

MANY ATTEMPTS HAVE BEEN MADE TO COMBAT THIS  
DISCRIMINATION AGAINST WOMEN AND VIOLENCE TO CHILDREN

369. Because of the intransigence of this problem at the state level, in 1990, advocates were successful in getting Congress to recognize the bias against battered women in court. It passed House Concurrent Resolution 173 that stated:

Whereas State courts have often failed to recognize the detrimental effects of having as a custodial parent an individual who physically abuses his or her spouse, in so far as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

Whereas there is an alarming bias against battered spouses in contemporary child custody trends such as joint custody and mandatory mediation;

Whereas joint custody guarantees the batterer continued access and control over the battered spouses life through their children;

Whereas joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

Whereas a batter's violence toward an estranged spouse often escalates during or after divorce, putting the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Whereas physical abuse of a spouse is relevant to child abuse in child custody disputes.

Resolved by the House of Representatives (the Senate Concurring) Section 1. It is the sense of this Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

370. Other national efforts were made. The Model Code on Domestic and Family Violence released by the National Council of Juvenile and Family Court Judges in 1994 said that violence raises a rebuttable presumption that custody should not be given to the abuser. The American Bar Association followed suit in 1996 saying that preference should be given to the nonviolent parent. In Arizona, as in many states, statutes say that joint custody should not be awarded if there is significant domestic violence. In spite of all this, more than 16 years have passed and abusers continue to obtain custody of children. Children continue to be put into dangerous and sometimes deadly situations. Protective parents continue to be punished for doing the most basic behavior for animals or humans – trying to protect their young.

371. Local political efforts have been made. The Fairfax, CA town council passed Resolution 2466 on 6 December 2006 that states in part:

WHEREAS the practice of moving domestic violence and child abuse cases out of criminal venues and into Family Conciliation Court has resulted in the formulation of nefarious legal strategies which deflect attention away from the behavior of batterers and sexual abusers, and shift blame to parents reporting abuse so as to do harm to abused parents and children; and

WHEREAS such strategies include the use of Parental Alienation Syndrome, which was originally constructed as a legal defense of child molesters and to shield abusive fathers from prosecution, and has hence been used across the nation to justify granting abusive parents improper custodial rights, to remove children from the protective care of safe parents, to deny due process and parenting rights, and to otherwise punish parents, especially mothers, who complain about the abuse; and

WHEREAS the problem of the use of Parental Alienation Syndrome was noteworthy enough to be addressed in the original drafts of the federal Violence Against Women Act II of 2002 (hereafter referred to as VAWA II), specifically in Title II, Section 201 Findings: Limiting the Effects of Violence on Children (17-20), (See exhibit B), which noted that the American Psychological Association has found no empirical data to support the so-called phenomenon of Parental Alienation Syndrome, that some courts and custody evaluators frequently use such terms to discount the reasonable fear and anger of children toward a violent parent, and that this 'syndrome' and similar ones are used almost exclusively against women; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Town Council of Fairfax California, speaking for itself as a body and for those residents of Fairfax who agree, that the California Legislature be urged to address the above referenced defects in the CFCL to ensure that domestic violence and child abuse cases are prosecuted and that records that might serve as evidence in the prosecution of such cases cannot be destroyed; and .....(related specifically to California law)

372. Advocates know that one of the main problems is the acceptance by courts of the discredited theory of Parental Alienation Syndrome (PAS). Since 1985, in jurisdictions all over the United States, fathers have been awarded sole custody of their children based on claims that mothers alienated those children due to a pathological medical syndrome called Parental Alienation Syndrome (PAS). Given that some such cases involved stark outcomes, including murder and suicide, PAS admissibility in U.S. courts deserve scrutiny. Jennifer Hoult has looked at every case where PAS was used. 1

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1 Hoult, Jennifer, J.D., The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy, Children's Legal Rights Journal, Vol. 26, No. 1, Spring 2006. Exhibit 14.

