

Her Neighbor's Wife

A HISTORY OF LESBIAN
DESIRE WITHIN MARRIAGE

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CHAPTER 7

The Price They Paid

CAMILLE AND DOYLE MITCHELL married in 1955 and had three children together. Outwardly, they had a conventional middle-class marriage. Doyle worked as an instrumentation technician, while Camille stayed home and took care of their children. Together they owned a house in San Jose, a station wagon, a motorcycle, and an extensive record collection.¹ Still, their marriage was not without its problems, and by the late 1960s Camille was having an affair with her married next-door neighbor, Darlene Reynolds. Although Camille did not speak openly with Doyle about her relationship, he “strongly” suspected it.² To some extent, Doyle even seemed to enjoy the women’s intimacy. In court, Doyle admitted to taking pictures of the women sunbathing nude together in the backyard and to kissing Darlene’s breasts on that occasion.³ In 1970—the very same year that California’s new “no-fault” divorce legislation went into effect—Camille and Darlene made plans to leave their husbands and begin a new life together. Doyle may have been willing to turn a not-so-blind eye to his wife’s relationship with their pretty brunette neighbor during their marriage, but when Camille announced that she wanted a divorce, he did not hesitate to use her sexuality against her. He immediately told her that he possessed letters providing evidence of her lesbianism, which he would use to take the children away from her. “I would rather give the children to the grandfather,” he said publicly at one point, “than have them be raised with a bunch of queers.”⁴

Camille was one of the “lucky” ones. Untold numbers of lesbian mothers in the 1970s and 1980s lost custody of their children, but against all odds, Camille succeeded in winning custody of her three children in 1972.⁵

While the national gay news media celebrated Camille's win, proclaiming her to be the first "acknowledged lesbian to win custody" in the country, her victory was only partial.⁶ Wanting to prove that he was not "soft on homosexuality," Judge Gerald Chargin, who presided over the case, awarded Camille, then unemployed, punishingly low child custody and alimony payments, totaling less than a quarter of her husband's monthly income.⁷ Furthermore, Chargin prevented Camille and Darlene from living together and even from spending time together when the children were present. Only by sneaking around, much as they had before their divorces, were the two women able to see each other at all.⁸

Camille's story suggests the paradoxical situation that wives who desired women faced in the 1970s. As divorce became more common and less stigmatizing, and as the gay liberation and lesbian feminist movements challenged discrimination against gays and lesbians, many of the forces that had worked to keep these women within marriage abated. Yet, while legal reform made getting divorced significantly easier, it also exacerbated gender inequality between divorcing couples when it came to child custody and financial matters. In the late 1960s and early 1970s, divorce reformers began to replace the earlier alimony system, which had often required husbands to support their ex-wives long after divorce, with a gender-neutral rhetoric of equality and mutual self-sufficiency. As legal scholars Deborah Rhode and Martha Minow have written, these reforms "secured equality in form, but not equality in fact."⁹ The new ideology of economic equality negatively affected divorced women in terms of alimony, as well as the division of assets and child support payments.¹⁰

In addition, beginning in the late 1960s, the judicial preference for placing minor children with their mothers declined, leaving *all* divorcing mothers at increased risk of losing primary custody of their children. Mothers who openly identified as lesbians were particularly vulnerable. But depriving lesbian mothers of custody was merely one of the ways that the courts punished and policed such women's sexuality. In child custody cases of the 1970s, the courts began to intervene in lesbian mothers' lives more intimately than they had before. Lesbian mothers had certainly lost custody of their children in the 1950s and 1960s, and a great many others chose to hide their homosexuality and their relationships with other women for fear that the courts would take their children away from them. But it was not until the 1970s, *after* it became possible for wives who desired women to lead openly lesbian lives outside of marriage, that the state, through child

custody rulings, began regularly preventing lesbian mothers from living with their lovers, seeing their lovers while in their children's presence, or participating in gay and lesbian activism and communities. Such rulings were part of a broader legal and political attack on "homosexual households" in the 1970s, but they also represented a specifically anti-feminist means of punishing women who dared to build homes and families without men.¹¹ It was in leaving their marriages, in other words, that the women in this study encountered the full force of the state's power to control their lives and punish their sexual behavior.

The Divorce Revolution

Beginning in 1963, the divorce rate, which had remained stable since the mid-1950s, began to rise again until it peaked in 1979. In 1958, when the divorce rate reached a postwar low, there were 368,000 total divorces. By 1970, that number had climbed to 708,000; in 1981, it reached a new high of 1,036,000.¹² Both the baby boomers and their parents contributed to this tremendous increase in divorce. Though the generation that married between 1945 and the late 1950s slowed the long-term twentieth-century trend of rising divorce rates, these couples were still more likely to divorce than their predecessors.¹³ And while we might imagine that it was only younger married couples who chose to divorce in the 1970s, middle-aged Americans who had married in the postwar years contributed to the divorce revolution as well. Once their children were grown and out of the house, some parents of the baby-boom generation no longer felt the need to remain in unhappy relationships. For wives, in particular, divorce became more economically feasible when they no longer had to worry about financially supporting their children.¹⁴

There were many reasons behind the divorce rate's climb in the 1960s and 1970s. To begin with, marriages forged in the wake of World War II tended to last much longer than they had in the past, as Americans' life expectancy increased. One historian has even suggested that Americans turned to divorce in growing numbers because early death ended marriages less often.¹⁵ A 1973 *Readers Digest* article interpreted this correlation somewhat differently: "Living longer, [couples] have more time to be disappointed."¹⁶ Ending a marriage informally, or rather, extralegally, also became more difficult after the war than it had been beforehand. The necessity of

drivers' licenses, Social Security numbers, and health insurance plans compelled couples to appear in court instead of simply parting ways.¹⁷ The growing numbers of married women who worked outside the home after the war also contributed to the long-term increase in divorce, by reducing women's economic dependence on their husbands.¹⁸

Yet the rising divorce rate reflected more than just Americans' rising life expectancy, the growth of state and federal bureaucracy, and married women's growing participation in the workforce. Even more importantly, Americans began to reject the idea that remaining married at all costs was a personal responsibility and a social good. Feminists, of course, played an important role in this shift. The most radical contingent of the feminist movement, including many lesbian feminists, compared marriage to legalized prostitution and slavery. "Here come the slaves / off to their graves," members of the Women's International Terrorist Conspiracy from Hell (WITCH) famously chanted at a 1969 bridal fair at Madison Square Garden in New York City.¹⁹ Other feminists believed that marriage could be reformed, and they called on husbands to take responsibility for their fair share of childcare and housework.²⁰ Whether they believed that marriage could be reformed or not, though, feminists on all sides of the issue challenged the idea that marriage and motherhood represented women's natural destiny, ultimate achievement, and most important means of personal fulfillment. This intervention in and of itself enabled many wives to imagine a life for themselves outside of marriage.

