

Custody Roundtable Is Unanimous: Abusers Are Winning Custody, and Courts Have Been Duped

by Joan Zorza, Esq. © 2011

Federal administration leaders recently held a roundtable on protective parents to discuss whether battered women and protective mothers are losing custody to abusive fathers.

Fathers Claim Bias, But Win Child Custody Disputes

Fathers, and especially the ones who abuse women, have long maintained that they are treated unfairly by judges, insisting that their female partners virtually always win custody of their children.ⁱ Despite men's longstanding claims, based on no credible evidence, that women win more than 90% of contested custody disputes,ⁱⁱ even thirty years ago, fathers in contested custody cases won joint or sole custody in at least 70% of contested cases, and sole custody in 63% of trial court decisions and in over half of the nation's appellate decisions.ⁱⁱⁱ Indeed, the Massachusetts Gender Bias Study found that mothers won physical custody in only 7% of the cases across that state when fathers actively sought it.^{iv} Other state gender bias studies made similar findings and also found that mothers were held to much higher standards, with domestic violence being particularly trivialized and discounted in custody and other court decisions.^v In part as a result of these consistent findings, and that most men who sought custody had played a minimal role prior to the parties' separation,^{vi} as well as the realization that even witnessing domestic violence had highly adverse effects on children,^{vii} over the next thirty years every state enacted statutes requiring courts to consider domestic violence in custody decisions, and at least 24 states enacted statutes creating a presumption that domestic violence perpetrators not receive custody, and that visitation must protect the children.^{viii} Yet, as even various National Institute of Justice show, despite all these enacted laws and awareness of the issue, mothers are, if anything, losing custody more often to fathers, particularly when the men abuse them of their children, and abusive men now win child custody more than do men who are non-violent.^{ix}

Pleas to Violence Against Women Office for Help

Some 15 years ago, soon after Bonnie Campbell was appointed as the first Director of the Violence Against Women Office in the Department of Justice, Rita Smith and Joan Zorza, representing the National Coalition Against Domestic Violence, went to see her in order to raise the following complaints: Men were increasingly winning child custody cases. We were also increasingly finding it almost impossible to get the judges of family courts^x to recognize incest in custody cases, to the point that it was easier to obtain a conviction on a beyond a reasonable standard in the criminal courts than on the much easier preponderance of the evidence or clear and convincing evidence standard used in family courts. In addition the family courts kept trivializing and disbelieving domestic violence and incest allegations. In part as a result, the National Council of Juvenile and Family Court Judges held some exploratory workshops and meetings, yet the situation kept getting worse in custody cases for mother with children whose fathers were abusive, with many courts even punishing mothers who sought to protect themselves or their children from abusive fathers with loss of custody and even imprisonment. Over the years others joined in our appeals on these issues to the later renamed Office of Violence Against Women (OVW) and to Lynn Rosenthal after she was appointed to as the White House Advisor on Violence Against Women. Joan Meier and I sent many articles to both offices, particularly after Susan Carbon was appointed as the new director of OVW. Along with many of those involved in the Battered Mothers Custody Conferences (which had much overlap with those writing the book, *Domestic Violence, Abuse, and Child Custody*^{xi}, we continued to visit them and reiterate our concerns. They promised a meeting where such matters would be considered, and eventually Rita Smith and Joan Meier were put in charge of convening the long-requested meeting with OVW.

Protective Parents Roundtable Discussion

On March 22, 2011 the all-day Protective Parents Roundtable Discussion finally took place at George Washington University Law School. Amazingly, it began

with Lynn Rosenthal telling us that Vice President Biden apologized for not being able to attend, and thanking the two Joans for having sent all the materials. We were specifically told that they had gone through all of the research that we sent to both offices, and that it all checked out, and that as a result we would not be spending time on verifying that women were losing custody, that battered women were faring even worse than other mothers in the custody situation and that the family courts were refusing to acknowledge incest cases or protect women and children from wife batterers or incest perpetrating men. Instead, after hearing from some individuals who had experienced injustices from family court judges, we would spend the day discussing why we thought this had happened, and propose some solutions. Susan Carbon agreed with all of this, and then we heard briefly from Bryan Samuels, Commissioner of the Administration on Children, Youth and Families.

