

Scandal in Plain Sight: How Media Indifference and Family Court Incompetence Fail to Protect America's Children

by Garland Waller, M.S.*

***Editor's Note:** One of the biggest barriers to reforming the family court system is the entrenched lack of transparency of the courts and the failure of the mainstream media to investigate and expose custody/visitation scandal cases. In this article, first published as a chapter in the book *Domestic Violence, Abuse, and Child Custody*, Boston University College of Communication professor Garland Waller uses her knowledge and savvy about these cases and about the mainstream media to analyze the ongoing dearth of media coverage of child custody cases involving abuse allegations brought by protective mothers.*

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An earlier version of this article appeared in *Domestic Violence, Abuse, and Child Custody Legal Strategies and Policy Issues* (2010).

INTRODUCTION

When it comes to protecting abused children and their mothers, the family courts are failing miserably. But the mainstream media (MSM) has played its own role in this failure: The rare news coverage of the family court arena, with its ugly and acrimonious custody battles, is typically sensationalized and usually victim-blaming. The stories seldom dig below the surface and explanations are given routinely by attorneys or other legal actors who are contacted about the rare family court horror story—the favored one being that the complainants are “disgruntled litigants” whose reports, therefore, warrant little or no credibility.

How, and why, did journalism in such a compelling area—the nexus between the fates of parents and children and the role of the legal system—end up so blacked-out and so whitewashed? I believe that, when it comes to exposing the ugly collision between child custody and abuse and the lack of responsible media coverage, the “Yuck Factor,” the “Oprah Factor,” and the “Stickiness Factor” all play a part.

There was a time in this country, before the Reagan era’s deregulation of media corporations, when TV news operations were sometimes willing to

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take the heat and the risks that arise when exposing social injustices, government corruption, or a volatile combination of the two. Think, for example, of Edward R. Murrow calling out Senator McCarthy or of the great documentary *Harvest of Shame*,¹ which exposed the cruel living and working conditions of migrant work-

ers. Recall the conscience-afflicting black and white footage of dogs and fire hoses being used against civil rights marchers. These media images, and their messages, were enough to swing the pendulum of public opinion. That is the power of media.

But over the course of a few decades, the media landscape changed—and not in a good direction. Now, the near-deafness, dumbness, and blindness of the media regarding the hopelessly flawed condition of the nation’s family court system have risen to the level of complicity. In a nation that prides itself on respect for family values, human rights, and justice for all, how can this possibly be? How could a national scandal of such destructive and monumental proportions go unnoticed and unaddressed?

¹ Edward R. Murrow, *Harvest of Shame* (CBS 1960).

SOME STORIES ARE JUST TOO DARK TO TELL

In the introduction to my documentary, *Small Justice: Little Justice in America's Family Courts*,² I cite a statistic taken from the American Judges Foundation Web site: “Studies show that batterers have been able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases.”³ Also, “Fathers who battered the mother are twice as likely to seek sole physical custody of their children as non-violent fathers.”⁴ These quotations have a well-deserved ring of authenticity and generally grab peoples’ attention from the get-go.

There are plenty of other statistics I could cite. But the bottom line is that the MSM not only refuses to cover this issue, to look deeply into it and expose the horrific abuses many of us see every day in the family courts, they make it worse, simply by their silence. In a nation that prides itself on respect for family values, human rights, and justice for all, how can this possibly be? How can what is truly a national scandal go uncovered?

I draw from personal experience to explain why the media’s coverage of custody battles tends to be so myopic. I once was speaking to a reporter from a network magazine about the family court problems. As our conversation progressed, I realized that he

did not get it. He did not understand what was really going on behind the scenes in many child custody cases involving abuse. At every turn, this reporter challenged everything I

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was saying—about the cases I had studied, the horror stories I had heard from mothers, and the statistics I had collected on this issue. His behavior struck me as odd. Usually, when I am talking “producer to producer” to a fellow journalist, there is an implicit exchange of professional courtesy as well as a cutting to the chase shorthand. Forget the niceties. Skip all emotion. Tell me whether there is really a story I can use.

Later, when my colleague, Eileen King, a child advocacy professional at Justice for Children in Washington, DC, started dissecting this particular case, she commented, “I still can’t get the image out of my mind. He sat there in court, and when the children were testifying about their abuse by their father, he rolled his eyes. In the end, in order to be able to see her children at all, the mother of the children in question agreed to give up sole custody of her kids.”⁵ Those kids have lived with their abuser ever since the trial.

² Garland Waller, *Small Justice: Little Justice in America's Family Courts* (Intermedia, Inc., 2001).

³ American Judges Association, *Domestic Violence & the Courtroom Understanding the Problem . . . Knowing The Victim*, <http://aja.ncsc.dni.us/domviol/page5.html>.

⁴ American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* 40 (1996).

⁵ Eileen King, Justice for Children, Boston, telephone conference, Feb. 21, 2008.

Many reporters do their homework, but some do not, and any of them can be taken in by an abuser's charm just as easily as a family court judge. After all, when a normal looking man gets accused of raping a child, the specter is so repulsive, so unbelievable at such a deep level that, just like reporters, the family courts cannot believe it either. It is just yucky. Remember that word.

Another example comes from a February 9, 2008, headline in the *New York Times*: "Slain Dentist's Wife Is Charged with Murder and Conspiracy."⁶ It was the story of a woman charged with conspiracy in her ex-husband's murder. The husband was shot and killed at a playground in New York City during a visitation hand-off of their daughter. The article mentioned a custody dispute, but there was no mention of child abuse allegations against the husband.

Smelling a rat, I decided to act on my suspicions regarding the truth behind this story. I e-mailed the reporter to ask if any allegations of child sexual abuse had been raised in the case and, if so, whether the allegations had been founded or not. A day later, in his reply, the reporter stated that it was another *New York Times* reporter who had told him that a child abuse allegation had been made about the father, "but it didn't seem to be warranted—which would fit into the pattern of the mother's apparently extreme behavior."⁷

At this point, there was no evidence of anything; there were only charges filed against the wife and allegations launched against the husband. Nevertheless, the *New York Times* was willing to publish the unproven allegations of murder and conspiracy against the mother, while at the same time refusing to dig deeper into the allegations raised in the courtroom against the father. My point here is not whether the mother was guilty or innocent or whether sexual abuse had occurred. The point is that both the courts and the press refused to consider sexual abuse allegations.

This brings up a haunting reminder of Elsa Newman's case. I have been communicating with Elsa since before she was sent to jail, in Jessup, Maryland, in 2003.

Her case is extremely complicated because it also involves conspiracy to commit murder. The case reveals all too well the failures of both the mainstream press and the courts. In Elsa's case, someone else shot her ex-husband. When I first spoke with her, she was a loving mother working as a labor lawyer. She was concerned about her children being abused, and she wanted *Small Justice* to be shown at her temple. Elsa was nowhere nearby when her ex-husband was shot, but she was sentenced to prison for conspiracy. She will serve more time in prison than will the person who pulled the trigger. Elsa is now incarcerated with criminals, including women who have killed their own children. The *Washington Post* reporters

⁶ Bruce Lambert, "Slain Dentist's Wife Is Charged With Murder and Conspiracy," *N.Y. Times*, Feb. 8, 2008, available at http://www.nytimes.com/2008/02/08/nyregion/08dentist.html?_r=1&scp=1&sq=%22Slain%20Dentist%E2%80%99s%20Wife%20Is%20Charged%20with%20Murder%20and%20Conspiracy%22&st=cse. She has since been convicted.

⁷ Bruce Lambert, e-mail to author, Feb. 10, 2008.

wrote that at the time he was shot, Elsa's ex-husband was in bed with his child.⁸ What they left out was that the ex-husband had been naked from the waist down while in bed with his son.

As a TV producer for over twenty-five years, someone with contacts in the business and the ability to talk in a way that most TV, newspaper, and magazine reporters can hear, I have come to realize that it is not that the story of family court injustice is not a good one (i.e. one that will work for or sell the TV or newspapers). It is that the MSM today lacks resources, time, patience, and, above all, guts.

There are patterns to reporting on TV and in newspapers, not just in the family courts themselves, but also in how the media covers domestic violence (DV) and child sexual abuse in general. Sometimes, there is little to no coverage. Sometimes the coverage is short-lived and flimsy. Sometimes it is hot, hot, hot—a camera flash and then gone. Sometimes the story is promoted and aired but under pressure is later denied. These patterns reflect the larger state of news and media coverage in the United States today. The media, which could serve as a vehicle for social change, often ignores significant human rights issues in its quest for “eyeballs” and “advertising.”

SMALL JUSTICE: WHAT I LEARNED

I learned just that, in no uncertain terms, when in 2001, I produced *Small Justice: Little Justice in America's Family Courts*.⁹ The program follows a paralegal and her attorney husband as they try to prevent three loving mothers from losing their children to the very people the children said abused them. In my documentary on family court injustice, I sought balance. I was interviewing women who were seeking custody of their children, who were victims of DV, and whose children had also reported sexual abuse at the hands of their fathers. I tried to speak to the men as well as the women. The men refused to speak to me. In my opening stand-up, I addressed the issue head on. I tried to speak to both sides, but only the women wanted to speak. What you will see in *Small Justice* is the women's side of the story. Rather than ignore the issue, rather than give up on getting the story out, I presented one side. I did not let silence by one side prevent coverage of the issue. I thought this would take care of the MSM's primary concerns, and that, when presented with a powerful story, it would be a scandal they would want to expose, much like the Catholic priest scandal from years before.

As a professor and as a producer, there are rules of the documentary TV and film business that had to be respected. I teach them. I know them. I used those rules to create a respectable production that would make a difference. I felt that I would be able to sell it. I was not a kid. I'd won a half-dozen Emmys producing documentaries and specials.

⁸ Michael Ruane & Phuong Ly, “Wife Is Charged In Md. Shooting; Her Whereabouts Unknown; Couple Feuded Over Custody.” *Wash. Post*, Jan. 10, 2002, at B01.

⁹ See *supra* note 2.

I assumed that my contacts in the business would help. This is how I started. I pitched *Small Justice* to numerous production companies, TV shows, and networks. I expected openness and excitement about an uncovered scandal. I sent letters and made calls to many networks—Oxygen, HBO, The Independent Film Channel, CNN. I called several TV shows directly—*20/20*, *Prime Time*, *48 Hours*. Would they want to air the documentary? Would they air part of the documentary or use a clip? I just wanted the media to do something—to do anything.