Feminist activists also shattered the silence surrounding domestic violence and argued that that violence and abuse were not acceptable parts of married life. Before the 1970s, marital counselors were reticent about violence between married couples and even lacked the phrase "spousal abuse."²¹ Counselors and social workers were not entirely ignorant of domestic violence, however. Descriptions of domestic violence had long appeared in case records and complaints in women's divorce petitions, but marital advisors either willfully ignored the problem or encouraged women to find ways of dealing with the abuse.²² In sharp contrast, feminist activists argued that the silence around domestic violence derived from understandings of wives and children as men's property. They informed victims of domestic abuse that the violence they suffered was not their fault. They provided legal aid to women seeking divorces from or orders of protection against violent spouses, and they founded domestic violence shelters to help women escape. In 1973, the first domestic violence shelter in the United

States opened in Phoenix, Arizona. Only five years later there were more than three hundred such shelters across the country.²³

As feminists challenged the teachings of postwar marital experts, even wives who had been married for decades began to realize that they no longer had to “adjust” themselves to their husbands’ violent tempers and verbal abuse. For some wives who desired women, like Doreen Brand and Edith Daly, an increasing awareness of their attraction to women accompanied this realization. Doreen and Edith worked together for years in Yorktown Heights, New York, before falling in love in the mid-1970s. Doreen was a grade school teacher, and Edith was a teacher’s aide who often helped out in Doreen’s class. Both women were white and in their forties with children of approximately the same ages. Both had also endured years of domestic abuse.²⁴ For decades, Edith and Doreen discounted the possibility of divorce and believed they had no choice but to make their marriages work. But their attitudes began to change in the 1970s as domestic violence became less acceptable, divorce became more common, and their children reached their teens. Edith’s and Doreen’s attitudes also changed as they confided in each other about their marriages and their hopes for the future. Eventually Edith and Doreen were making gifts for one another, sharing special breakfasts before work, and playing footsie at dinner parties. In 1974, they expressed their love for one another. Their marriages ended soon after—Edith’s husband left, and Doreen’s husband passed away suddenly—and the women embarked on a new life together (Figure 8).

While feminists drew attention to the role marriage played in women’s oppression and the danger they suffered within it, humanistic psychologists critiqued the institution as a barrier to individual development and fulfillment. From their perspective, helping individuals to achieve happiness and reach their fullest potential was more important than simply holding a marriage together. A 1972 *New York Times* article about a “new breed” of marriage counselors suggested the reach of such ideas. These counselors considered themselves to be in the business of “saving” spouses rather than marriages. For them, a client’s decision to remain in an unhappy and unfulfilling relationship was a far greater “failure” than his or her divorce. As one emblematic psychology professor and marital counselor explained, “Our job is to help people understand how they are interacting in a relationship. What they choose to do with that understanding is *their* business. . . . We are certainly not in the business of gluing them together.”²⁵ Such attitudes marked a dramatic shift in marital



Figure 8. Doreen Brand (left) and Edith Daly at the wedding of Doreen's foster son, 1978. From the Old Lesbian Oral Herstory Project Records, Sophia Smith Collection, Smith College. Printed by permission of Edith Daly.

counseling, which, for most of the twentieth century, had focused on keeping couples together at all costs.

Humanistic psychology and the human potential movement idealized masculine behavioral traits and ignored gender inequality, but in some ways its critiques of marriage aligned with feminist ones, and many women—including those struggling with same-sex desires—found the ideology appealing.²⁶ By the mid-1970s, in fact, the idea that it was more important for women to achieve personal happiness than to avoid divorce had reached the pages of some of the most popular women's magazines—the very same magazines that had previously instructed wives to swallow their feelings and do whatever necessary to make their marriages last.²⁷ Although women's magazines never entirely rejected this earlier ideology, there were major signs of change. In an anonymous personal essay in *Good Housekeeping* in 1974, for example, a middle-aged bank executive explained why she had decided to divorce her husband after twenty-five years together. The problems that had plagued their marriage, including her

husband's drinking and infidelity, were those that most wives would have tolerated in the decades beforehand. In fact, the author admitted her marriage was probably better than those of many others. But for her, and perhaps for *Good Housekeeping's* readers as well, this was no longer enough.²⁸

As marital experts and ordinary married couples came to believe that remaining in an unhappy marriage was detrimental, wives who desired women, in their letters to lesbian groups and leaders, began to reason that doing so was "unfair" not only to themselves, but also to their husbands.²⁹ On the surface, this argument was a complete reversal of wives' earlier ideas about the necessity of remaining married for their husbands' sakes, a line of reasoning which never entirely disappeared from their writing. Yet with both arguments, wives who desired women struggled to make their choices—whether to stay married or to get divorced—compatible with normative understandings of "good" women's sensitivity, compassion, and selflessness. Arguing that they should divorce for their husbands' benefit, rather than, or in addition to, their own, may have helped wives feel that their decision was not a selfish one. They sought to convince themselves that, despite the pain and disruption they were causing, their husbands would be better off for it in the end.

Telling themselves that their children would be better off after divorce was somewhat more difficult for wives who desired women. Notwithstanding custody issues, mothers worried about the negative impact that leading an openly lesbian or bisexual life might have on their children. In the early 1970s, one middle-aged mother from outside of Dayton, Ohio, feared that her seventeen-year-old son, who was studying to become a minister, "would be totally destroyed with the truth" about her.³⁰ Although this woman had been in a same-sex relationship for years and desperately wanted to leave her marriage, she could not justify hurting her son by doing so. Other mothers worried about harming their children's relationships with their fathers. In one typical letter to Phyllis Lyon, for example, an officer's wife in Fort Dix, New Jersey, explained that she was planning to leave her husband and begin a new life with her children and her lover. She still had doubts about this decision, though, as her husband had threatened that he would have nothing more to do with their children if she left. "My only question to myself is who am I to take the boys' father from them?" she wrote. "I have already lost them their only grandmother."³¹

Yet even with regard to divorce's impact on children, such mothers could find reassuring messages within popular culture. As early as the late

1950s some researchers began to argue that divorce was less traumatic for children than unhappy, stressful marriages.³² In the late 1970s, pioneering longitudinal studies of divorced children and their parents showed that while divorce was traumatic for children, two years after the fact, most had adjusted and restabilized.³³ Among the most optimistic commentators on divorce's impact on children were Susan Gettleman and Janet Markowitz, social workers and authors of the book *The Courage to Divorce* (1974). In a chapter titled "Divorce Can Liberate Children," Gettleman and Markowitz rejected the ideas that parents should stay together for their children's sake and that divorce negatively impacted children's relationships with their parents. In contrast, they argued that divorce could free children from oppressive nuclear-family relationships and even "enrich children's lives" by forcing them to become less dependent on their parents.³⁴

As feminist activists and women's magazine writers, psychologists and relationship experts alike advised women against reconciling themselves to unhappy unions—even for their children's sake—the legal process of divorce became significantly easier. Lawyers began calling for legal reform of the adversarial, fault-based divorce process in the early twentieth century as Americans increasingly understood marriage as an egalitarian relationship, ideally based on mutual love and concern. In 1927, for example, noted marriage reformer Judge Ben B. Lindsey of Denver, Colorado, suggested that the law should allow couples to enter into trial marriages, which they could decide to end at will.³⁵ Such legal critiques increased in the 1940s, when the divorce rate spiked following the war. Reformers argued that by requiring one spouse to be found "at fault," divorce law unfairly punished couples whose relationships simply did not work.³⁶ Legal reformers also pointed out that the adversarial divorce process encouraged men and women to commit perjury in order to successfully secure a divorce.³⁷ Faced with such criticism, many states chose to make fault-finding less important to the divorce process in the 1960s by permitting couples to divorce without citing wrongdoing, after living separately for a certain period of time. By the mid-1960s, eighteen states and the District of Columbia allowed couples to use the fact that they lived apart as grounds for divorce.³⁸

