

# *Is There a Tilt Toward Abusers in Child Custody Decisions?*

This article will probe the question of why personnel in the legal system—judges, lawyers, law guardians, guardians *ad litem*, psychologists, legislators, child protection caseworkers, mediators—are prone singly and collectively to deciding custody disputes between a "protective"<sup>1</sup> and an abusive parents in favor of abusers.<sup>2</sup> And why the public-at-large is either blind or indifferent to the abundant evidence that protective parents are losing custody when children are put into play in the context of a litigious divorce or allegations of parental abuse. A new approach to standards is proposed that is intended to improve the chances that children will be placed in the custody of the more nurturing parent rather than the superior litigator.

In deference to non-judgmental language, divorces are characterized as "bitter" or "acrimonious" when there is no meeting ground for a settlement. This language of parity obscures the reality that one obstinate or vindictive party alone can produce an impasse. Reasonableness and flexibility on the part of one spouse will not produce an agreement if the other flouts the law, refuses to negotiate, or fixates on terms that will have the effect of jeopardizing the children or impoverishing the family (or both).

From our vantage point, as advocates for nurturing parents who have to contest with abusers for custody of their children, we feel that many of the individuals who contribute to custody decisions subscribe to mistaken paradigms that result either in sole custody being awarded to less qualified or avowedly abusive parents, or in joint custody being imposed or coerced without regard for how damaging it is for children to be torn between parents with widely divergent values and behavioral standards. The effect of imposing joint custody or joint decision-making is to qualify determinedly belligerent parents to drag beleaguered protective parents back into court alleging violations of the custody order until the children reach the age of emancipation. Instead of dissolving marriages to allow spouses to lead separate lives, this granting to abusers of veto over matters affecting the children cements the very power imbalance that made collaborative parenting impossible in the first place.

Readers may not be aware of the travails of protective parents in the courts or the tilt of the legal system toward money, power, false allegations, and devious tactics. When protective parents lose custody to abusive spouses, they commonly attribute the miscarriage of justice to judicial bias against their gender. Our experience suggests that the reason that so many protective parents—mothers and fathers—meet defeat is that the adversarial system is wired to respond to the demanding posture of clever litigators at the expense of less forceful petitioners pleading cases on the merits. Unless judges choose to focus on the merits and see fit to buttress the weaker party (public gratitude is owed to those who do), the momentum will favor litigants with a vendetta mentality. In fact, our exposure has led us to posit that a high "unscrupulousness quotient" has a high correlation with success in custody litigation.

## **TWO CASES**

*One example of the above would be the father who filed a habeas corpus motion claiming his wife had absconded with the children and that their whereabouts were unknown. The judge dismissed the motion when the mother proved not only that she and the children were at the marital residence (which the father had abandoned) at the disputed time, but also that the father had visited the children there the day before his lawyer filed the motion. This blatant perjury did not deter the father from raising other false allegations as the litigation dragged on, with the result that he won custody even though the mother had always been the children's primary caregiver.*

*Another case demonstrating the success of unscrupulous tactics involved a foreign-born father who absconded with his children to his homeland. When the children didn't get off the school bus, the frantic mother raced home to find a note in the kitchen informing her that they were aboard an international flight. A year-and-a-half later, the judge at the so called "Hague" tribunal, who heard the mother's absconding charge, ordered the father to return with the children to the jurisdiction where the family had*

*been living. Back in the U.S., the father demanded temporary custody on two claims: first an allegation, for which he offered no evidence, that his wife had abused the children; and second, a "worry" that the children would be emotionally harmed by an abrupt transfer to their mother since she had become "a stranger to them." The father and his lawyer were betting that the judge would ignore both the father's violation of the law in failing to report his abuse allegation to the police or child protection agency (which would have prompted an investigation), and the blatant hypocrisy of justifying his custody demand on the grounds of the children's separation from their mother, contrived by him. Their gamble paid off. The judge granted temporary custody to the father positioning him for the subsequent award of permanent custody.*

#### **WHY PROTECTIVE PARENTS MAY MAKE POOR LITIGATORS**

It is generally conceded that litigation is a game which smart, charming prevaricators can manipulate to their advantage. In litigation, facts are decided by a contest of wits. Martha Deed, whose work bridges psychology and law, explains that whereas psychologists think of truth as equivalent to reality, the Law defines truth as what emerges from an adversarial contest,<sup>3</sup> the outcome of a clash, not a quest. A malevolent imagination is a definite asset in a litigator. Practiced liars are fluent at denying wrongdoing and at devising false charges and accusatory projections,<sup>4</sup> a prowess that is unnerving to opponents grounded in truth and obedience to law. Moreover, abusers do not grow horns. On the contrary, they can be very ingratiating and may exude a deceptive geniality. A perpetual, inappropriate grin or smirk may camouflage anger or dissociation.

Custody and child abuse litigation are conducted according to the same rules of procedure and evidence that apply to civil trials, except that most states eschew juries, which seems proper since the personal content and sensitivity of the issues make custody cases unsuitable for jury deliberations. Judges or their surrogates conduct the trials, issue the interim rulings, and hand down the final decisions. Absent the time constraints imposed by a jury, the proceedings can be dragged out for months, even years (all the while children may be in the custody of an abuser). Moreover, when the protective parent is the respondent (defendant), having been wrongfully accused in a petition filed by the abuser parent or the child protection agency, she or he will have to wait to present evidence and refute falsehoods until after the petitioner's case has rested. By that time, the protective parent's character and credibility may have been damaged beyond repair; similarly their credit ratings. Protective parents view the money they have to raise to pay attorneys fees as ransom to recover their children.

Neophytes propelled into litigation to protect their children are shocked to find they are expected to be fully conversant with the rules and expectations of the adversarial system.<sup>5</sup> Judges going by the book grant no latitude for unfamiliarity with the intricacies of civil and criminal procedures, and no leeway to correct mistakes due to litigants' inexperience or their attorney's incompetence. If the imperatives of litigation are stupefying to persons of high intelligence, one can only despair for the fate of individuals of less endowment who may never know what particular legal incantation caused them to lose their child. The insurmountable barrier posed by lawyers' fees and legal costs is not in dispute. An occasional indigent litigant qualifies for publicly-funded counsel; others merely too poor to pay lawyers' fees or too poor to pay fees on a par with their opponent are granted no slack at all. Acknowledgment of the existence of these egregious inequities is hard to extract from legal scholars and practitioners. Any admission to endemic miscarriages of justice would strain the system's claim to legitimacy and shatter confidence in the protection supposedly enjoyed from living under "the rule of law."