As time passed, *Small Justice* won awards at independent film festivals like the New York International Independent Film and TV Festival and The Key West Indie Festival. It was screened at the Museum of Fine Arts in Boston and was being distributed by Intermedia Inc. But no one from the MSM picked up the piece. There was, however, a pattern that I was beginning to

Local and national newspapers and television news and magazines are heavily dependent on advertising dollars. In order to attract advertisers, the media has to guarantee a certain numbers of viewers or, as we call it in the industry, “eyeballs.” The more eyeballs a show or article attracts, the higher the ratings.

discern: interest, excitement, then silence. Reporters would take the call, be interested, call back enthusiastically for more details, and then boom—nothing. One day, I received two negative responses. One was from the TV show *60 Minutes* who said it looked too much like The Independent Film Channel, and the other was from the Independent Film Channel who said it looked too

much like *60 Minutes*. For me, this is when the light dawned. *Small Justice* was never going to see the light of day on TV. Something about it was too scary, too difficult—too something. I could not put my finger on it.

Since that time, I have been following media coverage of DV and family court issues, and I have put some of the pieces of the puzzle together.

Let us break down the media silence and, ultimately, complicity and then see what we can do about it.

WHAT THE MEDIA REALLY WANTS: RATINGS

To fully understand how things got this bad, and why the MSM refuses to expose a national scandal that affects thousands of women and children, one must look first at how all stories are chosen and covered today. To begin with, ratings are at the heart of *all* TV decisions. Ratings mean money. Local and national newspapers and television news and magazines are heavily dependent on advertising dollars. In order to attract advertisers, the media has to guarantee a certain numbers of viewers or, as we call it in the industry, “eyeballs.” The more eyeballs a show or article attracts, the higher the ratings. The higher the ratings, the more secure the show will be in attracting advertisers.

The more advertisers, the more likely the show will continue to air. It is a circle that provides millions of dollars to stockholders and CEOs.

It is important for people to understand that this is how the system works. Once you understand ratings, a lot of things fall into place.

Thomas Berman, a producer at ABC, told me,

In a place like ours, you have so many producers and bookers pitching stories. The people who decide what stories go on the air are the ones who are looking at what people who watch our show want to watch. I wish I could do more, but it's a ratings game . . . we're a weekly news magazine and there is really no market for the court system.¹⁰

There is also a myth that news broadcasters report the news and only the news—a sort of “Just the facts, m'am” mentality.” But that is not true. The news reports information that is accessible, easy to understand and can be reported in two to four minutes (less is preferred). Solid government sources and/or authorities are even better because without digging, without spending any real time or resources on the issue, the information appears to be credible. If a star can be quoted, then putting the celebrity on the air is a no-brainer. It may or may not be true, but it *looks* true, or as Steven Colbert would say, it has “truthiness.”

There is something else to consider. Frequently, news sources will not report news if it is not already being covered by another news media outlet. It is copycat news. That is why you see so many cameras covering one story like Kim Kardashian or Malaysian Airlines. It validates the importance of the topic. Take a look at the lead stories on network and cable news. Have you ever wondered why everyone seems to be covering the same story, sometimes even at the same time? Flip from channel to channel some night and just see how often this happens. And just for a hoot, take a look at *The Daily Show* with Jon Stewart. This is the meat and potatoes of his program—or at least the starch. He runs clip after clip of reporter after reporter saying almost the identical thing. “Repeat something often enough and people will believe it,” goes the old adage. This is nowhere truer than in American political journalism.

Eric Alterman's book, *What Liberal Media? The Truth About Bias in the News*¹¹ addresses these issues in the context of politics, but the message is the same for social issues. His chapter, “You're Only as Liberal as the Man Who Owns You,” is clearly inspired by the famous journalist, A.J. Liebling, who wrote in the *New Yorker*, “Freedom of the press is guaranteed only to those who own one.”¹² Stockholders and corporate titans own the media outlets. *Mother Jones* magazine reported that by the end of 2006, there were only

¹⁰ Thomas Berman, telephone conversation, *ABC Prime Time*, Mar. 6, 2008.

¹¹ Eric Alterman. *What Liberal Media? The Truth About Bias in the News* 14 (2003).

¹² A.J. Liebling, *New Yorker*, 1960, cited in Ralph Keyes, *The Quote Verifier* 172 (2006).

eight giant media companies dominating the U.S. media from which most people got their news and information:

- Disney (market value: \$72.8 billion);
- AOL-Time Warner (market value: \$90.7 billion);
- Viacom (market value: \$53.9 billion);
- General Electric (owner of NBC, market value: \$390.6 billion);
- News Corporation (market value: \$56.7 billion);
- Yahoo! (market value: \$40.1 billion);
- Microsoft (market value: \$306.8 billion);
- Google (market value: \$154.6 billion).¹³

Ted Turner, in his 2004 *Washington Monthly* article, noted,

Consolidation has given big media companies new power over what is said not just on the air, but off it as well . . . Disney recently provoked an uproar when it prevented its subsidiary Miramax from distributing Michael Moore's film *Fahrenheit 9/11*. As a senior Disney executive told *The New York Times*: "It's not in the interest of any major corporation to be dragged into a highly charged partisan political battle." Follow that logic, and you'll clearly see what lies ahead. If every media outlet in operation is run by a major corporation, then controversial or dissenting views may never get aired at all.

Naturally, corporations would claim that they never suppress free speech. But it is not their intention that matters; it is their capability. Consolidation gives them more power to tilt the news and to cut important ideas out of the public debate.¹⁴

The media, because of its corporate structure, does not have society's best interests at heart. That is not their job. Their job is to return a profit to the shareholders. High ratings return a profit. Whether it is political journalism or social justice journalism, the point is this: TV is not brave. It does not take risks. If a reporter spends too much time on a story, that is expensive. If the story is too controversial or does not suit the corporation's own financial interests, then it is not good for the bottom line. Stories that require digging and time, like complicated legal issues, are going to die on the vine.

One of the best examples of ratings as the driving force for what is covered in the "news" is "To Catch a Predator" (TCAP). John Hockenberry, a former producer for *Dateline* and one-time MIT Media Lab fellow, describes

¹³ Eric Klinenberg, "Breaking the News," <http://www.motherjones.com/politics/2007/03/breaking-news>; Dmitry Krasny, "Informational Graphic," *Mother Jones*, Mar./Apr. 2007, http://www.motherjones.com/files/legacy/news/feature/2007/03/and_then_there_were_eight.pdf.

¹⁴ Ted Turner, "My Beef With Big Media," *Washington Monthly*, July/Aug. 2004, available at <http://www.washingtonmonthly.com/features/2004/0407.turner.html>.

the TCAP experience in an article he wrote for *Technology Review*. His primary goal in the article was writing about the convergence of new technology with television, but what he says now that he is no longer working at the network is very, very powerful.

The culmination of *Dateline's* Internet journalism strategy was the highly rated pile of programming debris called *To Catch a Predator*. The TCAP formula is to post offers of sex with minors on the Internet and see whether anybody responds. *Dateline's* notion of New Media was the technological equivalent of etching "For a good time call Sally" on a men's room stall and waiting with cameras to see if anybody copied down the number.¹⁵

TCAP is a perfect example of ratings-driven journalism. It brought in tons of viewers. Advertising revenue was a nice bedtime story for the network. One of my graduate students told a story to me that her friends, all of whom are in their late-twenties and early thirties, and none of whom have children, loved this show. They gleefully got together to watch whenever it aired and fondly called it "The Pervert Show."¹⁶ It was their Superbowl. So yes, people talked about this show and watched the show. There was an "OMG (Oh My God) Factor," but somehow not a "Yuck Factor." It was so bizarre, so tawdry, yet somehow so removed from people, that they could watch it over beer and a pizza.

In the *Columbia Journalism Review*, Douglas McCollam said of TCAP in his article, "The Shame Game,"

since its debut in the fall of 2004, "To Catch a Predator" has been the rarest of rare birds in the television news world: a clear ratings winner. The show regularly outdraws NBC's other primetime fare. It succeeds by tapping into something that has been part of American culture since the Puritans stuck offenders in the stockade: public humiliation.¹⁷

McCollam goes on to point out that, although TCAP was continuously bringing the issue of Internet predators to the attention of the American public, a

more recent study by the Crimes Against Children Research Center at the University of New Hampshire found that the number of kids getting unwanted sexual advances on the Internet was in fact declining. In general, according to data compiled by the National Center for Missing and Exploited Children, more than 70 percent of sexual abuse of children is perpetrated by family members or family friends.¹⁸

¹⁵ John Hockenberry, "You Don't Understand Our Audience," *Tech. Rev.*, Jan./Feb. 2008, <http://www.technologyreview.com/infotech/198451> (registration required).

¹⁶ Eleanor Greene, interview, Boston, Feb. 12, 2008.

¹⁷ Douglas McCollam, "The Shame Game," *Colum. Journalism Rev.*, Jan./Feb. 2007, http://cjr.org/feature/the_shame_game.php.

¹⁸ Id.

Is there any other issue that has received that much airtime? The question is whether the level of coverage is proportional to the actual problem.

This was about ratings though. It was not about doing the right thing or even the relevant thing. Personally, I have always wondered why TCAP did not follow up with lots of those married men who showed up. Did any of them have full custody of their own kids? One man even brought his child with him. What happened to that kid? Where was that story?

Ratings and the bottom line do not apply just to TV. Consider the 2006 firings of several *Los Angeles Times* big shots—one quickly replaced after the other for not cutting back on reporters.

“Dean Baquet, the editor of The Los Angeles Times, who defied orders from his corporate bosses to cut jobs, was forced out of his own job yesterday, shocking the newsroom just as it was gearing up to cover election returns.”¹⁹ The article goes on to say, “Mr. Baquet’s departure follows that of the paper’s publisher, Jeffrey M. Johnson, who openly objected to cuts ordered by the Tribune Company in September and was fired last month.”²⁰

The word bloodbath comes to mind. Even when there are good media folks out there who know you cannot get something for nothing, they are not the owners. And at the end of the day the owners (stockholders) call the shots.

