

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

1889 F Street NW

Washington DC 20006

PETITION IN ACCORDANCE WITH INTERNATIONAL COMMISSION ON HUMAN RIGHTS

RULES OF PROCEDURE 23 and 49

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INTRODUCTION

1. For members of the Organization of American States (OAS) who are not parties to the American Convention on Human Rights, the Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man. 1 The procedure followed by the Commission will be those in Articles 28-43 and 45-47 in the Rules of Procedure. 2

2. According to Article 23 of the Rules of Procedure, any person or group of persons or nongovernmental entity legally recognized in one or more member states may submit petitions to the Commission, on their own behalf or on behalf of third person, concerning alleged violations of the human rights recognized in the American Declaration of the Rights and Duties of Man. Said petition may be submitted by a designated attorney 3 according to the requirements of Article 28. 4

THE NAME, NATIONALITY AND SIGNATURE OF THE PERSON OR PERSONS MAKING THE DENUNCIATION; OR IN CASES WHERE THE PETITION IS A NONGOVERNMENTAL ENTITY, THE NAME AND SIGNATURE OF ITS LEGAL REPRESENTATIVE(S).

3. The following persons and organizations are all citizens of the United States or legally registered U.S. nongovernmental entities. The factual situation of each or their interest in this issue will be briefly described in the fact portion of the petition below. For the organizations, an affidavit will be attached as an exhibit describing their interest and involvement in this issue and petition.

- a. Claudine Dombrowski – Kansas
- b. Wendy Titelman – Georgia
- c. K.A. - California
- d. J.H. - California

1 IACHR Rules of Procedure 49.
2 IACHR Rules of Procedure 50.
3 IACHR Rules of Procedure 50.
4 IACHR Rules of Procedure 28.

- e. Yevgenia Shockome (Genia)– New York
- f. Withdrawn
- g. Susan Navratil – California
- h. Esther Horton – New York
- i. California Protective Parents Association
- j. Kourts for Kids – Ohio
- k. Stop Family Violence – New York
- l. Parenting Project, Rhode Island
- m. Illinois Coalition for Family Court Reform, Woodstock, Il.
- n. Child Abuse Forensic Institute, Napa, CA
- o. Petitioner A – Confidential
- p. Petitioner B – Confidential
- q. Petitioner C – Confidential
- r. National Coalition Against Domestic Violence
- s. Justice for Children

DOES ANY PETITIONER WISH THEIR IDENTITY BE WITHHELD FROM THE STATE?

4. Yes. Three petitioners have requested confidentiality as noted above. Notations will be made in the text and their identification supplied to the Commission in a separate envelope for those who request confidentiality.

ADDRESS FOR RECEIVING CORRESPONDENCE FROM THE COMMISSION AND, IF AVAILABLE, A TELEPHONE NUMBER, FACSIMILE NUMBER, AND EMAIL ADDRESS.

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AN ACCOUNT OF THE ACT OR SITUATION THAT IS DENOUNCED, SPECIFYING THE PLACE AND DATE OF THE ALLEGED VIOLATIONS.

FACTUAL SITUATION OF THE INDIVIDUAL PETITIONERS

5. On Mother's Day, May 11, 1997, a group of mothers who lost custody of their children gathered on the steps of the U. S. Capitol in Washington, D. C. Entitled "Give Us Back Our Children," the event was held to represent the increasing numbers of women who are losing custody of their children to

batterers and child abusers. This event, co-sponsored by the National Coalition Against Domestic Violence, the Family Violence Prevention Fund, the House of Ruth, My Sister's Place, Rep. Diana DeGette (D-CO), Rep. Connie Morella (R-MD), and Rep. Lucille Roybal-Allard (D-CA), was held to bring attention to the plight of women and children unfairly victimized by the legal system, and to dispel the myth that women always win custody of their children. That was 10 years ago. As the facts of the petitioners' cases illustrate, the situation today is even worse. The stories of these petitioners are not unique. They are the tip of the proverbial iceberg indicating a grave and growing injury to human rights.

Claudine Dombrowski - Kansas

6. Claudine was a psychiatric LPN. Now she is disabled and though a cane is medically indicated, she continues to be mobile on her own. The father owns his own business in Topeka. The abuse started when she was four months pregnant when she found out he was married to another woman. The child was already 11 months old before they were married in late 1995. Four months after marrying, the father filed for divorce in March 1996. In May 1996, mother asked for permission to move with the child to another city in Kansas because of the closing of a hospital where she worked. She had obtained employment in the other city and it would help her escape from his unremitting violence. Permission to move was granted. Four days later, father filed to change custody of the child to him.

7. During the course of the litigation, he admitted hitting Claudine and that it was a reason for her to leave the home but claimed it was not the reason she left every time. He admitted he told her to leave, pushed her out of the home, and paid no child support. He admitted to twisting her leg and scratching her face. According to her, he beat her 2 - 3 times a week. He pointed and cocked a shot gun at her while she was feeding the baby. He cut up her military uniform. He beat her when the baby dirtied the house. She was kicked out, locked out and would leave 3-4 times a week to escape the violence. Often she was gone for 2-3 weeks to maintain her safety and that of the child. Though she had a perfectly valid reason to leave and was in fact protecting the child, court personnel later used that to claim she would hide the child and therefore he should have custody.

8. In one incident, he hit her in the head so severely she required 14 internal stitches and 14 external stitches. When the court questioned the parties about this on the stand, the judge was far more worried about where it happened and who was telling the truth than the admitted and verifiable fact that he did hit her in the head with an object that left that much damage. Whether he hit her in the head with a big stick in his driveway or he hit her in the head with a tire iron in her apartment – he hit her in the head resulting in severe injury. The judge however lectured both parties about lying. See Exhibit 1 for photos of the petitioner after beatings by the child's father.

9. While the father admitted the abuse, he claimed it was mutual combat. However not only did she have a protection order against him, but the man has eight criminal convictions - three convictions for domestic violence against her, a conviction for a bar fight, a conviction for assaulting a police officer, a conviction for obstruction of justice, one for possession of marijuana and one for driving under the influence. Pursuant to his various convictions, he was ordered to attend alcohol treatment – he didn't. He was ordered to a psychiatric evaluation – he didn't go. He was ordered to anger management classes but was asked to leave because of his inappropriate behavior. Domestic violence professionals know that anger management is not a suggested treatment modality for domestic violence perpetrators.

10. Court personnel not only were blind to the violence, they were completely ignorant of safety issues for the mother and child. Dr. Bernie Nobo, a licensed social worker, testified that it was a volatile situation. He actually had to stop the father from assaulting the mother in a meeting. Still he

said there was no danger to the child but suggested she might hide to protect herself. In fact, that would be a very sensible thing to do. He diagnosed her as primarily depressed and the father as adjustment disorder with mixed emotional features (depression or anxiety). Not only is depression a reasonable response to the situation, but as a social worker, he is not qualified to make such diagnosis. Nobo did say her parenting was fine and he recommended supervised visitation to father.

11. The court services officer knew of the domestic violence and in fact listed it as the biggest concern. But rather than deal with the perpetrator, she suggested that the child should be put into foster care – thereby punishing the child who would lose a perfectly good loving and protective mother and would punish the mother for being a victim of abuse. The officer claimed the mother was a risk to run though she admitted she had never had any trouble contacting her. The officer was more concerned that the father have access to the child than the safety of the child or the mother.

12. Kansas statutes require joint custody unless there is a reason for sole and the GAL recommended custody to father because he lived near the court while mother had moved out of town (with the court's permission) and he wanted to keep this child near the other three step-children from other marriages of the father. The GAL never talked to the mother or child, to the day care or the child's physician nor did he do a home study. The GAL said the violence was so far fetched he didn't believe it though he only knew of one conviction for DUI and never talked to the battered women's shelter. Astonishingly, the GAL recommended the mother go to anger management classes.

13. On April 17, 1997 during a settlement conference, the mother was stunned by her own attorney suggesting she agree to a joint custody arrangement with a man she knew to be extremely dangerous. Her lawyer and the judge threatened the mother that he would grant sole custody to the father because allegedly she would not work together with him. This of course completely discounts the impossibility of working with a man as violent as this perpetrator. Though admitting that the violence lessened when she moved away, the judge said he would give shared custody only if she moved back to Topeka where the father lived and where the violence occurred. Forcing her to resettle in Topeka near the perpetrator, a routine practice of family courts, is the state forcing her directly into danger. It is a violation of the fundamental rights of life, safety and to be free from torture and other maltreatment. Essentially the court required the mother to give up her right to life and safety for custody of child. She did. Only to lose custody as well. She agreed to the settlement only to change attorneys and file a motion to set aside four days later.

14. In 1998, the child's doctor reported the child had very poor hygiene when staying with father. The day care provider reported a change in her behavior after being with the father. She became either withdrawn or aggressive. A nurse requested an investigation of psychological abuse because of his treatment of the child.

15. On 31 July 2000, without any motion from either party and without a hearing, the judge simply issued an order that the mother had to relocate to Topeka if she wanted any possibility of obtaining custody. She did so but then in August, the judge ordered the child to remain with the father. In December 2000, supervised visitation was ordered for mother because she had allegedly returned the child late to the fathers over Christmas. They suspended all contact for several months and then she was allowed two hours a week supervised. The bizarre behavior of the courts was evident from as early as 1998 when they granted a divorce twice as evidenced by their own records – April 17 and October 28, 1998.

16. At the time of this filing, the mother had supervised visits once a week after having had no contact for 10 months based on an *ex parte* order without an evidentiary hearing issued 3 February 2004. At time of this filing, the mother had last seen the child on 15 April 2007 for one hour.

17. Over these 11 years of litigation, the judge was changed several times. One judge limited each side to five witnesses at trial and then continued to call them liars when they could not prove what they had said or disprove what the other had said because they were prohibited from calling witnesses. While the judge chastised the father for game playing in the court, he then berated the mother for not coming to agreement with the father. He could see how unreasonable the father was and the judge was not subject to violence from the man but yet he blamed the mother for not reaching an agreement. He said any child in this situation would grow up damaged but then blamed the mother rather than the father who was the one committing the violence. The judge focused on the mother's move to escape the violence rather than the harm of the violence itself. The court excluded evidence of his extensive criminal record, medical records and other records of violence. In addition to mother, other witnesses knew of the violence and that the child witnessed it. But still the court saw no danger to the child.

18. In spite of an order of protection against the father and his eight criminal convictions, three against her, one judge said it was mutual violence and besides she provoked it. He said there was no evidence that the father mistreated the children and ordered joint custody and both parties to anger management. She was ordered not to call law enforcement about the father without getting permission of the case manager. In other words, he could assault her freely and she was not allowed to even call the police. She was told to stop gathering evidence against the father. In March 2005, she was ordered not to file any more motions in the court without permission from the case manager – she had filed a motion to remove that case manager. In other words, she was even denied access to the court.

19. The complete failure of the court to protect the victim continued after father received custody. When she complained that the father forced her to have sex if she wanted to see the child, the case manager said that it was just part of co-parenting so deal with it.

20. She appealed twice to the Supreme Court of Kansas. In the appeal, she alleged not just for herself but that the policies and procedures of the Kansas courts denied the right to a full and fair hearing, denied equal protection and due process, and violated fundamental rights. She first filed in 1997, the appellate court affirmed the lower court in 1998 and the Supreme Court rejected review in 1999. She appealed again in 1999 and again the appellate court affirmed the lower court in 2000.

21. In July 2002, mother again regained unsupervised visitation.

22. On 25 August 2003, Claudine was attacked with a hammer and her arm broken by Kathleen Sales. Sales later admitted she was paid by the father who assured her no charges would be filed. They weren't.

23. On 3 February 2004, false allegations were made against mother that she sought to have harm done to the father. The mother objected to the order and asked for an evidentiary hearing. The request was never even heard. By March 2005, mother had only supervised visitation that has remained to this day.

24. In March 2002, Dr. Dale did an evaluation for unsupervised visits with mother and recommendation for therapy. The evaluation cost \$5,000 and father admitted violence and the mother was found not to be any danger to the father or child. She was however ordered to shut down her web site that she had constructed. On the website she expressed her opinion and her facts about the case and the danger the child was being put into by the court. In a second order later, she was ordered to remove the child's photo from another website. After this evaluation, she had unsupervised visitation from May 2002 until 3 February 2004.

25. Repeatedly when father files motions, they are heard with negative consequences for mother and child based on the flimsiest of evidence or none at all. But when mother files motions, they are never even heard. A home study ordered into the father's home in February 2006 was never done. On 14 April 2006, the court held a conference in chambers and refused to allow the mother to attend. The court changed the orders from a home study of father to a study of mother to assess her risk to the child. The evaluation found no risk and was positive for mother. Still supervised visitation was not changed.

26. In a hearing on 10 April 2007, the mother has asked yet again that the child be protected from abuse and at least she have unsupervised visitation. Again the court refused. The child spoke out in 2003 and three CPS reports have been filed but in all three, they claimed that the mother coached the child who is now 12 and certainly able to speak for herself and punished both mother and child by restricting visitation time further. The lesson is clear – don't report abuse.

Wendy Titelman - Georgia

27. The story of Wendy Titelman is well known in the United States. Her two daughters were taken from her by a Cobb County judge in Georgia at ages five and seven after sexual abuse was reported against the father who was abusive to her during the nine year marriage. She has not seen them for more than six years. She was jailed twice and acquitted by a jury once. She has filed bankruptcy. Expert after expert, witness after witness verified the child sex abuse. Rather than dealing with the confirmed sexual abuse of the children, parental alienation and mental illness were alleged against her because of her belief that the girls were telling the truth about molestation by their father.

28. In February of 2000, she was put on supervised visitation. In the divorce, the court made no finding of facts. The court and various related personnel clearly participated in a cover up of the abuse. In September 2000, in an *ex parte* hearing, the court ordered her not to come near her own children. The court did not hold a final hearing for 5.5 years, did not apply the clear and convincing legal standard as required and did not make findings of fact or conclusions of law.

29. Instead contempt motions have been filed against her and bogus arrest warrants, one federal and two from Georgia were served and she was jailed for five days in Mississippi and one day in Georgia. She was criminally prosecuted for custodial interference and not only did the jury return a not guilty verdict, but wrote a letter to the judge in the custody case condemning her prosecution as malicious and a cover up of the abuse. The court in Mississippi put the children in protective custody after an investigation there, but the father was successful in having them returned to Georgia where the abuse continued.

30. The courts have refused her petition and she has had to go to the state Supreme Court to force the lower court to accept the petition. When they were ordered to accept it, they then promptly dismissed it. She filed a federal suit for malicious prosecution and it was dismissed and the attorney sanctioned \$84,000. This sanction was upheld all the way to the U.S. Supreme Court. Just recently the Georgia Supreme Court dismissed all her appeals and requests for reconsideration.

31. As a method of sustaining herself during this nightmare, Wendy has written a book documenting the case. The forward includes endorsements from Paul Fink, M.D., a prominent psychiatrist, Seth Goldstein, a lawyer, former investigator and instructor at the FBI academy, and Sol Gothard, a judge in Louisiana. The book details the marriage, the violence, the early years with the children, the divorce, the mother's unceasing efforts to protect the children, the court system's cover up of the abuse including withholding of evidence, *ex parte* hearings, and denial of due process, the retaliation of the system against the mother and her attorney. Exhibit 2.

32. It also includes documents from the children, letters, notes, emails, a court petition, reports of the abuse, professional assessments, drawings of the children, documentation of the abuse, supervised visitation reports, and expresses the deep pain, loss and grief the mother is suffering not only because she cannot see her children but knowing they are being abused and she is helpless to prevent it.

33. This case is an extreme example of the State silencing the protective mother and putting the children directly in harms way. Unfortunately, it is not unusual.

K.A., Placerville, CA

34. K.A. was a single mother with physical custody of three sons from a first marriage when she married D.H. in June 1985. D.H. and K.A. had three children during the marriage: J.H., K and S.

35. She separated from D.H. in August 1993, due to his abuse of the children and her. The three older sons from a previous marriage were verbally, emotionally, and psychologically abused by D.H.. For the most part, his physical abuse of them was mild (yanking them by the arm etc.) but he viciously attacked the older son on one occasion, and the younger son and mother had to struggle to pull him off. He often threatened all of them with physical abuse. She filed for divorce in Amador County, CA in May 1994. They were divorced in 1995. She was always the primary caregiver of the children and had primary physical custody of the children after the separation and divorce.

36. Susan Harlan, acting as presiding judge, took jurisdiction of the case between 1 January 1993 and 1 January 1999. In the fall of 1994, the two daughters began disclosing to the mother and a family friend and babysitter that their father was engaging in sexually inappropriate behavior with them on court ordered visits. He was sleeping and showering with them against their will, walking around in tiny underwear, with his genitals showing through. The younger child, S., complained that the father would sleep with her and she would wake up without her panties on. The children manifested behavioral signs consistent with children who have been molested such as acting out sexually with each other and other children and demonstrating sexual activity with dolls.

37. On or about July 25, 1995, UC Davis Medical Center filed a suspected child sexual abuse report to Amador County Child Protective Services, after discovery by a pediatrician of a damaged hymen in K., age 6. The Medical Center requested authorization to do a sexual assault examination at its Child Protection Unit, to determine the cause and extent of K's genital injuries. CPS director Matt Zanze refused to authorized the exam.

38. On October 13, 1995, Judge Harlan appointed psychologist Larry Leatham to act as a custody evaluator and appointed attorney Larry Dixon to represent the children in the family law matter. The mother was court ordered to participate in a custody evaluation, conducted by Leatham. Leatham wrote and filed an evaluation report with the court on December 11, 1995, in which he disregarded D.H.'s history of family violence, to which D.H. had admitted. Leatham disregarded warnings by the children's therapists that the children were at risk of abuse in unsupervised contact with D.H.. Instead, he recommended 50/50 joint physical and legal custody.

39. On January 19, 1996, K (age 7) disclosed to her therapist that someone was abusing her. On or about January 24, 1996, the Amador County Sheriff's Office ("ACSO") initiated a criminal investigation for sexual abuse of K and S (age 4), after both girls were examined by UC Davis Medical Center, Child Protection Unit, in July 1995 with a finding of genital injuries in K. (See paragraph 37 above)

40. During the law enforcement investigation, K and S made direct disclosures of molestation by D.H.. They described acts of vaginal penetration, sodomy, oral copulation, and being shown child pornography. Their disclosures were substantiated by ACSO, supported by medical evidence of penetration, psychological evidence of trauma, statements made to collateral sources, and the report of the 12-year-old daughter of a family friend who observed D.H. molesting K when he had stayed overnight at her home to baby-sit.
41. On January 30, 1996, ACSO conducted a pretext phone call to D.H., alerting him to the allegations of sexual abuse made against him by the daughters. On January 31, 1996, ACSO interviewed D.H., who did not admit or deny the allegations of molestation. When asked by the ACSO detective if his children's sexual abuser should be punished, D.H. couldn't decide. During the ACSO interview D.H. admitted to calling Leatham the evening before, following the pretext phone call, to ask for Leatham's help in defending against the sexual abuse allegations.
42. Thereafter, on or about February 1, 1996, Leatham went to the office of Helen O. Page, county paid Family Law Facilitator and friend, and solicited Page to represent D.H. as a private client. An independent witness later reported this meeting and the planning to ensure that custody went to the father. On February 8, 1996, Page substituted into the case as D.H.'s attorney.
43. On February 28, 1996, by a phone call, Harlan transferred the case to an out of county judge from Alpine County, Harold Bradford. Bradford failed to disclose a conflict of interest in presiding over the case resulting from a close prior employer/employee relationship between himself and Page.
44. On March 6, 1996, Leatham fraudulently represented himself as an "expert" in child sexual abuse to give testimony to the family court regarding the children's allegations of molest. Leatham refused to review the evidence of sexual abuse, and then gave incompetent forensic testimony to the court by "diagnosing" the children and mother with a non-existent disorder, "parental alienation syndrome," (PAS) a hypothesis in which it is assumed that children who disclose paternal sexual abuse are lying at the instigation of vindictive mothers.
45. Using PAS, Leatham, who had recommended joint custody prior to the children disclosing sexual abuse, then recommended sole custody to D.H. in spite of the fact that D.H. was under active criminal investigation for child sexual abuse. Subsequent to Leatham's March 1996 testimony, the mother complained about his incompetence to her attorney, victim advocate, child protection agencies and members of the public. In retaliation, Leatham slandered and defamed the mother in the legal and mental health communities in the county.
46. On or about March 20, 1996, CPS director, Matt Zanze conducted a token investigation of the molestation. Zanze did not interview the mother, the victims or the collateral witnesses to whom the children disclosed molest. When she informed Zanze that there was a witness who observed D.H. molest K, Zanze stated, "I'm not going to go hunting for witnesses." Zanze accepted documents from D.H. but refused to accept documents from mother. Zanze used Leatham's fraudulent representations as an "expert" in child sexual abuse to include recommendations. While failing to conduct a proper investigation of the sexual abuse, Zanze made a finding that he "couldn't tell what happened." Even with this dilatory investigation, Zanze refuted Leatham's PAS "diagnosis," and recommended custody to mother, with unsupervised visitation to D.H..
47. Zanze stated to the mother, in the presence of her attorney, that he was being politically "pressured" to go along with the custody switch. In Leatham's September 1, 2004 deposition, in a collateral civil lawsuit brought by the mother, he identified Zanze as a "friend" and admitted to having *ex parte* communications about the case with him. After the mother criticized his incompetent "investigation" report, Zanze engaged in a pattern of hostile and retaliatory conduct.
48. On or about March 21 –28, 1996, former Amador County District Attorney, Steve Client conducted a Grand Jury proceeding to determine if D.H. should be prosecuted. He failed to subpoena

critical collaborative witnesses who would support the children's disclosures of sexual abuse by D.H., including the children's brother who was aware of his father's clandestine night time visits to his sister's bedroom and who saw his father in bed with his sisters, collateral witnesses to whom the children disclosed sexual abuse, and the eye witness to molest of K by D.H..

49. On April 11, 1996, the mother was forced by court order to submit to a psychological evaluation by a psychologist appointed by the court, Richard Deatherage, even though she had no history of mental health problems. This evaluation resulted in a finding that she was mentally, emotionally, and psychologically healthy ("the profile of a rather normal individual"), and that she was "unlikely to make false allegations of abuse." These findings were disregarded. D.H. had a psychological evaluation and his raw data was withheld because it was too incriminating.

50. On June 5, 1996, the children sought to terminate Larry Dixon as their court appointed attorney because he refused to believe their allegations of abuse.

51. On August 14, 1996, Bradford conducted a hearing without a court reporter present, in which he ridiculed and threatened the mother's attorney, the children and the mother. Zanze was present and made inappropriate sexual remarks against the mother that were taped. When the tape was turned over to the grand jury in 1997 with a complaint against Zanze, he was disciplined for unprofessional conduct that only increased his hostility toward mother.

52. On August 16, 1996, Dixon filed a motion to suppress all evidence of sexual abuse and any other form of family violence perpetrated by D.H. claiming it was for procedural reasons. Dixon suppressed this evidence after he admitted on the court record in March 1996 that there was medical evidence of sexual abuse and penetration of K. In a court pleading in 2002, Dixon admitted he had asked the K, who said she had been molested. While Dixon claimed that the father was not the perpetrator, he took no steps to locate any other perpetrator.

53. On September 24 – 26, 1996, Bradford conducted the custody trial. The mother had to obtain new counsel due to the sudden illness of her previous counsel but the court refused a motion for continuance. At the custody trial, Bradford ordered all evidence of D.H.'s sexual abuse of the children and his history of family violence to be suppressed. Bradford refused to allow anyone to testify except Leatham, who again, gave testimony regarding PAS and the children's allegations of molestation, while fraudulently representing himself as an "expert" in child sexual abuse. Again Leatham recommended custody to D.H., while he remained under criminal investigation for sex abuse, and while the children were identified by the State of California, as victims of sex crimes perpetrated against them by their father.

54. The mother was barred from testifying at her own custody trial except regarding her answers to interrogatories. She was prohibited from presenting evidence or witnesses regarding the abuse of the children or the best interests of the children. The judge granted the child's attorneys motion to exclude all evidence of sexual abuse or any abuse by the father as a sanction against the mother. But the judge went beyond that order and even disallowed evidence of best interest.

55. Custody was switched to D.H., based on Leatham's fraudulent testimony to PAS, even though Leatham had never conducted a child abuse assessment and he had never reviewed the law enforcement, medical, and psychological evidence of abuse of the children. Leatham's recommendations refuted findings in his own December 1995 custody evaluation report, wherein, by the admissions of the children's father, the mother was a good mother and the parent to whom the children were most bonded.

56. The mother was stripped of custody and ordered to have no contact with the children. The mother was quite upset, protested the ruling and refused to divulge the location of the children. She was arrested and transported to Amador Hospital, where a County Dept. of Mental Health employee, Frank Whitman recommended a 72 hour mental health hold at a psychiatric facility. However, mother

was released from the psychiatric facility as soon as she saw a psychiatrist because he found that the order for a 72 hour hold was unlawful because “patient does not fit the criteria for a 72 hour hold.” The trial was then continued until 31 October 1996.

57. On or about October 31, 1996 at what was supposed to be the continuation of the trial, Bradford stated to the mother, “You already had your trial” and refused to hear testimony on the best interests of the children. He accused witnesses of being on a witch hunt and threatened the attorney and mother with sanctions for repeating allegations of sexual abuse.

58. On November 1, 1996, Bradford appointed a therapist, Marsha Nohl, privately hired by D.H., to “treat” the children for the false PAS diagnosis made by Leatham. Without meeting or speaking to the children or mother, Nohl prepared a treatment plan for treating PAS – a diagnosis which does not exist. The mother refused to meet with Nohl and complained about the validity of a therapist diagnosing someone without ever having met them.

59. On November 26, 1996, mother filed an appeal of the order transferring custody to D.H.. On the same day Dixon filed an *ex parte* Order to Show Cause to terminate telephone contact between the children and mother. On November 27, 1996, Bradford and Amador Superior Court clerk Janet Davis, altered the court file prior to sending it to the appellate court. This was first reported by an insider and then 2-3 years later while reviewing the file, the mother found a memo written by Davis stating the judge had called her and told her to list some political materials as trial exhibits and send to the appeal court with the record on appeal. The mother kept a copy of the memo.

60. On January 31, 1997, Bradford’s Order to Show Cause for sanctions against mother’s attorneys and mother was heard. Bradford was forced to abandon his threat of sanctions after counsel for the attorneys presented evidence that the judge had previously refused to hear at the custody trial that supported the children’s allegations of sexual abuse and the good faith conduct of the attorneys and mother. On the same day, an Order to Show Cause and Affidavit for Contempt was filed against mother for providing Child Protective Services with information regarding the abuse.

61. On or about February 13, 1997, Nohl threatened the mother to sign a contract to use her separate business (A.F.T.E.R.) for visits with the children, stating that she would induce the court to prohibit contact between the children and mother if mother didn’t sign the contract. Mother was forced to pay Nohl in cash to see her children. Mother was restricted to supervised visitation for two years. Nohl instructed the mother not to tell the children she loved or missed them, not to demonstrate affection for them, and not to speak to them about their feelings, their activities, or how they were coping with the changes in their lives. Failure to comply by the children or mother would result in Nohl asking the court to prohibit contact completely.

62. On April 25, 1997, Bradford put a publication that he obtained *ex parte* into the case file supporting the myth that women routinely make false allegations of sexual abuse. Bradford also closed the proceedings to the public. Bradford took this action after community members who observed the hearings wrote letters to the editor of the local newspaper alleging that the court was acting corruptly to purposefully cover up the sex crimes of an offender and retaliate against the complaining witnesses.

63. On or about May 5, 1997, K made new allegations of sexual abuse by D.H. to classmates at school. The therapist, Nohl, insisted that K write a letter denying this later as witnessed by the older boy, J.H., who reported it when he left the father’s home.

64. On May 13, 1997, mother was forced to file bankruptcy.

65. On or about January 15, 1998, mother filed a civil rights lawsuit against Amador Superior Court, Judges Harlan and Bradford, D.H., Dixon, Page, Leatham, Nohl, and Zanze and the County of Amador among others.
66. On January 22, 1998, on the advice of an investigator for the Board of Behavioral Sciences, mother filed an *ex parte* motion to terminate Nohl as the children's therapist, citing her right to do so as joint legal guardian of the children, and to increase visitation with the children. The court then began the process of removing her joint legal custody so she would not be able to have any influence on the children's treatment.
67. On or about January 26, 1998, Bradford was served as a defendant in the civil rights lawsuit. On February 20, 1998, mother was ordered by Bradford to dismiss the lawsuit and "apologize to the community." Bradford ordered unsupervised visitation but told community members present in the courtroom that the mother's ability to have contact with her children was dependent on their willingness to restrict their free speech right to talk about the case.
68. On March 12, 1998, Dixon filed a motion to force mother back to supervised visitation, for the reason that lawful service of a lawsuit on the father had harmed the children's interests. On March 18, 1998, Bradford was removed from the case on a challenge for cause for bias filed by mother. On May 13, 1998, visiting judge James Accurso granted Dixon's motion for a return to supervised visitation and to remove joint legal custody. Nohl withdrew from the case.
69. Thereafter, the children and mother had supervised visitation in Amador County with volunteer supervisors. D.H. repeatedly violated court orders and harassed and threatened visitation supervisors, causing them to be in fear and withdraw their services so that the children suffered repeated, sudden losses of contact with mother. D.H. and Dixon would then refuse to agree to another supervisor, causing mother to have to file court actions to obtain a new supervisor, with long periods of no contact between withdrawal of a supervisor and a court hearing to appoint a new one. The children's unpredictable losses of contact had an extremely negative impact on the children's bond and sense of security with their mother. In January 1999, Accurso ordered mother into counseling "other than by a Victims of Crime therapist" to cause her to "change her views".
70. On January 1, 2000, California Family Code §3027.5 was enacted to protect child victims of sexual abuse and the custody rights of their non-offending parents in family court litigation. The new law was created partially from this family law case that was used as an example of the malfeasance of family courts in adjudicating allegations of child sexual abuse.
71. On January 13, 2000, Accurso was removed from the case on a peremptory challenge by grandmother intervener. On March 23, 2000 visiting Judge Frank Grande presided over mother's Motion for Modification of Custody, based on the new law created from the facts of her case. In spite of the new law, the judge denied the motion.
72. On March 23, 2000, Leatham, the evaluator, pled no contest to charges of gross negligence filed against him by the Attorney General, on behalf of the Board of Psychology, for performing incompetent evaluation services and giving incompetent testimony to the court in this case. On May 15, 2000, an investigative reporter, Karen Winner, released her study, *Placing Children at Risk: Questionable Psychologists and Therapists in the Sacramento Family Court and Surrounding Counties*. In it, she specifically investigated Larry Leatham and Marsha Nohl as well as other cases and therapists and found that there were repeated violations of law, ethics and common sense.

73. On August 11, 2000, the State Victims Compensation and Government Claims Board concluded a new investigation of the sexual abuse of the children and made a finding that there was at least a preponderance of evidence that the children were molested by D.H.. Despite this finding, the court refused to return custody to mother in a hearing In January 2001.
74. On August 25, 2000 Grande was removed from the case on mother's challenge for cause for engaging in *ex parte* communications. On January 10, 2001, a new Judge, Robert Martin, ruled that supervised visitation was not appropriate and ordered alternate weekend and mid week visitation to mother. The court sealed all pleadings that revealed that Dixon, the child's court appointed attorney, had been accused by his wife of inappropriate conduct with an unrelated 11-year-old girl.
75. On May 2, 2001, Martin held an informal hearing because of the joint efforts of D.H. and Dixon to frustrate mother's visitation. Martin reprimanded Dixon reminding him that he was not representing the father and ordered Dixon to refrain from interfering.
76. On December 31, 2001, mother filed a motion for a change of venue and counseling for the children and mother together because of the history of trauma and the children's depression, to be provided through the benefits authorized by the Victims of Crime program. The motion was supported by the Amador County District Attorney and by the Attorney General.
77. On January 10, 2002, mother's motion for a change of venue was denied and her motion for counseling was continued, pending an evaluation of the children's "Best Interests." Dixon urged the court to re-appoint Nohl for the specific purpose of assessing the children's mental health status and need for counseling. Nohl wrote a letter to court assessing the children's mental state and blocking therapy though she had not seen the children for three years.
78. On April 17, 2002, mother was ordered to participate in a custody evaluation conducted by Family Court Services director, Diane Goodman. Goodman refused to sign the required declaration of qualifications required by the Family Code and California Rules of Court, and therefore, was not qualified to perform an evaluation. Goodman was Leatham's supervisor.
79. On July 5, 2002, Goodman refused to consider D.H.'s history of sexual and psychological abuse of the children. Goodman declared that all three children "presented as depressed" but that they should not have therapy. On August 14, 2002, Judge Martin adopted the recommendation. Martin was subsequently removed from the case because of medical physical disabilities.
80. On or about April 19, 2003, the parties' son, J.H., wrote a letter to Dixon disclosing D.H.'s abuse of him and requested that Dixon file a motion to place him in mother's custody for his safety. Dixon refused to file the motion on behalf of J.H.. On April 22, 2003, mother filed a motion for Modification of Custody based on J.H.'s new disclosures of years of emotional abuse of all the children by D.H. and D.H.'s continued efforts to frustrate mother's visitation and relationship with the children. On May 7, 2003, J.H.'s letter was sealed and mother's motion for modification denied.
81. On or about May 30, 2003, J.H., then 17, escaped from his father and returned to mother's sole physical custody. Once free from the custody and control of his father, J.H. disclosed that he was present and witnessed collusion between his father and court officials to rig the case in favor of D.H.. J.H. also revealed that he had knowledge that his father continued to visit his sisters' bedrooms in the night after obtaining custody, and that he and his sisters were terrorized by his father, Nohl, and Dixon, to be silent about his father's abuse.

