

# LASSITER V. DEPARTMENT OF SOCIAL SERVICES: WHY IS IT SUCH A LOUSY CASE?

Brooke D. Coleman\*

Every year in my 1L Civil Procedure course, I introduce the subject with a collection of due process cases. The cases force students to confront the tension between procedural efficiency and fairness right out of the gate. It sets a fantastic tone for a course that is essentially all about managing that tension. What makes things even more interesting is that the authors of my casebook have chosen meaty due process cases.<sup>1</sup> This is not to say that the re-possession of one's stove without notice and a hearing is not important.<sup>2</sup> Those cases have their esteemed place in the doctrine. But, in my experience, students are much more intrigued by cases like *Hamdi v. Rumsfeld*,<sup>3</sup> *Greene v. Lindsey*,<sup>4</sup> and *Lassiter v. Department of Social Services*.<sup>5</sup>

The latter case—*Lassiter*—is one that really gets students' attention. The debate about that case is inevitably a lively one. And, for that, I am so very grateful. However, every year when I teach it, I find myself rejecting the case and its approach even more. It is a slow burn—I started out just not agreeing with its result, but after teaching it a few times, I now simply despise the entirety of the case. My goal with this Essay is to explain why I have such distaste for the case, not just to the reader, but also to myself. By exorcising these demons, as it were, I hope to reach some level of catharsis. Perhaps then I can teach the case with its pedagogical purpose at the forefront, without my obvious angst for the case distracting my students.

So first, what is this case about? In short, the case is about the termination of parental rights and whether, during the hearing to adjudicate one's parental rights, an indigent parent should have a state-appointed attorney.<sup>6</sup> The second question is why do I hate it so much? Well, that is a thornier one. There are a number of reasons to despise this case. It is written without any acknowledgment of race or institutionalized racism, nor does it confront the failings of our

---

\* Assistant Professor at Seattle University School of Law; J.D., Harvard Law School; B.A., The University of Arizona.

<sup>1</sup> See BARBARA ALLEN BABCOCK, TONI MARIE MASSARO, & NORMAN W. SPAULDING, CIVIL PROCEDURE: CASES AND PROBLEMS (4th ed. 2009).

<sup>2</sup> See generally *Fuentes v. Shevin*, 407 U.S. 67 (1972). The Babcock, Massaro, and Spaulding casebook covers this line of cases quite well in a summary that precedes *Lassiter*.

<sup>3</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). *Hamdi* is also fantastic for upsetting student's ideological biases. Many find themselves agreeing with Justice Scalia, a position they might not have thought possible before entering law school.

<sup>4</sup> *Greene v. Lindsey*, 456 U.S. 444 (1982).

<sup>5</sup> *Lassiter v. Dept. of Soc. Servs.*, 452 U.S. 18 (1981).

<sup>6</sup> *Id.* at 34.

criminal justice system. The Court also turns a blind eye to the realities of poverty. Thus, there are many angles from which one could attack this decision, as it is a case that finds itself at the intersection of so many “isms.” Yet, for me, the case is most offensive because it is so sexist. The characterization of motherhood and its value to our society is not just off-putting, it is plain irksome.

To understand why the case is so lousy, it is necessary to first know the case’s background, if only to appreciate the immense amount of bad luck that Abby Gail Lassiter, the petitioner in the case, experienced. Lassiter was fourteen years old when she had her first child.<sup>7</sup> She was uneducated, poor, and black.<sup>8</sup> Her only support was her mother, Lucille, and the community in which she lived.<sup>9</sup> Lassiter went on to have five children.<sup>10</sup> The subject of this case was her fourth child, William Lassiter.<sup>11</sup>

When William was eight months old, he was taken from Lassiter by a social worker named Sam Crawford.<sup>12</sup> William had been a sick child, so doctors at his local hospital knew him fairly well.<sup>13</sup> When he missed some appointments, the doctors asked the Durham County Department of Social Services to follow up with his family.<sup>14</sup> Crawford went to Lassiter’s home.<sup>15</sup> Lassiter was not there, but Lucille was caring for the children.<sup>16</sup> Crawford said that William had missed some doctor’s appointments and offered to take him while Lucille watched the other children.<sup>17</sup> Lucille understood that Crawford would bring William back, but that was not the plan.<sup>18</sup>