Commenting on insights from his research for *The Crucible*, his play about the Salem witch hunts, Arthur Miller offered the following hypothesis to explain why we shun knowledge of gross miscarriages of justice: "Few of us can easily surrender our belief that society somehow makes sense. The thought that the state has lost its mind and is punishing so many innocent people is intolerable. And so the evidence has to be internally denied."<sup>6</sup>

Once they discover the jeopardy, protective parents are strained to the breaking point by the burden of knowing that their performance as litigators will decide their children's future. It is stomach-churning to have to sit impassively in a courtroom condemned as a pariah while an opponent spreads lies and besmirches character. When frustration leads to tears or expostulations, the protective parent looks like an hysteric or a shrew, in contrast to a smooth-

talking, self-justifying opponent. The cumulative impotence of being forbidden to rescue one's child from harm and having to pretend to be a good sport about it, can make a parent feel suicidal. Few protective parents endure without suffering some form of stress-related physical or emotional collapse, which plays into the hands of opponents poised to pounce on any show of weakness.

Parents feel intuitively that protecting children from harm is a right sacred enough to be constitutionally guaranteed. The expectation is that when a child is imperiled and public authorities are appealed to for help, they will see the merits and act promptly. Failure to respond is commonly charged to error or ignorance. The comfortable assumption is that individuals earning their livelihoods in the field of child protection would have good intentions toward children. Common sense, though, should tell us that nothing bars bureaucrats with indifferent or negative attitudes toward children from gaining positions of power over custody and abuse proceedings and linking up with like-minded associates to do mischief. Just as those who value children gravitate to others with nurturing instincts, those who would subvert children's welfare are astute at picking up the scent of fellow "pedophobes" or "matriphobes." (The prevalence of patterns of anti-child decisions by agencies and courts gives rise to the need for language to help concerned members of the public interpret the motives. We offer "pedophobia" and "matriphobia" to describe the palpable hatred of children and mothers that is observed in the demeanor of judges and lawyers behaving as prosecutors in the courtroom and in the hostile exchanges that take place in the corridors. Like misogyny and homophobia, giving a name to a bias and those who profess it may help to identify a negative trait and arouse opinion against it.)

Only a nation-wide commitment to put child protection into the hands of proven child protectors would produce the top to bottom renovation that would be needed to direct the system toward doing what's right for children. Unfortunately, nothing of that sort seems to be in the offing. It is conceivable that the system could be retrofitted with a gyroscope that would direct the energy toward merit rather than power, a challenge worthy of the best legal minds if they were inspired to undertake it. Civilian discipline of lawyers and judges is a long overdue reform. As it is, lawyers and judges know they can violate their respective codes of responsibility with impunity since disciplinary bodies tend to dismiss the majority of complaints outright and to levy light penalties, such as private admonitions and wrist-slap censures, against those found to be at fault. Civilian discipline will be conceded only when public demand reaches a critical mass that cannot be denied. The heavy hitters in the American Academy of Matrimonial Lawyers have adopted a *Bounds of Advocacy* which has clauses that would deter some of the most egregious breaches of ethics in custody litigation if there were any enforcement mechanism.<sup>7</sup> Law schools could come under pressure to educate for public responsibility and to certify the character fitness of their graduates. Conventional solutions such as mediation are touted as remedies, somewhat cynically we would say, since mediators are not precluded from using the most convenient method for reaching an "agreement" which is to squeeze the weaker party to make the concessions.

Thinking in terms of realistic reforms, we would see no benefit in trying to convert defenders of the status quo. Efforts to engage the segment of the population that is approving, apologetic or minimizing of child abuse and incest would seem futile. Rather, we would suggest a focus on reaching selected members of the public who put a high priority on the welfare of children and whose minds are not closed to learning disheartening facts. What we propose is to replace the prevailing standard of "best interests of the child," a reform at the time of adoption but now too variously interpreted to discriminate,<sup>8</sup> with descriptive standards that define and educate about visible behavior and attributes that differentiate between protective and injurious conduct toward children.

**1. The fallacy in viewing spouses as either equally fit or equally unfit as parents.** It is not within our scope to address the range of difficulties litigants of good conscience encounter in the legal system. Rather, we wish to focus on two false premises, alleged to be based on the wisdom of psychology, that provide judges and lawyers with a rationale for homogenizing spousal and parental behavior.

First, we would challenge the operative assumption in divorce litigation that couples in a disputatious divorce somehow "deserve each other," which gives rise to the further assumption that dishonesty and vindictiveness are reliably reciprocal. In contested custodies, this homogenizing of the spouses

produces an equally mistaken opposite presumption that both parents are "fit" for custody on the evidence that both are seeking it.

Second, we would challenge as misguided the principle that children always benefit from frequent contact with a non-custodial parent. The courts claim to be in accord with the advice of psychological experts when they order regular visitation without regard for the harm that may befall children from enforced contact with non-custodial parents who have a documented history of rage, cruelty, or violence within the family, or antisocial or criminal conduct in the world-at-large.

All the parties who have a say in the disposition of custody and visitation disputes should be educated to differentiate between spousal and parental conduct that is sufficiently caring, empathetic and responsible to qualify as "good-enough," and that which is so cruel and injurious as to meet a negative test as "not-good-enough." (We borrow the concept of the "good-enough parent" from Donald W. Winnicott, the English pediatrician-psychoanalyst,<sup>9</sup> and supplement it with its opposite, the "not-good-enough" parent.) This distinction is not nebulous; the difference shows in specific marital and post-marital behavior toward children and co-parents, behavior that can be assessed objectively to allow the drawing of bright line distinctions compatible with legal categorizing.

**2. Bright lines discriminate between acceptable ("good-enough" parenting) and unacceptable ("not-good-enough") parenting.** The telling attributes of "good-enough" versus "not-good-enough" parenting can be spelled out. "Good-enough" parenting during and after separation and divorce, for example, would be demonstrated by assigning first priority to children's welfare; devising plans and action to cushion social hardships; participation in cooperative parenting; fairness about money; and obedience to law. Certainly major violence, cruelty, law breaking, and substance addictions would point to disordered conduct that on its face is evidence of "not-good-enough parenting." We are talking about patterns of behavior that are visible and subject to documentation—crimes, not garden variety misdemeanors—against one's family. Injurious conduct against a spouse which crosses these bright lines would weigh in as harmful to children and as evidence of "not-good-enough" parenting.

Good-enough parents are differentiated by their willingness to learn about child development and receptivity to information that will help them to improve their parenting skills. In our opinion and observation, it would be rare for two "good-enough" parents to litigate over custody. By definition, "good-enoughs" would want to settle custody with the least disturbance to the children, and would hold back from subjecting themselves and their spouses and children to the enmity and expense of litigation. They would compromise their personal preferences for the sake of resolving differences without going to the barricades. Well-intentioned parents would be disposed to agree voluntarily to joint custody and to living arrangements that would allow each to stay in close touch with their offspring, without depriving them of the time and freedom necessary to develop their own friendships and interests.