82. On September 4, 2003, the California State Commission on Judicial Performance substantiated mother's complaints that Judge Bradford acted in a biased and unlawful manner in this case and he was disciplined by the Commission for his unlawful conduct but he only received a private reprisal.

83. On April 1, 2004, mother filed an *ex parte* request for sole legal custody of J.H. because D.H. was using legal custody to block J.H. from obtaining needed oral surgery for impacted wisdom teeth. On April 6, 2004 mother obtained legal custody of J.H. from a visiting judge and J.H.'s oral surgery, scheduled for that afternoon, was ordered to go forward. However, by that time, D.H. had removed J.H. from his medical insurance policy so there was no means of paying for the oral surgery, and therefore, it could not be done.

84. On April 6, 2004, mother filed a Motion for Modification of Custody. In violation of court orders, D.H. refused to participate in mediation but was not held accountable. On July 7, 2004, Judge Ritchey granted Dixon a protective order against J.H., to prevent Dixon from having to release to J.H. his client file. On July 28, 2004 mother was ordered to participate in a custody evaluation conducted by Barbara Liberty-Vick, MFT.

85. On February 22 – 24, 2005, Judge Ritchey refused to allow mother to have a court reporter for a custody trial with evidence and witnesses. All witness testimony, including the testimony of experts, supported mother's position. Vick testified that prior to being appointed to the case, she had been influenced by "other court officials" through *ex parte* communications, to adopt D.H.'s position in the case. Vick testified that the undue influence led her to draw incorrect conclusions about the children's welfare. Vick testified that she came to discover that the children were molested by their father. D.H. refused to take the witness stand and invoked the 5th Amendment right against self incrimination when asked if he molested his daughters. J.H. testified about D.H.'s abuse of him and his sisters, and about his father's aggressive efforts to turn him and his sisters against the mother.

86. On March 17, 2005, Ritchey falsified the testimony to deny the mother custody. J.H. later filed an affidavit about his actual testimony and how it was mischaracterized by the court.

87. Because father continued to violate the court orders, mother filed for contempt. A hearing was set for 26 August 2005 but continued.

88. On August 17, 2005, Vick concluded a thorough investigation of the entire case and submitted a report to the court for the August 26, 2005 review hearing. Vick's report substantiated sexual and psychological abuse of the children by D.H. and continued violations of court orders and frustration of mother's parenting time by D.H. since the orders made on March 17, 2005. Vick urged the court to transfer the children to mother's sole custody for their safety and well being.

89. On August 26, 2005, Ritchey refused to accept Vick's report and refused to consider new evidence that warranted an increase in parenting time for mother. Instead, he gave D.H. even more custody and control over the children. Between July 2005 and January 2006, Ritchey failed to set a trial date for multiple Orders to Show Cause citing D.H.'s repeated instances of contempt of custody orders.

90. On September 12, 2005, mother filed a Motion for Modification of Custody based on Vick's report substantiating abuse of the children by D.H., his continued violations of court orders and efforts to sabotage mother's parental role. Ritchey refused to set a trial date.

91. On October 7, 2005, a stipulated order was made for the children to have weekly therapy with mother to re-build their relationship that was being destroyed by D.H.. D.H. violated the order each

week, causing law enforcement to send reports to the District Attorney for prosecution. Ritchey refused to set a trial date for the contempt against father and for mother's Motion for Modification.

92. On October 13, 2005, the first evaluator, Leatham, was fined \$75,000.00 by the Board of Psychology in further administrative actions filed by the Attorney General, and his license to practice psychology was revoked for illegal and retaliatory conduct perpetrated against mother in this case (gross negligence, abuse of power, violation of confidentiality) and for performing a grossly negligent fitness for duty evaluation of another woman in an unrelated case.

93. On January 5, 2006, the then Amador County District Attorney filed criminal charges against D.H. for multiple violations of custody orders. On January 24, 2006, D.H. and daughter S were arrested for violations of the court order.

94. On January 27, 2006, visiting judge Jane York conducted an *ex parte* hearing based on procedurally defective papers submitted by D.H., requesting termination of mother's parenting time and therapy for the children. Prior to conducting the hearing, York had *ex parte* communications about the case with local court officials. Prior to commencement of the hearing, York instructed the court reporter to not report the hearing. York temporarily suspended mother's parenting time for "parental conflict" caused by D.H.'s and S's violations of the court orders, and changed the terms of the stipulated order for therapy at D.H.'s request and over mother's objections. York ordered the children to continue in therapy but with D.H. delivering them.

95. On January 30, 2006, two hours after mother complained at the court clerk's office about the January 27, 2006 *ex parte* hearing, York and court supervisor Janet Davis altered and falsified D.H.'s moving papers, then removed and secreted the falsified documents from the court file. Mother has copies of the original OSC submitted and the falsified one after conversion with fax tracking information on the falsified pages.

96. On February 17, 2006 Ritchey over mother's objection, without service of the pleading, and in violation of California law that requires mediation prior to hearing an OSC for custody/visitation, ordered continued suspension of mother's parenting time and ordered suspension of therapy for the children. The tape recording of the February 17, 2005 hearing was made "unusable.

97. On April 3, 2006, mother filed a writ for emergency relief from the temporary orders and due process violations to the California Court of Appeals, Third District, which was denied.

98. On April 12, 2006, Ritchey conducted another hearing over mother's objection and appointed a different attorney for the minor's (Brian Chavez-Ochoa). Ritchey refused to set a trial date for mother's Motion for Modification.

99. On April 19 –20, 2006 Ritchey conducted an evidentiary hearing over mother's objection. Ritchey refused to allow the son J.H. to testify, who was a necessary and critical witness. Ritchey conducted an *ex parte* interview with daughter S over mother's objection. Ritchey refused to allow mother a transcript of the *ex parte* interview. All witness testimony favored mother's position in the case. D.H. admitted violating court orders and supporting S in doing so.

100. On May 3, 2006 Mother filed another writ for emergency relief from the temporary orders and due process violations to the California Court of Appeals, Third District, which was determined to be moot because of final orders made before the appellate court addressed the writ.

101. On May 5, 2006, Ritchey conducted another hearing over mother's objection and finally set an August 28, 2006 trial date for her Motion for Modification.

102. On May 19, 2006, Ritchey made a ruling based on the April 19th hearing that permanently terminated orders providing mother with parenting time and vacated a stipulated order for therapy for the children. Ritchey gave D.H. sole custody and control of the children, while 24 citations of contempt and criminal charges were pending against D.H. for violating custody orders.

103. On July 13, 2006, mother filed a Notice of Appeal to the California Court of Appeals, Third District, *K.A. v. Amador Superior Court* CO53231. On July 18, 2006, mother filed a writ for emergency relief to the California Court of Appeals, Third District, to stay the May 19, 2006 orders. The writ was denied.

104. On July 28, 2006, the first evaluator, Leatham, testified before a jury in the civil jury trial brought by mother for slander that Judge Susan Harlan, while acting as presiding court judge of the Amador Superior Court, repeatedly offered legal advice to him while the case was pending, and repeatedly solicited Leatham to file a motion to declare mother a vexatious litigant. Leatham filed the motion in the civil case at Harlan's urging, but it was denied for lack of merit by the judge who conducted the jury trial.

105. On or about July 28, 2006, during the civil jury trial, mother also discovered that on January 19, 1999, Judge Susan Harlan, acting as presiding judge of the Amador Superior Court, interfered in the Medical Board administrative complaint against Leatham by writing an unsolicited letter to the Medical Board Investigator.

106. On August 1, 2006, Leatham testified before a jury in the civil trial of *K.A. v. Leatham*, that he gave testimony before a Grand Jury on or about March 20, 1996, and to the Amador Superior Court in mother's custody trial on September 26, 1996, regarding the validity of the children's allegations that their father sexually abused them. He represented himself as an "expert" in child sexual abuse when he gave testimony to the Grand Jury and family court while he knew at the time, that he had no expertise in child sexual abuse. He declared to the Grand Jury and the family court that the children made "false allegations" of sexual abuse and that they were not sexually abused by their father, while he knew at the time that he had no way of knowing with any certainty whether or not the children were sexually abused by their father. He further testified that when he gave testimony to the Grand Jury and the family court diagnosing the children and mother with "parental alienation syndrome," (PAS) he knew at the time that PAS was not a validated diagnosis or mental health disorder.

107. On or about September 28, 2006, mother filed a Verified Statement of Disqualification against Ritchey, challenging him for the cause of bias, mental incapacity, and his accessory to the crime of conspiracy and falsifying court documents. He was not removed from the case.

108. On December 7, 2006 Ritchey, in complete violation of all procedure, said he was filing a motion from the bench to dismiss mother's Motion for Modification. That so called motion is now scheduled to be heard May 15, 2007.

109. A trial on D.H.'s citations for contempt of court orders was scheduled for March 1 - 2, 2007. No charges were filed against the daughter. The criminal case against the father has been continued by the prosecutor until the family court judge rules in the civil contempt case. Given the history of Ritchey's rulings, mother fully expects that the family court judge will not find the father in contempt and then the father will use that to have the criminal charges dismissed.

110. On February 13, 2007 mother filed a new Verified Statement of Disqualification against Ritchey for bias demonstrated at the 7 December 2006 hearing. The judge who reviewed the disqualification motion found nothing wrong with a judge filing motions against a party from the bench.

111. On 5 March 2007, the mother went to the daughter S's school to fill out an emergency card with her new address and phone number, and to request a "second mailing," so that she would receive all the same school notices the father receives. She also requested a copy of S's report cards since the father refuses them in violation of court orders. The school refused to give mother any information claiming the file had been "red flagged". Only after intervention by an attorney was she able to get the records and be included as a recipient of the child's records.

112. On 12 March 2007, mother filed a rebuttal in the Disqualification case that is pending against Ritchey arguing that the issue is not the rulings of the judge, but the bias and prejudice, the violation of due process, *ex parte* hearings, falsification of records and evidence, destruction of evidence, fraud, misstatement of facts, and refusal to record the proceedings either by court reporter or tape recorder. A review judge denied the disqualification. The Amador Superior Court's history of unlawful conduct, gender bias, and retaliation against complaining victims of abuse is documented in a lawsuit filed by the former CEO of the Amador Superior Court, *Rachelle Agatha v. Amador Superior Court*, 05CV03942.

113. The son J.H., age 20, who now lives in San Diego, California, still suffers from the effects of being forced to live in an abusive environment for years. He is grieving over the loss of a relationship with his sisters, who were forced by their father to cut ties with him. J.H. is also a petitioner in this action.

114. The daughter K left her father's house at age 17 and moved to another city. She is now 18. The years of abuse and trauma have left her depressed, unable to trust, and emotionally shutdown, so that she cannot form close relationships. The father has successfully poisoned the bond between the mother and daughter so that the relationship is severely damaged. The mother maintains contact hoping that one day they can reconcile.

115. The daughter S, almost 16, has been completely isolated from the mother and the rest of her maternal family for over one year. She is so consumed with negativity and rage that she sometimes expresses it with violence. Although she is extremely intelligent, she is doing poorly in school.

116. The lives of the children and mother have been irreparably harmed by the family court. Instead of protecting victims of abuse, the court protected the offender and the court itself became an arm of the offender, perpetrating legal abuse on the children and mother. The children have suffered years of abuse at the hands of their father and the court. The years of trauma and psychological abuse have left them with lasting emotional damage. They suffer from abandonment and loss issues, low self esteem, anger, rage, depression, and sleep disturbances. They have lost the ability to trust. Their childhoods were stolen from them because of the conduct of the court.

117. The mother has been prevented by the court from protecting her children. She has been treated by the court as if she were not even human. She has been demeaned, ridiculed, and slandered by court officials in the courtroom and in the public through *ex parte* communications. She has been diagnosed with Post Traumatic Stress Disorder resulting from the abuse of her children by their father and the legal/psychological abuse perpetrated on her by the court.

118. The entire maternal family has suffered immeasurable trauma, loss, and grief from being separated from the children. The children's sibling relationships have been seriously damaged and destroyed by the conduct of the court.

119. The mother has been financially and emotionally raped by the Amador Superior Court by unconstitutional gender bias and retaliation for challenging the court's competence and ethics, and for daring to fight to protect her children. Court officials improperly influenced other county official's agencies through *ex parte* communications and nepotism, including the Dept. of Social Services, Child Protective Services, the Office of County Counsel, and the Dept. of Mental Health, to participate in what the mother terms "emotional gang rape." The mother alleges that the court has committed a hate crime against her because of characteristics associated with gender - a woman's natural maternal instinct to fight to protect her children from harm and to remain an active participant in her children's lives, i.e., to mother her children.

J.H. - California

120. J.H. is the son of K.A. and D.H.. He is 20 years old. His parents were separated when he was seven and divorced when he was 10. For that three years, he lived with his mother and visited his father on weekends. The mother had always been the primary caretaker and J.H. was closely bonded to her. He was also bonded to her parents who lived close by and visited frequently. He felt safe and happy living with her and his older half brothers. She took excellent care of him. She had a home business so was always available. This continued until his two younger sisters disclosed that their father had molested them.

121. At that time, a court evaluator, Larry Leatham, was assigned to the case. J.H. told Leatham that he wanted to live with his mother and he specifically did not want to live with his father. The therapist that J.H. was seeing at the time also told Leatham that it would be harmful for J.H. to live with the father because the father was emotionally abusive and the sisters would be in danger.

122. The court also assigned an attorney, Larry Dixon, to represent J.H. and his sisters. J.H. and the therapist both told Dixon the same information they told Leatham.

123. The court assigned Matt Zanze from child protective services to do an investigation. J.H. told Zanze that he wanted to live with his mother and not his father because of the emotional abuse and because he was afraid of him. Zanze recommended the children stay with the mother but he did nothing to protect them from the father.

124. When J.H. was interviewed by the Amador County Sheriff's department about the molestation of his sisters, he told them that the father left the bedroom that he and the father shared to go into his sister's bedroom at night, shutting the door and staying in there for long periods. He told them that he had seen his sister's in his father's bed and that the father continued sleeping with the girls even after there was a court order not to. After he told the sheriff that his father was going into his sisters' room at night, the father made a separate room for J.H. in the garage so he wouldn't know when his father went into his sisters' room at night.

125. In September 1996, Judge Bradford held a trial for custody. Dixon, the lawyer who was supposed to be representing J.H. and his sisters, filed a motion to suppress all evidence of the father's abuse of the children. J.H. wanted to present evidence on his own behalf but was not allowed. The judge only allowed Leatham to testify and he accused the children of lying about the abuse in spite of medical evidence, therapist's reports and past abuse of the mother and older brothers. At the end of the

trial, the children were put immediately into the custody of the father. “My life was completely shattered apart on that day, and my childhood was destroyed” J.H. said.

126. J.H. was one of the original Courageous Kids who started an email network for support. In a posting on that network, he related how he felt when custody was changed from his mother to his father.

It was really quite a traumatizing day. It was a school day and there had been arrangements for me to go to a friend’s house after school since my mom knew she’d be in court. I planned on going to my friend’s house, playing for a while, and then going home. Little did I know that the last part of that sentence wouldn’t be true until seven years later. I was playing computer games when a sheriff knocked at my friend’s door. His parents were both emergency rescue personnel so I figured it was one of their friends. After talking to my friend’s parents the sheriff told me to come with him. At this point I knew something was wrong and I began to cry and panic. The sheriff took me to my dad’s attorney’s office where I still sat and cried and waited for my sisters. The panic turned deeper. I not only was just taken to my dad, but I didn’t know what happened to my mom. And on top of that I had nothing but a few schoolbooks and a single pair of clothes. From that point on I never felt secure when I saw a sheriff knocking at the door. It was as if I was just kidnapped. I was torn from everything I knew. I had no brothers next to me, no pets, and most importantly, no mom. From my dad’s attorney’s office we drove straight to San Francisco where he could work on a Starbucks coffee business. He worked inside putting things together, while my two younger sisters and I sat outside the shop on the curb. So now I had no brothers, no pets, I was 3-4 hours from my home, and again... no mom. This is when I was damaged so severely emotionally. ... No one told me anything about my mom or why I was at my dad’s or why we were in San Francisco on a sidewalk. I asked but received no answers. I felt that if I wasn’t told anything that I was worthless to everyone. I was made into a possession rather than a child.

127. When J.H. was forced to go to his father, the court also prevented him from going to the therapist he had trusted and who believed his reports of abuse. He was forced to see Nohl who allegedly treated him for PAS. He was not allowed to see his mother for months and he was not allowed to see his half brothers and grandparents for years.

128. Months after the custody change, J.H. could remember one of his friends coming up to him one day at school saying, “Your mom told me to say hi and she loves you.” To the friend it was something he heard from his mom everyday. But when J.H. heard that he went to the bathroom and cried. It was the first that he had heard that his mom still wanted to talk to him, and the first he had heard that she was even alive! From then on he went to school anxious everyday. Anxious to hear someone tell him about his mom and how she was doing. There was a small slice of hope.

129. When he was able to see his mother, it was under supervision. Nohl told him he could not hug or kiss her, show affection for her, talk to her about his feelings, or what was going on in his life. If he did, she threatened that he would not see his mother at all. This made it impossible to maintain any kind of real relationship with his mother.

130. J.H. began trying to live a secretive life and put on a happy mask at school. He made up stories about his mother taking him places so he could fit in. If he saw his mother’s friends in a public place he would run and hide because he didn’t want them to ask why he didn’t see his mom. He had to lie a lot.

131. After each visit, Nohl would interrogate the children and urge them to say negative things about their mother while she said positive things about the father. The children were not allowed to have pictures of their mother or half-brothers nor were they allowed to give pictures of themselves to their mother. He specifically recalls the incident where Nohl forced his sister to write a recantation of her molestation allegation to a school friend. Every week after the hour with his mom was over he would go home wondering if he'd see his mom again. He wished with all his heart he would, because the agency workers discouraged the children from hugging their mother and he figured that if he could keep seeing her every week that one week he'd sneak a hug in. "Until then I had to just look at her and wave." He was forced to endure this mental and psychological abuse weekly for three years, each year feeling more and more helpless.

132. When Nohl was removed from the case, he saw his mother for two weekends a month and a few hours during the week without supervision. However, his father and attorney Dixon continued to interfere to destroy any relationship. He found it extremely hard to trust anyone that the court appointed for him. He lost trust for almost everyone in his life.

133. He lived like a prisoner for all the years he was in his father's custody. He was isolated from his entire maternal family and former friends. He was put into day care or left alone with the two younger girls. They had to forage for food in the house and basically raise themselves. Instead of living like a child, he was forced to take on adult responsibilities for himself and his younger sisters. For the seven years in his father's custody, he had learned to become completely self-reliant. He paid for things that parents normally pay for. He taught himself to be independent. Along with his responsibilities, he kept his feelings to himself. For those seven years he felt powerless.

134. J.H. was emotionally abused and physically neglected by the father as well. He could not speak his true feelings but had to pretend everything was fine in order to survive. The father told the children they were to blame for all of his problems because they had told the police about his actions. The father expressed aggression with outbursts of rage. He would storm around the house, hit things and throw things. J.H. feared he would be the next to be hit. He felt alone and terrified.

135. After the father obtained custody, he continued to visit the girl's bedroom at night. J.H. could not sleep worrying about what he was doing and feeling helpless to stop him. He lived in constant fear and anxiety and felt he didn't really sleep for the seven years he was with his father.

136. The father's whole life revolved around his hatred for the mother. He isolated the children from her, told the children the mother was to blame for the destruction of their lives, she didn't care about them, he constantly criticized her saying she was a bad person, selfish, crazy and unchristian. As a result of this emotional abuse and neglect, J.H. became severely depressed over the years. As a child, he tried to talk to the court to get help but was never allowed. Those in charge of protecting him instead banded together saying his mother was bad and crazy. Even when he was authorized to get counseling through the Victims of Crime program, Dixon and Nohl prevented it.

137. When J.H.'s father remarried, the step-mother joined the father's efforts to demonize his mother. J.H. was afraid to challenge his father and so lived with constant guilt that he was not able to defend his mother. He became so fearful and depressed that he didn't want to live. He wrote to attorney Dixon specifically asking him not to show the letter to his father and telling him that he wanted to be put into his mother's care for his own safety. Dixon told the father about the letter and J.H. felt even more fearful.

138. When J.H. turned 17 in 2003, he packed his bags and left his father's house to return to his mother. His father reacted by being vindictive e.g. he tried to prevent the boy from being on the school snowboard team by refusing to get information for his physical examination and he blocked him from getting oral surgery so J.H. suffered in pain for a year. For J.H., the worst thing is that the father turned his sisters against him as he tried to turn the children against their mother and he no longer has a relationship with them. He has no doubt that his father molested his sisters and felt guilty that he could not protect them either.

139. After he went to live his mother's house, life completely turned around. He was happy and free from fears. He had two jobs, was on the school's snowboarding team and had a GPA over 3.0. He ate more often, he slept at night and his life was much better.

140. Because of the conduct of the Amador court, J.H. feels he was robbed of his childhood. He grew up feeling very unsafe, ripped away from everything and everyone that made him feel safe, secure and loved. Instead he was forced to live a life full of fear and mental abuse. The years of pain and suffering he endured in the custody of his father still haunt him. It has left him permanently scarred and he feels it will take many more years to heal from the trauma. Because of what his father did to his sisters, he has declared that when he gets married and has children, he will never allow them to be around his father or even know him.

141. On 22-24 February 2005, J.H. testified in court regarding custody of his sisters. On 17 March 2005, the court issued a ruling. On 13 June 2005, J.H. filed an affidavit correcting numerous false statements in the court's ruling concerning his alleged testimony.

142. His alleged attorney Dixon refused to give him a copy of the file to prevent J.H. from suing him for malpractice. J.H. did however file a complaint with the State Bar but they closed the case. When J.H. turned 18, he filed a complaint against the court to the California Judicial Council. The Council rejected the complaint saying he should have filed it within six months of being placed in the father's custody – in other words when he was 10 years old.

Yevgenia Shockome – New York (Genia)

143. Genia met Timothy Shockome in Moscow, her home. They were married in 1994. She gave birth to two children by Shockome, a son in 1995, and a daughter in 1996. She learned about her husband's two previous wives and his background when she was already pregnant. At 22, it was a first marriage for her. While she was pregnant, Timothy frequented night clubs kissing and dancing with prostitutes. She learned about it from friends, who bartended in one of the clubs. He wanted to abort the first child and sent her to a Russian abortion clinic. She refused but almost lost the child from the nervous atmosphere. The child was born in Germany, where she stayed with friends, who invited her for safe delivery.

144. Timothy left his job in Moscow, and remained unemployed. They lived in her apartment and lived on her money. He decided to go back to the USA in 1995. He forced her to leave her college studies of six years, sell her apartment for \$40,000, leave her family and support network and move to the USA with him on or about February 1996. She became a United States citizen on or about August 1999.

145. As soon as they crossed the US border, he said that he was about to go to jail for non-payment of child support for his son from his first marriage. He spent about \$15,000 dollars of her money without asking, including paying back child support to his ex-wife, paying his debts, giving money to his brother and father, and spending money on his own needs.

146. The rest of her money was put a house in Austin, Texas about a quarter of the mile away from the house of his ex-wife. She was very uncomfortable with the situation but was pregnant with the second child. During the pregnancy and after the daughter was born the father completely abdicated any responsibility for supporting the family. Genia begged for charity and asked for public assistance. As a foreign woman in America she had no money, no family, no friends to ask for help. He also refused to care for the children in any way. If she asked for help, he would become violent. He yelled in her face, shook her, pushed her around, chased her around the house, cursed, kicked, threatened with his gun that he kept under his pillow. He said that he would not change diapers on the daughter because she was a girl and her genitals would get him sexually excited.

147. He read pornography magazines and left them around the house. He masturbated in front of their children. He tried to force her into the group sex in Texas. He had first tried this in Moscow, but when she refused he stopped mentioning it. In Texas he wanted to have several men to have sex with her, while he would be an observer and participator. He wanted to have sex with those men as well. Though he threatened her with a gun that he kept under his pillow, she refused again.

148. To support the family, she knew she had to finish her education and get a good job. She transferred her courses from Russian colleges, got a government grant, got a job to pay for the babysitting, and finished her degree in Mathematics. Her GPA was nearly 4.0 and friends helped her to get a job in IBM. Without help from the father, she moved with the children to Poughkeepsie, New York in August 1999.

149. She could not file for divorce until one year passed by New York State residency requirement laws. She filed in August 2000. The grounds for divorce were cruel and inhuman treatment. That year she paid all the bills, including child care when the father did not work. He found a part time job later but never contributed any money or paid any bills.

150. When she moved, the violence escalated. He said she “had no right to leave”, since she was his “property”, and since he was the one who brought her from Russia. He yelled at her, shook her, kicked her, threatened her and degraded her in front of the children. When the children saw it, they were crying and very scared. They avoided him all the time. He got angry at the children very often and hit them. He abandoned the family twice, each time leaving for three weeks to Texas.

151. When she filed for divorce, he called every day and cursed her, including calling her a “f---ing bitch”. He repeated she “had no right to leave”, and that she should go back to “f---ing Russia with your f---ing children”. He called at home and at work more than 20 times a day every day with these and similar statements. He came to her work and sat on the hood of his car right in front of her job entrance, yelling profanities as she walked in every morning.

152. During this nightmare, she bought a condo, and signed up the children to the best schools in the area. The children developed many good friendships, the condo was full of children during the weekends, and they were invited to many social gatherings and parties. The children had swimming, gymnastics and ice skating lessons, which they loved to attend. She took the children to museums in New York City, zoos, aquariums, they read books and danced; she taught them about science, nature, and social skills.

153. In November 2000, she received the first Order of Protection from Judge Forman based on the father’s harassment of her and the children. He cursed them on the phone and in person, stalked them and threatened them. Among other comments, he said, “I will teach you a lesson, f--king bitch, I will take your f--king kids from you, I will teach you a lesson”.

154. In mid November, at a first hearing on custody and divorce, the judge granted visitation to the father for one day a week without overnight visits. The father was then dealing with his son from a previous marriage who was hallucinating, suicidal and aggressive to his father. No child support was ordered for Genia. But both parents were ordered to pay an attorney as a law guardian for the children. It was later revealed that the law guardian was in a custody battle for his daughter at that time and in 2002 his bar license was suspended for unethical conduct.

155. In February 2001, the judge gave the father his first over night visits with the children. The father was arrested in July 2001 for harassment and violating the Order of Protection. He accepted the charges but got virtually no punishment - a criminal record for one year. She received an Order of protection from the Criminal Court for one year.

156. In August 2001, the judge finally ordered child support. At that time the judge already knew about the domestic violence, cruel and inhuman treatment, the father's arrest, and multiple orders of protection. Despite that, he did not order the child support to come out of the father's paycheck, which meant that he would deliver the check and would use that time to harass her, curse her, and threaten her. Many times the children were witnesses.

157. In December 2001, the father asked to change his visitation from Christmas Eve to Christmas day. She refused because she already had plans and it would be against the court order. Shortly thereafter, her own attorney called her to tell her that the judge had ordered her to give the children to him on Christmas day contrary to the order. This attorney was a friend of the judge who later wrote a letter of recommendation for him.

158. By February 2002, based on the recommendation of the law guardian, the father had obtained 40% unsupervised visitation time. The judge also ordered that he can have daily phone calls. He used his phone calls to grill the children about the mother. The husband complained that the children were not always available from 7-8 p.m. and asked for a change of custody. When the children were at the father's home and she was given phone calls, the children frequently were not available but her complaints went unheard. When custody was changed, she had no phone calls for three years. She then was able to have phone calls weekly until the father unilaterally terminated them. Again no sanction was given him and he was in fact rewarded by obtaining an order a year ago terminating phone calls completely.

159. In the spring of 2002, the father falsely claimed he had supported Genia while she earned her mathematics degree. However the court had the value of the degree assessed and awarded him \$10,000.

160. The trial in the case went from April to July 2002. The mother provided 13 witnesses to the abuse of the children. The school therapist testified that the father hit the child so hard on the thigh she could not walk during a time that she had pneumonia and that the child was afraid of her father. The school teacher for the children testified that children were not well taken care of physically or educationally when they went to their father. The school nurse testified about finger nail scratches that the father gave the children while naked, she told the court about sexualized behavior and that the children reported their father hit them. The after school teacher for the daughter testified that the child said her brother was mean to her when they were with the father and that she was not taken care of with the father. The child care teacher for two years testified that the mother was the primary caretaker. A co-worker of the father testified that he told her that he would punish the mother, "teach her a lesson". She talked about his bad reputation at work, his dirty apartment, and that he talked about inappropriate things in front of the children. A neighbor testified about harassment, his cursing "f--king bitch" in

front of the children, his threatening, his breaking Orders of Protection and his driving at high speeds. A friend and high school teacher testified about sexualized behavior, poor appearance of the children when with the father, and his harassment of the mother and children including hitting them. The evaluator appointed by the judge recommended that the mother was the better and more responsible parent and the children were far closer to her.

161. The judge refused to hear testimony from the therapist for both parents who would have testified that she considered the father scratching the children with his fingernails when they were naked as sexual abuse and inappropriate touching. The father had no witnesses except himself.

162. In spite of this evidence, the attorney for the mother threatened that if she did not accept joint custody, the judge would be angry and order sole custody to the father. She felt coerced into accepting the settlement before the trial ended and stated this fact on the record. The court gave her 60% and the father 40% of the time. Later the judge claimed she agreed to this.

163. In August 2002 when the Order of Protection from the Criminal Court expired, his harassment escalated. The mother got a new Order of Protection for herself and the children, which gave her 100% custody. Judge Forman imposed strict conditions on the father and took his domestic violence seriously.

164. In September 2002, the mother fired her attorney for misrepresentation. She went to court pro per but the judge would not give her a continuance to get a new attorney. The judge threatened her with jail four times and cancelled Judge Forman's order. Instead he put one in place that canceled the order of protection for the children, reinstated the 60/40 joint custody arrangement, took her passport, wrote to the INS, and prohibited her and the children from travel outside of the county. Other attorneys refused to take her case citing fear of retribution from the judge. From 19-26 December 2002, the mother was prohibited from seeing the children.

165. In January, 2003, without an evidentiary hearing, the judge transferred custody to the father. While admitting that the mother was good and capable, he cited Parental Alienation as a factor and gave 100% custody to the father while ordering the mother to have supervised visitation with the children. She was ordered to do this through Little Angels, an organization she later found out her attorney worked for and whose CEO was convicted for fraud. The new law guardian also relied on PAS to claim custody should be changed.

166. During the supervised visitation the mother was prohibited from speaking their native language with the children. She was prohibited from asking them questions about their lives. She was prohibited from hugging and kissing the children without permission. She was also prohibited telephone access. Unlike the father, she was ordered to pay child support immediately and it was garnished from her check. The judge refused to make any orders final so she could not appeal.

167. In February 2003, she fired her attorneys and obtained a new one. The judge told the attorney not to fight for her because previous attorneys "spoke negatively" about her. The attorney asked judge Amodeo to recuse himself, but that motion was denied.

168. In February 22, 2003, she saw the children for the first time in about six weeks. It was documented by the supervised visitation report that the father told the children she had moved away and didn't want them. No action was taken against the father for alienation.

169. In the summer of 2003, the children were interviewed by the judge and law guardian. According to the children, they said they wanted to live with the mother not the father. It was divulged

in the record later that they said they hated the judge and law guardian. The father wrote a letter to the court (copied to all the parties), that the children hated the judge. Later his attorney stated on the record that the children hated the Law Guardian. This happened before the judge interviewed the children in the presence of Law Guardian.

170. In November 2003 the court ordered the mother to carry the father on her insurance plan though he had insurance through his own employer. The father never reimbursed the mother for this.

171. From the summer through the winter of 2003, there was a second trial in front of the same judge. The trial took in total more than a year. The judge ignored the requests for a speedy trial but scheduled only 1-2 days a month. Again the mother provided numerous witnesses including a psychologist, a social worker, the children's former therapist, the therapist for both parents, the mother's therapist, a domestic violence expert, friend and co-worker, school nurse, and his co-worker. The therapist for the parents testified that the father scratched the children with his nails. She considered it sexual abuse and inappropriate touching. The judge not only ignored the testimony but was rude and dismissive to the witnesses.

172. Again the father had no witnesses but himself. Though the father had at least five protection orders against him and had spent two days in jail in 2001 for violating an order, the judge ignored the violence. The judge issued a gag order but refused to put it in writing so it could not be appealed.

173. On May 10, 2004, the judge finally issued an order and the decision on custody and visitation, one and a half years after he took the children away and limited the mother to supervised visitation. He maintained the status quo with sole custody to the father and supervised visits to mother.

174. The children severely deteriorated. The boy tried to run away. The girl was almost held back in school two years. She lost her eyelashes. Teeth grew in wrong for both of them. They missed school and did not attend sports or other extra curricular events.

175. In the summer of 2004, the mother prepared to appeal and discovered that two days of trial were erased and other segments of the transcripts were missing. The missing days contained the most crucial testimony. The appeals court ordered a reconstruction hearing to attempt to recreate the missing transcripts.

176. During that hearing, there was also testimony that the father was naked in front of the children, the daughter drew and described his genitals, that the children walked around naked, masturbated, and that the boy grabbed other children and tried to kiss them. The mandated reporter filed a complaint with CPS. However, the judge opined that he had heard it was becoming normal for American parents of children 10-16 to go to summer nudist camps.