373. Her article analyzes every precedent-bearing decision and law review article referencing PAS in the past 20 years. Again and again it is the most serious abusers and molesters who fight for custody of the children and who win claiming the bogus theory of PAS. She also analyzed every one of the promoter's articles about the alleged condition. In addition to many falsehoods, she found that his theories promoted sex with young children as an evolutionary benefit to humankind. He claims that pedophilia and incest are not child abuse. She finds that the theory has no reliability, validity, or empirical support and has never been scientifically tested or accepted in the scientific community even as soft science. She concludes that the theory is not and should be in the future admissible. Researcher and author Jon Conte wrote in 1988 that Gardner's Sex Abuse Legitimacy Scale is "[p]robably the most unscientific piece of garbage I've seen in the field in all my time. To base social policy on something as flimsy as this is exceedingly dangerous." <sup>2</sup>
374. However, judges all over the country continue to admit it and even train about it. (See Exhibit 22) Hoult describes unethical psychologists and evaluators who adopt the theory without even seeing the parties. She decries judges who completely abdicate their decision making roles by relying on such biased and unscientific data and who do not properly question its admissibility. She claims that if attorneys had alerted courts to the problems of PAS at the beginning, we never would have come to this pass. Here she is incorrect. Attorneys have been alerting courts to PAS and issues of abuse of women and children to the courts for years. They have filed motions and argued against its admissibility only to find their arguments rejected again and again and themselves vilified as radicals or feminists out of the mainstream. Yet as Hoult points out, PAS claims that when women exercise their legal rights, they are pathological and therefore should not be given custody of the children. She labels it legal coercion and says that it violates both medical and legal duties of care. This is yet another method in which due process is denied women and they are denied access to justice. Their very justice seeking behavior labels them as crazy. In a patriarchal system, it is indeed crazy for women to believe they can achieve justice. As PAS is applied exclusively to women, it is axiomatic that they will always lose.
375. Attempts have been made at the national level to stop this practice. The National Council of Juvenile and Family Court Judges (NCJFCJ) is a policy making body that provides information and education to the courts but whose recommendations are not mandatory. Many of the participants are present or former judges as well as professors, attorneys and other specialists. They are very clear in their 2006 edition on domestic violence that PAS is not admissible and that the safety of the victim should be the top priority. <sup>3</sup> So called "parental alienation" is dealt with on page 26. They state unequivocally that the courts should not accept this testimony. They rightly point out that it diverts attention away from the abusive parent – its intended purpose – as abusive parents rarely take responsibility for their own behavior.

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<sup>2</sup> Wilson, Trish, How "Parental Alienation Syndrome" is used against Mothers and Children Who Allege Child Sexual Abuse, 1997.

<sup>3</sup> Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judges Guide, National Council of Juvenile and Family Court Judges, 2004, revised 2006. Exhibit 15.

376. In spite of the complete lack of validity of PAS, the Arizona study revealed that 49% of the women said the court used PAS against them in their case. (Exhibit 8, p. 49) In 2003 a Court Watch volunteer observed a judge ask for an evaluator who had experience in PAS and the evaluator with the most child custody evaluations was distributing information specifically on Gardner and PAS at a training for the legal community. (Exhibit 8, p. 49) As late as February 2007, in spite of all judicial, Congressional and national admonitions against it, Arizona judges hosted a conference on PAS. In the instant case, PAS or “alienation” was used against K.A., Shockome, Navratil, Petitioner A and Horton.

377. Advocates have raised the issue in the report to the United Nations Human Rights Committee. <sup>4</sup> The first and a main point in the report is that the courts in the United States do not provide an effective remedy for gender based violence. The point is made that state courts because of immunities and gender discrimination do not provide effective remedies. Pregnant and nursing women are not given protection under current laws, but in fact suffer serious hardship. (Exhibit 16, p. 41-43)

378. The report also, on page seven of the summary, makes the point that women’s personal conduct or actions, taken in light of the social group to which they belong, may be “political expression” that should not be prohibited. The entire document demonstrates a continuing legacy of discrimination against women in the U.S. that is strengthening rather than diminishing. (Exhibit 16, p. 30)

379. The children themselves have started to speak out. As a result of the practice of ordering abused children back into the clutches of the abuser, the children have seen that their words do not count and their agony is unimportant to the court system. Those who are reaching maturity have started their own support system called Courageous Kids Network <sup>5</sup> in an attempt to both support those who remain trapped in abuse and change the system. Individual stories from those children, some now adults, are attached as Exhibit 17. A documentary was aired in 2005 by Connecticut Public Broadcasting Inc. called Breaking the Silence: Children’s Stories. In the documentary, children and prominent adults who endured the same treatment, talk about their attempts to be heard, their attempts to be safe, and the complete failure of the system to respond. Three of the petitioners appear in that documentary that is attached as Exhibit 28.

## CONCLUSION

380. The evidence presented by this petition is overwhelming. The failure to protect children in the family courts is not a new phenomenon but has existed since at least the

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<sup>4</sup> United Nations Human Rights Committee, Eighty-seventh Session, July 2006, Geneva Switzerland, Report on Women’s Rights in the United States under International Covenant on Civil and Political Rights in response to the Second and Third Periodic Report of the United States of America, July 2006. Exhibit 16.

<sup>5</sup> Courageous Kids Network, [www.courageouskids.net](http://www.courageouskids.net), accessed 28 March 2007. See Exhibit 17.

1960s. This failure is not limited to one court or one district or one state but is a national problem. The problem continues in spite of law suits and legislation, education and political activism. The root cause is based on the presumed inferiority of women and the patriarchal theories of ownership of both women and children. The result is rampant discrimination against women and children and violation of their most basic human rights.