

**1999 SENATE JUDICIARY**

**SB 2197**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2197

Senate Judiciary Committee

Conference Committee

Hearing Date January 19, 1999

| Tape Number                                     | Side A | Side B | Meter #     |
|---|--------|--------|-------------|
| 1   |        | x      | 2476 - 4715 |
|   |        |        |             |
|   |        |        |             |
| Committee Clerk Signature <i>Jackie Follman</i> |        |        |             |

Minutes:

SB2197 relates to false allegations of domestic abuse.

SENATOR STENEHJEM opened the hearing on SB2197 at 10:50 A.M.

All were present.

SENATOR COOK testified in support of SB2197. Testimony attached.

SENATOR CHRISTMANN testified in support of SB2197.

DANIEL BIESHEUVAL, R-KYDS, testified in support of SB2197. Testimony attached.

SUSAN BEAHLER, R-KYDS, testified in support of SB2197. Domestic violence is a very difficult thing to talk about. I believe there should be some consequences if there are false allegations.

SENATOR TRAYNOR testified in support of SB2197. I believe this could be a deterrent.

AMANDA MARTIN testified in opposition to SB2197. Testimony attached.

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number SB2197  
Hearing Date January 19, 1999

SENATOR STENEHJEM CLOSED the hearing on SB2197.

SENATOR LYSON made a motion for DO PASS, SENATOR TRAYNOR seconded.

Discussion.

Motion passed.

SENATOR LYSON will carry this bill.

6 - 0 - 0

Date: 1-19-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2197

Senate Judiciary Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Lyson Seconded By Traynor

| Senators                 | Yes | No | Senators | Yes | No |
|--------------------------|-----|----|----------|-----|----|
| Senator Wayne Stenehjem  | X   |    |          |     |    |
| Senator Darlene Watne    | X   |    |          |     |    |
| Senator Stanley Lyson    | X   |    |          |     |    |
| Senator John Traynor     | X   |    |          |     |    |
| Senator Dennis Bercier   | X   |    |          |     |    |
| Senator Caroloyne Nelson | X   |    |          |     |    |
|                          |     |    |          |     |    |
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|                          |     |    |          |     |    |

Total (Yes) 6 No 0

Absent \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Floor Assignment Lyson



**REPORT OF STANDING COMMITTEE (410)**  
January 20, 1999 7:25 a.m.

**Module No: SR-11-0864**  
**Carrier: Lyson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2197: Judiciary Committee (Sen. W. Stenehjem, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2197 was placed on the  
Eleventh order on the calendar.

**1999 HOUSE JUDICIARY**

**SB 2197**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2197

House Judiciary Committee

Conference Committee

Hearing Date : March 2, 1999

| Tape Number                                    | Side A | Side B | Meter # |
|--|--------|--------|---------|
| 1  |        | X      | 4.2     |
|  |        |        |         |
|  |        |        |         |
| Committee Clerk Signature <i>Alan Gundberg</i> |        |        |         |

Minutes:

SEN. COOK Presented written testimony, a copy of which is attached.

SUSAN BEEHLER (R-KIDS) I have five children and I am a survivor of domestic violence.

An accusation of abuse is easy to make, but it can cause serious trouble for the accused. There should be some incentive to stop unfounded accusations.

DANIEL BIESHEUVEL Presented his own written testimony and written testimony from Aaron Stroh and Robin Berger, copies of which are attached.

LADD ERICKSON (Asst Morton Co. SA) I am in support of this bill. Any accusation of anything should be made in good faith. there is a great deal of passion involved in breaking up and the custody issues make people do things they otherwise wouldn't. I had a friend who was falsely accused. His wife filed an affidavit stating that he had committed violence against her at a time when he was with me shooting pool in a Mandan Bar.

Page 2

House Judiciary Committee

Bill/Resolution Number 2197

Hearing Date : March 2, 1999

??? CARLSON (from Bowman, didn't sign in) I am for this bill. I was married to an attorney who filed false papers and now I have lost my children, my home and have no money.. I am currently taking him to the Bar Asso. Disciplinary Board.

LARRY DVORAK Presented written testimony, a copy of which is attached.

ANDREA MARTIN (Abused Women) Presented written testimony, a copy of which is attached.

ROBERTA BIEL (Abused Women) Presented written testimony, a copy of which is attached.

DAN DRAOVITCH (Minot Chf of Police) I have seen a lot of domestic violence. I have had special training in Los Angeles and Minneapolis. Many men, and women, believe that they have a right to batter the other. Intimidation is the biggest roadblock to false claims, and this bill will aid that. We want a level playing field.

COMMITTEE ACTION: March 3, 1999

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS. Rep.

Mahoney seconded and the motion passed on a roll call vote with 9 ayes, 5 nays and 1 absent.

Rep. Mahoney was assigned to carry the bill.

Date: 3/3/99  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2197**

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass

Motion Made By Koppelman Seconded By Mahoney

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| REP. DEKREY     | ✓   |    | REP. KELSH      | ⊗   | ✓  |
| REP. CLEARY     |     | ✓  | REP. KLEMIN     | ✓   |    |
| REP. DELMORE    | ✓   |    | REP. KOPPELMAN  | ✓   |    |
| REP. DISRUD     | ✓   |    | REP. MAHONEY    | ✓   |    |
| REP. FAIRFIELD  |     | ✓  | REP. MARAGOS    |     |    |
| REP. GORDER     | ✓   |    | REP. MEYER      | .   | ✓  |
| REP. GUNTER     | ✓   |    | REP. SVEEN      | ✓   |    |
| REP. HAWKEN     | .   | ✓  |                 |     |    |

Total Yes 9 No 5

Absent 1

Floor Assignment Mahoney

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 3, 1999 4:10 p.m.

Module No: HR-38-3974  
Carrier: Mahoney  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2197: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SB 2197 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2197

## TESTIMONY

Prepared by Senator Dwight C. Cook

Tuesday, January 19, 1999

Mr. Chairman, Members of the Senate Judiciary Committee: For the record, my name is Dwight Cook, State Senator from District 34. I'm before you today to introduce and to urge your support of SB 2197.

There are two words in the title of this bill that set the stage for the discussion that is going to follow. Those words are "domestic abuse". They are ugly words. They are painful words. They should send shivers down the back of every law-abiding, God-fearing person in this room. They don't make for pleasant conversation. The pain and suffering inflicted on innocent children or spouses is pain that should be suffered by no one. It is pain that leaves lifelong scars. Mr. Chairman, stopping domestic violence is a top priority of legislators everywhere. History shows that some of the earliest domestic violence laws dealing with child abuse were passed by states in the 1960s. The 1970s brought more shelters and an increase in state and national political efforts to deal with domestic violence. Laws in the 1980s began to treat domestic violence as the serious crime that it is, with much attention to protective orders. According to the NCSL, states enacted 200 domestic violence laws last year alone.

But, as is all too often the case, individuals soon find ways to take perfectly sound and needed legislation and misuse it or apply it for their own personal gain.

Mr. Chairman and members of the Committee, falsely accusing someone of child abuse or any form of domestic violence also inflicts pain and suffering on an innocent person. It, too, leaves a lifelong scar, and it, too, is wrong.

SB 2197 simply states that if a false allegation of domestic violence is not made in good faith, it is wrong and the victim can recover court costs and attorney fees incurred while proving his or her innocence. Not made in good faith, Mr. Chairman, in other words, made with dishonest intentions, made with malice, made with the intent to defraud, or to seek an unconscionable advantage.

Mr. Chairman, the questions before you today is simply this: "Is this a fair law?"



I've already been asked that question. I was asked by a constituent who was falsely accused; by a constituent who was not allowed to see a child for 2 ½ years while innocence was proven. I was asked if I thought it was fair that someone can knowingly and dishonestly falsely accuse someone of domestic violence and not face any recourse. I had to say no.

I was asked if I would try to find a solution. I said yes.

Today I come before you and ask you to either say yes to this proposed solution or to find a better one.

Thank you.

Respectfully submitted by:

Senator Dwight C. Cook

**Fifty-sixth Legislative Assembly**  
**Senate Bill 2197**  
**January 19, 1999 10:45 am, Ft. Lincoln Room**

Chairman Stenehjem, and members of the Senate Judiciary committee. My name is Daniel Biesheuvel, I am a lobbyist for R-KIDS of North Dakota.

R-KIDS expressly requested that the subject of false allegation of domestic abuse be addressed in the interim. I have received countless calls from divorcing and divorced persons, who are devastated after being wrongfully accused of abuse during their a court proceeding.

This ploy is commonly used to get the defendant to conform to the demands of the plaintiff party, or to influence a judge. Just the fear of being accused will cause a defendant to agree to anything rather than be falsely labeled an abuser. The allegation takes on a life of it own.

Even when found to be untrue, the accused is labeled by society for life, and just the accusation could come up again in future cases. This false allegation is the most heinous form of liable, and the accuser must be held accountable.

I am happy that this bill is before you today, but I feel the penalty should include not only court costs, but a finding of contempt and the appropriate penalty.

Thank you, and I will attempt to answer any questions.

Abused Adult Resource Center  
 222-8370  
 BOTTINEAU  
 Family Crisis Center  
 228-2028  
 DEVILS LAKE  
 Alternatives for  
 Families  
 62-7378  
 DICKINSON  
 Domestic Violence and  
 Rape Crisis Center  
 225-4506  
 ELLENDALE  
 Kedish House  
 349-4729  
 FARGO  
 Rape and Abuse Crisis Center  
 800-344-7273  
 FORT BERTHOLD RESERVATION  
 Coalition Against  
 Domestic Violence  
 627-4171  
 FORT YATES  
 Tender Heart Against  
 Domestic Violence  
 854-3402  
 GRAFTON  
 Tri-County Crisis  
 Intervention Center  
 352-4242  
 GRAND FORKS  
 Community Violence  
 Intervention Center  
 7-105  
 HORN  
 Shelter  
 888-353-7233  
 McLEAN COUNTY  
 McLean Family  
 Resource Center  
 800-657-8643  
 MERCER COUNTY  
 Women's Action and  
 Resource Center  
 873-2274  
 MINOT  
 Domestic Violence Crisis  
 Center  
 852-2258  
 RANSOM COUNTY  
 Abuse Resource Network  
 683-5061  
 STANLEY  
 Domestic Violence Program,  
 NW, ND  
 628-3233  
 VALLEY CITY  
 Abused Persons Outreach  
 Center  
 845-0078  
 WAHPETON  
 Th...vers Crisis Center  
 W...N  
 Family Crisis Shelter  
 572-0757

Testimony on SB2197  
 Senate Judiciary Committee  
 January 19, 1999

Chair Stenehjem and Committee Members,

My name is Andrea Martin, and I am the Assistant Director of the ND Council on Abused Women's Services/Coalition Against Sexual Assault. I am also a Licensed Professional Clinical Counselor in ND. I have been providing crisis intervention, advocacy, and counseling services to victims of domestic violence and sexual assault for the past ten years. I have also provided domestic violence offender treatment and group therapy for children who have witnessed domestic violence in their home. I mention this because I have had long-term exposure to the perspective of all groups typically involved in domestic violence court proceedings.

I am here on behalf of the ND Council on Abused Women's Services to oppose SB2197 for the following reasons:

Many who debate the issue of false allegations assert that one false report is too many. The ND Council on Abused Women's Services agrees that false allegations pollute the process and by doing so endanger victims overall. However, we address thousands of incidents annually and believe that false allegations are rare. These rare incidents can be addressed with existing statutes. Passing 2197 may cause more damage than might have been anticipated when this bill was originally drafted.

