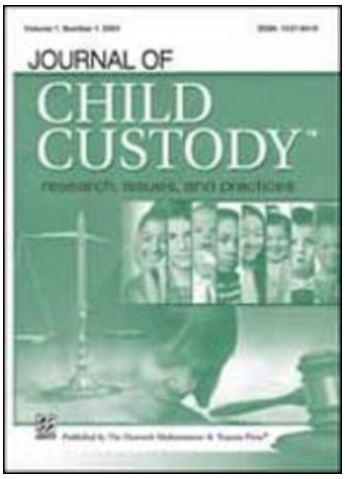

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A Review of Neustein, A. & Lesher, M. (2005). From Madness to Mutiny: Why Mothers are Running From Family Courts—And What Can Be Done About It

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Book Review

Neustein, A. & Lesher, M. (2005). *From Madness to Mutiny: Why Mothers are Running From Family Courts—And What Can Be Done About It*. Boston: Northeastern Press. ISBN 978-1584654629, $19.95, 316 pp.

This work is particularly relevant to the topics in this special issue and has been termed by past reviewers as a "searing and profoundly disturbing indictment of family courts in the United States" (Slote, 2006) and as a "brave and much needed effort . . . published in one of today's more prominent university press criminal justice series" (Pepinsky, 2006). A collaboration of a sociologist, Amy Neustein, and lawyer, Michael Lesher, this work has received wide and multidisciplinary acclaim—from sociological and women's studies reviews to legal journals—and has been nominated for the coveted Schribner Award for outstanding scholarly contributions in the social sciences as the first major academic book to analyze the major systems failures of family courts when allegations of child sexual abuse are raised in the context of custody proceedings. This review follows ten earlier reviews in scholarly journals across five disciplines.

The genesis of this work is Dr. Neustein's own "bad dream" of the family court system which began in 1986 when she lost custody of her six year old child in spite of the child's own statements that she had been sexually abused by her father; statements confirmed by eyewitness testimony, and supported by the testimony of numerous expert witnesses (Neustein & Lesher, 2005). Ultimately, Dr. Neustein founded a research and resource center to assist other protective parents and brought her scholarly expertise to bear on the issue, collecting more than 4,000 cases of parents who contacted her resource center for assistance with problems in family court. The selection of 1000 of these cases—which were documents with full court transcripts and supporting material, analyzed from both a legal and sociological perspective and followed longitudinally over the course of the case—provide rich data of great depth in the documentation of court failures.

Part I of the three major sections of the book provides an overview, with convincing evidence of the depth and breadth of the problems of child abuse and custody. The large number of children and families affected is indicated by data such as the thousands of callers surveyed by the national child abuse hotline of *Childhelp* USA and the NOW national and state organizations, and the national scope of the problem is indicated by national media coverage in

a wide variety of venues. The political and legal seriousness of the problem is evident in the recounting of various legislative hearings and the acknowledgment by some appellate court decisions. In one such decision, Judge Jack Weinstein of the U.S. Court for the Eastern District of New York in 2002 not only found for a mother in her challenge against child protective services, but also expressed his outrage over the evidence in the case. He concluded "the abuser [is] left unaccountable because it is administratively easier [for children's services] to punish the mother by separating her from her children." He went on to opine, "The Thirteenth Amendment should protect exploited workers, abused mothers, neglected children, and all other victims of relationships reminiscent of slavery" (Neustein & Lesher, 2005, p. 17).

Part II of the book contains the "Observations in Depth," describing the research methodology and its application to the primary actors in the court system. The method of sociological inquiry termed *ethno methodology* is used to examine the actions of the judges and allied court professionals for the situated meaning that is created and then recreated in each subsequent social interaction. The authors opine that this process ultimately evolves into actions and decisions that appear irrational and bizarre when viewed outside the relatively closed system of the court. In recounting the path of protective mothers from "madness" to "mutiny," the actions of judges, law guardians, social service workers, and mental health professionals are examined through the rich details of case studies of system failures where abused children are disbelieved or ignored and their protective mothers sanctioned and silenced.

In examining system failure, *From Madness to Mutiny* contributes to an existing body of knowledge. The study of how individuals within systems operate to make high stakes decisions—and how they sometimes fail—has been a topic in the social sciences since at least the 1960s (Stahly, 2007). It is ironic that the social dynamics of systems failures and the costs of bad decisions has been so much more thoroughly investigated in the operation of business organizations, where the bottom line is financial, than in the court system, where the consequences of errant decisions are measured in justice denied and the toll in broken lives. Industrial Organization Psychologists have studied how business and political decisions can be tragically mistaken and how highly motivated decision makers can make errors and then compound those errors by narrowing their focus to reduced the flow of contrary information. They engage only with like-minded colleagues to produce "group think," and they minimize or deny information that is dissonant with their original hypothesis (Janis, 1952; Festinger, 1957; Straw, Sandelands & Dutton, 1981).

