathers' Custody Advocacy Groups' Main Strategies

- A. **The Push for Joint Custody**: The fathers' custody activists claim that both legal and physical joint custody is in the best interest of the child. But it is no coincidence that joint custody drastically reduces the father's child support payments and other financial obligations (health insurance, day care, etc.). Efforts to make joint custody presumptive by state statute are ongoing around the country for this very reason. In reality, after joint custody is agreed to or ordered by the court, many mothers often have the child or children most of the time, while the reduced child support payment from the father negatively impacts the mother's ability to support the child or children. Additionally, in many families where the parents are married, time spent with and provision of daily care of the children are not evenly shared by the two parents while they are together. There is no reason to impose a presumption of joint legal and physical custody on families when they have not previously chosen this arrangement for themselves.

- B. The Use of an Accusation of “Parental Alienation Syndrome” (PAS) as an Offense or Defense in Court: Fathers are urged by some fathers' custody activists to say the mother is alienating the child from the father and harming the child's mental health. The fathers hire mental health professionals or others not well qualified who will testify (frequently for a substantial fee) that the mothers are alienating the children. In many cases, the fathers are abusive to the mothers and/or the children, or are using the children to harass or control the mother – leading the children to not want to visit the father. The accusation is most often used to deflect charges of abuse made by the protective mother. The originator of the so-called parental alienation syndrome, the late Dr. Richard Gardner, widely distributed his writings, including to judges, attorneys and guardians at litem, and custody evaluators. “Parental alienation syndrome” or disorder has not been subjected to empirical research and remains an unproven and false accusation. Some officers of the court -- who are not necessarily trained in psychology or psychiatry -- have become convinced that such a syndrome or disorder exists. Or, they routinely “diagnose” parental alienation because this has become an important source of income for them in courts which do not reject the use of PAS.

ABA, Judges’ Association Say PAS Inadmissible in Court

Importantly, the American Bar Association's Spring 2006 journal article, *Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy*, concluded that the supposed disorder is inadmissible in court “given its lack of scientific validity and reliability.” Similarly, the National Council of Juvenile and Family Court Judges (NCJFCJ) rejects it and recommends that “Under relevant evidentiary standards, the court should not accept this testimony.” Their publication, *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judges Guide* (2nd edition). Reno.NC:NCJFCJ. finds that:

“The theory positing the existence of “PAS” has been discredited by the scientific community.” The guide notes that that Supreme Court ruled that even expert testimony based on the “soft sciences” must meet the standard set in the *Daubert* [54] case. *Daubert*, in which the Court re-examined the standard it had earlier articulated in the *Frye* [55] case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. Any testimony that a party to a custody case suffers from the syndrome or “parental alienation” should therefore be ruled inadmissible and/or stricken from the evaluation report under both the standard established under *Daubert* and the earlier *Frye* standard [56].

Despite these clear statements from the two most recognized professional organizations that advise courtroom practices, many family courts continue to allow accusations of “parental alienation syndrome” to be made and continue to use custody evaluators, mediators, guardians at litem and child protective services personnel who mistakenly believe that PAS is a valid and professionally-accepted mental condition.

Bruch, Carol J., Alienation: Getting it Wrong in Child Custody Cases (Fall 2001). 35 Family Law Quarterly, 257 (2001). Available at SSRN: <http://ssrn.com/abstract=298110> or <http://dx.doi.org/10.2139/ssrn.298110> and <http://www.thelizlibrary.org/site-index/site-index-frame/html#soulhttp://www.thelizlibrary.org/bruch/>

DSM-V Update on Parental Alienation Syndrome (PAS)

Groups Push for PAS in DSM- V - For years, fathers' custody activists have promoted inclusion in the "bible" of the mental health profession, the Diagnostic and Statistical Manual of Mental Disorders (DSM), a listing of the so-called "parental alienation syndrome or disorder" as a recognized mental illness. Their supporters have gone to extraordinary lengths to convince officials of the American Psychiatric Association and reviewers charged with updating the DSM that PAS/PAD is real. They have sponsored biased "scientific" studies, attempting to build the case that PAS/PAD is a mental illness and held conferences to train individuals in the application of PAS/PAD in challenged custody cases. The field has grown to what must be a multi-million dollar enterprise where consultants charge as much as \$30,000 to assess parents' fitness.