The doctors believed that William was suffering from malnutrition and other ailments.<sup>19</sup> Based on that information, the Department sought to remove William from the home.<sup>20</sup> The first hearing on the removal proceedings was re-scheduled because Lassiter was in jail for a shoplifting charge—a charge that was later dropped.<sup>21</sup> When the re-scheduled hearing date came, Lassiter still did not show.<sup>22</sup> It is not clear whether she even knew of the date or whether she knowingly missed the hearing.<sup>23</sup> Either way, the judge found that William had been neglected and gave custody of the child to the state.<sup>24</sup>

---

<sup>7</sup> Elizabeth G. Thornburg, *The Story of Lassiter: The Importance of Counsel in an Adversary System*, in *CIVIL PROCEDURE STORIES* 509 (Kevin M. Clermont ed., 2nd ed. 2008).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 510.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 517.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 517–18.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 518.

<sup>21</sup> *Id.* & n.35.

<sup>22</sup> *Id.* at 518.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

The removal took place in June 1975, and the state's records show that Lassiter only met with William once, in December 1975.<sup>25</sup> Why she did not meet with him in those intervening months is unclear. Why she did not meet with him after December 1975 is because she was convicted of second degree murder and sentenced to twenty-five to forty years in prison.<sup>26</sup> The story of the alleged murder of Lassiter's neighbor and Lassiter's subsequent trial is a torrid one. Suffice to say that her ultimate conviction for the murder was dubious at best.<sup>27</sup> Her lawyer was inexperienced and made a number of mistakes.<sup>28</sup> Moreover, the state failed to provide potentially exculpatory evidence during the trial.<sup>29</sup>

While Lassiter had experienced plenty of hardship up to this point, she was in for far more. Shortly following her conviction and sentencing, a new social worker, Bonnie Cramer, came to visit Lassiter in jail to ask that she give up her parental rights to William.<sup>30</sup> Lassiter refused, and instead asked that William be placed with her mother Lucille and her other four children.<sup>31</sup> The state had no objection to Lucille keeping the remaining four children, which included a child younger than William.<sup>32</sup> But, it refused to let Lucille keep William.<sup>33</sup>

Lassiter learned that the Department was seeking termination of her parental rights in April 1978.<sup>34</sup> The hearing regarding this termination occurred in August that same year.<sup>35</sup> Lassiter was present at the hearing, but in the four months leading up to that hearing, she had done nothing to prepare for it.<sup>36</sup> Most notably, she had not requested the aid of an attorney.<sup>37</sup> She had informed a matron at her jail that she wanted some kind of help with the termination process, but she did not tell the attorney handling her habeas petitions a thing about the termination proceedings.<sup>38</sup> Thus, she came to the hearing alone and unprepared.<sup>39</sup>

There were many things that were disturbing about the hearing. The judge did not believe that Lassiter's incarceration was an acceptable excuse for her not finding an attorney for the hearing; thus, he did not give her more time to find counsel.<sup>40</sup> Bonnie Cramer, the social worker, testified against Lassiter, but had met Lassiter only once.<sup>41</sup> In addition, the court allowed Cramer to testify

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 520.

<sup>27</sup> *See id.* at 518–21.

<sup>28</sup> *Id.* at 518–19.

<sup>29</sup> *Id.* at 520. This evidence included a confession by her mother, Lucille, that she had killed the neighbor. *Id.* at 519–20.

<sup>30</sup> *Id.* at 521.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 521–22.

<sup>35</sup> *Id.* at 522.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 522–23.

