



## Winter 2013 - 2014 – Newsletter of the NOW Foundation Family Law Ad Hoc Advisory Committee

Dear Friends,

The purpose of the NOW Foundation Family Law Ad Hoc Advisory Committee Newsletter is to provide continuing education on family court issues to the general public and supporters of NOW Foundation as well as the leaders and members of the National Organization for Women. The newsletter contains current news and information regarding the ongoing crisis for mothers and children in family courts. As many of our readers are aware, protective parents – primarily mothers – are losing custody of minor children in court proceedings that often ignore evidence of battering or child abuse and grant custody or unsupervised visitation to the abusive parent.

We hope you find the information we share with you of value as you go about your work as advocates for women.

### **General Information**

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation web site at this link. [now.org/now-foundation/crisis-in-family-courts](http://now.org/now-foundation/crisis-in-family-courts). There are additional materials at the Chapters only web site.

Family Law Advisory Committee Brochure available at this link: <http://now.org/wp-content/uploads/2015/02/familylawbrochure7-08final.pdf>

*“There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest.” - Elie Wiesel*

### **Interview**

Lisa Macci is an attorney who has been a strong advocate for mothers’ rights since 2003. She has practiced law since 1988, and is currently a practicing attorney in Florida. In addition to practicing law, Lisa produces “The Justice Hour,” a Florida radio show providing a venue for victims of court, police, or government injustice to have their stories heard.

**Committee:** How did you become involved in mothers’ rights issues?

**Lisa:** I became involved after I went through a nasty divorce and custody dispute myself in 2003. While I did have the resource to retain custody of my children, I imagined how bad it would be for mothers who were not attorneys and who were not familiar with the court system or the laws!

**Lisa:** Here in Florida, the Fathers’ Rights groups have quietly taken over the Florida Bar’s Family section. The Florida Bar says, “We’re going to make this equal. It will be better for everyone.” They never present it as a Fathers Rights’ issue in Florida.

**Committee:** What state laws are being used against moms?

**Lisa:** Laws about time sharing and visitation guidelines are being used against moms. While Florida doesn't have a 50-50 presumption yet, there is a lot of talk about it. For example, in court two weeks ago, a judge said that if there was any dispute, he was going to rule in favor of 50-50.

**Lisa:** Relocation laws are also being used against mothers. (Relocation laws don't allow mothers to move a certain distance from the father for work and still retain custody; they also relate to remarriage and other issues). Relocation becomes another costly court battle.

**Lisa:** Lawyers do not work hard enough to get attorney's fees for mothers, and the judges are not granting the fees.

**Committee:** Regarding relocation laws, we've seen women ordered back (to live near the father) after they have moved, even if they moved less than 100 miles away.

**Lisa:** If a mom wants to move, the court will force them to leave the children with the father. There was a case in which a mother who was a doctor wanted to start a clinic in Guatemala; the father wasn't working and hadn't worked for several years. The judge awarded custody to the father because he didn't work. The mother was also ordered to pay alimony.

**Committee:** Are any laws being used in favor of mothers in Florida?

**Lisa:** None that I've seen.

**Lisa:** Laws that I have seen are harmful to mothers. The tender years doctrine was eliminated many years ago. Parental Alienation Syndrome (PAS) continues to be the number one issue. PAS and claiming domestic violence reports to be false (even if they are not false) can result in loss of maternal custody.

**Committee:** Some states have a presumption against custody if a parent is a batterer. And yet many courts do not consider these presumptions. In light of that, why do you think protective mothers frequently lose custody when they are challenged in court?

**Lisa:** Men do a better job of planning for a divorce than women. If you are a mom with young children, you don't have time to think about what you will do if something happens. Men are emotionally cooler in court than mothers, so they make a better impression. Mothers are frantic and stressed out in court. They concentrate on the fact that, "These little people came out of my body." Mothers don't use strategy and maneuvers like fathers do. Women take the possibility of losing their children very personally, and so they don't make a good impression in court.

**Committee:** What about monetary and social capital? Do you think men in custody cases have more capital to use presenting their cases in court? Do these factors influence custody decisions?

**Lisa:** Yes, definitely.

**Committee:** Do you think judges in Florida consider domestic violence when they make custody decisions?

**Lisa:** Most of the domestic violence cases won't be taken into account in terms of custody decisions, unless a bone has been broken or something more serious has happened. There was one case in which a father was being charged with raping his daughter's 12 year-old friend and facing life in prison, but the mother had to litigate against him having visitation with his daughter in the predator wing of the prison.

**Committee:** Yes, it's possible to have that kind of conviction, and the mother still cannot protect the child.

**Committee:** Is the primary caregiver one of the factors for custody consideration in Florida?

**Lisa:** There is nothing considered about which parent has been the primary caregiver.

**Committee:** What are the top three recommendations you would give to a good mother who is going to be challenged for custody in court?

**Lisa:** She should educate herself about the court and the custody laws. Carefully plan everything she's going to do. Be very quiet about her plans. Don't let on to her husband about her divorce plans. Consider getting a throw away phone. Prepare and have access to money. Women should get a credit card in their name only. Get important papers and things she thinks she will need out of the house long before a divorce action is filed.