177. CPS reports were done improperly by interviewing the children in the presence of their father. A government commission did a study of Dutchess County CPS at this time and found serious problems such as lack of education, lack of training, lack of supervision, not enough time for investigation, etc.

178. Expert witnesses also testified that the mother had PTSD and was frightened of the father's retaliation and had anxiety, dread and panic though she had not told them directly about the father's violence. During that hearing, the judge said he did not care if he was wrong because he gets paid anyhow.

179. In August 2004, during what was supposed to be supervised visitation, the mother videotaped the supervisor at Little Angels sleeping. She also taped her daughter's bruises and the children's comments. The program terminated her from using their services. Three days later, the judge held a hearing and demanded the original of the tape. He threatened her with jail, scheduled several hearings without giving reasons, she asked for a stay because her attorney resigned for health reasons but was denied, hearings were ongoing at least every two weeks and sometimes twice a week. During this time the father had a free attorney provided by the county. He filed continuous petitions including asking for the father to relocate to Texas. The mother insisted on restoration of contact with the children whom she had not seen since the incident at the Little Angels.

180. In December 2004, she was again threatened to turn over the tape. Surrounded with three police officers with handcuffs in the Court on December 3, 2004 she was forced to turn the tape to Judge Amodeo. She had refused to turn over the tape fearing retaliation against the children. The children had called Judge Amodeo a "stupid judge", had called people who prevented them from being with the mother, "dumb and bad". They also stated that they wanted to live with the mother. The son said that his life was normal when he lived with the mother, and he wished the custody switch "never happened".

181. By February 2005, the mother again had been denied Christmas access. She went to school to try to deliver presents because mail was intercepted. Instead, the principal called the police and a report was written because she was not to come to the school. Again without a trial, the court issued a judgment for alleged child care expenses and increased child support. The father stopped working.

182. By March 11, 2005, over four years after the divorce petition had been filed, the judge still had not scheduled the divorce for trial.

183. On April 6, 2005, the mother filed a federal lawsuit against the judge, her first attorney, the law guardians and others in the county. Shortly after receiving notice, the judge issued an order that he would grant a divorce based on default though both parties had been participating for four years and that the ground for the divorce would be the mother's cruel and inhuman treatment of the father – exactly the opposite of the original petition.

184. Soon after filing the federal law suit, the father came to the mother's home and she photographed him for proof. Instead, the court claimed that she stalked and harassed him and issued an Order of Protection that included she have "absolutely no contact with the children, no third party contact, no letters". In spite of repeated requests, the judge refused to remove himself from the case. Because of the time and stress, and the fact that she was seven months pregnant, the mother had to take a leave of absence from her job.

185. On May 5, 2005, the mother appeared in court without a lawyer. The judge had set the hearing but gave no notice of its purpose and she wanted to prepare. She asked for a continuance but the hearing started over her objection. She was chastised for not working though the father had not been so chastised. The judge granted the motion for the father to relocate to Texas. When she objected she was told not to open her mouth or she would go to jail. When the judge was restating the facts, she objected saying his statements were not accurate. He sentenced her to 30 days in jail for contempt when she was seven months pregnant. When she got out of jail, she never saw her children again.

186. Though she could not work, she continued to be threatened by the father's attorney, her driver license was suspended, her bank account frozen, a lien was placed on her condominium and she was threatened with jail for non-payment of child support. A month after the baby was born, while breast feeding and very weak, she attended a hearing on child support and when she was threatened with jail,

agreed to their terms. She told the judge she did not agree except that she was threatened with jail. Under the terms, the father could stay in Texas on condition that he provide air tickets to her for visiting the children, she have 15 minutes weekly of phone calls and she pay him \$10,000 for the “value” of her math degree.

187. Up to 26 March 2007, the father has not bought a single ticket, although he got full child support. The father terminated phone calls after two weeks. When she complained about father's termination of phone calls, the father filed a petition to legally terminate them and the judge signed it and issued an order against her. On the record, the father's attorney called her a serial murderer, ugly woman, abusive woman, worthless woman. Neither the judge nor the bar association took any action.

188. The mother was forced into bankruptcy in October 2005. In spite of the federal stay on financial rulings, the divorce judge intervened to force her to pay the \$10,000 for the math degree. The bankruptcy judge chastised the family court judge for violating the bankruptcy law. The father stated that until she pays the \$10,000 she would not see the children.

189. The family court judge finally issued a divorce in the summer of 2006, six years after she filed. The terms of the divorce, including the financial violations and ruling that she was cruel to her husband, are on appeal. The termination of telephone calls is also on appeal.

190. In July 2006, the mother filed a complaint against the judge with the Commission on Judicial Conduct. On October 13, 2006, the Commission on Judicial Conduct ruled that they did not find anything inappropriate in Judge Amodeo's conduct and that they were closing the file.

191. Genia has not seen her children since 20 March 2005. Before that, she had only seen them for 40 minutes in the previous two years. For a year and a half, she paid 60% of her monthly net income for child support. She still pays 25% of her income though the father has prevented every effort to see the children. When she had custody, she received \$8,000 from him during approximately the same number of years that he has received \$59,000 from her.

192. As a result of these actions by the State, Genia has suffered loss of sleep, loss of work, anxiety, emotional and physical distress and injury, fear of arrest, intimidation and other injury and harm. She is unable to carry out and live a normal life or have basic, fundamental contact with her minor children. She is fearful for her safety and is fearful of exercising basic First Amendment rights and liberties.

193. Currently she works at IBM as a Staff Software Engineer. She has worked there for eight years. She has received many awards and recognition at her job, including promotions. She was named a “Mother of the Year” in Dutchess County in 2003. She is a National Masters Champion in Track and Field (Pentathlon and Long Jump), and three times Gold Medalist in Empire State Games (representing Dutchess County).

Susan Navratil - California

194. Susan, a clerk/bookkeeper and Mark, who became a firefighter were married on 5 March 1966. Susan is 5.4 and weighs 115 pounds. Mark is 5'11 and weighs 200 pounds. In 1967, Mark began to drink and use marijuana. He became physically abusive to Susan by punching and choking her, hit walls and doors, threw things and became verbally and sexually abusive. The violence occurred nearly monthly but she did not make any police reports.

195. In 1981 they moved and the violence stopped for about seven years. In 1989, a daughter, Sarah was adopted. When the child was 3-4, the father had an affair and became violent again. In 1994, the

violence escalated including in front of the child. In 1995, he put a knife to Susan's stomach. In another incident in front of the child, he threatened Susan that if she called the police she would go out in a body bag. Several days later she did go to the police but decided not to press charges because she was afraid he would kill her. She filed for divorce in October and for a protection order. He continued his violence by raping her and smashing her car. She filed a police report about the rape several months later but the police said the car was his too and he could destroy it if he wished. In December, a commissioner removed the protection order and he moved back into the house.

196. In 1996, Susan again asked for a restraining order but was denied. Susan received joint legal and full physical custody of six-year-old Sarah. Later the father was put on supervised visitation because the child was afraid of him. In the spring of 1996, the mother took the child to a child psychiatrist because the child did not want to spend time with her father whom she feared. She also asked for supervised visits. A special master was appointed who had virtually the rights of a parent. The mother was forced to sign an agreement to this and did not know what the document meant – that basically she gave up her right to parent to this special master. She was ordered to stop taking the child to the child psychiatrist she had chosen.

197. In 1997, Mark filed a protection order against Susan that was denied. Disregarding the violence of the father, the special master claimed that the child was the victim of parental alienation syndrome by the mother. Mark's temper and violence were minimized even though he had admitted to some incidents. The evaluator said the child made repeated references to his temper but her statements were discounted. The mother was ordered to pay for therapy for everyone because in their eyes, she was the problem rather than the victim of his abuse. If the child showed hesitancy in wanting to see the father, it was assumed to be the mother's fault and a contempt citation would issue. Further the child was ordered to send a picture and letter weekly and put up a photo of her father in her room. In December 1997 the divorce was finalized with mutual restraining orders and signed in February 1998. The child began overnight visits with the father.

198. In early 1998, the child wrote a plea for help that was ignored by the so-called professionals working on the case. Instead, a few months later, the father got temporary physical custody when, in the hearing, the father falsely claimed the mother had a gun. The mother received supervised visitation, a three year criminal restraining order issued against her and she was given supervised visitation though a doctor stated that she is not mentally ill, has no signs of psychosis, depression or anxiety, is rational but distressed at the separation from her daughter. In August the Department of Social Services received a referral from a third party about the child. The referral source said the child appeared undernourished and neglected and was left home alone at night to wander around the apartment complex. In spite of the report, the father was given permanent sole physical custody of the child in October with joint legal custody but supervised visits with the mother. For two years the mother only saw the child sporadically because the father did not bring her to the visits. Yet no allegations of parental alienation were made against him.

199. In January 1999, the child's therapist reported the child was depressed, had low-self esteem and concentration, and was quick to regress under stress. A counselor made a report for neglect because of bruises and a cut that needed stitches. The father said he could not get her to shower. In March of 1999, mother was finally able to have overnight visits. Upon return in April, the father was not there so the mother called a police officer to verify that she had returned the child. The child then told the officer her father was abusing her but again was not believed. The pediatrician said the child was unusually sick, was withdrawn, had flat affect and regressed to sucking her thumb at age 10. The doctor said her overall health had declined and her emotional stress increased and recommended more time with mother. Yet in January 1999, the mother's motion for joint custody was denied and supervised

visits were decreased. Between 12 June 1999 and December 2001, Susan only had two brief visits with her daughter. Yet the father was not charged with parental alienation.

200. After having good credit her entire life, the mother was forced into bankruptcy. The court continued to claim that while they knew the mother loved the child and was a good mother, she would alienate the child from her father so he maintained custody. The restraining order against mother was extended another year, and though she was disabled, ordered her to pay nearly \$1,000 a month in child support income out of less than \$2,000 total income. The court ordered her to look for work though her doctor said she remained under treatment.

201. In 2000, the father stopped visits and the mother saw her child only twice in 12 months. Once again an investigative expert was hired by the court and minimized the father's domestic violence. Though the child was referred to as almost catatonic after the custody change, custody was not changed back nor was the father punished for stopping visits. Susan was to apply for additional disability funds and the father was to go to anger management, which he never completed. Professionals confirmed that Susan was perfectly normal mentally but her request for reasonable accommodation for her physical disability was denied.

202. During this time the father was not the care giver for the child but had a live-in nanny. Thus the court substituted the perfectly competent protective parent for a hired employee. This nanny wrote to the mother in 2000 that she was afraid for the child because the child was being mentally and emotionally abused and neglected by the father. The supervised visitation monitor reported an incident when the father tried to have an unknown person pick up the child. When she objected, the father verbally assaulted her and drove recklessly. No action was taken.

203. In 2001, the mother saw her child outside of the court ordered visitation and an arrest warrant was issued for her. In December the county attorney dismissed it when Susan demanded a jury trial rather than a plea bargain. She was threatened with suspension of visitation if she did not go to counseling but the father never went to anger management though ordered twice. No sanctions were levied against him. Again a doctor informed the court that the mother had no evidence of psychotic though, pressured speech, flight of ideas or any thought disturbance, impulsivity or paranoid projection. In contrast, a woman from the Stanford University Hospital Trauma Center reported that the father had an explosive outburst at her. In a December hearing, the mother's witnesses were not allowed to testify and her declaration was not admitted.

204. In January 2002, the mother presented eight counts of contempt for the father refusing to bring the child to visits. No action was ever taken against the father civilly or criminally. In contrast, the mother had two counts of criminal charges for seeing the child outside of the supervised visits. In May the child reported the father grabbed her and pushed her against a wall – the same kind of behavior he had done to Susan years before. The child said she was grabbed and wrestled into the shower and she had found sexual pictures in the house of girls her age. Now 13, the child ran away from the father's home. The police detained her, talked to the father and then returned her to him. According to the child, she was held by the police for 9.5 hours without sleep, food or a bathroom until she told them that her mother had put her up to it so she could be let go. Again Dr. Silverman stated to the court that Susan had no psychiatric problems and poses no threat to anyone. Yet in October, the mother was ordered to have no contact with the child for 30 days of therapeutic counseling for the girl. The mother was prohibited from contacting the daughter's therapist.

205. In January 2003, the father and child had an argument and he threw her out of the house. She stayed with friends for nearly a month, but finally had to return to her father's house because of school. In 2003, the court dismissed the mother's motions for contempt for the father's refusal to bring the child

to visitation. In July, the child reported that the father grabbed her and touched her breast and then dropped her off at her mother's. The child reported the assault but the police took no action. On 27 July 2003, the daughter began living full time with her mother. In December 2003, the child wrote declarations and a Writ and spoke publicly about her father abusing her. In spite of that, she was later ordered to return to the father.

206. In January 2004, the court mediator recommended supervised visitation for the father based on his behavior and the child's fear of him. Yet another person reported in a declaration the father's irrational and compulsive behavior and his obsession with denigrating Susan and also the judge's disrespectful treatment of Susan in court. The father then began to harass that person who responded to the father with a cease and desist letter. In February 2004 the child appealed to the court. She stated that the father had physically abused her and sexually assaulted her. She said he threw garbage at her, threatened her with juvenile detention, broke down her door while she was changing, threw her into walls, threw her into the shower with her clothes on, threw her clothes into the middle of the room and the hall way. After being told not to come by the mother's house, the father continued to stalk mother and daughter by standing by the gate, calling her name, whistling, ringing the doorbell, and waiting at the bus stop.

207. On 18 March 2004, in spite of her clear statements of abuse, the child was ordered by the court again to return to the father's. Mother was again put on supervised visitation after the child had lived with her for a year. The child again ran away from her father's and stayed with her friends, so as not to implicate her mother. Father filed a contempt action against the mother anyhow, and the mother was charged for contempt for allegedly removing the now 15-year-old child from school. In June 2004, the mother was in a car accident and could not attend the hearing and had no money for an attorney. The court issued an arrest warrant for her. Even though eight contempt motions against the father were repeatedly continued and then denied, one contempt motion against the mother when the teenager ran away and the mother was not even able to be in the courtroom, was granted against the mother.

208. Astonishingly, after this, the court services personnel recommended supervised visits with mother! The father then filed an accusation of child abduction. The child, now 14.5, filed a writ of habeas corpus in federal court to restore her individual liberty and freedom from physical and sexual abuse, opinion, expression and association. This writ never went forward because the child had to flee from the abusive father again.

209. The now teenager again notified the attorney appointed for her that she was being abused and did not want that attorney to represent her because she did not listen to her. In April and September, she spoke at family violence conferences about her ordeal.

210. During the time the child was with the mother, the father paid nothing in child support. But the court continued to garnish the mother's retirement income for child support for father. They also ordered termination of her spousal maintenance. This was overturned at the higher court in an opinion that said the action looked to be a punitive sanction in violation of policy.

211. In October 2005, the child, now 16, appeared in a PBS documentary *Breaking the Silence: Children's Stories*. In December 2005, she was at friends when an air pellet pistol was fired and the police came. When they called the father, he said to let her stay there. But in mid March 2006, he took her to live with him in Santa Cruz. She again ran away when her father hit her in the head in April 2006. She stayed with friends.

212. The child was not informed of a March 29 juvenile court hearing about her and since she did not show up, a warrant was issued for her arrest. In July 2006, the child was arrested by the police. The

juvenile court sent her to live with her father again. She was put on probation, ordered to stay away from the teen who shot the pistol and do community service. The father however invited the teen to visit and then reported that the child had violated the probation and she was ordered to more probation and community service. Again in December 2006, the now 17.5 year old Sarah ran away from her father's home after he became violent, and stayed with friends. In January 2007, her probation officer made a mandated report of child abuse for the December violence. At the time of filing this suit, the child was on the run again, staying with friends.

WITHDRAWN (Keeping paragraph numbers so as not to have to change all of them in the following materials and in the argument.)

213.

214. Mother

215. The

216. However,

217. The

218. At

219. At.

220. Despite

221. In

Esther Horton – New York

222. Ms. Horton and the biological father were never married. They began a relationship on September 1989. The child was born on Feb 7, 1995. Though the parents were not living together, the father visited the child without incident for the first three years. He did not file for paternity until after the violent incident.

223. In 1998, the father kicked the mother in the head while she was driving a car on the highway. The child was in the car and observed this. A report was made to the police. Charges were filed and in spite of the testimony of the victim, a witness and a state trooper, the father was found not guilty and released. A report was made to CPS and they substantiated the complaint against him for inadequate guardianship and ignoring the welfare of the child. However, he was only limited to 10 supervised visits with the child and then the supervision was lifted. He previously had been convicted in 1988 for criminal possession of a weapon when he pointed a loaded gun at a person during an argument.

224. In January 2000, the court had ordered joint custody with bi-weekly unsupervised visitation with the father. In January 2001, the child who was six at the time, was being seen at Astor Services for Children. She was diagnosed as adjustment disorder with anxiety from seeing father kick mother in the head in the car. She also disclosed sexual abuse. The therapist (Joan Traver) launched a CPS hotline report as mandated by law. After the CPS caseworker, Elena Peritocis, interviewed the child, she ordered the mother to get an order of protection which she did on 9 January 2001. The CPS worker also told the mother to go to the Queens Special Victims Squad and a police criminal investigation for sexual abuse third degree was launched. CPS stated in court on 19 January 2001 that the "child made a statement that father tickles her vagina and inserted his fingers into her vagina." Visitation with the father was suspended. The Assistant District Attorney (Queens) interviewed the child who did not disclose the abuse and the case was dropped.

225. In a custody hearing on 8 February 2001, the Law Guardian recommended the custody switch based on allegations of PAS against the mother and that she had coached the child. Yet he had not interviewed the child for over a year. In subsequent hearings, one witness testified that he never said she coached the child and another that the assistant district attorney was misquoted by CPS. No mention was made of the father's violence in front of the child nor his criminal history. While the mother was in court, CPS took the daughter away without even a good bye. Three weeks later the mother was ordered to have supervised visitation at a program called Little Angels and ordered to pay \$200 per month.

226. The program was completely incompetent, filthy and cluttered, had staff with little training and was never registered as a charity and never qualified as a non-profit as it alleged. Eventually it was closed and the manager convicted of embezzlement. This is the same agency that another petitioner, Genia Shockome, was ordered to take her children to and where she videotaped the so-called supervisor sleeping. The child had to travel six hours to get to the visits. She would arrive disheveled, hungry and tired. Signs of abuse were reported to the monitors and ignored. At these visits, the father was late constantly and the child had to be forced to go home with him kicking and screaming: "I don't want to go back to that man."

227. The mother had an order of protection against the father but the monitors made no effort to prevent direct contact with the assailant father. The mother paid over \$2,000 to see her daughter but had to stop in June 2001 when she could no longer afford the fee. The mother worked seven days a week because of mounting debt but lost jobs due to the court schedule and was forced to file bankruptcy. The court now claims she has abandoned her child though they have prevented her contact.

228. A full custody trial was held in October 2001 and the court left the custody in place with father repeating that the mother was paranoid and coached the daughter because the child was too articulate. A forensic evaluation was done of the mother after the custody switch but it did not find the mother to be mentally ill. The mother does not see her child and has only limited phone contact. Only the child's older step-sister (24) is permitted to visit. Again there is no mention of the father's violence nor his criminal history in the findings of fact. The child is now 12 and continues to report abuse that continues to be ignored.

Organizational Petitioners

229. California Protective Parents Association is an organization created nearly 10 years ago to address the issues in this complaint. After assisting over 2,000 protective parents, they have found that while their efforts have changed things, the underlying problem persists. Exhibit 3.

230. Kourts for Kids, Inc. is a nationwide non profit organization located in Ohio founded to work with public officials and judiciary to better protect abused children in family court. After three years of work, they see the situation deteriorating even further and children's rights and safety being denied. Exhibit 4.

231. StopFamilyViolence.org – the people's voice for family peace is a grass roots activist organization headquartered in New York that works for safety, justice and accountability for those affected by violent relationships. They are contacted by an average of three women every week who have lost custody to fathers who have abused the mothers or the children. Exhibit 5.

232. The Parenting Project from Rhode Island was started in 1996 specifically to research and write about the problem of the Rhode Island Family Court removing children from battered mothers to give them to abusers. Exhibit 22

233. The Illinois Coalition for Family Court Reform, Woodstock, Illinois has a mission to provide emotional support and information to parents involved in custody litigation with issues of domestic violence, child abuse or other parental conflict. They have documented more than 225 similar cases in Illinois alone. Exhibit 23

234. Child Abuse Forensic Institute, Napa CA is an organization dedicated to assist litigants in cases where child abuse is alleged. They work throughout the United States and are attorneys, police officers and investigators. Exhibit 24

Petitioner A - Confidential

235. The parties were married on 10 May 1986. The ex-husband is well known in the so-called father's rights movement. That is why the petitioner requests confidentiality because of the fear of retaliation. They had four children born in 1987, 1989, 1991, and 1993. The marriage had a long history of domestic violence (physical, mental, economic) documented back to 1988 with the first Final Restraining Order. The husband knocked the wife to the ground when she was eight months pregnant with the first child. She called the police but this was 1987 and the officer told them to "calm down" and "work it out". The children all saw the father threaten the mother, poke her, push her, jab her, call her crazy, take away her vehicle, leave her with no money or food for her or the children, work them all like slaves at his business (he was actually found guilty of violation of child labor laws and fined on or about 2001).

236. In addition, the mother was raped by the husband and he threatened to sodomize her and to kill her. He physically abused the children - beating them with a belt (especially the boys) and making all of them stand in the corner for hours. He would deny them food and drink when the mother was not home and, on at least one occasion, he tried to give the older daughter some day-old pizza that had been left out at work and had mouse droppings on it. The children saw him drive crazily when he was drunk and they were with him in the car. He also constantly threatened to take the kids away from the mother where she would never see them again - this was said in front of the children.

237. In November of 2003, the mother obtained the Final Restraining Order that is still in effect. The existing final restraining order was gotten on the basis of the fact that he was stalking the mother in his vehicle and threatening to kill her. She was in Domestic Violence shelter twice - in 1996 and in 2003.

238. The children also have suffered a long history of reported child abuse. In 2002, DYFS (Child Protective Services) documented/substantiated abuse and neglect of the four children by the father. But DYFS also blamed the victim and found that the mother had "failed to protect" the children. At the time DYFS brought the charges in 2001, they took the oldest child and put him in residential treatment out of state. They warned the mother that if she did not get herself and the children away from the father

they would take the children away from her. When she said she had nowhere to go, DYFS arranged to get her Section 8 housing assistance. With it, she was able to move out of the family house in November of 2001.

239. The mother had filed for divorce in 1996 but, after two years of battling in the system, and being financially broken with four small children, she wore out, dropped the divorce, and reconciled with the father.

240. The father filed for divorce in September of 2003 on the grounds of mental cruelty and adultery and was allowed to amend his complaint to add a tort claim for parental alienation. The mother counterclaimed on the grounds of 18 months separation. She attempted to file on mental cruelty as well but the judge would not allow it. She also attempted to file a claim, allowed in the state, for battered wives to seek money in a divorce for personal injuries done to them by the husband. The judge also refused to allow her to file that claim. Both parents asked for custody - originally he asked for joint custody and she asked for sole custody.

241. The court appointed an evaluator who, though complaining that the mother had moved too many times and had allegedly interfered with the children's relationship with the paternal grandparents, recommended custody to the mother. However, after conferring with the father's custody expert and another psychologist who was trying to do therapeutic reunification of the children with the father, she changed her recommendation and suggested that the mother was committing parental alienation. So, she recommended custody to the father - with the mother having limited or no contact. A third evaluation took place where she again recommended custody to the father. However, in 2007, she reversed her position and recommended mother have custody of the older daughter and admitted she has concerns about changing the custody of the younger one. She also admitted in depositions that the father has been and continues to stalk the mother via litigation.

242. For the divorce trial, the father hired a forensic psychiatrist as his expert custody evaluator who claimed, true to the father's rights thesis, that the mother was an alienator. Both custody evaluators and the therapeutic reunification psychologist knew of the father's violence and minimized it.

243. The children have had five custody evaluations - three by the court appointed custody evaluator and two by the evaluator hired by the father. A Guardian ad Litem (GAL) was also appointed who initially strongly supported custody with the mother because of the father's behavior and abuse. The father then began a campaign of harassment against the GAL who eventually disappeared from the case. The judge completely ignored the GAL's report that said that the father should not get custody of the children.

244. The children's therapist, who they had been seeing outside of the court process, was very concerned about the children, especially the younger one, who was terrified to see the father alone and unsupervised. The therapist explained to the judge that PAS is not a valid theory at all. The judge retaliated by issuing an order that the daughter could no longer see that therapist.

245. The attorney for the mother was threatened by the father and because the mother also had no money, the attorney dropped the case. The mother had no attorney for the pendency of the trial (over the span of a year with 53 trial days in court - not including Motions). The parties were divorced on May 4, 2005 on the grounds of father's claim of mental cruelty and 18 months separation.

246. The oldest son was emancipated to go into the Marine Corps. The mother received sole custody of the two daughters. The father received sole custody of the younger son. The father has unsupervised visitation with the daughters every three weeks on a Saturday for five hours and on designated holidays - some overnight. The mother is supposed to get the younger son during these times (and overnight on those Saturdays) but she has hardly ever gotten him.

247. The judge entered a \$30,000 judgment against the mother (punitive and compensatory damages) for parental alienation. He ordered that the youngest daughter be in "reunification therapy" with a licensed psychologist. A warrant for the arrest of mother was issued when she was unable to find a therapist to take the youngest child for "reunification therapy" with her abusive father. That warrant currently is inactive but the judge has threatened to activate it because she is still unable to find a therapist who will take on the case and who is not frightened off by the father.

248. Currently the mother is unemployed and cannot even afford to take the child to therapy even if she could find someone to take them to. During the whole case, the judge regularly threatened the mother with jail and said he would put the children in foster care. She received no money or assets in the divorce at all. The abuser kept the house, cars and some monies from a foreclosure. He also got everything in the house except for the personal belongings that the mother took when she left. She is supposed to receive \$86/week in child support - but the judge refuses to enforce the order. She still owes on the judgment and also fees to the evaluators.

249. About a month after the trial was over, she convinced legal services to represent her because the father was repeatedly filing motions for change of custody for the two daughters. They represented her until she got a good job (about eight months later). She was then without counsel for several months.

250. The father has filed over 100 motions and the case was scheduled for another hearing on April 10, 2007 on his application for change of custody of the two daughters - and on the status of the 16-year-old son who is in his custody but in jail. According to the son, the father locks him out of the house until 10 p.m. so he has broken into the house and his father filed charges against him. He has been truant from school and missing. When the boy was 14, he was on house arrest and the father left town for two weeks. The boy was unable to leave the house so friends had to bring him food. He has been in and out of juvenile court since shortly after the divorce and being placed with his father. This application for change of custody contains absolutely no change of circumstances, i.e. the judge is hearing it on no legal grounds whatsoever. That hearing has now been continued until 12 June.

251. Mother filed a Notice of Appeal within the prescribed time limit after the divorce but was unable to get the transcripts. Because the trial went on for 53 days, the transcripts would have cost over \$40,000. She filed a motion to get them at no cost because of indigency but was denied.

252. Mother lost a job when the divorce trial started and cannot go back to work right now because she will have to attend the plenary hearing in April 2007. The mother has a college degree and long work experience. Most recently she was a manager at a very large e-commerce company.

253. During the course of this case, the judge has said "What does this case have to do with domestic violence?" He illustrated his ignorance about the motivations of abusers when he said, "The father clearly cares about his children because he has filed over 80 motions in this case." The judge has ordered the mother to personally drive the daughter to the father's house for visitation despite existence of the Restraining Order. When the mother asked for protection from the abuser during the taking of depositions, the judge responded, "Get your own protection" but finally relented under pressure from the state Battered Women's Coalition and allowed a Sheriff's officer to be present during the depositions.

Petitioner B

254. The mother is an elementary school teacher. She met the putative father, who became a hydrotechnical with a government agency in 1987. His former wife told the mother that he was abusive but she didn't believe her. He ultimately gained custody of his two children from that marriage who were then three and five. Ten years later, the children returned to their mother's custody. The now adult daughter denies being molested by the father but will not allow her children to see him.

255. In 1989 the father, began talking to the mother about being with other men in front of him. For seven years he then pressured her to have sex with other men and would become angry if she did not do what he wanted. He put ads on the Internet claiming to be from her and saying they were a “swinging” couple looking for other couples. She also found he was using pornography on the Internet. He tried to convince her to be filmed having oral sex with him and forced her to watch men masturbating.

256. By 1990, he started being becoming violent and threw her against the bed. In 1996, he threatened to break her arm during an argument. He blocked the door so she could not leave. None of the behavior, physical nor sexual, was reported to the police. She could not become pregnant and when he was tested, he had anti bodies that killed his sperm. He suggested she have sex with another man so she could become pregnant and she agreed.

257. In October 1996, she became pregnant and they married when they found out. He continued to pressure her to have sex with other man but she refused due to fears of being harmed or getting a disease. He became violent and she was afraid he would kill her. He also began drinking heavily. When she was eight months pregnant, she found a picture of another woman he had contacted. That woman told the mother that the father was obsessed with the other woman over the internet and tried to get her to masturbate on videotape.

258. The mother left the marriage at this point but returned when he promised to get couples therapy but he refused to discuss the sex issues. They only went 2-3 times when he stopped. In spring 1997, a daughter was born. In 1998, they went to Disney World but he became angry when she refused to attend a masturbation club. At another time, he became drunk and was waving a gun around and pointed it at her head.

259. In the fall of 1999, she then found another letter from another woman on the computer. She took the child and left for the weekend and upon return, told him to leave the house as she was the sole owner. He threatened never to pay child support and to tell everyone who the real father of the child was. For over a year, they lived apart and he had reasonable visitation with the child.

260. In May 2000, pursuant to a divorce action filed by mother, the court ordered joint legal custody with sole physical custody to mother and reasonable visitation to father. There were no disputes about visitation until the child was five. He continued his swinging life style.

261. In 2001, he sought to reconcile with the mother who resumed counseling with him. The therapist recommended she not reconcile because he was very disturbed. The mother then met another man and they have been dating since.

262. In January 2002, the mother became concerned about the child’s sexualized behavior such as appearing naked in front of the boyfriend, dancing seductively, grabbing at her mother’s clothes and trying to touch her breasts. The mother had the child evaluated but the therapist said it was nothing to worry about. In September of the same year, again the mother became concerned about the 5-year-old’s behavior.

263. In February 2003, the father filed for modification of visitation. The Family Court Services mediator recommended that the father have more time with the child and he began having her overnight one night a week. The child was having night terrors two or three times a week and would not sleep in her own bed. The hyper sexualized behavior continued.

264. In March 2003, the child reported she took showers with the father or she had seen the father take showers with other women. Sexualized behavior with Barbie dolls was observed by mother and reported to the child's therapist. Father went to counseling for two months but again refused to address sexual issues. By May, the child was drawing and talking about penises. After more sexual behavior in July, the therapist made a mandated report to CPS based on the picture the child drew and information from the mother's uncle and his wife. A CPS worker interviewed the child and recommended keeping her in therapy. A medical exam found no physical findings, which is common even when there is abuse, and visits with the father continued. The sexualized behavior continued. In the fall, both parents were ordered into 12 sessions of co-parenting counseling.

265. In January 2004, the child was placed in her mother's classroom for accelerated math. When the mother was out of the room, the child drew naked people on the white board. The mother photographed her drawing. The child also engaged in provocative photo poses. In school the child attempted to remove another girl's dress. The two children later were found in a closet with their panties down playing "sexy". The co-parenting sessions were ended due to the sexual abuse allegations.

266. In February 2004, the CPS worker reported that the child identified the male with the penis in her drawing as her father and the girl as herself. The worker advised mother to file a no contact motion.

267. A police officer spent four hours with the child but when the father passed a polygraph test, no charges were filed. The child began to exhibit dissociative behaviors, acting as if she were another child. She was interviewed at a Multi-disciplinary Interview Center but did not disclose sexual abuse. At the request of CPS, in March 2004, the judge suspended reunification and sent the parents to mediation.

268. On 15 March 2004, the mediator released her report. She found that the report of sexual abuse came from the police, the social worker involved and the child's therapist who notified CPS based on information from the child. The child had drawn extremely graphic sexual pictures far beyond what a five year old girl should know and labeled the figures - herself and her daddy. The mediator stated, "This mediator's clinical assessment based on the information provided in person as well as subsequent calls with the police officer and the child's therapist leave no margin of doubt that this child has been molested." The mediator, along with the other professionals, recommended the father have no contact. The mediator consulted with experts in the field and all agreed the child's mental health was seriously compromised by the abuse. On 29 March, visits were stopped temporarily by the court pending a hearing. The child improved substantially when no longer forced to see the father. The father filed complaints against the therapist, the mediator, the CPS worker and the police officer.

269. In June 2004, the father filed a motion to have visitation with the child. An evaluation was done under state law. An evaluation has very specific requirements for sexual abuse investigations and is paid for by the court. The evaluator recommended that the father and child attend family therapy and the child terminate treatment with her long established therapist. She recommended a different therapist and supervised visitation.

270. Shortly after this, the original therapist made a third report to CPS because the child disclosed that the father asked her to touch his private parts and to put her mouth on his private parts. The CPS social worker interviewed the child who disclosed sexual abuse and it was substantiated in the state system.

271. Another police officer interviewed the child but again the father passed a polygraph test and was not charged.

272. In December 2004, another evaluation was done by a different person who claimed that a determination had not been made whether molest occurred contrary to the March 2004 in which the mediator left no doubt that it had occurred. The new evaluator did suggest that either the child was sexually abused or she was exposed to stimuli of a sexual nature as suggested by her acting out behavior and her drawings. Being exposed to sexual stimuli at that age in that state is defined as child abuse.

