

# The Custody Trap

The only thing worse than a divorced father who walks out on his children is a system that shows him the door.

BY STEPHEN PERRINE

**W**ho's that shameful-looking man on the cover of *Newsweek*? Who's that guy staring out from wanted posters throughout New England? Who's Bill Clinton declaring open season on in his acceptance speech at the Democratic convention? Is he a deadbeat dad? Or is he the victim of a backward legal system that robs men of their children and children of their fathers?

Richard Warshak, one of the country's foremost experts on child custody, thinks he knows the answer. He wants to shatter the very structure of divorce proceedings, change society's view of visitation rights and child support and make the term "custody battle" an anachronism. He wants nothing short of a custody revolution. And he has a plan to make it happen.

"A generation ago we never had fathers in the delivery room—now it's an everyday thing," he says. And the only change needed for that, he says, was in "public perception." Today nine out of 10 children of divorce live with their mothers, mainly due to the presumption on the part of courts and society that mothers make better parents. Warshak wants to change that perception too.

In his new book, *The Custody Revolution* (Poseidon Press), Warshak, 42, uses research he has conducted as an associate professor of psychology at the University of Texas Southwestern, and his experience as a practicing child psychologist, to explode what he calls "the motherhood mystique." In the process

he offers an explanation for the deadbeat dad syndrome and maps out a strategy for divorced men to play a larger role in their children's lives. To Warshak, joint custody should be the expectation rather than the exception for divorced parents. That conclusion is based on three central findings of his research. First, men with joint custody honor their child-support payments to a far greater extent than

more involved with their children—until they get divorced. Then they're suddenly told that four days a month is enough," he says, referring to the standard every-other-weekend that many fathers are allotted. Trying to frame a relationship around weekend movies and trips to the pizza parlor is more like dating than fathering, and just as awkward. Add to that the guilt of the divorce and the

anguish of repeated painful farewells and it's no wonder, Warshak says, that so many men who are denied custody wind up dropping out of their kids' lives.

"It's too simplistic to say these men just don't love their children," says Warshak, who is married and the stepfather of one grown son. "A lot of men stop contact in order to avoid the pain of saying good-bye." In fact, a 1989 study by a sociologist at the

University of Pennsylvania revealed the startling statistic that about one-third of all children who live with their mothers never see their fathers. And once the rewards of seeing his child are gone, so is much of the man's motivation to pay child support.

Another reason many divorced fathers fall short in their financial obligations is that their former spouses have the ability to use access to the children as a weapon. If a man misses a payment, his ex-wife may refuse him his next visit—and the father retaliates in one of the few ways he can, by withholding money. Fathers' resentment of the standard custody arrangement is one reason women's financial resources are so damaged by



The issues in *Kramer versus Kramer* remain unchanged 13 years later.

those with restricted visitation rights. Second, children with equal access to both parents fare much better than their traditional-custody peers. And, third, so do their parents—ex-spouses with joint custody are much more likely to have amicable divorce arrangements and mutual financial security.

But joint custody is still a controversial arrangement, and one that only 34 states recognize as an option. So in order to support his proposal, Warshak has dissected the evolution of custody in the United States and demonstrated that many children destined for single-parent custody, especially boys, would fare better living with their fathers.

"Men are being encouraged to be



divorce. "There have been some studies in which fathers explain why they don't pay child support," Warshak says. "One is that there's no accountability for how the money is spent, and that the mother has all the power and the dad has all the bills. There are some men who don't have the money and there are some who are just lousy fathers who are incapable of loving their children." A 1990 Census Bureau report found that

the option of awarding custody to the mother, but only if the child was under seven. This type of "tender years" custody usually reverted back to the father when the child reached school age. But the bias toward the mother was gradually extended until, by the 1920s, maternal custody was the clear preference. So the "age-old" tradition of mothers retaining custody dates back a mere 70 years.