Within this shifting legal context, California became the first state to permit "no-fault" divorce. In 1969, California's legislature approved the Family Law Act, which replaced the state's previous seven grounds for divorce with two no-fault options: marital breakdown or incurable insanity. The law completely removed fault as a basis for divorce and as a factor

judges could consider in awarding alimony or dividing marital assets. Instead, judges were supposed to divide property equally, taking into consideration one spouse's financial need and the other's ability to pay. The innovation of no-fault divorce had national effects. In 1970, the Commissioners on Uniform State Laws created the Uniform Marriage and Divorce Act (UMDA) as a model for state divorce law. California's legislation significantly influenced the UMDA, which similarly replaced the search for blame in divorce with an attempt to uncover "whether the marriage has ended in fact."³⁹ Three years later the American Bar Association finally ratified a version of the UMDA. This model divorce legislation differed from California's "pure" no-fault divorce law by allowing judges to take fault into consideration when dividing marital property. By the end of the 1970s, thirty-seven states provided some way for couples to end their marriages without finding fault. By 1991, this was true of every state.⁴⁰

These legal changes allowed some wives who desired women to leave their marriages with relative ease. As no-fault divorces did not regularly require witnesses, private detectives, or drawn-out trials, the cost of divorce dropped. The 1977 US Supreme Court ruling in *Bates v. State Bar of Arizona* reduced the cost of divorce even further, by upholding the right of lawyers to advertise their services. Though lawyers advertised divorces for as little as \$29 in Georgia, the national median for a simple, uncontested divorce was \$150 nationally in the late 1970s. The minimum cost of more complicated contested divorces, or those involving children or property, ranged from \$300 to \$400 nationally.⁴¹ Ann Marevis was among those wives who secured a no-fault divorce after recognizing her attraction to women. Ann left her husband in 1987. Although she considered suing him for "mental cruelty," she sought a no-fault divorce because it was faster and cost less. Ann had to live apart from her husband for eighteen months, but after that her lawyer went ahead with the paperwork, and her husband did not resist it. "It was a done deal," as Ann put it. By 1989 their divorce was final.⁴²

In light of these changes, the idea that divorced men and women were destined for unhappiness and social exclusion began to crumble. In his book *The World of the Formerly Married* (1966), author Morton M. Hunt rejected the notion that divorced people were failures and encouraged Americans to see divorce as "painful but necessary," and even as an "act of courage," suggesting one's faith in the possibility of a finding a more fulfilling relationship.⁴³ That same year, a *Newsweek* cover story titled "The Broken Family: Divorce U.S. Style" portrayed divorce as difficult and

undesirable, but hardly disastrous. One divorced father of three interviewed for the article stated that divorce had improved both his and his ex-wife's lives: "She's developing her independence and I've got the joys of having my family. We're both happier now. We've both gained fuller lives."⁴⁴ Indeed, during the 1970s and 1980s a range of divorce self-help books argued that those who divorced could not merely survive, but thrive. In one of the earliest of these books, *Creative Divorce: A New Opportunity for Personal Growth* (1973), divorce therapist Mel Krantzler acknowledged the feelings of loss and guilt that often followed divorce, but he argued that men and women who divorced could, after mourning their relationships, begin a process of rebirth and rebuilding.⁴⁵ As his book's title made clear, Krantzler presented divorce as an opportunity rather than a disaster, and a beginning rather than an end.

Some of this divorce literature was specifically for women and decidedly feminist in tone. In 1972, for example, the Philadelphia Women's Center published the *Women's Survival Manual: A Feminist Handbook on Separation and Divorce*. The book was a national version of the guidebook that the center's staff had developed for African American, Puerto Rican, and low-income women who were in the process of separating from their spouses or partners.⁴⁶ Jane Wilkie's *The Divorced Woman's Handbook* (1980) provided advice targeted at newly divorced women. It included instructions on everything from fixing a broken toilet to dining out alone and becoming sexually active again (don't sleep with your ex-husband, Wilkie warned).⁴⁷ In 1986, even *New Woman* magazine published an article titled "The Complete Guide to Divorce—American Style," which provided practical advice as well as uplifting emotional reassurance. "Will you win?" the article asked, before concluding firmly, "You've already won. You've gotten out of a marriage that wasn't working, and you've got your health, your career, your self-esteem, and the love of your family and friends to get you through this trauma."⁴⁸ Such optimistic advice was a far cry from the demonizing and pathologizing messages that unhappily married women had encountered in the pages of similar magazines just a few decades beforehand.

While most of these authors took divorcing wives' heterosexuality for granted, they likely provided much needed encouragement for some of the women in this study, particularly those who were more isolated from lesbian and feminist communities. Janet Lathrop, who came out as a lesbian in the late 1980s in Munising, Michigan, was among these more isolated

women. Subscribing to older ideas about divorce as a type of social death, Janet was initially quite nervous about divorcing her husband, and she believed that in leaving her marriage she would be entering a type of “wasteland.” “I don’t know anybody, I’m going to be completely alone and it’s going to be really, really, drab, gray, frightening, lonely,” she feared at the time.⁴⁹ A therapist’s help proved vital in getting Janet through her divorce. And her life improved dramatically after she entered graduate school at the University of Wisconsin and discovered the lesbian feminist community in Madison. Soon Janet was attending lesbian picnics, barbecues, and concerts every night. She easily met a lesbian lover, became involved in the university’s women’s studies program, “fell in love” with Alix Dobkin’s music, and attended the Michigan Women’s Music Festival. In fact, Janet’s post-divorce life was better than she had ever imagined possible. It was, she later explained, as if she had been “reborn.”⁵⁰

Other wives needed little reassurance in getting divorced, knowing full well that a better life awaited them. Barbara Kalish fell within this group. As mentioned in Chapter 2, Barbara and her lover, Pearl, carried on a relationship for more than a decade in the suburbs of Los Angeles, beginning in the late 1950s. The women had agreed to leave their marriages once their children were grown, and around 1970, at forty years old, Barbara decided she was ready. Pearl chose not to leave her husband. She was ill at the time and worried about losing health insurance if she divorced, but Barbara was done. “I went to Chuck Kalish and said, ‘I’m going.’ And I went,” she recalled.⁵¹ By this time, Barbara had discovered the Star Room, a lesbian bar on the outskirts of the city at the corner of Main and El Segundo. In fact, Barbara invested some of her own money in the bar, making her a part owner; and when she left her marriage, she moved into a “cute little house” directly behind the bar, where she was particularly well situated to begin a new lesbian life. She swiftly embarked on a series of lesbian relationships with women half her age, and she eventually began selling dildos, which she made out of mattress stuffing and electrical tape, at the bar. As Barbara later recalled of this time, “I was in hog heaven.”⁵²

“The Full Weight of the Power That He Had”