<sup>41</sup> *Id.* at 521.

about the Department's records even though she had absolutely no personal knowledge of what was contained in those records.<sup>42</sup> The court also allowed hearsay evidence. And, evidence challenging the Department's case was ignored. For example, the Department alleged that Lucille had filed a complaint against her daughter, asking that she no longer leave her four children with her.<sup>43</sup> Lucille disputed that she had filed any such complaint, yet the court would not give that testimony any credit.<sup>44</sup> These moments in the hearing went unchallenged largely because Lassiter did not have an attorney to help her through the process. Ultimately, the court terminated Lassiter's parental rights based on a finding that Lassiter "willfully failed to maintain concern or responsibility for the welfare" of William.<sup>45</sup>

Lassiter's case was appealed to the U.S. Supreme Court. It presented the narrow question of whether under the Due Process Clause of the Fourteenth Amendment indigent parents should have a state-appointed attorney in parental termination hearings. The Court decided that an attorney need not be appointed in every such case.<sup>46</sup> Instead, it determined that courts should apply a case-by-case analysis using the *Mathews v. Eldridge*<sup>47</sup> balancing test to decide what due process is required.<sup>48</sup> Under *Eldridge*, a court must weigh the private interests at stake, the government interests served by the process in question, and the risk of error under the selected process.<sup>49</sup> In *Lassiter*, the Court found that a parent's interest in her child was "commanding" and should be weighed against the state's interest in reaching an accurate decision as well as the state's interest in executing a hearing process that was not too administratively burdensome.<sup>50</sup> Finally, both the parental and state concerns must be weighed against the risk of error in any given proceedings, which the Court acknowledged could be quite high depending on the complexity of the hearing itself.<sup>51</sup>

This all sounds reasonable enough, so why is this case so lousy? Well, I believe it is a bad case for two substantive reasons. First, the Court erred in its finding that parental rights were not akin to liberty interests (where an individual might be incarcerated). This prevented the Court from creating a presumption that indigent parents should receive appointed counsel every time their parental rights might be terminated.<sup>52</sup> Second, even setting the presumption mistake aside, the Court erred in how it applied the *Mathews v. Eldridge* balancing test to Lassiter's case. There were many reasons why the Court reached

<sup>42</sup> *Id.* at 523.

<sup>43</sup> *Id.* at 527.

<sup>44</sup> *Id.* at 527, 532.

<sup>45</sup> *Id.* at 532.

<sup>46</sup> *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 31 (1981).

<sup>47</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976).

<sup>48</sup> *Lassiter*, 452 U.S. at 31–32.

<sup>49</sup> *Mathews*, 424 U.S. at 334–35.

<sup>50</sup> *Lassiter*, 452 U.S. at 27–28, 31.

<sup>51</sup> *Id.* at 31. For example, if the hearing involved medical evidence or other complex matters, an unrepresented parent might be confused.

<sup>52</sup> At the time of Lassiter's argument before the Court, thirty-four states and the District of Columbia had statutes that provided appointed counsel to indigent parents in parental termination hearings. See Brief for the Petitioner at 17, *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981) (No. 79-6423), available at <http://legal1.cit.cornell.edu/kevin/civprostories/chap14/lassiter01.pdf>.

these flawed results, but sexism is the one that I will address. Thus, while there are many principled ways to criticize this case, I will do so through the lens of sexist attitudes toward women.

First, the Court completely rejected the idea that the loss of parental rights might be equal to or greater than the loss of one's personal liberty in the criminal context.<sup>53</sup> The Court did not explain much of its reasoning in this case, but pointed to its precedent cases. Those cases basically held that an indigent's right to appointed counsel "has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation."<sup>54</sup> Yet, the Court had recognized that parental rights were "far more precious . . . than property rights" in other contexts.<sup>55</sup> Thus, there was nothing to prevent the Court from expanding its conception of what rights might require appointed counsel.

In fact, the Court had already broadened the loss of personal liberty to include cases involving a transfer from prison to a mental institution,<sup>56</sup> a sentence in a juvenile proceeding,<sup>57</sup> and a six-month prison sentence.<sup>58</sup> In all of those instances, the Court determined that the indigent person was due appointed counsel. It does not seem like a giant leap to say that losing one's child is just as fundamental an interest as losing one's liberty, especially when that loss of liberty spans only six months. In fact, one could easily argue that the two instances are not even comparable. Most parents would probably agree that losing one's right to her child seems like a far greater loss than spending six months in prison. As Lassiter's attorney argued before the Court, "The parent has a compelling interest of preventing a denial of her right to care, custody, and companionship to her child. She has the compelling interest of maintaining the right to transfer cultural or religious and political views to the next generation."<sup>59</sup> In other words, the parent's interest in her parental rights could be viewed as more compelling than her right to physical liberty. Yet, the Court refused to take this approach.