It appears that there are several provisions currently in statute that would afford the same type of consequences or at a minimum some type of penalty for providing false information to a court. Chapter 28-26-01 of the North Dakota Century Code indicates that in civil action the court shall award attorney's fees to the prevailing party if the action was determined to be frivolous or without basis or facts to support it. Chapter 28-26-31 indicates that pleading not made in good faith or allegations made without reasonable cause and not in good faith and found to be untrue subject the party bringing forward the allegations to payment of all expenses. Chapter 12.1-11-01 is the perjury statute, which indicates that a person is guilty of a class C felony if making false statements to the court under oath. Chapter 12.1-11-02 indicates that a person is guilty of a class A misdemeanor if the false statement is made under oath whether or not it is material to the case. Chapter 12.1-11-05 indicates that it is a class A misdemeanor to tamper with public records or make false entry in a public record which would include records that are kept by a government body for information or record. These types of records could include protection orders and other court documents for proceeding indicated in SB2197.



Clearly if an individual were going to falsify information to the court, there are already numerous remedies and penalties available to ensure consequences. Most of the actions indicated in SB2197 are those that involve representation by an attorney. It is my understanding that attorneys are bound by ethical standards that prevent them from bringing forward cases that appear false in any way.

Also, domestic violence advocates have every interest in maintaining the integrity of the protection order process, which is often a pro se process. One case mistakenly brought forward that turns out to be false can ruin the credibility of other claims. Advocates are very aware of this issue and assess each protection order carefully to ensure that it is appropriate for application. For example, if an individual comes to a domestic violence agency and indicates that they want a protection order for the primary purpose of gaining custody of their children, the advocate is trained to refer that person to a private attorney to pursue civil action other than a protection order.

Advocates carefully screen applicants and Judges make the final decision on whether or not protection orders are granted. In essence, protection order applicants are screened twice for accuracy and truthfulness prior to being heard in a full court hearing. Advocates see hundreds of victims each year and their experience and training assist them in determining the truthfulness of claims.

The testimony I have provided so far addresses the issue of resolving false reports. The following portions of my testimony are geared more toward the philosophical implications and potential harm to victims the passage of this bill would likely cause.

As I am sure you are aware, domestic violence happens often times in a private setting with no witnesses. A protection order proceeding may be the first time a victim seeks assistance from the court system. There will often times be no record or police reports of previous violence. Because incidents occur in the home, there often are no witnesses, there is no one to corroborate her story unless she is seriously injured and has sought medical treatment. Even then I have heard numerous offenders indicate to the court that she inflicted the injuries upon herself in an effort to manipulate the court.

There are two basic issues about this that concern me. One, being that we will engage in a court battle where it is too easy to confuse unfounded allegations with false allegations. Just because there is no hard evidence does not mean allegations are false. And two, we are in essence stating that false allegations of domestic violence are coming in at such a rate that we need legislation to deter it and punishment for those doing it. However, in ten years I have never seen any local, state, or national research to support the claim. I recognize that there are those rare anecdotal accounts that need to be addressed. We can do so through existing statutes.

Women are the most likely individuals to bring forward allegation of domestic violence. Statistics repeatedly show that women are the victims 95-98% of the time. This bill has undertones that women tend to lie and resort to desperate, unethical and even illegal methods to seek revenge upon former partners. Are we sure this is the message we want to send?

As a domestic violence treatment provider and someone with extensive training in offender treatment, before making any policy decision that would affect both offenders and victims I would ask myself if the policy change runs the risk of empowering the abuser. If it provides him with an additional tool to further harass the victim, I would look for other means to address a given problem.

Also, victims of domestic violence often times have no access to joint finances. Many times the offender will prevent them from getting or keeping a job in order to keep closer watch on them and diminish their contact with others who might help them escape the violence. If we are going to pass legislation that potentially deters victims from seeking assistance for fear of reprisal, not just from abusers but from the court systems as well, then we have lost the original intent of the protection order process altogether.

Many of us assume that domestic violence in families comes to an end when a relationship dissolves. Instead, the offender, who previously sought and had control over his partner, feels panicked and retaliates when a victim asserts herself. In a recent article published by the NOW Legal Defense Fund, research is cited that indicates that terminating a violent relationship results in a greater risk of fatality for battered women and their children (Byron Johnson, et al., Mortality Review for Florida Governor's Task Force on Domestic and Sexual Violence 9 (1997). The same document also cites research that indicates that abusive fathers continue to abuse and exert control over women after separation by vigorously pursuing custody of the couple's children (Zorza, 1994). Research also indicates that abusers are twice as likely as non-physically abusive fathers to seek sole custody of their children. These facts are part of my testimony to illustrate that it is the abuser that works overtime to manipulate his victim through the court system. There is research to prove this. There is no research to prove that the manipulation and false allegations is coming from the victim in court proceedings.

When a victim chooses to leave an abusive relationship, it is a very difficult decision to make. She is aware of the increased danger to her because it is likely he has threatened her many times. By passing this bill we are adding to reasons for her not to pursue a system that is intended to assist her in her search for peace and safety for herself and her children.

Thank you.



Andrea J. Martin, L.P.C.C.  
Assistant Director  
NDCAWS/CASAND

Brief Prepared for Testimony for the 56<sup>th</sup> Legislature  
Child Support Guidelines  
Human Services Committee

Mark Hafner

My name is Mark Hafner and I am from Beulah ND where I have lived all my life. I am married to Denise and we have a 6 month old son, Josten. I work for the Coteau Properties Company and Denise works as a transcriptionist at Missouri Slope Clinic in Beulah

I was divorced from my first wife in 1991. Her name is Brenda and we have two daughters Kara now 13 and Deanna now 11. They moved to Tehachapi, CA shortly after our Divorce to live with her parents there. Brenda was originally from Hazen, ND and had lived in ND all her life but her parents had moved to CA shortly after we were married.

I will try to show in this brief, different parts of my divorce story and will tie them into different aspects of how legislation being looked at affects these situations.

#### HB 1346 Mandatory Mediation.

When we, meaning Brenda and myself first got divorced it was agreed that we did not want a big fight in court that would in turn hurt the kids and cause more problems between the two of us. Although we both had attorneys, almost all aspects of our divorce were agreed to between us. This aspect of our divorce went fine and seemed to be working fine until, and this is the problem with this idea, the spring of 1998 after she found out Denise was pregnant she decided she needed more money for Child Support and filed for such. I had assumed when our Divorce was settled and everything had been agreed to that this stipulation was binding and would be for the term of the children's eligibility. This was as I found out later not to be true. Child support as I found out can be changed later even though she knew what the guidelines required at the time of our Divorce and she admitted to knowing in court in October, under oath. My recommendation for this bill is that it would pass with the addition that this is a legal obligation by both parties and cannot be broken in a court of law or by the Child support Enforcement Unit at a later date for either persons purposes.

#### HB 1280 Child Support Income Shares Guidelines.

I recently went to Court for a raise in Child Support brought on by Brenda by the Child support Enforcement Unit. A few things should be mentioned here about incomes for the benefit of this bill. I work for the Coteau Properties Company and work a 40 hour week Guaranteed with a base salary of \$50386 a year. Denise works 30 hours a week at her job and will have a base salary of \$10875. As noted before we have a child from the two of us. In our case Denises salary is now figured into the basis of my support for my two Daughters. By the guidelines now in place I am paying Brenda \$991 a month in support for two children I see once a year. Brenda currently works a 40 hour a week job and is paid about \$7.50 an hour for a base pay of \$15600. Brenda is remarried and her husband works as a civilian aircraft mechanic at Edwards Airforce Base making over \$50000 a year. They are also still living with Brenda's parents who are both claiming disability and don't work. Add their incomes up and they make about \$65000 a year plus the \$12000 I send them a year. Living with Brendas parents, she only pays half the expense of the household and does not require any day care expenses. For the purpose of my case and all other cases I strongly believe that Shared Guidelines should be in place no matter how large the cost to the state, even though it would not be as large a cost as previously testified, because it is the right thing to do to fix a very unfair practice to the obligor of the children.



#### HB 1028 & 1029 Employee Benefits, Overtime and Second Job Exclusions.

Up until July of 1998 overtime at Coteau was very easy to come by for those that wanted to go outside their own departments to work it. Up to that point I was working overtime in my own department as well as picking up overtime in other departments. The day I am writing this is January 31, and from this day back to July 17, 1998 I have not worked any overtime, in any department. Although I am willing to work overtime it is not available anymore. Why is this important to know? When I went to Court in October I entered evidence that my income for 1998 would fall far short of what I made in 1997 and would even be less in 1999. The attorney for the Child Support Enforcement Unit turned my numbers around and added and subtracted and probably multiplied to come up with her own figures to suit their own needs. She came up with numbers showing that I would earn \$57853 in 1998 and 1999 and claimed that my figures were and I quote [Speculative and self serving to better my own interest] un-quoted. Recently I just received my W-2 for 1998. During court I testified under oath that I would make \$55000 in 1998. Guess what. My total wages for 1998 were \$54892.17. I also testified that in 1999 my wages because of the lack of overtime would continue to drop and with a possible raise in March of that year I would probably make \$52000, with again the same response from the Child Support Enforcement Unit. This figure will be what I will make this year and I will more than likely be back in court to have my case refigured in July. I leave this issue with these two thoughts, with my wage set at \$52000 which is a true and accurate figure I would not have to waste the courts time to reassess my support and the children would have been fine. And second who is being speculative and self serving to better their own interest. Please pass this bill on.

#### SB 2039 Child Support Guidelines and Extended Visits

My two children, Kara and Deanna live in CA with their mother, new dad and Grandma and Grandpa. I have visitation rights to see them for 6 weeks in the summer in 1999 and 2000 and 8 weeks from then on. I am required from the before mentioned agreement to pay all travel expenses to and from Ca to ND. These travel expense add up to more than \$1500 and are figured into my Child Support, but only amount to a deduction in support of \$15 a month. Being my children live in CA, when they step of that plane what they bring with them in their one small suitcase apiece is what they will have for the time they are with us. We can't just drive back to moms later and pick something up. We will have to by whatever they need to get by with, and in most cases their mother does this on purpose just so the girls will get new things. Also now that my girls are here we now have to pay daycare, which as noted she doesn't have to pay anyway, we now have to run all over to keep them entertained, feed them, etc. Which are all things she no longer has to do. I strongly urge the passage of this bill.

#### Required Benefits

As mentioned above I am required to pay almost \$1500 in travel expenses to get my girls back to CA. Although \$1200 of this is deducted in my Child Support it only comes of my net monthly income and gets me a \$15 break on my support. Spend \$1500 get a break of \$180. I am also required By my divorce to provide Life Insurance policies on both Kara and Deanna for \$25000 apiece that would also accrue interest and be made available to them when they go to college. I am also required to have \$100000 life insurance policy with the same effect that lists Kara and Deanna as beneficiaries. These three policies are required by divorce and cost me \$100 a month with no consideration on my Child Support. In reality then I am paying \$991 for support plus \$225 for travel expenses and insurance with a total of \$1216. Someone else whose children lived nearby and was not required to have Life Insurance policies which by the way is not a requirement would then only be paying \$991. This is a good bill and should definitely be passed

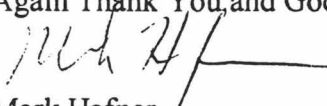
SB 2197 False allegation of Domestic Violence

As noted before I just finished going through courts on Child Support and myself going for more visitation. On the issue of more visitation the judge did rule in our favor for more visitation. My X- wife did not like this. After everything was completed and I thought over for now I received in the mail a copy of a letter sent to the judge from her attorney disagreeing with his finding for longer visitation and claiming Domestic Violence In our previous marriage and my current marriage. No mention of Domestic Violence was ever mentioned in our first divorce or in the courtroom while arguing case points for longer visitation. The reason being that it could never be proven by her because it didn't exist and was only made as a allegation in a desperate measure for a change that I could now not defend myself against. This Bill will not keep people that are involved in a domestic situation from reporting it but it will deter false accusations from being made or at least give the accused the protection that they need.