Seven brave protective mothers and one teen age child all told their own stories of how their families were not protected, but most were punished with loss of custody for seeking to have the abuse acknowledged. After lunch a long discussion happened on what we thought had caused these problems. Many of us knew about Richard Gardner and how he poisoned the courts against mothers through his unscientific theories of the “friendly parent” concept and Parental Alienation Syndrome (later renamed parental alienation after the syndrome was discredited),^{xii} but we learned of another major influence in discrediting mothers and incest allegations: Douglas J. Besharov.

Douglas Besharov is a lawyer who became the first director of the National Center on Child Abuse and Neglect (NCCAN), a program in the U.S. Department of Health and Human Services, and served in that capacity from 1975 – 1979. We learned that in the 1970s he taught that incest is extremely rare, that child sexual abuse is seldom harmful to children, that incest seldom happens more than once, and that incest is especially unlikely to be repeated once anyone else learns about it. We were told he sought to have incest decriminalized or at least downgraded to a misdemeanor or relatively trivial crime in every state, and worked to get child

protection agencies to not screen for it, particularly when there was a custody dispute. He believed that mothers in custody disputes often make false allegations of incest for tactical advantage.^{xiii} Unlike Gardner, who primarily worked to influence the court culture, Besharov worked, and was extremely successful in changing child protection practices, and our incest laws in every state by 1986.^{xiv} Undoubtedly with the help of others, like child abuse perpetrators and their defense attorneys, both men greatly influenced the social sciences and mental health professions in discrediting and decriminalize child sexual abuse and promoting marriage and keeping families (particularly, the parents) together, though over time he came to advocate using the criminal courts at least to frighten abusive parents in particularly severe instances of abuse (most likely not sexual abuse) into accepting services.^{xv} For twenty years from the time I began practicing law in the early 1970s in Boston, I heard all of these myths expounded by numerous mental health practitioners, child abuse agency workers, and judges involved with incest cases,^{xvi} although it is also true that “child sexual abuse is often exceedingly difficult to prove.”^{xvii} Clearly by 1986 Besharov had accomplished his goal of getting child protection agencies and the family and juvenile courts to largely ignore incest cases, particularly when they arose during custody disputes. In child abuse and neglect cases, while the abused child might be separated from the rest of the family, often the father was kept at home and at most sent to counseling. As time went on and I became involved with programs all over the country, it was clear that increasingly fewer fathers lost custody or were forced into supervised access with their children, and fewer yet were criminally convicted, particularly of serious crimes when their child sexual abuse involved “only” their own children. This is the legacy with which we are now dealing all across the country, and why mothers are so at risk for being punished with loss of custody for casting doubt on the reputations of their incest perpetrating or wife abusing partners. Judges vary in how or why they do this, sometimes using different rationalizations in different cases. They may refuse to find that the incest or abuse occurred; or agree that it happened, but find that it caused little or no harm or happened so long ago as to not be relevant; or that the mother is so vindictive or disturbed that she deserves to lose custody. Still other

judges insist that the incest won't reoccur now that it is out in the open. Most judges still assume that the child protection service (CPS) agency fully and impartially investigated the allegation and found nothing, unaware that CPS never investigates, or largely ignores incest allegations, and instead finds such cases unsubstantiated, unfounded, not indicated, or in other ways refuses to validate the accusing mother or child.^{xviii} After Gardner and Besharov, undoubtedly assisted by many others, it is no wonder that hundreds of thousands of mothers across America are losing custody of their children to abusers, and the men who abuse children and their partners are going without prosecution or appropriate punishment, leaving their child victims vulnerable.^{xix} With the collusion of those who should be holding them accountable, increasing numbers of abusers are perpetrating incest on their partners' children to devastate their ex-partners.