**3. A sensible divorce law would set a minimal standard of decent conduct.** We think it is time to call for a minimal standard of decency in divorce to be stated in simple terms such as: *Do as little harm as possible to your spouse; cause as little disruption as possible to your children.* We would recommend writing into matrimonial law clauses establishing and defining such a decency standard and specifying penalties for violations.

**4. Abusers show a talent for homing in on accommodators to be their partners.** In order for the public to understand the benefit of a standard of decency, four insights about the psychology of spousal abusers and the reversibility of love to hate need to be assimilated:

- a. That during courtship prospective spouses can be extremely deceptive about their true character.
- b. That many abusers do not show their cruel side until after gaining control in marriage, and sometimes not until a crisis sparks a reaction of scapegoating the spouse and possibly the children.
- c. That substance abuse, which may be minimized as transient and comparatively harmless in a young person, can develop into major family-destroying addictions later on.
- d. That many abusers, whether they are the initiators or the responders in a divorce, approach negotiations and litigation as if divorce

conveyed a natural right to wage a war of attrition against their spouse.

The decision-makers in divorce need to be provided with enough background in relationship behavior to understand how it is possible to be deceived during courtship by suitors who seem worshipful and ingratiating only to turn cruel and controlling after marriage. Many spouses lack the radar for detecting potential abusers. Either an unhappy childhood has conditioned them to anticipate or acquiesce to abuse, or the opposite: the experience of growing up in supportive families has raised expectations that prospective partners will be cut from the same cloth. Some spouses describe a turnabout right after the wedding as if the marriage vows had conferred ownership rights. Others report a change in the valence of the relationship coinciding with a crisis affecting self-esteem. Suddenly a previously valued spouse finds her/himself projected as the villain in her or his partner's life scenario.<sup>10</sup>

Aside from the spouses who unwittingly marry abusers, there are others who imprudently take marital risks. Some may allow their judgment to be clouded by the attraction of money, power, looks, adventure, or the fulfillment of romantic or rescue fantasies. Others may marry hastily to escape conflict at home, or to produce children before their biological clocks wind down. Whether headstrong or foolhardy, nothing these spouses did by way of action or omission can fairly be held to have provoked the blizzard of abuse that demolishes families when a partner's "love" inverts to hate and rage. Since it would not be in the nature of these spouses, despite having carelessly committed to marriage, to deliberately mistreat their children or to lie, cheat, steal, and plot to ruin their partner, they would rate as "good-enough" on our scale.<sup>11</sup>

Another mistake made during the courtship phase of a relationship is taking a chance on marriage on the theory that "if it doesn't work out, there is always the remedy of divorce." Exposure to novels, film and advice columns provides no warning of how abruptly and thoroughly spouses can lose their autonomy in a marriage to an over-controlling partner, and how costly and debilitating it is to divorce when the opponent makes unconscionable demands and the legal system seizes superceding control over finances and parenting.

Based on long-term exposure, we can attest that litigation affords abusers a sanctioned venue for torturing their spouse. As an extension of the right to have one's day in court, over-zealous litigators can spend endless days in court scheming to deprive opponent spouses of custody and of whatever share of the marital estate the law entitles them to. In such a setting, as we have suggested before, money and over-drive tend to win out over truth and merit. (Abusers discover that lying is effectively condoned since perjury is never prosecuted.) Less aggressive spouses find themselves at risk for losing their children, and also their home and all the savings and assets that comprised their economic security. In an article in the newsletter of The National Council of Juvenile and Family Court Judges, Janet M. Browermaster, professor of law, criticizes family courts for failing to "identify and address correctly control-based intimate abuse in child custody proceeding."<sup>12</sup>

##### **5. Evidence of extreme cruelty needs to be disclosed and documented.**

Child advocates witness numerous cases in which "not-good-enough parenting" has been exhibited in acts of sabotage ranging from absconding with the children to emptying bank accounts, turning off utilities, stripping homes bare, and myriad other violations that would be treated as crimes if committed outside a family. Offenses like perjury and blackmail cannot always be proved. Stalking, battering, and attempted murder leave a trail that would lead a reasonable person to conclude that custody should go to the non-offending parent.

In *Second Chances*, her longitudinal study of children of divorce, Judith Wallerstein was forthright enough to share with her readers her observation that rage and temporary psychosis are part of the divorce picture. We would add that rage, psychosis, *and* psychopathy (when behavior reflects lack of conscience more than mental illness) may be one-sided and not very temporary. The point we would drive home is that a not insignificant number of divorcing "couples" may consist of one spouse with no compunctions about leaving the family to starve and freeze, and the other too impoverished, bruised, and demoralized to properly defend in an adversarial contest.

Under the shield of confidentiality, many psychologists refrain from disclosing even in general terms the cruelty some of their patient-clients visit on their families. We believe that children should not be sacrificed to this

reticence, and that openness is needed to acknowledge how hazardous a passage divorce can be and how inappropriate it is to steer spouses facing toxic opponents into joint or collaborative processes.

**6. Case histories illustrate the harm that befalls children as a consequence of the legal system's tropism for abusers.** To illustrate the background of experience that has led us to make these observations and to develop proposals for sounder principles on which to base custody and visitation decisions, and to buttress this appeal for support from child advocates, we provide a few brief case histories which could be replicate nationwide by the thousands.

*CASE ONE relates to the issue of temporary disability of a good-enough parent. This mother lost custody of her two sons when the turmoil of divorcing a violent drug-user sent her into a depression requiring hospitalization. Once she recovered and resumed her career, she discovered that the "temporary" custody order had no expiration date. After three years of a strenuous long-distance commute for biweekly and summer visitation with the mother, the boys—now seven and nine—simply refused to return to their father. The mother took them to a psychologist who discovered in the interview that they were being physically abused by the father, something that the mother did not suspect despite his cruelty and harassment of her. Very sourly and reluctantly, the judge modified the custody order to give the mother temporary physical custody and devised a plan for the father to begin supervised visitation with a therapist acting as intermediary to pave the way for normalizing his visitation. But the father would have none of it. He was sufficiently angry at being exposed as an abuser that he refused to return to his sons a single item of clothing or belongings. He would neither phone them nor keep an appointment with the therapist. The judge persisted: no divorce and no permanent custody order until the father was back in the picture. This went on for three years until the judge finally relented and awarded the mother custody and allowed her to proceed with the divorce.*

*CASE TWO relates to the court's obliviousness to the custody implications of the criminal character of a father who tried to murder his wife. When his infant son was six months old, this father pushed his wife off an overlook. She plunged into a ravine and survived, thanks to some bushes that cushioned the impact. Her husband evaded indictment. For the eight years this case was pending, the courts showed not a particle of compassion or concern for this mother. The first inexplicable affront to Justice was awarding the father custody of the infant at the moment the mother was being discharged from the hospital to recover from her injuries. After finally winning her struggle for custody, the mother dared not attempt to curtail the father's visitation lest she put her son into play in a new custody suit. Still suffering flashbacks to the assault, the mother must stoically send off her son on alternate weekends to spend two nights with his brilliant, malicious father. The child invariably returns in an agitated, out-of-control state that subsides only in time for the next visitation. Why, we wonder, would the court not use its broad discretion to give this mother authority to raise her son free from the influence of a father known to be capable of murder and diagnosed by its own forensic specialist as a "sociopath?"*