**Lisa:** Research the attorney she's going to hire. The attorney is key in custody cases. Remember that a mother's credentials don't matter. She could have just come out of a convent before getting married, and they (the husband, the opposing attorney, the judge) will find something wrong with the woman. With the right lawyer, the right judge, and the right factors coming into play, the fathers will get custody unless the mother is adequately prepared and represented.

**Committee:** The hardest part for women is the planning piece. Many mothers wind up in frightening situations, so they're in a reactionary, not a planning, mode.

**Committee:** Women are more likely to be naïve and believe what attorneys tell them without questioning.

**Lisa:** Women need to be very clear and lay out a plan for the attorney. Women must know their judge and attend every hearing.

**Committee:** Once a mother has lost custody, how should she prepare for appeal, and what are the odds of the custody decision being reversed?

**Lisa:** It depends if it's an initial decision or not. In Florida, the judge has discretion. In Florida law, it's extremely difficult to get that decision overturned. With a modification of custody (if the mother lost custody under a modification order), the requirements are more stringent. It might be easier to get such an order overturned because statutes give more direction to the judges and use such language as, "substantial," "material," and "unexpected."

**Committee:** So in family law and custody cases, the mothers need to think more in terms of starting their cases right and in setting them up for appeal, correct?

**Lisa:** This is true any time you're in court. You have to make a record. You can't wait until the end of the case to file the appeal. You have to start your appeal each time due process is denied. You should appeal if the mother is ordered to go for a psychological exam. You should appeal if the judge appoints a guardian ad litem, a custody evaluator, or a psychologist. Do whatever you can do to stop those things at the very beginning. If you wait until the end, it is very difficult to get the custody decision reversed. (Please note: I am referring to Florida law. Each person should consult with an attorney in her state to use the right terms to appeal or object to a judge's a ruling.)

**Lisa:** Unfortunately, this is likely to be very expensive.

**Committee:** You have to know – the expense is a reality. You will have to fight hard, borrow money, whatever you have to do. You have to fight everything that is wrong. We have had

women ask: "Am I bad for quitting for stopping the fight for custody?" We often say: "You can only do what you can do. Heal yourself and your children will come."

**Lisa:** Temporary relief however it comes (by hearing or mediation) will set the tone for everything else. Whatever you agree to or get at a temporary relief hearing – will set the tone (temporary alimony, child custody and support, attorney's fees) and in Florida, you may get only 30 minutes total for the temporary order hearing. That is a lot to cover if you are the one seeking affirmative relief.

**Committee:** Once a mother loses custody, do you have any recommendations as to how she and her children can cope?

**Lisa:** The worst reaction is for them to feel they are victims, for them to feel that this is something personally about them, and for them to fall apart. Frequently, this is not something they did wrong (assuming there isn't an issue – if so, go correct it). Try to get things turned around after the fact, which is not an easy task. Children survive this. Many bad things happen to people. It is not good to think "I'm a victim, I'm not a good mother because I lost custody," if it had nothing to do with them. It is very important to try to have a good relationship with the children despite this. If the father sees the effects of the loss of custody as bothering the mother and that she is desperate for the children's attention, this becomes an avenue for more abuse.

**Committee:** How can those who work in this field improve our effectiveness in helping, supporting, or educating others in our efforts to divert this crisis in the courts for women?

**Lisa:** Continue to reach out and educate women as much as possible. Go educate people who are dealing with mothers' issues like child protection governmental agencies. Educate other government officials and departments dealing with these issues, law enforcement, and judges. We should present at judicial conferences, for example. Continue to send proposals for presentation topics. I also suggest teaming up with experts these specific groups will respect for example, former judges.

**Lisa:** Additionally, if you see proposed legislation that is damaging to mothers, try to address it as soon as possible. Reach out to those you have contact with. If you have a chance to have an audience with your Governor or a Legislator, talk to them about proposed legislation that harms protective parents and children.

**Lisa:** We have to acknowledge that there is a greed factor. We have to get the greed out of the system. We hear of Custody Evaluators who charge \$500 per hour. We hear of psychologists charging \$500 per hour to testify. The solution is to get volunteer guardian ad litem as in dependency courts. I suggest fee caps or fee schedules.

**Committee:** Perhaps time limits on these cases are also needed. In one case in California, the evaluation phase of the custody case lasted 3 years and cost \$1.5 million.

**Lisa:** Perhaps we should look at a system of weighted factors, such as considering which parent has been the primary caregiver during marriage. We should also consider the danger of the father using the threat of the loss of custody against the mother.

**Committee:** When we hear of a domestic violence victim who loses custody of her children, what does that imply about our court system?

**Lisa:** The public thinks judges are giving custody to mothers almost automatically. So when a mother loses custody, the public thinks there had to be something wrong with her. Because they believe that this just doesn't happen unless she is unfit or mentally ill or something similar.

**Committee:** Do you have any particular advice for women - ideas for them as they prepare their cases?

**Lisa:** It is very important they remember while going through this, that whatever they do, they will be looked at under a microscope. Consider the issue of dating during the divorce proceedings. It doesn't matter what their husband does, there will be a judgment if the mother does the same thing. If a mother is not careful, if they are careless during litigation, it can contribute towards their losing custody.