Solutions

Since much of this misinformation and indoctrination occurred with the complicity of our government, I believe that our government must help to correct these injustices and act with great haste. The fathers' supremacist groups are gaining momentum every day across the country, poisoning our legislatures and interjecting ever more punitive custody laws that favor fathers. We have to be ready to turn back their assaults. Susan Carbon and the Director of OVW want to hold more Roundtables across the country. There is nothing wrong with holding more Roundtables, but given that this administration already knows that what we are complaining about is real, and those who met together at the first Roundtable came from such varied states as New York, the District of Columbia, California, Wisconsin, Nevada, and Maryland, I fear that a response cannot wait for a national consensus, but must begin right away. The country has been duped, and now it is time to correct these injustices, or we will be destroying countless more of our children, driving more of them to kill themselves or self-mutilate, and turning many of them into terrorists who will perpetrate crimes against the next generation, and for a small minority, against civilization, including in our own country. Until we end these practices, we are allowing untold pain to the hundreds of thousands of

children and their mothers who are being punished by the family courts by placing innocent children in the custody of abusive fathers.

A future article will discuss other possible remedies for our country's egregious failure to protect children from incest, including a public awareness campaign, such as the Start By Believing one created by EAW International,^{xx} support from men's groups (see Barry Goldstein's article, this issue), and many of the suggestions sent to OVW, Lynn Rosenthal and Rita Smith by Roundtable participants, your author included.

Child Custody Roundtable II: Proposed Solutions

by Joan Zorza, Esq.

This article follows up from **Custody Roundtable Is Unanimous: Abusers Are Winning Custody** in the last issue of *DVR* on p. XX about some disturbing things that were acknowledged to exist at the Protective Parents Roundtable. The Office on Violence Against Women (OVW) and the White House convened the Roundtable on March 22, 2011 in Washington, DC, and they acknowledged that women and children are being badly hurt in custody cases in the nation's courts. Specifically women and children are not being believed when they allege domestic violence [DV] or incest in custody cases. And a large part of the fault for this was a campaign in the 1970s to convince state legislatures, courts, and child protection agencies to decriminalize incest and child sexual abuse crimes based on clearly false information – that such crimes seldom happen, that they are seldom repeated, that in any case they stop once anyone becomes aware of them, and that that they do not harm children. This is much the same misinformation that Parental Alienation Syndrome is based on, a theory invented at the same time and also with no scientific basis (as noted by the fact that the DSM-5 has rejected “parental alienation disorder.” As promised in the last article, this article makes some suggestions to correct or at least help alleviate the problem.

I. Correcting the Misinformation. There needs to be a massive campaign pushed in large part by the federal government (HHS, DOJ, CDC, and OVW to correct the misinformation, and get all of the state laws to stop treating incest as a trivial crime that does not hurt children. Child protection agencies should be required to update their manuals, policies and procedures to require them to impartially investigate incest crimes and protect child victims. Police and prosecutors must likewise treat these crimes seriously and charge offenders accordingly, not plea bargaining down the case or

recommending only counseling for offenders. It is also time to stop blaming mothers for allowing these crimes to happen or being collusive in the vast majority of cases where the mother had no offending role. The federal government can effect much of this by withholding funds for states that do not make these changes.

II. National Conference of Commissioners of Uniform State Laws (NCCUSL).

NCCUSL is an elite national organization that drafts proposed legislation to make the state laws more uniform in every state. Beginning with the Uniform Child Custody Jurisdiction Act (UCCJA) in the 1970s, an increasing number of its proposed uniform laws have touched on areas which affect battered women. However, it does not include DV experts among its members, although of late it has permitted some input from domestic violence attorneys, though usually at the last minute, and made only some of the requested changes, often watered down. The following suggestions will correct this lack of input.

1. NCCUSL should appoint someone from (or selected by) OVW who will be notified of any proposed uniform law (or revision) so that that person (or his or her designee) participate as of right, particularly on any matter affecting battered women.
2. NCCUSL should appoint someone selected by the American Bar Association's Commission on Domestic Violence, and that any proposed law have the approval of, or at least not be opposed by, the Commission before it is sent for approval of the ABA.
3. Since so many people, and battered women in particular, are forced to represent themselves in divorce and custody cases, someone skilled in **pro se** issues should be appointed to NCCUSL. So many litigants, particularly virtually all battered women, are or become unable to afford lawyers, because their abusers, who are far more likely to be represented, often force them into court or in protracted litigation.
4. Ask NCCUSL to reopen the UCCJEA (the more recent version of the UCCJEA) to do the following:
 - a. Delete provisions that defeat the purposes of the act by permitting the decision on where a case will be heard to be made by agreement of the parties or based on which court can first schedule it.
 - b. Mandate (as opposed to only making discretionary, as it now is) requiring courts to cede jurisdiction to a state where a battered woman has fled with her children if they have safety issues, or if wrongful analyses (such as parental alienation, estrangement, which parent was "unfriendly", or