Dr. Mo Hannah (coeditor of this volume), Professor of Psychology at Siena College in New York and the chair of the Battered Mothers Custody Conference (BMCC) takes it a step further. “Corporate media is often affiliated with right-wing causes. It also has a desire to maintain the status quo, and even patriarchy to some extent. It actually affects not just this issue, but other social issues as well.”²¹

THE CRUEL IRONY: WHY FAMILY COURT STORIES WORK AT FIRST

With the understanding that media is a ratings-driven business and that journalism thrives on stories like TCAP, it is easy to assume that TV and newspapers would want to cover a story like custody and abuse in the family court. After all, there are seriously high levels of conflict and drama. In fact, early on, a lot of producers and reporters feel that they have hit the mother lode when they hear about these contested custody cases. After all, they involve sex, violence, and child abuse. This could be a front page or lead story. Sex and violence do sell. And when it is layered with a sense of outrage and need for social justice, well, call Clark Kent.

Somewhere along the road to publication and eyeballs, family court stories almost always get axed or they simply pass into the media graveyard.

¹⁹ Katherine Q. Seelye, “Los Angeles Paper Ousts Top Editor,” *N.Y. Times*, Nov. 8, 2006, available at <http://www.freepress.net/news/18961>.

²⁰ Id.

²¹ Dr. Mo Hannah, telephone conversation, Boston, Feb. 22, 2008.

WHAT KINDS OF STORIES WORK FOR THE MEDIA?

The media is a beast that must constantly be fed. It needs stories. Stories are their meat. But the stories have to get good ratings and sell papers and generate advertising dollars.

What they want are stories that have the following elements:

- Are easy to understand;
- Have clear pros and cons;
- Are simple to write;
- Contain drama and excitement;
- Have lots of visuals;
- Are celebrity-packed;
- Have the blessing of the legal department; and
- *Appear* balanced and unbiased.

WHY FAMILY COURT STORIES DO NOT GET COVERED

To explore why the MSM has shied away from covering the family courts, let us look at how the characteristics of family court issues conform to the features listed above.

Family Court Stories Are Not Easy to Understand

Easy to understand involves having a beginning, a middle, and an end to the story. The chronology is simple, clear, and unambiguous. The robber came in, demanded money, fled, got caught, and went to jail. The end. Easy also means that the issues at hand are relatively familiar to the reader or viewer; that way, a long learning curve is not needed, and explanations do not have to be too lengthy. An easy story comes tied up in a neat little package that fits snugly into a couple of newspaper columns or a few minutes on the air.

Since time is money, there is rarely enough of either for any news story that needs to give detailed explanations. The news, in fact, does not typically give a lot of actual airtime to any one topic. When I was a special projects producer, for example, I had to *beg* for thirteen extra seconds on a TV story. This was typical.

Newspapers, too, aim for concise stories that are fast reads and can be easily understood by an audience with a broad range of education and reading levels. If stories do not meet these standards, they are unlikely to see the light of day.

Complicating matters further is the fact that family court processes are not easily understandable to lay persons. The criminal courts, with their glamorization through TV shows like *Law and Order*, are far more familiar to the general audience. Think of it this way: As *Law and Order* presents it, crime is black and white. Somebody committed a crime, so they have to pay. To their credit, and largely because of the influence of Mariska Hargitay, the female lead on

Law and Order SVU and the force behind No More (an anti-domestic violence public service campaign), the show has *briefly* touched on complicated family court issues. In one episode, “Legitimate Rape,” a rapist goes after custody and

gets visitation.²² For the most part, however, crime shows portray the issues in black and white. Grey is a very dull color in TV dramas. Most of the time, there was no black and white—just a lot of gray.

Reporters looking for a simple story that builds to a strong close will be hard pressed to find one in the family court system. Family courts do not operate like the more familiar criminal courts, so cases are hard to follow and even harder to summarize into a concise story. If the case has dragged through the courts for months, years, even decades, the time span alone makes the story nearly impossible to cover.

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Thomas Berman, a producer at ABC’s *Prime Time*, agrees. “These stories are so complicated. When we try to tell a story, if anything is confusing, if there is anything that is apt to have them tune out, the story is less appealing to us.”²³

Family Court Issues Do Not Have Clear Pros and Cons

Stories from criminal courts will have a victim for which the public can feel sympathy. But stories from family court may have a competing narrative. For instance, a case that involves Parental Alienation Syndrome (PAS) or a pro-fathers’ rights agenda may be hawked to the same media organizations that battered mothers’ advocates are trying to reach. The widely discredited junk science of PAS and its many derivatives have become so entrenched in the mentality of the courts that it is routinely passed along to reporters who often buy into it.

Joan Meier of DVLEAP (*Domestic Violence Legal Empowerment and Appeals Project*) writes, “The proponents of ‘parental alienation syndrome’ are purveying invalid junk science is not even legally admissible. PAS has been emphatically rejected by the Presidential Task Force of the American Psychological Association and by the National Council of Juvenile & Family Court Judges. Leading researchers in the field of custody have agreed

²² “Legitimate Rape,” *Law and Order: SVU*, Season 14, Episode 1. Aired 2013. <http://www.tv.com/shows/law-order-special-victims-unit/legitimate-rape-2678453/>

²³ Thomas Berman, telephone conversation, ABC *Prime Time*, Mar. 6, 2008.

that PAS has no scientific validity and the only courts to address the issue have found it inadmissible.”²⁴

So really, PAS is junk science but there are still judges who believe in it and oily lawyers who will use it. What that means is that, in the crazy upside down world of family courts, lots of mothers who are trying to protect their children from abuse are seen as the bad parent.

Complicating matters is the inclination of reporters to take experts’ opinions at face value. When reporters are seeking an expert for a story on PAS (whether pro or con), they often locate the pro-PAS lobby first, since PAS proponents are well organized through the Internet. Pro PAS groups are made up of FRs (fathers’ rights) advocates and their enablers. They are usually organized and have discretionary income, unlike the non-custodial, protective mothers who are usually bankrupted, distraught, and emotionally unable to organize. If reporters are not strongly committed to getting the whole story, they might be duped by the pro-PAS regiment. So it does not take much for reporters to miss half the story, or get it wrong entirely, all the while thinking they have done their due diligence by getting quotes from “experts.” (Notice how quoting only pro-PAS experts violates MSM’s usual policy of getting both sides of the story.) Attorney Richard Ducote says,

If they say they are going to do a story on the courts and how the courts don’t protect children, and that they have to give both sides, well, what is both sides? False allegations are not the “other side.”²⁵

It Is Not He Said - She Said

What I have heard over and over again from reporters is that family court stories are of the “He Said-She Said” variety. The family court judge can prevent certain evidence from going on the record. When a reporter learns that a medical report stating clearly that the child was anally raped, or any other evidence against the father, is not on the record, that is the same thing as there being no evidence. Any “proof ” that is not on the court record is no proof at all.

“Every media outlet is pitched so many stories, but without a finding from the court, there’s just not much they can do about it,” says attorney Richard Ducote. “Criminal courts—with the heavy burden on proof beyond a reasonable doubt—will convict people for crimes of abuse on the same evidence that family court judges deem to be no evidence at all.”²⁶

²⁴ Joan Meier, Esq. “DVLEAP Case Overviews Concerning PAS”, Case Studies of PAS in Courts, <http://www.dvleap.org/programs/custodyabuseproject/pascaseoverview.aspx> (accessed May 2014)

²⁵ Richard Ducote, Esq., telephone interview, Boston, Feb. 22, 2008.

²⁶ Richard Ducote, “What I Learned in the Courthouse,” in *Exposé: The Failure of Family Courts to Protect Children From Abusers* (Elize T. St. Charles & Lynn Crook eds., 2002), available at <http://www.taliacarner.com/backgroundarticles/ducote.html>.

A network reporter said to me, off the record,

There's always a shadow of doubt. The testimony of a child could have been manipulated by an adult. There are huge gray areas. I know abusers count on this. That is the biggest problem. We can't go on the air. We could get sued.²⁷

Brandon Bodow, a producer at *Good Morning America*, told me,

These cases are so difficult to cover when we, as editorial producers, struggle between the outcome of the cases and what we feel might be the real truth. But how can we report injustice when the evidence is often so unclear?²⁸

As a TV producer and documentary film producer I understand this. As a citizen, I would say that this is what makes it so imperative that the media dig deeper. If they did, they would learn that the truth. Especially in cases that involve allegations of abuse and defenses based on PAS. Research by Dr. Bea Schuman is informative. She writes that there's "a range of 1-5% for rates of deliberately false allegations, and 14-21% for mistaken allegations."²⁹ If reporters did more research, if they dug a little deeper, they would learn that the facts are out there, and the facts make a good story even better.

Family Court Stories Are Not Easy to Write

Not long ago, I was speaking to a reporter at a national newspaper who was interested in exploring family court injustices. He was trying to wrap his mind around some of the issues. He was confused as to why PAS was illegitimate; to him, it made a certain amount of sense. "Listen," I advised him, "Parents say bad things about each other all the time. Divorce can be messy. But there is a big difference between a mother who doesn't get along with her ex and a mother who reports that her child told her, 'Daddy put his pee-pee in my mouth.'"

Joan Zorza, founding editor of *Domestic Violence Report* and *Sexual Abuse Report*, told me, "The courts have bought into the idea that the woman is making false allegations."³⁰ Statistically, false reports of sexual abuse are rare, but reporters usually overlook that point. The real irony is that fathers are sixteen times more likely than mothers to make false allegations during custody battles.³¹

²⁷ Telephone interview with anonymous major network producer, Boston, Feb. 22, 2008.

²⁸ Brandon Bodow, Producer, *Good Morning America*, telephone interview, Boston, Feb. 21, 2008.

²⁹ Stephanie Dallum and Dr. Joyanna Silberg, "Myths That Place Children At Risk During Custody Litigation", The Leadership Council, http://www.leadershipcouncil.org/1/res/cust_myths.html, Sexual Assault Report, 9(3), 33-47. (accessed May 2014)

³⁰ Joan Zorza, telephone interview, Boston, Feb. 21, 2008.

³¹ Nicolas M.C. Bala et al., *Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper* (Canada Department of Justice 2001), <http://www.justice.gc.ca/en/ps/pad/reports/2001-FCY-4.html>.

When a reporter contacts a woman going through a custody battle, the mother is usually so frantic over the possibility of losing her children that when talking about her case, she obsesses over each and every detail. This strategy almost always backfires on her. Reporters are in a hurry; they want to get the key elements of the story quickly, so that they can do a quick turn around and sell the story to an executive producer/boss.

Family Court Stories Lack Drama and Excitement

Television is always looking for great drama. Newspapers and magazines need it for their life blood. But they are not looking for the kind of drama that is seen in family court litigation. Since these cases seem to go on forever, there is no closure, no grand conclusion to bring it all to fruition. Leaving a story in midair makes a story deeply unsatisfying.