The *threat rigidity* (Straw et al., 1981), which is characteristic of such group dynamics gone awry, results in a system that is unable to process dissonant information that—appropriately and competently analyzed—would

have indicated that the groups' original decision was in error and would have avoided the tragic consequences of continuing in the wrong direction.

History is rift with examples of powerful decision makers using their power to decide in a way that ensures disasters that could have been avoided if the information available had been fully, objectively, and competently evaluated. The price of bad decisions is stunning. Consider the historical wreckage that group think has wrought—like John Kennedy's decision to invade Cuba in the 1960s (one of the original case studies of "group think"). Then there was the NASA administration's decision to ignore the persistent (and finally frantic) warnings of the ground level material engineers that the Shuttle Challenger's O-rings were not reliable when frozen. Then, there was the group think in the Bush administration's recent Iraq War debacle based on poor intelligence about nonexistent weapons of mass destruction. It appears that the higher the stakes, the more difficult it may be for the "decider" to recognize dissonant information and factor it into a situation. Once a difficult, high-stakes decision has been made—like a rocket launched from the pad—it appears nearly impossible to recognize error and turn the bad decision around. Threat rigidity (Straw et al., 1981) appears to guarantee that decision makers will ignore, banish, and punish anyone who produces solid evidence that their decision is wrong, as the Neustein and Lesher work richly illustrates. It recounts the litany of punishments meted out to mothers who continue to believe their children's reports of abuse and confront the court with its failure to protect. Mother's have been jailed, fined, and banished from the children's lives completely—a punishment apparently reserved only for protective mothers since even when the courts find that fathers have been abusive, their contact with their children is generally preserved (Neustein & Lesher, 2005).

From Madness to Mutiny . . . is the first scholarly volume to analyze the process and the consequences of systems failure in the family court, the place where such a failure has the most devastating effect on the most vulnerable members of society: our children. Family Court judges, like business and political leaders, must always balance the pros and cons of a situation and measure the cost of error on each side of a decision, something that social sciences calls the relative cost of a type 1 (false positive) versus a type 2 (false negative) error. When an allegation of child abuse is raised by a child or by one of the parents against the other, the judge must weigh the cost of accepting a false report as true or, on the other hand, dismissing a true report as false. Neustein and Lesher argue convincingly and with many gripping and chilling examples that when family courts face the decision of evaluating the charges of child sexual abuse in divorce and custody proceedings, the balancing of the risks and the damage of false positive versus false negative errors goes tragically awry. The court appears to treat the protection of the rights of the accused parent (usually the father) as the first and primary priority.

Whereas it may be counter intuitive for most people outside the court system that the rights of the father should be placed over the right of the child to be protected from abuse, it appears to occur regularly in family courts. I was recently deposed in a case that had continued for 7 years and included extensive medical evidence of physical and sexual abuse, and in which the judge had granted sole custody to the abusive father with no contact for the children with their mother for more than a year. In reaching this extreme decision, the judge stated, "The longer I sit in this department the less compelled I feel to err on the side of caution . . . it (the case) takes on a whole new life of it's own . . ." While few judges would put such a statement on the record as it stands in sharp contrast to the legislatures intent that the family courts should put the best interest of the child as highest priority, Neustein's and Lesher's excellent book illustrates that the above judge's failure to put the safety of the child first (or even equal with other considerations such as limiting the scope of the case and protecting parental rights), is far from an aberration. In fact, it appears that the above judge's position is closer to the rule in the over 1,000 cases Neustein and Lesher review from around the country. The volume provides many examples of how judges' failures to err on the side of safety in their findings puts the safety of the child in a backseat to expediency and to the interests of father. Additionally, it shows how the court culture, the in-group of court personnel and court experts closely allied to the court, share the same biases, myths, and false assumptions with disastrous consequences for the children and their protective mothers.

Beyond a callous disregard for child safety or an overweening concern for a father's rights or case efficiency, one of the assumptions that may lead even conscientious family court judges and court allies astray is their misunderstanding of the probability of type 1 (false positive) versus type 2 (false negative) error (Stahly, 2007). The assumption that sexual abuse is rare and false reports are common has developed over the last 20 years, spurred by the efforts of Richard Gardner and the promotion of his theory of parental alienation syndrome (PAS) (Gardner, 1988, 1991, 2001, 2004), although the opposite appears to be true (Thoennes & Tjaden, 1990; Faller & DeVoe, 1995; Dalenberg, Hyland, & Cuevas, 2002; Dallum, 1998; Bala & Schuman, 1999; Trocme & Bala, 2005; Stahly, 2007). This misconception has biased a generation of court personnel- including judges, lawyers, mediators, evaluators, and guardians at litmus, and it even has affected the work of child protective agencies.