Munchausen by proxy) were used; or if mutual abuse allegations were found, but no analysis was made as to which parent was the predominant or primary aggressor based on fear, course of conduct and coercive control; if any presumption of joint custody was used in a case with abuse allegations; if a conflict with abuse allegations was characterized as “high conflict” unless non-alienation abuse was found; if any punitive measures were used to deprive a protective parent of custody or unsupervised visitation; if police or a child protection agency failed to do a full and impartial exam on the theory that such cases are less credible during custody disputes; if custody evaluators relied on used and relied on measures such as the MMPI that were never intended to be used in custody cases and especially custody cases involving abuse allegations; ordered “reunification” counseling; etc. And make sure that the Commentary expresses such reasoning.

5. Ask NCCUSL to reopen Interstate Enforcement of Domestic Violence Protection Orders Act to reconcile it to the Full Faith and Credit mandate in VAWA, by: not requiring the order to be registered in the enforcing state, not requiring that the respondent be given notice of an order to be registered, permitting opposition to the validity to the order to be challenged on the grounds it now lists (but not cutting off the time period to objection to protective orders not opposed at the time of registration).
6. Consider if other uniform acts need to be reopened to include safety provisions or an appropriate abuse analysis in cases of DV.

III. PKPA and National Center for Missing and Exploited Children (NCMEC)

Consider similar changes as noted in section I above to the federal Parental Kidnapping and Prevention Act (PKPA), and insure that NCMEC and federal prosecutors carry them out. Promulgate a memo (as was recently done regarding court responsibility to provide free translators, see *Interesting New Developments*, 16 DVR 12 (2010)) to all court administrators to explain that federal policy is to protect victims of DV and child abuse and not to punish them, that courts should insure appropriate investigation of abuse issues by experts in abuse and then protect them. Make the practice of courts declining jurisdiction to protect a child of victim of domestic abuse mandatory, and once this is to be effected, insure that the PKPA says it preempts state law.

IV. Hague Convention Custody Cases

The Hague Convention deals with child custody disputes where different countries are involved. It would help for there to be a clear message from the Department of Justice (DOJ) and the State Department that the Hague Convention should be used to protect victims of abuse and not punish them or turn children over to the custody of abusers. The Hague Convention was written to protect children and custodial parents, never to require return of custodial parents or their children who have relocated abroad with their children. (See, Jeffrey Edleson's Testimony, 16 *DVR* 67 (2010).) It was meant only to enforce the non-custodial parent's court visitation rights. However, family courts routinely get around this by transferring custody to him after she has fled, making the case one of returning the child. The government should set clear policy standards that this is not permissible, particularly in any case where there has been abuse by the parent seeking enforcement to bring home the child. Full impartial investigation should be done. The State Department and National Center for Missing and Exploited Children should not be used to endanger children or punish mothers. At a minimum they should tell abducting mothers and prosecutors about the 18 U.S.C. § 1204(c)(2) affirmative defense to parental abduction of a child for removing a child to another country when there has been a pattern or incidence of domestic violence.

V. Abuse Custody Court Laboratory

Consider funding one or, ideally, more model or exploratory trial abuse custody courts in jurisdictions which will apply the approaches discussed at the Roundtable, and be willing to be analyzed and compared to traditional jurisdictions by experienced researchers knowledgeable in abuse areas. Specifically the court would first look to see if there are any abuse or safety issues, and only if none are found can the rest of the case be handled as usual. If any abuse or safety issues are found, all measures would be taken to provide safety for victims and children, including, as necessary, no visitation (or only visitation by photograph, or other safe way), and permission to relocate with the children.

VI. Change of Names and Social Security Numbers.

Consider realistic ways when safety is an issue to permit relocation, change of names and social security numbers of battered women and their children. Currently there are many problems with people trying to do this even with court permission, and those working in this area (e.g, Valinda Applegarth at Greater Boston Legal Services) should be consulted to make this safe and workable.