Another point is that *real* sexual abuse and *real* DV makes people sick. When it is unfiltered and presented to you over dinner, it is not entertaining; it is just plain uncomfortable.

Of course, *The Burning Bed* is about DV, but it stars Farrah Fawcett. *Erin Brockovitch* is about cancer and corporations poisoning water supplies, but it also has Julia Roberts. *Syriana* has George Clooney. All of that is entertainment. But long trials, with sad, worn out people and children talking about being raped are not drama. That is disgusting. This may be why it is easier to expose important social issues in TV dramas rather than on the news. There is emotional distance in dramas, because discomfort comes under the guise of fiction, therefore requiring no action on the part of the viewer.

This may be why it is easier to expose important social issues in TV dramas rather than on the news. There is emotional distance in dramas, because discomfort comes under the guise of fiction, therefore requiring no action on the part of the viewer.

John Hockenberry, in *Technology Review*, claims that it is, in fact, the nightly fictional dramas that have the network's blessing to explore real-life issues.

Entertainment programs often took on issues that would never fly on *Dateline*. On a Thursday night, *ER* could do a story line on the medically uninsured, but a night later, such a "downer policy story" was a much harder sell. In the time I was at NBC, you were more likely to hear federal agriculture policy discussed on *The West Wing*, or even on Jon Stewart, than you were to see it reported in any depth on *Dateline*.³²

It is also not easy to get producers to talk on the record the way Hockenberry does. He is very candid about the content decisions that news and

³² Hockenberry, *supra* note 15.

networks make. The reason Hockenberry could talk so openly was because he did not have the network legal eagles breathing down his neck. His paycheck came from MIT, not the network. He is a free man, which makes a big difference as far as what he can say or not say.

Crimes Make Better Headlines

Reporters find it easier to report on a crime that was committed and that led to someone's arrest. Most of us grew up in a society that teaches that crime is bad and that criminals are bad people who should be punished. If a crime has been committed, there will probably be a trial (if not a plea bargain), a verdict, and possibly a sentence. That is an easy and intuitively appealing story.

In fact, some family court cases have attracted media coverage once the case found its way to criminal court. Other cases got attention from the press when one of the parties went to jail or died.

Let us look at a case in which someone went to jail. Genia Shockome's case received coverage and a headline from the *New York Post*: "Pregnant Ma Lands in Jail."³³ The article stated, "The ruling on May 5th by Poughkeepsie Family Court judge Damian Amodeo sent Russian-born Shockome, a 33 year old IBM software engineer, to prison for Mother's Day."

In a press release, Attorney Barry Goldstein (coeditor of this volume) commented,

Genia's husband abused her throughout the marriage. He had little to do with the children before the separation, but did engage in physical and sexual abuse of the children. When the mother decided to separate from her abuser, he threatened that he would take the children and destroy her life. It would be one of the few times that he told the truth.³⁴

Virtually everything that happened in this case was outrageous, but there were no headlines until the mother, who was seven months' pregnant, was gagged, then jailed for three weeks, causing her and her children to be separated on Mother's Day. The stories in the press expressed considerable outrage. People were shocked that a pregnant woman who was once named a "Mother of the Year" could land in jail for purportedly speaking too vigorously and persistently to a judge while defending her maternal rights.

In *Small Justice*, we see Kathy Smigelski, the protective mother who took her abused daughter underground, go to jail. TV and newspapers heavily covered her criminal trial. Here was this sweet, blonde mother going off to jail in shackles for trying to protect her child. It was TV manna from heaven. "I was put in jail with women who had killed their children. I went to jail

³³ Brad Hamilton, "Pregnant Ma Lands in Jail," *New York Post*, May 15, 2005.

³⁴ Barry Goldstein, Esq., Background Press Release, <http://www.thelizlibrary.org/outrage/shockome.html>.

for trying to protect mine,” she says in *Small Justice*.³⁵ Although Kathy was exonerated in criminal court, the family court gave custody of her daughter to her ex-husband.

If Someone Dies, The Media Will Cover It

Unfortunately, a bullet is sometimes what it takes to get a story about DV on the front page. (Occasionally, a woman can be hospitalized, instead of dead, for the news to pick up her story.) Think about Charles Stewart, the furrier who made up the lie that a black mugger murdered his pregnant wife for some jewelry. That story got national attention. According to *Time Magazine*, “Instead of suspicion, Stuart was showered with sympathy. The media apotheosized the couple as starry-eyed lovers out of Camelot cut down by an urban savage.”³⁶

Darren Mack, who murdered his wife and shot the judge in his divorce case, got coverage from Fox News. “Reno businessman Darren Mack is suspected of shooting the judge whom he blames for the ‘unjust’ conditions of his divorce. He is also charged with slashing his estranged wife Charla to death.”³⁷ More recently, the Baltimore Sun covered a story about three children who were drowned in a bathtub by their father, despite the mother’s pleas. “Adhering to a Montgomery County visitation order, Amy Castillo released the children into their father’s care . . .”³⁸ Dr. Amy Castillo, a pediatrician, had begged the courts to protect her children. Coverage came when three children were dead.

The Washington Post did a moving story, after the fact, of another child murder. This one was of a little boy named Prince. His mother, Hera McLeod had begged the courts not to allow unsupervised visitation with the father.

“. . . a state medical examiner, issued a determination Jan. 16 that death was the result of drowning, and on Jan. 25, Rams (the father) was charged with first-degree murder, later upgraded to a capital charge. In their investigation, authorities discovered that Rams, between the time of his split with McLeod and seeking custody of Prince, had taken out three insurance policies on Prince. The largest, \$443,000, listed McLeod as having died in an accident.”³⁹

³⁵ See *supra* note 2.

³⁶ Margaret Carlson, “Presumed Innocent,” *Time Magazine*, Jan. 22, 1990, available at <http://www.time.com/time/magazine/article/0,9171,152635,00.html>.

³⁷ Wendy McElroy, “Fathers Rights Movement Must Condemn Darren Mack,” Foxnews.com, June 27, 2006, Views, <http://www.foxnews.com/story/0,2933,201251,00.html>.

³⁸ Tricia Bishop, “Castillo Guilty In Kids’ Deaths”, October 2009. http://articles.baltimore-sun.com/2009-10-15/news/0910140135_1_mark-castillo-amy-castillo-guilty-plea. (Accessed May 2014)

³⁹ Jo-Ann Armao, “Baby Prince: After a child’s death, father is charged, mother finds a way to move on, December 12, 2012.” http://www.washingtonpost.com/lifestyle/magazine/prince-rams-after-a-childs-death-a-father-is-charged-and-a-mother-finds-a-way-to-move-on/2013/12/12/bc8f6ffc-4c89-11e3-9890-a1e0997fb0c0_story.html

When the courts didn't listen, McLeod went to the press. But, again, coverage came after a child had died.⁴⁰

Attorney Joan Zorza knows all about the proclivities of the media. She described a case of a husband who threw gasoline on his wife and tried to burn her alive. "This woman had been trying to get the courts to protect her from him for months. Once she was in the hospital, she got some media coverage." Zorza went on to say, "A kid has got to be dead. At that point, everyone rushes to cover it, but months before, the mother was screaming to the courts for protection. To the media, though, it's not a story unless it's totally dramatic."⁴¹

So the media accepts death, injury, or jail as ways to wrap up a story.

Family Court Stories Lack Visuals

In many criminal and civil courtrooms, cameras are allowed. You can take pictures of people in handcuffs. You can see who is accused of setting the fire or raiding the corporation's 401(k) plan. You can see the pain and horror on the faces of the witnesses. This creates powerful images.

A real obstacle to getting coverage of DV and custody cases is that viewers cannot see for themselves what is going on inside the family courtroom. No cameras are allowed. This is supposedly for the protection of the children, who might have to testify about being sexually abused. But another reason for this, I believe, is because whether an alleged abuser is guilty or innocent, once the victim's testimony is broadcast, the accused will no longer be able to hold his head up in public.

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abuser is guilty or innocent, once the victim's testimony is broadcast, the accused will no longer be able to hold his head up in public. Alleged abusers can be very litigious, and that scares the daylight out of the media. "I can't have faceless people in my story. I can't have everyone in silhouette. It's not like the old days," an off-the-record reporter told me.⁴²

ABC's Tom Berman admitted that any story related to the family courts raises a red flag. "But mostly, it means that there can be no camera in the

⁴⁰ Brian Ross, "Official: Marine Killed by Crowbar, Baby Was a Girl," ABCNews.go.com, Jan. 18, 2008, <http://abcnews.go.com/Blotter/story?id=4155874&page=1>.

⁴¹ Ruben Castaneda, "After Burning of Woman, Judge's Cases Are Limited," *Wash. Post*, Oct. 14, 2005, at B05.

⁴² Interview with anonymous network reporter, Feb. 28, 2008.

courtroom. For what it's worth, we shy away from federal court stories, too. It would have to be a pretty big story for us to do it."⁴³

Interviews have similar issues. Sound bites are short, clear statements (sometimes incomplete sentences) that capture the essence of a thought, idea, or issue. It is like a campaign slogan or a rallying point; it is what people remember. Who does not recall the name of the person who said, "I did not have sexual relations with that woman"?⁴⁴

In DV and custody cases, sound bites are hard to get. Often, that is because the entire story is too complicated to boil down to a sound bite. In addition, the protective mother, unfortunately, is sometimes her own worst enemy. She has a hard time telling her story chronologically, or in brief. She wants to explain each and every detail. This turns reporters off. They have nothing to work with: there are no sound bites, they have no courtroom images, the issues are not clear-cut, and what the courts are doing is incomprehensible. Consequently, the story goes nowhere.

Celebrity Custody Battles Are Newsworthy

If a celebrity is attached to a story, news organizations react like they have hit the bonanza. The drive for high ratings partly explains the attractiveness of celebrity-based news, but also relevant here is the fact that we live in a celebrity-obsessed culture. Reporters cover Brad Pitt going to build houses in New Orleans. They salivate over Angelina Jolie as a UN Ambassador. They will embrace George Clooney or Meg Ryan in Cambodia. But when serious questions are raised about the actions of the power elite in our court system, reporters and editors want to run for cover.