273. The new evaluator recommended reunification therapy with father to progress to long-term family therapy but in a supervised setting pending the outcome of yet another evaluation. But she also suggested assessing for parental alienation, recommended stopping individual therapy and moving the child to family therapy.

274. In January 2005, the child had another Multidisciplinary Interview where she did disclose abuse by the father. In February, the CPS referral concluded with a finding of sexual abuse of the child by her father.

275. In March 2005, the court adopted the evaluator's recommendations calling for supervised visits wholesale but ordered yet another evaluation paid for by the parties. That evaluation also has specific requirements for a sex abuse investigation.

276. In May 2005, the child began seeing the new therapist recommended by the evaluator. The new therapist claimed she did not believe the child was abused in spite of the CPS substantiation and the child's many disclosures. In June, the child acted out sexually again with a friend. The friend's mother contacted the therapist who made a fourth CPS report. The school district transferred the child because of the sexual acting out.

277. In 20 October 2005, the new evaluation was filed. The doctor admitted that the child has been prematurely sexually exposed, that she has drawn disturbing sexual drawings and acted out sexually. In spite of that, he says supervised visits are no longer necessary and the goal is joint custody. He report is patently biased – he believes the child when she says something negative about the mother but disbelieves her when she says something negative about the father; though the father's psychological tests are much more negative than the mother's, he ignores it; the father admits that he likes to watch women have sex with other men; when the mother is upset because no one is listening to the child's report of abuse he disparages the mother calling her hypervigilant or upset or panicked; when the father is upset about being accused of molest he is not disparaged; when the mother does not participate in counseling she is criticized; when the father doesn't participate, it is ignored. He is one of the court related evaluators investigated and criticized by investigator reporter Karen Winner in her 2000 expose because of a purported history of biased and unethical reports.

278. The case went to trial in December 7-8, 2006. The Mother had five witnesses and the father one. On 3 January 2007, the court the judge adopted the doctor's evaluation recommendation as a tentative decision. On page one of the decision, the judge admits that CPS concluded in 2005 that the father sexually abused the child. Yet on page 2, the court claims there is no credible evidence that the father molested the child. Further the judge claimed that both MDIC interviews were negative when in fact the child did disclose abuse by the father in the second interview. The doctor who did the evaluation claims the child was not abused by the father but was probably exposed to sexual behavior and/or nudity during visitations with the father. Under state law, this qualifies as sexual abuse. Instead he suggests that the mother was coaching the child and is being hypervigilant.

279. In January 2007, the mother objected to the tentative decision. Her objection was rejected as being untimely though her attorney disputes that. The mother has spent more than \$35,000 on the case and has no further financial resources.

280. In 28 March of 2007, the child refused to go for her first unsupervised visit with the man who she reported has molested her. She locked herself in the therapist's bathroom and cried.

Petitioner C

281. The parties were married in 1994. The mother had one child by a previous marriage who lived with them. A child of the couple was born in the spring 1995. She worked at a bank and he was caretaker of the property they lived on.

282. The violence in the marriage began when she became pregnant. The instances were many and severe. He kicked and spat at her, kicked her in the stomach, threatened to kill her, choked her, pulled her hair, pushed her around and into things, threw things, broke possessions, kicked dents into and damaged vehicles and a mobile home, hurt or killed pets, shot at animals on the property with an always ready loaded gun, shot a hole in the wall inside the house, held the infant out the car window when drunk, spanked his step son so hard on his bare bottom that three weeks later he still had 5-6 full hand prints, threw a knife into the wall, broke the windows of the boat with a hammer, kicked and broke a fish tank, bruised her face, threw the step son's computer at him, was suicidal at times, and slept with a loaded gun next to the bed. He pushed her against the kitchen counter and cracked her back in eight places, threw her down five steps onto the grass, and screamed at her. He broke her nose that finally resulted in his arrest and conviction for domestic assault. In April 1996, he was arrested for domestic battery, pled guilty and was sentenced to 30 days suspended to complete anger management. Anger management for domestic violence is completely ineffective as soon became evident. In addition, he drank and gambled.

283. Police reports were filed in September 1995, January 1996, April 1996, September 1996, October 1996, January 1997, and October 1997. A visitation exchange supervisor witnessed his violent and erratic behavior as did others who came forward to testify for the mother. In October 2001, he threatened to kill her brother. In a police report in January 2002, they report that he has an arrest for inflicting injury on a child but no disposition. In July 2006, he pled guilty to violating a restraining order protecting the maternal grandmother in the adjoining state. He remains on three years probation. In October 2006, he continued to make threats against the family by telephone.

284. During this action, many orders of protection have been granted against the father – May 1997, December 1997, January 1998, April 1998, February 1999 (mutual order at a hearing where she was not represented), September 1999 (again mutual). A permanent injunction was granted to the maternal grandmother against the father in an adjoining state.

285. Nor is this his first experience with domestic violence. His first wife obtained a temporary restraining order against him in August 1987. He was arrested the next day. In her divorce petition in 1988, she described extensive domestic violence including beating, dragging her and choking her. She was hospitalized with a collapsed lung. He beat her when drunk or sober. He threatened her with a gun and shot a hole in the apartment. He hit the children hard enough to make them fall down. He tried to run over her father who was in a wheel chair. He would not let the children eat – a pattern that re-occurs.

286. His second wife described an incident in September 1990 where he threatened his second wife's daughter and threatened to pull the telephone out of the wall. In November 1991, he pushed her out of bed and shoved her against the wall and across the bedroom – again a pattern that re-occurs. The victim obtained a temporary restraining order. In 1992, he hit her in face and threw her on the ground.

287. In December 1997, the mother in this case, the third wife, moved out of the home and in January 1998, she filed for divorce. In March, she was granted temporary legal and physical custody with supervised visitation with numerous conditions attached regarding the father's use of alcohol, counseling and weapons. In April, he asked for unsupervised visitation and in July the court granted that request with additional time for him to see the child but continued the conditions. After visits with him, the child would come home sick, emotionally upset, dehydrated, with sinus infection, bronchitis, vomiting and weight loss. The weight loss is significant in that it continues the pattern of denying food to children.

288. The divorce trial took place in December 1998. Included in the exhibits were 11 police reports against the father, his conviction for domestic violence, charges for larceny, medical records of mother's injuries, affidavits of his two ex-wives and step children, affidavits of other witnesses to his abuse and orders of protection from all three wives. The court found that it had clear and convincing evidence of domestic violence perpetrated by the father against the mother during the marriage. The court also quoted the state statute that has a rebuttable presumption that the abuser should not get full or joint physical custody and specifically said he had not rebutted that presumption. He was ordered not to drink, gamble, or possess weapons and to attend anger management classes at least once a month for a year. In spite of that, the judge still ordered joint legal custody. This requires the battered woman to work with the abuser and cooperate with him on issues of medical care, education, transportation and the like. Clearly the victim of such abuse should not be put into that position. Nor does the ruling recognize the danger to the child. The judge accentuates his ignorance of domestic violence by reserving jurisdiction on whether the father can offset his payment for the surgery to repair her nose broken by him. The judge considered if he could offset it on the value of community property – in other words, the victim could pay for her own surgery.

289. She had requested to move to an adjoining state and the court granted that request because of the better quality of life. The father was given unsupervised visitation two days at a time with overnights and exchanges were to be done at the sheriff's office or security gate.

290. Less than six months later, in May 1999, the court revised its order on request of the father. Though the court admits the father has not overcome the presumption against joint custody, he granted the father "visitation" three days a week. Clearly this is joint custody without using the name. The mother was strongly warned that she should not interfere with the visitation or violate future orders. As becomes obvious later, the father is not warned by the court when he regularly violates orders and withholds visitation from her.

291. The older child of the mother's remained fearful of the ex-husband since they were very close in the adjoining state and the mother was unable to obtain sufficiently well paid work. The educational quality is much better in the southern area of the adjoining state so she asked for permission to move there. In September 1999, her request was granted but again the father was given additional time to be with the child. A one year restraining order was granted but again, it was mutual though no evidence had ever been shown that she was a threat to him.

292. In November 1999 a CPS report was made by a doctor based on comments told to the child's therapist. No action was taken.

293. In December 1999, he filed for contempt against her and was denied. In June 2000, he filed for contempt against her again and was denied. In June 2000, she had filed an action in the adjoining states court and this clearly angered the judge. The adjoining state denied jurisdiction and the case remained in the original court though the child had lived in the other state for a year and a half. In July 2000, father again filed contempt against her.

294. Hearings were held in December 2000 and January 2001 on the combined motions regarding father's request to change custody and contempt of the mother. A decision was issued in March 2001. The court quotes the statutes that say there is a presumption against custody to an abuser but claims the father has now overcome the presumption and granted joint physical custody until August 2001 when the child goes to school. The parties lived 500 miles apart by that time. The statements by the court in the order indicate either a bias or a complete lack of awareness of domestic violence or both.

295. At the further hearing to determine the arrangements when school started, the mother testified along with her brother and a custody evaluator who had done a unilateral custody study. The father presented no witnesses and did not testify. In October 2001, the court ordered primary physical custody to mother with liberal visitation to father. The judge stated there was mutual disparagement from the parents. In spite of father's repeated violations of the previous court orders by concealing or detaining the child, the judge did not hold him accountable.

296. In February 2002, the father asked for a custody evaluation that was granted in August 2002 and a Court Appointed Special Advocate was appointed.

297. In 2004, the child reported to her teacher's aide that she received spankings every day, arm twisting and hair pulling by the father. The school called CPS who declined to protect the child. The child reported to a teacher that she was dragged across the floor by one arm. This behavior is very similar to the pattern of father in his previous abuse. But rather than calling CPS, the teacher put the child in a group for troubled children.

298. In February, the father again tried to change custody claiming that the mother cannot co-parent. Of course she cannot. A victim of violence should not be required to co-parent with the abuser who uses that opportunity to continue to victimize the mother. That is why the legislature passed laws prohibiting joint custody when there is domestic violence. (See also paragraph 13 where petitioner Dombrowski was told the same.) But this judge, like many others, continued to ignore the clearly written laws.

299. In August the court did not grant the motion but said, "The court denied the Motion for Reconsideration as untimely, but invited (the father) to file a Motion for Change of Custody. Such a statement in a court order would at the least violate judicial canons prohibiting the appearance of impropriety. When referring to the mother, the judge called her behavior sickening and deplorable but while admitting that the father also engaged in basically the same behavior, he called it inappropriate conduct. He called her irrational for not wanting the child to fly and preferring to drive the child to visits. Yet when the father refused to see the child because she drove rather than flew, the judge didn't consider that irrational. The judge made a psychological diagnosis of Munchhausen syndrome by proxy though he does not have the qualifications nor did he have the evidence to do so. He referred to her behavior as "insidious...reprehensible and destructive" yet he admits that the father could not get the child to bed so he called the mother in the middle of the night and made derogatory remarks in front of the child and does not similarly chastise him.

300. Four months later in December 2004, the father filed for sole legal custody requesting that mother have a psychological exam. In January 2005, he filed an *ex parte* motion to suspend all

visitation with the mother. In March, he filed it again but it was denied while a psychologist was appointed.

301. In June, the father filed again for sole legal custody and in November the court granted it to him. The court said the father has troublesome behavior and the mother positive points but felt he knew her better than the psychologist who was appointed in March. Because there is such poor communication between parents, the judge claimed that the way to solve the essence of the problem is to give father sole legal and physical custody. Her visits were limited to his state except for holidays and summer.

302. This is exactly the essence of the problem. Because the abusive fathers never stop their abuse, the cases go one and on. Of course there is bad communication. A victim cannot have good communication with an abuser nor should she be expected to. The abuser will make sure there are continual problems to return to court over and over. A court ignorant of domestic violence tactics then sees that the way to resolve the problem is to just give him everything he wants and maybe the problem will go away. It does if the mother gives up. But the mothers in these cases have chosen to stand and fight for their children and their own safety and human rights. In December 2005 she appealed but it was dismissed in April 2006.

303. In all, the father filed seven contempt charges, 11 motions to change custody, and four motions to suspend mother's visitation. In addition to filing the initial divorce, she filed one contempt action, and five motions to change custody, mostly after he had. Yet she was admonished by the court to stop filing motions.

304. In March 2005, charges were filed against the father for violation of an injunction against harassment against the maternal grandmother in the adjoining state. The judge ordered that the child can therefore not visit the maternal grandmother because the father won't be able to call her during the time she is there. Again failing to understand domestic violence dynamics, the judge suggested that it's up to the grandmother to solve the problem by just modifying the order to allow the father to call when the child is there. In July 2006, the father pled guilty to violation of the restraining order in the adjoining state. Unfortunately accountability was minimal as he was only fined \$100 suspended, 52 weeks of batterers treatment program also suspended if he completes three years of successful probation. He remains on probation at the date of filing this petition.

305. When she had custody, he refused to return the child in July 1998, December 1998, and November 1999. In spite of clear law in the state that concealment or detention of a child is a felony, and the statement of this law in capital letters in the divorce decree, the police and district attorney refused to take any action, instead referring her to civil courts. However, she was accused of interfering with his access to the child and that was one of the reasons for changing custody to the father.

306. The tables were turned when he had custody. He repeatedly interfered with her access to the child. He refused to allow her to see the child and police reports were filed in February 2005, March 2005, April 2005, and July 2005. No action was taken by the judge nor was he punished with a change of custody.

307. As recently as March 2007, the Court Appointed Special Advocate (CASA) reported to the judge that the child consistently wants to be with her mother. Her grades have dropped from A's and B's to D's and F's. She will be 12 years old on 11 April 2007 and though she has repeatedly asked to speak to the judge, she has not been allowed to. The CASA fears that if the judge doesn't change custody the child may act out because of the refusal of the court to listen to her.

308. The conclusion from these individual petitioners is clear. Women are treated very differently in the courts than men. Rules are applied very differently to women and abused children. Due process protections are not applied in favor of women and children. Financial rulings are very detrimental to the women and each of the women was financially crippled through the process of litigation. Several of the petitioners were jailed – K.A., Titelman, Shockome or arrest warrants issued – Navatril. Several of the women were told not to talk about or report instances of abuse – Dombrowski, K.A., Petitioner C and Shockome. Several women were accused of being mentally ill – Titelman, K.A., or forced to have mental exams – Horton, Petitioner C. Parental Alienation Syndrome, a completely discredited theory, was used against most of the women – Shockome, Navatril, Horton, Titelman, K.A., Petitioner A. In every case, when the children spoke out either as minors or as adults, they too were ignored. Several of the petitioners filed complaints about the judges to no avail – K.A., Shockome, Titelman, D.H.. Attorneys or others who tried to help the victims were threatened – K.A., Shockome, Navatril. This happened from New York to California, from Georgia to Kansas, from the East coast to the West, from the South to the North and in the very heartland of the country. These stories illustrate an overarching policy and practice of ignoring domestic violence and child abuse in family law courts and not protecting the children or the mothers who are the victims in violation of the Declaration of the Rights and Responsibilities of Man.

309. The National Coalition Against Domestic Violence IS and is interested in this petition BECAUSE. Their letter is attached as Exhibit 26.

310. Justice for Children IS and is interested in this petition BECAUSE Their letter is attached as Exhibit 27.

ACADEMIC STUDIES SHOW THAT BIAS AGAINST WOMEN EXISTS IN THE COURTS ESPECIALLY RELATED TO CHILD CUSTODY DETERMINATIONS

311. Since the 1990's, a series of gender bias studies were done around the country. The findings of the thirty-one state and five federal task forces that have reported over the last fifteen years are similar and disturbing. They report that gender bias in the courts does sometimes affect men, but that its victims are overwhelmingly women; that male judges and lawyers of all ages are largely unaware of the experiences and perceptions of their female colleagues; and that the disrespect and devaluation experienced by white women is even more pronounced for women of color. In the words of the New York Task Force on Women in the Courts, "Gender bias against women litigants, lawyers and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity." The task forces also found that custody awards often punish women who breach the stereotype of the ideal mother, because, for example, they work outside the home or have a sexual relationship outside of marriage. There is a growing tendency to award custody to the wealthier parent rather than to award child support. Given women's and men's unequal earning power, this constitutes a paternal preference. There is also significant indifference to spouse abuse in custody cases. Many judges do not understand why a man who beats his wife but not his child should not be awarded custody, and erroneously assume that husbands' violence against their wives ends with divorce, so requests for supervised visitation can be denied. Judges sometimes assume that women are making false allegations of child sexual abuse to gain an advantage in custody disputes.

312. The task forces repeatedly found that men who rape, batter and even murder women often face little or no punishment. These findings are illustrated by two cases. A Kentucky man raped his former girlfriend and injured her so severely that she required surgery. The jury recommended a sentence of thirteen years in prison. The judge sentenced him to six months in jail and probation on work release.

The judge was swayed by letters from such luminaries as a basketball coach attesting to the rapist's good character. [Thomas Tulliver, 13-year Sentence for Rape Cut to 6 Months, Probation, LEXINGTON HERALD-LEADER, June 8, 1994 at A1] A Maryland man shot his wife to death several hours after finding her in bed with someone else. The judge sentenced him to eighteen months in prison to be served on work release, plus fifty hours of community service in a domestic violence program, the last place someone like this should be permitted. The judge said he wished he did not have to impose any sentence, because it was understandable that a man in such a situation would feel compelled to impose some "corporal punishment." [Reporter's Official Transcript of Proceedings (sentencing) at 3 and 12, *State v. Peacock (Md. Cir. Ct. Oct. 17, 1994) (No. 94-CR-0943)*].

313. Domestic violence continues to be an area in which women experience significant bias, despite major statutory reforms to provide them with civil and criminal protections. Courts show little understanding of the circumstances under which battered women survive and the ways in which the cycle of violence, economic dependence, lack of support from family and community, and fear of the batterer combine to keep women in these situations.

314. Instead of focusing on why men batter and what can be done to stop them, many judges and court personnel ask battered women what they did to provoke the violence, subject them to demeaning and sexist comments, shuttle them from court to court, and issue mutual orders of protection when the respondent has not filed a cross-petition and there is no evidence that the petitioner was violent. These women are then castigated for failing to go forward with their cases. Although initial orders of protection are granted with greater frequency than they were in the past, violators are rarely punished in any meaningful way.

315. The gender bias task forces' documentation of state courts' failure to treat gender-based violence seriously was the basis for a 1991 Senate report recommending adoption of the Violence Against Women Act, which treats these crimes as a civil rights violation. Pointing to the "sad fact" that "law reform has failed to eradicate the stereotypes that drive the system to treat these crimes against women differently from other crimes," the Senate acknowledged the need for a federal remedy for women victims. [S. Rep. No. 102-197, at 47-48 (1991)].⁵ Unfortunately, the civil rights remedy for battered women was declared unconstitutional by the Supreme Court. ⁶

316. Domestic violence is a factor in 50-80% of divorce cases in the U.S., depending on the jurisdiction. ⁷ The victims of domestic violence are overwhelmingly women and children, approximately 95%. ⁸ Therefore, practices in the divorce courts disproportionately impact women, especially battered women. In addition, a high correlation has been shown between spouse abuse, child abuse and incest ⁹ putting at risk the children of these battered women. Nor is child sexual abuse rare in the U.S. "The Honorable David Paterson, a state senator from New York, testified that one of every three young girls and one of every five boys become victims of child sexual abuse and that a high percentage of those most afflicted repeat the cycle." ¹⁰

317. As early as the 1960s, when fathers asked for custody of the children, they won 70% of the time. Fifty-nine percent of the judicially successful fathers and 50% of the privately successful fathers had physically abused their wives or initiated a violent divorce. Sixty-four percent of the judicially and

5 National Judicial Education Project, Gender Bias Task Forces: Findings & Recommendations, 2006

6 *U.S. v. Morrison*, 529 U.S. 598 (2000).

7 Divorce Mediation and Domestic Violence, Domestic Violence Report (Civic Research, Inc. Kingston, N.J., Oct/Nov. 1998), at 1.

8 Jaffe, P.G, Wolfe, D., & Wilson, S., Children of Battered Women. Newbury Park, CA: Sage, 1990

9 American Bar Association, Young Lawyer's Division, Center for Child Advocacy and Protection, *Legal Response: Child Advocacy and Protection*, No. 2, P. 1 (June-July 1979); Roy, A Current Study of 150 Cases, *Battered Women: A Psychological Study of Domestic Violence* (1979).

10 EXPOSE p. 201, Exhibit 6

50% of the privately successful fathers saw their wives as “uppity” i.e. not fitting their stereotypical view of what mothers and women should be. According to these men, “uppity” women returned to school or work, held independent political or religious opinions, had non-marital sexual activity during marriage or even after divorce, or started a divorce against the husband’s wishes. Fathers who kidnapped their children were not punished while 80% of women who did were imprisoned, fined or custodially punished. Having more money was one of the factors that allowed fathers to win but 62% of the fathers used violence to win custody. Courts then rubber stamped this behavior. These fathers had not been any more involved in child care or housework than any other father. The standard for evaluating mothers and fathers was very different. **11**

318. Pursuant to the National Institute of Justice Grant number 2000-WT-VT-0016 entitled “History of Intimate Partner Violence and the Determination of Custody and Visitation among Couples Petitioning for Dissolution of Marriage” many academic studies were done and the results published in *Violence Against Women*, No. 11, Volume 8, Sage, 2005, p. 991 entitled *Children in the Crossfire*.

319. In one study, the researchers looked at spouse abuse issues in all divorces in Seattle, Washington from 1998-1999. They did not look at child abuse issues. They found that mothers who suffered interpersonal violence (IPV) were no more likely to be awarded custody than other mothers without IPV. Fathers with known histories of IPV were more likely to be denied visitation, but that still only represented 17% who were denied visitation. 61% had restricted decision making and 71% had restrictions on visitation. Of those fathers with IPV, 51% were ordered to participate in some program. 25% of them had supervised visitation, however they were no more likely to have it than any other group. In half of the cases with court or police documented domestic violence (DV), that history was not in the divorce file.

320. The study concluded that interpersonal violence (IPV) was ignored even with a documented, substantiated history and strong protections for the children were not put into place. 12 As many as 20% of the victims reported returning to the abuser because of threats made about taking the children. Clearly returning to the abuser is not ending violence against the children.

321. A second study looked at outcomes when the fathers had protection orders against them. 13 There was no statistical difference in outcomes for fathers and mothers when filing custody or visitation petitions.

322. They found that contrary to popular thought, fathers restrained by orders of protection (OPs) were more likely to obtain visitation orders than not (64%). More than 50% threatened to kidnap the child, 40% threatened to kill the mother and in 44% of cases, the children were physically involved in the violence. The researchers found that the State of New York could and did charge mothers with failure to protect if children witnessed violence. But if the mothers separated from the fathers to avoid the child witnessing violence, fathers asked for and got custody or visitation and the children and mothers were abused yet again during the exchanges and visits.

11 Chesler, Phyllis, *Mothers on Trial The Battle for Children and Custody*, McGraw-Hill Book Company, NY. 1986. Exhibit 7

12 *Child Custody Determinations among Couples with a History of Intimate Partner Violence*, p. 991, Kenic, Monrory-Ernsdorff, Koepsell, Holt in *Children in the Crossfire*.

13 *Outcomes of Visitation and Custody Petitions when Fathers are Restrained by Protection Orders: The case of the New York City Family Courts*, Rosen and Sullivan, National Institute of Justice Grant no. 1998- IJ-CS-0021, secondary analysis of data, p. 1054.

323. In the first look at the data, they found that 81% of custody petitions filed by fathers with OPs were rejected. In this second look at the data, they found that, “If OP fathers get custody less often than other fathers, it is not because of decisions made by the courts to deny them custody.” A denial must have a full fledged hearing which rarely happened. Rather the reason was in the rate of dismissals and withdrawals. The researchers were unable to find out the rate of dismissals but available evidence showed that most were for failure to appear at hearings. No fathers restrained by OPs who asked for custody and appeared at trial were denied custody or visitation in family court. Thus safety considerations were obviously not being considered in custody determinations.

324. Paradoxically, the data showed that fathers were more likely to get visitation when an OP was granted (64%) than when it was dismissed (49%). So mothers who wanted to protect their children were better off not filing for a protection order. Also in 58% of those cases, father’s custody petition was also dismissed indicating that fathers filed custody to coerce mothers into dropping OP petitions. If mothers want to protect their children, they have to not protect themselves. Even when there were two orders – OP and visitation order – the OP was limited by the visitation order rather than the visitation order being limited by the OP. Thus the “right” of the father for visitation was a higher ranking right than the right of the mother or child to be protected from physical violence. The researchers concluded that the courts are failing to protect women from victimization and children from exposure to violence. The court itself may become the instrument by which abusive fathers continue to have contact with and abuse partners.

325. One study directly studied the effectiveness of statutes mandating that the court have a presumption against custody to the perpetrator and that judges have education about the issue of domestic violence.¹⁴ When there was a presumption against custody to a perpetrator, more custody decisions gave custody to the mother unless there was also a friendly parent provision and a presumption for joint custody in the law. Under those conditions, courts granted joint custody twice as often in states with a presumption against the perpetrator but also competing presumptions of friendly parent and joint custody as those with no presumption against DV at all. So in those states, it appears that reporting DV punishes the victim of abuse rather than protects her.

326. The presumption against custody to abusers had no effect regarding physical custody; mothers won 66% of the time. But when a state had the competing presumptions, the courts vastly favored fathers. Only 4% of mothers then won sole physical custody. The presumption against custody to abusers did not affect granting visitation, but with it, more visitation orders were structured. Without the competing statutes, 66% of the orders had conditions on perpetrators. With competing presumptions, only 19% had conditions on perpetrators. In states with the presumption against perpetrators, only 6% of the orders protected the mothers address and 10% ordered her to counseling. If there was no presumption, no orders protected the address and only 1% were ordered to counseling. Thus even with a presumption against abuse, courts did not protect the safety of the victim and in fact more seemed to blame her by ordering her to counseling.

327. When sole legal custody was given to father, he also received sole physical custody 100% of the time, for mothers it was 90%. In states with competing provisions, sole physical was given more often to fathers than mothers. When joint legal custody was awarded, mother was given physical custody 50% of the time. Even with the presumption against custody to perpetrators, 40% of batterers were given joint custody. The conclusion was that even if there is a statute saying that the court shall operate with a presumption against custody to perpetrators, the competing presumptions of friendly parent or joint custody undermine the intended protections. The friendly parent provision effectively penalizes

¹⁴ Child Custody and Visitation Decisions when the Father has Perpetrated Violence against the Mother, Morrell, Dai, Dunn, Sung, Smith, National Institute of Justice Grant 1999-WT-VX-0013, Children in the Crossfire, Sage, p. 1076.

the abused parent who asks that the visitation be denied or curtailed. This violates her freedom of thought and expression. In spite of statutory presumptions against custody to abusers, they were granted joint or sole custody or unrestricted visitation the majority of the time. Statutory reform or litigation has been shown to be ineffective to protect children.

328. Some judges actually believed there was no situation that could justify restricting the fathers visitation. Thus the right to life and security of the mother and child were violated as the fathers parental rights were elevated into a higher position.

329. Whether a state mandated it or not, 87% of the judges said they had had Domestic Violence (DV) education in the past three years. Judges who had education in DV scored no better than judges without it in knowledge and attitudes. More judges who had DV education gave mother sole physical custody but few structured or limited fathers visitation. If judges had DV education, they were twice as likely to give sole physical custody, half as likely to give primary or shared physical, less likely to structure fathers visitation or impose conditions, more often protected her address and less often referred her to counseling. Thus it seems they understood the parties could not co-parent but they did not understand the need for protection for mother or child during visitation. If judges had DV education and if sole legal custody was given, conditions were more likely to be imposed. But even if judges had DV education and she got sole physical custody, conditions were less likely to be imposed than if she got joint physical. On average female judges had more knowledge and more enlightened attitudes than male judges but this did not affect their orders. The researchers concluded that the quality of DV education is more important than a statutory mandate to have DV education. "Indeed, it is almost impossible for them to obtain court custody orders that adequately protect them and their children." Gender bias against women is common because of an effective father's rights movement relying on a history and culture of discrimination. 15

330. The situation was no better with mediators who work in family court. Mediators failed to recognize and report DV in 57% of the cases, even when DV was on the court screening form. The screening form itself failed in 15% of the cases. Even when there was a protection order, mediators recognized DV in only 49% of the cases. Even when there was both DV in the court screening form and a protection order, mediators recognized DV in only 49% of the cases. 16 This level of failure cannot be put down to ignorance or negligence but must be willful disregard.

331. Joint legal custody was recommended by mediators 91% of the time for DV cases and 90% for non DV cases, turning conventional wisdom on its head. Sole custody was recommended 5% of the time when DV was present and 7% when there was no DV. Primary physical custody was awarded to the mother 49% of the time when there was DV and 48% when there was not according to mediators. But according to researchers, it was 35% and 40% respectively. According to the mediators, primary physical custody for fathers was recommended significantly more often in DV than non DV cases – 11% v. 7%. But according to researchers, it was 10% and 9% respectively i.e. no more likely. It was clear that the mediators were unaware of their own determinations or their own prejudices. Even worse, mediators who reported DV were more likely to recommend supervised visitation but the findings were significant ONLY if there was police involvement and child abuse in addition to abuse of the mother. In other words, violence against mothers was not a reason to supervise visits showing a failure to grasp the risk to mothers or to children presented by violent fathers. Mediators recommended a higher percentage of protected child exchanges when there were no DV indicators then

15 Violence Against Women, No. 11, Volume 8, Sage, 2005, Zorza, Rosen, Guest editors Introduction, p. 983.

16 Violence Against Women, No. 11, Volume 8, Sage, 2005, Child Custody Mediation in Cases of Domestic Violence, Johnson, Saccuzzo, Koen, p. 1022, National Institute of Justice Grant No. 1999-WT-VX-0015.

when there were DV indicators, again the opposite of what would be expected. Without DV indicators, threats resulted in protected child exchanges 75% of the time but with DV indicators, the number dropped to 32%. This appears to be deliberate punishment of the victim who reports DV. The authors concluded, “Present findings offer evidence that the children may be placed in greater jeopardy when DV is alleged at all.”

332. While joint physical custody was recommended 40-60% of the time, actual time sharing was 14%. In reality, fathers kept control but did not assume responsibility. Joint physical custody was recommended by the mediator 12% in DV cases and 15% in non-DV cases. Fathers were granted visitation in 89% of DV cases and 86% in non-DV. When violence was documented, supervised visitation was recommended in 25% versus 16% in non-DV cases. That means that 75% of the fathers in documented DV cases had unsupervised visitation. When there were threats, supervision was granted in 38% of cases versus 16% if no threats; if there were police reports supervision was granted in 32% to 15%; if there were child safety concerns it was 41% to 14%; if there were documented child abuse and neglect supervised visitation was ordered in 29% versus 16% in non DV cases. Again, that means that in 71% of cases of documented child abuse and neglect, unsupervised visitation was granted to the father. Documented drug use resulted in restrictions 29% of the time versus 17% without drug use and with alcohol abuse the figures were 26% to 16%. Even with documented difficulties in child exchange, supervised visitation was granted in only 13% of the cases compared to 20% of other cases. This pattern appears over and over – if the mother wishes to protect the child, she has to stay silent about the DV. In the situations where the father was a clear perpetrator, he received some physical custody in 97% of the cases. In the situations where there was documented child abuse or neglect, the father was twice as likely to have restrictions but still 71% had absolutely no restrictions on visitation. Clearly the child’s health and welfare is not protected.

333. The researchers looked at what factors determined the few recommendations for supervised visitation. One factor was child safety concerns, which meant supervised visitation was 3.6 times more likely if the mediator felt there was a child safety issue. Another factor was parental drug use, making supervised visitation 2.9 times more likely. The third factor was difficulty in child exchanges but that only had an impact of .213 times. Concerns for mothers safety had no impact whatsoever on the decisions. Thus again, the right to life and security of the mother is being ignored while the parental rights of the father are placed on a higher level.

334. Contrary to common belief, violence against a woman and her children does not stop when she leaves the abuser. In fact separation often leads to an escalation of the violence and greater danger. In spite of that, the father-child relationship is privileged as more important than the danger to the child. 17 Often the request for custody of the children has more to do with attempting to force the mother to reconciliation or to punish her for refusing than over care about or concern for the child’s best interest. In fact, research has found that 75% of men who abuse their female partner also abuse their children. Girls run a higher risk – they are 6.5 times more likely to be sexually abused than girls from non-violent homes. They are particularly susceptible to sexual abuse when the marriage is ending. The belief that mothers and children make false allegations of child sexual abuse during custody proceedings has been shown to be simply not true. Mothers were no more likely than fathers to make false allegations. In fact, 21% of father’s allegations were shown to be false compared to only 1.3% of mothers.

335. Another prominent myth is that mothers always get custody of children. Several studies have shown that in contested custody cases, fathers win custody approximately 70% of the time. Other

17 Arizona Battered Mothers Testimony Project, Exhibit 8, pages 14-18. See also Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, Exhibit 9.

studies show that abusive fathers are the ones most likely to fight for custody. (Exhibit 8) After making allegations of abuse by father, 58% of mothers had no or supervised visitation with their children by the end of the court battle.

336. A national survey found that 65% of non-abusive parents were advised by attorneys, mediators, court personal, advocates, police, psychologists, family court advisers, other protective parents and even judges not to report the abuse. (Exhibit 8, p. 18) This is a clear denial of due process, access to court and the right to petition the courts for the protection of fundamental rights.

