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our cover girl

Whoopi Goldberg, photo by Robert Trachtenberg; Hair, Julia Walker; Makeup, Michael Germain; Stylist, Amanda Chamberlin; Sweatshirt, Gap.

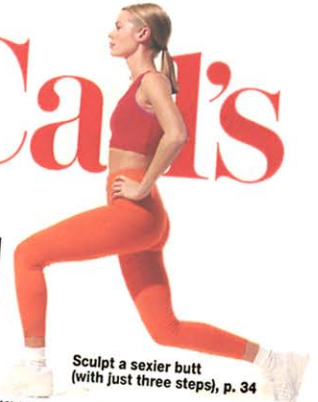
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## preparing your case: smart strategies

If you are anticipating a custody battle, heed these tips from attorney Lynne Z. Gold-Bikin:

1. You won't get everything you want out of a divorce, so if your goal is custody, focus on that.
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8. Don't keep love letters or other proof that you are having an intimate relationship outside your marriage—and tell no one about it. —D.M.M.

## McCALL'S INVESTIGATES

# Are fathers winning the custody wars?

It's no longer only "unfit" mothers who lose parental rights. This is what every mother must know before she gets to court.

BY DEBI MARTIN-MORRIS

When Patricia Malone's youngest son started kindergarten last fall, she wasn't with him—as she had always imagined she would be—hold his hand as he took those giant steps on his first day of school. His father did that. It was one of the many times in her children's lives, both moments and ordinary, that Malone is missing these days. Last June, after ten months of legal wrangling, Judge Edward O. Spain awarded custody of her sons, ages nine and five, to her ex-husband, Anthony DeFazio.

The judge's decision shocked Malone. Like most women in her situation, the 33-year-old New York State mother never believed it could happen to her. She thought only unfit, irresponsible mothers lost custody. Malone's parental fitness was not, however, at issue. According to court transcripts, the judge took into account that she had moved 50 miles from the family home to take a job—the only one she could find in her field after getting her master's degree in library science. Such a move would put distance between the boys and their father, said the judge, so it was best for them to remain with him. (Malone is appealing the decision.)

"I took the job assuming I'd get custody of the kids," says Malone, who has since quit that job and taken one in sales in a town 30 miles closer to her children. She wonders if not working might have helped her win. But then, could she have supported her children or paid her court costs? Malone's custody case didn't get national coverage, but similar cases

college on a scholarship. In 1993, a judge gave custody of soap-opera actress Tanya Pinkins's children to her ex-husband. In the judge's view, the actress's busy professional life gave the father greater ability to be consistently available to the children.

Mothers lose custody for reasons beyond the fact that they work, of course. Some mothers lose custody after accusing their ex-husbands of molesting their children (see "The Worst That Could Happen," p. 70). Some lose because the judge in the case honestly believes, for any number of subjective reasons, that the children would be better off with their father. Women's advocates call these cases examples of judicial bias against women; men's groups claim that justice for fathers is finally being served.

While the issues are murky, one point is clear: No mother should walk into a courtroom counting on the advantage a woman once had simply by virtue of being the mother. If a father wants custody, his chances of getting it are better than they've ever been—and a woman may have to be ready to defend her parent-



Like more and more fathers, Anthony DeFazio won custody.



Judge Edward O. Spain presided in the Troy, N.Y., courthouse (right).



hood (AFC). After all, he points out, mothers are awarded custody 85 to 90 percent of the time. "If fathers are 'winning' more," he asserts, "it's because when both parents are working, fathers are doing as much parenting as mothers are." He says women are threatened by the new '90s dad who is no longer satisfied with second-class parental status.

In the old days—prior to the passage of the Equal Rights Amendment in various states in the 1970s—judges tended to give mothers the advantage in custody disputes, especially if the child was a preschooler. This so-called tender years doctrine was based not on law but on judges' presumption that mothers did know best when it came to caring for young children. "In those days, women got the children and men paid the bills," says Lynne Z. Gold-Bikin, an attorney who heads the American Bar Association's Family Law Section.