The question is why. The argument expressly articulated in the opinion and at oral argument is the old stand-by—the slippery slope. It goes something like this: If you start expanding this concept beyond loss of personal liberty, then what's next? During oral argument, one justice wondered what might happen if a particular profession required a state license and the state denied the license application for a hypothetical man.<sup>60</sup> Assuming that man was indigent, would he have the right to counsel if he challenged that determination? In other words, if the presumption of counsel were expanded from loss of personal lib-

---

<sup>53</sup> *Lassiter*, 452 U.S. at 25.

<sup>54</sup> *Id.*

<sup>55</sup> *May v. Anderson*, 345 U.S. 528, 533 (1953).

<sup>56</sup> *Vitek v. Jones*, 445 U.S. 480 (1980) (four justices agreed that counsel should be appointed in such a situation while a fifth concurring judge argued that, in some cases, a layperson might provide the right assistance).

<sup>57</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>58</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>59</sup> Transcript of Oral Argument at 16–17, *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981) (No. 79-6423).

<sup>60</sup> *Id.* at 11–12.

erty to loss of parenting rights, then why not also expand it to something as important as what the justice referred to as the loss of his “livelihood.”<sup>61</sup>

This is a traditional slippery slope argument, and it has some appeal. The Court was obviously concerned about moving the presumption of appointed counsel from its limited place in the criminal context to the unlimited civil one. But, there are elements of this argument that also reveal the Court’s bias against women. In the moment described above where the justice asked about the professional license, he revealed his belief that the male stereotypical role of breadwinner was at least, if not more, important than the stereotypical role of mother as care-taker. When Lassiter’s attorney challenged that belief, the justice responded, “Well, here’s a man about to lose his livelihood. He may no longer practice his profession. Isn’t that a rather significant interest?”<sup>62</sup> In essence, the justice asserted that if parenting—a role that he associated with women—was considered a fundamental right worthy of appointed counsel in this context, then certainly employment—a role that he associated with men—must be similarly fundamental. Yet, as the justice knew, the Court’s precedent would not support a reading of the Constitution that would presumptively expand appointed counsel to a situation where the indigent person’s property (employment) was at stake. Thus, by juxtaposing these two stereotypical roles—mother as care-taker and father as breadwinner—the Court set up the argument that if something as important as one’s “livelihood” was not captured, then certainly something less important like parenting could not be.

Of course, this is a deplorable view of parenting. First, many fathers, both then and now, are engaged parents and many mothers, both then and now, are both parent and breadwinner. Yet, the gender stereotypes of parenting roles persist. It was this dismissive view of mothering that, in part, prevented the Court from elevating the loss of parental rights highly enough to create a presumption of appointed counsel. So while the slippery slope argument had some appeal, it also masked the Court’s bias toward women. Or, put differently, it masked the Court’s bias against “mothering,”<sup>63</sup> and thus, against women.

Similarly, as to the second error—how it applied the *Eldridge* test to Lassiter’s case—the Court further revealed its bias toward women. After degrading parenting because of the perception that if women were doing most of it, it could not be as important as a “real” man’s job, the Court turned around and held Lassiter to an impossible standard of motherhood. By idealizing what a “good” mother might do and then comparing Lassiter to it, the Court showed its limited and unrealistic view of how mothers should behave.

In applying the *Eldridge* test, the Court first determined that a parent’s interest in her status was “extremely important” and that the state’s interests

---

<sup>61</sup> *Id.* at 12.

