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Custody fight

Documentary sheds light on system that lets children suffer at the hands of abusive fathers

By **BOB PORT**

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This week, every judge, lawyer, psychiatrist, psychol social worker with any connection to family law in New York ought to be taken into custody, escorted to their local courthouse and forced to watch "Breaking the Silence: Children's Stories," a PBS documentary set to air in the Capital Region at 10 p.m. Thursday on WMHT Ch. 17.

Before coming to Albany, I worked for years at the New York Daily News. I had occasion to cover stories from Family Court and custody battles, largely in New York City. I've heard the tales of more than a hundred people in recent years caught up in the "Twilight Zone" of a custody dispute, as many of them identically refer to the legal system.

This exquisite documentary, "Children's Stories," like no other production I have seen, makes comprehensible the subtlety of a scandal that recurs in custody proceedings in New York and other states. It is an almost impossible story to tell, one from which journalists flee, and it boils down to this: A judge, often misled by self-interested lawyers and court-appointed professionals, ignores a protective mother, ignores the wishes of children and awards custody to a man who is an abuser, emotionally or physically, of his wife or their children.

In a bitter irony, the judge orders this injustice wrapped in the banner that is New York's legal standard for deciding custody: "best interests of the child."

What our legal system has failed to grasp is that lust for vengeance drives the worst of fathers to use litigation itself as a way to abuse ex-wives. Their economic incentive has also grown. Winning custody can be cheaper than child support.

"Children's Stories," filmed partly in Loudonville, will not try your patience with he-said, she-said debate between couples or among experts. Save that for later. Instead, the filmmakers select wise experts to explain and ask that you do two things our courts easily fail to do: Trust mothers to behave like mothers and listen to what children say.

There is little Sarah, ordered to live with a father she feared. "You feel like," she says, biting her lip, "you want to die."

There is the terror-stricken voice of Manya recorded on the phone, pleading with her mother to rescue her from her father, who molested her for years. "I don't care if you have to break the law," she sobs, "get me out right now."

There are the observations of Jeff, who turned 18 and escaped, but who remains haunted at having lain awake across the hall from his little sister as she was raped and sodomized by his dad, who won custody. "It's the most helpless feeling," Jeff laments.

These are the raw extremes of custody law gone awry. The typical abusive parent is less severe or far less obvious, and abuse is always difficult to discern. Two adult men speak in "Children's Stories" with memories of their own abusive fathers to shed light.

One of them, Joe Torre, manager of the New York Yankees, who suffered in

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the care of a violent father, recalls why he never called police. "My father was the police," Torre says.

"It is never an event," says the other, Walter Anderson, CEO of Parade magazine. "It is a pattern of behavior." Abuse, he explains, is "the systematic diminishment of the child." This common sense can elude family courts.

Some facts are in order here. We're talking about a big but very narrow problem. Custody is not disputed in court in the overwhelming majority of divorces as many as nine in 10 cases settle amicably, according to studies. In uncontested custody, mothers win out over fathers, taking custody about 2-1, although this is partly because some fathers see trying to win custody as futile.

[1](#) | [2](#) | [3](#) [NEXT PAGE >>](#)

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First published: Sunday, October 16, 2005
(Page 2 of 3)

Contested custody, about 10 percent of break-ups, clogs courts. In these disputes, some studies show, a mildly abusive, or brutally battering or seriously molesting parent lurks in three fourths of cases. It can be a mother, but mostly it tends to be a father, and recent studies show fathers winning these battles 2-1.

Do the math. It's a problem.

Custody case law in New York, as in many states, enshrines one of the most ridiculous legal principles ever to evolve, called "parental alienation."

Conceived by the late Columbia University psychiatrist Richard Gardner, "parental alienation syndrome" was a proposed name for a mental illness in which a mother, to punish her ex-mate, alienates kids against dad by coaching them to allege abuse.

The antidote for this alleged insanity, Gardner theorized, is to give the kids to dad, thereby counteracting mom's alienation by removing the kids from her control. It's the ultimate mind game in custody battles. We can almost never prove what's really true in an abuse allegation, and a bald abuse allegation, even if false or exaggerated itself, can be symptomatic of a deeper, less severe pattern that is true. The victim of abuse thus becomes the perpetrator and a villain can win. Gardner's ideas became a playbook for fathers using litigation to punish ex-lovers.

Gardner's colleagues rejected the addition of his theory to the Diagnostic and Statistical Manual, the peer-reviewed handbook of mental illnesses. His work has been debunked by the American Psychological Association and others. Parental alienation syndrome is junk science.

Yet in a monument to ignorance, New York courts continue to recognize "parental alienation" as if it were some psycho-law of medicine and continue to give kids to oppressive, if not abusive fathers simply when mothers make accusations. It's as if judges are years behind in reading social science literature.


Father's rights groups have legitimate concerns about false abuse allegations, but given the nature of contested custody, these utterances should not trigger instant death for mothers. Yet, Gardner's remedy for alienation is etched in precedent in our state appellate law books. Judges continue to fall for it as medical dogma when it comes from court-appointed forensic psychiatrists. These experts, unregulated in the court system, are often ordered by a judge to evaluate parents, but they answer to no one. They must be right, judges are pressed to believe. After all, judges appointed them.

In "Children's Stories," a judge, who happens to be a social worker, as perhaps we should require of all our Family Court judges, tries to set the record straight. Maybe our Court of Appeals will get the message.

Also aired in this documentary are the problems with some law guardians, lawyers appointed for children. The documentary shows us how they can do more harm than good. They can be patronage-seeking pals of judges who authorize legal fees billed to parents for whatever the market will bear.

 FRONT PAGE


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- » [PRINT-FRIENDLY VERSION](#)

Custody fight

First published: Sunday, October 16, 2005
(Page 3 of 3)

Law guardians may not listen to their clients, the children, and they inevitably end up taking sides, then avoid communication with the losing side. They can freely engage in what lawyers call ex-parte communication they talk to one side without the other present. Judges do it, too. It's unethical and it deprives one party of a fair hearing. Yet, in our family courts, ex-parte exchanges, even hearings, can be standard operating procedure.

Dominique Lasseur, the producer of "Children's Stories," told me he expects to be sued, but I say he deserves a Nobel Prize for honesty for his work here. The Mary Kay Ash Charitable Foundation, which financed this effort, deserves our gratitude. And this documentary should prove again the incalculable value of public broadcasting.

An annual event at Siena College became the setting for some of "Children's Stories." Mo Therese Hannah, a psychology professor at Siena, is already organizing the third Battered Mothers' Custody Conference there, set for next January.

The judiciary in New York is aware of the problems you'll see on TV. A 32-member Matrimonial Commission, appointed by our chief judge, has heard from hundreds of citizens. Appellate Judge Sondra Miller of Westchester County, chairwoman, says her commission is preparing its report for release in December and it will recommend major changes.

"We hope that we can change the tenor of these proceedings," Miller said. She intimated her commission is considering some new court model for resolving custody, one based on principles of mediation and arbitration more than advocacy.

We'll all be watching.

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[<< PREVIOUS PAGE](#) [1](#) | [2](#) | [3](#)

■ FRONT PAGE



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