A friend of mine was talking to a network magazine reporter about using the Darren Mack case as the thread for story on the family courts. (This is the case where a man shot a judge and killed his wife.) The expert in the case, Dean Tong, would later be arrested himself on DV charges. The Darren Mack story was interesting, this reporter told my friend, but he knew his network would not cover it. "Give me a star. Have the star go to court. Then I can do something."⁴⁵

The Alec Baldwin voice mail incident is a good example of how a celebrity can attract media attention to a custody battle. Baldwin got angry when his daughter (the child of Baldwin's marriage to actress Kim Basinger) did not respond to a phone call from him. "You are a rude, thoughtless little pig," he screamed as he left a voice mail message for his daughter. "You don't have the brains or the decency as a human being."⁴⁶ The taped message was leaked, then played incessantly on the radio and TV and over the World Wide Web. *Newsweek* and other national publications carried this story.

⁴³ Thomas Berman, telephone conversation, ABC *Prime Time*, Mar. 6, 2008.

⁴⁴ President William Jefferson Clinton, White House Press Conference, Jan. 26, 1998, <http://www.washingtonpost.com/wp-srv/politics/special/clinton/stories/clinton081898.htm>.

⁴⁵ Telephone interview with anonymous network reporter, Feb. 28, 2008.

⁴⁶ Alec Baldwin, as heard on "Alec Baldwin's Threatening Message to Daughter," *TMZ Staff*, Apr. 19, 2007.

What people may not remember about this incident is that Kim Bassinger (Baldwin's ex-wife) took a lot of media heat for allegedly releasing the audio tape (although there is no proof that she did so). In contrast, Baldwin—a very famous celebrity caught angrily castigating his child—was viewed with considerable sympathy. He also received, along the way, free advanced publicity for the pro-PAS book he was writing.

From radio shock jocks to *The View*, from the *New York Times* to small town papers, everyone was talking about this “rude, thoughtless, little pig” tape. But the really important information lying in the background—such as how custody was decided in the Baldwin-Bassinger case, or whether Baldwin's taped message constitutes verbal abuse—was lost on the media. They had their stars—Baldwin and Bassinger—and they were going for broke.

Attractive People Attract Coverage

“‘Beauty is Nature's coin,’ [seventeenth century poet] John Milton wrote in 1634. It is currency in today's labor market, as well. Since 1994, numerous studies have found that work-

This is what the courts and the media do not seem to understand: People who abuse and batter others are often incredibly charming. That is why they are so successful at attracting romantic partners.

ers of above-average beauty earn 5 to 15 percent more than those with below-average looks. ‘Those differences are of a similar order of magnitude as the premiums we associate with race and gender,’ says as-

sociate professor of economics at Wesleyan University, Markus Mobius.⁴⁷ Mobius coauthored “Why Beauty Matters,” which was published in the *American Economic Review*.⁴⁸ The article adds, “We attribute all kinds of positive things to people who look good.”⁴⁹

This is especially true for the family courts and for the media. Both are quite taken in by appearance. While I was shooting *Small Justice*, when I saw the men accused of abuse go to court, even I had a few moments of doubt. These men looked really normal. They went to church. They had decent jobs. They looked like your neighbor next door.

This is what the courts and the media do not seem to understand: People who abuse and batter others are often incredibly charming. That is why they are so successful at attracting romantic partners. Charm is an essential tool enabling them to do what they do—which is abuse and control others—while convincing people that their victim is to blame.

⁴⁷ Quoted in Harbour Fraser Hodder, “The Beauty Bounty,” *Harv. Mag.*, Nov./Dec. 2006, available at <http://harvardmagazine.com/2006/11/The-Beauty-Bounty.html>.

⁴⁸ Markus M. Mobius & Tanya S. Rosenblat, “Why Beauty Matters,” 96(1) *Am. Econ. Rev.* 222–35 (2006).

⁴⁹ Hodder, *supra* note 42.

Sandra Horley describes this further in *The Charm Syndrome*.

The “syndrome” is described as one whereby men use attentiveness and romance as controlling mechanisms. The charm visible to the outside world, and to the woman herself at the outset of the relationship, makes it difficult for others to believe that this man can really be capable of any abuses which are alleged by his victim.⁵⁰

In *Small Justice*, Diane Hofheimer commented on this phenomenon: “Some of the judges are very good people. But the courts just don’t believe that these men could do the horrible things they are accused of. They look so normal, but you know, they have spent their lives fooling people. The judges just don’t get it.”⁵¹

These con men seem so cool, calm, and reasonable. That is how they get what they want: first, the woman; then, the children. Family courts and

These con men seem so cool, calm, and reasonable. That is how they get what they want: first, the woman; then, the children. Family courts and the media share an inability to see through their manipulative behavior.

the media share an inability to see through their manipulative behavior. “Experts, judges, friends will say of a man accused of abuse, ‘He’s such a nice man.’ They don’t realize that these things are irrelevant. These are men who are interested in controlling their image,” says Joan Zorza.⁵²

How a woman looks also makes an impression. Like so many other women, Bridget Marks had a horrific custody battle. But unlike most other women, her case got a lot of TV coverage. She appeared on *Dr. Phil*, *The O’Reilly Factor*, and *Prime Time Live*, among other shows. She got stories in the papers as well. After sexual abuse allegations were raised during the custody hearing, the wealthy, married man who fathered Bridget’s two girls was given sole custody of the children. There is widely viewed footage of the two girls screaming not to be taken away from their mother, who is seen kneeling at their level as they cling to her. However, there was an additional visual component to this story: Ms. Marks was once a *Playboy* model, and she looks it. This is not to detract from the seriousness of her story. But she got media coverage in large part because of her beauty—not her story.⁵³

⁵⁰ Sandra Horley, *The Charm Syndrome: Why Charming Men Can Make Dangerous Lovers* (1991), cited in Linda Walton-Brown, “Charmers Who Use Romance and Attention to Hide Their Violence,” *The Scotsman*, June 27, 2000, available at <http://www.highbeam.com/doc/1P2-18737459.html>.

⁵¹ See *supra* note 1.

⁵² Joan Zorza, telephone interview, Boston, Feb. 21, 2008.

⁵³ For detailed records of press coverage of the Bridget Marks case, see <http://judicialaccountability.org/articles/expertsinchildcustody.htm>.

In a *New York Times* op-ed piece, Nicholas D. Kristof commented on another issue, when he wrote about “The Elizabeth Smarts and Natalie Holloways . . . who fill the cable niche for a “missing blonde” story,”⁵⁴ I was reminded of this issue. Once again, it is about images that are attractive, that sell, that tap more into pop culture than to important news and information. The essence of the story gets lost in the blizzard of sellable paparazzi shots,

Bernard Goldberg, a producer for *48 Hours*, admitted, “All we do is murder, murder, murder, sex. And only about white people.”⁵⁵ To which I would add, “And attractive people.”

Returning to Genia Shockome’s case, at the time she got coverage, she was seven months’ pregnant and had been sentenced by a family court judge to a month in jail for contempt. That is what got her in the news—not the unending abuse her ex-husband had inflicted on her or the fact that she had lost all meaningful contact with her two young children. When a very pregnant battered mother goes to jail, that works. That is newsworthy.

Appearance also plays a role in how the courts view battered mothers. Lundy Bancroft and Dr. Jay Silverman, in their remarkable book, *The Batterer as Parent*, commented,

One reason is that these mothers have been so abused and terrorized by their husbands is that they don’t look good in court. They seem frazzled and out of control when they go before a judge. They might have been living in a shelter or on the run, so they look disheveled. The batterers, on the other hand, understand how the system works. They also have been living at home, have the money and resources to pay an attorney. They are dressed properly, and they appear calm and in control.⁵⁶

In *Small Justice*, Dr. Carolyn Newberger, who is affiliated with Harvard University and Boston Children’s Hospital, commented,

What I’d like people now to know is that when women are abused, they do not come out looking like paragons. They come out looking tired, angry, sleep-deprived, with symptoms and difficulties that need to be understood for what they are. Women are often blamed for what they look like instead of being understood and helped.⁵⁷

The things that make a woman look bad in court are the same things that make her not a great “sell” for TV. Beauty, motherhood, and apple pie work better than battered, victimized, and angry.

⁵⁴ Nicholas D. Kristof, “The Pimp’s Slave,” *N.Y. Times*, Mar. 16, 2008, available at <http://www.nytimes.com/2008/03/16/opinion/16kristof.html>.

⁵⁵ Bernard Goldberg, Producer *48 Hours*, telephone interview, Feb. 21, 2008.

⁵⁶ Lundy Bancroft & Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2002).

⁵⁷ See *supra* note 2.

Legal Department Has to Bless It

When the legal department of a TV station, network, or newspaper reads the notes or a story written by a reporter, no matter how true, well written, or substantiated the story may be, it can get axed on the spot. Legal is paid to be alarmist. It is the legal department's job to protect the company from lawsuits, because if you have to go to court, it costs money; if you lose, it costs even more money.

Many advocates and protective parents have told me that when they first spoke to a reporter about their story, he/she listened, took notes, seemed genuinely interested, and promised to follow up. I also can say, from my own experience, that when I contact producers of TV shows like *20/20*, *60 Minutes*, *Prime Time*, and *48 Hours*, they show initial interest. But in every instance, once the story reaches the eyes and ears of the news organization's legal department, the piece ends up getting killed. Legal counsel wants incontrovertible proof that the allegations are true before the story goes to print; otherwise, it is too risky.

Anyone who has worked on these family court cases knows that the reason they are in court is because spousal or child abuse is hard to prove in family court, where the criminal rules of evidence do not apply.

My ex-husband, a civil rights attorney, used to say that all cases that go to court are complicated. If they were easy, they would settle. Anyone who has worked on these family court cases knows that the reason they are in court is because spousal or child abuse is hard to prove in family court, where the criminal rules of evidence do not apply.

A sympathetic network reporter who requested anonymity told me,

I know with [an unnamed protective mother] that she had documented everything. She was giving me this story on a silver platter. But the child, who was living with the father, was unwilling to testify, and the father denied any and all abuse. You know, even if the child spoke on the record, it was her word against her father's. [Our] legal [department] would just never let this pass.⁵⁸

In 2009, Crystel Strelloff was interviewed in Kane County Adult Justice Center—a jail—by Chris Cuomo of ABC. Despite the fact that Crystel's children were in a public school, she was accused of abduction by her ex-husband. She was sentenced to 12 years in prison with a \$25 million dollar bond. At the same time, her children were detained by the State of California because California, along with Illinois, found the father severely sexually abused the two children. It was an extraordinary story. The crew spent almost a week interviewing those involved.⁵⁹

⁵⁸ Interview with anonymous, major network producer, Boston, Feb. 21, 2008.