Despite the elation many women experienced upon leaving their marriages, it was in the process of divorce that the inequality between wives who desired women and their husbands became most pronounced. In some

ways, the women described here were like many others, for no-fault divorce put women at a distinct financial disadvantage, regardless of their sexual orientation. In her landmark 1985 book, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*, sociologist Lenore J. Weitzman argued that no-fault divorce laws failed to take into consideration the fact that most husbands earned far more than their wives, and that wives who took care of their children and households full-time typically earned little money, if any. Adversarial divorce provided some financial protection for women whose husbands were found "at fault," as husbands were typically "punished" through lifetime alimony payments to their ex-wives. But under the no-fault paradigm, alimony payments became less common and short-term, based on the assumption that a woman would swiftly become financially independent. Assuming that husbands and wives would share the financial costs for their children equally, judges also began requiring husbands to pay only half of what was needed to support their children. According to a 1975 federal government poll, only 14 percent of divorced women received alimony, and only 44 percent received child support. Among both groups of women, less than half received the full amount of either alimony or child support on a regular basis.⁵³ The result, according to Weitzman, was that most wives who divorced were worse off economically, while their husbands' income increased.⁵⁴

Because they felt guilty about breaking up their marriages or simply wanted to divorce as quickly as possible, some wives who desired women contributed to the resulting economic inequality between themselves and their ex-husbands by choosing not to fight over financial assets. Harriet Marks-Nelson, a Jewish woman from Brooklyn, New York, left her physically abusive marriage in 1978. Harriet and her husband owned a hardware store together that had originally belonged to her parents. When Harriet divorced, she wanted no part of the business, but she did want to leave it intact for her son. So, rather than selling her share of the business to someone else, she allowed her husband to buy her out slowly over the course of several years at what was a significant financial loss. "You could be a very rich woman today," Harriet remembered her friends telling her, but Harriet did not care.⁵⁵ Despite her personal financial loss she was happy because she had helped to ensure her a financial future for her adult son and his family. Henrietta Bensussen, mentioned in Chapter 6, similarly deprioritized her own economic needs when she and her husband divorced in the

mid-1980s. Henrietta was in her late forties at the time, and she had stayed home taking care of two children for most of her married life. At the time she divorced, though, she had a job at Stanford University Press, a steady paycheck, and her own bank account, credit card, and car. "I had a budget. I could manage," she recalled thinking, so she decided not to push for alimony, and she willingly gave up the house she and her husband had shared.⁵⁶

Of course, even those women who were more willing to fight still suffered financially. In the late 1970s, after nearly three decades of marriage, Avis Parke's husband, a Unitarian minister, announced that he wanted a divorce so that he could marry his much younger lover. Avis, meanwhile, had fallen in love with a woman her husband had hired to help her around the house. Avis's Massachusetts divorce was technically no-fault, and Avis's husband had been unfaithful to her throughout their marriage. Even so, he still brought up her lesbian affair in their divorce proceedings. Avis thus had to fight "tooth and nail" to retain a home on Cape Cod that she and her husband technically owned together, but which she had inherited from her parents.⁵⁷ Avis succeeded in gaining her husband's share of the home and some child support, but with no marketable job skills and three of her six children still at home, she applied for public assistance. Eventually, she became a spokesperson for the displaced homemakers' movement, which fought for greater recognition of women's household labor and drew attention to the economic challenges faced by primarily white, middle-aged, middle-class housewives after divorce.⁵⁸ Avis's lesbianism rarely came up in public coverage of her story, however, which portrayed her as a "representative" displaced homemaker, a "deserving" member of the "nouveau poor."⁵⁹

As Avis's story suggests, the transformation in divorce law made the legal process of divorce easier, but it did not completely remove fault-finding from the process. While fifteen states made "marital breakdown" or incompatibility the only ground for divorce, sixteen others—Alabama, Alaska, Connecticut, Georgia, Hawaii, Idaho, Indiana, Maine, Massachusetts, Mississippi, New Hampshire, North Dakota, Ohio, Rhode Island, Texas, and Tennessee—more conservatively added the no-fault standard to their existing list of grounds. In these states, one spouse could bring up the other spouse's misbehavior and threaten to initiate a fault-based divorce, in order to pressure the "misbehaving" spouse into giving up child custody, alimony, or assets during negotiations. Many of the no-fault divorces in

these states, therefore, could and did involve behind-the-scenes allegations of misconduct. Furthermore, most states continued to allow judges to consider either spouse's fault or merits in awarding property. A wife whose husband proved that she had been unfaithful could thus still lose receiving alimony or suffer in the awarding of marital assets in most states.⁶⁰

Significantly, child custody was the one sphere in all states in which fault continued to matter. In states that took fault into consideration in awarding alimony and dividing marital assets, custody was one more realm in which fault came into play. But in states like California, where couples could not raise fault in other aspects of a divorce, lawyers often encouraged husbands to fight for child custody even if they did not want it, in order to get their wives to make other, typically financial, concessions. In effect, then, the no-fault divorce revolution made child custody a *more* important tool for vengeful spouses whom divorce reform had left with fewer means of making their ex suffer, financially or emotionally.

Child custody also became a more important battleground between divorcing husbands and wives in this period as courts began to replace the maternal preference, or "tender years," principle that had prevailed for most of the twentieth century with a more gender-neutral concern for the "best interests of the child."⁶¹ In the late 1960s, as divorce rates increased, fathers' rights groups began to protest the courts' preference for granting child custody and child support payments to mothers. By the late 1970s, studies found that when fathers in Minneapolis, New York, and North Carolina demanded custody, they were nearly or equally as successful as mothers.⁶² By 1981, thirty-seven states had rejected the tender years doctrine, either by statute or court decision.⁶³

On the surface, this transformation in family law appeared to be more egalitarian and less sexist than the earlier maternal preference, but several feminist researchers have shown that it often resulted in mothers being unjustly deprived of their parental rights. For example, judges in contested custody cases tended to place children with the higher-earning parent, thus penalizing mothers who had given up careers in order to serve as their children's primary caretaker. At the same time, family court judges often assumed that mothers with full-time jobs had prioritized their careers over their parental responsibilities and would be unable to care for their children. Needless to say, judges typically did not hold fathers' full-time jobs against them in this way.⁶⁴ After interviewing sixty mothers who fought for child custody in the United States and Canada in the 1960s and 1970s, the

feminist psychologist Phyllis Chesler concluded that women tended to lose custody when their husbands challenged them because of the impossible cultural standards to which all mothers are held. "An ideal father is expected to legally acknowledge and economically support his children," she wrote. "Fathers who do *anything* (more) for their children are often seen as 'better' than mothers—who are, after all, supposed to do everything."⁶⁵

Mothers who had engaged in lesbian relationships or identified openly as lesbian were particularly vulnerable to custody challenges from ex-husbands. The "best interests of the child" doctrine thus conveniently served as a "smoke screen" for legal bias against both gay and lesbian parents in this period.⁶⁶ A 1967 case involving Ellen Nadler of California set the precedent for rulings in lesbian mothers' custody cases during the 1970s and early 1980s and demonstrates how judges used a concern for children's welfare to justify discrimination. In the case, Judge Joseph Babich of Sacramento County initially granted custody of Ellen's five-year-old daughter to her ex-husband purely on the basis of her lesbianism, without hearing any additional evidence. Ellen challenged the decision, and a California court of appeals overturned the ruling, not because of its outcome, but because of Babich's decision not to hear all the evidence in deciding where "the best interests of the child" lay. The appeals court thus forced Babich to hear the case again, and again he awarded child custody to Ellen's husband. Rather than stating that her lesbianism *itself* made her unfit, however, this time he determined that there was a potential link or "nexus" between Ellen's homosexuality and harm to her daughter, which made placing her in a heterosexual household preferable.⁶⁷

