

LAWYER'S

Bookshelf

Reviewed by Nancy S. Erickson

*From Madness to Mutiny:**Why Mothers Are Running From the Family Courts—
and What Can Be Done About It*

By Amy Neustein and Michael Lesher, Northeastern University Press, Boston, Mass. 284 pages, \$26

Dr. Judith Herman, a renowned psychiatrist and trauma researcher, wrote in her classic book, "Trauma and Recovery": "The ordinary response to atrocities is to banish them from consciousness. Certain violations of the social compact are too terrible to utter aloud: this is the meaning of the word unspeakable."

Dr. Herman gave many examples of this phenomenon of denial, including the holocaust and—most relevant to our topic—incest. That atrocity is addressed by Neustein and Lesher. Their thesis is that "the American family court system, built to safeguard the welfare of children and their families, has all too often become a place where civil rights are thrust aside, where the search for truth is subordinated to 'junk science,' and where children are forced into unwanted relationships with parents they have accused of sexually abusing them—while the parents who try to protect them are punished with the loss of custody."

I wish that I could say that their thesis is false or exaggerated, but my too-many years of experience representing parents in custody cases prove otherwise. There are three kinds of cases in which I fear I will not be able to keep children safe with their protective parents (usually mothers, but sometimes fathers): (1) cases involving intimate partner violence (IPV), (2) cases involving incest, and (3)—most frightening of all—cases involving both forms of abuse.

Research has shown that there is a large statistical overlap between IPV and child abuse. Partner abusers are much more likely to abuse their children than are those who do not abuse their partners. Yet, if I am representing a victim of IPV whose child reveals sexual abuse, my client is likely to be viewed with extreme skepticism by the judge, the law guardian, the forensic evaluator, and Child Protective Services (CPS). As Judge Sol Gothard of Louisiana has stated when speaking to other judges, in such cases all four are likely to credit the alleged abuser's cries of "parental alienation syndrome" (junk science, but still accepted in some courts) and require proof beyond a reasonable doubt that the abuse happened.

Neustein and Lesher present many reasons for this extreme skepticism, including that many people still believe the myth that there are large numbers of false allegations of child sexual abuse during custody cases and that such allegations are instigated by one parent against the other in order to get an advantage. Research, some of which is cited by the authors, has demonstrated that this belief is a myth, but it persists. It is human nature, as Dr. Herman stated, not to want to accept the fact that such atrocities can take place.

Neustein and Lesher present many cases of child sexual abuse by a parent to demonstrate the failures of the system, and they describe the roles of each of the four players in those failures. One failure is the presence of actual corruption in some cases. The "Judge Garson/Law Guardian Siminovsky" scandal in Brooklyn is an example. I suspect, however, that judges are rarely involved in such corruption and

that most often the money or favors pass hands between the abusive parent and one of the other players. Those individuals—especially the law guardians and forensic evaluators—are placed in almost godlike positions, so it is understandable that a few would succumb to temptation. Indeed, I have been told by some custody evaluators that litigants have approached them with bribes (or threatened bodily harm and/or complaints to licensing boards if the evaluator failed to recommend custody to the "right" parent).

Other law guardians and custody evaluators may simply lack expertise in domestic violence or child sexual abuse. Despite the recommendation in the American Psychological Association "Guidelines for Child Custody Evaluations in Custody Proceedings" that psychologists lacking expertise in such areas should consult with experts, I have never seen a case in which such consultation was utilized. Further, my recent experience as a master's student in forensic psychology confirmed that the course of study of the typical psychologist does not contain sufficient training in these areas. Additionally, the overwhelming majority of psychologists have no training whatsoever in forensics.