337. While one would hope that experts appointed by the court would be aware of the issues involved in the best interest of the child, this is simply not so. Forty percent of those working in mental health fields in the U.S. have received no training about partner violence and fewer received training about child sexual abuse. A study by Bancroft and Silverman showed chronic problems with custody evaluations done by unqualified evaluators. (Exhibit 9, Exhibit 8, p. 19, see also *Placing Children at Risk: Questionable Psychologists and Therapists in the Sacramento Family Court and Surrounding Counties*, investigative reporter Karen Winner, May 15, 2000) Evaluators often blame the victim for not leaving the abusive situation and label her as unfit or unstable. They then turn right around and recommend custody to the violent parent. One study gave therapists a case study of an actual domestic violence situation that resulted in the murder of the woman. The study found that 91% of therapists failed to even identify the abuse. Of the 9% who recognized it, 40% of them did not think it was important. Thus by the court's abdicating its power of decision making to these unqualified therapists, they are eviscerating the law that requires domestic violence to be taken into account in custody decisions and denying women access to the protection of the existing law. (See paragraphs 272, 276-7).

338. Studies have also shown that even when confronted with the child's disclosure of abuse, less than 50% of mothers took action. For those mothers who did, the most frequent action was a divorce. However, that is precisely when the court and child protective agencies do not believe the mother or child. Rather than understanding that abuse motivated the divorce, they believe the divorce motivated the abuse allegation. Those children who were believed about the abuse suffered much less emotional and behavior problems. But when the mother believes the child and takes action, she is at most risk of losing custody or visitation all together. (Exhibit 8, p. 27) This is clearly in violation of the right to establish a family, and to receive protection therefore, Article VI of the Declaration and the duty of every person to aid, support, educate and protect his minor children, Article XXX of the Declaration.

339. According to Patricia Bellasalma, "(t)he judicial system reality is that outcomes are determined by the personal philosophy of the jurist ...this system has only served to reinforce a profoundly patriarchal philosophy." Even the experts chosen to educate judges tend to promote the patriarchal philosophy of those judges. Nor are judges objective and disinterested parties. Instead they under value the contribution of the mother and over value any contribution by the father, mirroring the bias in society. James Ptacek found in his study that judicial harassment of women was a common problem. The Wellesley BMTP found gender bias and that mothers are held to a higher standard than fathers. The 2002 California Family Court Report found that in almost every case involving abuse allegations, the mother was labeled as overprotecting or alienating and custody was recommended to the father. The mothers in AZ felt they were held to different standards and were themselves held responsible for the abuse. See Exhibit 8, pages 27-31 and 49.

340. Mothers are in a no win situation - if they do not protect the child, they are accused of failing to protect but once a divorce is filed, suddenly the viewpoint is reversed and if she tries to protect, she is instead accused and likely to lose her children. (Exhibit 8, p. 32) As Jill Zuccardy, the attorney in the Nicholson case stated, "The battered mother has to worry that if she leaves, the abuser will take her children and, if she doesn't, that the government will." That is precisely what happened to Petitioner A and B.

341. Different standards are also applied to working outside of the home. A stay-at-home mother loses credibility for not having worked in the marketplace and the working mother is at fault for not being home. The father who works outside the home however is praised even if he works long hours. (See Exhibit 8, p. 32)

342. The mothers explained how the abusers used the court system to continue their abuse of her and the children. Ordering joint custody actually increased the risk of post separation violence. (See Exhibit 8, pages 39-40)

**EXPERIENTIAL STUDIES SHOW THAT BIAS AGAINST WOMEN EXISTS IN THE COURTS
ESPECIALLY RELATED TO CHILD CUSTODY**

343. The problem of giving custody or unrestricted visitation to abusers has not arisen suddenly. The media has covered it extensively over many years. Articles in the popular media on protective parents losing custody to an abuser include articles from 1995 to 2006, from the east coast to the west pointing out judges who give custody to abusers, the use of PAS, the harm to the children, the discrimination against women, advice to women not to report abuse, court orders to women to not file additional motions, the involvement of the FBI and federal law in arresting women, and women who go into hiding to avoid turning children over to abusers. 18

18 Following is a brief summary of some articles:

A. World Net Daily, April 20, 1999, Exclusive Commentary, Judith Reisman: Discussion of mothers losing custody to abusers, the use of PAS, and that mothers hide sexual abuse of children so as not to lose custody.

B. Pittsburgh Post-Gazette: Special Reports: Casualties of a Custody War tells the story of a 16 year old boy subject to "threat therapy" meaning that if the boys did not visit their father and act nice, the mother would be jailed. Nathan subsequently killed himself after leaving writings about how his father continued to harass them through court cases.

C. "Heavy Hand of Justice" by Jill Kramer, Pacific Sun October 24-30, 2001, CUSTODY SWITCH
"If you suspect that your ex-spouse is molesting your child, don't report it to authorities. If you do, you risk losing custody to your child's molester."

But Gardner's contention that there is an epidemic of sexual abuse allegations in custody fights is not borne out by research. In a study of 9,000 disputed custody cases, fewer than 2% involved such allegations - true or false. And when the charges are leveled, they're usually true. A team of researchers at the University of Michigan examined 215 cases and found that, in 156 of them, or 72%, it was "likely" that sexual abuse had occurred. But, of those likely cases, the judges disregarded more than half."

"Idelle Clarke lost custody of her daughter to her ex-husband in Los Angeles family court after social workers determined that he had sexually abused her repeatedly. A family court judge dismissed the sexual abuse charge, deciding that the girl who was eight years old when she first described the abuse had been coached by her mother to lie. The children's services department filed an appeal, but promptly dropped it when the father, a well-fixed executive in the entertainment industry, sued department staffers. The child was placed in her father's custody in 1998 and Clarke has been fighting the decision ever since. ... Meanwhile, Clarke's daughter, now 15, claims that her father continues to molest her. She has written a number of letters to her court-appointed attorney, pleading for help. But the attorney is an ardent proponent of parental alienation syndrome."

D. Pop psychology has brutal role in family court, April 18, 2002, Eric Zorn, Chicago Tribune
Zorn tells the story of a 10 year old who has said my dad is going to hurt me and my dad gets drunk sometimes but was taken from the courtroom away from her mother to her father without even saying good bye to her mother based on PAS.

E. Custody fight: Documentary sheds light on system that lets children suffer at the hands of abusive fathers, By BOB PORT, October 16, 2005, Albany Times Union.
"It is an almost impossible story to tell, one from which journalists flee, and it boils down to this: A judge, often misled by self-interested lawyers and court-appointed professionals, ignores a protective mother, ignores the wishes of children and awards custody to a man who is an abuser, emotionally or physically, of his wife or their children. ... What our legal system has failed to grasp is that lust for vengeance drives the worst of fathers to use litigation itself as a way to abuse ex-wives. Their economic incentive has also grown. Winning custody can be cheaper than child support. ... There is little Sarah, ordered to live with a father she feared. "You feel like," she says, biting her lip, "you want to die." There is the terror-stricken voice of Manya recorded on the phone, pleading with her mother to rescue her from her father, who molested her for years. "I don't care if you have to break the law," she sobs, "get me out right now."

344. Voluminous evidence exists that courts are discriminating against women, particularly battered women, are giving more importance to fathers' rights than mothers' or children's rights, that mothers are denied due process or meaningful access to court, that judges operate with negative stereotypes against women and a paternal preference, and that mothers are prevented from protecting their families or receiving court protection of their most fundamental rights. The Leadership Council on Child Abuse and Interpersonal Violence has gathered an extensive list of such evidence: I. Research (24 articles); II. Gender Bias Reports (6) and Reports by Testimony Project (3); III. Reports by Professional Organizations (8); IV. Scholarly Commentary (44); and V. Media Reports (22). A brief summary of the findings is footnoted below.¹⁹

Contested custody, about 10 percent of break-ups, clogs courts. In these disputes, some studies show, a mildly abusive, or brutally battering or seriously molesting parent lurks in three fourths of cases. It can be a mother, but mostly it tends to be a father, and recent studies show fathers winning these battles 2-1.

Law guardians may not listen to their clients, the children, and they inevitably end up taking sides, then avoid communication with the losing side. They can freely engage in what lawyers call ex-parte communication they talk to one side without the other present. Judges do it, too. It's unethical and it deprives one party of a fair hearing. Yet, in our family courts, ex-parte exchanges, even hearings, can be standard operating procedure."

F. In the Courts: Fit Calif. Moms Losing Custody to Abusive Dads, 10/11/02, by Pamela Burke, Women's E News Correspondent. New statistics indicate California fathers with a history of child abuse, domestic violence or criminal behavior often have been granted visitation and sole custody of their children in contested cases.

"Attorneys will tell women not to raise sexual abuse charges in custody hearings," says Tom Lyon, a professor at the University of Southern California Law School and a former dependency court attorney. "Judges will hold it against them as the basis for denying custody." ...

Clearly, Clarke and her allies believe that is what happened in her case. Recently declared a vexatious litigant, Clarke is barred from filing any further legal motions statewide unless she posts \$25,000 each time. But she continues to press forward with Yeamans by her side. This month the California Supreme Court denied her Petition for Review.

G. In the Courts: Desperate Moms taking Abused Children Underground, 10/07/01, Mariam Raftery, Women's E News Correspondent. In custody disputes involving sexual abuse claims, closed-door family courts too often award custody to the alleged abuser, saying the mother is lying. Some mothers take children underground; others flee the country. The involvement of the FBI in tracking down the women, charging them with federal kidnapping charges and jailing them in federal jails illustrates the involvement of the federal government in this violation of human rights. It is estimated up to 100,000 women annually go into hiding rather than expose their children to abusers.

H. Commentary, Biased Family Court System Hurts Mothers, 09/05/01, by Garland Waller, WEnews contributor. Behind closed doors of the family court system, thousands of women each year lose child custody to violent men who beat and abuse mothers and children. The writer says family courts are not family-friendly and betray the best interest of the child. The American Judges Foundation themselves studied the problem and found that abusers win custody 70% of the time. In her discussions with Dr. Gardner, she asked what a mother should do if her child reported abuse. He suggested she tell the child not to say such things or she would beat her.

I. The Guardian Unlimited, May 8, 2006. The problem has now spread to the U.K. as well. The story tells of children dragged kicking and screaming into cars to visit their fathers, of fathers who abduct the children and take them to a foreign country and then given unsupervised visitation again, of sons who describe in graphic detail the father's sexual abuse and are forced to visit him alone. "The court wants the fathers to have contact" said the mothers and neither the facts nor the child matters.

19 Starting as early as 1983 in South Carolina fathers were winning in 84% of the cases including when they were violent, to 1989 when the Massachusetts court found that more weight was given to fathers' interests than those of the mother or children to a study of custody evaluators in 1996 who thought that so called alienation was more important than violence against the mother the research shows a clear picture of discrimination against women and children and violation of their rights to protection and court access. One study in 1995 found that the allegations with the most proof of abuse were the ones where the reporter was most likely to suffer sanctions including losing custody or visitation, being jailed and ordered not to report again or take the child for an examination. A study of 800 couples in 2005 showed that in nearly 50% of the cases with substantiated violence, the violence was never mentioned in the custody case. One study found that no fathers lost custody to a mother where an alleged perpetrator was in the home yet mothers lose custody frequently to fathers who are themselves alleged perpetrators. Joan Mier found in 36 of 38 cases of alleged or adjudicated abusers, sole or joint

345. This concern prompted the publication of the book, EXPOSE: The Failure of Family Courts to Protect Children from Abuse in Custody Disputes in 1999 in which a well known case, Dr. Elizabeth Morgan, illustrated the failure of the U.S. courts to protect children, “When I asked the U.S. courts to protect my child from sadistic abuse and incest I was jailed three times for no crime, the third time for more than two years. Judge after judge was enraged that I asked for justice. I am one of many mothers so misused. In the end my child, more fortunate than most, was protected, but never by a U.S. judge.”²⁰ Morgan had accused her husband and his parents of abuse but was not believed even after the 14-year-old step daughter also accused him of abuse. The judge ordered unsupervised visitation and Dr. Morgan sent her child into hiding. She spent two years in jail until she was released by the passage of a law tailored for her. It was overturned a few years later but by that time, the child was 18. After Morgan and her child were discovered in New Zealand, the father sued but the New Zealand courts protected the child and refused to return her to the U.S. because it had become obvious the U.S. courts had not and would not protect her. This was however a rare victory because of the high economic and social status of the parties involved. Most litigants cannot afford nor would they know how to flee to

custody was awarded to the abuser. Two-third’s of the decisions were overturned on appeal. In 1999, research found that only 10% of the cases resulted in the child being placed with the protective caretaker with supervised visitation to the abuser. Even with a statutory presumption against custody to a perpetrator, the law was more effective only if there was no friendly parent provision or joint custody presumption. The Michigan gender bias study found that only 58% of judges follow the state statute requiring the consideration of violence and 11% say they never follow it. California court records show that violent fathers were as likely to pursue sole custody as non-violent fathers but more likely to win than non-violent fathers. Articles and books present case after case of custody lost to abusers.

The list also contains gender bias studies that have been done in 45 states and a number of federal circuits dating from 1989 to 1998. The reports found that gender bias and negative stereotypes about women resulted in judges disbelieving women and failing to protect them and especially the children when sexual abuse allegations are raised. The early Massachusetts study found that courts are demanding more of women than men and putting the needs of noncustodial fathers above those of custodial mothers and children while other studies found that judges show a strong paternal preference.

The American Psychological Association found that violent men are twice as likely to seek custody especially if sons are involved. As early as 1987, at a legal continuing education seminar on sex abuse, protective parents were advised that without irrefutable medical evidence, they should not raise issues of sexual abuse or they would lose custody. The articles cover research from Australia to Canada and from the US to the UK.

Dallam, S. J., & Silberg, J. L. (Jan/Feb 2006). Myths that place children at risk during custody disputes. *Sexual Assault Report*, 9(3), 33-47.

In spite of more than 20 years of litigation, legislation, research and education, this 2006 article shows that the problems have not been ameliorated. The myths include that there are false more allegations of abuse during divorce, that battering women is not related to child abuse, that custody to abusers is rare, that fit mothers do not lose custody, that PAS is valid, and that women abuse children more than men. One study even found that the more honest women are about the violence, the more likely they are to receive a negative outcome. In fact mothers are pathologized and punished for taking steps to protect children. The article refers the reader to 53 other articles supporting the conclusions.

Jaffe, Crooks, and Poisson, Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, *Juvenile and Family Court Journal*, Fall 2003, p. 57. Exhibit 9

The time of separation is the most dangerous time when severe domestic violence and death is most likely. (p. 62) Abusers often use visitation access time as a time to threaten and abuse women. 78% of the women reported that children were the conduit to abuse. The phenomenon is so common, supervised visitation centers are recommended. (p. 63) In the past, we used to put into the orders that pick up and drop off of the children would be in front of the police station. Recent research shows that in high-conflict cases, the best interest of the child is to have a primary caretaker who has good psychological health and a cessation of the violence including not seeing the father.

²⁰ EXPOSE The Failure of Family Courts to Protect Children from Abuse in Custody Disputes: A Resource Book for Lawmakers, Judges, Attorneys and Mental health Professionals, Our Children Our Future Charitable Foundation, Los Gatos, CA, 1999, p. 1. Exhibit 6.

New Zealand and they would not have access to high level Washington D.C. operatives to get a law passed for their release. Exhibit 6.

346. Richard Ducote, an attorney who has represented battered women for years said, “After twenty years in family law courtrooms throughout the country, I confidently say that no woman, despite very abundant evidence that her child has been sexually molested by her ex-husband or that she has been repeatedly pummeled by the violent father of her child, can safely walk into any family court in the country and not face a grave risk of losing custody to the abuser for the sole reason that she dared to present the evidence to the judge and ask that the child be protected.” (Exhibit 6, p. 11) Sol Gothard, Judge of the Court of Appeals in Louisiana said, “There are very few times in law when you can state anything categorically, but I can certainly say that beyond any doubt whatsoever, the problem expressed by Wendy Titelman in this book is epidemic and widespread, and it has been this way for the forty-four years that I have been involved with the legal system.” (Exhibit 2, page v)

347. The individual stories in EXPOSE illustrate time and time again that in spite of physical, medical and eye witness evidence, which would be enough to convict the abuser in criminal court under higher standards of proof, family court judges ignore the evidence, blame the mothers and give custody to the fathers sentencing the children to years of abuse. (Exhibit 6, pps. 15, 47, 55, 108, 113,146) Negative stereotypes about mothers and bias for fathers continue to drive the resulting injustice. (Exhibit 6, p. 109) Nannette Pierson Sachs, chair of Amicus for Domestic Justice argues, “Using cases involving allegations of incest as the example, I would like to present evidence to suggest that the misfiring of the system – in these cases its failure to protect children from incest – is neither inadvertent nor accidental but deliberate and willful. Such perverse decisions as judges compelling children to visit regularly with parent-molesters and most egregiously, placing them in the custody of molesters, should not be minimized as unfortunate results that have to be tolerated so as not to undermine the public’s confidence in the legal system. Given the reality that these cases are argued and adjudicated over a period of months or even years, it is preposterous to attribute such child-jeopardizing outcomes to honest errors of an overworked or under-qualified bureaucracy (or a judge’s temporary indisposition). I will argue that professional recommendations and judicial decisions having the effect of putting children in harm’s way for sexual abuse are sufficiently common to be read as evidence of implicit understandings in a segment of the child protection field that permit, and even encourage, professionals to choose the options that will enable molesters and disempower protective parents.” (Exhibit 6, p. 144) Bellasalma argues that it is those very people who believe in the so called “traditional” gender roles of male dominance and female submission who create and accept psychological theories such as Parental Alienation Syndrome and Malicious Mother Syndrome that pathologize the reporting of abuse. (Exhibit 6, p. 156) Judges then reinforce those roles by granting custody to fathers and punishing mothers who have reported abuse.

348. Punishing professionals who report abuse is also part of the pattern and not new. Since before the time of and including Freud, professionals who report abuse, especially child abuse, have suffered various forms of retaliation. (Exhibit 6, p. 163) For centuries there has been a cyclical suppression of public and professional awareness of child sexual abuse. Freud’s colleagues threatened to destroy him if he persisted in his recognition of the prevalence of child sexual abuse. Thus, he changed his story to claim it was only fantasy but some of his followers, who have lapsed into obscurity, did not.

349. Dr. Kemp reignited the issue in 1962. During the 1970s such reporting became mandatory with immunity given to reporters. Still the backlash against those who tell the truth has been severe including ethics complaints and law suits. (Exhibit 6, p. 165- 169) Numerous examples of law suits against doctors and psychologists across the country further enforce the silence. 21 Those so called

21 Althaus v. Cohen, No. 70 W.D. Appeal Dkt. 1998, No. 71 W.D. Appeal Dkt. 1998, Supreme Court Pennsylvania, August 22, 2000. Parents sued the psychologist over allegations of sex abuse. The court ruled for the psychologist. <http://www.leadershipcouncil.org/1/lg/2000.html>; O’Heron et al v. Blaney et al, 276 Ga. 871, 583 S.E. 2d 834, 2003, Ga.

mental health experts whose theories have been challenged repeatedly as unscientific, remain today the primary courtroom advocates for fathers and are accepted by judges.

350. Attorneys who advocate for the abused children are also attacked. (Exhibit 6, p. 167-170) Garnet Harrison was disbarred in Mississippi and an arrest warrant is still out for her arrest in that state. An attorney in Georgia was threatened with prosecution, found in contempt, fined and also faced disciplinary action. The president of Justice for Children was sued for alleging corruption in Texas courts. Journalists who write in favor of the victims are attacked. Police officers and prosecutors, volunteer victim advocates and even judges who stand up for victims are persecuted. In these petitioners cases, attorneys or other helpers were threatened in the K.A., Shockome, Petitioner A, B and C and Navitril cases.

351. When the reporter is the mother, she is punished for not reporting by claiming she failed to protect the child and she is punished for reporting by losing the child in a custody battle. Such backlash has been reported by many observers since at least 1986. (Exhibit 6, p. 195) The court has not responded to protect these children. 22 A contempt citation was filed against K.A. for reporting abuse to CPS (paragraph 60). Petitioner C was ordered not to report.

352. As Director of National Center for Protective Parents, H. Joan Pennington's testified to Congress (Exhibit 6, p. 181-182) that 20 years of public outcry about battering has resulted in judges who still don't acknowledge domestic violence and its impact on custody. She alleges the legal system has failed miserably to protect abused children as was found in New York by Assemblyman Jerrold Nadler. (Exhibit 6, p. 201) As the pattern repeats state after state, attorneys are advising parents not to raise the issues of abuse if they want custody. (Exhibit 6, p. 183) Appellate courts in general do not disturb lower court findings because of the great weight granted to the judge who sees the witnesses and hears the testimony.

353. The federal courts will not accept custody cases as divorce is exclusively a state matter. So the cases brought at federal court have been brought on other grounds. One case that was accepted at the federal level was Chrissy F. 23 The Chrissy F case (in which Harrison was one of the attorneys) was denied certiorari to the Supreme Court, killing the hopes of thousands of protective parents. (Exhibit 6, p.181) As one prominent family law attorney stated, "If the goal of the family court system is to protect as many sexually abused children as possible while still respecting the fundamental concepts of due process of law, our current system is an utter failure." (Exhibit 6, p. 208)

LEXIS 608 (Supreme Court of Georgia 2003), June 30, 2003. A doctor was sued for reporting. First the district attorney brought criminal charges but the grand jury refused to indict. Then the abuser sued civilly. The doctor prevailed. <http://www.leadershipcouncil.org/1/lg/2004.html>; Ouvellett et al v. Tillitski et al, Court of Appeals of Georgia, Third Division, August 27, 2004. The abuser sued the psychologist for reporting sexual abuse of his son. The court held for the psychologist. <http://www.leadershipcouncil.org/1/lg/2004.html>; P.T. et al v. Richard Hall Community Mental Health Care Center et al, Superior Court of New Jersey, Appellate Division, November 25, 2003. A psychologist who gave his opinion in a child custody sexual abuse case was sued. The court held the psychologist had complete immunity and no duty of care to the non custodial parent. <http://www.leadershipcouncil.org/1/lg/2003.html>; September 22, 2004. Children's Hospital was ordered to pay 1.2 million dollar to a father whose case was discussed on a CNN broadcast about PAS. A judge had previously ruled that the allegation was without merit and barred any further examinations of the child or disclosure of facts to anyone. <http://www.leadershipcouncil.org/1/lg/2004.html>; Morrow v. Ripley. While there was a criminal action pending, the accused sued the grandmother of the 7-year-old girl claiming she was coached. The civil case was held pending the outcome of the criminal one. <http://www.leadershipcouncil.org/1/lg/2004.html>. While in most cases the professionals prevail, it still costs them much time and money to defend. It takes only one such suit to silence many others who would report but for the threat of suit. Also a ruling for 1.2 million is a serious deterrent.

22 Dziech and Schudson, On Trial: America's Courts and Their Treatment of Sexually Abused Children, state, "The critique is predictable; courtroom justice is a "sometime thing" in which conservative rich men make the rules and play the game for the benefit of conservative rich men. The rest – elderly, poor, women, minorities and children, are powerless." (p. 21)

23 Chrissy F by her next friend Donna Medley v. the Mississippi Department of Public Welfare, W S 161615 (USDC So. D Miss. 1991)

354. Several qualitative studies have been done to document this pattern of bias against mothers and the states failure to protect children. *Battered Mothers Speak Out*, a report published by the Battered Mothers Testimony Project (BMTP) at Wellesley College in November 2002 (24) documents the human rights violations battered women suffer when they fight against their abusers for custody of their children in the Massachusetts family courts. Since 1999, project co-directors interviewed 40 battered mothers with experience in 11 of Massachusetts' 14 counties. Said Cuthbert, "Despite their diversity, the problems that they identified were remarkably similar. The courts fail to protect battered women and children by issuing child custody rulings that endanger them. Family courts give custody to batterers. Child abusers are given unsupervised visitation. Women and children are required by the courts to interact with their abusers with no protection." (See executive summary, Exhibit 30)

355. In court, women are often at a disadvantage. A law that could provide critical protection—the Massachusetts Presumption of Custody Law that affirms that the children's best interests are not served when they are placed in the custody of a batterer or child abuser is not regularly enforced. Women usually receive custody in uncontested cases, but the 1989 gender bias study commissioned by the Massachusetts Supreme Judicial Court found that fathers win three times more often than mothers in contested custody battles.

356. The Battered Mothers' Testimony Project found that the Massachusetts Family Court system violated human rights through:

- a. Failure to protect battered women and children from abuse: incidents include granting child custody to batterers.
- b. Discrimination and bias: holding mothers to a higher parenting standard than fathers.
- c. Degrading treatment: court investigators treat battered women with disrespect.
- d. Denial of due process: court officers pressure battered mothers to engage in unsafe face-to-face mediation with their abusers.
- e. Allowing the batterer to continue the abuse through the court system: battered mothers are harassed emotionally and financially when batterers can file multiple, baseless motions.
- f. Failure to respect economic rights: judges fail to hold batterers accountable for nonpayment of child support.

357. In an effort to replicate the Wellesley study in a very different state, the Arizona Coalition Against Domestic Violence carried out a two year study of 57 women who had gone through a custody battle in Arizona family courts. 25 In the AZ study, 72% of the mothers said they were not given an adequate chance to tell the court their side of the story and 41% were ordered into mediation though the court knew there was violence. (p. 48) Some courts limited the case to three hours when a fundamental issue such as child custody and violence was presented. Some courts limit temporary hearings to 20 minutes, 10 each side. In reality, the final order is the same as the temporary in almost every case so in reality, parents are given 10 minutes to present their case on the most important issue in their and their children's life. (p. 49) Likewise women were afraid to raise issues of violence for fear they would be used against them. (p. 48) (Exhibit 8)

24 Wellesley Center for Women, Women's Rights Network, Wellesley College.

25 Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, Arizona Coalition Against Domestic Violence, June 2003. Exhibit 8.

358. In the AZ study, 86% of the participants reported discrimination based on gender, socioeconomic status, religion, language and race. (Exhibit 8, p. 49, 89) Examples of such behavior are illustrated on page 51-2, and 95 of Exhibit 8. The judges continued to order mothers into extremely dangerous situations and 37% said that violence is no longer a concern after the divorce. In one egregious case, the judge ordered the mother to deliver the child to the father though he had threatened repeatedly to kill her and the man's therapist felt the threat was credible enough to warn the mother and the court! (Exhibit 8, p. 62) This particular father had a long history of mental health problems and arrests.

359. The father's rights are often privileged over the mother's or the right of the child to safety. (Exhibit 8, p. 62) Many participants in the study felt the judge was improperly delegating the judicial role to the evaluators. (Exhibit 8, p. 63) By relying on the evaluators report when it is based on junk science such as PAS, the evidence rules are being subverted as is due process for the litigants. As reported in the Children in the Crossfire series of studies, when documentation of the abuse toward the mother was given to the mediator, fathers were more apt to win custody. (Exhibit 8, p. 53)

360. The Arizona studies main findings were:

- a. In spite of evidence of violence against women and/or their children, (and with such violence documented in 63% of the cases) the courts consistently ordered sole or joint custody to perpetrators in 74% of the cases in Maricopa County and 56% of the cases in the other counties combined.
- b. Income level, which was highly skewed towards father, seemed to have the most impact on the ultimate custody decision.
- c. A mother represented by an attorney was more likely to win custody.
- d. Having a custody evaluator more likely resulted in the mother losing custody.
- e. By and large, the systems of control the perpetrator established pre-divorce, including physical and sexual violence and child abuse, were maintained post-separation with the added ability to use the court system to abuse the victims.
- f. Having an order of protection had no impact on the final custody decision; contrary to Arizona law, the courts simply ignored the documented existence of domestic violence.
- g. The courts ignored well-known research and federal standards as 100% of the victims were ordered to go to mediation or a face-to-face meeting with the abuser.
- h. A large number of perpetrators had weapons or used alcohol or drugs when with children.
- i. A large number of judges thought that since the parties were separated, domestic violence was not a concern.
- j. In a large number of cases, unsupervised visits were awarded or the supervisor was an untrained person such as a family member.

361. For this group of battered mothers, state law was violated at virtually every turn. Constitutional issues such as due process, equal protection and the fundamental right of parenting were violated by arbitrary rules and actual practice. The fundamental precepts of international human rights law were violated. The children's rights to a violence-free life and due process in the courts according to the United Nations Convention on the rights of the Child were also violated.

362. In the same year, a study was released regarding the domestic relations division of the Philadelphia Family Court. ²⁶ While the methodology was different, the findings were equally horrific. A summary of their findings includes:

- a. Limited access to court, inadequate length of hearings, lack of appropriate translation, disrespect and lack of information;
- b. Backlogs leave families in distress and especially battered families in danger;
- c. The main petitioners are women, gender bias contributes to a distorted application of the law and subjects women to condescension, indifference and hostility;
- d. Applicable legal standards are not always observed especially in child custody cases leaving many families at risk;
- e. Due process is lacking; more than half of the protection order cases were completed in five minutes or less; 75% of protection order hearings and 50% of custody hearings are completed in 10 minutes or less, no more than five minutes was spent on more than half of the litigants in custody cases;
- f. Even when looking at protection from abuse cases being heard only on the merits with both parties present; 50% were heard in less than 10 minutes;
- g. Even when looking at child custody cases being heard on the merits with both parties present, 39% of the cases were heard in less than 10 minutes;
- h. African-Americans (petitioners who are mainly women) were given less time than Caucasians in custody cases;
- i. Some judges refused to hear evidence of domestic violence in custody cases;
- j. Some litigants were not allowed to present their evidence or question their opponent;
- k. Some judges refused to issue protection from abuse orders even though evidence of violence had been presented;
- l. Some victims were ordered to joint counseling though there was domestic violence;
- m. Many judges showed ignorance of domestic violence and its effects, some advised the women to just live with it, some chastised women for seeking protection orders;
- n. Litigants were frequently attacked or threatened in or near the court with little or no security;
- o. Mothers were held to higher standards than fathers;
- p. The procedures did not meet the Trial Court Performance standards established by the National Center for State Courts;
- q. The researchers felt that drastic underfunding of the domestic relations division may be related to the gender bias as most petitioners are women;

²⁶ Justice in the Domestic Relations Division of the Philadelphia Family Court: A Report to the Community, Women's Law Project, Philadelphia, Pa, April 2003. Exhibit 10.

363. In California, the California Protective Parents Survey project collected questionnaires nationally from September 2001 to December 2004 and netted 164 responses nationally and 93 in California. Exhibit 11 For both groups, 83% of the primary caretakers had primary custody at the beginning of the litigation. Mothers initiated litigation in 63% of the cases in CA and 61% of the cases nation wide. The main issue was child custody and visitation (94%). The mothers alleged the fathers had substance abuse issues (69% CA, 65% US); a criminal history (55% CA, 52% US); the mother was a victim of domestic violence (88%); allegations of child abuse arose during the litigation (91%), 71% was physical abuse and 65% sexual; and the father threatened to take the children if the mother left (74% CA, 78% US). Medical or physical evidence was submitted by the mother in 60% of the cases, other corroboration was presented in 80%, and the child identified the father as the perpetrator (74%). The evidence was ignored by the court (97%). Though 88% of the mothers reported they were victims of domestic violence, the mother was advised not to mention domestic violence or child abuse in court (67% CA, 64% US) and was advised by her attorney that pursuing court action would harm the case (62% CA, 57% US). Custody was changed over mother's objection or in an emergency hearing (70%). The most potent reason for custody to change to the father was an allegation of child abuse (67% CA, 62% US). After litigation, 19% of the mothers had primary custody yet 71% of the children continue to report abuse by the father.

364. The mother was herself restricted from all contact with the child at some point (60% CA, 55% US). She was put on supervised visitation at some point (51% CA, 44% US). Parties were ordered to mediation (91% CA, 75% US). A child custody evaluator was selected by the court (86%). PAS was specifically used against mother (40% CA, 41% US) or Gardner quoted (16%) or the term "alienator" used (27% CA, 29% US). The mothers felt the result was due to discrimination (97%), unethical behavior (74-80%), gender bias (68-70%), and fathers having more money (64-65%). Though nearly a third of mothers spent over \$90,000 on the case and had to file bankruptcy, for nearly 80%, the case continues. The mothers felt due process was violated by the inability to present her case, inadequate or incomplete transcripts, insufficient time, no attorney, mother threatened, *ex parte* hearings, refusal to allow mother to see evaluations and transcripts, and no reporter at the hearing so an appeal was not possible (55-88%).

365. The resulting situation has left fathers with full custody even when he was identified as the perpetrator of violence (41% CA, 40% US); mother has no contact with the child (22% CA, 21% US); mother has supervised visitation (18%); they have joint custody (22%); mother has primary custody (16% CA, 19% US), father has supervised visitation (7%). The children continue to report abuse (74% CA, 71% US) but mother is unable to protect the child (82%) because she fears that reporting abuse will result in her contact with the child to be terminated (56% CA, 60% US). In California, in 85% of family law cases, at least one party does not have an attorney. 27

366. On May 10, 2006 in Delaware, the organization Common Cause held hearings on the family court system and found faulty records, inaccurate transcripts and secretive proceedings. 28

367. An investigative reporter in Phoenix, Arizona admitted that when she first heard stories that judges were giving custody to abusers, she thought it was just hysterical women making claims and that it could not be true. She admits now that she was wrong. 29 As she states, the bottom line is that abusive fathers are convincing judges to ignore children's cries of abuse, claiming that it's really the mothers who are coaching the children. The fathers get custody; the mothers get no or limited visitation; and the children are sentenced to a life of hell. She relates a case where the mother was threatened by the judge, on pain of jailing, not to bring forth any more allegations of abuse or risk losing her child altogether. Accusing your wife of Parental Alienation Syndrome (PAS) is advice *du*

27 www.courtinfo.ca.gov/programs/cfcc/programs/description/flic.htm

28 <http://www.leadershipcouncil.org/1/lg/2006.html>, accessed 10 December 2006.