In closing I would like to say that I know these are only a few of the bills being looked at but I think they are all a good start to Make the Child Support System more fair than it is. It would eliminate most of the complaints, problems and injustices brought on by a system that is totally for the well being of the custodial parent with no rights at all to the non-custodial parent regardless of how good a parent they are. I also firmly believe that this system of Child Support Enforcement that is in place only affects those people who are as good of parents as they can be by continually going after these people for more and more things while those people who could care less about their kids, continue to not support their children and never see their children continue to be looked over, pampered to and basically don't have any thing happen to them. I also believe the Department of Human services and especially the Child Support Enforcement Units need to learn to be more fair and understanding in their methods and should not be speculative and self serving just to fit their needs.

I Thank You for taking the time to read this description of my case, how these bills affect me and how I feel about them and this system in North Dakota. I have tried to keep as much of my negativity about this system as it is now, out of this description and in no way mean to offend anyone if it did. I believe North Dakota is an excellent place to live and raise children and I know that you people are doing your best to make it a fair and equal place for all people to live.

Again Thank You, and God bless you and your work here,



Mark Hafner  
5840 4<sup>th</sup> St NW  
Beulah ND 58523



## TESTIMONY

Prepared by Senator Dwight C. Cook

Tuesday, March 2, 1999

Mr. Chairman, Members of the House Judiciary Committee: For the record, my name is Dwight Cook, State Senator from District 34. I am before you today to introduce and to urge your support of SB 2197.

There are two words in the title of this bill that set the stage for the discussion that is going to follow. Those words are "domestic abuse." They are ugly words. They are painful words. They should send shivers down the back of every law-abiding, God-fearing person in this room. They don't make for pleasant conversation. The pain and suffering inflicted on innocent children or spouses is pain that should be suffered by no one. It is pain that leaves lifelong scars. Mr. Chairman, stopping domestic violence is a top priority of legislators everywhere. History shows that some of the earliest domestic violence laws dealing with child abuse were passed by states in the 1960s. The 1970s brought more shelters and an increase in state and national political efforts to deal with domestic violence. Laws in the 1980s began to treat domestic violence as the serious crime that it is, with much attention to protective orders. According to the NCSL, states enacted 200 domestic violence laws last year alone.

But, as is all too often the case, individuals soon find ways to take perfectly sound and needed legislation and misuse it or apply it for their own personal gain.

Mr. Chairman and members of the Committee, falsely accusing someone of child abuse or any form of domestic violence also inflicts pain and suffering on an innocent person. It, too, leaves a lifelong scar, and it, too, is wrong.

SB 2197 simply states that if a false allegation of domestic violence is **not made in good faith**, it is wrong and the victim can recover court costs and attorney fees incurred while proving his or her innocence. Not made in good faith, Mr. Chairman, in other words, made with dishonest intentions, made with malice, made with the intent to defraud, or to seek an unconscionable advantage.

Mr. Chairman, the question before you today is simply this: "Is this a fair law?" I have already been asked that question. I was asked by a constituent who was falsely accused; by a constituent who was not allowed to see a child for 2 ½ years while innocence was proven. I was asked if I thought it was fair that someone can knowingly and dishonestly falsely accuse someone of domestic violence and not face any recourse. I had to say no.

I was asked if I would try to find a solution. I said yes.

Today I put that same question before you. I ask that you either say yes to this proposed solution or find a better one.

Thank you.

Respectfully submitted by:

Senator Dwight C. Cook

**Fifty-sixth Legislative Assembly**  
**Senate Bill 2197**  
**March 2, 1999 9:00 am, Prairie Room**

Chairman DeKrey, and members of the House Judiciary committee. My name is Daniel Biesheuvel, I am a lobbyist for R-KIDS of North Dakota.

R-KIDS expressly requested that the subject of false allegation of domestic abuse be addressed in the interim. I have received countless calls from divorcing and divorced persons, who are devastated after being wrongfully accused of abuse during their a court proceeding.

False accusations are commonly used to get the defendant to conform to the demands of the plaintiff party, or to influence a judge. One of the first things an attorney asks their client for is events that can be construed as violence. Some attorneys, who can't find any events, make a blanket accusation to make their case.

Just the fear of being accused will cause a defendant to agree to anything rather than be falsely labeled an abuser. The allegation takes on a life of it own.

At the Senate Judiciary Committee, I testified to the fact that I have received "countless calls" of false accusations of domestic violence before and during hearings. Ms. Andrea J. Martin, Assistant Director of North Dakota Council on Abused Women' Services said without further investigation, she "would not be comfortable supporting those claims". I am here to give some insight to my investigations.

The North Dakota Council on Abused Women's Services claim their studied shows that false accusation rarely occur. That is because the cliental the council deals with ARE the abused that end up in their care, thus vastly reducing the possibility of false and questionable claims. They do not deal with all the divorce cases on record.

According to child sexual abuse experts, Wakefield and Underwager (1991), 80% of allegations of child sexual abuse made during divorce custody and visitation disputes are blatantly false-there is no physical evidence, usually the strongest evidence is the testimony of a 3- or 4-year-old saying something that seems very unnatural, and apparently coached. Ten year ago false claims were rare - according to USA Today, 30%, and 25% of all custody dispute cases now involve an allegation of misconduct or abuse. Of the 2500 cases professionals Drs. Hollida Wakefield and Ralph Underwager, Karol Ross and Dr. Gordon Blush, Dr. Timothy Campbell, a vast majority were false, manufactured and malicious. Children's Services statistics assert that over 60% of custody dispute cases in the US today, 60% of such allegations - evenwhen not part of a divorce - are false. (See attached)

In Ms. Martin's January 19, 1999 testimony before the Senate Judiciary Committee, she stated that "it is my understanding, that attorneys are bound by ethical standards that prevent them from bringing forward cases that appear false in any way." This would be idyllic, but that's not what happens. I have submissions from two separate persons who testify that attorneys accused them of lack of support and child abuse, which nearly and eventually did decide their case outcomes. These attorneys coach their clients to 'remember' things.

Many times when a person comes to an attorney to get out of a marriage, that attorney will immediately ask if there is anything that could be construed as abuse towards that person or the children. If nothing can be substantiated, the lawyers lower on the ethics rope will "fabricate" a claim.

Ms. Martin also stated that if "one case mistakenly brought forward that turns out to be false can ruin the credibility of other claims". If you plan on taking the abuse charge step, you better be sure of that claim. Any attorney worth his salt would also. Corroborating evidence, witnesses, medical examination records, and physical proof makes a case, not an assumption.

Ms. Martin said in her testimony that if "an individual...indicates that they want protection...to gain custody...the advocate is trained to refer that person to a private attorney to pursue civil action *other than a protection order*". To simplify, if the advocate, going on just the request of the client, refers that client to attorney, just the referral can be construed as supporting evidence of abuse. Once this coordination between a counselor and a lawyer occurs, possible false claims follow. One case I know of, the social services counselor falsified evidence on the stand to substantiate her client's claims. When the study was subpoenaed, the exact opposite was found to be true. She was put before a review board, and only got supervised probation. Conversely, the father cannot see his son unless it is supervised at a safe house.

Ms. Martin also believes that most cases occur behind closed doors, without witnesses, unless there is serious injury that needs medical treatment. She says she has heard of offenders claiming the abused have inflicted the injuries upon themselves. I know of one case where the alleged abused spouse did inflict the injuries upon herself, lost custody of the children, and ended up fleeing the state with them during a visitation. Does the name Kathleen Schaffer-Imhoff ring a bell?

Ms. Martin is concerned with the confusion of "unfounded allegations" and "false allegations". Unfounded allegations are actual cases without hard evidence. I have to again remind Ms. Martin that if a claim is made in a court case, *the responsibility lies on the accused to clear their name*, not the abused. Home studies, and interviews done by accredited professionals will dispel this problem.

Ms. Martin claims that women are the victims 95-98% of the time. According to a Nov. 1998 Department of Justice report on the National Violence Against Women Survey, 1,510,455 women and **834,732** (36% of total events) men are victims of physical violence by an intimate. There may be a trend toward less violence against women, more violence against men, or both. (See Attached)

Ms. Martin also claims that this legislation may "empower" the abuser, with a tool to harass the abused. I claim that any legislation that does not put false allegations in check will empower the accuser by removal of the rights from the accused.

The concerns of duplications of statute by applying this legislation, were raised. The domestic law section I printed out takes up seven pages, covering every detail concerning domestic violence. Amazingly, Section 14-07.1-09 - Immunity from liability and PENALTY FOR FALSE REPORTS was REPEALED in 1989! It's time to reinstate this crucial part of the law. It is too easy for attorneys and the courts to deny a person's right when it is not stated right in the statute where they have to see it. Two extra sentences will not cripple anyone, except those who are handicapped by its exemption.

There is a strong opposition to this legislation in the Minot area. Maybe there is an attorney up there who has found a market in false allegation, and is trying to get this legislation killed, just to perpetuate a moneymaking business.

I am happy that this bill is before you today, but I feel the penalty should include not only court costs, but a finding of contempt and the appropriate penalty. Even when found to be untrue, the accused is labeled by society for life, and just the accusation could come up again in future cases. This false allegation is the most heinous form of liable, and the accuser must be held accountable. The false claim must be stricken from the record, so it doesn't rear its ugly head again.

I have the utmost respect for Andrea Martin and her organization, but I still feel this legislation is needed.

Thank you, and I will attempt to answer any questions.

# Discussion of the work of Wakefield and Underwager

Posted by Aaron L. Hoffmeyer.

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According to Wakefield and Underwager (1991), 80% of the allegations of child sexual abuse made during divorce custody and visitation disputes are blatantly false - there is no physical evidence, usually the strongest evidence is the testimony of a 3- or 4-year-old child saying something that seems very unnatural, that seems coached.

Many of the investigators of child sexual abuse allegations made during divorce custody and visitation disputes are women, and to me, it is enlightening that so many of them are concurring that mothers are fabricating these allegations and coaching the children to say they were molested in so many cases.

Anyway, back to the stats. There have been numerous studies done on the phenomenon of false allegations. Where they came from - who knows? 10 years ago they were very rare and only occurred in (according to this source) 7% of the disputed custody cases, which are less than 1/4th of the total number of divorce cases. Yet, so far in the last two months, I have seen, both the above article, and an article in USA Today, that 30% and 25% of all custody dispute cases now involve allegations of sexual misconduct by the father of the children.

Yet, Drs. Hollida Wakefield and Ralph Underwager, Karol Ross and Dr. Gordon Blush, Dr. Timothy Campbell, and many other professionals who have investigated at least 2500 cases each, have determined that the vast majority of these allegations are false, manufactured and malicious. Also, extensive psychological tests of the women making these allegations reveal that 75% of them are borderline psychotic personalities - meaning they have major problems, but can still get by in society.

Yet, the courts choose, in the best interests of the children, to assume that these women are telling the truth, because merely fabricating such an allegation and stigmatizing a child for life for something that never happened, subjecting a child to intense examinations with proctoscopes and other scopes (the names of which I can't recall) that take pictures, "play" interviews with life-sized dolls with anatomically over-sized genitalia, forcing a child to live with a lie that puts that child in high risk categories for drug-use, delinquency, academic failure, psychological problems, and suicide - all that is better than presuming that an accused person is innocent - as the Constitution guarantees. You see, all men are rapists, and that's all they are, so when one gets discovered, well, that's just fine and dandy. It should be up to him to prove that he did NOT do it and damn the Constitution. The founding fathers didn't have children. They couldn't understand these things. This kind of empathy is solely the realm of ovarian nurturers. These women feel they "deserve" sole custody of children, no matter what underhanded tricks they have to pull to get it. And our laws, which are applied fairly in all other cases, simply do not apply when the alleged victims are children. We have to have a new set of laws for those cases.

So, women apparently are using this "revelation of truth" in 25-30% of custody dispute cases in the US today. Yet, even Children's Services statistics assert that over 60% of such allegations - even



when not part of a divorce - are false. Couple that with statistics that I have from Pennsylvania for last year. Apparently there were about 21,000 child abuse cases reported in the entire state - approximately 33% were substantiated. Yet 8000 children were removed from their homes - many to be returned when it was determined that no abuse took place. Of all these substantiated abuse cases, less than 50% were sexual molestation allegations. Many of the substantiated abusers were women. Women disproportionately sell their children for sex. The majority of people convicted of child abuse, in general, are women. Of the total number of children residing in Pennsylvania, less than .13% were substantiated as being physically abused or sexually abused in a given year. The "child abuse" craze is more hype than fact. And the "hype" inspires the courts to take allegations that are completely without merit, contrived and malicious - seriously - "in the best interests of the children."