While many husbands in this study had tolerated or even enabled their wives' lesbian relationships during their marriages, they often became more hostile once divorce was immanent or their ex-wives began leading openly lesbian lives. Many used the legal bias against lesbian mothers to their advantage. In the midst of a custody battle in the early 1980s, one woman from DeKalb, Illinois, told Martin and Lyon how her estranged husband had earlier helped her to recognize her lesbianism. "Once upon a time, my husband bought me a copy of your book *Lesbian/Woman*. Until that time, I did not have a name for how I felt about this coworker, or that friend," she recalled.⁶⁸ This woman and her husband divorced for reasons unconnected to her sexuality, but once she began openly living as a lesbian several years later, her husband became hostile and revisited their custody agreement. "Why or how

[his] attitude changed I don't know," she explained.⁶⁹ Another woman, from California, later recalled how her husband had quietly encouraged her lesbian affair, believing that she would remain in the marriage if she could have a "little dalliance on the side."⁷⁰ Once she decided to end the marriage, he sued for child custody on the basis of her homosexuality.

There were likely many reasons behind such men's change in attitude. When formerly married women began to put their relationships with women ahead of those with their husbands, when they began to identify as lesbian openly and raise their children in unconventional female-headed households, their homosexuality likely became more real to their husbands, more threatening, and perhaps publicly embarrassing. In some cases, grandparents and other extended family members pressured husbands to fight for child custody when they learned of a mother's homosexuality. In 1974, one Iowa mother, whose husband knew of her homosexuality when they married, sued for custody of their two children, in part because of her own father's influence. "My father has pledged \$20,000 to my husband's side in what he rationalizes as his duty to save his innocent grandchildren from their perverted mother," she wrote in a letter to Del Martin.⁷¹ A husband's increasing religiosity could also prompt him to challenge child custody. In the early 1970s, for example, a married couple in South Dakota became sexually involved with another woman. As the relationship between the two women intensified, the husband left. The couple eventually divorced, and the mother was granted child custody in 1975, but when the father became a Jehovah's Witness, he began to see his ex-wife's relationship as "evil" and filed a petition seeking custody.⁷²

More often, though, once-understanding husbands were motivated by purely financial concerns. In the late 1960s, Margaret, a California mother, and her husband embarked on a group marriage with another couple. Eventually, Margaret and the other wife in their group marriage became sexually involved and fell in love. Although Margaret's husband had been willing to have a sexually open marriage, after Margaret initiated a divorce he attempted to use her lesbian relationship against her to secure a more favorable financial settlement. "The trade-off became, that if I wanted his daughter, I couldn't have his money too," she recalled. Ultimately, Margaret received \$125 a month in child support for her daughter, and \$150 a month in alimony for just two years.⁷³ Another woman, who had married an openly gay man in the late 1960s, had a similar experience. After her divorce was final, in the midst of a fight about child support, this woman

threatened to take her ex-husband to court to make him pay. "If you do that, I'm a queer and you're a lesbian and I'll scream it all over the place," he retorted.⁷⁴ Had he done so, both parents could have lost custody of their infant daughter. Unwilling to take this risk, and recognizing that her ex-husband was financially unstable anyhow, this woman decided to drop her demands for financial support entirely.

Fathers were not the only ones who could contest lesbian mothers' custody. Though such cases were less common, some lesbian mothers faced custody challenges from their own parents. After her divorce in the 1960s, Lynda Chaffin had secured custody of her two daughters. In 1968, Lynda left her daughters, then six and eight years old, in her parents' care in Washington State while she regained her health and her economic stability in Los Angeles. A few years later, after Lynda moved her children to California to be with her, her parents sued for custody. In 1973, a trial court judge granted custody of Lynda's daughters to her parents, largely because of her homosexuality. In response, Lynda and her two daughters went underground. A year later, when Lynda turned herself in and appealed the custody order, the appellate court again denied Lynda custody of her children.⁷⁵ Aware of cases like Lynda's, another lesbian mother in California so feared that her parents might attempt to have her declared unfit that she had made up her mind to go to great extremes to protect her custody rights. "I could, and am quite capable of going underground with eight hours' notice," she told an interviewer in the late 1970s. "I'd do that before I lost custody."⁷⁶

In the 1970s and 1980s, family court judges across the country ruled against lesbian mothers based on claims that their homosexuality could cause harm to their children in some way. Typically, judges expressed concern that placing children with lesbian mothers would expose them to ridicule and social isolation or thwart their normative gender and sexual development. All of these issues came into play in the case of a Dallas mother named Mary Jo Risher, who famously lost custody of her nine-year-old son, Richard, after a jury trial in 1975. The testimony of a court-appointed psychologist, Robert Gordon, weighed powerfully against Mary Jo. Gordon claimed Mary Jo's older teenaged son, Jimmy, had been in a "homosexual panic" when they met because his mother occasionally dressed in masculine attire and supposedly once took him to a gay bar.⁷⁷ In addition, Gordon expressed concern that Richard had attended a meeting with him wearing a YWCA T-shirt and a pair of jeans belonging to the

daughter of Mary Jo's lesbian partner. By allowing Richard to wear this clothing, Gordon argued that Mary Jo showed poor parental judgment and was not doing a sufficient job of "encourag[ing] . . . masculine identifications" in her son.⁷⁸ It did not help matters when seventeen-year-old Jimmy took the stand and claimed that he had chosen to live with his father because his mother's homosexuality was a source of shame and embarrassment.

Stereotypes about homosexuals as child abusers also had an impact on lesbian mothers' custody rights. Lawyers often insinuated that lesbian mothers might sexually molest their children by asking these mothers whether they had engaged in sexual activity in front of their children.⁷⁹ In at least one instance, widely described as a "witch hunt" in the feminist press, a social worker falsely accused Cynthia Forcier, a lesbian mother of two, of sexually abusing her daughter. In the mid-1970s, Cynthia placed her five-year-old daughter, Kristi, with foster parents in Orange County, California, while she struggled to get her life together. After Kristi spent Christmas with her mother, her foster parents took her to a doctor, who noticed bruising around her pelvic area. Kristi explained that a little boy had kicked her, but the doctor disregarded her explanation and assumed that her mother had sexually abused her. The doctor notified Kristi's social worker, who sent a letter about the "violence of [Cynthia's] lifestyle" to Orange County authorities who, in turn, pressed charges against her.⁸⁰ Orange County authorities offered to drop the charges if Cynthia relinquished parental rights to both her children, but Cynthia refused. Only after a superior court judge ruled that Cynthia's lesbianism could not be used against her did Orange County authorities drop the charges against her for lack of evidence.