*CASE THREE illustrates a situation in which awarding the abuser the full quotient of visitation left the caregiving parent open to continual harassment. To end the ordeal of the divorce, this mother agreed to joint custody of a son and daughter with a father whose violence and over-controlling tactics had made living together unbearable. Although she never interfered with visitation, he found excuses to bring a total of fifty-two lawsuits, some challenging custody, others attempting to punish her for fabricated violations of the custody order. His record of stalking, break-ins to the family home, and harassment might have cued at least one of the many judges to sanction him for bringing frivolous lawsuits, but that never happened. When the son was 17, the father won a lawsuit seeking to punish the mother for failing to obtain his consent for a brain scan to diagnose the cause of a black-out. She was found guilty and given a jail sentence (which the judge, perhaps having second thoughts,*

*suspended). The court never lost patience with this father; his lawsuits did not cease until both children turned eighteen, the age of emancipation.*

*CASE FOUR illustrates circumstances in which we believe parenting rights should have been terminated. Neither this little girl's remarried mother nor her therapist could understand why she had become so anxious and belligerent. Finally after returning from a trip with her father, she disclosed to her teacher a truly horrifying account of sexual molestation. Sitting in the office of the New York City lawyer whose work in child abuse cases we admire, we joined the mother and her second husband in suggesting that the goal of this litigation should be to terminate the father's parental rights. The lawyer protested. He envisioned supervised visitation that would gradually be relaxed on the theory alluded to at the beginning: that children need to spend time with their fathers, no matter how deviant. In the end after a grueling and impoverishing trial, the mother was lucky enough to get a decision setting conditions for visitation the abuser would not be likely to meet. Throughout the year-and-a-half-long ordeal, the mother's lawyer had to fight off the judge's effort to reinstate the father's visitation. It was only after her lawyer, over the objections of the child's law guardian, managed to compel the judge to view forensic videotapes that it became impossible to deny the incest. Still, no civil or criminal action was taken to permanently remove the father from the child's life.*

**7. Applying the "good-enough" standard to custody.** Applying a "good-enough" or an equivalent standard would, we think, decrease the probability that abusers, despite having the natural advantage in litigation, will emerge with custody. When there is a choice, custody should be awarded to a parent with good-enough attributes over a parent who falls short. In most cases, this would be synonymous with selecting the spouse who has been both the psychological parent, the one who has the closest emotional bond with the child; and the "primary caregiver," the one who has carried and fulfilled the major responsibilities for rearing the child from birth on. The advantage of the primary caregiver standard is that the supporting evidence pre-dates the breakup of the marriage, making it unproductive to challenge custody by injecting false allegations stemming from conditions imposed by the divorce. The flaw is that this standard, too, can be manipulated. If the authorities are blind to the malice, deceit, and false charm of abusers, they will fail to "see" that a "not-good-enough" parent has managed to pose as a "primary" by subterfuge such as filling in temporarily during a period of crisis, perhaps one of the not-good-enough's making.

Frankly, if gender neutrality were not so thoroughly ingrained in the conventional wisdom, we would argue for a return to the simplicity of the "tender years doctrine" of awarding custody to the mother when the status of young children is in dispute. The demand for equal treatment of women in the workplace has evoked a parallel demand and modification of custody standards to eliminate the preference for mothers no matter how young the children. Restoration of this presumption, with an exception for specific evidence of the mother's unfitness, would go a long way toward reducing custody contests and securing stability for children. Unfortunately, such a departure from gender neutrality does not seem to be in the cards just now. Not only is there no preference between married parents for the parent who gave birth to the child, there is no preference for the mother between unmarried parents when the father abandoned the child during the tender years.

Interviews with children are another problematical aspect of custody litigation. Whether conducted by forensic psychologists, law guardians, guardians *ad litem*, investigators and lawyers for child protection agencies, or judges, interviews can be productive or perplexing depending on the skill of the interviewer and attitude of the child. Some interviewers, sad to say, frame their questions to elicit responses that will confirm their bias; others make no effort to create an atmosphere that would allow children to speak their mind, should that be their wish. If rapport is established, some youngsters are comfortable expressing and explaining their custodial preferences. Others do not want to be asked to decide between parents. And those fearful or threatened with repercussions may be intimidated into silence. Anyone who undertakes to put direct questions to a child needs to be sensitized to the mix of needs, pressures, and reactions, and to appropriate expectations at various developmental stages.

A much-debated subject is whether a parent can implant false memories

of being sexually molested by the other parent, or coach a child to give false testimony of abuse. Surely, brainwashing behavior like this could be in the repertoire of a sub-group of not-good-enough parents. The question is whether a conscientious evaluator would be deceived. Not too easily, we would suggest. For one thing, a parent given to such duplicity would present as someone who is less than forthright and given to false accusations in other contexts. Secondly, as evidenced in the work of Suzanne Sgroi, a skilled, conscientious evaluator can detect the inconsistencies that are bound to crop up in the behavior and reporting of a child being coached.<sup>13</sup> As for the experiments that have shown that some young children, after being told repeatedly that a fictitious event happened to them, will "recall" the event as real, Charles Whitefield points out that these results would not be applicable to the traumatic memory of sexual abuse. The memories the experimenters attempt to implant are ordinary memories which are processed differently and stored separately from traumatic memories.<sup>14</sup>

Just as an enlightened standard would take into account the reticence and distress of children, it would also accept the reality that good-enough parents are prone to symptoms of post-traumatic stress disorder during the ordeal of a punitive divorce. Occasionally, the physical or mental illness is serious enough to require hospitalization; and occasionally, unscrupulous spouses take advantage of the caregiver's panic and depression to manipulate involuntary hospitalization. The temporary indisposition of a good-enough parent should not be used to justify a granting of custody to a not-good-enough parent. Instead, the authorities deciding custody should look to interim, temporary childcare arrangements to allow time for the good-enough parent to recover equilibrium and resume custodial responsibilities.

By definition, a parent against whom there is credible evidence of domestic violence, whether or not the assaultive conduct was witnessed by the child, should be categorized as "not-good-enough." Child advocates with no background in forensics are incredulous to learn that many judges, lawyers and psychologists do not deem it necessary to weigh domestic violence as a factor in custody unless so instructed by state law.