⁵⁹ Helen Lynn, interview and e-mail attachment of bond order. Accessed May 2014.

The story never aired. I have my suspicions. I have no proof, but it had to be the legal department. When a network sends a reporter and a crew anyplace for a several days, they generally want to get their money's worth. So I am sticking with the legal department.

Legal concerns are one of the main reasons why the national media retreats from these stories at the last moment. The legal department is usually the last hurdle for the producer or writer. The legal department is what causes immense frustration to a lot of battered women's advocates. The advocates spend hours with a reporter. They send the reporter enough material to sink the Royal Caribbean's *Allure of the Seas*. But the story's plug is likely to get pulled once the legal department discovers that the story includes allegations of sexual abuse or DV—unless the battered mother is already dead or the perpetrating father has been found 100 percent guilty by the court.

A producer friend said to me, "You know I can't talk to you. I am owned by the network."⁶⁰ This is a reporter who would like to blow this scandal wide open. But my friend has remained silent, like almost everyone else in the media. The media knows that the legal department would nix the story, anyway. They know who the boss is and what the rules are; so rather than waste everyone's time, they simply decide that they cannot do the story. That way, the story dies by way of self-censorship.

Eric Alterman points out,

Focusing on examples of direct censorship in the U.S. media misses the point. Rarely does some story that is likely to arouse concern ever go far enough to actually need to be censored at the corporate level. The reporter, the editor, the producer, and the executive producer all understand implicitly that their jobs depend in part on keeping their corporate parents happy.⁶¹

Fair and Balanced

In my opinion, the notion that news must be "fair and balanced" may be the biggest obstacle to getting coverage of family court corruption. News organizations are committed to getting both sides of the story, which requires interviewing the accuser and the accused. If a man accused of abuse will not talk, or if a woman alleging abuse is under a gag order and therefore cannot talk, there is no way for the reporter to get both sides of the story. Under the fair-and-balanced mandate, then, there can be no story.

Gag orders are especially problematic. Many protective parents are so traumatized by what has happened to them that they try to tell their stories to anyone who will listen. They believe that since they live in America, if it becomes known that children are being hurt, people will want to know and do something about it. But when a judge in a family court issues a gag order,

⁶⁰ Interview with anonymous major network producer, Boston, Feb. 22, 2008.

⁶¹ Alterman, *supra* note 11, at 14, 23.

these parents cannot talk for fear of the consequences. As Joan Zorza commented to me, “The gag orders that are imposed are the most powerful tool the courts use under the guise of protecting children. They are weapons used to control and silence what is really going on in the family courts.”⁶²

Annette Zender, a protective mother from Illinois, was not about to be intimidated by a gag order (see Chapter 10 in this volume). Along with organizing a group once called the Illinois Coalition for Family Court Reform (ICFCR),⁶³ she got hundreds of protective mothers to write down what happened to them during their custody battle. Annette understood that battered mothers tend to give too many details or have problems presenting the facts of their case. This is why Ms. Zender posted a form on the ICFCR Web site for mothers to use to summarize their stories for the media.⁶⁴ That made the Illinois courts nervous. In fact, it made Ms. Zender’s family court judge mad enough to place a gag order on her. In protest, Annette defied the judge’s order, contacted the press, and wore a purple scarf over her mouth—a visually impressive action that made the front cover of the *Lake County News Sun*. The headline was “SHUT UP!—She Can’t Discuss Custody Case With Any Third Person, Including This Newspaper.”⁶⁵

Something similar happened in The Shockome case. Barry Goldstein, Genia Shockome’s former attorney, noted how the case drew press attention after Ms. Shockome was gagged and sent to jail:

A local radio program, “Scams and Scandals,” and two local cable shows covered it. Interestingly, when we received the publicity, other victims of [the biased judge in the case] came forward, which is exactly what the gag order was intended to prevent.⁶⁶

The waves of publicity that follow the imposition of gag orders on Annette Zender and Genia Shockome had nothing to do with the fact that a loving mother had lost custody of her children. It had everything to do with the First Amendment—a gag order that effectively bans the publication of a newsworthy story? To reporters, *that* is scary. Freedom of speech amounts to their bread and butter. When people cannot talk to the press, a reporter’s job becomes difficult if not impossible. Reporters recognize that a gag order placed on a witness is not a big leap away from a gag order placed on a member of the press. Many reporters would be willing to go to jail rather than give up their First Amendment right to do a story. Therefore, if packaged properly, a case in which a protective parent is gagged could attract press coverage. Usually, though, the

⁶² Joan Zorza, telephone interview, Boston, Feb. 21, 2008.

⁶³ Illinois Coalition for Family Court Reform, <http://icfcr.org/index.html>.

⁶⁴ Id.

⁶⁵ Art Peterson, “‘SHUT UP!’ She Can’t Discuss Custody Case With Any Third Person, Including This Newspaper,” *Lake County News Sun*, Aug. 31, 2006, available at <http://www.stopfamilyviolence.org/ocean/host.php?page=340>.

⁶⁶ Barry Goldstein, e-mail to author, Jan. 26, 2008.

fear factor silences those who have been gagged, and since a reporter needs both sides of a story, without one side or the other, there can be no story.

On a related note, I believe that the refusal of alleged abusers to talk to the press is a strategy used by FRs groups to keep the media from covering these stories. If, as it claims, the media is required give both sides of the story, if one side will not talk, that virtually guarantees the media's silence. The MSM may use "fair and balanced" as an excuse for a number of their failings, but I maintain that it is fear that is preventing the media from exposing the family court problems.

In fact, both sides are *not* required for all stories. We do not feel the need to cover both sides of hate crimes. We do not require reporters to talk to people arrested for pushing drugs in order to get both sides of the story. Certainly, for most topics, the goal is to get and present both sides. But why must every news story have two sides? Should a story be killed if the reporter *cannot* get both sides? Should the Nazi war criminals have been granted coverage equal to that given to their prosecutors to ensure that the reporting was fair and balanced?

FALLOUT, ANGER, AND THREATS

The fairness-and-balance issue brings up to two different documentaries. The first is *Small Justice*,⁶⁷ where, as stated earlier, I explicitly informed the audience that they would be hearing only one side of the story. This admission, stated at the outset, might be the primary reason why *Small Justice* never aired on network TV. "We could never air this on our news magazine," an executive producer told me. "We always show both of sides of the issue."⁶⁸ *Small Justice* has been shown at many conferences to great acclaim. It has won Indie awards. But it has never been aired on network TV.

The second documentary did get network time, but it also got a volley of retribution hurled at it by FRs proponents, who lambasted the documentary for what they called one-sided storytelling. *Breaking the Silence: Children's Stories*⁶⁹ aired on the Public Broadcasting Service (PBS) in the fall of 2005. A year or so earlier, the documentary's co-producer, Dominique Lasseur, had shot footage at the BMCC. He listened to the experts and spoke to many women who had lost or were losing custody to abusers. The Mary Kay Cosmetics Foundation funded the documentary to the tune of \$500,000. The show was produced in accordance with the PBS underwriting guidelines. Advocates hoped this would be the breakthrough show and that it would, indeed, break the silence.

But even before it had aired, FRs groups launched an attack on the documentary claiming it was not fair and balanced. According to PBS ombudsman

⁶⁷ See *supra* note 2.

⁶⁸ Interview with anonymous major network producer, Boston, Feb. 22, 2008.

⁶⁹ Catherine Tatge & Dominique Lasseur (producers), *Breaking the Silence: Children's Stories*, aired on PBS in October 2005.

Michael Getler, 4,000 letters were written to PBS about *Breaking the Silence*.⁷⁰ Of those, 3,500 were against the show. More than 90 out of 105 calls were also negative.

Although in their formal press release⁷¹ PBS stood behind the integrity of *Breaking the Silence*, they eventually buckled under. As attorney Barry Goldstein put it, “There was an important campaign around that film in which the male supremacy movement attacked the film before even seeing it. We sought to support it [*Breaking the Silence*], but PBS caved in to the pressure.”⁷²

Dr. Mo Hannah, chair of the BMCC, commented,

I got to witness this up close. PBS leaned in the direction of the bully. They were listening to the loudest voices. It felt abusive—that is the word for it. In the end, it was another experience of being subjected to an abusive system.⁷³

As a way to respond to the complaints of the FRs groups, PBS commissioned a second documentary. (This kind of response to pressure is extremely unusual in the TV industry.) That subsequent production, *Kids & Divorce: For Better or Worse*⁷⁴ never received the kind of buzz that *Breaking the Silence* got, but it did pacify FRs proponents. In a review of *Kids and Divorce* for the publication *Domestic Violence Review*, Dr. Hannah summed it up this way:

What I anticipated, then, from *Kids and Divorce* was a cohesive, statistically rich counter-punch to *Breaking the Silence*. I expected a point-by-point rebuttal of what was stated in the earlier documentary—for example, the statistic that 50%–70% of abusers who seek joint or sole custody are successful in doing so, or the claim that battered mothers and their children often are re-victimized by what goes on in the family courts. What I did not expect was a piece that deflected attention away from the heart of the matter, namely the family courts’ handling of custody cases when there is domestic or family violence. Instead, *Kids and Divorce* completely failed to dispute, challenge, or even respond to the bleak picture portrayed in *Breaking the Silence*.⁷⁵

It is not just the networks that have to deal with complaints from angry fathers, though. Sometimes the writer/producer is the one under attack.

⁷⁰ Michael Getler, “A Little About Me, A Lot About “Breaking the Silence,” *The Ombudsman Column*, Dec. 2, 2005, http://www.pbs.org/ombudsman/2005/12/introduction_and_breaking_the_silence_print.html.

⁷¹ PBS Statement on *Breaking The Silence: Children’s Stories*, Dec. 21, 2005, http://www.pbs.org/aboutpbs/news/20051221_breakingthesilence.html.

⁷² Barry Goldstein, Esq., telephone conversation, Feb. 21, 2008.

⁷³ Dr. Mo Hannah, telephone conversation, Feb. 21, 2008.

⁷⁴ David Iverson (Producer), *Kids & Divorce: For Better or Worse* (2006).

⁷⁵ Dr. Mo Hannah, telephone conversation, Feb. 21, 2008.

I personally have received hate mail in response to both *No Way Out But One* and *Small Justice*, so I take my hat off to those who have had to deal with the backlash on a regular basis.