As these examples suggest, any sense of propriety or discretion that affected how judges and lawyers dealt with wives' lesbianism in the 1950s and 1960s had disappeared by the 1970s. Taking its place in the courtroom was a new obsession with such women's sexual behavior. While Ellen Nadler, mentioned earlier, was on the stand, the opposing lawyer asked her how frequently she engaged in sex and if she had ever had sex while her children were present. He demanded that she give the names and addresses of her previous female sexual partners and he inquired if she had ever worked as a prostitute. If this was not enough, Judge Babich demanded to know precisely what Ellen did in bed. Even after Ellen's lawyer responded that answering such questions could expose her to criminal prosecution, as

sodomy remained a crime in California at the time, Babich persisted with mock ignorance, "I would like to know what she does with other women that constitutes the act. Maybe she just shakes hands with them."⁸¹ Though Babich claimed to be uninterested in whether or not Ellen's sexual activities constituted sodomy, in many other cases lawyers and judges invoked sodomy laws to argue that lesbian mothers were in effect criminals and therefore unfit. Women were rarely convicted of sodomy laws, and, beginning with Illinois in 1961, states were slowly repealing these laws across the country. Nevertheless, judges and lawyers continued to reference sodomy laws to threaten and intimidate lesbian mothers.⁸²

In general, judges and lawyers focused in far greater detail on lesbian mothers' sex lives than gay fathers' sex lives in custody cases.⁸³ This discrepancy may be due in part to the greater attention judges and lawyers paid to all mothers' sexual behavior in child custody battles, regardless of their sexual orientation.⁸⁴ But judges' and lawyers' detailed scrutiny of lesbian mothers' sexual experiences and activity also, undeniably, reflected their own fascination with lesbian sex. In a 1976 case in Washtenaw County, Michigan, for instance, a lawyer advised one lesbian mother's lover to restrict her presence in court in order to prevent sexual fantasies on the judge's part.⁸⁵ Other lesbian mothers encountered this objectifying behavior on the part of their own lawyers. Upon seeking advice from a legal aid service in California, one lesbian mother found that her male lawyer was more interested in learning about the details of her sex life than in protecting her parental rights. "He really got off on that, and started asking me all these questions, about did I lust after women, and all that crap, it was really awful," she recalled.⁸⁶ Despite his offensive behavior, because her financial resources were so limited, this woman felt she had no choice but to use this lawyer to represent her in her divorce.

Ironically, judges and lawyers tended to portray lesbian mothers as the ones who were sex-obsessed. In explaining his decision to deny lesbian mother Lorraine Townend custody of her three children, Judge Albert Caris of Ohio argued that it was not Lorraine's lesbianism, per se, that made her an unfit mother, but her decision to raise her children in a lesbian household. Caris believed that Lorraine should have given up her lesbian relationship in order to maintain custody, and damningly declared of all lesbians, "Orgasm matters more to them than children or anything else."⁸⁷ Judges also asked lesbian mothers more often than gay fathers to choose between their children and their lovers. For example, in *Jacobson v. Jacobson* in 1981,

the North Dakota Supreme Court reversed a district court ruling that had granted Sandra Jacobson custody of her two children, not because she was a lesbian, which the judges conceded might well be “beyond her control,” but because she had chosen to *act* on her lesbianism by living with her lover. “We need no legal citation to note that concerned parents in many, many instances have made sacrifices of varying degrees for their children,” they concluded.⁸⁸ The subtext of such a statement seemed to be that “good” mothers should be willing to surrender their sexual and romantic lives for their children.

Anticipating legal discrimination in court, lawyers working on behalf of lesbian mothers often advised women to hide or deny their lesbianism in court if they could. In 1972, one mother in the midst of a custody battle over her six-year-old son in Connecticut decided to take this path after her lawyer informed her that her husband did not have sufficient evidence to prove her homosexuality. “I grappled for a long time about whether to make this a political issue,” she explained in a letter to Del Martin, “but finally I decided for the sake of my child, who needs me, I would not prejudice the case against me by making any unnecessary confessions. If my own welfare were the only issue, I would have made a stand for justice.” Doing so, however, meant that she would no longer be able to participate in lesbian life and would have to “resume the façade indefinitely,” as she put it. Even attending a lesbian workshop, her lawyer warned, could endanger her case, and communicating with Martin was itself a risk.⁸⁹ Likewise, another lesbian mother, from Berkeley, lied on the stand and said that her homosexuality was a passing phase in order to win custody of her children. Because she did not want to risk losing her kids, for years afterward this mother hid her relationships with women while publicly performing the role of a “flaming heterosexual.” “That’s what I had to do, ’cause I wanted my kids. . . . So I just paid that price, and got what support I needed from women, covertly,” she explained.⁹⁰ Such women found that in leaving marriage, they had effectively traded one form of confinement for another.

Because courts could reassess child custody decisions even after an initial determination, lesbian mothers remained legally vulnerable so long as their children were minors. Though most states required proof of a “material change in circumstances” to revisit a custody ruling, a husband could meet this standard simply by claiming to have discovered his ex-wife’s homosexuality. A husband could also argue after remarrying that he and his new wife could provide a more “stable” heterosexual family life for his

kids.⁹¹ This legal vulnerability pushed some lesbian mothers into isolation for years. One Bay Area mother of two, Beth, succeeded in winning full custody of her children because her ex-husband assumed her lesbianism was temporary. Sometime after the divorce, a lesbian friend and her son moved in with Beth and her children. At that point, Beth's ex-husband suddenly began "to question the moral atmosphere" she was providing their children. "I remember it was quite late at night when he phoned me, and I was alone," Beth recalled. "I felt the full weight of the power that he had. Before that time, I was kind of trusting along, and suddenly I realized—just being a lawyer, being who he was, being a man, being a white man—having everything on his side. There was like a moment of panic."⁹² This experience convinced Beth that the possibility of living with a female lover was out of the question.

Surprisingly, even mothers who *lost* primary custody could find their lives legally constrained. In a 1976 case, *In re Jane B.*, a New York trial court judge denied a lesbian mother child custody because she lived with her lover, and imposed major restrictions on her visitation rights as well. The judge ruled that her child could not stay overnight with her, visit her when other gay people were present, or accompany her to places where gay people were even likely to be present. In addition, the court ordered that this mother could not involve her child in gay rights activism, or what it termed "homosexual activities or publicity."⁹³ Writer, activist, and Chilean immigrant Mariana Romo-Carmona faced similar constraints after losing custody of her two-year-old son, Cristian, in Connecticut in 1976. In fact, her legal battle and the government's intrusion into her life continued for years as the courts restricted her visitation rights further and further. "Every time I move, I am forced to give an account of my living situation," she wrote in 1982. "Being a visiting lesbian mother, everything I do is subject to scrutiny, my faults are magnified as under a microscope, and accordingly, my anxiety rises with each incident in which my privacy is violated."⁹⁴ Painfully, Mariana found that just as the courts denied her parental rights, her ex-husband denied her very identity as a mother, leading Cristian to believe that Mariana was "just a friend."⁹⁵ Only when her son was four years old, after Mariana made a formal request through her lawyer, did Cristian's father tell him the truth. Even so, Mariana ultimately lost the right to have Cristian visit her on the weekends when she moved to New York City in 1985.