Custody Evaluations Often Biased Against Protective Parent - These groups have powerful professional allies in the mental health field whose significant incomes derive from negatively assessing protective mothers' fitness in challenged child custody proceedings. As protective parents and their attorneys point out, their custody evaluations often include evidence-free statements about the protective parent and evaluation methods have not followed professional standards. Additionally, serious problems or short-comings of the other parent are often down-played or overlooked in their reports. Unfortunately, many family court judges place a great deal of weight on these biased and unscientific evaluations. Even if the term "parental alienation disorder" or syndrome is not specifically mentioned, the protective parent is alleged to have some sort of mental disorder that would deem her an unfit parent and is causing the child(ren) to become alienated from the other parent by manipulation and delusional criticism or denigration.

NOW Foundation Objects to Inclusion of "PAS" – Because NOW Foundation believes that PAS is a dangerous and misleading term used by fathers' rights groups to undermine the credibility and/or to control protective mothers engaged in custody disputes we took action. In April 2010, NOW Foundation sent a letter to a review group of the American Psychiatric Association in which the Foundation objected to the recognition and inclusion of PAS/PAD in the Diagnostic and Statistical Manual – V which is to be published in 2013. You can read it here: <http://www.nowfoundation.org/issues/family/PADLetrFinal4-13-10.pdf>

Is Parent-Child Problem the Same as PAS? - NOW Foundation followed up with the American Psychiatric Association's DSM reviewers in 2012 and learned that parental alienation syndrome or disorder will *not* be included in the DSM-V, but another category, parent-child problem which is listed the current DSM will. Whether parent-child problem is just another name

for “parental alienation syndrome” is not clear. The issue is important as the listing of recognized mental conditions means that claims can be made for payment from insurance companies, in many cases. PAS has been found to have already been included in some health insurance policies under the term “parent-child relational problems.” The APA said that they would be working with the World Health Organization in their revision of the International Classification of Disease on the definition of a “parent-child problem.” Read the NOW Foundation update here: <http://www.nowfoundation.org/issues/family/pas-dsm5.html>

Basis for DSM Classifications Questioned - It should be noted that the American Psychiatric Association has a tradition of NOT always basing professional practices on the findings of empirical studies. And it has been criticized as designating as a mental illness a condition for which there is little valid and reliable scientific evidence, while ignoring others where methodologically-sound studies have been conducted. The American Psychiatric Association has been criticized for its close ties to the pharmaceutical industry as well. Sales of the DSM each year generate over \$5 million. Other critics argue that the DSM represents an unscientific system that enshrines the opinions of a few powerful psychiatrists. See: <http://en.wikipedia.org/wiki/DSM-5>

Official recognition of PAS/PAD or any other similar term, in NOW Foundation’s view, is actually the “medicalization” of human distress in what is a trying and emotional-laden experience during divorce and child custody proceedings. Certainly, the facilitation by any court or professional association that would affirm the application this term (or any substitute term) to describe the behavior of a protective parent in official evaluations is to be condemned.

Psychologists’ Perspectives on PAS - Although the organization previously opposed PAS, in 2008 The American Psychological Association (note: not the psychiatric association) made the following statement regarding Parent Alienation Syndrome (PAS):

“The American Psychological Association (APA) believes that all mental health practitioners as well as law enforcement officials and the courts must take any reports of domestic violence in divorce and child custody cases seriously. An APA 1996 Presidential Task Force on Violence and the Family noted the **lack** of data to support so-called ‘Parental Alienation Syndrome (PAS),’ and raised concern about the term’s use. However, we have no official position on the purported syndrome.”

<http://www.apa.org/news/press/releases/2008/01/pas-syndrome.aspx>

Over-diagnosing People for Socio-Political Reasons? - In late 2011, divisions of the American Psychological Association created an online petition in response to professional concerns over the lack of the empirical process involved in DSM-V, an updated revision of the Diagnostic and Statistical Manual (DSM) that is used by psychiatrists and insurance companies to treat people diagnosed with mental illness. While there are many concerns expressed in the petition about the scientific credibility of the DSM, one of the chief concerns cited in the petition is the lowering of the threshold for the creation of new diagnostic categories, which could lead to over-diagnosing people with mental illness based on socio-political reasons.

Psychology Today article from June 2011, titled "Parental Alienation Syndrome": Another Alarming DSM-V Proposal - Using a medicalizing label to mask child sexual abuse: <http://www.psychologytoday.com/blog/science-isnt-golden/201106/parental-alienation-syndrome-another-alarming-dsm-5-proposal>

Parental Alienation Syndrome and Parental Alienation Research Reviews by Joan S. Meier (January 2009) Applied Research Forum, National Online Resource Center on Violence Against Women, http://www.ncdsv.org/images/VAWnet_PAS_Meier_1-2009.pdf

APA Declares 'PAS' Not a Mental Disorder

Reportedly, the American Psychiatric Association has decided against including the so-called parental alienation syndrome or disorder in its revision of the DSM-V. An article appearing on Huffington Post quotes Dr. Darrel Regier, vice chair of the task force revising the manual, as saying, "The bottom line – it is not a disorder within one individual. It's a relationship problem – parent-child or parent-parent. Relationship problems per se are not mental disorders."