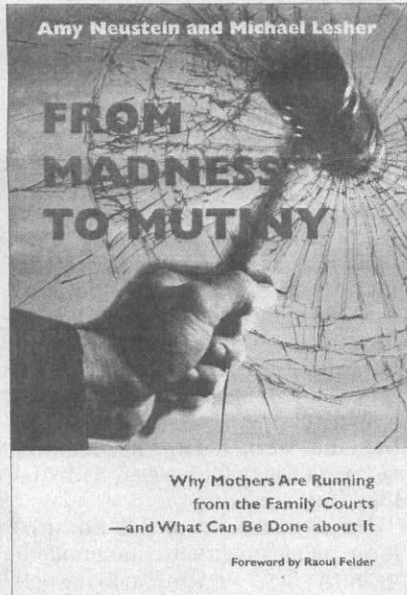
"From Madness to Mutiny" ends with proposals for change. It was published before the issuance of the Matrimonial Commission Report, and a comparison of the recommendations in the book to those in the report is instructive. While I do not agree with all the recommendations in the book (or the report), I do agree with the concerns that underlie those recommendations. Therefore, even if the specific recommendations are not viable, the concerns require us to search for different solutions.

The most compelling stories

in this book are told by children (now adults) who were placed in the custody of abusive parents by courts, often with the involvement of law guardians, forensic evaluators, or CPS workers. Some of these adult survivors have formed organizations, such as "The Courageous Kids" (www.courageouskids.com), to work for reforms. Members are featured on the recent PBS documentary, "Breaking the Silence," telling of law guardians who advocated against their wishes and custody evaluators who refused to listen to them or even told them they were lying. Some of these children had to wait until they turned 18 before they could leave their abusive parents. Others escaped at earlier ages, hiding with friends or simply refusing to return to their abusive parents. The emergence of such organizations may turn the tide that heretofore has been running against protective parents.

Dr. Herman was correct when she stated: "Atrocities...refuse to be buried.... Remembering and telling the truth about terrible events are prerequisites both for the restoration of the social order and for the healing of individual victims." Neustein and Lesher's book takes important steps toward these crucial goals.

Nancy S. Erickson is a senior attorney at Legal Services for New York City, Brooklyn Branch, representing low-income clients, primarily battered women, in divorce and other family cases.



LETTERS

To the Editor

Same Sex Marriage And Meritocracy

New York State has decided to maintain marriage discrimination. The Court of Appeals' decision in *Hernandez v. Robles*, in what Chief Judge Judith Kaye called a "mishap," failed to establish the right of New Yorkers to marry without regard to sex, preventing thousands of lesbian and gay couples from marrying. New York thus refused to follow its long tradition in the forefront of states and nations on human rights. Recent polls indicate that a majority of New Yorkers support ending marriage discrimination and allowing lesbian and gay couples to marry. It now falls to the Legislature and the next governor to ensure that this discrimination ends. This human rights failure is all the more disappointing because allowing same-sex marriage would increase New York's economic competitiveness in the United States and in the world.

One irony stands out in this decision. Conservatives have fiercely opposed ending marriage discrimination, even though ending marriage discrimination would aid New York's economic growth, their top priority.

If New York allowed same-sex marriage, corporations would find it easier to attract skilled employees who felt welcome in the jurisdiction. New York has long prided itself as a meritocracy: what has always counted here is what you do, not where you're from or who you are. Ending marriage discrimination would make it clear that lesbian and gay people are valued for their skills and are welcome to call New York home.

In the post-industrial economy, growth draws on one thing: creative and intelligent people. The past 10 years have seen the creation of enormous wealth by companies whose sole unique asset is an idea, rather than some widget that can be manufactured in China. Ideas come from people. Legally, corporations constitute "artificial persons." Real people work for artificial persons, yet artificial persons know that their viability depends on real people. Real people live in real places where they eat, shop and frequent theater and sporting events.

Real people also fall in love, and sometimes they fall in love with someone of the same sex. Some of these real people want to entrust the other person with their lives, before the law. They want to get married. They want the other person to be able to visit them when ill, and to get their social security benefits when they die. They want the benefits that come with marriage—1,138 rights under federal law, and many more if we include state law. Bereft of these benefits, thousands of New York lesbian and gay couples never see the benefits of their tax dollars.

Most corporations have already recognized that many of their most important employees had fallen in love with someone of the same sex. Over half of Fortune 500 companies provide domestic partnership benefits; 86 percent have non-discrimination protections. The U.S. corporate world has begun to place diversity at its center, including sexual orientation diversity.

New York has always attracted the best and the brightest of all backgrounds, and New York corporations would benefit from clarity in the law. Currently, corporations absorb the cost of providing bene-