

## De-Pathologization of Consensual BDSM



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Family court judges regularly removed child custody or visitation rights from adults who engaged in consensual bondage, discipline, dominance and submission, and sadomasochism (BDSM), fetishes, and cross-dressing behaviors before the American Psychiatric Association (APA) differentiated consensual paraphilias (sexual sadism, sexual masochism, transvestic fetishism, and fetishism) from the paraphilic disorders in the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition* (DSM-5). After the proposed changes to the DSM-5 were made public for commentary, there was a significant decrease in discrimination against BDSM-practicing individuals.

The National Coalition for Sexual Freedom (NCSF) has tracked requests for assistance by BDSM-practicing parents through its Incident Reporting and Response (IRR) program.<sup>1</sup> The NCSF is a national advocacy organization founded in 1997 that advances the rights of and advocates for consenting adults in the BDSM-leather-fetish and non-monogamy communities, and its IRR program offers educational resources and referrals to kink-aware professionals upon request.

In total, 808 parents contacted the NCSF's IRR program from January 2005 to December 2017 to report that a determining factor in their child custody hearing was their BDSM, fetishism, cross-dressing, and/or non-monogamous behavior.<sup>2</sup> These parents were being investigated by state social services because of their sexual behavior or they were in divorce or custody disputes with ex-partners and their adult sexual behavior was introduced as a determining factor. The *Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision* (DSM-IV-TR) was used by judges, social workers, and psychological evaluators to "diagnose" kinky people with a paraphilic mental disorder and then deny them child custody on that basis.

A case study illustrates how legal and social service professionals typically regarded BDSM behaviors in child custody cases before the DSM-5: a mother in a Midwestern state requested help from the NCSF in mid-2009 after losing custody of her 4 children and while undergoing investigation by the Department of Social Services Children's Division because she engaged in consensual BDSM. The mother's psychological evaluations showed no mental illness and there was no sign of abuse; however, the social worker quoted from the DSM-IV-TR and objected to reunification between the children and their

mother, adding "With regards to [the mother's] alternative lifestyle; can she separate this from her parenting? There has been some questions arise from other team members regarding her sexual sadism."<sup>3</sup>

From 2005 through 2007, the NCSF received 59 to 89 reports each year from parents, with only 17% to 19% of parents retaining child custody or visitation rights.<sup>3</sup> To help educate the APA about the harm that was being done to kinky parents, the NCSF launched the DSM-5 Revision Project in 2008. The NCSF provided information on discrimination that was documented in 2 national surveys of Violence and Discrimination Against Sexual Minorities (1998 and 2008), and more than 3,000 people signed the NCSF's DSM Revision Petition urging the APA to de-pathologize sexual behaviors by consenting adults, including a large number of mental health professionals.<sup>4</sup> The NCSF also responded to questions from the APA Paraphilias Subworkgroup and provided information about consensual paraphilias and the discrimination that was occurring.<sup>5</sup>

The 2008 launch of the DSM revision campaign led to a 56% increase in child custody cases reported to the IRR, with 124 parents contacting the NCSF.<sup>6</sup> The reports stayed high in 2009 and 2010 at 110 and 103 parents.<sup>7</sup> Although the total case numbers decreased slightly in 2010, the NCSF received reports of the lowest rates of custody and visitation retention (13%) since its IRR started tracking child custody data in 2005.<sup>8</sup>

In February 2010, the APA's Paraphilias Subworkgroup publicly posted the proposed revisions to the DSM-5 that differentiated consensual paraphilias from paraphilic disorders. The NCSF educated parents and family attorneys on the proposed revisions to the DSM-5 paraphilias and, in the case study previously quoted, the mother's attorney submitted the APA's proposed revisions in the final permanency hearing that same month. The judge ordered a re-evaluation of the mother's case and chastised the Department of Social Services for not being aware of the proposed changes. Custody of 3 of the children was awarded to the mother, with the father retaining custody of 1 child to take advantage of his health care coverage.<sup>9</sup>

In 2011, after the release of the proposed DSM-5 revisions, case numbers remained high, with 101 parents reporting to the NCSF; however, the rate of custody retention increased to 23%.<sup>10</sup> In 2012 there was a 24% decrease, with 77 parents reporting to the NCSF, whereas the retention rate increased significantly to 58%, the 1st time more than half the reporting parents retained custody or visitation rights.<sup>11</sup>

The DSM-5 was published in May 2013, widely disseminating the change in the APA's classification and diagnostic tool.

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That same year, the data for NCSF's IRR program were lost with the death of the NCSF's former IRR director in December 2013, when her executor destroyed all the records that had been in her possession.<sup>12</sup>

By 2014, the number of reports decreased by 43% to 33 parents.<sup>13</sup> In 2015, there were only 19 parents who reported, and only 3 parents had their custody removed at least temporarily. 7 parents in 2016 and 15 parents in 2017 reported to the NCSF, with 5 parents losing custody at least temporarily in 2017.

Parents who have lost child custody because of their adult consensual sexual behavior are the victims of institutionalized discrimination within the family court system based on the DSM-IV-TR and prior editions. Many adults have been forced to hide their sexual preferences and refrain from accessing sex education or interacting with others who are kinky because of the risk of losing child custody. The DSM contributed to the stigmatization of an entire subculture of kinky adults who also suffered discrimination in their jobs, school, and by their family members.

This stigma lingers on with negative effects, as seen in the most recent NCSF survey (2015), with only 10% of the more than 800 respondents stating they are completely open about their involvement in BDSM.<sup>14</sup> Such stigma directed toward BDSM-practicing adults has the potential to contribute to poor well-being, with suicide risk being 1 such potential mental health correlate.<sup>15</sup>

These data illustrate the harm that can be done when public policy is not based on science. In particular, there has historically been a significant amount of discrimination against those who engage in sexual practices that are considered unusual or atypical by the mainstream society at that point in time.<sup>16</sup>

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