However, it is most likely that these designations, such as parent-child relationship problem or parent-parent relationship problem, are broader terms that could include the so-called parental alienation syndrome. The DSM-IV Diagnostic V Codes "Relational Problems" currently allows mental health professionals to bill insurers and charge fees for evaluating parents and children. A handbook for mental health providers includes a category under Parent/Child Relational Problems, "Unresolved parental conflict (i.e., the constant devaluing of one parent by the other in divorce or estranged families resulting in parental alienation syndrome,"

This utterly fails to recognize the vast difference between domestic violence/child abuse and the very common, very human tendency to disparage one's soon-to-be ex-spouse in cases *not involving abuse*. Adversarial proceedings in court often exacerbate these very human tendencies. Counseling can help divorcing partners to reduce the acrimony. But we are not talking about those kinds of divorces; we are concerned about divorces where intimate partner violence has taken place or where children have been physically or sexually abused by a parent.

NOW Foundation believes that the same sort of manipulation by abusive parents and biased evaluators that has switched custody from protective parents will continue, despite the APA's belated rejection. Domestic violence and child abuse frequently figure in high conflict divorces and custody battles; the notion that allegations of abuse constitute parent/child relationship or parent/parent relationship problems is absurd. It is simply a courtroom strategy to deny the existence of family violence, to discredit the accuser and protect the perpetrator. Family courts and custody evaluators must take seriously charges of violence and abuse, investigate and document them in the course of their evaluations, and make their determinations with the safety of protective parents and children uppermost.

The APA's declaration that the supposed parental alienation syndrome or disorder is not a form of mental illness is welcomed— though many years late. It remains to be seen whether the APA's position will be sufficient to guide custody evaluators to adhere to professional standards in assessing parents' fitness (many do not). We hope that the APA's rejection of PAS/PAD as a mental disorder will lead family courts across the country to do the same, especially since the

American Bar Association and the National Council of Juvenile and Family Court Judges have said that PAS/PAD should not be admitted in court. But we remain wary and vigilant. The accusation of mental illness inevitably leads to increased billable hours' for attorneys and substantial fees demanded by psychiatric and psychological evaluators. Bankrupt parents, along with a half million children subjected to continued violence, is the sad result of a family court system desperately in need of reform.

Parental Alienation Not A Mental Disorder, American Psychiatric Association Says, by David Crary

http://www.huffingtonpost.com/2012/09/21/parental-alienation-is-no_n_1904310.html

Value Options Provider Handbook

http://www.valueoptions.com/providers/Handbook/PDFs/Treatment_Guidelines/V_CODES_RELATIONAL_PROBLEMS.pdf

NOW Family Law Ad Hoc Advisory Committee Perspective

MONEY – Joint custody or sole custody helps fathers avoid having to pay thousands of dollars a year in court-mandated child support payments to their ex-spouses. Joint or sole custody to fathers may also minimize their contributions for other financial obligations (health insurance, child care, private tuition, braces, music lessons, etc.). To obtain joint custody or sole custody, fathers may claim that the children will live a more financially secure life with them. Since women have fewer financial resources because of sex-based pay discrimination and time taken out of the paid workforce to raise children, they are clearly placed at a disadvantage when financial resources become a major determinant of who should receive custody.

Many women agree to joint custody for fear they will lose custody completely. Threats are often made to mothers that if they don't agree to joint custody; the father will push to obtain sole custody resulting in the mother having little or no time with the children. As mentioned above in the parental alienation syndrome discussion, it is far too common for loving, protective mothers to lose custody and to even be subject to supervised visitation or no visitation, after trusting in the court system to fairly address custody of their children. So, while it may be a matter of money for many fathers in contested custody cases, it is undoubtedly a matter of love for and protection of the children for the mothers.

CONTROL – Prolonging divorce or custody proceedings and continued motions for modification or contempt of court (also known as "litigation abuse") are tactics the fathers' custody activists recommend to divorcing fathers to keep former partners off balance, financially strapped and, in many instances, very scared.