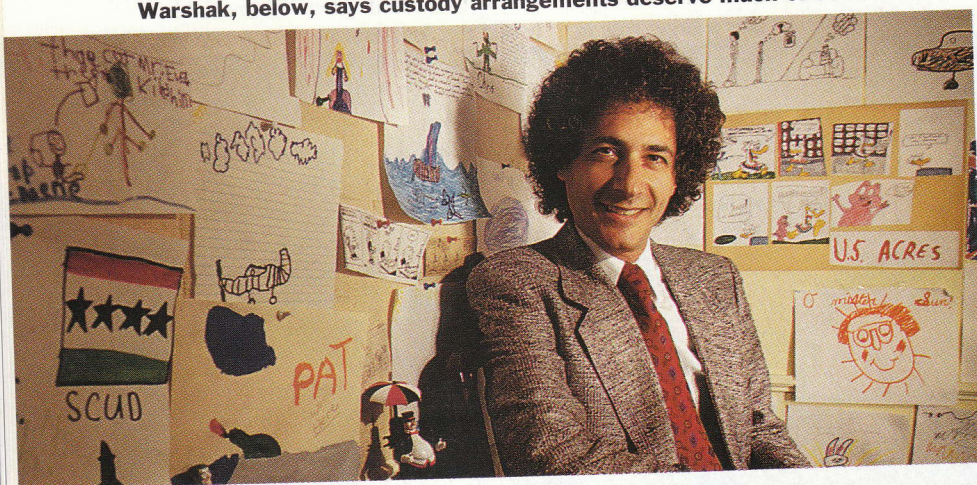
With the dramatic increase in the

son for my work."

Warshak's findings caused a sensation (and were used—out of context, he believes—to deny custody of her son to Roxanne Pulitzer). A series of studies revealed that compared with boys in the custody of their mothers, boys raised by their fathers were more mature, sociable, cooperative and independent. They had higher self-esteem and were more satisfied with their living arrangements. This, Warshak believes, is the whole reason why earlier studies had found boys to be more at risk from divorce—because they were forced to live with the opposite-sex parent. On the other hand, girls seemed to fare better living with their mothers than with their dads.

In his studies of boys in the custody of their mothers, Warshak found a variety of developmental problems that he links to a lack of access to their fathers. Most of them—insecure gender identity, difficulty in forming intimate relationships and general feelings of anxiety and low self-esteem—stem from the absence of a male role model. Warshak also believes that because divorced parents often can't fight the urge to denigrate their ex-part-

**In New Hampshire, deadbeat dads adorn wanted posters, bottom. But Warshak, below, says custody arrangements deserve much of the blame.**



## Warshak on deadbeat dads:

**"You can't say there are three million men who don't love their children."**



of the five million women who have been awarded child-support payments, only about half receive the full amount they're owed. "You can't say there are three million men who don't love their children," Warshak says.

He believes the whole system for awarding custody is backward. Up until the Industrial Revolution, custody of a child was usually granted to the father. The Talfourd Act of 1839 gave courts

divorce rate in the 1960s and '70s came a similar increase in the number of studies probing the impact of divorce on children. All of them found that children are dramatically impacted by their parents' breakup. But the studies also showed that boys tended to suffer more than girls. It is here that Warshak protests: these studies were done for the most part on children who lived in traditional custodial arrangements—with their mothers. And therein lies the problem.

In the late seventies Warshak began his investigation into the emotional lives of children who were in the custody of their fathers, and to compare them with children who were denied regular access to their dads. The impetus for his studies was distinctly Bly-like. Warshak's grandfather was killed by a runaway carriage when his father was only two. "It was always in the back of my mind: how would his life have been different if he had had his father? In looking back, it's apparent that that was an underlying rea-

ners, boys are often exposed to a tearing down of their fathers, or of men in general, at the same time they're trying to come to grips with their own masculinity. Girls too suffer when they are denied access to their opposite-sex parent, since their relationships with their fathers give them models to build on when they begin to date. So while a two-parent upbringing is ideal, if we're going to designate one parent to be the primary caretaker, there's no reason we should assume it should be the woman.

In fact, Warshak's studies show that men adjust to having custody of their children at least as well as women do. "The pattern in father-custody homes mirrors that in the film *Kramer versus Kramer*," Warshak says. "At first the father thinks, What am I doing? But eventually he does learn how to run the household." He quotes one study that found fathers coping much better with traditional "woman's work" like cooking than their female counterparts did with



tasks usually reserved for men, like patching roofs or changing storm windows. Men are also more likely to maintain a high level of income while caring for their children, while mothers with custody usually see their income drop.