Despite a Congressional resolution (H.Con. Res. 172, 1990) stating that physical abuse of a child should create a presumption that it is detrimental to award custody to the abuser, the American Psychological Association in its report, *Violence in the Family*, credits cumulative complaints indicating "that judges rarely follow this recommendation." The APA Report goes on to state that child custody decisions "must be made with full knowledge of the previous family violence and potential for continued danger whether or not a child has been physically harmed."<sup>15</sup>

**8. Yes, joint custody is preferable; but only when it is voluntary.** If both parents are "good enough" not to ride roughshod over the other, joint custody would seem appropriate, but then only if it is agreeable to both parents. No group of professionals involved in custody decisions—judges, law guardians, guardians *ad litem*, forensic psychologists, social workers—has a reliable enough track record for assessing character and intentions to be trusted with an option to impose joint custody (if they are judges) or to recommend that it be imposed (if they are psychologists or appointed advocates for children). Some lawyers try to sell judges on a theory that even if there is enmity at the time of the divorce, it will diminish over time. No expert, we would suggest, is capable of reading behavior accurately enough to know whether such a smoothing over can be predicted in any particular case. Unless parents see eye to eye on a range of subjects including education, religion, medical care, discipline, values, aspirations, and proper conduct toward a former spouse, the children will be buffeted by conflicts they cannot resolve. Survivors of such entrapment will tell you they felt their childhood was sacrificed to mediating parental conflicts, or to extricating themselves and their nurturing parent from constant interference from an abuser.

According to the American Psychological Association report, "Children caught in the middle (of forced joint custody) have been found to suffer long-term damage to their psychological and social adjustment. Their outcomes are worse than those of other children of divorce with only one parent who remains present and active."<sup>16</sup>

What about two not-good-enough parents? If the abuse does not rise to a level requiring intervention by child protection authorities, we believe that the decision-maker should make known the shortcomings of both parents and select for custody the parent who appears to be more willing to become involved in parenting education and personal counseling.

The schema that needs to be promulgated is that wanting custody is not synonymous with being a fit parent (or being sincerely motivated to do well by children), and that custody may be sought for many improper reasons including:

- To evade responsibility for paying child support.
- As a strategy to force the opposing parent into a reduced financial settlement.
- As a strategy—sometimes on advice of counsel—to add to the opponent's burden by expanding the scope and increasing the cost of litigation.
- To hold on to children with the intention of exploiting them sexually, physically, or emotionally.
- For self-gratification.
- To compensate for inner feelings of emptiness and isolation.
- For the satisfaction of defeating or tormenting the opposing parent.

While we see the pattern of so many ill-founded custody and visitation decisions as indicative of the adversarial system's complicity with manipulators, be they fathers or mothers, it must be acknowledged—with apologies to nurturing fathers—that a significantly higher proportion of fathers succeed in rigging the system to produce the custody outcome they seek. Fathers' groups are vociferous in alleging gender bias, but the most revealing statistic is not the proportion of mothers who are awarded custody: that percentage necessarily would be high since more mothers make custody a priority and a majority of fathers are not averse to granting it to them. The telling statistic is the outcome of contested cases. The studies that have been conducted have found that the fathers are victorious in contested custody from sixty to eighty percent of the time.<sup>17</sup> The reason that mothers are less vociferous about defeats is that they tend to hold back from going public, being ashamed of losing custody and fearful of hardening the courts against them and thereby negating any chance of regaining custody in the future.

By a similar misuse of statistics, fathers' rights groups argue for joint custody by showing that fathers with joint custody have a better record of paying child support. This is a misleading correlation. Until recently, the majority of joint custody arrangements have been voluntary (it would be impossible to pin down statistics on voluntary vs. coerced by interviewing every spouse in the test sample); thus, the participating fathers would be disposed to accept social and financial responsibilities for their children. (In another distortion, the statistics purporting to show a higher incidence of child abuse by mothers do not correct for the disproportionate amount of time children spend in the care of mothers compared to fathers.)

As a result of concerted drives by fathers' rights groups, the domestic relations statutes in a majority of states have been amended to include a listing of factors to be applied to joint custody. The language varies. In a few states, these sections read as if joint custody is a privilege to be awarded only to parents with a demonstrated capacity to work and plan together. The more common wording carries an implication that joint custody is to be regarded as a "preference" to be imposed at judicial discretion. The looming crisis in the "preference" states is that good-enough parents run the risk of losing custody for resisting joint custody with a not-good-enough. While struggling to "save" a marriage, many good-enough parents make a supreme effort to mitigate the impact of an abusive co-parent. When those efforts fail and the protective parent takes the step of filing for divorce and custody, she or he can be regarded as "unfriendly" and obstructionist for arguing for sole custody. This represents a drastic altering of the current criteria for custody from best interests of the child to the comparative "friendliness" of the parent defined solely by her or his attitude toward joint custody. (The parent making the demand for joint custody does not have to show evidence of good will and a co-operative spirit because the resister is already defined as uncooperative.) The effect of joint custody in these circumstances is to perpetuate the dominance of a parent who is more interested in winning court battles than raising children.

**9. Why the campaigns aimed at casting out for fathers risk reeling in abusers.** Sad to say, the very emphasis on encouraging non-custodial fathers to stay involved with their children has had the perverse effect of paving the way for "not-good-enough" fathers to sue for custody. The courts have taken the cue to cheer on all fathers who take up arms to fight for custody and visitation, a

development that has been abetted by branch of feminist opinion that holds that the time has come for fathers to take over for mothers as the parent assuming the major share of responsibility for rearing children. Consequently, mothers' pleas for support to prevent abusive fathers from winning custody have fallen on *some* deaf feminist ears.

There is another anomaly that plays into this indulgence of fathers. The educated guess of Wallerstein and others is that many absentee post-divorce fathers would be "good-enough" parents if they chose to remain involved instead of dropping out of their children's lives. Encouraging fathers with good-enough traits to resume a relationship with their children is a worthwhile effort. Unfortunately, many of the fathers who show up in the courtroom fall in the not-good-enough category. Fathers who have had little or no contact with their baby or growing child suddenly reappear, sue first for visitation, then for custody, and end up winning both. It is hard to fathom the mind of a judge who would summarily remove infants or children from the only home they have known and deposit them with a parent who is a virtual stranger and possibly an abuser. *An example "would be a previously absent father with a history of abuse winning temporary custody on the theory that since he is living on disability benefits, he can spend more time with the child than the working mother (whose child support payments will of course be welcome).*

Coming back to our primary argument that abusers have the wherewithal to win custody and inappropriate visitation arrangements, we should clarify that neglectful and abusive mothers also stand to win custody when decision-makers are blind to the indications of not-good-enough parenting. Though proportionally fewer, those mothers who wrest custody from care-giving fathers show similar traits of cruelty and indifference to their children's welfare. Fathers *and* mothers of the good-enough breed suffer grievously from enforced separation from their cherished children.