Men who were violent and controlling during their marriage are likely to continue or increase their violence and control during a divorce proceeding or custody modification proceeding. Women who leave abusive relationships are at the most risk of danger when they make plans to leave the relationship or move away (such as in the tragic case of Nicole Brown Simpson). This is the juncture at which the most tragic events take place, sometimes resulting in the murder of

the wife. These consequences are evident in state domestic violence fatality review board findings and in newspaper headlines all too often. More than three women each day die as a result of intimate partner violence in the U.S. (Domestic Violence Resource Center, <http://www.dvrc-or.org/domestic/violence/resources/C61/cite>)

Though fathers' custody activists contend that their organizing is necessary to protect their "rights," the National Organization for Women Foundation and the NOW Family Law Ad Hoc Advisory Committee believe that their true objectives are to discriminate against, control and punish women by gaining custody of children and to denigrate the personal and economic sacrifices made by mothers for their children.

Children Subjected to Violence In Post-Divorce Situations

One-Half Million Children in Care of Their Abusers is a National Public Health Crisis

In 2008, the Leadership Council on Child Abuse and Interpersonal Violence conservatively estimated that 58,500 minor children *each year* are ordered to have unsupervised visitation with physically or sexually abusive parents following divorce. At any given point in time, a half million children in the U.S. will be affected; they will suffer physical and psychological damage which may take a lifetime to heal, the Leadership Council noted. The ongoing problem of tens of thousands of children each year ordered by a judge into unsupervised care by a violent parent constitutes a national public health crisis.

For more details, go to - How Many Children Are Court-Ordered Into Unsupervised Contact With an Abusive Parent After Divorce? <http://www.leadershipcouncil.org/1/med/PR3.html>

Myths that Place Children At Risk During Custody Litigation, Dallam, S.J. & Silberg, J.L. (Jan/Feb 2006) *Sexual Assault Report*, 9(3), 33-47. http://www.leadershipcouncil.org/1/res/cust_myths.html

International Court Says Gonzales Case a Violation of Human Rights

Children Murdered as Police Ignore Pleas - In many cases, even though the court has ruled to protect mothers and children with a protective or restraining order, local law enforcement officers often ignore the mother's pleas when the father disobeys the court's restraining order and threatens to harm or kill the family members. A tragic example of this is the 1999 Jessica Gonzales case. Gonzales filed for and received a protective order from her abusive ex-husband, Simon Gonzales, whom she believed posed a threat to her and their children. Only one month after receiving the order, the children were not returned to Gonzalez after visitation. Gonzales called police who told her to call back after 10 p.m. if the children had not been returned. At 3:20 a.m., after police had ignored five calls from Jessica Gonzales, Simon Gonzales showed up at the police station and opened fire. The police returned fire, fatally wounding Mr. Gonzales. They then found the dead bodies of Leslie, Katheryn and Rebecca Gonzales in the back of Mr. Gonzales' truck.

U.S. Supreme Court Renders Harmful Decision - Ms. Gonzales took her case all the way to the U.S. Supreme Court, which in 2005 ruled that local police cannot be sued for refusing to enforce a domestic violence restraining order (*Town of Castle Rock, Colorado v. Jessica*

Gonzales) Then NOW president Kim Gandy expressed NOW's outrage at the decision, stating that "the U.S. Supreme Court just hung a "Shoot Here" sign around the necks of battered women and their children all across the country." Gandy said that states must enhance laws to mandate enforcement of restraining orders—and back it up with the right to sue.

Gonzales Meets with UN Human Right Committee - Gonzales related her experience about the failure of law enforcement to protect her children and of the U.S. Supreme Court's appalling decision in her case at a meeting of the United Nations Human Rights Committee in Geneva, Switzerland, July, 2006. The UN committee was conducting a periodic review of the U.S. under the International Covenant on Civil and Political Rights (ICCPR) – of which the U.S. is a signatory. At this same meeting NOW Foundation joined seven other women's and civil rights groups to present a shadow report on various aspects of the failure by the U.S. under the ICCPR to assure women's equal rights, including failure to protect certain groups of women from violence. <http://www.nowfoundation.org/issues/economic/GenderShadowReport.pdf>

Petitions to the Inter-American Human Rights Commission - Ms. Gonzales (now known as Jessica Lenahan) continued to push her case forward and became the first domestic violence survivor to bring a case against the U.S. before an international human rights tribunal. NOW Foundation joined with 11 other women's rights and human rights organizations in signing on to an *amici curiae* brief, prepared by our sister organization Legal Momentum, on Jessica Lenahan's behalf to be submitted to the Inter-American Commission on Human Rights (IACHR). In July, 2011, the Commission concluded that the "United States failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article 11 of the American Declaration." IACHR further found that "The State also failed to undertake reasonable measures to prevent the death of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration....and that the State violated the right to judicial protection of Jessica Lenahan and her next of kin under Article XVIII of the American Declaration."