As society debated more flexible roles for the sexes—that men should be actively involved parents, that mothers should be able to have careers—judges were advised by their professional peers to be gender-neutral in their decisions and to base them on the best interests of the child. Joint custody was briefly in favor, but these fifty-fifty partnerships proved very difficult to maintain.

Increasingly, judges must choose between two parents who both work and who have valid reasons to support their wish to be awarded custody. "Women are now on equal footing with a husband who really has spent time with his children and wants to continue to do so—and I'm not sure that's a bad," says Utah judge Judith Billings, former president of the National Association of Women Judges.

**Motherhood on trial** But is it truly equal footing? While the majority of mothers do retain custody after divorce, that's because most of the time, fathers don't ask for it. When

other things, that when men ask for custody, they get primary or joint physical custody in 70 percent of cases; that when fathers contest custody, that of parents are held to a higher standard of parenting; and that about half of the judges surveyed agreed that "mothers should be given home when their children get home from school" and child is likely to suffer if his/her mother works." ▶



Actress Tonya Pinkins, above, with sons Max and Myles; Anne Archer, right, is in custody.



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Malone's custody case didn't get national coverage, but similar cases did—and have struck fear in many mothers' hearts. Last September, Sharon Prost, 43, a Senate aide in Washington, D.C., lost custody of her two sons because a judge viewed her as less devoted to them than to her career. Last July, Jennifer Ireland, 20, of Harrison Township, Mich., lost custody because she planned to put her child in day care while she attended

college on a scholarship. In 1993, a judge gave custody of soap-opera actress Tonya Pinkins's children to her ex-husband. In the judge's view, the actress's busy professional life gave the father greater ability to be consistently available to the children.

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If a father wants custody, his chances of getting it are better than they've ever been—and a woman may have to be ready to defend her parenting skills (see "Preparing Your Case: Smart Strategies," p. 69).

### The new activist fathers

If there is any court bias, it's directed against *men*, claims Bill Harrington of the American Fathers Coali-

Like more and more fathers, Anthony DeFazio won custody.

Judge Edward O. Spain presided in the Troy, N.Y., courthouse (right).

Malone and sons in a family snapshot; now she sees them mostly on weekends.



FOR PHOTO CREDITS, SEE P. 162



# custody wars?



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## Motherhood on trial

But is it truly equal footing? While the majority of mothers do retain custody after divorce, that's because most of the time, fathers don't ask for it. When a father does ask (about 20 percent of the time, according to one estimate), he's likely to get it, say mothers' advocates, citing a 1989 study of Massachusetts rulings. The study found, among

## preparing your case: smart strategies

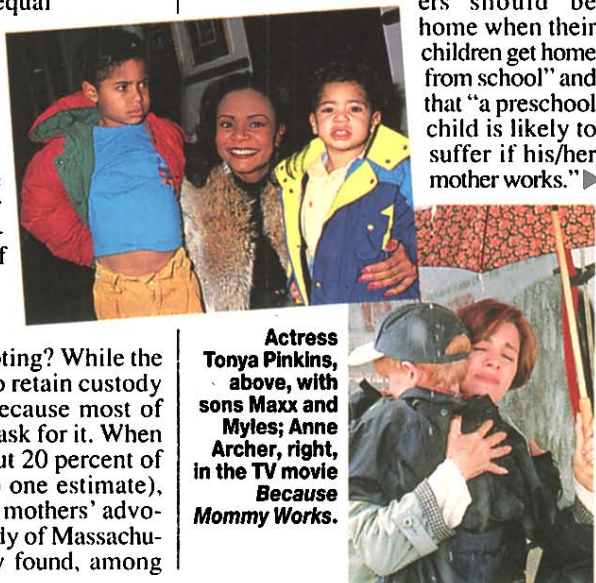
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Actress **Tonya Pinkins**, above, with sons **Maxx** and **Myles**; **Anne Archer**, right, in the TV movie **Because Mommy Works**.



## ■ McCALL'S INVESTIGATES



Custody of Maranda Ireland, three (below, with her mother), was awarded to her father, Steven Smith. His own mother had offered to watch the child while he went to work.