*An example would be the father who held back from divorcing his wife, choosing to endure her cutting hostility and refusal to enter treatment for drug and alcohol addiction, in order to keep the household intact and not disrupt the lives of their three children. In a pre-emptive strike, his wife sued him for divorce and demanded custody. The court ignored the abundant evidence that the father had been the keeper of the home and the psychological parent from infancy on. No alcohol or drug tests were ever ordered. The mother's forcefulness and falsifications carried the day. Not only did she prevail in custody, but afterwards she succeeded in blocking the father and his mother, the children's grandmother, from all contact with the children. Like many not-good-enoughs, she persisted in her brainwashing until the children joined in boycotting the father.*

**10. Mothers risk being punished with loss of custody for reporting evidence of incest.** The frequency with which mothers lose custody after reporting suspicions of incest to a public authority (the police, a child abuse hotline, a child protection agency) is unknown. With the advent of the Internet as an outlet for venting custody grief, however, any interested browser can confirm that this perverse sequence is widespread.

Intelligence pointing to sexual abuse of a child triggers a parent's adrenalin alarm, a rush to act to prevent any repetition. Suspicions may be aroused by information from individuals in contact with the child, teachers, therapists or baby sitters; from the child's own disclosures; from the discovery of physical evidence; and/or from a concerned adult's probing to find out why a child is showing symptoms of severe emotional distress. Once a protective mother becomes convinced that a child has been molested and reports the information to a public agency, she expects an EMS-type of response. And in fact, whoever is summoned first—the police, the hotline, a lawyer, a doctor—often sounds as if such a grievous violation of a child will be halted promptly. Only as the case threads through the bureaucracy does it become apparent that the evidence of the father's incest is being obfuscated and that the mother is being treated like a suspect. Unbeknownst to reporting parents, once charges are filed in behalf of a child, the agency can proceed against either or both parents. Considering that parents with complaints are unaware that the agency to which they turn for help is authorized to alter course and prosecute them, a Miranda warning would be in order: "Anything you say (in making this complaint) can be used against *you*." More important, the law and procedures should be amended to preclude this entrapping potential.

A variety of offenses may be charged against mothers to justify

transferring custody to the father. She can be found, for instance, to have harmed the child by reporting suspicions of abuse. When the charges are challenged or dismissed she can be faulted for "lying." She can be cited for "neglect" for interfering with the father's visitation, for taking the child for a required physical examination, and/or for persisting in believing that the child is being molested. Drawing on extensive experience as an advocate, Michelle Etlin has documented diverse cases of mothers losing custody to incest perpetrators. *Hostage Child*, which she co-authored, is a powerful indictment of the courts and the bureaucracy.<sup>18</sup>

Adding to the reporting parent's jeopardy is the difficulty of proving sexual abuse. Evidence that would seem incriminating to an adult of average intelligence may not stand up in court. Medical proof of injuries and penetration has to be obtained promptly before wounds have healed over. Forms of abuse that do not leave physical traces may have to be substantiated by forensic interviews which, as mentioned before, have to be conducted by properly trained, appropriately sensitized psychologists or psychiatrists capable of standing up to grueling cross-examination in the courtroom.

The adjudication of sex abuse allegations is thoroughly covered in a publication entitled *Exposés* assembled by a group of protective mothers on the West Coast. Critics from a range of disciplines testify to the malfeasance they have witnessed and detected.<sup>19</sup>

Lloyd deMause's findings on the "universality of incest" help us to comprehend these reversals of justice. DeMause has unearthed the sorry evidence that contrary to popular belief, sexual exploitation of children is prevalent, not exceptional, varying from one society to another only in how openly it is accepted.<sup>20</sup> The fact that incestuous practices cross boundaries of culture and class may explain why allegations produce such rage reactions, and why reporting mothers run headlong into a wall of denial and into defenses indicative of a need to kill the messenger.

Richard A. Gardner, M.D. is the leading spokesperson in the courts for the rump opinion that the harm from incest is exaggerated. Stephanie Dallam has documented Gardner's defense of incest and coining of the "parental alienation syndrome" as an offense to be charged when protective mothers attempt to curtail contact to prevent recurrence of sexual abuse.<sup>21</sup>

The essential standard for evaluating a parent who reports allegations of sexual abuse ought to be whether the parent was acting in good faith. Insufficient evidence or incorrect interpretation of suspicious-looking incidents should not be grounds for bringing charges against the reporting parent. Some form of indemnification is needed so reporting parents need not fear reprisals. In the meantime, child advocates should be circulating advice warning parents of the risk of being punished with loss of custody for reporting allegations of sexual abuse.

**11. When the child's right to live free of abuse should be invoked to deny visitation to an endangering parent.** Visitation (or access as some prefer) needs to be evaluated in light of the power it confers on abusive parents. Once there is a court order for visitation, protective parents are forbidden to interfere when they fear the regular contact is having deleterious effects on the children. Any unilateral attempt to curtail visitation invites contempt of court charges followed by lawsuit to take away custody. Even when they are not under special scrutiny, protective parents are deterred by "hearsay" psychological opinion from trying to limit contact with a non-custodial parent who has shown malicious intent toward them or their children. They are cowed by the supposed unanimity among "experts" that children should maintain relationships with both parents. (Spending time with abusers is seen as character-building, like learning to swim by being pushed off a diving board.)

There is legitimate reason to worry that children will suffer emotionally from being separated from a parent, even one who has abused them, and that they may develop an intense longing for reunification. We suspect, though, that the yearning is more for the missing parent to return transformed into the loving, affirming father or mother of their fantasies. Our adult experiences tell us that such conversions are rare, and that the greater worry is that children will suffer irreparable damage from regular or extended contact with a negligent or sadistic parent. When contact is forced on them, children are justified in feeling betrayed by the protective parent. In their eyes, that parent has failed in the most elementary responsibility to keep them safe from harm. More sophisticated children may realize that the fault lies with the courts. Diagnosing the source of their misery, however, does not make it any more tolerable or excusable in their eyes.

As reputable psychotherapists know, the repercussions of parental abuse are lifelong. Judith Herman and Lenore Terr have made particularly compelling contributions to this literature. Whether or not there is validity to the view that some children will be stronger for toughing out a relationship with a not-good-enough parent, we would argue that court-ordered visitation is the wrong instrument for accomplishing this. The courts, even when trying to be conscientious, cannot possibly duplicate the fine-tuning and individualization that therapists envision in making recommendations aimed at "curing" the abuser to permit future resumption of visitation.

It must also be noted that some children are susceptible to being lured into the orbit of a not-good-enough parent by the force of personality or temptations of money, adventure, and freedom from rules. These children have to discover for themselves whether the outlaw parent's life style really suits them. The enormous sacrifices involved in litigation seem incumbent when children are young and dependent, or older and sufficiently self-aware to reject abusers, but are probably wasted on children in thrall to abusers.

More voices are needed to speak up from within the psychological community to disabuse the legal community of the sacredness of visitation and to verify that custodial parents have an implicit obligation to insulate their children from a parent who would injure or exploit them. The "good-enough" standard, or something similar, would help to differentiate self-serving from child-serving motives when attempts are made to interdict visitation.

