

As with most state courts, family court judges are usually appointed and promoted by commissions dominated by bar associations, to which they become effectively answerable.<sup>127</sup> Judges therefore have a strong incentive to channel money to the lawyers. The main source of the money is fathers. Having seized legal control of his children, the judge then presides over a feeding frenzy in which everything the father has and can earn in the future is doled out to political clients of the court.

The most obvious example is attorney's fees. It is not unusual for a father earning \$35,000 a year to amass \$150,000 in fees when trying to recover his children, according to William Dawcs, a Washington attorney.<sup>128</sup> This is seldom the case for mothers. One affluent promoter of divorce to mothers boasts that her divorce cost "only" \$11,000, a relative bargain.<sup>129</sup> For fathers this would be unusual. Not contesting custody is not necessarily any protection, since judges have various methods to ensure that a father's property and earnings are confiscated for lawyers. Fathers who represent themselves report being branded as "arrogant" and punished with adverse rulings. They are typically interrupted and insulted by judges so often they are unable to speak at all.

If this fails, less subtle forms of pressure are available. Parents who do not hire lawyers are also ordered, on pain of incarceration, to pay the fees of lawyers they have not hired. In a kind of judicial shakedown, judges regularly order involuntary litigants to pay the fees of attorneys, psychotherapists, and other court officials they have not hired and jail them for failing to comply.<sup>130</sup> What are invariably described as "reasonable attorney's fees" are not determined by the market forces of supply and demand but are set with the backing of the penal apparatus, with the police and jails acting as the attorneys' private collection agency. There is thus effectively no limit to what can be charged. Rates run as high as \$2,000 an hour, as in the case of one father who, according to court documents, was ordered to pay a lawyer he had not hired \$1,000 for a thirty-minute hearing.

Massachusetts Judge Arline Rotman ordered one father to pay \$10,000 to an attorney with whom Rotman had a long-standing friendship and who had given a speech praising Rotman in Boston's Mechanics Hall. "I had seen winking back and forth during the hearings," the father said. "I'm in the midst of testifying about the children, and I saw this wink and nod between the two, and the judge cut me right off."<sup>131</sup>

Yet collusion between judges and lawyers need not be so personal or visible. Though obviously punitive, the terms of this award are much less severe than some. Ken Gallahan of Alexandria, Virginia, who was earning about

\$35,000 yearly and was never charged with any wrongdoing, was summarily jailed by Judge Leslie Alden in January 2000 for failure to pay \$2,200 to a psychotherapist he did not hire, and released only when his mother paid the fees, according to court documents. In October, he was ordered jailed without trial for twelve months for failing to pay \$15,000 to a lawyer he had not hired for a divorce to which he had neither agreed nor given grounds.<sup>132</sup> In the same jurisdiction, Tahir Khilji, earning \$10,000 a year in Pakistan, faces jail for his inability to pay \$20,000, fully two years of his salary, to a lawyer he also did not hire for a divorce he did not request.

Such thievery has become so rampant that even the *New York Times* has reported on how easily "the divorce court leads to a jail cell." The *Times* describes how Marvin Singer was jailed without trial for failing to pay an attorney he did not hire \$100,000—only half of what the court claimed he "owes." "These soon to be ex-husbands—and it is almost always husbands—are tossed in jail not for abusing wives or children but for contempt, which is legalese for not doing what the judge ordered." The *Times* reports matter-of-factly how a divorce lawyer deems it a "scandal" that such orders are sometimes not willingly obeyed. "If I pay that," Singer is quoted as saying, the judge "can order me to pay another \$100,000, and send me to jail again if I don't."<sup>133</sup>

What is taking place here should be made very clear: Citizens who are completely innocent of any legal wrongdoing and simply minding their own business—not seeking any litigation and neither convicted nor accused of any legal infraction, criminal or civil—are ordered into court and told to write checks to officials of the court or they will be summarily arrested and jailed. Judges also order citizens to sell their houses and other property and turn the proceeds over to lawyers and other cronies they never hired. Summoning legally unimpeachable citizens to court and forcing them to empty their bank accounts to people they have not hired for services they have neither requested nor received on threat of physical punishment is what most people would call a protection racket. Were any other public officials to use their position of public trust to coerce money out of private citizens, they would likely face indictment. Yet family court judges do this as a matter of routine. This is by far the clearest example I have ever encountered in my professional research of what we political scientists term a "kleptocracy," or government by thieves.<sup>134</sup>

Given this power of divorce officials to simply take whatever they want from parents who are forced into divorce litigation against their will, it is not surprising that other interests are getting their noses in the trough. In Britain,

# **TAKEN INTO CUSTODY**

**The War Against Fathers, Marriage, and the Family**

**Stephen Baskerville**



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