VII. Bolster Women's Credibility and Parenting

1. VAWA should specify that states are not eligible for funding for VAWA funding if child custody statutes do not include a provision that parental alienation (in any name) is not to be admissible to deprive a parent of custody; that has or acts on a presumption or policy that women (or children) are less credible than men, or that abuse allegations made in custody disputes are any less credible than at other times or if made against any other caretaker or stranger or non-family member; that does not require as full, impartial and thorough an investigation of any incest allegation arising in custody disputes as at other times; that has a shorter statute of limitations for incest than any other comparable child sexual abuse crime, including clergy cases; or that permits Munchausen Syndrome or Munchausen Syndrome by Proxy to be used to deprive parents of custody. [Since very occasional Munchausen cases probably are real, one might want to put statistical data on this, requiring courts to keep track of how often it is alleged and found, and not to permit its use in more than one in a thousand cases.]
2. Child Abuse Protection Treatment Act (CAPTA). Include similar language regarding prohibiting any federal CAPTA funding for child abuse, or to child protection agencies that do any of the above.
3. Fund research that shows men's and women's credibility, or publish and disseminate research showing that women are if anything more credible than men, insist that such research be included in legislative findings or a joint Congressional resolution so that courts may take judicial notice of it without expert testimony on it, or use it to refute the typical statements used to discredit women ("a woman scorned..."; or "women are forever making false allegations for tactical advantage..."; "mothers often coach their children to make false allegations...; etc).

VIII. Fix the Failure of Courts to Give Victims Useable DV Findings

There is a real phenomenon of courts setting up abused victims to not gain the custody preference that legislatures meant them to have. Some practices are particularly difficult to deal with (e.g., failure to find the victim credible; or bringing charges against both parties or finding both guilty of DV, or issuing mutual orders after encouraging the other side to file a petition for an order of protection; or prosecutors downgrading cases at filing or at trial or in plea negotiations to reduced offenses that do not constitute DV). But many practices clearly violate rules against having offenders end up with findings or even offenses, such as by vacating offenses after a batterer program is completed or after the passage of a certain amount of time. VAWA should prohibit any practices that leave victims without a record, that requires specific findings of fact or an admission in any

case where there is mutual abuse as to which party was the primary or predominant aggressor (possibly over the whole course of conduct of the relationship). Likewise the VAWA funding should be prohibited to states that give no precedential weight to consensual orders of protection, or should amend the Full Faith and Credit Mandate in VAWA to state that orders of protection, including ones issued on consent, have precedential weight.

IX. Use VAWA, CAPTA, or other federal Funding to Forbid Abhorrent Practices:

Just as the problem of mutual orders of protection was largely cured by conditioning a state's receipt of VAWA funding by being able to show that mutual orders of protection were not generally issued, restrict funding to states without assurances that the following abhorrent practices are not used in their jurisdiction:

1. **Gag Orders.** Silencing women hurts their health and longevity, but does not have adverse medical effects on women. Gagging women and children is also prevents their healing from abuse, since naming the abuse and coming to terms with it is necessary for them to heal. It is very common for custody courts to gag women (particularly mothers), or both parties, which is a First Amendment violation as well as highly gender biased. Often women are punished by contempt, jail, fines, and/or loss of custody for badmouthing their partner, particularly when they have alleged that the partner abused them or their children. They are even more likely to face jail if they deny visitation, even when it is to protect their children from unsafe abusers or unsafe conditions, such as the abuser is drunk. At the same time, courts are notorious in ignoring the many assaults and indignities that men often do to their intimate partners (e.g., spitting on them, swearing at them, badmouthing them to the children and others), or treating a man's allegation that the mother was misbehaving as grounds for a custody transfer, often *ex parte*. VAWA should prohibit these practices for states getting any VAWA or CAPTA funding.
2. **Findings of Fact.** See Section VI above.
3. **Prior Abuse.** Condition funding on states making prior abuse history against this or another victim admissible in civil or criminal order of protection cases.
4. **Diverting Abuse Cases.** Just as no findings of abuse or admissions of guilt leave abused victims without any useable record of the abuse, so does pretrial diverting of cases. Harder to deal with is the practice of permitting the defendant to plea cases down.