29 Jana Bommersbach, Jana's View, Phoenix Magazine, May 2006, p. 28. Exhibit 12.

jour on father's rights websites. She tells the story of a woman who fought for years and pleaded for protection for her child. She was accused of fabricating it. The father killed the child in 2004. Exhibit 12. In another case in Arizona, a mother after pleading in vain was forced to send her daughter to the fathers for a weekend. Thinking it would keep her safe, a friend of the child went with her. The father killed them both.

368. A newspaper article in June 2006, describes what the author believed to be the only case in which a mother accused of PAS won her child back before she turned 18 – after the child ran away from home for more than 8 months. 30 The mother fought for 13 years while her daughter remained with the father she claimed was abusive. The child sought the assistance of an NGO for children's rights and was placed in a foster home eventually to be returned to her mother at the age of 17. Utah had validated the abuse claims but Los Angeles County ruled that the more than 100 reports of abuse against this child were unfounded. The article claims that some judges and the California Judicial Council have tried to eradicate the use of PAS in custody cases but have failed. California National Association for Women (NOW) said they had hundreds of such cases where children are put and left in harms way. Exhibit 13.

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

30 Article Launched: 6/18/2006 12:00 AM , Mom termed 'parental alienator' wins rare vindication in courts ,BY TROY ANDERSON, Staff Writer, LA Daily News. Exhibit 13.

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. 31

31 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." 32

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. 33 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.

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.

32 Wilson, Trish, How "Parental Alienation Syndrome" is used against Mothers and Children Who Allege Child Sexual Abuse, 1997.

33 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.

377. Advocates have raised the issue in the report to the United Nations Human Rights Committee. 34 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 35 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 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.

THE NAME OF THE VICTIM AND OF ANY PUBLIC AUTHORITY WHO HAS TAKEN COGNIZANCE OF THE FACT OR SITUATION ALLEGED.

381. Named Victims: Claudine Dombrowski and child, K.A. and children, J.H., Wendy Titelman and children, Yevgenia Shockome and children, Susan Navratil and child, Esther Horton and child, California Protective Parents Association, Kourts for Kids Inc., StopViolence.org, Petitioners A, B, and C, Parenting Project, Illinois Coalition for Family Court Reform, Child Abuse Forensic Institute, National Coalition Against Domestic Violence and Justice for Children.

382. Public Authority who has taken cognizance

Congress of the United States, state courts in Arizona, California, Georgia, New York, Kansas, Mississippi, Nevada, New Jersey and Wisconsin. Federal courts in California, Mississippi, District of Columbia, New York, California, and the United States Supreme Court. Child protective service agencies in Arizona, California, Georgia, New York, Kansas, Mississippi, Nevada, New Jersey and Wisconsin. Law enforcement agencies in Phoenix, AZ; Sacramento, CA; Queens Special Unit,

34 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.

35 Courageous Kids Network, www.courageouskids.net, accessed 28 March 2007. See Exhibit 17.

Queens, New York; Topeka, Kansas; San Mateo County, CA; Cobb County, GA; Dutchess County, New York; El Dorado County, CA; Douglas County, Nevada; New Jersey and Amador County, California plus the Town council of Fairfax, CA.

THE STATE THE PETITIONERS CONSIDER RESPONSIBLE, BY ACT OR OMISSION, FOR THE VIOLATION OF ANY OF THE HUMAN RIGHTS RECOGNIZED IN APPLICABLE INSTRUMENTS.

383. The petitioners consider that the United States of America is the responsible party. While the U.S. has signed the American Convention on Human Rights on 6 January 1977 indicating its intention to adhere to its provisions, it has never ratified it. However, the fifth paragraph of the preamble states that the Convention has incorporated into the Charter broader standards with respect to economic, social and educational rights. 36 Therefore, though the U.S. has not ratified it, by incorporation into the Charter which the U.S. is bound to, the broader rights of the Convention apply.

384. Further, the Commission has held that:

Development in the corpus of international human rights law relevant to interpreting and applying the American Declaration on the Rights and Duties of Man may in turn be drawn from the provisions of other prevailing international and regional human rights instruments. This includes in particular the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.” 37

385. Though the United States continues to contest it, the Commission has found repeatedly that the American Declaration constitutes a source of international legal obligation for all member states of the Organization of American States. The Commission can, under Articles 20 of the Statute and 49 and 50 of the Rules of Procedure, receive and examine petitions for violations of human rights set forth in the American Declaration though the OAS member State is not party to the American Convention. 38 Further the Declaration is not to be interpreted or applied in a vacuum but in context of developments in international human rights laws (¶86) and in context of developments regionally and globally including the American Convention and The United Nations Convention on the Rights of the Child which is pertinent in this case. (¶87)

386. According to Article 20 of the Commission Statute, the Commission has powers to pay particular attention to those human rights referred to in the American Declaration of the Rights and Duties of Man. 39 According to Article 24, the Commission establishes the procedures for such cases as outlined above. The Commission must pay attention to the other relevant norms of international law and the evolution of international human rights including the American Convention. 40

36 Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,...

37 REPORT N° 99/99 CASE 11.140 MARY AND CARRIE DANN UNITED STATES, December 20, 2002, ¶ 97.

38 REPORT N° 40/04, CASE 12.053, MERITS, MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT, BELIZE, October 12, 2004, (¶ 85).

39 Article 20 In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18: a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;

40 REPORT N° 67/06, CASE 12.476, PUBLICATION, OSCAR ELÍAS BISCET *ET AL.*, CUBA, October 21st, 2006, (¶ 41).

387. Whether or not the U.S. is signatory to the American Convention, the obligation of respecting human rights is an obligation *erga omnes* as direct beneficiaries of the human rights recognized by the American Declaration of the Rights and Duties of Man. “In this regard, the Inter-American Court of Human Rights has indicated that for the states “the American Declaration is a source of international obligations. The fact that the Declaration is not a treaty should not lead one to conclude that it has no legal effect...”” 41

The Bahamas is also not a party to the American Convention. However, the Commission said that when interpreting the Declaration, the broader context of international and Inter-American human rights systems must be considered along with the evolution of human rights over time including in other human rights documents. 42 The Commission held that Article XVIII regarding due process must be given effect in the Bahamas. (¶202) In addition, the Commission has held that Article XVIII when considered in light of other obligations means that a right protected by Convention, the state parties Constitution or the domestic laws of the State concerned means that a party must have the ability to obtain a judicial investigation conducted by a competent, impartial and independent tribunal. (¶204)

Under Commission rules, procedures and case law, the U.S. can be held responsible.

The Articles of the Charter of the OAS alleged to have been violated are:

388. Article 3(l) – The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex; ...

389. Article 45 – a) All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security; ...

The Articles of the Declaration of the Rights and Duties of Man alleged to have been violated are:

Preamble: All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

Article I. Every human being has the right to life, liberty and the security of his person.

390. Women have known for years that violence by the father is harmful to the children. While some have tried to deny it and claimed that “just because he beat his wife doesn’t mean he beats his kids”, that fallacy has been put to rest. Many studies have now confirmed that children are harmed when forced to live with or even visit or spend time with abusive fathers. 43

391. It is not surprising that the stories of these petitioners should be so similar to each other and to the academic and experiential studies. Men in our society are trained to dominate others using the same techniques of power and control. As Kathleen Waits points out, “Further, as the Amnesty International chart shows, torturers throughout history have used similar techniques without going to torturers' school. Human psychology is not that tough. The ways to dominate and brainwash another

41 REPORT N° 86/99 CASE 11.589 ARMANDO ALEJANDRE JR., CARLOS COSTA, MARIO DE LA PEÑA, AND PABLO MORALES CUBA September 29, 1999, (¶39).

42 Bahamas 12_067a - Merits-edwards2.htm, (¶ 107, 108).

43 David A. Wolfe et al., The Effects of Children’s Exposure to Domestic Violence: A Meta-Analysis and Critique, 6 CLINICAL CHILD & FAM. PSYCHOL. REV. 171 (2003); Carla Smith Stover et al., The Effects of Father Visitation on Preschool-Aged Witnesses of Domestic Violence, 18 J. INTERPERSONAL VIOLENCE 1149 (2003); Sara R. Jaffee et al., Life With (or Without) Father: The Benefits of Living With Two Biological Parents Depend on the Father’s Antisocial Behavior, 74 CHILD DEV. 109(2003).

person are relatively straightforward. They are not hard to figure out, even without attending an official batterers' school.” 44. The results of such domination are not that difficult to figure out either. Children and women are harmed and their human rights denied.

392. The act of the U.S. in putting persons in danger, exposing them to acts of brutality by someone else is a breach of the right of security. 45 In the instant case, the U.S. is putting children directly in danger, exposing them to acts of brutality including sexual violence by putting them into the legal custody of abusers and molesters. They are liable for breaching the security of those citizens. The courts knew or should have known that the children would so suffer and thus deliberately violated the Declaration. Likewise as the stories of the mothers and children show, the right to life and security for the mothers who have been victims of violence is also breached by the courts refusal to take into consideration the safety needs of the victim. The Catch 22 situation that mothers are put into is perfectly illustrated by Petitioner A. (See paragraphs 235-253) She was charged with failure to protect the children when she remained in a domestic violence situation. (See paragraph 238) But when she fled and sought to protect the children, she was blamed for alienating the children (paragraphs 240-241), the violence was minimized (paragraphs 242 and 253) and the custody was ordered to the abuser. Petitioner B also followed the suggestions of CPS and obtained a no contact order only to lose custody to the perpetrator. (Paragraphs 266-8)

393. Some writers have suggested that the court's subjection of children to continued violence in their own homes is akin to slavery and violates the 13th Amendment of the U.S. Constitution. 46 In his first five years of life, Joshua DeShaney endured repeated beatings at the hands of his father, and thereby suffered severe brain damage. During these years, Joshua remained in his father's custody even though Wisconsin's Winnebago County Department of Social Services (DSS) had strong reason to believe that he was being abused. After being admitted to a local hospital for multiple wounds, Joshua was temporarily removed from his father's custody, but a Wisconsin juvenile court soon returned the child to his father. During the course of monthly visits throughout 1983, a DSS caseworker methodically observed and recorded many signs of Joshua's victimization but took no further action to protect the child. In both February and November of 1983, a local emergency room contacted DSS to report that Joshua had been treated yet again for injuries believed to have been caused by child abuse. On both occasions the caseworker chose to take no action to remove Joshua from his father's custody. In March of 1984, a few weeks before his fifth birthday, Joshua suffered a final and savage beating. His subsequent hospitalization revealed a history of traumatic head injuries, leading doctors to conclude that Joshua would have to spend the rest of his life in an institution for the profoundly retarded. Joshua and his biological mother then brought suit against DSS and other local officials for their failure to remove Joshua from his father's custody in the face of repeated evidence of physical abuse.

394. The state claimed it had no responsibility because the perpetrator was not the State but the father and the State had no responsibility for private wrongs. However, the 13th Amendment does apply to private actions and it was within the power of the State to remove the child from the father which they failed to do in spite of repeated evidence of abuse. As early as 1824, the U.S. Supreme Court said parents did not have an absolute “property right” to the custody of their children. Parental custody is justified only if in the best interest of the children (BIC). Even parents do not have the right to abuse their children.

44 Waits, Kathleen, *Battered Women and Their Children: Lessons from one Woman's Story*, Symposium: Domestic Violence and the Health Care System, *Houston Law Review*, 1998.

45 REPORT N° 51/96[1], DECISION OF THE COMMISSION AS TO THE MERITS OF CASE 10.675, UNITED STATES[2], March 13, 1997 (¶ 171).

46 Akhil Reed Amar, Daniel Widawsky, *CHILD ABUSE AS SLAVERY: A THIRTEENTH AMENDMENT RESPONSE TO DESHANEY*, 105 *Harv. L. Rev.* 1359, 1992.

395. Though in the past children were considered property or chattel of their fathers, that philosophy is long dead. The Children's Rights Convention (CRC) should have disabused anyone of such notions. Though the U.S. has not signed the CRC, it has become an international norm by the multitude of countries that have. If children are subjected to domination and degradation, as the children in this petition have been, this violates the 13th amendment of the U.S. Constitution as well as Article I of the Inter-American Declaration of the Rights and Responsibilities of Man.

396. Article 19 of the American Convention also guarantees that every child has the right to protection. Since the Inter-American Court has determined that the Convention and the Convention on the Rights of the Child forms part of the international *corpus juris* on the protection of children, this finding applies to the U.S. 47

397. The petitioners in this case have provided overwhelming evidence to the courts, the police and the child protective services of the violence and sexual abuse being perpetrated on the children. In every case, the court placed these children directly in danger by giving custody to the abusers thereby violating the right to life, liberty and security of the children. Petitioner D.H. speaks eloquently of the seven years of suffering he endured because of the courts action and inaction. The courts also violated the right to life, liberty and security of the mothers. In the Dombrowski case, the court ordered her to return to Topeka, Kansas where she was subject to more violence from the father. In Petitioner C's case, in spite of a 20 year history of abuse, in spite of a state statute prohibiting it, the court gave first joint physical custody to the perpetrator and then sole legal and physical custody to him. K.A., Titelman and Shockome were jailed while seeking to protect their children. Navratil and Petitioner A were threatened with jail and arrest warrants were issued. Petitioner A and B were blamed for failing to protect the children and then blamed for protecting the children who were ordered into the arms of the person the child protective agency said was the abuser.

398. The obligation to protect human rights is not confined to those who have signed the Inter-American Convention but equally applies to each and every member of the Organization of American States based on fundamental human rights. 48 The right to life and freedom from torture are *jus cogens* and do not require signature on the Convention. 49 The violence to which these children have been subjected qualifies as violation of the right to life and freedom from torture. Intent to cause such actions is irrelevant in determining the international liability of the State. 50 "The fundamental point in this case is to elucidate whether the violation of the right to life has occurred with the support or tolerance of the state, or whether that state has acted in such a manner that the violation has been carried out in the absence of any prevention, or with impunity." No doubt the judges did not set out to cause physical harm to the children, nor did they set out to violate human rights, but their intentions are not relevant to a determination whether the actions do in fact violate the petitioners' human rights.

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

399. Women and men are treated very differently when there are allegations of child sexual or physical abuse. Women, even though they are often not the direct abusers, are criminally charged and given stiff prison sentences. 51 But men, even those themselves convicted of child abuse or neglect,

47 Mexico 11_565a - Merits-Perez2.htm, Report N° 79/00, para 56.

48 REPORT N° 52/97, CASE 11.218, ARGES SEQUEIRA MANGAS v. NICARAGUA, February 18, 1998, ¶ 144.

49 REPORT N° 52/97, CASE 11.218, ARGES SEQUEIRA MANGAS v. NICARAGUA, February 18, 1998, ¶ 145.

50 REPORT N° 52/97, CASE 11.218, ARGES SEQUEIRA MANGAS v. NICARAGUA, February 18, 1998, ¶ 149.

51 February 8, 2001, Massachusetts Superior Court, Hampden County. The mother was found guilty of two counts of rape and battery by aiding her boyfriend to abuser her two daughters. He was sentenced to life and she could be.

<http://www.leadershipcouncil.org/1/lg/2001.html>; Fulton County, GA June 24, 2004. Mother got life plus 21 years for letting her boyfriend rape and impregnate her 11-year-old daughter. <http://www.leadershipcouncil.org/1/lg/2004.html>;

are given sole custody or unsupervised visitation with children – often the very ones they abused. 52 This is precisely what occurred to Petitioner A. (See paragraphs 235-253) It is not unusual that a father gets custody after having murdered his wife. In an Illinois case the court found that a single murder of the mother, even in the presence of the children does not make the father unfit. In contrast, a woman in West Virginia who maybe fired a gun but hurt no one was unfit. 53 Studies have repeatedly shown how differently women are treated in the courts. (See paragraphs 311-368)

400. A letter from NOW to the New York Supreme Court recalls an article in the Judges' Journal. "It discusses a new evaluator who was assigned to evaluate a young family. The father's apartment was a complete mess and he had no food in the refrigerator. The evaluator wrote that the father lives in a typical bachelor apartment. The mother's apartment was a little messy, but nothing like the father's and she had food in the refrigerator but not as much as preferred. The evaluator wrote the mother lives in a messy apartment with inadequate food. The evaluator had a supervisor because she was new and the supervisor asked if she saw what she had done. The evaluator couldn't believe her gender bias and quickly corrected the report." 54 This was a rare incident where the bias was corrected.

401. Legal Momentum has documented discrimination against women in federal grant programs under the National Fatherhood Initiative since June 2006. In spite of repeated attempts to correct the discrimination, they have met with no success. Exhibit 18. See also their letter as Exhibit 25.

402. By treating women differently from men, specifically by treating battered women and children differently from men, and by denying battered women a fair opportunity to present their cases, the U.S. has violated Article II. The right under Article II is not just a substantive right but applies whenever

August 19, 2005. Natalie Gibbons was arrested because she refused to send her children to the father after he had allowed them to watch pornography. She was held on 1 million dollars bond until public outcry forced the judge to lower it.

<http://www.leadershipcouncil.org/1/lg/2005.html>; Newark, New Jersey, 13 April 2006. Mother arrested for allowing a convicted sex offender around her son. <http://www.leadershipcouncil.org/1/lg/2006.html>.

52 Lewis v. Lewis, Docket No. 34, 031-CA, Nov 3, 2000, Louisiana Appeals Court. The husband admitted wide ranging abuse of the wife including injuries that caused her to be hospitalized. The court found that he was violent but gave joint custody anyhow. She appealed on the statutory language that said a presumption exists that if there is violence sole or joint custody to the abuser is not possible. The trial court decision was reversed and he received supervised visitation.

<http://www.leadershipcouncil.org/1/lg/2000.html>; Nevada, Family Court, May 2001. Two boys were taken from their religious mother and given to their father who had as the court described, "a history of sexually deviant behaviors." He had multiple incidents of pedosexual incidents with young females and was fascinated with naked pictures of young girls.

<http://www.leadershipcouncil.org/1/lg/2001.html>; Fremont Superior Court, CA, Jan. 11, 2002. The mother was found guilty of kidnapping her children after she refused to turn them over to her husband who was a convicted child molester who had committed lewd conduct with his 13-year-old niece in 1992. He was to be deported for this conviction but won his appeal at INS. In 1997 California granted him sole custody of their child while she got sole custody in Texas. Texas refused to send the child to California until California threatened to sue. At the criminal charges against her in California, the jury was not allowed to hear of his conviction for molest and his domestic violence to understand why she had refused to return the child. <http://www.leadershipcouncil.org/1/lg/2002.html>

Hoppell v. Hoppell, Court of Appeals of Ohio, 7th Appellate District, March 25, 2004. Though the father was convicted of sexual battery on his step-daughter, he was granted unsupervised visitation with his child. The trial court ruling was overturned on appeal. <http://www.leadershipcouncil.org/1/lg/2004.html>; In the Interest of A.S.W. Supreme Court of Missouri, 1 July 2004. Convicted rapist wins sole custody. He had sodomized two nieces 11 and 15 years old and spent 10 years in prison. After release, he had a head injury and the State took his child because he could not care for her. He had supervised visits but these were terminated because of "inappropriate behavior" and his parental rights were terminated. He appealed and was granted sole custody of the child. His sexual offenses were not even considered by the court.

<http://www.leadershipcouncil.org/1/lg/2004.html>; In re the Marriage of M.A. and M.S.M.A. Missouri Court of Appeals, Eastern District, Division 2, May 11, 2004 and November 29, 2004. The father confessed to molesting and sodomizing his infant daughter. He was convicted but yet granted unsupervised visitation with his son and joint legal custody with that very same daughter. His current wife was to supervise his visits with the daughter. The trial courts ruling was reversed on appeal. <http://www.leadershipcouncil.org/1/lg/2004.html>

53 Straton, Jack C., Ph.D., What is Fair for Children of Abusive Men?, Journal of the Task Group on Child Custody Issues of the National Organization for Men Against Sexism, Volume 5, Number 1, Spring 1993 (Fourth Edition, 2001).

54 NOW letter to Justice Lobis, New York Supreme Court, 20 February 2007

there is a differential in actual treatment as there is here. 55 A violation of Article II can be found not only in the application of a substantive right but also in the unjustifiable difference of actual treatment of persons. Even though many states have statutes that mandate consideration of domestic violence and a presumption against custody to batterers, the language is meaningless because it is not followed. (See paragraphs 325-329) In the state of Petitioner A, there is a law that allows victims of domestic violence to sue for damages. She was prohibited from filing such a claim but her husband was allowed to add a claim for so-called parental alienation and the judge gave him a \$30,000 judgment. (See paragraph 240) Expansive statements about provisions in the law mandating equality mean nothing if they are not implemented in reality. 56

403. The Commission has stated repeatedly that non-discrimination is a particularly significant protection that permeates the guarantee of all other rights and freedoms.⁵⁷ The rights of non-discrimination and equality are fundamental and have indeed reached the level of *jus cogens*. (¶ 164-5) All States are bound as are private parties. Gender discrimination impairs the exercise of all other rights. 58 “The inter-American system has recognized, for example, that gender violence is “a manifestation of the historically unequal power relations between women and men.” When the decision is based on discriminatory criteria, it is a violation of both Article II and Article XXVI. 59 The common use of PAS that is so biased against women is one tool used by the court to disguise the gendered nature of their discrimination. (See paragraphs 372-376) Every one of the women petitioners, every gender task force and every study of women’s experience in the courts has shown discrimination against women. They are held to different parenting standards. (See paragraphs 308, 356-364) Financially they were held accountable when the fathers were not. (See paragraphs 156, 169, 166, 170, 188, 191, 240, 247) In every case, fathers were not held accountable for violation of court orders while mothers were held to strict account. Discrimination against women permeated the petitioners’ cases from the beginning and continues to this day.

404. While the state may argue that statutes mandating equality exist, not only are they not implemented but it is not enough to simply provide for equal protection. The state must also take other measures to ensure the effective enjoyment of these rights. 60 Thus simply stating in the law that both parents are preferred equally or that no parent is preferred due to sex is not enough. These guarantees must be made real. When it is brought to the attention of the State that these *de jure* laws are not effective *de facto*, the State has an obligation to take action. The law and its implementation must ensure equality, not identity of treatment. (¶166). Therefore to treat women and men equally in terms of the custody of the children after divorce when they were not treated equally before and when they are not in the same situation (one is subject to violence from the other, one was the primary caretaker before) may be identity of treatment, but it is not equality. The need for equality may require member States to take affirmative action to eliminate discrimination especially in relation to known disadvantaged groups such as women. (¶166) When the protections necessary to exercise their rights fully are absent, Article II is violated. (¶ 171)

55 Report No. 51/96, *ibid*, paragraph 177-178.

56 REPORT N° 51/96[1], DECISION OF THE COMMISSION AS TO THE MERITS OF CASE 10.675, UNITED STATES[2], March 13, 1997 (¶178).

57 REPORT N° 40/04, CASE 12.053, MERITS, MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT, BELIZE, October 12, 2004. (¶163).

58 REPORT N° 4/01,* CASE 11.625, MARÍA EUGENIA MORALES DE SIERRA, GUATEMALA, January 19, 2001, ¶52.

59 REPORT N° 1/05, CASE 12.430, MERITS, ROBERTO MORENO RAMOS, UNITED STATES, January 28, 2005 (¶67).

60 REPORT N° 40/04, CASE 12.053, MERITS, MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT, BELIZE, October 12, 2004, (¶ 162).

405. Women are the victims of domestic violence in disproportionate numbers. (See paragraph 316) As in the instant cases, the judges refuse to hear testimony about domestic violence and child abuse or if they do hear it, they refuse to believe the women. If they are forced to concede there is violence, they assess blame to the victim rather than the perpetrator. (See paragraph 18) Such treatment of domestic violence is not isolated but is a deeply rooted pattern as found by the Commission in the Fernandes case. 61 The continuing pattern violates the obligation to prevent the practice as well. (¶ 56) This is especially salient since we are referring to children who are deliberately being put into danger by the State. In order for judges to be fair and impartial, “as the United Nations Human Rights Committee has stated ‘impartiality of the Court implies that judges must not harbor preconceptions about the matter put before them, and that they must not act in ways that promote the interests of the parties.’”⁶² It is clear from the actions of the judges in the petitioners’ cases that the judges did harbor preconceptions and acted in ways to promote the interest of the father. In the K.A. case, the judge even “filed a motion” against the mother from the bench. (See paragraph 109) In Petitioner C’s case, the judge wrote in his order that he invited the father to file a Motion for Change of Custody. (Paragraph 299) In case after case, mothers were prohibited from testifying, (see paragraph 55, 203), refused access to court (Exhibit 2, pages 210-212, paragraph 18, 54, 68, 125, 136, 166, 303,307) locked out of court (see paragraph 25), refused transcripts (paragraph 251), coerced to accept settlements, (see paragraphs 13, 163), threatened with jail or institutionalization (see Exhibit 2, page 100 and paragraphs 29, 57, 180-181, 186, 204, 208, 247-248), attacked because of their religion (Exhibit 2, pages 82 and 160) and prohibited from speaking her native language. (See paragraph 167)

406. In the Fernandes case, the judge twice agreed to hear an appeal for the perpetrator though the time line had clearly passed. Thus the judge clearly ignored the black letter law. Here too, many states have clear statutory prescriptions against ordering custody to abusers and clear mandates to consider domestic violence as detrimental to the child. Yet the judges blatantly ignore the black letter law. (See paragraphs 325-329, 359-366)

407. Evincing international recognition of this practice, the European Parliament in its report in September 2005 recognized plainly that violence against women and children in the family is a societal problem, a structural and historical problem with deep roots that is widespread and is gender based and motivated by power and control. They make it clear that such violence seriously affects mothers and children, that witnessing violence by children is a violation in itself, and that joint custody is risky. They point out that such discrimination against women is a human rights violation. ⁶³ The U.S. Congress recognized this as well in their Resolution in 1990. (See paragraph 369)

408. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) committee of the United Nations has likewise recognized that failure of the State to appropriately address domestic violence violates that Convention. In a case against Hungary, ⁶⁴ they held that, “Women’s human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.” (¶9.3) Nor can women’s rights be superseded by men’s rights in the custody of their children, especially when that man has exhibited violence.

409. The CEDAW committee held that while they appreciated the State’s existing efforts to deal with domestic violence, those efforts did not benefit the applicant nor address the necessary concerns.

61 REPORT N° 54/01, CASE 12.051, MARIA DA PENHA MAIA FERNANDES, BRAZIL April 16, 2001.

62 *Karttene v. Finland* (387/1989) at ¶ 7.2.

63 European Parliament, A6-0404/2005, Report, 9.12.2005 on the current situation in combating violence against women and any future action (2004/2220(INI)) Committee on Women's Rights and Gender Equality Rapporteur: Maria Carlshamre PE 364.709v02-00 2/17 RR\364709EN.doc. Exhibit 19

64 Communication No.: 2/2003, Ms. A. T. v. Hungary (Views adopted on 26 January 2005, thirty-second session)

(¶ 9.3) A simple allegation of “we’re trying” is not good enough. The State has to provide real protection that included prompt, thorough and impartial investigation and safe and prompt access to justice including free legal aid. The Congressional Resolution and the statutory presumptions are not enough. The state has an obligation to provide real protection to women and children who are victims of violence.

410. When the victim is prevented from exercising her rights and responsibilities on an equal footing with her spouse, as in the petitioners’ cases, the State has failed to take steps to ensure the equality of rights and balancing of responsibilities between the mother and the father.⁶⁵ This violates international standards of human rights especially Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women and it is a violation of Article II.

Article IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

411. The expression and dissemination of ideas cannot be separated. When one cannot impart ones thoughts, the right to free expression is violated.⁶⁶ When the mothers who are battered are told that they may not make any allegations of violence, they may not file any petitions with the court, they may not report to child protective services, they may not take the child for any medical or psychological examinations, they are being denied the ability to impart their thought that the child is being abused and thus their free expression is being violated. (See paragraphs 18, 24, 67, 172, 218-9, 327, 336, 363 and Exhibit 2, pages 105, 160)

412. The right to freedom of expression is not absolute but the Commission has held that constraints may be applied only after an idea or information is imparted, not before.⁶⁷ The Cuban dissenters were punished for criticizing the government and the revolution. Battered women are punished for criticizing the judiciary and child protective services. When the Arizona Battered Mother’s Custody Project report was released, it was originally scheduled to be in a statewide newspaper on a Sunday above the fold. It was censored and never appeared. Nor did any other newspaper cover the story.

413. Study after study and the experience of these petitioners shows that battered women who report the violence are punished by the loss of custody or contact with their children. Wilson reported as long ago as 1997 that a Ginger Hearn was told in court that she could not speak about sex abuse and was prohibited from taking her child to any therapy for sex abuse. K.A. was not allowed to testify or call others to testify about her children’s allegations of sex abuse. Women who make such claims are labeled paranoid. Gardner, who invented PAS, labeled the children who claim sex abuse paranoid or coached or lying.⁶⁸ The children are punished as well by being put into dangerous situations as illustrated by each petitioners case and the stories of the Courageous Kids (Exhibit 17 and 28) Petitioner J.H. ran away at 17. Navatril’s daughter ran away repeatedly and is on the run at the time of the filing of this petition. Petitioner B’s child locked herself in her therapist’s bathroom rather than visit her molester. This constitutes a denial of the freedom of opinion, expression and dissemination of ideas to force a mother by threat of injury to herself and her children to keep silent about the violence in her life. (See paragraphs 336, 346, and Exhibits 2, 6, 8, 10, 11)

414. In a case in New Jersey, the family court judge had removed the child because of the mother’s suspicions of abuse by the father. The decision was overturned on appeal.⁶⁹ The same principle was

65 Report No. 53/01, Case 11.565 Ana, Beatriz and Celia Gonzalez Perez, Mexico, April 14, 2001, ¶ 45.

66 REPORT N° 67/06, CASE 12.476, PUBLICATION, OSCAR ELÍAS BISCET *ET AL.*, CUBA, October 21st, 2006, ¶ 198.

67 Ibid, ¶199.

68 Wilson, Trish, How “Parental Alienation Syndrome” is used against Mothers and Children Who Allege Child Sexual Abuse, 1997.

69 *P.T. v. M.S.*, 325 N.J. Super. 193, 218-19, 738 A.2d 385, 399 (App. Div., 1999).

affirmed in New York 70 in which a trial judge's transfer of custody from the mother to the father based on the mother's suspicions of sexual abuse by the father was reversed on appeal. Not only are women not allowed to express their suspicions about child abuse, they are not even allowed to think it.

415. Petition Bradford was told this bluntly by the trial court when it wrote that "Mother's history of reporting abuse of (the child) is antithetical to an award of custody to her" and referred to her need to change "her deeply entrenched belief about a history of abuse." (See paragraph 221) In the K.A. case, the judge ordered her to counseling to change her views. (See paragraph 70) These statements illustrate the trial court's theory that Mother's *belief* in Father's possible abusiveness, even more than her *actions*, justified the transfer of the child into Father's custody. 71 In fact in every state, parents are legally obligated to report to authorities if they have any reasonable grounds for suspicion of violence or abuse to a child. So the mothers are put into a no win situation. If they comply with state law and report suspicions, they will lose their child to the abuser and be ordered by the court not to report.

416. It would appear that the goal of the court is to suppress any and all investigation, opinion, expression and dissemination about the volume and seriousness of domestic violence and sex abuse toward women and children in family court in violation of Article IV.

Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

417. It is customary in cases of domestic violence or child abuse for the court to order a psychological exam. Often repeated examinations are ordered. (See paragraphs 24, 37, 49, 77-8, 228, 241, 243, 269, 272-3, 275, 296) Often, examiners who have little or not knowledge or experience with domestic violence or child abuse administer and/or interpret the results with devastating results for the victims. (See paragraphs 337-340, 344) Battered women are often misdiagnosed as borderline personalities while abusers appear to be quite upstanding gentlemen. 72

418. It is common during these lengthy cases, for the protective parent to be repeatedly accused of being insane, paranoid or having mental problems. (See paragraph 57 and Exhibit 2, pages 50, 117, 219, 221, 299) One author, McDonald, knew of one case in which the court said the mother was insane and ordered her to psychiatric treatment because she believed her toddler had been sexually abused. A few years later, when the child attempted suicide, the abuse was confirmed. Often the protective parent is labeled paranoid for thinking abuse has occurred and vengeful for reporting it. 73 On the contrary, even when the father is ordered to have a psychosocial examination, the order is not upheld. (See paragraph 217)

419. If the law were applied equally, American law requires under Federal Rule 35 that the mental or physical condition of the party sought to be examined be "in controversy" and that "good cause" be shown for the examination. Good cause is not met by mere conclusory allegations of the pleadings nor by mere relevance to the case. 74 Rule 35 requires discriminating application by the trial judge, who must decide, as an initial matter in each case, whether the party requesting a mental or physical examination has adequately demonstrated the existence of the requirements of "in controversy" and

70 *John A. v. Bridget M.*, 16 A.D.3d 324, 791 N.Y.S.2d 421 (1st Dept., 2005), *leave to appeal denied*, 5 N.Y.3d 716

71 Private communication to attorney.

72 Herman, Judith M.D., *Trauma and Recovery: The Aftermath of Violence – from Domestic Violence to Political Terrorism*, Basic Books, 1992.

73 McDonald, Marilyn, *The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases*, Court Review, Spring 1998; Bancroft, Lundy R., *Understanding the Batterer in Custody and Visitation Disputes*, 1998.