Neustein and Lesher devote Part III of their volume to a detailed exposé of the failure of the major actors in family court and child protective services to protect abused children under their jurisdiction. The authors connect these failures to the influence of PAS Theory, and the way in which Gardner specifically targeted protective mothers in his widely disseminated (within court circles) writings. Gardner contended that in custody disputes children's statements regarding abuse were likely to be false, manufactured most often

by the mothers who were motivated to gain advantage over the fathers (Gardner, 1988). Although Gardner revised his estimates of mothers versus fathers as perpetrators of parental alienation from 90/10 to 50/50 (a few years before his suicide in 2004), the blight that the continuing myth places on mothers' ability to protect their children remains and is richly detailed in the Neustein and Lesher work. The book recounts the lasting legacy of Gardner's ad hoc theory, played out in tears and tragedy as abused children are ripped from their frantic, protective mothers and placed by the family courts in the sole custody of their abusive fathers. The scholarly work documents the fact that, far from a rare occurrence, this is a systematic and predictable outcome of the misplaced focus on extremely rare false allegations of sexual abuse, a finding supported by other researchers (Trocme & Bala, 2005).

Once a court has made the error of assuming a "false positive" by dismissing the evidence of child sexual abuse in favor of the PAS hypothesis, it is extremely difficult to have the decision reversed. Neustein and Lesher term judges' reactions to challenges to mistaken decisions regarding sexual abuse as "robed rage" and recount a number of incidents where "in more extreme cases, judges who feel their authority threatened actually take the law into their own hands, ignoring rules and violating judicial ethics in order to ensure that any challenge to the judge's findings is reliably punished" (Neustein & Lesher, 2005, p. 51). It may be that the social panic regarding child sexual abuse in the larger culture has engendered "defensive rigidity" when new information indicates that a family court decision has erred in failing to protect the child from sexual abuse. Cases with medical evidence of abuse, while making up only about 5% of reported child sexual abuse cases (Neustein & Lesher, 2005), are considered definitive in the criminal justice system, but even such conclusive evidence is ignored or minimized by the family court. Neustein and Lesher describe many cases in which medical evidence is ignored, and family court judges and psychological evaluators have been known to dismiss even eyewitness testimony once the PAS hypothesis has biased the proceedings. The case history studies in *From Madness to Mutiny* are supported by the empirical findings of other scholars. For example, in a study of 220 cases of child sexual abuse investigated by the University of Michigan Child Treatment Clinic, Faller & DeVoe (1995) found that the cases that had medical evidence to substantiate the abuse resulted in greater court sanctions against the protective mothers (absurdly labeled as suffering from PAS in spite of the overwhelming evidence of child sexual abuse in their children's case), than were enacted against mothers in "close call" cases where no such definitive evidence existed. Such empirical findings as these certainly seem to support the existence of the robed rage named and described in the work of Neustein and Lesher.

The last section of *From Madness to Mutiny*, Part III, is a hopeful set of suggestions for rebirthing and reforming the badly flawed court system, with specific recommendations for actions that can be taken from the grassroots to

the highest political and court administrative levels to bring about needed social change. The changes are not small ones. Overarching changes are recommended in the Child Abuse Prevention and Treatment Act that would require states to adopt family court reforms in order to continue to receive funding for child protective service agencies. Recommended changes include: end to sealed records that prohibit public scrutiny of court records pertaining to custody decisions where abuse is alleged; end to due process violations including ex parte hearings and emergency orders without notice to parties; changes in custody or visitation used as punishment for contempt of court for allegations of child abuse; providing for independent psychological evaluations beyond a tight cadre of court related experts; arranging for independent, multidisciplinary commissions to review decisions where controversial abuse charges are present; ensuring meaningful higher court review without the standard delays by allowing parents to seek immediate relief from federal courts when they allege that their civil rights have been violated; and extensive training for all court related personnel to dispel the myths surrounding child sexual and physical abuse.

At the end of the day, resolving the problems of family court may be possible only when family courts are finally treated with the same respect as criminal courts and are not the "last choice," undesirable assignments for the least experienced or least favored judges. Further, family courts must protect civil rights and due process of all participants by enforcing the same standards, rules, and ethics as all other courts (Neustein & Lesher, 2005, p. 203) by abolishing ex parte hearings and emergency orders removing children from protective parents on "psychological" grounds such as PAS. Court appointed evaluators, mediators, and other allied professionals must be educated regarding child physical and sexual abuse as well as the empirical findings regarding the improbability of false reports by mothers and children.

From Madness to Mutiny... is an emotionally tough but intellectually satisfying read; it is a volume that belongs on the bookshelf of every professional who deals with child custody and child abuse, from lawyers and judges to psychologists and social workers. One reviewer recounted that she had provided a volume of this book to a family court judge who then stated that he had purchased 25 more copies and sent them all to other judges (Fox, 2006). This level of enthusiasm is not surprising since this volume brings the unique combination of a scholarly analysis within a passionate call for change. There can be no doubt that the family courts must change to address the widespread systems failure that has made the best interest of the child an empty slogan instead of the guiding principle it should be.

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