5. **Consensual Orders.** Courts should be forbidden to enter consensual orders without an admission or findings.
6. **Abolish Immunity** for mediators, custody evaluators and others who urge/require a victim to drop a court ordered order of protection, or fail to investigate impartially and fully claims of abuse, or do so when they do not have the expertise to do so.
7. **Reunification Counseling.** Forbid the use of reunification counseling to overcome “parental alienation”. Also preclude states from receiving CAPTA funding if their child protection agencies or courts refer children to reunification counseling or programs doing such counseling.
8. **No therapeutic jurisprudence for abuse.** Consistent with findings of the NCJFCJ, courts should stop using custody evaluators except when there are actual issues involving mental health, and specifically not use them to assess for DV, child abuse or incest. Federal funding should be conditioned on this, and that the state have clear statutory language that the friendly parent concept never applies in cases where there has been abuse. Ideally states should be encouraged to look at the course of conduct of an entire relationship in assessing abuse, and always assess for the predominant or primary aggressor when there are mutual allegations of abuse. In addition, courts should make findings about abuse for judicial economy, and to protect victims of domestic and family violence.
9. **Conflict Tactics Scales (CTS).** While there may be some validity for using the CTS to assess how much violence there is in an abusive relationship, it (and instruments based on it) are too over and under inclusive to be used to assess whether someone is abusive. Courts and state agencies should not be eligible for finding if they use such instruments to assess for abuse. Ideally with the help of real DV experts, a new instrument should be developed that is able to assess for the coercive control and course of conduct that are so important in defining abusive relationships.

X. Treatment of Partners and Children of the High and Mighty

The criminal justice system and family court system has bent over backwards in most cases to not hold accountable those with status, such as police officers, those in the military (especially those of higher rank), those with political influence, and many celebrities such as actors and sport players. How to approach this should take some strategizing by a variety of players. But this is something that brings discredit on our

justice system and makes us look bad in world opinion. Such practices generally overlap with gender bias, but this is not always the case. It may be possible to address this in the context of international human rights, or by a RICO type statute. But there should be a way to prohibit the common experience that wives of the high and mighty experience with police being unwilling to protect them or arrest their abusers, or with courts being unwilling to hold them accountable or convict as they would a person who is seen as without status. Certainly language should be put in VAWA forbidding separate standards of justice or burdens of proof when someone makes abuse allegations against someone seen as having higher status.

XI. Presumption that Batterer or Sex Offender Programs Work

Many model statutes (e.g., The Model Code of the National Council of Juvenile and Family Court Judges (NCJFCJ)) include a presumptions that once an abusers has complete treatment they should presumptively be eligible for shared or full custody, and unsupervised visitation consideration. The reality is that while completers of at least the better programs (the only ones studied to date) are considerably less likely to reoffend, there is little proof that they are actually cured or unlikely to reoffend. Accordingly such presumptions are misleading, dangerous, unfair and gender biased. Government policy should work to eliminate them in laws, policies, and practices.

XII. National Registry. Require that courts use a national registry for orders of protection, that no order issued after notice or an opportunity to be heard be removed from the registry, even after it has expired (but permit comments, e.g., if there was a pardon issued to be inserted after the order). Require that states consult the registry **before** issuing any civil or criminal *ex parte* or final order of protection, or child custody order.

XIII. Government Training Strategy

Write memos and/or do trainings on what are good and bad laws and practices, ideally linking them to what will or will not be funded. (See above for some examples.) In particular, training should be done on myths that courts and administrative agencies hold and act on that discriminate against victims of domestic violence and their children, such as that women are less credible than men, that incest seldom happens, that incest does not hurt children, that few mental health professionals are adequately trained in matters of DV and incest. Related to this is to encourage courts to stop using false terminology that trivializes violence against women and children. E.g., “high conflict” divorces are almost always cases involving DV, and should be called as such.

XIV. Government Litigation Strategy: File or Appear in Cases that Advance Good Practices or Challenge Bad Ones

Federal prosecutors and the Solicitor General should consider taking or weighing in on court cases to put teeth to some of the suggested changes.