74 *SCHLAGENHAUF v. HOLDER*, 379 U.S. 104 (1964) , p. 118-120.

"good cause." A person requesting a mental or physical examination of a party when that party has not asserted his mental or physical condition either in support of or in defense of a claim has the burden to show that the condition sought to be examined is really and genuinely in controversy and that good cause exists for the particular examination requested.

420. Such discriminating presentation and analysis is rarely if ever done in custody cases. As a result, the victims of abuse are often labeled neurotic, psychotic, alienators, having Munchausen's Syndrome and a variety of other negative labels simply for trying to protect themselves and their children. This diagnosis often follows them for years. Unless the record is then sealed, these erroneous and negative evaluations of the victim and sometimes the child can become public and whether sealed or not are used against the victim to deprive her of her rights in violation of Article V.

Article VI. Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

421. When a person is separated from the family for no justifiable reason that violates Article VI. 75 To refuse to allow a person to be re-united with his/her family, is also a violation of article VI. 76 Women who report violence are often separated from their children, sometimes without any contact, when they have never caused that child any harm. Every one of these petitioners has been separated from their child(ren) or in D.H.'s case, his mother, for periods of time ranging from weeks to years without any contact though none ever inflicted any violence or abuse on the child(ren).

422. The United States Supreme Court has held that parenting is a fundamental right protected by the Constitution and that it is a denial of Due Process to treat parents differently. 77 The Inter-American Commission has held likewise that the right to establish and protect the family is so basic it cannot be derogated.⁷⁸ Even when a person is imprisoned after being found guilty of a crime, the State is obligated to take steps to effectively ensure the right to maintain and cultivate family relationships. (¶237) If the State is obligated to do that for a convicted prisoner, they are certainly obligated to do that for an innocent child and a battered mother. The practice of completely cutting off the contact between a mother who alleges abuse and the child is a violation of the rights of both the child and the mother under this article and the Convention on the Rights of the Child (CRC). Article 2 of the CRC requires States to protect children against discrimination or punishment because of the opinions, actions or beliefs of their parents. Article 9 requires that children not be separated from their parents without reason and due process. Even when they are separated, the State shall respect the child's wishes to remain in contact with the other parent.

423. The State does have the obligation to protect the rights of fathers as well. But they cannot restrict the rights of one person so as to damage the fundamental rights of another. 79 They cannot deprive the mother or child of their rights in order to protect the rights of the fathers, especially when their right is based on discriminatory concepts of patriarchy and ownership of children.

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

75 REPORT N° 56/06, ADMISSIBILITY, PETITION N° P8-03, WAYNE SMITH, UNITED STATES, JULY 20, 2006, (¶2).

76 RESOLUTION N° 11/82, CASE 7898, CUBA, March 8, 1982.

77 STANLEY v. ILLINOIS, 405 U.S. 645 (1972).

78. REPORT N° 67/06, CASE 12.476, PUBLICATION, OSCAR ELÍAS BISCET *ET AL.*, CUBA, October 21st, 2006, ¶ 236.

79 REPORT N° 109/99, CASE 10.951, COARD ET AL. UNITED STATES, September 29, 1999, ¶ 59.

424. The children of battered women are in need of particular protection. Between 25-63% of domestic violence victims are pregnant when beaten. (See paragraph 316) In one study, 53% of the wife batterers had sexually or physically abused their children as well. In a longitudinal study of the children of battered women, 63% of the men who abused their wives also abused their children and in a study of 1,000 battered women, 70% of the children were also abused. For those children who observed inter-parental abuse, 82% were victims themselves. They also noted that daughters of abused women are six and one-half times more likely to be sexually abused as girls from non-abused families. 80

425. Multiple studies have established the high overlap between battering and incest perpetration 81 These studies, taken together, indicate that a batterer is about four to six times more likely than a non-batterer to sexually abuse his children. These statistics are in line with studies of batterers' risk to physically abuse children. The largest study of this kind showed batterers seven times more likely than non-batterers to frequently hit their children (Straus). About half of incest perpetrators also batter the children's mother. 82 The American Psychological Association publication on family violence recommended that any history of sexual assaults against the mother be treated as a warning sign of possible sexual or physical abuse of the children. 83 Yet these are the very men receiving custody or unsupervised visitation in nearly 70% of the cases. These are the very men who received custody in each of the petitioners' cases.

426. Other countries are much more aware of the risk to mothers and children of unrestricted visitation let alone custody. 84 The Gonzales case currently pending at the Inter-American Commission is an example of the lack of protection for battered women in the U.S. 85 In June 1999, Jessica Gonzales' estranged husband abducted her three daughters, in violation of a domestic violence restraining order. Ms. Gonzales called and met with the police repeatedly to report the abduction and restraining order violation. Unfortunately, her calls went unheeded. Ten hours after her first call to the police, Ms. Gonzales' estranged husband arrived at the police station and opened fire. The police immediately shot and killed Mr. Gonzales, and then discovered the murdered bodies of the Gonzales children – Leslie, 7, Katheryn, 8, and Rebecca, 10 – in the back of his pickup truck. Ms. Gonzales filed a lawsuit against the police, but in June 2005, the Supreme Court found that she had no constitutional right to police enforcement of her restraining order. In December 2005, Ms. Gonzales filed a petition with the Inter-American Commission on Human Rights, alleging that the police's actions and the Supreme Court's decision violated her human rights. A hearing was held 5 March 2007 at the IACHR in Washington D.C.

427. The U.N. Declaration Against Violence recognizes that battered women and their children may need specialized assistance including treatment and counseling for physical and psychological abuse. As special rapporteur on violence, Ms. Radhika Coomaraswamy reported in 1999 that overall states are failing in their responsibility to investigate, prosecute and prevent domestic violence instead viewing it as a private family matter. The Council of Ministers in the European Union recognizes it as well. 86 The European Court of Human Rights has found that a states failure over four years to protect children from serious neglect and abuse of which they were aware was a breach of Article 3 prohibiting torture

80 Straton, Jack C., Ph.D., What is Fair for Children of Abusive Men, *Journal of the Task Group on Child Custody Issues of the National Organization for Men Against Sexism* Volume 5, Number 1, Spring 1993 (Fourth Edition, 2001).

81 Herman, 1981; McCloskey et. al.; Paveza; Sirls and Franke; and Truesdell et. al.

82 Herman, 1981; Sirls and Franke; Truesdell.

83 Bancroft, R. Lundy, *The Connection Between Batterers and Child Sexual Abuse Perpetrators*, 1997.

84 *Transnational Litigation*, Merle Weiner, 2003, *Journal of Gender, Social Policy and the Law* Vol. 11(2) p. 749.

85 *Jessica Gonzales v. United States of America*, Petition No. P-1490-05.

86 Recommendation No. R(84)4 of the Council of Ministers to Member States on Violence in the Family. 25 March 1985, at the 385th meeting of the Ministers Deputies. [http://www.social.coe.int/en/cohesion/fempol/recomm/family/R\(84\)4.htm](http://www.social.coe.int/en/cohesion/fempol/recomm/family/R(84)4.htm), accessed 14 January 2007.

and inhuman treatment or punishment.⁸⁷ The test under Article 3 does not require that the victims show that “but for” the failing of the state they would not have been injured. It is enough that the State failed to take reasonably available measures that would have altered the outcome or mitigated the harm.
88

428. The DeShaney case at the U.S. Supreme Court stands in express violation of Article VII that children are entitled to special protection, care and aid. ⁸⁹ As stated above (See paragraphs 393-4), though the State knew of the beatings by father, they did not remove the child until he suffered permanent brain damage and was rendered profoundly retarded. When he and his mother sued, the Supreme Court held that the state’s failure to provide the child with adequate protection against his father’s violence did not violate his rights under the substantive component of the Due Process Clause.

429. The court reasoned that a state’s failure to protect an individual against private violence generally does not constitute a violation of the Due Process Clause, because the Clause imposes no duty on the State to provide members of the general public with adequate protective services. The court interpreted the Clause as a limit on power, not a guarantee of minimal standards of safety and security. The court denied any affirmative duty on the part of the state to prevent harm to children. On its face, this ruling violates Article VII.

430. The court rejected the mother’s argument that since the state knew of the danger, they had an affirmative duty to protect. According to the Supreme Court that duty only arises when it is the state that has imposed some limitation on the person e.g. by imprisonment or institutionalization. The Supreme Court said that because the harms to the child occurred in the custody of his father, the state had no duty. However, it was the state that placed the child in that home during the divorce; it was the state that returned the child to the father after the child had been hospitalized from several beatings; it was the state that was charged with enforcing both criminal and civil child abuse laws to protect children. The State failed on all accounts in blatant violation of Article VII.

431. Rather than offering special protection, care and aid to women and children, nearly three-fourths of the states have laws on the books that treat sexual abuse of a family member less seriously than the same sexual abuse of a stranger. The states that do not have more lenient laws for family members are Arizona, Arkansas, California, Colorado, Connecticut, Illinois, Kansas, Maryland, Michigan, Mississippi, Montana, New Hampshire, New York and Rhode Island. In Utah, prison sentences for the rape of a child, sodomy of a child or rape of a child with an object can, under certain conditions, be suspended if the perpetrator is a parent, stepparent, adoptive parent, or legal guardian of the child victim. In Hawaii those who have committed felony sexual assaults on children who they are related to by blood can continue to reside in the same dwelling unit to avoid prison. Incest offenders rarely go to jail. Only 4% of reported cases go before a jury. The vast majority result in probation, suspended sentences or short sentences. This is a gender issue since 97% of the abusers are male. ⁹⁰ In fact, most abuse is perpetrated by males within the family. A study in 2005 found that 71.2% of total abuse is perpetrated by males: 34.9% by fathers, 24.2% by boyfriends of mother, 4.5% by other male relatives, 2.3 by step fathers, 1.5% by male babysitters, and .8 by fosters fathers. ⁹¹ The more lenient punishment for sexual abuse by a family member is in blatant violation of Article VII. Rather than special protection, children abused by a family member get less protection in clear violation of Article VII. The 36 State statutes that have more lenient laws when abuse is done by family members violate Article VII *per se*.

⁸⁷ Z and Others v. United Kingdom, no 29391/95, ECHR 2001-V, §§74-75.

⁸⁸ Case of E and Others v. United Kingdom, no. 33218/96, ECHR 26 November 2002.

⁸⁹ DeShaney v. Winnebago Cty. Soc. Servs. Dept., 489 U.S. 189 (1989).

⁹⁰ Oprah, Jan Goodwin, 320 November 2006.

⁹¹ Schnitzer and Ewisnoe (2005).

432. Sexual violence is without a doubt a serious violation of human rights and rape is a form of torture.⁹² When children are given into the custody of abusers, the State is complicit in the foreseeable injury that will come to them. (See paragraphs 121-142) The anguish and suffering imposed on the mothers also constitutes a violation of the right to humane treatment. (¶53) In these cases mothers, knowing their children are being or will be sexually abused, must stand by and not only watch this happen but turn over these children for torture, forcing them to go with the abuser. (See paragraphs 32, 118-120, 193 and Exhibit 2, page 105, 118, 239-240, Exhibit 17 and 28)

Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

433. This right applies to more than just the criminally accused.⁹³ By ordering women not to bring up issues of abuse in custody cases and by punishing those who do, the U.S. is violating the right of the victims to have access to court to obtain respect for legal rights and protection from violation of the fundamental right of both access to courts and custody of one's own child.⁹⁴ (See paragraphs 18, 54, 68, 125, 136, 166, 205, 240, 251, 303.)

434. Due process has been absent in many of these cases. Mothers have even been locked out of the court room and lost contact with their children from negative testimony never divulged to them.⁹⁵ In the Dombrowski case, decisions were made without a hearing (paragraph 15-17) and decisions were held behind closed doors, evidence of violence was excluded, the time to litigate such an important issue as child custody was extremely limited (paragraph 25). The experiential studies also showed that the time allocated for such an important decision as child custody was generally less than 20 minutes and often less than 10. (See paragraphs 357-365)

435. In the Titelman case, the court held *ex parte* hearings, did not issue finding of fact or conclusions of law, withheld evidence, refused to look at domestic violence, gave mother only limited time to present her case, and gave no notice of hearings. (See paragraph 28 and Exhibit 2, p. 100, 111, 118, 152, 166, 190-191) Numerous conflicts of interest were found (Exhibit 2, pages 106-7, 110, 122-23, 185) yet judges refused to recuse themselves (Exhibit 2, page 184, 210) and ignored evidence (Exhibit 2, page 121).

436. The violations of due process in the K.A. case are so numerous over 14 years they can hardly be catalogued. The court refused to provide court reporters (paragraphs 52, 86, 96), suppressed evidence of violence and refused testimony from mother and her witnesses (paragraph 54, 90), conducted *ex parte* communications and hearings (paragraphs 48, 75, 86, 95), altered the court record (paragraphs 63, 96), refused mother a transcript (paragraph 100), filed a motion from the bench against the mother (paragraph 109). Eventually a judge was sanctioned (paragraph 83), a state official was reprimanded (paragraph 52) and the evaluator was fined and lost his license to practice (paragraph 93). Still, the children were never returned.

437. The due process violations in the Shockome case are also numerous including holding hearings without notice (paragraph 158), transferring custody without a hearing (paragraph 166), refusing to finalize orders so no appeal could be taken (paragraph 167 and 173), ruling 1.5 years after taking the

92 REPORT N° 53/01, CASE 11.565 ANA, BEATRIZ AND CELIA GONZALEZ PEREZ, MEXICO, April 4, 2001, ¶ 45, 47.

93 Report No. 51/96, *ibid*, ¶ 180.

94 In *Stanley v. Illinois*, *op. cit.* the U.S. Supreme Court found that parenting is a fundamental right.

95 Sutherland, T.J., R.N. B.S.N. P.H.N., J.D., High Conflict Divorce or Stalking by Way of Family Court? The Empowerment of a Wealthy Abuser in Family Court Litigation: Linda v. Lyle - A Case Study, 1995 & 2005 Minnesota Center Against Violence and Abuse.

children (paragraph 174), transcripts missing (paragraph 176), issuing child support without a hearing (paragraph 182), and took six years to grant a divorce (paragraph 190).

438. Witnesses for petitioner Navatril were not allowed to testify (paragraph 204). National studies support that these problems are not isolated but commonplace. (See paragraphs 352-363 and Exhibits 6, 7, 8, 10, 11)

439. In responding to issues of domestic violence and child abuse that constitute a fundamental violation of human rights, the United States is under an obligation to investigate such allegations with due diligence. Yet in both De Sheney supra and Chrissy F supra, while the government admits that parenting is a fundamental right, the government said it has no obligation to investigate harm or violence to children, a *per se* violation of the Declaration.

440. Studies and the experiences of the petitioners show that resort to the courts is more chimera than civil procedure. In Florida, no records are kept of family court hearings. In Arizona, the Supreme Court passed new rules for family court that neither the rules of evidence nor rules of civil procedure apply unless specifically requested. Yet 80% of the petitioners in the family courts in Arizona are without lawyers so they would never know to ask. Though family law is a civil court, victims are held to a criminal standard of proof to show abuse while perpetrators are only held to a civil standard to show their alleged parenting skills. (See Exhibit 8 and 28)

441. When hearings are not conducted in a prompt and efficient manner thereby creating a risk of impunity that is a violation of the Declaration. Holding a 10 minute or less hearing on such an important issue as child custody that will impact on the child for her/his entire life is simply not acceptable. This is a very complex and difficult matter and to restrict the parents to such a short time that they cannot present a case is a violation. (See paragraphs 352-363 and Exhibits 6, 7, 8, 10, 11) Due to the failure of the court to properly address instances of violence, the child will have already been irreparably harmed before the mistake can be corrected.

442. The U.S. cannot escape its liabilities because custody cases are handled in state not federal courts. "Likewise, international law assigns the State international responsibility for the behavior of its institutions and agents when they are operating in that capacity, even if outside the normal scope of their functions. This includes the higher organs of the State, such as the Executive, Legislative, and Judicial Branches, and acts and omissions of public officials or agents acting in their place."⁹⁶ Brazil is also a federal state like the United States but, "Since Brazil is a Federal State, it is the national State that must be held responsible in the international sphere." (¶42) When the government knows of a threat to life or health, they must act with due diligence in investigation of the issue. Here the petitioners have presented overwhelming evidence, time and time again to the courts about the violation of human rights of their children and themselves. Yet the courts continue to ignore it.

443. While the federal courts do not deal with domestic violence or child abuse in the context of divorce, they do in the context of Hague Convention cases. The Convention relating to international abduction of children was domesticated into U.S. law at 42 USC 11601 et seq. The state and federal courts have concurrent jurisdiction; however most cases have been heard in federal courts. The federal courts as well as the state have, as a rule, failed to protect women from domestic violence and children from child abuse as required under the Declaration of the Rights and Responsibilities of Man.

⁹⁶ REPORT Nº 24/98, CASE 11.287, JOÃO CANUTO DE OLIVEIRA, BRAZIL , April 7, 1998, (¶39-40).

444. When the protective mother has tried to show proof of abuse, the court has refused it saying that it is not the type of evidence relevant in this type of proceeding. 97 It is hard to understand how a protective parent could show grave risk of harm or intolerable conditions without this type of evidence. When the protective parent does introduce evidence of violence toward herself and other children, the court has dismissed it as not relevant because it only concerned the relationships between her and her husband and father-in-law and not the child. 98 This indicates complete ignorance of the impact of domestic violence on children and the increased risk for children in the household. Even when contempt citations exist in the U.S. and criminal complaints in Mexico and the grandparents have a civil judgment against the father for the death of their daughter, the court has held that is not sufficient evidence that the children would face grave risk of harm if returned to the father. 99 The court has required more than minimal abuse to find grave risk and verbal and physical abuse that only included shoving did not meet their standard. Though the child and mother had been held at gunpoint at the airport, the father disclaimed knowledge and the court accepted that. If the child returned to Mexico, she would be separated from her siblings but the court said it was then up to the mother to simply return to Mexico too. 100 It is apparent from this comment that the judge has no awareness of domestic violence nor the potential for serious harm to the mother. Her right to be free from violence was not considered. The cases illustrate the federal courts failure to understand or take seriously domestic violence and its impact on both mother and child. The court seems to think that the mother is obligated to continue to experience violence so the father can have access to the child.

445. In some cases, the federal courts did credit the domestic violence and refuse to return the child. When the evidence of the father's abuse of both child and mother is extensive and long lasting, the court has ruled that the children would be at grave risk if returned. 101 The evidence showed that the child was beaten at 6 years-of-age and missed a week of school. He was beaten about two times a month while the mother was also beaten one to two times a month. The mother was pushed down the stairs when she was pregnant, choked, had a pillow put over her head, stomped on, broke her nose, and cut her lip with a cup. He also had loaded handguns in the house. While he did not beat the younger child, she did witness the abuse. The police refused to intervene and when the mother's sister did, he threatened her too. The children and mother had PTSD and physical symptoms such as not sleeping and nightmares. This behavior is very similar to what petitioner Dombrowski has had to endure. Yet in her case, custody of the child was given to the perpetrator.

446. A long history of abuse especially when the perpetrator assaults others outside the family and violates court orders may also result in a finding of grave risk of abuse for the children. 102 In Walsh, the court favorably cited social science research that has proven that serial spousal abusers are also likely to be child abusers. The court also referred to state and federal laws that recognize that children are at increased risk of physical and psychological harm when in contact with abusers citing the 1990 Congressional Resolution. They gave no credence to the promises the father had given because he had a history of violating court orders. All of the petitioners have experienced long histories of abuse with abusers who repeatedly violate court orders with impunity. In Petitioner C's case, the father has a 20 year history of domestic violence through three wives. Yet the abusers were given custody of the children by the courts.

447. In the Hague Convention context, the federal court has held that spousal abuse must be considered and the reaction of the child may be more important than the actual behavior of the father.

97 Janakakis-Kostun v. Janakakis, 6 S.W. 3d 843 (Ky. Ct. App. 1999).

98 Nunez-Escudero v. Tice-Menley, 58 F 3d 374 (8th Ct. 1995).

99 March v. Levine, 136 F Supp 2d 831 (U.S. D.C. – MD TN 2000).

100 Whallon v. Lynn, 230 F 3d 450 (1st Cir. 2000).

101 Rodriguez v. Rodriguez, 33 F. Supp 2d 456 (D. Md. 1999).

102 Walsh v. Walsh, 221 F 3d 204 (1st Circuit, 2000).

When the child is so fearful or traumatized, then the child has to be protected. 103 Petitioner J.H. was 10 years old when he was suddenly taken from his mother where he felt safe and had lived his entire life. He describes his years of fear and anguish and the impact it has had on his adult life. Though he told the court, as did petitioner Shockome's children and Dombrowski's child and Navatril's child and Horton's child and Petitioner C's child that they did not want to be with their abuser fathers and they were not safe, the court did not act to protect them.

448. While the federal court does not look at the child's "best interest", they do look at the child's interest and whether there is a real risk of being hurt physically or psychologically and whether the child can be protected in some other way. 104 The appeals court stated that "...U.S. policy with regard to the Hague Convention, (which) holds that sexual abuse by a parent constitutes an intolerable situation and subjects the child to grave risk." (p. 15) The court opined that it is the policy of both the U.S. and Massachusetts to protect children from sex abuse when there is credible evidence particularly of a young child by a parent.(p. 16) The Department of State has said, "An example of an "intolerable situation" is one in which a custodial parent sexually abuses the child. If the other parent removes or retains the child to safeguard it against further victimization, and the abusive parent then petitions for the child's return under the Convention, the court may deny the petition. Such action would protect the child from being returned to an "intolerable situation" and subjected to a grave risk of psychological harm." (p.16) 105 This policy has clearly not been followed in the petitioners cases. J.H. and his sisters were left with their father after clinical findings of sexual abuse. Wendy Titelman's children were put with their father after substantiated findings of sex abuse.(Exhibit 2, pages 298-355) and even after the children reported abuse time and time again. (Exhibit 2, pages 87-89, 92, 101, 109, 116 119, 172-3) Claudine Dombrowski's child was put with a man who brutally beat the mother and had eight criminal convictions including three for beating her. Even when the child spoke out, she was ignored. (See paragraph 26) The D.H. children repeatedly disclosed the abuse to no avail. (See paragraphs 49, 64, 82) Shockome's children told the court and law guardian they hated them and wanted to go home to their mother (Paragraphs 170, 181). Navatril's daughter spoke to the police, her lawyer, the court, the public and on television. (See paragraphs 199-200, 205-212) Horton's child spoke out. (See paragraph 227) Petitioner A's children were placed with the very abuser she had been warned by the state agency to flee. (See paragraph 236) An investigator said there was no doubt Petitioner B's child had been molested. (See paragraph 268) Petitioner C's child has spoken out. (See paragraph 308) Still they all were returned to the abusers – an intolerable situation.

449. One reason why the courts have not complied is illustrated in Daniapour when the court says, "Accusations that a parent has sexually abused a young child in private are difficult to prove. They are also difficult to disprove: And claims of abuse, whether brought in good faith or for other reasons, are sometimes used as weapons in divorce and custody battles." (p. 26) This statement is analogous to the charge to the jurors by Lord Hale in the 17th century when he said, "Rape is a charge easily made and difficult to defend." Today we recognize not only the falsity of that statement but the discrimination against women embedded in it. It took until 1963 in the U.S. before courts began to disavow Lord Hale's discriminatory concept and refuse to issue the instruction. It has been proven time and time again that there is no epidemic of false abuse claims by mothers or children in divorce cases. (See footnotes 19 and 73 and Exhibit 9) By adhering to this belief, courts continue to violate the human rights of victims of the most severe and harmful violence – physical and sexual abuse by a parent to their child.

103 In re Tsarbopoulos, 2000 WL 1721800 (9th Cir, 17 November 2000); 176 F. Supp 2d 1045 (E.D. Wash. 2001).

104 Blondin v. Dubois, 238 F 3d 153 (2nd Circuit, 2001).

105 Daniapour v. McLarey 286 F 3d 1 (1st Cir. 2002).

450. Attempts at reform, such as the 1990 Congressional Resolution, are not enough. The situation has only worsened since 1990. There must be actual reform resolving the violation. 106 While the victim, as a parent, has the right and duty to protect the best interests of her minor child, the law as practiced strips her of the ability to do that. (¶42)

451. The informality often sought in family court is no excuse for violating human rights. The U.S. Supreme Court itself has held that, “Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated is frequently a poor substitute for principle and procedure.” Even though the family court might perceive itself as acting in the best interest of the child in a more informal procedure, due process is still a primary and indispensable necessity. 107 Good intentions are not the gravamen. Results are. Research and experience over more than 20 years and countless damaged protective mothers and children has taught us that proper court procedures are a better protection than court promises.

452. The state cannot escape responsibility because the violation of human rights is actually being done by a private person, a parent. The Commission has said very clearly that there is an obligation to respect human rights as between private persons. 108 An act by a private person can lead to international responsibility because of the lack of due diligence to prevent the violation or to respond to it. The U.S. Supreme Court decision in DeSheney clearly violates this principle. In DeSheney, the court used the power of the state to put the child in the custody of his father though they knew of the foreseeable harm to the child. They said the state is not obligated to take action to protect the child violating both Articles VII and XVIII.

453. The Commission said in the Simone Andre Diniz case that the obligation to prevent violations between third persons is also based on the fact that since states determine their own internal legal order including private law, they must ensure that human rights are also respected under private law. Absent that, the state may be responsible for violation of rights. So states must ensure that in their domestic law, every person has access to a simple and effective remedy without discrimination. 106

454. By the U.S. courts refusal to properly consider the allegations of violence, especially when the violence is overwhelmingly directed at women, the court is complicit in the violation of human rights as defined by the Declaration of the Rights and Responsibilities of Man and the OAS Charter and the State is therefore liable. The State has an obligation to provide effective judicial remedies and a violation of rights carried out by an act of public authority is imputable to the State. Acts of private persons or even unidentified persons can be attributable to the State if they fail to act with due diligence to prevent the violation or respond to it. 109

455. The State cannot excuse its lack of diligence or due process by claiming an excessive work load. Even if true, an excessive work load of the judiciary does not release the state from its obligations. 110 In the K.A. case, the state refused to do a thorough investigation (paragraphs 38 and 47) and refused to admit evidence of abuse (paragraphs 55 and 90) The court in Dombrowski’s case also refused to allow in the evidence and she was told she could not report abuse to the police. (See

106 REPORT N° 4/01, CASE 11.625, MARÍA EUGENIA MORALES DE SIERRA, GUATEMALA, January 19, 2001, ¶28.

107 Application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527, p.18- 20, (1967).

108 REPORT N° 66/06, CASE 12.001, MERITS, SIMONE ANDRÉ DINIZ, BRAZIL, October 21, 2006 (¶ 41-2).

109 REPORT N° 4/94, CASE 10.517, EL SALVADOR, February 1, 1994, paragraphs g and h in second section 3.

110 REPORT N° 52/97, CASE 11.218, ARGES SEQUEIRA MANGAS v. NICARAGUA, February 18, 1998, para 133.

paragraphs 17-18) Petitioner C was also ordered to make no reports of abuse. (See paragraphs 218-9 and 334) When there is no investigation, Article XVIII is violated. 111

456. Under international law, “Due diligence” is not a subjective factor, but rather the very content of the pre-existing obligation which the State is responsible for violating. The State's liability does not depend on the existence of an act of malice, negligence, or carelessness by any individual agent; it may consist of a general defect or a flaw in the structure of the State, or in its public administration, and may have nothing to do with any subjective intention.” 112. Though the petitioners do believe that the acts are motivated by prejudice and bias based on gender discrimination, motivation does not determine whether the States obligation has been violated. The facts clearly show that children are being put in harms way regardless of intent. The existence of gender bias adds to the gravity of the violation not to the fact of it.

457. Failure of due diligence resulting in impunity for violations of women’s rights has been addressed by several reports to the Commission. In a report in 2002, 113 “The Rapporteurs emphasize that States are obliged to apply due diligence to prevent violence against women, to prosecute and punish those who perpetrate acts of this nature, and to adopt measures to eradicate such violence in their societies. However, the declaration highlights that the fact that state agents and private persons and entities are not being held to account for their actions creates a climate of impunity that encourages the persistence of these violations of rights. The Rapporteurs urge states to take immediate “action to bring their laws and practices into conformity with these standards.”

458. In 2004, the IACHR rapporteur stated:

Firstly, we should point out that violence against women is a human rights issue that not only affects women but also their sons and daughters, their families, and society in general. As described in the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, violence against women is an expression of discrimination and is rooted in “historically unequal power relations between women and men .” 114

459. The report goes on to point out that due diligence for prevention and investigation of such violence is an obligation of the State. Failing to properly investigate abuse and placing children directly in the hands of abusers does not constitute due diligence and is a violation of the State obligation. The State is obligated to investigate and ensure the full enjoyment of the rights. If the government has supported or acquiesced in the behavior or allowed it to take place without taking measures to prevent it or to punish those responsible, it is liable. 115 The government has a duty to organize the government apparatus, especially the public power including the judiciary, to ensure free and full enjoyment of human rights. (¶ 43)

460. The right to resort to court for protection of fundamental rights means a court with a minimum of due process. The right to trial means not only trial to be held within a reasonable time but the need to provide judges with the necessary time to enable them to properly assess the allegations of both

111 REPORT N° 86/99 CASE 11.589 ARMANDO ALEJANDRE JR., CARLOS COSTA, MARIO DE LA PEÑA, AND PABLO MORALES CUBA September 29, 1999.

112 REPORT N° 49/96, CASE 11.068, ELEAZAR RAMÓN MAVARES vs. REPUBLIC OF VENEZUELA, October 17, 1996, ¶ 114.

113 Press Release, N° 10/02, THE THREE RAPORTEURS ON THE RIGHTS OF WOMEN EXPRESS THEIR CONCERN FOR THE SITUATION OF VIOLENCE AND DISCRIMINATION AGAINST WOMEN.

114 PRESS COMMUNIQUE, N° 20/04, THE IACHR SPECIAL RAPORTEUR EVALUATES THE EFFECTIVENESS OF THE RIGHT OF WOMEN IN GUATEMALA TO LIVE FREE FROM VIOLENCE AND DISCRIMINATION.

115 REPORT N° 54/01, CASE 12.051, MARIA DA PENHA MAIA FERNANDES, BRAZIL April 16, 2001, ¶ 42.

parties, form a conviction as to the facts, and arrive at a decision through sound reasoning.¹¹⁶ The practice of setting 5-10 minute hearings on such an important issue as custody of a young child violates the right to resort to the courts.¹¹⁷ In some cases, protective parents have been prohibited from resorting to court at all. (See paragraphs 18, 25, 55, 167, 173, 204) The studies also show that the evaluators are gatekeepers to access to the court. Since they are not competent, the court is not accessible to the litigants. (See paragraphs 335, Exhibit 2, pages 106, 176, 179) When the protective parents are prohibited from using the courts Article XVIII is violated.

461. The right to a fair trial must also include the right to the fundamental procedural protections of due process.¹¹⁸ This right is violated when a parent, especially a victim of violence who is concerned about violence being done to the children, has only 10 minutes to present her case. Victims must have sufficient time to prepare. Further the court must have sufficient time to carefully weigh the evidence and the arguments of fact and law on the basis of sound reasoning. On the other hand, the court should not make a decision on moving children 1.5 years after the deed is done or take 6 years to grant a divorce as happened to Shockome (See paragraphs 174, 190) Decisions should state findings of fact and law with appropriate reasoning. (¶ 182) Such protections are extremely rare in child custody cases. Even when findings of fact are required, they are often abbreviated such as, “based on the testimony of *some expert*, the decision was made”, or the court improperly delegates its authority such that the recommendation presented by the court appointed evaluator is simply adopted wholesale. This is also a violation of access to court. A failure to make clear and founded relationships between the facts and law in such serious and complex cases as child custody when violence is alleged is a violation of Article XVIII. (¶ 184) Failure to make findings of fact and law occurred to Titelman, (paragraph 28) and is commonly found in the studies. (Exhibit 8, 10, 11)

462. Failure to provide a remedy for the violation of fundamental rights has been held by the European Court of Human Rights (ECHR) to be a violation of due process.¹¹⁹ The IACHR has held that a lack of an effective judicial remedy is not just an exception to the exhaustion doctrine, but a substantive violation on its own.¹²⁰ Most of the petitioners filed at least one complaint against a judge. (See Exhibit 2, pages 213-214, and paragraphs 66, 75, 83, 108, 111, 113, 143, 191, 209) While several judges were removed in the K.A. case, only one was given a private reprimand. (See paragraph 83)

463. However, U.S. Supreme Court jurisprudence has made it clear that there is no remedy when fundamental rights are violated by judges. In Stump v. Sparkman¹²¹, a mother asked the court to order her 15 year old somewhat retarded daughter sterilized. Without any notice or guardian ad litem for the child, the judge held an *ex parte* hearing and granted the request. The daughter then sued a few years later. The Supreme Court said that the judge was absolutely immune no matter if the act was malicious or in excess of authority including in civil rights cases. The court said the only way a judge could be liable was if s/he was in clear absence of all jurisdiction. The factors to determine jurisdiction were whether the function was one usually done by a judge and whether s/he was acting as a judge at the time. Since custody of children is a function usually done by a judge, the petitioners have no remedy no matter how malicious the judge might be. In Mireles v. Waco, 502 U.S. 9 (1991) a public defender sued a judge who ordered the police to seize him and bring him to court forcibly. The

116 REPORT N° 67/06, CASE 12.476, PUBLICATION, OSCAR ELÍAS BISCET *ET AL.*, CUBA, October 21st, 2006, ¶ 171.

117 REPORT N° 51/96, DECISION OF THE COMMISSION AS TO THE MERITS OF CASE 10.675, UNITED STATES, March 13, 1997 (¶ 180).

118 *Ibid*, ¶181.