The jury is still out on this issue - but hopefully a reasonable verdict will be returned soon. The judicial system has to start recognizing the truth about what is happening here - fathers who battle for custody, who are very close to their children and want to maintain that relationship with their children, are being lumped together with a bunch of sick perverts who abuse their children. It is the fathers that are closest to their children, that care the most about them, that are being victimized by these false allegations. Why? Because making these allegations works. If it didn't, it wouldn't be happening.

I do recognize that the system is starting to take notice of what is going on and is trying with some degree of earnest to make amends - figure out better ways to get to the truth. When this tactic starts back-firing on those who use it and back-firing in a big way, then the false allegations will decrease. As it is, the false allegations are in no way a reflection of real abuse that does take place out there.

I can believe that when a divorce starts with such allegations, it is more likely to indicate that real abuse did take place. However, when allegations come up months into a divorce, with no physical evidence, and after it looks like the father is going to succeed in obtaining a reasonable settlement - well, give me a fucking break.

Aaron L. Hoffmeyer  
TR@CBNEA.ATT.COM

P.S. If you are really interested in obtaining as much information about false allegations of child sexual as is possible, I recommend contacting Reid Kimbrough - a litigation consultant on false allegations of child sexual abuse. He has one of the most comprehensive databases of studies, reports, documents, books etc. available in the world.

Reid Kimbrough  
427 Ascot Court,  
Sanford, FL, 32773;  
home phone is (407) 328-7685.  
*shartlin@bellsouth.net*

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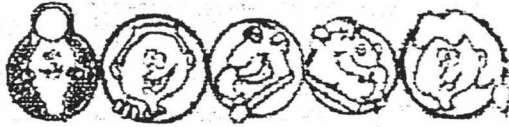
Be sure and see the 'What to do' page.

HTML by David R Throop.

False Reports of Child Abuse



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Battered Men - The Hidden Side of Domestic Violence  
Battered Men in Washington and Nationwide

## Domestic Violence Against Men

# 25,473 Washington Men a Year

According to National Violence Against Women  
Survey Estimates

© 1998 by Bert H. Hoff

Every year, 1,510,455 women **and 834,732 men** are victims of physical violence by an intimate. This is according to a Nov. 1998 Department of Justice report on the National Violence Against Women Survey. What does that mean? Every 37.8 seconds, somewhere in America a man is battered. Every 20.9 seconds, somewhere in America a woman is battered. Every **20.6 minutes** another man in Washington is battered.

In Washington, that's 42,824 women **and 25,473 men**. That includes 2,754 men on whom a knife was used, 5,508 men threatened with a knife and 11,016 men hit with an object.

There may be a trend toward less violence against women, more violence against men, or both. While 76.5% of the people reporting physical violence by an intimate in their lifetime were women, only 62.5% of the people reporting physical violence by an intimate in the *last year* were women, and 37.5% were men.

The data show that men are more likely to have a knife used on them or to be threatened with a knife, hit with an object, kicked, bitten or have something thrown at them. Women are more likely to be beaten up, threatened with a gun, choked, victims of drowning attempts, have their hair pulled or be pushed, grabbed or shoved.

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|  |                       |
|--|-----------------------|
|  | In Previous 12 Months |
|--|-----------------------|



| Type of Violence             | Percentage |      | Number in US |         | Number in WA |        |
|------------------------------|------------|------|--------------|---------|--------------|--------|
|                              | Women      | Men  | Women        | Men     | Women        | Men    |
| Rape                         | 0.2%       | 0.0% | 201,394      | -       | 5,710        | -      |
| Physical Assault             | 1.3%       | 0.9% | 1,309,061    | 834,732 | 37,114       | 25,473 |
| Rape and/or Physical Assault | 1.5%       | 0.9% | 1,510,455    | 834,732 | 42,824       | 25,473 |
|                              |            |      | 62.5%        | 37.5%   |              |        |

What does that mean? 834,732 men battered a year means every 37.9 seconds, another man is battered. Every 20.9 seconds, another woman is battered. Every **20.6 minutes** another man in Washington is battered.

| Type of Violence             | Lifetime   |      |              |           |              |         |
|------------------------------|------------|------|--------------|-----------|--------------|---------|
|                              | Percentage |      | Number in US |           | Number in WA |         |
|                              | Women      | Men  | Women        | Men       | Women        | Men     |
| Rape                         | 7.7%       | 0.3% | 7,753,669    | 278,244   | 219,828      | 8,491   |
| Physical Assault             | 22.1%      | 7.4% | 22,254,037   | 6,863,352 | 630,936      | 209,449 |
| Rape and/or Physical Assault | 24.8%      | 7.6% | 24,972,856   | 7,048,848 | 708,019      | 215,109 |
|                              |            |      | 76.5%        | 23.5%     |              |         |

| Type of Assault         | Women | Men | Women        | Men          | Men    |
|-------------------------|-------|-----|--------------|--------------|--------|
| <b>Total</b>            | 22.1  | 7.4 | 100%         | 100%         | 25,473 |
| Threw something         | 8.1   | 4.4 | 36.7%        | <b>59.5%</b> | 15,146 |
| Pushed, grabbed, shoved | 18.1  | 5.4 | <b>81.9%</b> | 73.0%        | 18,589 |
| Pulled hair             | 9.1   | 2.3 | <b>41.2%</b> | 31.1%        | 7,917  |
| Slapped, hit            | 16    | 5.5 | 72.4%        | 74.3%        | 18,933 |
| Kicked, bit             | 5.5   | 2.6 | 24.9%        | <b>35.1%</b> | 8,950  |
| Choked, tried to drown  | 6.1   | 0.5 | <b>27.6%</b> | 6.8%         | 1,721  |
| Hit with object         | 5     | 3.2 | 22.6%        | <b>43.2%</b> | 11,016 |
| Beat up                 | 8.5   | 0.6 | <b>38.5%</b> | 8.1%         | 2,065  |
| Threatened with gun     | 3.5   | 0.4 | <b>15.8%</b> | 5.4%         | 1,377  |
| Threatened with knife   | 2.8   | 1.6 | 12.7%        | <b>21.6%</b> | 5,508  |
| Used gun                | 0.7   | 0.1 | 3.2%         | 1.4%         | 344    |
| Used knife              | 0.9   | 0.8 | 4.1%         | <b>10.8%</b> | 2,754  |

Source: National Institute of Justice, Centers for Disease Control and Prevention, *Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey* (US DOJ/OJP, 11/98) (NVAW Survey conducted 11/96-5/96) Exhibits 7,8, p. 7

Washington Population Data: OFM 1998 projections, statewide, men and women over 18. 2,073,807 women, and 2,007,651 men. As did the NVAW survey team, we multiplied percentages by population numbers to estimate numbers for Washington.

## Other Resources

**Domestic Violence-It's About People.** A Men and Violence project seriously misrepresents several

Statement of Larry H. Dvorak

I have been falsely accused of REMOVAL OF CHILD ACCORDING TO CUSTODY DECREE, twice. The first time the charge was dismissed. The second time I spent 13 months in prison for having my children for summer vacation.

I have been falsely accused of SIMPLE ASSAULT and charges were dismissed.

I was falsely accused of trying to break into her car and charges were never filed.

I was falsely accused of VIOLATION OF PROTECTION ORDER, three times. Once for leaving a message on her recorder to buy the children \$300 worth of clothes and for her to call me and let me know where to pay for the clothes.

Another time I brought a car load of supplies for her and the children.

This last violation of protection order will be going to court March 15, 1999. I am accused of giving my daughter a hug and \$50 to buy clothes.

My x-wife filed for a protection order in April of 1997 with false accusations. The Judge gave her a two year protection order where I can't even say "Hi" to my children. Her reasons for the protection order was that:

I saw the children twice when they got off the school bus and gave them candy.

On Easter Sunday I left a garbage bag filled with Easter goodies on their door step.

I went to my 10 year old sons wrestling match.

I went to church to watch my son serve as Alter boy and one day I saw my daughter playing basketball, I stopped and gave her \$20.00.

My x-wife told the Judge that the Children are afraid of me. I talked to my children and they said they aren't afraid of me, they have no reason to be.

My x-wife has also filed for protection orders on two other occasions, which were both dismissed.

My x-wife files these charges to keep the children from seeing their father. She has even gone so far as to hide the Children from me on my weekends. I have been through this for the last seven years. I haven't seen my Children since Aug. of 1997.

I am for the passing of Senate Bill # 2197 to stop Domestic Violence against the non-custodial parent and the children.

Thank you for your time

Hi, My name is Larry Dvorak from Manning, N.D.

I am speaking to you in support of Senate Bill # 2197.  
I have been falsely accused by my x-wife of many different charges, all of them were filed to keep me away from my children.

CASE # 92K-166.

In November of 1992, she filed charges for "REMOVAL OF CHILD FROM STATE IN VIOLATION OF CUSTODY DECREE". I was moving to Rapid City, SD to start a new job with Western Trucking. My x-wife agreed to leave my youngest son come with me and my Folk's for four-five days while I found an apartment. Five minutes before we were ready to leave Dickinson, she called and told me to bring my son back, she said he can't go because it was snowing. My son wanted to go with me and he was crying when he talked to his Mother. I got back on the phone and told her that he was coming with me, that she can't keep changing her mind like that. I found out through my Boss in Rapid City, before we left back to Dickinson that she had filed charges against me. The charges were dismissed in court.

CASE # 94K-96

In May of 1994, I had the three youngest children for the first time for summer vacation. When I called for the children, my x-wife asked me how long I was going to have them. I told her "Two - Three weeks. She then told me I could only have them for one week, or I wouldn't get them at all. After a short discussion, I agreed to one week at a time. After one week, the children wanted to stay longer, so the children called their Mother and she agreed. After the second week, the children wanted to stay for Father's Day and again my x-wife agreed. On the Monday after Father's Day, I called her and asked if she could come and get the children or if she could wait until Thursday, when a friend of mine could bring them home. (The man I worked for said that we had to finish remodeling the apartment house done within a week because the people wanted to move in.) My x-wife again filed "REMOVAL OF CHILD FROM STATE IN VIOLATION OF CUSTODY DECREE" charges against me. My divorce decree stated that I could have my children a "MINIMUM" of two weeks in the summer, and said nothing that I couldn't take them out of state to where I lived. The States Attorney turned everything around and stated that I could only have the children a "MAXIMUM" of two weeks and that I couldn't take them out of state. I was sentenced to thirteen months in the State prison because I was exercising my right as a Father and going by what our Custody Decree stated. This was the first time and the last time that I have had my children for summer vacation. My x-wife has only let me have the Children twice for Christmas and no other holidays which was against our Divorce Decree.

CASE # 94K-123

I spoke to my x-wife one day and she was mad that I haven't been able to help her buy things for the children. I had just started to work after going through two eye surgeries and being laid up for over three years. I got my first paycheck and bought a carload of supplies for her and the children. When I got back to Dickinson, I tried calling her for two days. When she didn't answer on Sunday, I went to Killdeer to leave the supplies with her neighbor. When I got there, my x-wife just got home with the two youngest children, so I gave her the supplies, not even getting out of the car. I asked her if I could take the children to the movies and she got mad. She then filed charges for "VIOLATION OF RESTRAINING ORDER", which was later dismissed.

CASE # 96C-06

The day I was getting out of prison, My x-wife served me with papers for "APPLICATION FOR PROTECTION ORDER". I didn't see or talk to her for eleven months. The charges were dismissed on May 8, 1996.

X-WIFE TRIED TO CHARGE ME WITH BREAKING INTO HER CAR.