<sup>62</sup> *Id.*

<sup>63</sup> I use the term mothering instead of parenting because the Court focused on parenting by a woman. And, to a greater degree, I use that term because of what I believe was the Court’s view of parenting—the oft-held perception that it is the province of the woman to care-take for her family while the man will provide the means for living. There is plenty of scholarship challenging this notion of parenting and gender roles, see, e.g., Darren Rosenblum, *Unsex Mothering, Toward a New Culture of Parenting*, 35 HARV. J.L. & GENDER 57 (2012), but once again, the stereotypes undeniably persist and abound.

were strong, but not as commanding.<sup>64</sup> Thus, the case turned on application of the risk of error part of the *Eldridge* balancing test. The Court argued that the risk of error was low to non-existent.<sup>65</sup> First, there were no criminal charges associated with this hearing, so she was not at risk of physical detention (ignoring for the moment that she was already incarcerated).<sup>66</sup> Also, there was no expert evidence and the points of law were not “specially troublesome.”<sup>67</sup> Finally, and most importantly, the Court determined that even with assistance of counsel, Lassiter could not have overcome the “evidence that she had few sparks of . . . interest” in William.<sup>68</sup> This allowed the Court to dismiss any concerns it might have over the inability of Lassiter to present a meaningful defense, including her inability to dispute hearsay evidence that the Court acknowledged had been erroneously admitted.<sup>69</sup>

The Court completely failed to acknowledge the complexity of Lassiter’s experience as a mother of five children, her poverty, her skin color, and the effect that all of those factors had on her ability to mother in a stereotypical, if not traditional, white privileged way. Instead, it applied a standard of idealized motherhood—one that would have allowed her to show up in a fancy dress to protest the taking of her child immediately after it occurred. One that would have made her skin color white.<sup>70</sup> One that would have allowed her to properly articulate that she wished to remain as William’s parent, and that if she could not, she wished him to be placed with his loving grandmother. This articulation needed to be stated in terms that the justices could understand, terms that only June Cleaver might have been able to provide.<sup>71</sup>

Yet, if the Court was listening, this mother was speaking out in an effort to keep her child in her nuclear family. She stated during the hearing that “[h]e knows us. Children know they family . . . . They know they people, they know they family and that child knows us anywhere. . . . I got four more other children . . . and they know they little brother when they see him.”<sup>72</sup> She further explained that William still recognized her and his siblings by telling a heart-wrenching story about seeing William out with his foster mother.<sup>73</sup> She stated that William “got out of [the shopping] cart” because he saw his mother and his siblings and “he didn’t want to go with [his foster mother].”<sup>74</sup> Finally, after repeated questioning by the attorney in the termination hearing, Lassiter asked

---

<sup>64</sup> *Lassiter*, 452 U.S. at 31.

<sup>65</sup> *Id.* at 32.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 32–33.

<sup>69</sup> *Id.*

<sup>70</sup> See Adrien Katherine Wing & Laura Weselmann, *Transcending Traditional Notions of Mothering: The Need for Critical Race Feminist Praxis*, 3 J. GENDER, RACE & JUST. 257 (1999). In this article, the authors argue that “[a]lthough each of us has our own idea of what it means to mother, the law constructs its own image of the ideal mother. The law rewards the self-sacrificing, nurturing, married, white, solvent, stay-at-home, monogamous, heterosexual, female mother.” *Id.* at 258.

<sup>71</sup> June Cleaver was the famous “perfect” mother on the hit television show *Leave it to Beaver*.

<sup>72</sup> *Lassiter*, 452 U.S. at 23 (internal quotation marks omitted).

<sup>73</sup> Thornburg, *supra* note 7, at 529.

<sup>74</sup> *Id.*

him, "Sir, how would you feel if somebody came and got your child and took it away like that."<sup>75</sup>

That final question went unanswered, yet, it is very telling. Lassiter was not a perfect mother, but let's face it, no mother is. She had her infirmities, but to say that she did not care for or have a "spark" of interest in her child was an unfair assessment. Her pleas, those that would appeal to the emotional connection that individuals have with their children, simply did not resonate with those who sat in judgment of her. Unfortunately and instead, the civil justice system that she confronted from the time of her termination hearing to the time her case was argued before the Supreme Court could not get over its idealistic view of mothering. For instance, in the oral argument, the attorney for the Department repeatedly questioned why Lassiter had not done more to attempt to retain an attorney or to see her child, even though she was in prison.<sup>76</sup> He stated that "the fact that a parent is in prison does not prevent them from maintaining concern or responsibility as to the child's welfare. And she . . . made no effort to do that."<sup>77</sup>