119 Case of E and Others v. United Kingdom, no. 33218/96, ECHR, 26 November 2002.

120 REPORT N° 40/04, CASE 12.053, MERITS, MAYA INDIGENOUS COMMUNITIES OF THE TOLEDO DISTRICT, BELIZE, October 12, 2004, ¶ 175.

121 435 U.S. 349, 1978

Supreme Court again held that mistake or excess of authority does not strip a judge of immunity. Immunity is not overcome even if the judge is acting in bad faith or with malice or even if s/he is corrupt. The only way to avoid immunity is if the acts were not judicial or in the complete absence of all jurisdiction. So long as the action is cloaked in a judicial robe, the most gross violations of human rights are without remedy. This constitutes a violation of Article XVIII.

Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

464. Article XXIV is wider in scope than Article XVIII that is confined to courts regarding legal rights.¹²² At a minimum it means that the authority to which the petitions are submitted must be competent to decide those questions. Particularly in the matter of custody and visitation questions involving domestic violence, it has become clear that the judges are not “competent” under the law both because of gender bias and because of blindness to the existence and harm of violence to women and children. (See paragraphs 311 – 329, 339, Exhibit 2, page 114, Exhibits 6-11, 16) The judge in Petitioner A’s case said, “What does this have to do with domestic violence?” (See paragraph 253) He also retaliated for a therapist suggesting that PAS was not valid. (Paragraph 244)

465. The issue of judicial accountability for bias and prejudice has been addressed and studied at length with distressing results. In 1990 the National Commission on Judicial Discipline and Removal was created and funded \$1 million dollars to study the issue of judicial discipline. In 1993 they completed their report and made recommendations without ever speaking to anyone who had filed a complaint against a judge. Thus their findings were not surprising that all was well and 95% of the complaints were dismissed as “merits related” but that was so ill-defined almost any complaint could be disregarded. In fact that is what is happening to K.A. in her current complaint. (See paragraph 113) Then the Commission went out of existence and the recommendations remained on the shelf. ¹²³

466. The Commission seemed unable to separate the issues of judicial independence from judicial accountability. As Sassower points out in her article, “However, judicial independence is predicated on “good faith” decision-making. It was never intended to include “bad-faith” decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal. And egregious error is also misconduct, since its nature and/or magnitude presuppose that a judge acted wilfully, or that he is incompetent.” She found that in court it was common to misstate facts, common to not disclose personal relationships or bias, dangerous for lawyers to challenge it, and that the judge himself rules on his own prejudice which is obviously a conflict of interest violating the appearance of impropriety. Petitioner D.H. plainly accuses the court of misstating facts. (See paragraph 142) The judge blatantly misstates the facts in Petitioner B’s case. (Paragraph 278) K.A. has numerous instances of court or state personnel not disclosing conflicts of interest. (See paragraphs 42-44, 60, 75, 78, 81, 95, 107, 111, 113 and 166 (Shockome)) Several of the petitioners found that indeed it was dangerous for lawyers or others to challenge the court. (Titelman, Exhibit 2, page 96, 162 and paragraphs 30, 101, 207) In Petitioner A’s case, the father successfully attacked the GAL, therapist and lawyer for mother. (See paragraphs 240-242) In Petitioner B’s case, the father attacked everyone who had said the child was abused. (Paragraph 268)

467. Women who complain of prejudice or bias by a judge are told to appeal. The petitioners did that. (See paragraphs 20, 30, 98, 101, 176, 190, 222, Exhibit 2, pages 158, 213, 226, 249) They also

¹²² REPORT N° 51/96, DECISION OF THE COMMISSION AS TO THE MERITS OF CASE 10.675, UNITED STATES, March 13, 1997 (¶ 181).

¹²³ WITHOUT MERIT: THE EMPTY PROMISE OF JUDICIAL DISCIPLINE, Elena Ruth Sassower, *The Long Term View*, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97.

took their complaints to federal court. (See paragraphs 30, 65, 184, 209, Exhibit 2, pages 215) Not one has received relief.

468. But an appeal and a judicial discipline procedure are two different remedies addressing different problems with different results. An appeal merely puts the litigant back in the place s/he should have been. The judicial misconduct remedy must directly censure the judge and take corrective action. “Even with a reversal, the onus of the appeal is on the aggrieved litigant, who, at best, gets what he was entitled to at the outset, only years later and after spending untold amounts of money on legal fees and costs. Beyond that, the appellate decision, if it even identifies the "error" as judicial misconduct, will likely minimize it. Notwithstanding their ethical duty, appellate judges rarely, if ever, take steps to refer an errant trial judge for disciplinary action.” 124

469. Because of continued agitation about judicial accountability, in 2004 Chief Justice Rehnquist of the Supreme Court appointed a committee of judges to yet again study the judicial discipline system. That committee submitted its report in September 2006. 125 The committee was very narrowly focused and only looked at filed complaints and how they were handled but looked at no broader issues of accountability in general. They had no expertise, no academic investigation, no funding but were all judges evaluating judicial decision making. This is not an independent investigation. Only 700 complaints are filed a year in federal court, a very small number considering more than two million cases are filed. The committee concluded that the vast majority of the complaints were properly handled, no serious problems existed. But of high profile cases, a high percentage (30%) were procedurally mishandled. According to these data, chief judges appointed nine special committees to investigate 15 complaints filed against nine judges. The judicial councils: dismissed six complaints filed against five judges; imposed public censure on two judges (involving a total of seven complaints) and private censure on one judge (involving one complaint); and imposed “other discipline” on one judge (according to administrative data; the case file is sealed). They focused far more on procedure than on merit and more on image than substance.

470. Allegations of prejudice or bias made up 28.4% of the complaints and abuse of judicial power another 23.4%, together constituting 52%. They found that 88% of the complaints were dismissed as being related to the merits of the case or unsubstantiated. That is precisely the problem petitioner K.A. is facing. (See paragraph 113) The committee established their own standards for evaluating the complaints and admitted that attorneys often don’t file complaints for fear of retaliation. Even with these problems, a pattern emerged showing that the complaint system does not work for those impacted especially by prejudice or bias.

471. In a listing of problematic cases, claims of prejudice or bias (primarily racial but one gender) were routinely dismissed without any investigation. (5) Complaints of *ex parte* communication were also erroneously dismissed without investigation. (4) Often cases were dismissed based solely on the basis of the judge’s denial without any independent verification of the facts. These are the very types of complaints battered women have made against the judiciary (prejudice, bias, *ex parte* communication). (See Exhibits 6-8, 10-11) The response from the judiciary has been complete denial and the women then become victims of judicial retaliation.

472. Often complaints of prejudice or bias are claimed to be merits related but even the standards adopted by the committee point out that, “Our Standard 2 says “[t]he . . . complaint procedure cannot be a means for collateral attack on the substance of a judge’s rulings. The interest protected is the

124 Sassower, *ibid.*.

125 Implementation of the Judicial Conduct and Disability Act of 1980 *A Report to the Chief Justice* The Judicial Conduct and Disability Act Study Committee Stephen Breyer, *Chair Associate Justice, Supreme Court of the United States* September 2006.

independence of the judge in . . . deciding . . . cases or controversies.” But it adds, “an allegation . . . that the judge ruled against the complainant because the complainant was Asian, or because the judge doesn’t like the complainant personally, is *not* merits-related. What the allegation attacks is the propriety of arriving at rulings with an illicit or improper motive [and] thus goes beyond a mere attack on the correctness of the ruling itself.”

473. In the past six years, 99% of misconduct charges against judges have resulted in no punishment. Only 74 State judges were removed and 563 publicly sanctioned. At the federal level in the last six years, 4,300 complaints were made but only four federal judges received public censure, one private and one other secret. From 1980-1991, only five were privately reprimanded, one impeached and three retired. The California Commission on Judicial Performance from 1960 has recommended 16 removals to the CA. Supreme Court, removed five themselves, censured 20, admonished 38, and publicly reprimanded 17. In September 2005, the American Bar Association (ABA) did a survey and found that more than half of Americans felt that judges were “arrogant, out-of-control, and unaccountable.” 126

474. It is clear that justice depends on a full and fair accounting of the facts. One author argues that judges often misstate those facts thus prejudicing the case from the outset. 127 He asked attorneys, if in their cases, judges had ever misstated the facts. “Every practicing attorney to whom I have asked this question has responded in the affirmative; some have told me that the practice is, unfortunately, quite common, and that judicial misrepresentation of the facts of cases has produced a crisis in their professional lives. They feel that their work is subject to the whim of judges who play God with the facts of a case, changing them to make the case come out the way the judge desires. Some say that if they had known that the practice of law would be like this, they would have gone into a different profession. Professor Monroe Freedman stated in a speech to the Federal Circuit Judicial Conference: Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the cases that have been filed and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, judicial opinions that cover up these things with no-publication and no-citation rules.” Petitioner D.H. clearly says the judge falsified the facts in his case. (See paragraph 142) When Shockome questioned the judge’s statement of the facts, she was jailed. (See paragraph 186) The judge clearly misstated the facts in Petitioner B’s case. (See paragraph 268)

475. It appears from these studies of judicial discipline 13 years apart and the opinions of at least two legal writers that the self-regulating system of judicial discipline is not working. Both an appeal and a complaint of judicial misconduct have proven futile. The judges simply are incapable of ruling fairly on these cases. The judicial council itself said that in 70% of the cases involving domestic violence, custody goes to men. (See paragraph 327, 339) The gender bias studies (paragraphs 311- 315) show that the court is not competent when adjudicating cases involving battered or abused women and children in violation of Article XXIV.

Article XXV No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

476. The right to liberty under Article XXV is not absolute but allows the State to deprive individuals of their liberty only under certain conditions. This right extends to more than the criminal arena but includes other situations when the State administers authority. 128 Certainly the State has the right to order that children live with one parent or the other when the family is breaking up. However, any such decision must be made within the norms of Article XXV of the Declaration of the Rights and

126 Who is judging the judges? Thomas D. Williams, Truthout, 16 October 2006.

127 Anthony D’Amato, The Ultimate Injustice: When a Court Misstates the Facts, 11 Cardozo Law Review 1313 (1990).

128 REPORT N° 51/01, CASE 9903, RAFAEL FERRER-MAZORRA *ET AL.* UNITED STATES (April 4, 2001, (¶ 210).

Responsibilities of Man. While the Commission refers back to domestic law to determine whether substantive and procedural rules are being followed, those domestic provisions must also conform with Article XXV to protect persons from arbitrary deprivations of their liberty. So not only must the decisions comply with domestic law, they must also comply with the principles of Article XXV. 129 The notion of fairness is particularly fundamental. The decision maker must be impartial. The gender bias and experiential studies show the courts are not impartial. The person must be given an opportunity to present evidence. 130 For these petitioners and battered women in general, due process is violated because the length of hearings, time for decisions, the existence of bias, *ex parte* conversations, admission or refusal to admit evidence, lack of findings of fact and law, improper delegation of judicial authority and refusal to follow the black letter law mandating consideration of domestic violence as detrimental to the child and mandating protection for the victim.

477. J.H. was deprived of his liberty when he was whisked away by sheriff deputies from the only home he knew and confined in fear and terror for seven years. These petitioners' cases are illustrative of a much broader and deeper problem. Over and over, from coast to coast, battered women have reported that the hearings are fundamentally unfair to them and the children they are trying to protect depriving them of their liberty under Article XXV.

Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.

478. Some of these petitioners have fought for more than 10 years to protect their children. Three have gone to jail or mental institutions. Every one has been financially devastated by the legal actions. (See paragraphs 6, 27, 65, 187-189, 192, 201, 222, 228, Exhibit 2, pages 162, 229, 246, 250) But under the current policy and practice of family courts in the U.S., mothers are not allowed to protect their children. By the action of the state, they are forced to turn them over to men they know are abusing them physically or sexually or both. The cost to mother and child is enormous, permanent and devastating.

CONCLUSION:

479. In this petition, all three elements that cause a State to be internationally responsible are present namely (i) whether there existed an action or a failure to act that violated an obligation enshrined in a rule of international law currently in force, which in this case would be the American Declaration of the Rights and Responsibilities of Man; (ii) whether that action or a failure to act can be attributed to the State in its capacity as a juridical person, and (iii) whether harm or damage was caused as a result of the illicit act. 131

480. By the policy and practice of giving custody and unsupervised visitation to abusers and molesters, the right to life and security of these child victims is violated under Article I. The discrepancy in treatment between men and women in family courts illustrates the depth of gender bias in U.S. courts and the difficulty in rooting it out in violation of Article II. Ordering mothers not to talk about abuse of children, not to report it, not to obtain any proof of it by medical examination and not to even think about it while punishing those who do violates Article IV rights of expression and opinion. The savage attack on the mental health of the mother and child who reports abuse, especially sexual abuse, violates the rights in Article V. When mothers do report abuse, they are often separated from

129 *ibid*, (¶ 211).

130 *ibid*, (¶ 213).

131 REPORT N° 86/99, CASE 11.589 ARMANDO ALEJANDRE JR., CARLOS COSTA, MARIO DE LA PEÑA, AND PABLO MORALES CUBA September 29, 1999 (¶ 29).

their children completely or with only short periods of supervised visitation in violation of Article VI. Mothers and children protesting abuse are locked out of the court both figuratively by the lack of due process and literally by orders to remain silent. Rather than offering protection for pregnant women and children, the laws and practice of the United States offer them less protection. The Supreme Court has created a *per se* violation of Article VII in its decision in De Sheney that the state owes no duty of protection to children even when the state knows of the abuse to them. States that have lesser punishments for family members who abuse children than strangers are also *per se* violating Article VII that requires protection of children. Though the Declaration requires due diligence by the State in investigating violence, the Supreme Court of the U.S. has *per se* violated Article XVIII by ruling that the state has no obligation to investigate violence. The courts are not competent in their assessment of cases involving violence toward women and children because of deep seated bias and a failure of the disciplinary system in violation of Article XXIV. Children placed with parents who abuse them and parents who are incarcerated for trying to protect them are deprived of their liberty without due process by courts that refuse to listen to or understand violence in the family in violation of Article XXV. While a parent has a duty to aid a child, and protective parents seek to do just that, they are prohibited by the long term failures of the family court to deal with domestic violence in violation of Article XXX.

The denunciation is *ratione materiae*.

481. The denunciation complains of three different types of actions that violate the applicable instruments and of violations of Articles I, II, IV, V, VI, VII, XVIII, XXIV, XXV and XXX. The facts illustrate discrimination against women in general in violation of the Declaration of the Rights and Duties of Man and is therefore admissible. 132

482. Secondly, it complains that the behavior of the State forms a pattern of discrimination evidenced by the condoning of domestic violence against women and children in the U.S. through ineffective judicial action, lack of due diligence in investigation and *per se* violations under existing law. The Commission concluded in a case against Brazil 133 that such facts formed a pattern of discrimination against women and was a violation of Declaration Articles II and XVIII. “Furthermore, as has been demonstrated earlier, that tolerance by the State organs is not limited to this case; rather, it is a pattern. The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.” 134 “Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.” 135 The facts of these petitioners along with the studies outline without a doubt that this is a general pattern of neglect and lack of judicial effectiveness.

483. Third, it complains about the violation of individual rights in specific cases. The denunciation is not asking the Commission to determine whether domestic law was properly interpreted or applied. That is not the purview of the Commission. Rather, the petition is asking the Commission to ascertain whether the state, through its judicial authorities, acted in conformity with the rights outlined in the Declaration or the Rights and Responsibilities of Man. 136

132 REPORT N° 28/98 , CASE 11.625 , MARÍA EUGENIA MORALES DE SIERRA , GUATEMALA , March 6, 1998.

133 REPORT N° 54/01* , CASE 12.051 , MARIA DA PENHA MAIA FERNANDES , BRAZIL , April 16, 2001, ¶ 3.

134 *ibid*, ¶ 55.

135 *ibid*, ¶ 56.

136 REPORT N° 71/00* , CASE 11.676, "X" and "Z" , ARGENTINA, October 3, 2000, ¶ 43.

484. The Commission is competent *ratione materiae* to hear the case at hand since it involves violations of rights enshrined in the American Declaration of the Rights and Duties of Man. Its competence stems from provisions of its Statute and Regulations and of the OAS Charter. Under the Charter, all member states pledge to respect the essential rights of individuals. In the case of states not parties to the Convention, the rights in question are those established in the American Declaration, which is a source of international obligations. 137

The denunciation is *ratione personae*

485. The petition is filed jointly by persons and organizations all of whom have legal authority to file a petition with the Commission pursuant to Article 23 of the Rules of Procedure and whose rights under the Declaration of the Rights and Responsibilities of Man have been violated. While in most instances, issues of child custody are within the exclusive jurisdiction of the states in the U.S. and not the jurisdiction of federal courts, the federal courts also deal with the issues and have failed as well. Child custody cases have been brought to the federal courts as civil rights violations and in connection with the Hague Convention but the court has found there is no duty to protect abused children. When a federative State is involved, as is the case for the U.S., the national government is answerable in the international sphere for its own acts and for those taken by the agents of the entities that compose the member State. 138

The denunciation is *ratione temporis*

486. The acts and omissions complained of in the above factual paragraphs took place after the United States became a member of the OAS and continue to this date. Therefore the denunciation is *ratione temporis*.

The denunciation is *ratione loci*

487. The acts and omissions complained of in the above factual paragraphs took place on the territory of the United States and therefore the denunciation is *ratione loci*.

THE PETITION COMPLIES WITH THE TIME PERIOD PROVIDED FOR IN ARTICLE 32 OF THE RULES OF PROCEDURE

488. Article 32 requires that a petition be lodged within six-months following the date on which the alleged victim was notified of the decision that exhausted the domestic remedies. However, in a case such as this, where the violation is systemic and on-going, the six-month rule is therefore met. 139

NECESSARY STEPS HAVE BEEN TAKEN TO EXHAUST DOMESTIC REMEDIES AS PROVIDED IN ARTICLE 31 OF THE RULES OF PROCEDURE

489. This is a continuing situation and the doctrine of exhaustion of remedies does not apply when the allegations concern a continuing situation.¹⁴⁰ In this case, the petitioners have tried multiple remedies for years but yet the situation continues unabated. Domestic remedies are clearly ineffective.

490. When the state refuses to meet its due diligence obligation and investigate the facts, the petitioner has met the exhaustion requirement by bringing the facts to the attention of the government

137 REPORT N° 86/99, CASE 11.589 ARMANDO ALEJANDRE JR., CARLOS COSTA, MARIO DE LA PEÑA, AND PABLO MORALES CUBA September 29, 1999 (¶ 18)

138 REPORT N° 54/01, CASE 12.051, MARIA DA PENHA MAIA FERNANDES, BRAZIL, April 16, 2001, ¶ 29.

139 REPORT N° 99/99, CASE 11.140 MARY AND CARRIE DANN UNITED STATES, September 27, 1999, ¶. 87-88.

140 REPORT N° 72/03, PETITION 12.159, ADMISSIBILITY, GABRIEL EGISTO SANTILLAN , ARGENTINA, October 22, 2003, ¶ 59.

because the petitioner cannot do more. 141. In this case, the petitioners have repeatedly brought this issue to states attention with no appropriate resolution.

491. When it is apparent that further proceedings would be to no avail because there is no reasonable prospect of success, the petitioner has in fact exhausted domestic remedies. 142 The highest court in the U.S has made it clear in DeSheney that contrary to Article VII, the state has no obligation to protect children or battered women. Therefore, there is no prospect of success in the U.S. courts.

492. The Commission has said it is not required to demand exhaustion of domestic remedies when the State has an obligation to maintain public order. The State has an obligation to set the criminal law system into motion and process the matter. “In other words, the obligation to investigate, prosecute, and punish the persons liable for human rights violations is a non-delegable duty of the state. One consequence is that public employees, unlike private persons, have a legal obligation to denounce all crimes of public action that they come to learn of in performing their duties” 143 In the cases of the petitioners, the judges came to learn of many crimes against the mothers and the children. However, rather than take action to protect their rights, they did the opposite and ordered the children into harms way. The women individually and collectively have appealed, legislated, educated, protested – all to no avail. There is no further domestic remedy.

493. The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights, Theo Van Boven, analyzed the question of impunity in the following terms:

Perpetrators of human rights violations, whether civilian or military, become all the more irresponsible if they are not held to account before a court of law.... It may therefore be concluded that in a social and political climate where impunity prevails, the right to reparation for victims of gross violations of human rights and fundamental freedoms is likely to become illusory. It is hard to perceive that a system of justice that cares for the rights of victims can remain at the same time indifferent and inert towards gross misconduct of perpetrators. 144

494. Here it is the judges who not only are failing to protect human rights, but they are collaborating with the perpetrator to perpetuate gross violations of human rights and fundamental freedoms of the protective mothers and children. Attempting to remedy the problem by complaining about the judges has proved futile. The issue of judicial accountability for bias and prejudice has been addressed and studied at length with distressing results as outlined above.

495. Petitioners have attempted to remedy the problem with litigation. But many cases have been litigated across the nation and appealed through the complete system with no resolution of the problem. 145 Appellate courts rarely reverse custody decisions because they place great weight on the trial court

141 REPORT N° 72/03, PETITION 12.159, ADMISSIBILITY, GABRIEL EGISTO SANTILLAN , ARGENTINA, October 22, 2003, ¶ 54.

142 REPORT N° 16/04, PETITION 129/02, ADMISSIBILITY, TRACY LEE HOUSEL, UNITED STATES OF AMERICA, February 27, 2004, ¶ 36.

143 REPORT N° 86/99, CASE 11.589 ARMANDO ALEJANDRE JR., CARLOS COSTA, MARIO DE LA PEÑA, AND PABLO MORALES CUBA September 29, 1999 ¶ 47.

144 *ibid*, ¶49

145 See footnote 52.

opinions, reversing only when the trial court abuses its broad discretion. 146 While some litigants have been able to take their cases to the highest court, many have not had the financial resources to do so – even to have attorneys at the first level – to their disadvantage. The judge in the Shockome case refused twice to put his ruling in writing. Thus they could not be appealed. (See paragraphs 167, 173) The judge in Titelman did likewise. (Exhibit 2, page 155) While indigence alone is insufficient to waive the exhaustion rule, combined with the pattern of discrimination evidenced from the bottom to the top of the system, and the fruitlessness of such attempts (See Exhibits 6-11 and 16), those petitioners have exhausted all potential effective remedies. 147 As the submission by United States NGO's to the United Nations Human Rights Committee 148 illustrates, state courts are so riddled with sexual discrimination they are unable to deliver justice to women, especially battered women. Often times the women are denied access to the courts by explicit or implicit statements that if they continue to voice these issues, they will suffer even more and lose all contact with their children completely. In many cases, though the procedures exist on paper, there is no due process in reality as women do not have competent lawyers available that they can afford, are not allowed to submit evidence or cross examine, are given only 30 minutes to resolve an issue as important as a child's future, are forced to have psychological exams and submit to evaluations by completely unqualified or biased evaluators, and are forced to put themselves and their children in danger to exercise visitation rights. One of the problems is the immunity of the courts. While in theory this is an essential part of an independent judiciary, when the courts themselves violate the law, and the political process does not hold them accountable, the victim is left with no remedy and no access to justice in violation of international law. 149

496. In addition to the plaintiff's appeals to federal court, two 42 USC 1983 civil rights actions were filed regarding conspiracy by state courts to deprive the protective mother of custody. Both were dismissed by the federal court as frivolous. 150 Not only were they dismissed but the litigants were punished by awarding large attorney fees, some that were upheld in an appeal in another example of punishing the attorney who speaks out for the victims. 151

497. Alanna Krause is one of those victims who took her case to federal court seeking a remedy. At 16, she wrote the following article: 152

“Hundreds of years of legal history have lead the United States to implement a system that ensures that every party in a legal proceeding gets a voice. We rest assured that, unlike in other nations, we can not be incarcerated without our day in court, lawyer by our side. What a country we live in: so civilized, so well thought out. God bless America.

But there is a forgotten minority that is not afforded these basic rights. They are not criminals or foreign aliens. In contrast, they are a group we all hold dear - one innocent and well meaning, with no hidden agendas or twisted motives - children.”

146 Nicholson, Child Sexual Abuse Allegations in Family Court Proceedings: A Survey of Legal Issues, in SEXUAL ABUSE, supra note 10, at 258; see also Lehman v. Billman, 178 Mont. 367, 373, 584 P.2d 662, 665 (1978) (deferring to district court on issue of custody and child's best interest).

147 REPORT N° 6/97 On Inadmissibility CASE 11.071 UNITED STATES (*) March 12, 1997, ¶ 43.

148 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.

149 REPORT N° 11,8/01, CASE 12.230, ZOILAMÉRICA NARVÁEZ MURILLO, NICARAGUA, October 15, 2001.

150 Elwood v. Morin, 84 Fed. App's 964, (9th Cir 2004); Elwood v. Morin, 87 Fed App's 617 (9th Cir, 2004); Elwood v. Drescher, 90 Fed. App's 501 (9th Cir 2004).

151 Elwood v Drescher, CV 02-04656LGB, July 28, 2006.

152 A Youth in Court Need Attorneys Who Represent Their Interests Fairly, Strongly, By Alanna Krause (age 16), Monday, July 17, 2000, *San Francisco Daily Journal*.

498. These are the words of a 16-year-old girl whose parents divorced when she was five. She tried to tell the judge, her lawyer, the guardian *ad litem*, and the counselor that she was abused by her father, a well known attorney. She was not allowed to address the court and no one listened but her mother. When she was 11, her father made a mistake and threw her against at wall at school and a teacher reported it. He then had her committed to an out of state institution where she was mistreated by the other inmates. When she returned, he sent her to boarding school. At 13, she was to return to him but instead ran away and sought the help of the juvenile protection system in Los Angeles that returned her to her mother two years later. Her father pleaded no contest to charges of child abuse and endangerment in Los Angeles juvenile court. At 18, Alanna filed a malpractice action with the State Bar against the attorney who represented her. In 2002, she filed a federal law suit against her father, her lawyer and the counselor based in tort because of suffering years of serious abuse. She was able to file in federal court because of diversity of citizenship and a claim exceeding \$75,000. She claimed a violation of her right of access to court and tortious interference with the mother-child relationship in addition to the torts and malpractice. In 2003, she settled the federal law suit for an undisclosed amount.

499. Nicholson v. Williams and Scoppetta was a class action for mothers in New York who had been victims of domestic violence and whose children were removed solely on the basis that the mother had failed to protect or neglected the child because of exposure to domestic violence. The district court held that the practice violated both substantive and procedural due process. 153 On appeal, the lower court decision was upheld. 154 Ultimately the case was settled. The actions by the child protection agency illustrated the extreme prejudice against battered women who are blamed for their own abuse and blamed for putting children in danger. Unfortunately the case only applies in juvenile court when the state is seeking to remove the child. In the family courts, the actual abusers are favored over their victims, not held accountable for the abuse, and receive custody more often than the mother who has been trying to protect the child.

500. Advocates have urged and gotten passed legislation in many states in an attempt to address this problem. Legislation in many states now mandates consideration of domestic violence in custody decisions and in some prohibits custody or unsupervised visitation to an abuser. However, as pointed out in the Battered Mothers Testimony Projects, California Protective Parents Survey and other research, the judges are simply ignoring the law. (See paragraphs 325-329, 343-368 and Exhibits)

501. Advocates have done significant research and influenced policy, written bench books, recommendations and law review articles to provide protection to the victims – all to little avail. The discrimination against women and children is so strong that litigation, legislation and policy recommendations continue to be ignored in favor of maintaining the status quo based on women’s inequality.

502. As in the Yama case, 155 the parties have pursued a variety of different remedies including litigation, legislation, education, administrative and political all without success. When it is clear that further attempts would be futile, the requirement of exhaustion has been met. The petitioners and others have struggled for years to remedy this problem facing excruciating agony as they see the harm done to their children. The Battered Mother’s Custody Conference held a Truth Commission in New York in January 2007. Sixteen women testified before the Commission. The findings and recommendations are attached as Exhibit 20. The Battered Women’s Resource from New York presented examples of continuing injustices in the New York courts. Exhibit 21. The petitioners and

153 203 F Supp 2d, 153, E.D NY March 18, 2002.

154 344 F 3rd 154, 164 2nd Cir. (2003).

155 REPORT N° 26/06, PETITION 434-03 ADMISSIBILITY ISAMU CARLOS SHIBAYAMA *ET AL.* UNITED STATES, March 16, 2006, ¶ 48-51.

the organizations representing them have gone above and beyond the requirement of exhaustion of domestic remedies. As stated in X and Z v. Argentina: 156

30. For the Commission to admit a petition, Article 46(1)(a) of the Convention stipulates that the remedies under domestic law shall have been exhausted, in accordance with generally recognized principles of international law. The Commission considers that the only domestic remedies that must be exhausted under Article 46(1)(a) of the Convention are those related to the alleged violations of the Convention. At the same time, those remedies must be adequate; in other words, they must be able to provide an effective and sufficient remedy for the violations. All internal legal systems have multiple remedies, but not all remedies apply in all circumstances. Therefore, those remedies that, although remedies in theory, offer no chance of remedying the alleged violations need not be exhausted.

503. Theoretically, multiple remedies exist. Logistically, all of them have been tried. Realistically, none of them have proven to be effective and sufficient with a reasonable prospect of success. Therefore, the requirements of Article 31 are met.

THE COMPLAINT HAS NOT BEEN SUBMITTED TO ANOTHER INTERNATIONAL SETTLEMENT PROCEEDING AS PROVIDED IN ARTICLE 33.

504. The matter has not been submitted to another international settlement proceeding as provided in Article 33 of the Rules of Procedure.

ADDITIONAL ORGANIZATIONS IN SUPPORT OF PETITION

505. Additional organizations that support this petition are the following:

A. National Organizations

1. National Center on Domestic and Sexual Violence, Tx.
2. The Leadership Council on Child Abuse and Interpersonal Violence, PA
3. National Alliance to End Sexual Violence, Washington, DC
4. Domestic Violence Report, Washington, DC
5. Sidran Traumatic Stress Institute, Baltimore, MD
6. National Organization for Women, Washington, DC
7. National Organization for Women Foundation, Washington, DC
8. National Family Court Watch Project, Michigan
9. Family Violence Prevention Fund, CA

B. State Organizations

10. Georgia Coalition Against Domestic Violence
11. Kansas Coalition Against Sexual and Domestic Violence

156 REPORT N° 71/00*, CASE 11.676, "X" and "Z", ARGENTINA, October 3, 2000, ¶ 30.

12. California National Organization for Women, Sacramento, CA
13. Colorado Coalition Against Domestic Violence
14. Michigan National Organization for Women
15. New York State Coalition Against Domestic Violence
16. Rhode Island Coalition Against Domestic Violence
17. Tennessee Coalition Against Domestic and Sexual Violence
18. National Organization for Women - New York City

Their letters of support are attached as Exhibit 29.

506. A letter from Legal Momentum is attached as Exhibit 27.

LIST OF EXHIBITS

1. Photos of petitioner Claudine Dombrowski.
2. Affidavit and book, *Let My Children Go, A Mother's Journal*, Wendy Titelman, Kinderlex Books, 2005.
3. Letter from California Protective Parents Association.
4. Affidavit from Kourts for Kids.
5. Letter from StopFamilyViolence.org.
6. EXPOSE *The Failure of Family Courts to Protect Children from Abuse in Custody Disputes: A Resource Book for Lawmakers, Judges, Attorneys and Mental health Professionals*, Our Children Our Future Charitable Foundation, Los Gatos, CA, 1999.
7. Chesler, Phyllis, *Mothers on Trial: The Battle for Children and Custody*, McGraw-Hill Book Company, NY, 1986, select pages.
8. *Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence*, Arizona Coalition Against Domestic Violence, June 2003.
9. *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, Jaffee, Crooks, and Poisson, 57 *Juvenile and Family Court Journal* Fall 2003.
10. *Justice in the Domestic Relations Division of the Philadelphia Family Court: A Report to the Community*, Women's Law Project, Philadelphia, Pa, April 2003.
11. California Protective Parents Network, national survey, September 2001 to December 2004.
12. Jana Bommersbach, *Jana's View*, Phoenix Magazine, May 2006, p. 28.
13. Article Launched: 6/18/2006 12:00 AM , Mom termed 'parental alienator' wins rare vindication in courts, BY TROY ANDERSON, Staff Writer, LA Daily News.

14. 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.
15. Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judges Guide, National Council of Juvenile and Family Court Judges, 2004, revised 2006.
16. 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.
17. Courageous Kids personal stories.
18. Letter from Legal Momentum to Daniel Meron, DHHS, Washington, DC dated 28 February 2007.
19. European Parliament, A6-0404/2005, Report, 9.12.2005 on the current situation in combating violence against women and any future action (2004/2220(INI)) Committee on Women's Rights and Gender Equality Rapporteur: Maria Carlshamre PE 364.709v02-00 2/17 RR\364709EN.doc
20. Testimony to the Truth Commission, Fourth Battered Mothers Custody Conference, January 2007.
21. Examples of Injustices in NYC Family Courts, Battered Women's Resources Center, January 2007.
22. Letter and columns from The Parenting Project, Rhode Island.
23. Letter from the Illinois Coalition for Family Court Reform.
24. Letter from Child Abuse Forensic Institute, Napa, CA.
25. Legal Momentum letter
26. Letter from National Coalition Against Domestic Violence
27. Letter from Justice for Children
28. Breaking the Silence: Children's Stories, Connecticut Public Broadcasting
29. Letters of support from additional organizations.

Dated this date: 11 May 2007