Reporter Kristen Lombardi last worked for the *Village Voice*. Before that, she wrote for the *Boston Phoenix*. I spoke to her while she was working on the *Boston Phoenix* piece, “Custodians of Abuse.” It was a powerhouse of an article, similar to what she wrote when she broke the Catholic priest sexual abuse scandal years earlier.

She began “Custodians of Abuse” with no holds barred.

If you’re a parent, it’s your worst nightmare: finding out that your child is being molested—by your spouse. If you seek a divorce as a result, or are already going through one when you make the discovery, you hope that family court will do the right thing: grant you sole legal and physical custody of your child. In fact, you can’t even imagine that there could be any other outcome in the custody judgment. But for many parents—in nearly every instance, mothers—just the opposite occurs: the alleged abusers don’t just get unsupervised visitation rights, they get full custody. How can this happen?⁷⁶

The answer to that question made a lot of people scared and a few people very angry. One man who was named in the article sued the *Boston Phoenix*. For a journalist, a lawsuit can be a very big problem. Lombardi’s livelihood and reputation were on the line. The *Boston Phoenix* stood behind her. Still there was a lawsuit. That lawsuit was settled, but her career trajectory was affected.

Richard Ducote commented to me about the article, “Before, during the 1980s and even the 1990s, there was local and national coverage, and much of it was good. After Kristen Lombardi’s article in the *Boston Phoenix*, there has been a chill.”⁷⁷ Indeed!

THE OPRAH FACTOR

You cannot discuss the media’s handling of these horror stories without looking at the *Oprah* phenomenon. This isn’t actually about Oprah herself. It’s about any major TV personality. But what if Oprah were to do a show on this issue? She is, after all, the leading lady as far as making people stand up and shout for change. Attorney Barry Goldstein told me that numerous women have proposed to him the idea of contacting Oprah about their cases.

Every protective mother victimized by the court system has the same idea: She should appear on *Oprah*. Protective parents often believe that

⁷⁶ Kristen Lombardi, “Custodians of Abuse,” *Boston Phoenix*, Jan. 09, 2003, available at <http://www.stopfamilyviolence.org/get-informed/custody-abuse/news-on-custody-abuse/custodians-of-abuse>.

⁷⁷ Richard Ducote, Esq., telephone interview, Boston, Feb. 22, 2008.

their story is so awful, so horrific, that of course the press will want to cover it, especially Oprah. Once Oprah hears the truth, she will put this story on the air, and women and children across the country will be saved. This is not just because of Oprah's great influence and the exposure an appearance on her show would provide, but because she is perceived as caring about human issues.⁷⁸

I put in a call to the senior supervising promotions producer at Harpo Productions, which produces *Oprah*. I wanted to know how many stories Oprah gets pitched a year, what they look for in stories, and how they weed through all of them. Her assistant was courteous; she asked me to provide questions and some background information about myself. To be honest, I did not really expect a call back. I did not get one either.

At the beginning of this chapter, we discussed ratings and the central role they play in media decisions. If you look at the *Oprah* Web site, you can see that there has been a seismic shift in the topics she is covering currently in comparison with those from when she first started on TV. This may explain why heavy topics like custody, D V, and child abuse are not being addressed on her show. Yes, she is looking for people to be on her show, but take a look at the prevailing topics: "How do you feel about your body?" "Does your family need a makeover?" Oprah Radio focuses on things like the law of attraction and how to clear up all that clutter in your house. On Oprah.com's Web page, notice that Nabisco and 100 Calorie Packs and Three Musketeers are sponsors.⁷⁹ Oprah at Home is sponsored by Target. It is all about ratings and advertising.

It is important to give credit where credit is due, however. The magazine *Oprah* did a magnificent story "Please Daddy, No."⁸⁰ I think this article by Jan Goodwin is one of the best ever written on child sexual abuse and the crisis in the family courts—certainly the best since Lombardi's "Custodians of Abuse."⁸¹

Goodwin drives the point home with, "A child molested by a stranger can run home for help and comfort. A child sexually abused by a parent cannot. And that tragedy will repeat itself again and again until we stop looking the other way." She continues, "Whoever it is—the GAL [guardian ad litem], the judge, the lawmaker, mother, 'the people responsible for placing children back with their sex offenders are, at the very least, criminally negligent in any subsequent sexual abuse,' says Randy Burton of Justice for Children."⁸² There is nothing soft about this story in *Oprah*. This is bold. Thank you, Oprah.

And Oprah has done numerous shows on abuse. Oprah also has spoken publicly about her own abuse. But to date, she has not looked at how loving

⁷⁸ Barry Goldstein, e-mail to author, Feb. 21, 2008.

⁷⁹ See Oprah.com, <http://www.oprah.com>.

⁸⁰ Jan Goodwin, "Please Daddy, No," *Oprah Magazine*, Nov. 2006.

⁸¹ Lombardi, *supra* note 70.

⁸² Goodwin, *supra* note 74, at 351.

mothers, once they go to family court, can lose custody of their children to men who batter and abuse.

Richard Ducote makes a good point.

There is a paradox in getting all these stories covered, whether it's for *Oprah* or any other show. Everyone runs to the media with an individual story. In the end, it makes it more difficult. A better strategy is to present a bunch of cases at the same time. It's much better than inundating them.⁸³

Well, yes and no.

Ducote makes a valid point. Yes, it is better when women and advocates and lawyers work together to compile names, stories, lawyers, and judges in

the cases. The no comes from seeing that the media, even if they could determine a pattern of abuse, would probably not cover it because it is too expensive, too time consuming, too complicated, and it probably will not do well in the ratings.

But there is one more thing to consider. When there have been stories in the media, and there have been some, they often

do not stick. They do not generate a buzz, they do not make people outraged, and they rarely lead to any form of corrective action. Why is that?

Childress notes, "Parental Alienation is now the leading defense for parents accused of abuse in custody cases, according to DV advocates." She writes that the National Council of Juvenile and Family Court Judges "denounced the theory [of PAS] as 'junk science.'"

STICKINESS FACTOR

I first met Kathy Lee Scholpp at the BMCC. I later helped get her story on TV. My husband, Barry Nolan, the former host of the Comcast Channel's *Nitebeat*, agreed to interview Kathy Lee and Boston attorney Barry Polack on custody issues. Barry also invited Dr. Ned Holstein, chair of the board and founder of "Fathers and Families First," to present the "other side." Kathy Lee had just lost custody of her young son in a Massachusetts family court. She commented, "I thought that once I went on the show that the media exposure would shine a light on the court and I would get my son back."⁸⁴ Needless to say, that did not happen.

In September 2006, *Newsweek* published an article written by Sarah Childress.⁸⁵ The article profiled Genia Shockome's case, but the real target was PAS. Childress notes, "Parental Alienation is now the leading defense for parents

⁸³ Richard Ducote, Esq., telephone interview, Boston, Feb. 22, 2008.

⁸⁴ Kathy Lee Schopp, conversation with author at the BMCC, Jan. 13, 2008.

⁸⁵ Sarah Childress, "Fighting Over the Kids," *Newsweek*, Sept. 25, 2006.

accused of abuse in custody cases, according to DV advocates.” She writes that the National Council of Juvenile and Family Court Judges “denounced the theory [of PAS] as ‘junk science.’” She quotes Richard Ducote, an attorney with expertise in custody matters, as saying that PAS has “been a cancer in the family courts.” So here is a major publication exposing a serious problem in the family courts, and yet it dies on the vine. There is no public outrage.

There is a common misconception that once the media disseminates information about an egregious injustice, the public will rise up and demand change. But when it comes to reports about family court injustice, the public does not do this. There is something about these stories that makes people so uncomfortable that, rather than getting enraged and engaged, they run and hide.

PUBLIC RESPONSIBILITY

I am reminded of one of the most important speeches in TV history, “The Vast Wasteland.”⁸⁶ It is a speech that I teach every year to my students at the College of Communication at Boston University. The speech focuses on the power of television to do great things along with its abysmal failure to do those very things.

In 1961, Newton Minow, who was then the chair of the Federal Communications Commission, gave a speech to the National Association of Broadcasters. It was one of the most courageous talks ever given to the very group that controls the airwaves. They did not like the speech then, and they hate being reminded of it now. Minow states,

I invite you to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit and-loss sheet or rating book to distract you—and keep your eyes glued to that set until the station signs off. I can assure you that you will observe a vast wasteland.

I, too, can assure you that things have not changed much since Minow spoke those words almost a half-century ago. When describing the principles that guided his work, Minow emphasized Principle #1:

The people own the air[waves]. They own it as much in prime evening time as they do at 6 o’clock Sunday morning. For every hour that the people give you, you owe them something. I intend to see that your debt is paid with service.⁸⁷

This is something few Americans know: These media corporations are making billions of dollars using *your* airwaves. News divisions were once

⁸⁶ Newton R. Minow, “Vast Wasteland,” Address to the National Association of Broadcasters, available at <http://www.americanrhetoric.com/speeches/newtonminow.htm>.

⁸⁷ Id.

viewed as beholden to the public. Holders of broadcast licenses had obligations to the public, who are the *real* owners of the airwaves. In the past, news divisions were more or less exempt from ratings pressures. Now, many news programs are profit centers, the economic engines of broadcast operations. If the news flops, the news director gets chopped, and so, too, does the attractive anchor reading the teleprompter.

Minow aimed his message right between the eyes of broadcasters.

Television and all who participate in it are jointly accountable to the American public for respect for the special needs of children, for community responsibility, for the advancement of education and culture, for the acceptability of the program materials chosen, for decency and decorum in production, and for propriety in advertising. This responsibility cannot be discharged by any given group of programs, but can be discharged only through the highest standards of respect for the American home, applied to every moment of every program presented by television. Program materials should enlarge the horizons of the viewer, provide him with wholesome entertainment, afford helpful stimulation, and remind him of the responsibilities which the citizen has toward his society. . . . I urge you to put the people's airwaves to the service of the people and the cause of freedom.⁸⁸

This is the point. Whether it is TV, radio, newspapers, or magazines, it is time for those of us who recognize the misuse of the MSM for profit to demand they get back to the "service of the people and the cause of freedom."

TIPPING POINT

"Much of what we are told or read or watch, we simply don't remember. The information age has created a stickiness problem" says Malcolm Gladwell.⁸⁹ Gladwell's book, *The Tipping Point: How Little Things Can Make a Big Difference*, discusses why serious concerns like the family court crisis are not sticking to the public psyche. Using terms like "sticky" to describe topics that attract media interest, Gladwell provides some insights that are useful for gaining exposure for family court-related issues.