The Department attorney's statement is superficially true, but certainly one can appreciate that Lassiter's experience was more nuanced than simply failing to inquire about her child. There was evidence in the record that she asked the matron at the prison for legal help. The fact that she did not ask her habeas attorney for help is easily explained away by her inability to understand all of the proceedings against her. It did not necessarily evidence a lack of interest in her child. There was also ample evidence in the record that she had been told different things about William by the Department, and that when she was incarcerated, she was clear and consistent in her request that William remain with her mother Lucille.<sup>78</sup> Moreover, although there was some evidence to the contrary, Lucille was clear during the termination hearing that she was more than willing to care for William and to bring him home to his four siblings while his mother served her prison term.<sup>79</sup> In other words, there was evidence that Lassiter was a decent mother, and more importantly, that she cared for William's well-being and wanted him to remain with his family. Yet, all of that evidence, and all of her and her mother's admonitions, could not overcome the fact that she was a poor, absent, convicted murderer, and thus, could not be a good mother.<sup>80</sup>

It was the Court's unwillingness to let go of its idealistic expectations of motherhood that prevented it from seeing that, in fact, the risk of error in Lassiter's case was quite high. There are undeniable rules, both spoken and unspoken, about how mothers are to conduct themselves, and these rules deter-

---

<sup>75</sup> *Id.*

<sup>76</sup> Transcript of Oral Argument, *supra* note 49, at 31, 37.

<sup>77</sup> *Id.* at 37.

<sup>78</sup> Thornburg, *supra* note 7, at 528-29, 532.

<sup>79</sup> *Id.* at 530-31.

<sup>80</sup> The dissent points out, albeit indirectly, the sexist underpinnings of this decision. It noted that "I deem it not a little ironic that the Court on this very day grants, on due process grounds, an indigent putative father's claim for state-paid blood grouping tests in the interest of according him meaningful opportunity to disprove his paternity." *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 58 (1981) (Blackmun, J., dissenting) (emphasis omitted).

mine how mothers are received by society.<sup>81</sup> In this case, Lassiter did not come close to meeting the requirements of being a good mother; thus, it was much easier for the Court to dispense with any concern about whether she continued her motherhood. While an attorney could have made a difference in the termination hearing, the Court would not concede that point because it really did not matter to it. Lassiter's mothering did not measure up. Because of that short-sightedness, Lassiter and her family suffered the unspeakable harm of losing a child.

Perhaps I am so affected by this case because in addition to being a law professor, I am a mother. So, I also feel the pressure of idealized notions of motherhood, and maybe it is that insecurity that brings out my strong response to this case. That the sexist overtones in this case are cloaked under a concern for the distinction between the process required in civil and criminal cases is even more insulting. This case is quite simply an example of how the civil justice system does not work for so many. As a person who benefits from white privilege, I cannot say that I understand how it must feel to have the system work against you in this way. But, with Lassiter the person, I can absolutely share my womanhood, my motherhood, and my continuing disgust at how she and her family were treated. So, at the end of the day, this Essay may serve as some kind of catharsis for me because I know more clearly why I am bothered by the case. However, even after writing this Essay, I doubt I will stop expressing my distaste for the case to my students—pedagogical concerns and distractions aside. And ultimately, as a professor, mother, and woman, I think that is as it should be.<sup>82</sup>

---

<sup>81</sup> Carol Sanger, *M Is for the Many Things*, 1 S. CAL. REV. L & WOMEN'S STUD. 15, 17–18 (1992). Sanger writes, "The rules [of motherhood] remind women of how to behave in order to stay revered. This reverence is something more than a fan club for mothers. It matters in such practical and concrete ways as keeping one's children, having credibility in court, getting promoted at work, and so on." *Id.* at 18.

<sup>82</sup> Doing what the Supreme Court was unwilling to do, forty-three states and the District of Columbia now provide an indigent parent with appointed counsel, if requested, in a termination hearing. See Thornburg, *supra* note 7, at 542.