In July of 1996, I saw my x-wife at the Dairy Queen. I had some things along that I bought for the children, so I stopped and was going to give them to her. She filed a complaint and claimed that I tried to break into her car, because I knocked on her window. I was never prosecuted for these charges.

CASE #'s 97K-129 & 97K-132

In July of 1997, I had visitation with my children at Social Services. After the visitation was over the children wanted to stay at my place for a few days before they moved to Minot. My daughter went to the car to get my x-wife so we could ask her if they could come to my place. When my x-wife came in to Social Services, I asked her if the children could come out for a couple of days. She said "Its not in the plan's" and started to walk out the door. I reached over and put my arm around her shoulders and said "What is your problem?, why are you always running away from everything, can't you see what you are doing to the children and me? The Director of Social Services then told me to just let her go. She then filed SIMPLE ASSAULT against me and two weeks later the Police filed "VIOLATION OF PROTECTION ORDER" charges against me. The charges were dismissed. It is so hard for the children to understand why their Mother won't let them see their Father.

CASE # 97R-05

In April of 1997, my x-wife once again filed for a protection order. Her reasons for the protection order were:

1. I saw the children twice when they got off the school bus and gave them candy and gum. She said that the children were scared of me. I asked the children on the phone and they said that they were not scared of me.
2. I went to the same Church, because I wanted to watch my son serve as alter boy.
3. I showed up at my son's wrestling match at the school.
4. I saw my daughter by the school while she was playing basketball outside and gave her \$20.00.
5. That on Easter Sunday, while they were not at home, I left a garbage bag filled with Easter goodies on their door steps.
6. She said that I followed her to Dickinson. Just because I was going in the same direction.

Because of these HARD EVIDENCE CLAIMS stating that I abused my children and my x-wife, the Judge awarded her a two year protection order. In the order I can't even say "Hi" to my children, and if I see my children anyplace I have to walk away.

CASE # 98K-0065

In December of 1997, I was in Minot, so I called my x-wife to have her go to the store and buy \$300-400 in clothes for the children. The first time I called, she heard my voice and hung up. I called about  $\frac{1}{2}$  hour later and left a message on her recorder to buy the children's clothes and then call me at the Motel and let me know where to pay for them. She then filed "VIOLATION OF PROTECTION ORDER" charges against me. I plead guilty and am on probation for two years.

CASE # 98K-396

In March of 1998, my x-wife once again filed "VIOLATION OF PROTECTION ORDER" charges against me. I saw my in-laws going to the mall in Dickinson and turned around to talk to them. I then noticed that my Daughter was walking into the mall with my Mother in-law I visited with my Father in-law and his brother outside for about 15 minutes, then went inside to talk to my Daughter. I saw them at Herbergers, gave my Daughter a big hug and \$50 to buy herself some clothes. The States Attorney's Office wanted me to plead guilty and spend one year in prison and four years probation for giving my daughter a hug. I still have to go to court on March 8 & 15 of 1999 for this charge.

It is one thing for one parent to file frivolous charges against the other parent, but when our Court system tries to prosecute these charges, something is wrong with our legal system. The States Attorneys and Judges that prosecute cases such as this should be criminally liable for their actions. I spent eleven months in prison, illegally, because I wanted to be with my children. I have spent many illegal days in jail under false charges because I wanted to be with my children.

I believe that when a former spouse files false charges against an x, they should be charged with the same class as the crime which was the objective. I have never filed charges against my x-wife for her lies and filing false charges against me. I did not believe that it was right for parents to do this to each other and it is not good for the stability of the minds of the children to have parents do this to each other.

I believe that it takes two people to have children, so both parents should have equal rights to see and be with those children.

The laws in the State of North Dakota and many other states are prejudice against the Father. They believe that the Father is to pay child support and not be able to see his children. The Father should be aloud to take his children shopping for what they need and that should be applied to the payment of child support. The way the law is now, any clothes or items purchased by the non-custodial parent for their children can't be deducted from their child support payment. I was once arrested and put in jail because I gave my children \$300 in gift certificates because they told me that their Mother was not getting them any clothes. This is a VIOLATION OF CIVIL RIGHTS against the none-custodial parent, and the law should be changed.

I once again urge for your support in the passing of Senate Bill # 2197.



## Senate Bill 2197

Chairman DeKrey and committee members, my name is Aaron Stroh, I live at 534 Sherwood Lane in Bismarck. I would like to share with you some of my experiences with false accusations while I was going through the course of my divorce.

I was working out-of-state when I found out about my wife filing for divorce. Shortly after returning to ND, I received a message to contact someone who I had never heard of before. When I called the number, I found out that it was Burleigh County Social Services. I about dropped the phone, I was totally shocked.

I was able to get in contact with a counselor, and set up a time to meet with him in two days. For the next two days, I couldn't totally focus on my job, wondering what the purpose of the meeting was. I asked a friend if he would come to the meeting with me, which he did.

When we met with the counselor, he explained that someone had a concern about verbal and mental abuse towards the kids. He also told me they are required by law to check into such matters, when a report is made to their office. Before the counselor asked me questions, he had told me that he had conducted an in-home study, and had talked to each of the kids. As he was asking questions about certain incidents, I felt like I was being cut into pieces, stripped naked and insulted not by the counselor but by the person who had reported these accusations to the social services office.

After the counselor had gone through his questions, he told me that all of these incidents being discussed had occurred at least three years old, and as far back as ten years ago. He said he would meet with his staff, and they would evaluate the information to see if any action would be necessary.

Later, the counselor didn't think that any action would be required. Within a couple of weeks, I did receive a letter from social services stating that there is "no risk factors of abuse by (me)".

I had also been accused by my wife's attorney of being a "deadbeat dad" by withholding money from her while working outside the state. When I disputed these claims, said I didn't appreciate the false statements about me, and he had better get proof before accusing me of anything, he admitted to my wife that I had not been holding back any money, and apologized to me.

Since then relationship between with my children has been strained, because my ex-wife now is afraid I will sexually abuse my 13 year old daughter, just because the counselor told her to be careful of me when I am around my daughter. My sons are angry with me because she told them she couldn't afford many things because I wasn't sending them enough money. She has called me several different names in front of the kids, and also stated she wished that I would get into a car accident and die.

Currently, it seems when a person is accused of abuse, that person is considered guilty until proven innocent. Even after your proven innocent, you can repeatedly be accused of abuse, just because of earlier claims.

The guilty must be dealt with accordingly. Not one who goes through divorce should be falsely accused by a former spouse, attorneys, counselors, or social service workers without proper proof. If someone falsely accuses someone else of abuse without proof, the penalty should be the same as someone who has been actually found guilty of abuse.

It is terrible what happens to children and their relationships with their parents, when there is a accusation made about one of the parents that is later found to be untrue. They become confused, and untrusting. It is unfortunate they have to go through such a thing.

Robin Berger  
4438 Crestwood Drive  
Bismarck, ND 58501  
March 1, 1999

Chairman DeKrey, Members of the Judiciary Committee,

I am writing to you today to in regards to Senate Bill 2197. I am a member of the R-Kids organization (Remembering Kids in Divorce Settlements). I have an interest in this bill because I was wrongfully accused of child abuse 3 years ago.

When I started my custody battle 3 years ago, my son's father contacted Arnie Fleck to represent him. Shortly after he contacted Arnie, I received a letter from social services stating that I was under investigation for child abuse. I fully cooperated with social services and met with the social worker that was assigned to my case. I told him that I recently filed custody papers to my son's father and that he must have been the one who had turned me in. The social worker could not give me any names of who turned me in (this information was later supeona and it was my son's father) but that "they see this all the time". That is, and I quote "parents accusing one another of child abuse during a custody case". Since social services takes about a month to investigate a case and this accusation was turned in two weeks prior to my case, I did end up losing custody of my son and his father received temporary custody. I still believe to this day that the attorney knew how to work the system to his advantage in this case.

In the written judgement I received from Judge Benny Graff stating I received joint custody, he had this to say: "the filing of the complaint with social services was an action not made in good faith". He also goes on to say, "I believe this was maliciously done in an effort to gain an upper hand in the lawsuit and for no other reason". I am now married and my husband has been through a custody battle. He also had Arnie Fleck as an attorney. When we spoke about the above story, he stated that Arnie also had suggested that he should turn the mother of his daughter in. He never actually told him to go to social services, rather made comments, that it would make him look better in court. I could not believe what I heard. This is why I was wrongfully accused of child abuse is because it makes someone else look better? My husband never did file a false accusation and he still won full custody of his daughter. This is proof you do not need to do this in order to win custody, I strongly urge you to pass Senate Bill 2197. I do not want to see anyone go through what I had to go through. We really need to protect those who are wrongfully accused. Who knows the next victim could be you.

Please feel free to call me anytime if you have any questions regarding the above statement. My telephone number is 701-222-4945.

Sincerely,  
Robin Berger



Re: SB2197

Chair DeKrey and Committee Members

My name is Roberta Biel and I am Executive Director of the Domestic Violence and Rape Crisis Center, covering the eight counties of Southwest North Dakota. I have held this position for seven years. Before that I was an elementary school principal, in both Catholic and public schools, for 14 years. I was one of the early supporters of the Domestic Violence Center when it was founded in 1979 and was also on its Board of Directors for seven years. My work at the center has not been just administrative, but has included crisis intervention, case management for shelter residents, assisting with Adult Abuse Protection Orders and facilitating adult support groups.

I am here to speak out of my experience in working with families in which there is violence. By the way, our agency serves men on the same basis it serves women and it has sheltered abused men with their children.

Where is the evidence that this law is needed? Ms. Martin indicated that there are at least five provisions in the Century Code for addressing false allegations. If indeed there have been a few situations in North Dakota in which someone has been unjustly deprived of custody or visitation these would have resulted from judicial incompetence, which no law would remedy. I have witnessed dozens of cases in which both visitation or custody were an issue. In none have I seen a judge make a decision based on unsupported allegations of domestic abuse. The judges have repeatedly stated that it is important for children to have consistent contact with both parents.

The effect of this legislation will be to place another millstone about the neck of victims. An even higher percentage of the 500 abused women we work with annually will be told "You can try leaving, but you'll never get the kids." How do I know this? Because that threat by abusers is almost universal and the fear of losing their children is a major reason women stay within violent marriages.

More women will be told "No one will believe you and if you even try to accuse me you'll have to pay for my attorney, too, because I can convince any judge or psychiatrist that you're lying, that you're crazy, that you're a vengeful bitch." How do I know this? Because I've seen it happen.

We had a client beaten with a two by four so severely she was hospitalized for weeks. Yet her husband convinced a psychologist that she was an incompetent parent. Fortunately the judge considered both law enforcement and hospital records in awarding custody to the mother; however, the judge also established the father's visitations rights.

Unfortunately many abusers lie and manipulate others into believing they are the victims rather than the perpetrators of violence. How do I know this? Because I've witnessed it. Abusers are often to all appearances, upstanding members of their families, churches and communities. They are expert manipulators. I saw one fellow with just a few tears totally snooker several police officers into feeling sorry for him and then turn on the victim, blaming her for the guy's suffering.

And this was a woman whose extensive bruises they had just photographed several days earlier. I saw one fellow say to a judge at a protection order hearing "But your honor, I would never hurt her. I love her." Fortunately there was a witness to his attempt to choke her.

Domestic Violence is a well kept secret. In our agency we have assisted persons who are personal friends and relatives of mine. No one among our mutual acquaintances and family knew of the abuse and still don't. One of our clients, a woman in her forties, had been in an abusive marriage for over 20 years. She and her husband were very prominent people in their small community. When she finally trusted a close female friend enough to tell her her situation the friend's response was "Oh, he'd never do those things. He's such a nice man." It took her four more years to share with someone else - one of our crisis workers.

There is already redress under existing law for those who suffer because of false statements in court proceedings. To single out the domestic violence arena for an additional law adds to the burdens of the already overwhelmed victims. Perhaps then, in the next legislative session, we'll need another law to catch those who make false charges about false charges.

