

## ANNALS OF LAW

## WHERE IS YOUR MOTHER?

*A woman's fight to keep her child.*

BY RACHEL AVIV

On December 5, 2005, a three-year-old boy named Adam spent the morning in his crib, playing a handheld Spider-Man computer game and snacking on crackers. He began calling, "Mama help!" a phrase he used when he couldn't get his games to work. He repeated the phrase at least ten times, but his mother never came. He had been alone for ninety minutes when police officers arrived at the home, an oceanfront condominium in Huntington Beach, California. A fireman climbed a ladder to the second floor, where Adam's cries could be heard, and pushed open the window. Adam was standing in his crib, his blond hair falling just below his shoulders. A policeman on the ground shouted up to him, asking him where his mother was. "Shopping," he replied.

After being lifted out of his crib, Adam (a pseudonym) repeatedly said, "Find Mama," and tried to leave the apartment. When he patted his mother's bed, "a plume of dust came off the sheets," an officer observed. The officer wandered through the rooms, noting that some parts of the apartment were immaculate and others in disarray. The medicine cabinet contained bars of soap arranged by color, but there were rings of "black sludge" in the sink and the toilet. In the kitchen, there were eggs in a skillet, live flies on the ceiling, and dead ones on the floor. The refrigerator contained an egg carton that held mostly eggshells.

Adam was taken to Orangewood Children's Home, an emergency center for abused and neglected children. A social worker and a nurse found no signs of injury or mental impairment. He could recite his ABCs and count to a hundred. He was friendly and polite; when a nurse checked his diaper and found that it was wet, he said, "I'm sorry."

Adam's mother, Niveen Ismail, a computer consultant, returned at around 6 P.M. When she saw a police officer's card taped to her door, she assumed that her

apartment had been burglarized. A petite, striking thirty-nine-year-old with long dark-brown hair and a slight Arabic accent, she called the department and begged them to return her son. She was told to discuss the matter with the Orange County Social Services Agency, which removes roughly twelve hundred children from their homes every year, the majority for issues relating to neglect.

When a social worker came to investigate, Niveen was so shy that she seemed shifty. Although she was intellectually confident, she spoke softly, deflecting attention away from herself. She admitted that she was exhausted: she was single, overworked, and had few friends and no family in the United States. When asked about her family, she told the social worker, "I was born overseas." She wouldn't elaborate, saying that her past was her "secret."

At a hearing in juvenile court, a social worker testified that "there seems to be a great deal of mystery about the mother's circumstances." Niveen told a convoluted story about how she hadn't known that Adam would be home alone, because his father was supposed to babysit. She added that she was overwhelmed, having just returned to work full time. "The car broke down twice," she said. "The washing machine broke and flooded. . . . And he was sick. He had a cough forever, and he got two colds, and he was throwing up." The judge found her explanations implausible and insufficient. Until the reasons for her negligence were better understood, he said, "nothing less than twenty-four-hour surveillance would protect this child."