**Committee:** From this interview, the situation in family courts is as bad as we thought and is getting worse. Most importantly, you have said: We have a huge job and we need to educate women and all those involved in the judicial system. Do you have any more advice for those working on these issues nationwide?

**Lisa:** When you can, engage high profile people as you reach out to the public, judges, etc. That will help bring attention to the issue.

**Committee:** Is there anything you would like us to know we did not ask?

**Lisa:** The more we can try to turn around the opinion of the general public and try to get mothers united, the more we can help mothers in danger of losing custody. Many mothers' groups don't realize what is happening. I would also recommend useful information to mothers contemplating a divorce or facing a divorce or an unmarried pregnancy on the internet at [www.thelizlibrary.org](http://www.thelizlibrary.org) and past shows dealing with these topics on *The Justice Hour*® at <http://www.lisamacci.com/thejusticehour/archives.html>.

## **Mother's Stories**

According to Adele Guadalupe, a Florida mothers' rights advocate, and co-president of Florida's Families Against Court Travesties (FACT's), many family court watch groups have sprung-up throughout the United States in the past decade. Court watchers are utilized when there is a child custody case of extreme injustice, usually when a protective, good mother or father has lost all rights to their children. One might ask, "How can this be?" Contrary to societal perception of a just family court system, this system is more likely to operate like "the wild west," rather than an unbiased, fair system following due process. Judicial discretion overrules due process with a judge often exercising bias rather than well-informed reason based on the facts and the only way to overturn an unfair, and sometimes horrific, decision is via the Court of Appeals. Many parents cannot afford the expense of an appeal, and even if they can, once a decision is made by a trial court it is usually upheld by a Court of Appeals. The following are synopses of true stories witnessed by some of these court watchers.

### **Mother Loses Custody Without Notice**

D.P. was a divorced, stay-at-home mother, studying part-time when her two young sons began reporting abuse and neglect by their father while in his custody. During that two-year time period, D.P. was being treated for battered wife syndrome. At a custody hearing the child psychologist recommended that the father have supervised visitation, which was ignored by the court. D.P. and sons moved from Florida to Connecticut, which was allowed by the divorce agreement at the time. However, without giving notice to the mother, the court switched custody from D.P. back to the father in Florida, even though both sons wanted to remain with their mother. Heartbreakingly, the youngest son threatened suicide if left with the father. D.P. was unable to obtain due process once the custody was switched, so she moved back to Florida for nearly a year. Fortunately, the

final custodial decision was provided under a new, unbiased judge who reversed primary custody back to D.P. and permitted her to move from Florida back to Connecticut. D.P. spent over \$100,000 in litigation costs.

### **Father has Mother Arrested on Trumped-Up Charges of Battery**

In the case of A.S., the father got his family to lie for him about his battering of the mother in district court in order to help him obtain primary custody. The district court ordered A.S. out of the home and awarded the father primary custody of the two children, ages seven and nine years old. A.S. was also ordered to pay child support to the father, even though he earned five times more than A.S. The children's father left them with a babysitter 19 hours a day. The father had a girlfriend, and they both refused to permit A.S. to have the four hours of supervised visits ordered by the court. A.S. became indigent and homeless, and at that point the court ordered her not to even have phone contact with her children. Many witnesses testified to confirm A.S.'s fitness as a mother and the problems she was having with her children's father. The witnesses also testified to the judicial bias they had observed against A.S. during the custody trial. However, the judge refused to recuse himself from the case. A.S. spent over \$40,000 in litigation costs. Twelve years later, she still has no contact with her children. The court denied A.S.'s children the right to have access to a loving mother.

### **Mother Labeled Neurotic and Loses Custody**

In the case of C.C., the district court judge called her a liar when she accused the father of infant and child molestation. The judge gave custody of the two-year-old daughter to the father and allowed C.C. only two, half-day supervised visits a month. Many experts validated C.C.'s claim after the father brought her to the place of visitation with vaginal sores and anal swelling, found to be caused by herpes. The judge ignored all of the evidence of sexual abuse. C.C. found out that the father's two previous wives had also accused him of sexually abusing their daughters. However, the judge would not allow any of the evidence from the previous wives to be presented in court. After C.C. received six months of court-ordered psychological evaluation and treatment both the treating psychiatrist and psychologist testified to support the fact that C.C. was indeed mentally healthy and telling the truth. Finally, C.C. was allowed unsupervised visitation every other weekend. The judge warned C.C. not to take her daughter to the doctor or to ever call the police again. After many years the mother finally got the judge recused and the new judge gave her shared parenting with the father. The daughter is currently eleven years old and continues to suffer from the trauma of the abuse.

**Question:** After reading Lisa Macci's interview and the three brief stories of mothers losing custody – have you recognized yourself in any of these stories? Has something like this happened to you or to a friend of yours? Your responses would be helpful as this Committee proceeds. If you feel comfortable to share a brief portion of your story, you can send it to this email address: [director@nowfoundation.org](mailto:director@nowfoundation.org)

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