(continued from p. 69) Although no national studies on the subject exist, the Massachusetts findings are consistent with similar studies published by the state supreme courts of Florida, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Rhode Island and Washington State.

"Case after case since the early '80s shows that in the minds of many judges, a woman working outside the home is not a good mother," says Lynn Hecht Schafran, who directs the NOW Legal Defense and Education Fund's National Judicial Education Program.

“Even being a stay-at-home mother is a shaky protection.”

"Women are expected to be responsible for the children 24 hours a day," says the American Bar Association's Gold-Bikin. "And when they're not—that is, when they're at work—they look neglectful." Yet opting to be a stay-at-home mother is a shaky protection at best. Says Schafran, "Usually, if there is a divorce, a stay-at-home mom has to go into the paid work force because the court will not give her enough money to stay home. Then, if she is working outside the home and Daddy remarries and has [his new wife] in the house, who can take care of the kids, he can go in and ask for a change of custody—and it's as if all those years of her being a stay-at-home mom count for nothing."

Men who make more money than their ex-wives are also at an advantage,

because they have the wherewithal for a continuing legal battle. That's how Mary McDonald, 45, of Lemont, Ill., figures she lost custody of her two children. She was awarded custody in 1980 and her children lived with her for the next 11 years, but the father, who petitioned the court three times, finally won after a three-year-long court fight. McDonald, now a member of Mothers Without Custody, a national support group (800-457-MWOC), says she finally gave in and gave up the fight. "I

just said, 'For the sake of the children, we've got to stop this.'"

"For the sake of the children" has become the rallying cry of advocates on all sides who urge a truce in the custody wars. It's the children who suffer most, as court proceedings drag on for years and foster bitter partings instead of providing a stepping-stone to healthy parenting partnerships.

Men and women should be fighting together for things like flexible work schedules, says the AFC's Harrington. "At many jobs you have to work overtime and on weekends, and that's not in the best interest of children.

Every one of these employees [working long hours], male or female, would be at risk of losing custody."

Judges in divorce cases should be required to be well versed in family law, say specialists, to reduce the need for opposing expert witnesses, who aggravate an already tense atmosphere.

There is no one-size-fits-all solution to contested custody cases, because each family's situation is unique. "Family law cases are like snowflakes," says Gold-Bikin. "And you've got to have the wisdom of Solomon—or, as one judge put it, 'I don't want to hear from any of these professionals; give me four grandmothers.' Maybe that's a better way to get at the truth." ■

Debi Martin-Morris is a journalist based in Austin, Tex.

### the worst that could happen

A Colorado mother\* reports to her pediatrician, who reports to social services, that her two-year-old daughter has been pointing to her vagina and saying, "Daddy touches me here." The mother loses custody to the father, despite physical evidence and documentation from physicians and therapists that sexual abuse has occurred.

Such allegations occur in only 2 percent of custody and visitation disputes, but when they do arise, most can be substantiated, says Charles B.

\*Name withheld for privacy.

Schudson, a judge on the Wisconsin Court of Appeals and coauthor of *On Trial: America's Courts and Their Treatment of Sexually Abused Children* (Beacon Press). The American Coalition for Abuse Awareness (ACAA) has no statistics but says its studies suggest that too many sexually abused children are sent to live with the offender and are separated from the one parent with whom they feel safe.

How does it happen? Judges believe court-appointed experts,

who testify that the mother invented the story and "brainwashed" the child into believing it as part of a vindictive plot to get back at the former husband, says Sherry Quirk, ACAA's president. If the mother continues to insist the story is true, she's viewed as obsessive or, at the very least, as less emotionally stable than the father. Since judges also consider which parent is likely to provide more access to the other, and a mother who accuses the father of sexual

abuse isn't likely to allow the child to see him, they tend to give custody to the father.

Quirk has encouraged U.S. Attorney General Janet Reno and Senator Carol Moseley-Braun (D-Ill.) to review how authorities investigate these cases and to make recommendations to Congress. Says Schudson, "All allegations of child sexual abuse must be evaluated thoroughly to separate the few that are false from the many that are true."

—D.M.-M.