XV. Combating Gender Bias

1. Some courts are using unusual punitive measures to slap fees and fines on protective mothers. As an example, as Eileen King of Justice for Children reported at the Roundtable that some mothers, including even some indigent mothers and their pro bono attorneys, are being slapped with paying the attorney fees of their children's fathers. The DOJ Civil Rights division, OVW, or the Solicitor General's Office could bring cases or file amicus briefs where such injustices are occurring, particularly those when an indigent mother or her attorney is ordered to pay the father's attorney's fees, or cases or disciplinary actions against various court players who deprive mothers of due process, do not practice up to ethical standards, etc.
2. Another way to deal with some of these practices is for the government to file **ethical complaints or malpractice cases** against those in the court system (including custody evaluators, parent coordinators and others appointed by the courts) who are committing unethical and gender biased practices against protective parents or victims of DV, including their children.

XVI. Relocation

Consider federal legislation to create a relocation law that covers parents moving with children for economic betterment and/or to avoid safety and abuse. Make sure that the PKPA is updated to cover these changes.

XVII. Stop Funding Fatherhood Promotion

Much of the funding to promote fatherhood has been misspent and not used to assist fathers to obtain jobs, but to promote fathers obtaining custody of their children. Instead, the federal government should be studying mother absence and its effect on children,

comparing it directly to father absence.

XVIII. Use Federal Funding to Study and Promote Resilience

It would be far better to use fatherhood promotion funding to study mother absence, and learn what makes children resilient. More funding should go toward educating courts and mental health practitioners in encouraging close relationships between mothers and children, and not holding mothers to impossible, gender biased standards.

XIX. Realistic Use of Mental Health Professionals

It is time to define actual criteria for what makes one an expert in DV, what makes one an expert in child sexual abuse, and what makes one an expert in incest. A mere degree in psychology, social work or psychiatry does not produce an expert, nor do the minimal courses that many professionals have. Only true experts in these subjects should be permitted to investigate, diagnose, and treat these issue. Traditional mental health professionals should be limited to their areas of expertise, used for evaluations only when it is an actual mental health issue.

XX. Start by Believing

Women and children's credibility have reached an all time low. Just as End Violence Against Women (EVAW) International has started a Start by Believing campaign to bolster the credibility of women who report rape and sexual assault (see <http://www.startbybelieving.org/>), we need to start a national campaign or join with that one to educate the public and support victims who have been sexually assaulted as children, or whose children are victims of sexual assaults.

ⁱ Ruth I. Abrams & John M. Greaney, Report of the Gender Bias Study of the Supreme Judicial Court [of Massachusetts], 62-63 (1989)

ⁱⁱ Id, at 76, n. 53, noting the Gender Bias Study “examined both sources carefully; neither contains any statistics concerning which parent gets custody in contested cases.”

ⁱⁱⁱ Id, at 63.

^{iv} Id, at 62.

^v Gender and Justice in the Courts: A Report of the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System, 227-40 & n. 6, citing similar findings from Arizona, Colorado, Florida, Maryland, Michigan and New Jersey. Available at http://w2.georgiacourts.org/georgiacourts/index.php?option=com_content&view=article&id=111&citimid=0

^{vi} See, e.g., Joan Zorza, Protecting the Children in Custody Disputes When One Parent Abuses the Other, 29(12) Clearinghouse Review 1113, 1117 (1996); Einat Peled & Diane Davis, Groupwork with Children of Battered Women: A Practitioner’s Manual 8. (Thousand Oaks, CA: Sage Publications, 1995).

^{vii} See, e.g., William Arroyo & Spencer Eth, Assessment Following Violence-Witnessing Trauma, 27-42, in Ending the Cycle of Violence: Community Responses to Children of Battered Women, Einat Peled, Peter G. Jaffe, & Jeffrey L. Edleson, eds., (Thousand Oaks, CA: Sage Publications, 1995); Zorza, *supra* note 6, at 1115-1117; and Robert Geffner, Robyn Spurling Igelman, & Jennifer Zellner, The Effects of Intimate Partner Violence on Children (New York: Haworth Press, 2003).