Change in Presentation

Gladwell notes that stickiness may be enhanced by "a subtle but significant change in presentation."⁹⁰ This point is particularly relevant to battered mothers' stories. Mothers and their advocates typically try to give the press too many details too soon, and at warp speed. Their presentation, instead, should be more like an outline than a full-fledged story: spare, clean, clear, and concise, just the necessary details, just the facts. They need to know how to create and use sound

⁸⁸ Id.

⁸⁹ Malcolm Gladwell, *The Tipping Point: How Little Things Can Make a Big Difference* 98-99 (2000).

⁹⁰ Id. at 257.

bites, which are pithy summations that are easy for a reporter to understand and run with. Their stories need to start with the most important part first, instead of at the end. They need to speak in a way that makes the media listen. They need to get to the heart of the matter right away (e.g., “My daughter told me her father makes her play the ‘marriage game.’”)

But even more important, we need to stop presenting a given case as though it were isolated and happenstance. We need articulate, powerful, and persuasive individuals, advocacy groups, and experts to constantly reiterate that these problems are systemic and endemic.

But even more important, we need to stop presenting a given case as though it were isolated and happenstance. We need articulate, powerful, and persuasive individuals, advocacy groups, and experts to constantly reiterate that these problems are systemic and endemic.

For example, custody expert Richard Ducote shows the masterful use of a soundbite when he made this comment: “the family court is a cabal and a cartel.”⁹¹ Another excellent sound bite, by author, advocate, and attorney, Andrew Vachss, goes, “If enough citizens step up this time, we can finally eliminate the law that gives a special bonus to those who grow their own victims.”⁹² The sound bite consists of the final phrase about “grow[ing] your own victim.” It is haunting and disturbing, and it sounds true.

In *The Tipping Point*, Gladwell points out that to make a message stick, you have to consider “The Law of the Few”:

There are exceptional people out there who are capable of starting epidemics. All you have to do is find them. The lesson of stickiness is the same. There is a simple way to package information that, under the right circumstances, can make it irresistible. All you have to do is find it.⁹³

That, in a nutshell, is the job of those who want to protect battered women and abused children. The information must be packaged in a way that a lot of people can quickly and easily understand. “We throw up our hands at a problem phrased in an abstract way, but have no difficulty at all solving the same problem rephrased as a social dilemma,” writes Gladwell.⁹⁴

Leveraging Entertainment

If a major TV or movie actress could star in a *Burning Bed* or *Erin Brockovich* type of movie about family court corruption, this could generate enough public interest to break the real story behind the film. The issue needs big

⁹¹ Richard Ducote, Esq., telephone interview, Boston, Feb. 22, 2008.

⁹² Andrew Vachss, “The 2004/2005 California Circle of Trust Campaign Senate Bill 1803,” *The Zero*, http://www.vachss.com/updates/ca_incest.html.

⁹³ Gladwell, *supra* note 34.

⁹⁴ *Id.*

name celebrities—Reese Witherspoon, Julia Roberts, Jodi Foster, and Geena Davis, to name a few—with money, power, and their own production companies. A good number of actresses are highly committed to social justice causes, including women’s issues. They could use their resources, power, and media access to shift the message.

National Spokesperson

The battered mothers’ movement needs a single and visible national spokesperson who can speak calmly but forcefully to the press. This must be a person who, at the first sign of a media frenzy, like the Alec Bladwin tape, can jump in with a press release to *all* news organizations that day, not two days later. It is not just someone who cares. It is someone who has the skill-set to talk to the press in strong, clear sound bites.

The spokesperson would also be able to coordinate with the myriad of groups who are working on mothers’ custody problems. All are well intentioned, but, at this juncture, these groups are too numerous and scattered throughout the country. They need to be organized, centralized, and united.

Legislation

Legislation needs to be drafted in ways that elicit bipartisan support as well as wide support from the public. In framing and presenting this legislation, we need to take back the “family values” line from FRs groups and other male supremacists. The battered mothers’ issue is all about the protection of the family, whose core purpose is the propagation and protection of vulnerable children (the FRs movement, with its sole focus on the rights of males, espouses precisely the opposite value).

Media Re-Boot and Connecting The Dots

Most of all, the media have got to reboot and rethink how they cover these complicated stories. The first reporter or media outlet that puts the pieces of the puzzle together by connecting the failures of the family court to protect children from physical or sexual abuse by one parent will get a Pulitzer. It is a national scandal every bit as big as the Catholic priest sexual abuse story or the Jerry Sandusky at Penn State story, but the reporters have got to do the groundwork and their homework. They must read the research and get the facts right. They must connect the dots by connecting the many individual stories to the greater national story and thus the national scandal.

CONCLUSION

At the very least, we know that the media’s failure to cover stories about the serious and pervasive pattern of family court injustice to battered mothers and their children is a danger to society and a disservice to the public, not to mention the field of journalism. I, personally, believe in advocacy journalism, and so I consider it incumbent upon the media to do the right thing simply because it is the right thing to do. But I also believe that, without pressure being

brought to bear by an outraged public, the networks and other media outlets will continue their strategy of minimizing risk and maximizing profits, meanwhile sacrificing social justice altogether.

I would like to close with the promised postscript to the story I related earlier, which I

heard from Eileen King of Justice for Children. This was about the reporter who wrote a sympathetic story about an abusive father who got custody of his kids. “The kids weren’t able to talk about the abuse because they have had to live with him,” Eileen said. “But when one son got to college, he was given an assignment to write about his hero. He wrote about his mother, because she ‘believed him and tried to keep him from being abused.’”⁹⁵

The flaws in the family court system should have been exposed long ago, but they have not. I lay that omission at the feet of the MSM. When children are mandated by the family courts to live with abusers, it amounts to a crime against humanity. When hundreds, perhaps thousands of battered women can lose custody of their children simply for making a good-faith claim of abuse, it amounts to a national scandal. When the MSM turns its back on everything except simple, noncontroversial stories and the almighty dollar, it is time for the media to turn in its licenses.

There is one more important consideration, as far as this issue reaching the “tipping point.” That is, the fact that the many children who have been forced by the courts to live with their abusers are now grown up, with many more close to having “aged out” of the courts. A number of these now-adults are beginning to talk. When they do, a good number will be naming names. With a little help, they will sue the people who facilitated that abuse by their courtroom procedures and behaviors.

A groundswell has begun. Courageous Kids, is an organization that gives children who have been victimized by unjust family court rulings a platform. And they are talking. They are no longer afraid. Now they’re just angry. And they want to expose the systematic failure of the family courts to protect children from abuse.

They are also going around the mainstream media to get their message out.

Consider the story of Damon Moelter, the son of Cindy Dumas. She created the web site Saving Damon to draw attention to Damon’s story when she realized that the family courts would not protect her son. It’s a long and complicated story, but the gist of it is this. *After* the family court in California specified that it was going to turn Damon over to the father he said sexually abused him, *after* Cindy and Damon had gone to the press, *after* Damon went underground to hide from the courts, *after* all that, Cindy and Damon drove

But I also believe that, without pressure being brought to bear by an outraged public, the networks and other media outlets will continue their strategy of minimizing risk and maximizing profits, meanwhile sacrificing social justice altogether.

⁹⁵ Eileen King, Justice for Children, telephone conference, Feb. 21, 2008.

to Nevada where they found a prostitute at a brothel who agreed to marry Damon on paper, so that he could become emancipated and therefore not have to abide by the rulings of the family courts. Between Cindy's activism, her use of the Internet, and an intrepid reporter named Martin Burns, FOX 11 News in Los Angeles aired a powerful series on Damon's family court struggle.⁹⁶

Or consider Jennifer Collins, now the executive director of Courageous Kids. She is the daughter of Holly Collins, the battered woman featured in my 2012 independent documentary *No Way Out But One*.⁹⁷ It tells the story of how, in 1994 Holly kidnapped her children, left everyone she knew and everything she owned behind, to go on the run so her children could escape from their abusive father. She would become the first American woman to be granted asylum by the Dutch government on grounds of domestic violence. These days, Jennifer travels around the country sharing her family's story, telling people how her mother "saved" them. In *No Way Out But One* Jennifer calls her mother a "hero."⁹⁸

Unlike *Small Justice: Little Justice in America's Family Courts*, *No Way Out But One* did air on TV. After it premiered on The Documentary Channel, it was picked up by a distributor, so it has reached far more people than the first documentary. There is progress.

But there are still thousands of children who have been beaten or sexually abused and who have not been protected by the family court system. In fact, according to a study posted on the Leadership Council web site, it is estimated that over 58,000 children a year are made to live with people they have named as their abuser.⁹⁹ And there is still mainstream media silence about the extent of the problem.

We, the public, need to be there for these children. Maybe one of them will have the story that sticks and will ultimately lead to what Gladwell calls an "epidemic" of understanding. Maybe the mainstream press will put together the pieces of the puzzle and reveal this national scandal. As George Orwell wrote his book 1984, "In a time of universal deceit - telling the truth is a revolutionary act."¹⁰⁰

It is time for revolutionary acts.

Author's Note

The author wishes to thank Eleanor Greene for her research assistance and her husband Barry Nolan for his thoughtful editing.

⁹⁶ Saving Damon website, "Lost in the System", FOX 11 Los Angeles. <http://www.savingdamon.com/fox-news-story-on-damon.html> (accessed May 2014).

⁹⁷ *No Way Out But One* aired on The Documentary, October 2012. It was produced by Garland Waller and Barry Nolan. Distributed by Intermedia Inc. and Passion River Films. www.noway-outbutone.com. (Accessed May 2014)

⁹⁸ *No Way Out But One* aired on The Documentary, October 2012. It was produced by Garland Waller and Barry Nolan. Distributed by Intermedia Inc. and Passion River Films. www.noway-outbutone.com. (Accessed May 2014)

⁹⁹ Dr. Joyann Silberg, "How Many Children Are Court -Ordered Into Unsupervised Contact With an Abusive Parent After Divorce?" The Leadership Council, <http://www.leadershipcouncil.org/1/med/PR3.html> (accessed May 2014)

¹⁰⁰ George Orwell, 1984, originally published in 1949. Source quote: http://www.age-of-the-sage.org/quotations/quotes/george_orwell_1984.html (Accessed May 2014)



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