While most media coverage of lesbian mothers' custody cases focused on white, middle-class women, mothers like Mariana found that racism

and economic marginalization only increased their legal vulnerability.⁹⁶ In fact, after Mariana briefly received public aid following her divorce, a family court judge restricted her visitation rights on the grounds that she was providing her son with “inadequate meals.”⁹⁷ As the editors of *Azalea*, a magazine for lesbians of color, explained in a special issue on lesbian mothers in 1980, the discrimination they experienced because of their lesbianism was part of a much larger social system that regularly denied women of color the right to bear and raise children either directly, through forced sterilization, or indirectly, through employment discrimination and a lack of basic social support. “All too often we have neither the funds to decide to have a child since we are most often employed in the lowest paying jobs or not employed at all and present day necessities such as day care and proper health care is generally unavailable to us,” the editors wrote.⁹⁸ Furthermore, as the editors noted, the stigmatization of lesbian mothers of color was inextricable from the hostility that *all* mothers of color encountered when raising their children in families without men for whatever reason. As one black mother who battled her ex-husband for child custody in Philadelphia in 1978 put it, “You’re aware of the odds against you. You’re aware that the deck is stacked.” Although this woman luckily succeeded in winning primary custody of her daughter, a year after her custody battle, she could name only one other black lesbian mother in the nation who had done so.⁹⁹

It is important to acknowledge here that not all fathers were antagonistic and homophobic. Rachel, mentioned in the previous chapter, divorced in the 1970s in California and found the process nearly painless. Rachel and her husband had a joint custody agreement, and they divided their property equally. “He was very chivalrous about the whole thing,” Rachel recalled, and neither one of them revealed her lesbianism to the court.¹⁰⁰ When her ex-husband’s parents found out about her homosexuality, they wanted to have Rachel declared an unfit mother, but her ex refused. Because the stories of lesbian mothers who were forced to fight for child custody have attracted attention from scholars and the media, there were likely far more men like Rachel’s husband than we know. Lesbian mothers who won primary custody or agreed to joint custody with their ex-husbands tended not to discuss their divorces in great detail in oral history interviews. Furthermore, *contested* custody battles are the ones that have made it into the historical record through court cases or letters that women wrote to lesbian mothers’ advocacy groups. The existence of men like Rachel’s husband,

however, does not diminish the overriding systems of inequality that structured lesbian and bisexual mothers' experience of divorce. Rachel's husband was clearly kind, respectful, and egalitarian in ending their marriage. As her comment about his "chivalry" suggests, though, the choice about how their divorce would play out remained his to make.

Even the experiences of women who chose *not* to fight for custody of their children suggest the oppression that lesbian and bisexual mothers faced. Women who chose to give up custody of their children often doubted their own ability to be good parents. Some women's reasoning was purely economic; they believed that their children would be better off with their husbands because they earned more money. But the idea that gays and lesbians could not be good parents, or rather that they could not be *as good* as heterosexual parents, may also have shaped these women's sense of themselves as mothers. In the early 1980s, for example, a divorced bisexual woman from Cleveland, Ohio, whose ex-husband was openly gay, was considering marrying again for her daughter's sake, despite the fact that she preferred relationships with women. "I've been told by other people, that because my X husband [*sic*] is gay, that at least one of us should be straight to give her a healthy outlook on life," she wrote.¹⁰¹ Similarly, another lesbian mother who had recently separated from her husband told an interviewer in the late 1970s how difficult it had been for her to overcome the idea that heterosexual families were best for children. Although this woman had come a long way in her thinking about lesbian parenting, she recalled that for many years, on hearing about lesbian mothers' custody cases in the news, she would side with straight fathers and the state. "You can't expect society to really just sit back and allow her to do her mothering and leave her alone when there is a nice heterosexual alternative," she recalled thinking. That wives who desired women could themselves remain convinced of the superiority of straight families suggests just how insidiousness such beliefs were.¹⁰²

Legal Change and the Lesbian Mothers' Rights Movement

It was precisely these types of ingrained attitudes that lesbian mothers' rights activists sought to change. Beginning in the early 1970s, a range of lesbian mother activist groups took shape across the country. The first of

these groups was the Lesbian Mothers Union (LMU). A group of women founded the LMU in 1971 following a panel for lesbian mothers at the Gay Women's West Coast Conference. In talking to each other, the dozens of women at the workshop began to realize the many issues they had in common, including their sense of marginalization within the lesbian community. "We realized that we never talked about our problems before because of the fear—fear that is still very real: fear that the courts will take our children away, fear that our children will suffer from the cruelties of straight world oppression . . . fear and paranoia that all those who know us as lesbians will use our motherhood against us," one article about the organization's founding explained.¹⁰³ By the conference's end, thirty women had signed up to participate in what became the LMU. While the LMU did not focus solely on lesbian mothers' custody battles, these cases were a priority from the beginning. With an initial donation from Del Martin and Phyllis Lyon, the LMU started a legal defense fund to help lesbian mothers and held auctions and benefits to raise money for it. Martin, an LMU cofounder and grandmother, unsurprisingly became one of its most outspoken members. During the 1970s, she delivered public lectures, published articles in the gay and feminist press, and spoke to the mainstream media about the challenges, legal and otherwise, that lesbian mothers faced.

Other lesbian mothers' groups soon followed. In 1974, Geraldine Cole and Lois Thetford helped to found the Lesbian Mothers' National Defense Fund (LMNDF) in Seattle, Washington. The LMNDF, like the LMU, raised money to support lesbian mothers' legal battles: "A Dollar a Day Keeps the Husbands Away," one call for donations wryly promised.¹⁰⁴ LMNDF members also organized auctions, dances, concerts, and performances with the help of well-known lesbian artists and musicians such as Pat Parker, Meg Christian, and Holly Near. The group's bimonthly newsletter, *Mom's Apple Pie*, served as an important venue for spreading the word about lesbian mothers' custody issues in Seattle and beyond. The same year that the LMNDF began, Rosalie Davies founded Custody Action for Lesbian Mothers (CALM) in Philadelphia. After losing custody of her children to her ex-husband because of her homosexuality, Rosalie, who compared her custody case to "an ancient witchcraft trial," returned to law school in order to defend women like her.¹⁰⁵ With the help of a private endowment and the pro bono services of its legal staff, CALM was able to offer mothers in Pennsylvania free legal counseling and representation. In 1976, Dykes and Tykes of New York City joined the movement. Dykes and Tykes created a

lesbian mothers' defense fund of its own, and also ran a hotline which received twenty-five to thirty-five calls a week from mothers seeking legal advice.¹⁰⁶

Complementing the efforts of these organizations, activists formed smaller, short-lived groups to support individual lesbian mothers' cases across the country. Such case-specific support groups emerged in cities such as Ann Arbor, Austin, and Denver, to name a few.¹⁰⁷ After Mary Jo Risher famously lost custody of her son Richard after a jury trial in Dallas in 1975 (see earlier discussion in this chapter), an activist group known as Friends of Mary Jo Risher came together to help raise money for her legal appeals. They planned fund-raisers, published articles, and secured opportunities for Mary Jo to speak on television and radio. Although she never secured custody of her son, she did regain the right to see him every other weekend.¹⁰⁸ Furthermore, the national media attention these activists—including Mary Jo herself—brought to the case helped to elicit sympathy for lesbian mothers and shift public attitudes toward them.