^{viii} Jannette Tucker, Model Code Retrospective, 8(2) Synergy 6, 8 (Summer 2004); since then Connecticut became the last state to make domestic violence a factor in custody decisions.

^{ix} See the Special Issue on Custody and Domestic Violence of the journal, 11(8) Violence Against Women 983-1107 (2005).

^x Although child custody cases between parents occur in courts of very different names in our country’s various courts, this article will speak of family courts to encompass all of the trial courts that hear such cases.

^{xi} Edited by Mo Therese Hannah and Barry Goldstein, Civic Research Institute, 2010.

^{xii} See e.g., Joan S. Meier, A Historical Perspective on Parental Alienation Syndrome and Parental Alienation, 6 Journal of Child Custody 232-257 (2009); Joan Zorza, The “Friendly Parent” Concept—Another Gender Biased Legacy from Richard Gardner, 12 Domestic Violence Report 65, 75-78 (2007); Stephanie J. Dallam, Dr. Richard Gardner: A Review of His Theories and Opinions on Atypical Sexuality, Pedophilia, and Treatment Issues, 8(1) Treating Abuse Today 15-22 (1998).

^{xiii} Douglas J. Besharov, Responding to Child Sexual Abuse: The Need for a Balanced Approach, 4(2) *The Future of Children: Child Sexual Abuse* 135, 146 (1994).

^{xiv} Alison Adams, Seen But Not Heard: Child Sexual Abuse, Incest, and the Law in the United States, 2 *Utah Law Review* 591, 593 (2009).

^{xv} Douglas J. Besharov, Child Abuse: Arrest and Prosecution Decision Making, 24 *American Criminal Law Review* 315, 343 (1986).

^{xvi} It was a relief that I also learned about a minority of knowledgeable experts, like Dr. Eli Newberger and Susan Schechter, MSW, both of whom practiced at Children's Hospital in Boston, and Judith Herman, a clinical psychiatrist at Harvard Medical School.

^{xvii} John E.B. Myers, Adjudication of Child Sexual Abuse Cases, 4 (2) *The Future of Children: Sexual Abuse* 84, 84 (1994).

^{xviii} For many reasons, as Douglas J. Besharov (*supra* note 13, at 140) has acknowledged, even the most careful investigations may not be able to find that a child has been sexually abused, and many "cases are labeled unsubstantiated when no services are available to help the family" or the "child or family cannot be located."

^{xix} Adams, *supra* note 14, at 597.

^{xx} See, www.startbybelieving.org/

Good News: APA Rejects Parental Alienation Disorder

Every few years the American Psychiatric Association (APA) rewrites its Diagnostic and Statistical Manual (DSM), its manual for diagnosing mental disorders. The next edition, DSM-5, is due to come out in May 2013. It will make a number of changes, but it has announced that it has rejected Parental Alienation Disorder (PAD), the most lobbied for condition for inclusion on the DSM-5, acknowledging that it has no scientific basis for inclusion as a psychiatric disorder. This was reported on June 9, 2011 by Paula J. Caplan, on her *Psychology Today magazine Blog*, <http://www.psychologytoday.com/blog/science-isnt-golden/201106/parental-alienation-syndrome-another-alarming-dsm-5-proposal>. Note that it is the disorder that is rejected, not just PAS (the syndrome), which is much more specific and has far less scientific basis. However, expect that custody evaluators will go on reinventing the concept and using it in ways to hurt battered women.

Another interesting development is that even with PAD rejected, the British

Psychological Society (BPS) has released a 26 page “Response to the American Psychiatric Association: DSM-5 Development,” criticizing the “continuous medicalisation of their natural and normal responses to their experiences; responses which undoubtedly have distressing consequences which demand helping responses, but which do not reflect illnesses so much as normal individual variation.” It also notes that these diagnostic systems “fall short of the criteria for legitimate medical diagnoses. They certainly identify troubling or troubled people, but do not meet the criteria for categorisation demanded for a field of science or medicine (with a very few exceptions such as dementia.)” The entire critique is available online at <http://bit.ly/KenPopeBMSDSMCritique>. The APA has extended its deadline for comments on its website, dsm5.org, until July 15, 2011.

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