To anyone who may have suffered because of false testimony about domestic violence I offer the services of the 19 domestic violence centers in North Dakota to advocate for them. We take seriously our goal of peace in the home for everyone, Mom, Dad, and children.

BISMARCK  
Abused Adult Resource Center  
222-8370  
BOTTINEAU  
Family Crisis Center  
228-2028  
DELAWARE  
Alternatives for  
Abused Families  
1-888-662-7378  
DICKINSON  
Domestic Violence and  
Rape Crisis Center  
225-4506  
ELLENDALE  
Kedish House  
349-4729  
FARGO  
Rape and Abuse Crisis Center  
800-344-7273  
FORT BERTHOLD RESERVATION  
Coalition Against  
Domestic Violence  
627-4171  
FORT YATES  
Tender Heart Against  
Domestic Violence  
854-3402  
GRAFTON  
Tri-County Crisis  
Intervention Center  
352-4242  
GRAND FORKS  
Community Violence  
Intervention Center  
805-555-5555  
JAMESTOWN  
S.A.F.E. Shelter  
888-353-7233  
MCLEAN COUNTY  
McLean Family  
Resource Center  
800-657-8643  
MERCER COUNTY  
Women's Action and  
Resource Center  
873-2274  
MINOT  
Domestic Violence Crisis  
Center  
852-2258  
RANSOM COUNTY  
Abuse Resource Network  
683-5061  
STANLEY  
Domestic Violence Program,  
NW, ND  
628-3233  
VALLEY CITY  
Abused Persons Outreach  
Center  
845-0078  
WILLISTON  
Family Crisis Center  
642-2115  
WILLISTON  
Family Crisis Shelter  
572-0757

Testimony on SB2197  
House Judiciary Committee  
March 2, 1999

Chair DeKrey and Committee Members,

My name is Andrea Martin, I am a licensed counselor in North Dakota and I am also the Assistant Director of the ND Council on Abused Women's Services/Coalition Against Sexual Assault. I have provided crisis intervention, advocacy, and counseling services to victims of domestic violence and their children, and treatment to domestic violence offenders for several years.

I am here on behalf of the ND Council on Abused Women's Services to oppose SB2197 for several reasons.

One is that it is not needed. There are several provisions currently in statute that would afford similar consequences or penalties for providing false information to a court. Chapter 28-26-01 of the North Dakota Century Code awards attorney's fees to the prevailing party for actions found to be frivolous or without basis. Chapter 28-26-31 awards payment of all expenses to the prevailing party in cases found to be untrue or not made in good faith. Chapter 12.1-11-01 and 12.1-11-02 are the perjury statutes, which provide for criminal penalties in cases where one is found to have made false statements under oath. Chapter 12.1-11-05 provides for criminal penalties for making false entries in legal documents, which could include documents for proceedings indicated in SB2197. Most of the actions indicated in this bill are those that involve representation by an attorney. It is my understanding that attorneys are bound by ethical standards that prevent them from bringing forward cases that appear false in any way.

Because there are no bills proposed this session regarding false allegations of criminal mischief, disorderly conduct, stalking, etc., we think it is important to ask why domestic violence? We don't need bills for each crime. We don't need one for domestic violence either.

This bill implies that false allegations of domestic violence are coming in at a rate so high that we need to do something about it legislatively. However, in ten years I have never seen any local, state, or national research indicating that domestic violence is a type of crime that has a high incidence of false reporting. There is nothing to substantiate that we have a problem with false allegations in North Dakota.

I recognize that there are a handful of anecdotal accounts that need to be addressed. These can and should be pursued with remedies in existing statutes. On the other hand, none of us can be certain that anecdotal claims of innocence are accurate. As a result of my experiences working with offenders, I would be extremely cautious about supporting claims of innocence simply based on an

North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota  
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individual's word. Abusive individuals will campaign for their innocence with incredible persistence. If we unwittingly or mistakenly support an offender's claim of innocence, then the offender feels rewarded and validated. We then reinforce his belief that he is entitled to abuse his partner. Abusers' denial about the effects of abuse and their ability to convince others that they are innocent is part of what makes them dangerous, its part of what makes them so resistant to treatment, and it is part of why it is so difficult to hold them accountable.

Many of us assume that domestic violence in families comes to an end when a relationship dissolves. Instead, the offender, who previously sought and had control over his partner, feels panicked and retaliates when a victim asserts herself. Recent research indicates that terminating a violent relationship results in an increased risk of fatality for battered women and their children (Byron Johnson, et al., Mortality Review for Florida Governor's Task Force on Domestic and Sexual Violence 9 (1997)). Research also indicates that abusers are twice as likely as non-physically abusive fathers to seek sole custody of their children (American Psychological Association). These facts illustrate that it is the abuser that works overtime to manipulate his victim through the court system. There is research to prove this but there is no research or substantiated evidence to prove that false allegations are a problem in ND.

As you may recall in recent years legislation pertaining to battering and custody was enacted that offered victims assistance from the justice system when seeking safety for themselves and their children. The legislation was long-awaited and many began to utilize it. As a result of this and other domestic violence legislation over the past decade, it makes sense that the rate of domestic violence reports increased dramatically in recent years. Victims are using the laws provided for them. This bill comes in response to that and essentially says, in the past we've taken down some barriers but now we are going to put one back.

If, despite of these arguments, you decide to pass this legislation, then we at least hope you will consider the amendment that I have attached to my testimony that would eliminate protection order proceedings from the list of court proceeding indicated on page one, line 7 of SB2197.

Protection orders are designed to offer immediate emergency relief when a party is threatened with imminent violence. These proceedings are very different than the others mentioned in SB2197. A protection order proceeding may be the first time a victim seeks assistance from the court system. There will often times be no record or police reports of previous violence. Because incidents occur in the home, there often are no witnesses, there is no one to corroborate her story unless she is seriously injured and has sought medical treatment. I am concerned about creating an environment where it is too easy to confuse unfounded allegations with false allegations. A lack of hard evidence does not mean allegations are false.

In matters of protection order proceedings in particular, I am very concerned about cases where victims recant due to intimidation and threats by the offender. If she has been threatened with her life, she has a significant investment in seeing that her protection order is dismissed or that the application is withdrawn. If she recants in court, not only does she remain in danger, without even a protection order to assist her, but with this legislation she could also have to pay her offender's attorney fees. This legislation could prolong contact between the parties that would surely lead to future violence. Legislation that potentially deters victims from seeking

assistance for fear of reprisal, not just from abusers but from the court systems as well, seems to defeat the intent behind the protection order process altogether. The bill will likely provide offenders with an additional tool to further harass their victim. We recommend seeking an alternative solution to the problem. Existing statutes could be that solution.

Also, domestic violence advocates have every interest in maintaining the integrity of the protection order process, which is often a pro se (without legal representation) process. One case mistakenly brought forward that turns out to be false can ruin the credibility of other claims. Advocates are very aware of this issue and assess each protection order carefully to ensure that it is appropriate for application. For example, if an individual comes to a domestic violence agency and indicates that they want a protection order for the primary purpose of gaining custody of their children, the advocate is trained to refer that person to a private attorney to pursue civil action other than a protection order.

Advocates carefully screen applicants and Judges make the final decision on whether or not protection orders are granted. In essence, protection order applicants are screened twice for accuracy and truthfulness prior to being heard in a full court hearing. Advocates see hundreds of victims each year and their experience and training assist them in determining the truthfulness of claims.

A final factor to consider is that women are the most likely individuals to bring forward allegations of domestic violence. Statistics repeatedly show that women are the victims in 95-98% of the cases. This bill is a gender-biased bill. Because women will likely be the ones alleging domestic violence, then this bill implies that women are more likely than men to lie about domestic violence and are more likely to abuse the justice system.

Please remember that when a victim chooses to leave an abusive relationship, it is a very difficult decision to make. She is aware of the increased danger to her because it is likely he has threatened her many times. As a society we tend to be angry and frustrated with her for staying in the relationship. It makes sense then that we would take steps to make it easier for her leave. This bill is an obstacle for her and in no way represents the voices of victims of domestic violence.

In sum, we are asking you to defeat this bill because it is unnecessary, potentially dangerous, and it's a step backwards from creating a victim-friendly justice system. If in spite of this lengthy list of arguments you decide to pass the bill, then please consider the attached amendment.

Thank you.



Andrea J. Martin, L.P.C.C.  
Assistant Director  
NDCAWS/CASAND

**Proposed Amendment to Senate Bill No. 2197**

Page 1, line 7, remove "domestic violence protection order proceeding,"

Renumber accordingly

Suggested by  
ND Council on  
Abused Women's  
Services



# FACTS ABOUT DOMESTIC VIOLENCE IN NORTH DAKOTA

January - December 1998

- \* **6,258 incidents** of domestic violence were reported to crisis intervention centers in North Dakota. *This is up by 338 incidents from 1997.*
- \* At least **5,267 children** were directly impacted by these incidents; *up 261 from last year.*
- \* **950 orders of protection** were filed with the assistance of domestic violence program staff, *slightly more than '97.*
- \* **94%** of the victims were **women**.
- \* At least **44%** of the victims were under **30**; At least **5%** were under **18** years old.
- \* **10%** of the new victims were disabled; **33%** of the disabled victims were mentally ill.
- \* **Weapons** were used in at least **17%** of the incidents.
- \* Law Enforcement officers were called to respond in at least **44%** of the incidents; *(41% in 1997)* In at least **34%** of these incidents, an arrest was made. *down 10% from 1997.*
- \* There is a **history of alcohol use by the abuser** and domestic violence incidents in at least **36%** of the cases. There is a history of alcohol use by both the abuser and the victim in at least **12%** of the cases.
- \* The abuser had a **history of abuse** with other adults in at least **37%** of the cases.
- \* Most abusers were charged with **simple assault (39%** of all charges).
- \* Victims reported that **242 batterers violated** their protection orders; **71** were arrested for a first violation and **32** were arrested for subsequent violations.

*This statistics represents a significant increase from 134 violations in 1997. More violators were also arrested for both first time and subsequent violations.*

*In 1998, at least 5 homicides involved domestic violence situations.*





**APRI**

American Prosecutors Research Institute  
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*Via Federal Express*

March 2, 1999

Ms. Bonnie Palecek  
Council on Abused Women Services  
418 East Rosser, #320  
Bismarck, ND 58501

Dear Bonnie:

As promised, I am enclosing materials pertaining to Ralph Underwager. Included in these materials are a list of prosecutors who have faced Underwager as a defense expert in the past two years, with their telephone numbers in the event that the legislators wish to call any of them. Additionally, there is a list of cases in which Underwager was prevented from testifying, which includes statements by the court as to why he is being prevented from doing so.

Among Dr. Underwager's publications includes an article in *Playboy* (included), as well as his publication in *Paidika*, which is also included for your reference. As I stated on the telephone, we need to have returned to us this *Paidika* journal.

Good luck to you, and please do not hesitate to contact us in the future should the need arise.

Very truly yours,

Mary-Ann Burkhart  
Senior Attorney

Prosecutors who have encountered Ralph Charles Underwager as a defense expert since 1997:

|                   |                          |
|-------------------|--------------------------|
| Robert Winn       | (518) 746-2525           |
| J.R. Devel        | (309) 477-2205 ext. 234  |
| Joe Welty         | (602) 514-7521           |
| Amy Belger        | (212) 335-9212           |
| Ron Campbell      | (605) 773-3305           |
| Gary Rapp         | (517) 362-6141           |
| Paul Young        | (612) 323-5598           |
| Lt. Mark Benfield | (904) 270-5550 ext. 3008 |
| Tom Truman        | (304) 255-9148           |
| Eric Johnson      | (715) 386-4658           |
| Kristin Zeller    | (304) 255-9159           |

Dr. Chadwick is Director of the Center for Child Protection in San Diego, California. (Children's Hospital) B-7

NOTES FOR TESTIMONY  
by David L. Chadwick, M.D.