Recommendations for Reform, Reparations - The Commission issued recommendations for an exhaustive investigation, reparations to Jessica Lenahan, adoption of "multifaceted legislation at the federal and state levels to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, backed by adequate resources to properly implement." Also, it was recommended that federal and state legislation be adopted that advance protective measures for children in the context of domestic violence, combined with adequate resources to implement, including training of law enforcement and judicial officials, and the design of model protocols that can be followed by police departments throughout the country. (Report No. 80/11. Case 12.626) Read the Commission's full decision here: <http://www.legalmomentum.org/our-work/vaw/gonzales-v-usa-decision.pdf>

The American Declaration of the Rights and Duties of Man is a human rights document adopted by the nations of the Americas in 1948, setting out a catalogue of civil and political rights of the citizens of the signatory nations, together with additional economic, social and cultural rights due to them. The U.S. and Cuba are not signatories, though the terms of the Declaration are still enforced for all nations of the Americas, including the U.S.

Whether any of the Commission's recommendations in the Jessica Lenahan case will be undertaken by the federal and state governments remains to be seen. Currently, both the

federal and many state governments have reduced funding for domestic violence programs and, in some communities, funding for law enforcement has been reduced as well even though demand for services increase every year.

For more details, go to: <http://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa>
<http://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa>

Documentary Reveals Flawed Family Court System Evidence of Abuse Rejected by Judge

- A new documentary film, *No Way Out But One*, produced by long-time protective parent advocates Garland Waller and her husband, Barry Nolan, details the tortuous case of Holly Collins of Minnesota who fled the U.S. in 1994 in order to protect her children from their abusive father, Mark Collins. Collins' two children, Zachary and Jennifer were then ages seven and nine. Divorced in 1992, Collins presented evidence in court of spousal abuse, including medical records, testimony from medical personnel that her ex-husband was dangerous and the children's statements that they feared visiting their dad. The court rejected that evidence, believing the claims of the father that Collins was alienating them from him. The judge, Michael J. Davis, said that Collins suffered from a "personality disorder" – most likely Munchausen by-proxy syndrome where a parent secretly hurts children to gain attention. Collins' court-appointed psychologist expressed doubt about the diagnosis, noting that her problems were the "result of marital abuse or battering. Custody was awarded to the father and a state Court of Appeals later refused to reverse custody.

Collins Flees to Netherlands to Protect Children - After two years of limited supervised visitation where the children were not allowed to discuss the ongoing abuse, Collins took the children and left the country, in effect, kidnapping the two – a federal offense. Amazingly, the family managed to sneak through airport security without passports and board a flight to Amsterdam. They were then sent to live in a refugee camp in the Netherlands where they remained in hiding until 2006. Collins managed to find a lawyer to represent her and became the first U.S. citizen to be granted asylum by the Netherlands on the grounds of domestic violence. The Dutch government declined to extradite her and the U.S. federal government dropped kidnapping charges. The legal case against her for deprivation of parental rights was recently resolved when the Hennepin County Judge Margaret Daly found her in contempt of court, ordered unsupervised probation for one year and performance of 40 hours of community service.

The Holly Collins case is another example of a jurisdiction outside the U. S. taking domestic violence and the safety of children more seriously than U.S. courts. Since the Collins' case has garnered much publicity, some fathers' rights groups have spread the claim that the Holly Collins story is a hoax!

View the thirteen minute trailer and learn more here: www.nowayoutbutone.com

Links to Related Information

Courageous Kids, <http://www.courageouskids.net/>

Battered Mothers Custody Conference, <http://www.batteredmotherscustodyconference.org/>

Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues, Mo
Therese Hannah, Ph.D. and Barry Goldstein, J.D. (2010, ISBN 978-1-887554-84-8)

**From Madness to Mutiny: Why Mothers Are Running from the Family Courts – and What
Can Be Done About it**, by Amy Neustein and Michael Leshner, Northeastern
University/University Press of New England (2005, ISBN 1-584650462-7)

**The Custody Wars – Why Children Are Losing the Legal Battle and What We can Do
About It**, Mary Ann Mason, Ph.D., J.D. Basic Books (2000, ISBN 0-465-01529-8)

*“Violence against women is the most pervasive human rights violation which continues to
challenge every country in the world, and the United States is no exception.”*

— Rashida Manjoo, U.N. Special Rapporteur on Violence Against Women

*Women and children face a national crisis in family law courts of the United States. NOW
Foundation recognizes this crisis and seeks to address the discrimination against women in
family courts. The NOW Family Law Ad Hoc Advisory Committee is appointed by the NOW
president to provide critical information to NOW leadership and members as they respond to the
family law crisis. See our website at: <http://www.nowfoundation.org/issues/family/>.*