To fill in the picture, we must re-visit that category of "good-enough-parents" who do not figure in this discussion, the non-custodial parents who do no active harm to their children but absent themselves after the divorce. Some in this number are child support evaders; other pay their child support while neglecting their children in every other respect. This physical abandonment after divorce, which can be a source of profound distress to children, is a passive offense that really has no legal remedy.

**12. Circumstances that warrant restricting the visitation of "not-good-enough" parents.** Visitation or access is commonly viewed as a right adhering to the parent, rather than the fulfillment of a responsibility to the child. Except in those courtrooms which assign the highest priority to protecting children from abuse, visitation decisions seem to show a gender bias. Non-custodial fathers tend to be rubber-stamped for whatever chunks of visitation the particular decision-maker is accustomed to dispensing. We have heard judges admonish fathers to stop abusing their children in the same breath as they award them alternate weekends, overnights and one evening during the week.

One pattern we have observed among not-good-enoughs (that may not have caught the attention of psychologists) is a carelessness about exposing children to physical danger. Examples of numerous incidents reported include: *letting a toddler wade into the ocean while sitting on the beach fully clothed and shod; refusing to give an ill child prescribed antibiotics; teaching underage children to drive; encouraging beginning skiers to try advanced slopes; a novice sailor taking children out in a sailboat and capsizing; driving recklessly with children in the car; driving under the influence of alcohol.* One can only speculate on the "why" of such apparently deliberate negligence. Some of the protective parents feel that the careless parents are sending the children out to slay their personal dragons of fear or cowardice. Whatever the motives, the pattern arouses legitimate worries in care-giving parents when they are compelled to transfer children for visitation.

Just as protective parents have a right to insist that co-parents take normal safety precautions during visitation, we would argue that they are justified also in trying to insulate children from the corrupting influence of an antisocial role model. Requests to cut off or cut down on the visitation (or access) of a parent known to be violent or criminal deserve to be treated with respect. Judges do not seem to see the contradiction of upholding the law by forcing children to spend time with criminals.

The callous disregard for children's feelings shown by some decision-makers is troubling to witness.

*When one judge heard that the children were refusing to leave the house for visitation, he told the mother to grab them by the shoulders, drag them down the driveway, and throw them into the car. In another case, a law guardian demanded that a three-year-old be taken to visit her father in jail where he was serving a brief sentence for refusing to pay child support.*

Fatalities linked to visitation occasionally make the headlines.

*National Public Radio carried the story the morning of December 23, 1998 of the tragic death of a mother and child murdered by the father in an encounter after a supervised visitation outside a community center near Seattle. According to the reporter, the mother had obtained a protective order prohibiting her estranged husband from contact on the grounds that "he choked her, beat her and threatened to kill her. She found his gun and turned it in to the police. Still he retained the right to see his daughter." (In newspaper accounts following the murder, the father was quoted expressing regret that the bullets intended for his wife had also struck his child.)*

*In August 1998, a Brooklyn man was convicted of murdering his former wife, a policewoman, while she sat in his car holding their baby after a visitation she had agreed to arrange to appease his demand for time during the supervisor's vacation. After the verdict, members of the jury commented to spectators from the National Organization for Women that they had heard sufficient testimony about the father's harassing phone calls, constant stalking, and maneuvers to obtain an illegal gun that they felt he should have been forbidden to have contact with the baby. Several noted that he had been grinning inappropriately throughout the trial.*

In connection with projects on custody and domestic violence, the National Council of Juvenile and Family Court Judges<sup>22</sup> has published and circulated a variety of advisory materials that by their very complexity suggest the near impossibility of insuring safe visitation by a demonstrably violent or stalking parent. Testimony abounds to the serious and lasting physical, mental, and emotional injuries children suffer in the custody of not-good-enough parents. *Exposé* carries a child's own story of enduring institutional and parental abuse before being returned to the custody of her protective parent.<sup>23</sup>

Bearing in mind that the courts cannot tailor visitation individually the way therapists might if there were no court involvement, a wide assortment of visitation options should be in the repertoire: frequent and flexible when conditions are "good enough;" brief and infrequent when not-good-enough traits are exhibited; infrequent and supervised when a parent is not to be trusted alone with a child or custodial parent. In situations where children or protective parents are in jeopardy, the decision should be no visitation; and when the abuser is incorrigible, termination of parental rights. One has to wonder how a theory could ever have gained currency that an individual can simultaneously be a fit parent to a child and a threat to the life of the child's other parent.

In the opposite circumstances of a good-enough non-custodial parent being deprived of visitation, court review, censure, and penalties are called for. Richard Gardner, the psychiatrist with a non-judgmental attitude toward incest, has tried to popularize his "parental alienation syndrome" (PAS) to refer to a custodial parent's instilling negative attitudes toward a non-custodial parent and refusing to allow visitation. Such cruel conduct against a good-enough parent is reprehensible, but brainwashing or programming would more properly describe the behavior. It does not consist of clustered or linked symptoms that constitute a syndrome indicative of a disease or abnormality. (Gardner has been campaigning to have PAS entered into the next edition of the *Diagnostic and Statistical Manual of Mental Disorders*.)

As a result of aggressive propagation of the dubious "parental alienation syndrome," child protection agencies have undertaken to equate denial of visitation with child abuse, and to file neglect charges against parents without regard for their reasons for curtailing visitation. These overburdened, understaffed agencies have extended their jurisdiction to issues of visitation where public intervention seems superfluous, since family courts provide an appropriate forum for parents to litigate issues relating to visitation.

**13. Why the risk of reprisals should be weighed before suing incorrigible abusers for child support.** While custodial parents have an absolute right to child support, they need to exercise discretion in deciding whether to pursue an opponent with criminal tendencies. The reality is that a segment of protective parents has to forego child support if they are to spare their children from enforced contact with an abuser and that, in truth, they will be lucky if the abuser agrees to stay away in exchange for dropping child

support demands. Some mothers understand this intuitively; others reluctantly come to accept it, and still others close their eyes and hand their children over for visits with an abusive parent. Of the latter, some knowingly trade visitation for child support, while others permit visits with abusers (and non-payers of support) on the theory that it is compulsory.

Advocates for children want to see to support paid, and want to see it collected from not-good-enough parents when income and assets can be accessed by means of court orders without compromising the safety of the custodial parent or the children. What must be recognized, though, is the existence of a breed of psychopath who will endanger mother and child if pursued for child support. (The unhappy truth, ignored by welfare "reformers," is that many abandoned mothers, particularly those with young children, cannot survive without old-fashioned home relief.)