ACCUSATIONS OF CHILD SEXUAL ABUSE  
Wakefield and Underwager

1. Overview and Introduction.

Reading the textbook by Wakefield and Underwager is a considerable effort because it is long (400 pages) and contains over 700 literature citations. However, very early in the book the reader is given a clear signal that the book is not a typical scholarly text aimed at presenting students and practitioners with a balanced and carefully documented overview of a large subject. The signal is given in the foreword by Douglas Besharov who describes the book's "strong rhetoric" very clearly so that the reader is not surprised later to encounter a number of statements of opinion that are unsupported by facts.

Despite Besharov's warning, the authors of "Accusations" make a long argument (pp. 49-52) in support of the special scientific qualifications and objectivity of psychologists. This argument implies that the authors possess these attributes to a high degree, and should, therefore abstain from statements that cannot be documented by facts.

The surprise in the book comes from the very high frequency of incorrect citations of the works of others that are employed to support the opinions of the authors. Before analyzing a sample of these in some detail a few things should be pointed out about the usual expectations of clarity, honesty and completeness which is "expected" or which meets a "high academic standard" in the writing of a textbook.

"Accusations" appears to be a reference work in that it is long and detailed, it contains little or no original research data and it contains many statements that are supported by citations from the writings of others. Practitioners require and writers are expected to produce reference materials which have several characteristics. The first and most important of these is honesty and accuracy in citation. If the reader is required to find and read hundreds of cited articles, there is very little value in having the book. The expectation, then, is that when a statement is made in the text and attributed to the author of another work and cited as such, the cited article should say what the book author says it says.

If the author of a cited article looks at both sides of an argument, it is not accurate and honest to cite selectively only those statements which support one side.

Another valuable attribute is balance. This means that if there are two or more important points of view both are presented and the reader is given the opportunity to select a viewpoint.

In addition to honesty and accuracy in citation it is reasonable to expect the author of a reference text to be honest and accurate when making statements from the author's own personal knowledge which are not supported by citations of the work of others. Unsupported statements in textbooks are likely to attract the critical attention of readers who often find it necessary to check them out through other resources. If a sample of unsupported statements in a reference text prove untrue, the author's credibility may be lost.

## LITERATURE CITATIONS

Citation Statement  
and Location in the Text of  
"Accusations".

"...frequently fictitious accusations were made by emotionally disturbed female adolescents." Jones (1985). page 300.

"Russell (1983) reports that 17% of incestuous child sexual abuse is by stepfathers and only 2% by fathers: moreover, of the offenses considered "very serious" 47% involved a stepfather. page 228.

Reference and  
Actual Citation Content

Jones, D.P.H. (1985) Reliable and fictitious accounts of sexual abuse in children. Abstract of Data Presented at Seventh National Conference on Child Abuse and Neglect. Chicago, IL Nov. 12, 1985.

The author provides a detailed description of the differences between true and false allegations of child sexual abuse with estimates of the relative frequencies of both. No mention of adolescents at all is made in this paper.

Russell, D.E.H. (1983) The incidence and prevalence of intrafamilial and extrafamilial sexual abuse of female children. Child Abuse and Neglect, 7:133-146

On page 138 of Russell's article we find that she says that 40% of all sexual abuse found was within the nuclear family. Of that set of 74 cases, 42 were perpetrated by all sorts of fathers and of the 42, 27 were biologic fathers and 15 were stepfathers. Applying math to this series of sets gives a figure of 14% rather than 2% for the proportion of all intrafamilial child sexual abuse committed by natural fathers.

In a table on page 141 Russell indicates that, of the 17

cases of sexual abuse committed by stepfathers that 8 or 47% were "very serious" rather than that 47% of very serious cases were by stepfathers.

"But in many descriptions of how to do a medical examination for abuse, physical signs are over-valued and not viewed realistically in terms of possible introduction of error. Also these same protocols for a medical examination advise the physician to be suspicious, ready to interpret what amount to minimal cues as indicating abuse, in order to avoid missing abuse (Connell, 1980; Duncan and Stuemky, 1980; Fontana, undated; Husain and Ahmad, 1982; Kerns, 1981; Krugman 1986; Pascoe and Duterte, 1981; Niggeman and Rimsza, 1981, Sgroi, 1978; Woodling, 1986). This introduces the strong bias of expectancy effect and interviewer prior assumptions into the evaluation and increases the probability of a misdiagnosis of abuse." p.187-188.

Same as above.

Connell, H.M. (1980) The pediatrician and the sexually abused child. Australian Pediatric Journal, 16:49-52.

In this article the author does not evaluate physical findings at all as to their importance in establishing whether or not a given child has been sexually abused. She does not "advise physicians to be suspicious".

Duncan, K.P. & Stuemky, J.H., (1980) Letter to the Editor. American Journal of Diseases of Children, 134-1002.

This letter states:".....many cases of sexual abuse are being missed by the medical community due to a low index of suspicion."

In a medical article this statement simply means that physicians should be aware of

the condition and is often employed to alert physicians to the existence of rather rare conditions as well as common ones. It is not the same as advising physicians to be suspicious and would not produce any bias of expectancy.

The article makes no attempt to evaluate the importance of physical findings.

Same as above.

Husain, A. and Ahmad, A. (1982) Sexual Abuse of Children. Diagnosis and Treatment. Missouri Medicine 79-331-334.

This article states that "...a medical examination, including the gynecological examination, is very important both diagnostically and to provide medical and gynecological care. It does not "overvalue" physical findings. The authors do not advise physicians to be suspicious.

Same as above.

Kerns, D.L. (1981) Medical assessment of child sexual abuse. In P.B. Mrazek and C.H. Kempe (Eds.) Sexually Abused Children and Their Families New York, Pergamon Press.

In this chapter the author does not evaluate the importance of physical findings. He does not advise physicians to be suspicious.

Same as above.

Krugman, R.D. (1986) Recognition of sexual abuse in children. Pediatrics in Review 8:25-30.

This article states that



recognition of sexual abuse may depend upon a "high index of suspicion and good interviewing skills." This is not the same as advising physicians to be suspicious.

The author does not evaluate physical findings.

Same as above.

Sgroi, S.M. (1978) in A.W. Burgess, A.N. Groth, L.L. Holmstrom & S.M. Sgroi, Sexual Assault of Children and Adolescents, Lexington, MA, Lexington Books. 129-157.

In these 2 chapters the author indicates that physical findings of genital or anal trauma may be indicators (among many others) of child sexual abuse. She does not really attempt to evaluate the relative importance of physical findings. She does not advise physicians to be suspicious of sexual abuse.

Same as above.

Woodling, B.A. (1986). Sexual Abuse and the Child. Emergency Medical Services April pp.17-25.

The author of this article discusses physical findings in child sexual abuse exhaustively. He states that: "Minor genital injuries are observed in 70-80% of all victims of vulva: coitus, or attempted penile-vaginal penetration where pain is experienced." This is about the strongest statement that he makes in support of the importance of physical findings. Many clinics report that about 50% of all children referred for sexual abuse evaluation have confirming physical findings, but most do

not specifically mention the frequency of findings in victims who experienced pain. Dr. Woodling's statement, therefore, is not an overvaluing of physical findings.

Same as above

Pascoe, D.J. & Duterte, B.O. (1981). The medical diagnosis of sexual abuse in the premenarcheal child. Pediatric Annals. 10:40-45.

The authors do not overvalue physical findings, but state that they may be positive about 20% of the time. They do not advise physicians to be suspicious of sexual abuse, but rather they advise them to be aware of the wide range of symptoms that victims may present.

Same as above

Niggeman, E.H. & Rimsza, M.E. (1981) The sexually abused child. Arizona Medicine, 38:705-707

In this article the authors do not evaluate the physical examination although they describe how to carry it out. They do not advise physicians to be suspicious, but they conclude: "In conclusion, sexual abuse of children is a problem which may be encountered by all physicians, particularly those in primary care settings. Awareness of the problem, knowledge of its manifestations, and a thorough medical examination are essential to making the diagnosis of sexual abuse and providing optimal treatment for the patient and family."

"King and Yuille (1987) studied children six, nine,

King, M.A. & Yuille, J.C. (1987).— Suggestibility and

eleven and seventeen years old and found that with both a slide event and a live event the younger children were more suggestible than older children. They stated that the less a child remembers the more he can be misled and the younger the child the less he will remember."

the child witness. In S.J. Ceci, M.P. Toglia & D.F. Ross (Eds), Children's Eyewitness Memory (pp. 24-35), New York: Springer-Verlag.

King and Yuille never state what W. and U. say they state. While they found that younger children were more suggestible than older children with respect to unimportant details in an observed scene, They also noted that "These results demonstrate that younger children are capable of resisting suggestions about matters that are salient and memorable (Johnson and Foley (1984)". In other words, if the events observed were important to the children, they can remember them and resist suggestions about them during later interviews.

King and Yuille provide some valuable insights about what they call "context sensitivity" and how interviewers can utilize this research to improve accuracy, but W. and U. do not comment on this part of their work.

In a summarizing statement King and Yuille state: "Over the last decade, however, researchers have begun to isolate those special instances in which children have problems as witnesses from the many situations in which their performance equals adults. In this chapter we present the findings from two separate investigations of the eye witness abilities of children. What emerges from this work is a composite picture of children's strengths and weaknesses. Our

results and our understanding of the findings of other investigators have convinced us that increased sensitivity to the cognitive and situational factors that influence children may ameliorate the problems related to their testimony."

"Zaragosa's (1987) study of memory, suggestibility, and eyewitness testimony concludes: 'The legal system has long suspected that children's testimony is easily modified by misleading suggestions. Recent studies of misinformation effects...have amply demonstrated that adult testimony is also dramatically influenced by misleading suggestions...These misinformation phenomena are robust and highly reliable; they have been shown to occur across a wide variety of stimulus events, different types of misleading information, and different methods for presenting the information (p.73).'

"The goal of this study was to search out whether the misinformation effect is caused by actual impairment of memory (Loftus & Loftus 1980) or if it is caused by a combination of social and methodological factors. This research question is important in finding ways to make memory-based statements more reliable but it is not important in terms of the known effect of misinformation on courtroom testimony."

Zaragosa, M.S. (1987) Memory, suggestibility and eyewitness testimony. In S.J. Ceci, M.P. Toglia & D.F. Ross (Eds), Children's Eyewitness Memory (pp. 53-78), New York: Springer-Verlag.

W. and U. ended their quote of Zaragosa just before the following sentences.

"These phenomena undoubtedly show that people have a strong tendency to incorporate different sources of information about an event in producing a response. To the extent that new information is inaccurate, people's testimony is bound to be inaccurate as well. Clearly, in many cases, misleading suggestions can seriously undermine the accuracy of adult testimony."

W. and U.'s comment represents a crude attempt to distort what Zaragosa is saying rather clearly: that adults are about as susceptible as children to being misled by inaccurate new information about a previously observed event, and that this effect could be important in their testimony.

"Cole and Loftus (1987) state that '...the demand characteristics of being given certain information by an adult, and even being questioned by an adult are powerful components of suggestibility in young children.' (p. 199)"

Cole, C.B. and Loftus, E.F. (1987). The memory of children. In S.J. Ceci, M.P. Toglia & D.F. Ross (Eds), Children's Eyewitness Memory (pp. 178-208), New York: Springer-Verlag.

W. and U. quote Cole and Loftus out of context. The full and actual quotation on p. 199 of the Cole and Loftus chapter reads as follows. "Taken together these three lines of research suggest that children under 7 years of age are particularly vulnerable to misinformation regarding peripheral details of events, and this susceptibility to suggestion may be heightened in stressful situations. However, there is little evidence that they are more suggestible than adults with respect to the central aspects of an event. In addition, the demand characteristics of being given certain information by an adult, and even being questioned by an adult are powerful components of suggestibility in young children."