Warshak's goal isn't to take children out of their mothers' homes and make father-custody the norm. And he emphasizes that the sex of the child should be just one of many considerations in deciding where he or she should live. But despite the fact that Warshak is really seeking a fair division of labor

raising kids together. Many professionals believe that hostilities between the man and his ex-wife may lead to the child's being fought over like a possession or used as a conduit for relaying hostile messages. But Warshak claims that joint custody does just the opposite. A recent study conducted by the Center for Policy Research in Denver concluded that the greatest deterioration in relations between former spouses occurred in maternal-custody arrangements. Parents with joint custody reported the most cooperation,

### **Parents with joint custody reported the most cooperation, even years after the divorce.**

between men and women, his arguments for joint custody could be construed as woman-bashing, and he admits he has taken heat from feminists for his beliefs. "Susan Faludi was right on target about backlash," he says, but he claims it works both ways. "There's been a backlash against joint custody because women are afraid of losing power. [But] I see this as a logical outgrowth of feminism. Let's break down the stereotypes one step further."

He draws a clear line between two types of joint custody—legal and physical. Joint legal custody, which many men are granted, means that the father has the authority to share in the major decisions about his child's welfare, helping to choose schools or approving medical treatment. It does not necessarily mean that he will be allowed to play an equal role in the child's daily life. Joint physical custody (or joint residential custody), on the other hand, means that the child spends relatively equal time in each parent's household.

The obvious question that remains is, do men really want to share custody of their children? Do they want to give up the social and financial freedom they receive when their ex-wives take on most of the responsibility? "A father has a lot of disadvantages to weigh before he seeks custody," Warshak concedes. But his research shows that fathers with joint custody, just like sole-custody men, eventually grow into the role—and that those who regret the choice are few.

Critics of joint custody argue not that fathers are incapable of raising children, but that former spouses are incapable of

even years after the divorce.

One sacrifice a man with joint custody will have to make is to live close to his ex. Older children can tolerate switching households every month or two, but younger kids, with their exaggerated sense of time, need more frequent and flexible shifts. "I would like to see parents be more cautious about moving away from their children—it limits their options," Warshak says. One reason judges often deny joint custody is their fear that moving a child between homes so frequently will undermine the child's sense of security. But many experts claim that it's not the consistency of the environment but the consistency of the relationship the child has with each parent that is the most important factor in establishing stability for the child.

So will Warshak's revolution ever catch fire? When he started his research in the late seventies, the release of *Kramer versus Kramer* seemed to spark a rethinking of custody. Nothing happened. "I've been working on the book for years," Warshak says of *The Custody Revolution*, "and thinking that by the time it came out it would be moot."

Although continued research into joint custody may help change our expectations about divorce, Warshak says simply, "We need to reexamine our priorities. Our children are put at enough risk already from the divorce without losing frequent access to one parent. The studies we have show that joint-custody kids are doing as well or better than those living with their mothers."

And the parents of those children are doing better as well. ■

### **Getting Custody**

**If you are facing divorce and fear the prospect of losing contact with your children, or if you already have a traditional custody arrangement and want to take on more of a role in raising your kids, there are steps you can take, Warshak says.**

- **First, think long and hard about why you want joint or full custody. Make sure you're not taking these steps to punish your ex, to gain the upper hand in other aspects of the divorce proceedings or to use the children as a way to cling to your former wife.**

- **Don't run to the nearest attorney as your first move. "Most men jump to a lawyer too soon," Warshak says. If you are on relatively good terms with your ex, talk to her about your concerns. "Many times the mother will welcome that involvement."**

- **Seek out a neutral third party, such as a psychologist or other mental health professional who is trained to work with children. "Parents' feelings about custody are very strong, and you need someone who will not see this from an adversarial point of view but from the child's," Warshak explains. "In most cases, even if the mother is initially against it, once she gets the sense that the mediator has the child's best interest in mind she'll become more cooperative."**

- **If you do need to instigate litigation, ask your lawyer to petition the judge to order you and your ex into mediation. In most states, the judge has the power to order such negotiations.**

- **If mediation isn't possible, ask the judge to order a psychologist to conduct an impartial investigation into the child's welfare. During custody battles, parents often hire their own guns, and such psychology experts usually have the effect of canceling each other out without ever discovering what's really best for the child.**

- **If you live in a state in which the judge cannot order joint custody, you can have visitation rights written into the divorce agreement that give you a virtual 50/50 split in custody. Again, a mediator can help arrange the terms. ■**