Even the rule requiring recipients to sign over to an agency the right to sue fathers to reimburse the public coffers exposes mothers to being harassed as scapegoats for the agency. *When unmarried pregnant women seek the assistance of advocacy groups, some will query about the character of the father. If he is described as abusive, stalking, or over-controlling, the mother may be counseled to leave blank the space for the father's name on the birth certificate and to prepare to manage without child support. That way the father would have to prove paternity before he could sue for custody or visitation.*

The payment of child support obligations can be equally problematical among upper income bracket parents. Wealthy self-employed "not-good-enough" parents can make themselves judgment-proof and sufficiently threatening that the protective parent may have to settle for less than the state guidelines; or for minimal, sporadic, or no payments at all, when she is unlucky enough to draw a judge who shirks on enforcement. The existence of abusive deadbeats among the wealthy does not deter child advocates from recommending that the general standard ought to be for wealthy parents to be generous, not stingy, about child support. Upper income earners should come under pressure to provide funds to cushion the hardship of divorce for the children, and to pay college tuition comparable to what they would have covered if there were no divorce.

## THE OUTLOOK

With the advent of the Internet, there is now a forum for exchange of information on custody injustices. Any doubt of an epidemic of good-enough parents losing custody to abusers can be dispelled by logging on to the web sites where parents tell their stories, or by subscribing to one of the lists that carry these discussions. Whether the Internet's potential as an organizing tool will make a difference is to be seen. Fathers' rights groups demanding automatic joint custody are well ensconced, and appear to be more prevalent and better funded at the national and local level as well as in cyberspace.

The irony is that custody reform would be a cost free initiative to better the lives of children. Compared to poverty, disease and violence, which will not yield to change without massive social and economic investment, children could reliably be placed with their protective parent when there is a choice between a good-enough and a not-good-enough parent. All that is needed is a new guard of leaders with a commitment to protect children rather than to let the legal chips fall where they may.

*Nannette Pierson Sachs, MA is Chair of Amicus for Domestic Justice, 23 Garden Place, Brooklyn, NY 11201-4501; email: [NanSac@aol.com](mailto:NanSac@aol.com); phone: 718.522.5435.*

1. Among the characteristics that distinguish "protective" parents are respect for their children's humanity, determination to prevent them from coming to harm, and dedication to helping them to realize their potential.
2. Abuse, abuser and abusive are used throughout to describe and refer to a range of cruel and wrongful conduct of a parent or spouse toward a child, spouse or co-parent.
3. Deed, Martha L. "Court Ordered Child Custody Evaluation: Helping or Victimizing Vulnerable Families, *Psychotherapy*, Vol 28, No. 1, Spring 1991.
4. Typical accusatory projections take the form of charging one's spouse with one's own wrongdoing. The need to dispose of guilt by believing and declaring the spouse to be at fault can produce highly convincing testimony.
5. An example of how acting on a child protection impulse compromised a single mother's custody case is the following: A single mother discovered nude, pornographic-looking photos of her infant daughter taken by the father. Social worker friends concurred and advised her not to allow the father to be

alone with the baby. Repulsed by the pictures and having no notion of the potential for the father to sue for visitation and custody, the mother tore them up. When more evidence of incest emerged and litigation ensued, she found that the existence of the photos was discounted. No one within the legal system would concede that anyone could be so naive as to destroy evidence. The mother came under fire and lost custody.

6. Miller, Arthur. "Why I Wrote the Crucible," *The New Yorker*. October 1 & 28, 1996, p. 158.
7. *Bounds of Advocacy* adopted 1992 by the American Academy of Matrimonial Lawyers, 150 North Michigan Avenue, Suite 2010, Chicago, IL.  
The *Bounds* advises lawyers *inter alia* that they "must consider whether the custody claim will be made in good faith." If not, the lawyer must advise the client of the harmful consequences of a meritless custody claim to the client, the child, and the client's spouse. If the client persists in demanding advice to build a spurious case or to use as a bargaining chip or a means of inflicting revenge, the lawyer should withdraw.
8. In two books, a trio of wise and well-intentioned experts, Albert Solnit, Anna Freud and Joseph Goldstein, proposed the influential "best interests of the child" standard. They also identified the primacy of the child's relationship with the "psychological parent," which if it had been adopted as the standard, might have proved less subject to bias. Best interests lends itself to interpretation as the parent with the higher standard of living or the "friendlier" parent in the sense of not raising issue of abusive conduct by the other parent as justification for curtailing contact with the child.
9. Winnicott, Donald W. "The Theory of the Parent-Child Relationship." *International Journal of Psychoanalysis*, 41,585-95.
10. In *Sudden Endings*, Madeline Bennett provides a description of the psychological process of converting an intimate from a holder of valued aspects of self (an object of love) to a container for the poisons of the despised aspects of self (an object of hate).
11. Spouses who have known an appealing side of a partner who turns abusive tell of persisting in trying to fix the relationship, deluding themselves that they can reawaken the glimmer of goodness that they posit is locked in a struggle with the lesser self that is being evidenced in cruel and repudiating conduct.
12. Bowermaster, Janet M. "Relocation Restrictions: An Opportunity for Custody Abuse." *Synergy*, Vol. 4, No. 2, Winter 1999/2000. The National Council of Juvenile and Family Court Judges, Reno, NV.
13. Sgroi, Suzanne, *Vulnerable Populations: Evaluation and Treatment of Sexually Abused Children and Adult Survivors*, New York, Lexington Books, 1988.
14. Whitehead, Charles L. M.D. *Memory and Abuse: Remembering and Healing the Effect of Trauma*. Health Communications, Inc, Deerfield, FL. 1995.
15. American Psychological Association. *Violence and the Family*, Washington D.C., 1996.
16. These results were obtained in studies conducted in counties in North Carolina, Massachusetts and California.
17. Rosen, Leora N, and Etiin, Michelle. *The Hostage Child: Sex Abuse Allegations in Custody Disputes*: Bloomington, Indiana University Press, 1996.
18. See *Exposé: The Failure of Family Courts to Protect Children from Abuse in Custody Disputes*. Elize St. Charles & Lynn Crook, editors. Our Children, Our Future Charitable Foundation. P.O. Box 111, Los Gatos, CA, 2000.
19. DeMause, Lloyd, "The Universality of Incest," *The Journal of Psychohistory*, (Special Issue: The Sexual Abuse of Children), Vol. 19. No.2, Fall 1991.
20. See *Exposé*, "The Parental Alienation Syndrome: Is It Scientific?" p. 67.
21. Therapists and survivors have produced extensive literature on the shocks and aftershocks of child abuse. The following are two highly recommended books:  
Herman, Judith Lewis. *Trauma and Recovery: The Aftermath of Violence from Domestic Abuse to Political Terror*. Basic Books, U.S.A., 1992; also Terr, Lenore. *Too Scared to Cry: Psychic Trauma in Childhood*. Harper & Row, New York, 1990.
22. National Council of Juvenile and Family Court Judges, P. O. Box 8970, Reno NV.
23. See *Exposé*, "Sarah's Story," p. 15.