Cole and Loftus go on to conclude p.205): From the diverse set of studies discussed, several consistent findings have emerged with respect to children's memory for events. As with adults, free recall is more accurate than cued recall or recognition, but less information is provided during free recall. The amount of information provided during free recall increases with age, reaching adult levels by about 12 years of age. The

information freely recalled by children tends to be as accurate as adult accounts. With respect to inaccuracies, children under 6 years of age are least likely to introduce inaccurate information into their accounts, while 8-to 9-year-olds are most likely to add extraneous, often implausible information, and adults seem to be most susceptible to errors of inference."

"A typical protocol for the first interviewing of a child is distributed by the Social Service Department of the San Diego Child Protection Center (1987). Every model question for the initial interview is a leading and suggestive question." p. 28.

Social Service Department, San Diego Child Protection Center (1987). Unpublished protocol for interviewing.

This citation is mysterious since no entity bearing that name exists in San Diego.

## STATEMENTS BY AUTHORS WITHOUT SUPPORTING FACTS

1. Discussing the child sexual abuse accommodation syndrome concept as advanced by Roland Summit.

"The application of the sexual abuse accommodation syndrome to children's statements means that nothing they say, nothing they do, can count against the belief that abuse happened. If they deny initially, that's because they have to keep it secret and if you keep at them long enough they will finally admit the secret. If they admit and then deny, that's because they are helpless, confused and it means they are abused. Everything is evidence that the child has been abused. Once an allegation hits a professional who holds the sexual abuse accommodation syndrome concept and the dogma that children must be believed at all costs, nothing can falsify it (Popper 1961)."

These statements are all original with W. and U. Summit says nothing of the kind in the article on the accommodation syndrome or in any other of his writings. Professionals find the accommodation syndrome concept useful because it explains what chronically sexually abused children must do in order to preserve as much as they can of their lives and the things they value. The forensic implication might be that children may well deny that abuse has occurred when in fact it has occurred, but this is very different from saying that "Everything is evidence that a child has been abused".

2. In a section entitled "Cheat Elite and Child Sexual Abuse" W. and U. set forth the following statements.

"In the course of consulting in hundreds of cases of accusations of child sexual abuse, defense attorneys across the land have reported to us that law enforcement personnel behave differently in a sexual abuse case. Exculpatory evidence is withheld or destroyed. Extraordinary effort is put into investigation and prosecution. Lies, circumventions, subterfuge and hostile manipulations of legal rules abound. Some defense attorneys claim that their phones have been tapped, surveillance teams assigned to them, set-ups and frame-ups attempted, erroneous reports made to IRS, and threats of retaliation and intimidation made. Those who have said this maintain that they have evidence to prove it. Some have dropped out of criminal law. Many defense attorneys assert that judges use their wide discretionary power to impede, obstruct, and prevent an adequate defense, favoring the prosecution in rulings, procedural decisions and threatening and intimidating the defense." (p. 130)

This is in contrast to their position stated earlier on p. 50:

"Psychology develops systematically obtained and rationally



tested knowledge to replace erroneous concepts. (NAS, 1970). To do this requires a commitment to be a scientist first, before anything else, including a healer or an advocate."

Using the undocumented and largely unprovable statements of defense attorneys as a basis for a group of very serious allegations against large numbers of persons working in the criminal justice system can hardly be construed as "systematic", "rational", or "scientific".

3. Another similar statement appears on page 150 under the subtitle "A Final Issue: A New Star Chamber.

"The aims of a justice system include vindication of the law, education in approved values, retribution, deterrence (general and special) and incapacitation (DeWolf, 1975, Meehl, 1983). The justice system has shifted power and responsibility to the social welfare and mental health bureaucracy so that these goals are declared purposes of this crypto-justice system. The child welfare structure with the support of an ancillary group of mental health professionals can remove parents and children from their homes, detain in protective custody, order sentences of therapy, impose exile from home and family for indeterminate periods of time, assume legal control of children and create great financial burdens.

"This crypto-justice system functions as a prerogative court in the manner of the infamous Star Chamber court which began under King Edward IV as a special instrument to advance the interests of the monarch and selected nobility Ashley 1969).....

"The child welfare crypto-justice structure makes decisions about guilt and innocence, punishment and reform, and the sanctions to be applied long before the justice system gets to a formal adjudication where constitutional rights are protected. The patron of the crypto-justice system is not clear and therefore the interests to be served by the power granted are not clear. The gate is opened to pursuit of idiosyncratic, hidden, and unchecked ambition and personal pathology."

This astonishing statement is not supported by a single fact acquired in a scientific manner, and no attempt is made in the book to review any of the real history or background of the child welfare system in the U.S. An easily available and easily readable description of standards of practice in child welfare is published by the National Association of Public Child Welfare Administrators under the title "Guidelines for a Model System of Protective Services for Abused and Neglected Children and Their Families." None of the attributes described by W. and U. can be found in these guidelines.

4. On pages 20 and 21, the authors describe the Children's

Advocacy Center in Huntsville, Alabama and go on to state: "The model is already replicated in Ramsey County, MN and in San Diego." This writer has been involved in child abuse work in San Diego for twenty years; there is in fact no program in San Diego that replicates the Huntsville system. The Child abuse programs in San Diego were well-developed somewhat before the Huntsville program appeared.

BISMARCK  
Abused Adult Resource Center  
222-8370  
BOTTINEAU  
Family Crisis Center  
228-2028  
DEER LAKE  
Alternatives for  
Abused Families  
1-888-662-7378  
DICKINSON  
Domestic Violence and  
Rape Crisis Center  
225-4506  
ELLENDALE  
Kedish House  
349-4729  
FARGO  
Rape and Abuse Crisis Center  
800-344-7273  
FORT BERTHOLD RESERVATION  
Coalition Against  
Domestic Violence  
627-4171  
FORT YATES  
Tender Heart Against  
Domestic Violence  
854-3402  
GRAFTON  
Tri-County Crisis  
Intervention Center  
352-4242  
GRAND FORKS  
Community Violence  
Intervention Center  
805-555-5555  
JAMESTOWN  
S.A.F.E. Shelter  
888-353-7233  
MCLEAN COUNTY  
McLean Family  
Resource Center  
800-657-8643  
MERCER COUNTY  
Women's Action and  
Resource Center  
873-2274  
MINOT  
Domestic Violence Crisis  
Center  
852-2258  
RANSOM COUNTY  
Abuse Resource Network  
683-5061  
STANLEY  
Domestic Violence Program,  
NW, ND  
628-3233  
VALLEY CITY  
Abused Persons Outreach  
Center  
845-0078  
WILLISTON  
Family Crisis Center  
642-2115  
WILLISTON  
Family Crisis Shelter  
572-0757

TO: House Judiciary Committee  
FROM: ND Council on Abused Women's Services  
Re: SB2197  
DATE: March 3, 1999

"Why are domestic violence advocates threatened by this bill?"

It's a fair question, and what we did not address yesterday is the context in which we view SB2197. We need to try again.

First of all, however, I wish to provide the committee with information about Dr. Ralph Underwager, cited by proponents of SB2197. Dr. Underwager is part of the reason we are so wary of this bill and so worried about the hidden agenda behind it.

Underwager is important because he has undertaken a national campaign to discredit and reverse the work of child advocates, domestic violence advocates, and sexual assault advocates over the past 20 years. He is perhaps most famous as a defense attorney in child sexual abuse cases. He himself has been discredited by every reputable national group, and entities like the National Prosecutors Research Institute, and the Battered Women's Justice Project continue to follow his activities because he is so dangerous.

As you can see by the statistics presented yesterday, Underwager does not simply disagree with us about certain issues, he charges that we made issues like rape, domestic violence, and incest up, that 80%-90% of all "allegations" of violence are lies. Because the group supporting SB2197 relied heavily on his data, and apparently share his agenda, we have a healthy skepticism about their motives. Documentation of his misrepresentations abound. I have provided a copy of a review of one of his textbooks as an example.

In dealing with the Ralph Underwagers of the world, we have learned we have to be wary. No, we did not have a lot of data 20 years ago. We are grateful that legislators trusted us then and that there is still a basic trust level with many of you, support we heard from several of you yesterday. Thank you! We certainly acknowledge you can support us and still disagree now and again.

On the other hand, I clearly remember presenting as fairly and as completely as we could, the data we did have. That is quite different from putting forward the kind of "evidence" we heard yesterday. It is not just a matter of "our numbers and experts against theirs."

But the question remains, "why are we so threatened?"

First, because the Underwager agenda described above is much broader than one bill which appears to put forward a penalty for something we all seem to agree is terrible whenever it happens. (i.e. false allegations) It extends to "false allegations" about just about everything, rape, child sexual abuse, and now apparently he has extended into what he characterizes as "hysteria" about domestic violence.

Second, we are feeling threatened because frankly we are experiencing a major backlash, perhaps because all of the laws, collaborative efforts, private and public initiatives, and general awareness we have promoted are working. Nonetheless, we have consistently seen virtually every law passed over the last 20 years manipulated and used as a threat against victims of personal advocacy violence. As advocates for victims, we see SB2197 as part of that pattern.

Some examples.:

- 1) We are seeing more dual arrests than ever, even though our statutes require an officer to consider "self-defense, comparative severity of injuries etc." We are



now gathering documentation to prove that victims are being arrested along with their abusers.

- 2) We are seeing more dual protection orders; even though our law specifically states separate petitions are required, some judges routinely issue them for both parties without separate petitions. One judge consistently tells the petitioner she will land in jail if the order is broken. Program staff need to mentally prepare victims for these verbal chastisements even though they are the ones asking for protection. We are documenting these cases.
- 3) We are seeing more threats by prosecutors that if these victims change their minds about cooperating with a prosecution, they could be charged with false reporting or perjury.
- 4) Last session, we were part of an effort to redefine domestic violence in cases of custody and visitation because so many batterers were getting to the courthouse first to get protection orders on what judges began to call the "one hit" rule; the whole system was shutting down, more and more cases were going to the Supreme Court, and more and more judges were refusing to even hear about custody in protection order hearings; they stopped issuing "findings" of domestic violence (even though those findings are pre-requisites to the orders themselves") in order to avoid the issue of dealing with children. Once again, the law initiated to protect victims and their children was being used against them.

This obviously has not deterred us from pursuing legislative initiatives or honing the statutes we already have to protect those we believe they were intended to protect. We intend to continue to do both and, as well, to react to legislation that we believe is not in the best interest of victims. SB2197 is not in their best interest.

- 5) We were told yesterday that nearly anyone seeking an emergency protection order would get one because judges want to err on the side of caution and safety. We also see judges erring on the side of caution in preserving parental rights, even when there are domestic violence allegations. Judges do not prohibit custody or visitation without substantiated evidence and careful consideration. The proponents of this bill would have us believe that "countless numbers" of individuals have been victimized and denied personal freedoms and parental rights by what would have to be an overwhelmingly incompetent judicial system.

We realize that laws are written hopefully to work for everyone. They always cut both ways. They should. Far from having our heads in the sand, we must always err on the side of vigilance and caution. We live in a world in which we hear daily about threats to "pull an O.J." if a woman in a violent situation suggests she is leaving. As indicated in our testimony yesterday, a very small percent of individuals are truly falsely accused. Based on our experience with offenders we believe that a significant number of individuals claiming to be falsely accused are indeed offenders who are acting true to form. They tend to proclaim their innocence in the face of a history with the judicial system, credible victims testimony, medical records, and/or police reports that would say otherwise. This is why we think it is important to be cautious about supporting potentially damaging legislation without further investigating their claims.

To think that a threat of charging “false allegations” won’t be used by batterers as new tool of intimidation would indeed be naive.

That’s all we were attempting to do yesterday: share with you our perspective that many of the 4,000 victims of domestic violence will be further threatened by this bill. Of course it is your job to sort things out and weigh that risk against what you may honestly view as an issue of fairness and protection for the overall integrity of the system. We wish you well in your deliberations. Thank you.

A handwritten signature in cursive script, appearing to read "Andrea Martin".

Andrea Martin

A handwritten signature in cursive script, appearing to read "Bonnie Palecek".

Bonnie Palecek  
ND Council on Abused Women’s Services