Lesbian mother activists insisted that the discrimination and oppression lesbian mothers faced in court was not an isolated issue. "Lesbian custody concerns all of us," one LMNDF fund-raising letter argued. "If we ignore the lesbian mother we are helping the homophobics [*sic*] to maim and rape our hearts and our humanity."¹⁰⁹ Lesbian activists thus framed lesbian mothers' custody issues as part of a much broader attack on gay and lesbian rights, but they connected their struggles to other battles for social justice too. One issue of *Mom's Apple Pie*, for example, compared the struggles lesbian mothers faced to those that formerly incarcerated women experienced, and noted that the LMNDF had begun working together with the Women Out Now Prison Project in Seattle.¹¹⁰ In 1977, the defense committee for Jeanne Jullion, a lesbian mother in San Francisco, joined together with the Black Panthers, as well as activists protesting police violence and working for women's wage equality, in planning a July 4 "March and Rally for Jobs and Justice."¹¹¹ While this broad political coalition seems somewhat atypical, many lesbian mother activists linked the fight for child custody to a range of other reproductive justice issues. As historian Daniel Rivers has argued, such activists' efforts should be understood as part of the broader struggle for reproductive freedom in the 1970s.¹¹²

The advocacy and support that the lesbian mothers' movement provided was critical, and by the late 1970s lesbian mothers were making some progress in the courts.¹¹³ In 1978, the Washington State Supreme Court

ruling in the case of Sandy Schuster and Madeleine Isaacson represented a major victory. Initially, in 1974, Judge James Noe of Seattle had awarded each of the women primary custody of their children—Sandy had two children, and Madeleine four—on the condition that they cease living together in the home they had shared for the past two years. Sandy and Madeleine came up with a creative solution to this legal requirement and rented adjoining units in an apartment building. But when the women's ex-husbands learned of their new living arrangement, they petitioned for a custody modification. They also alleged that the women had violated the court's order by living together and harmed their children by speaking out about their relationship publicly.¹¹⁴ Following a custody modification trial in September 1974, Superior Court Judge Norman Ackley ruled in the mothers' favor and lifted the requirement that they live apart, finding no evidence that the women's relationship had harmed the children whom he described as "healthy, happy, normal, and loving."¹¹⁵ In 1978, though narrowly, the Washington State Supreme Court affirmed Ackley's decision not to grant custody to the fathers, and, by default, allowed Sandy and Madeleine to continue living together.¹¹⁶

In 1979, lesbian mothers in New Jersey and Michigan won two more significant cases in the higher courts. That year a New Jersey Superior Court judge awarded Rosemary Dempsey unconditional custody of her two children in the first-ever ruling in the state in favor of a lesbian mother who lived with her partner. In his decision, Judge William J. D'Annunzio wrote that Rosemary was "not to be denied continued custody of the children merely because of her sexual orientation." He also stated forcefully of the children, "There is no evidence of any social, emotional or psychosexual damage as a result of their mother's sexual orientation."¹¹⁷ Likewise, after a two-and-a-half-year battle, the Michigan State Supreme Court granted Ann Arbor mother Margareth Miller custody of her adopted twelve-year-old daughter, Jillian. This decision overturned four earlier court rulings that had awarded custody of Jillian to Margareth's ex-husband, despite Jillian's stated desire to remain with her mother. By arguing that a parent's sexual status alone was not sufficient to deny him or her child custody without evidence of "proven detrimental effect," the ruling set an important national precedent.¹¹⁸

Despite lesbian mothers' increasing success in custody cases in the late 1970s and early 1980s, their right to be both lesbians and mothers was by no means guaranteed. And judges remained most likely to grant custody to

mothers who did not have romantic or sexual partners and were not politically active.¹¹⁹ One recent study of lesbian mothers' custody cases between 1973 and 1998 has demonstrated that there was no "steady progression" for formerly married lesbian mothers in court. Such women's chances improved in the late 1970s after a series of research studies showed that the children of lesbian mothers were no more likely to be gay or gender nonconforming than others. Yet these gains were primarily limited to lesbian mothers on the East and West Coasts, and lesbian mothers' likelihood of winning child custody never reached much beyond 50 percent. What is more, this legal progress proved short-lived. In the mid- to late 1980s and early 1990s, formerly married lesbian mothers' chances of winning child custody decreased nationally.¹²⁰



As the economic, legal, and cultural forces keeping wives who desired women within marriage waned in the 1970s, another architecture of repression emerged to take their place and to restrain the public growth of the lesbian community. This system of repression built on long-lived discrimination in the courts against lesbian mothers, but it went beyond this as well, by preventing women from building households with their lovers, from seeing their children in their lovers' presence, and from participating openly in gay and lesbian communities. The increased economic vulnerability that most women faced upon divorcing in the 1970s was a part of this system. Fear of angering ex-husbands and losing meager child support payments helped to keep divorced mothers in hiding, separated from their female lovers and the broader lesbian community. Being unable to afford experienced, sympathetic lawyers and expert witnesses hamstrung many mothers in contested custody cases as well.

Because so many lesbian mothers' cases have not been made public, we have no real way of knowing the numbers of women who lost child custody or visitation rights in court.¹²¹ Those lesbian mothers whose ex-husbands compelled them to give up child custody outside of court are even harder to trace. The emotional and material impact of the discrimination that lesbian mothers and their partners experienced in court is also impossible to measure. One lesbian mother from Mississippi, writing to thank women

across the country for their support during her continuing custody battle in 1979, explained that due to the stress of the case her partner had experienced "a complete nervous breakdown" and had been in and out of the hospital for months.¹²² Though Carol Whitehead won custody of her daughter in Maine in 1976, the fallout from the case persisted long afterward due to the notoriety she attracted in the local news. A year after her custody case concluded, her antiques business fell apart. She was unable to find employment, her phone was disconnected, and she was in danger of losing her farm.¹²³ Perhaps hardest to grasp is the trauma and confusion that such custody cases caused the children who were at once at the heart of such battles and so utterly unprepared to understand them. "If I have to live with my daddy I will cry and run back to my mom. She will cry too I think," the seven-year-old subject of one such custody case wrote.¹²⁴

Leaving marriage exposed the women in this study to more severe state discrimination than they had experienced before, but it also made the oppression they had faced within marriage more visible. The legal, financial, and emotional punishment meted out by the state, as well as by ex-husbands and other family members, on lesbian and bisexual wives who dared to leave their marriages swiftly and painfully disabused them of the notion that they were at liberty to live as they wished. This realization inspired many to political action and analyses that might have otherwise remained out of reach. One twenty-one-year-old bisexual-identified mother in Ottumwa, Iowa, for example, married in the 1970s believing that her husband would tolerate her sexual relationships with women. At the time they married, her husband knew that she and her maid of honor were involved in an affair. After that relationship ended, and this young mother found another female lover, her husband was no longer so accepting. Still, it was only in leaving her marriage and losing custody of her son to her parents that "the whole political aspect" of her sexuality became real to her.¹²⁵ Seeking legal help from Del Martin in her continuing fight to regain custody of her son, she wrote with newfound political conviction: "I want the law to give me my right as a mother. And I want my sexual privacy protected."¹²⁶