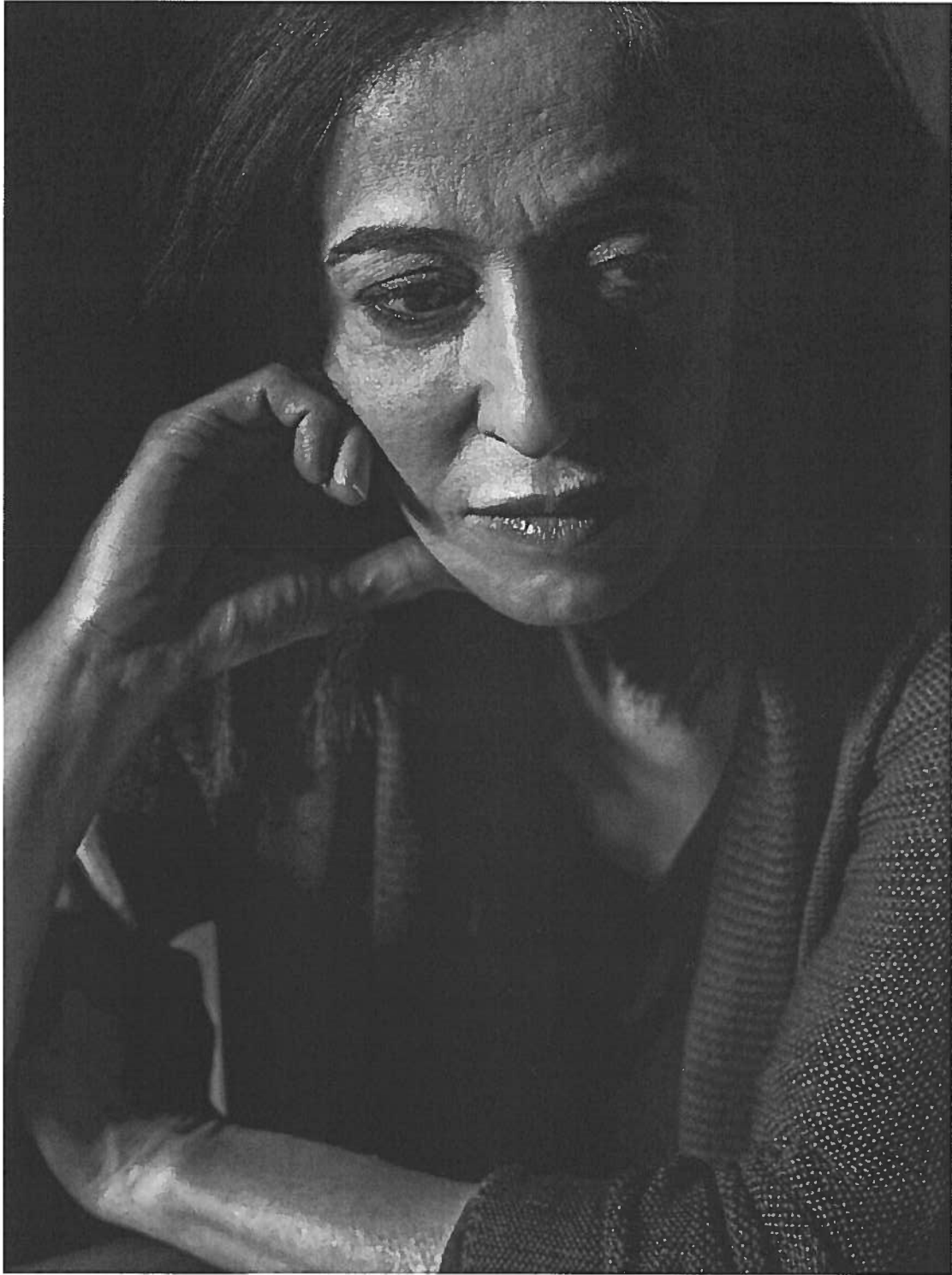
Adam was placed in the home of an elderly foster mother, who was caring for five other children. Niveen called the house at least once a day, but Adam was too young to say much more than "Love you, Mama, miss you, Mama, bye-bye," before dropping the phone. The so-

cial worker assigned to the case, Mary, observed that Adam was quiet and withdrawn in the presence of his foster family and became teary when anyone mentioned his mother.

Niveen was allowed to see Adam twice a week. They met for an hour and a half at the office of the Social Services Agency, which has a large visiting room with linoleum floors and cubbies of toys. Adam ran up to Niveen, smiling and shouting, "Mama!" Mary noted that "the mother was very affectionate toward the child giving him kisses, even when he told her to stop." They sang nursery rhymes, played hide-and-seek, and drew letters and shapes. Once, when Adam fell asleep on her lap, Niveen held him and cried silently. She told Mary that her workload was too heavy, and that on the day she left Adam alone she had reached a "breaking point."

A psychologist hired by the court concluded that Niveen's neglectful behavior was caused not by a mental illness but by "certain problematic personality characteristics." She repressed her emotions; she was defensive and isolated. On a lengthy personality test, she circled "True" after reading the statement "When I have a choice, I prefer to do things alone." The evaluator said that she needed to embrace her "softer emotions" and overcome the belief that "sympathy and tender feelings only distract and divert people from being correct and successful."

Niveen said that at visits she was forbidden from speaking Arabic with Adam, because the social workers needed to understand and document what she was saying. Her progress would be formally reviewed at hearings scheduled roughly every six months, and Mary's notes would be crucial evidence. If Niveen did not comply with her case plan and prove, within a year, that she was a responsible mother—she was required to attend therapy and parenting classes and to clean her



*Once Social Services started watching Niveen Ismail, the bar seemed to rise. She said, "You start questioning your own reality."*

PHOTOGRAPH BY MICHELE ASSELIN

THE NEW YORKER. DECEMBER 2, 2013 53



*"When portions are this huge, I eat half now and the rest in a few minutes."*

house—the court would begin the process of terminating her parental rights in order to free her son for adoption.

The director of the Orange County Social Services Agency, Michael L. Riley, said that most parents who become involved in the system "absolutely love their children." He describes the problem as a "three-headed monster: domestic violence, mental illness, and substance abuse," all exacerbated by poverty. Caseworkers, who are usually overworked and underpaid, must distinguish between mistreatment and parenting that is "good enough"—a subjective determination that is inevitably shaped by their own values and world view. Neglect is broadly defined, and its signs can be confused with poverty or a different culture's approach to child-rearing. The removal rates of counties around the country vary widely and tend to be swayed by the memory (or fear) of worst-case scenarios: social-service agencies most typically make the news because a child dies after being left with his birth family.

An Orange County elected supervisor, Todd Spitzer, said that the county's Social Services Agency, like many child-welfare

agencies, has made a choice to err "on the side of overreaction, because the alternative could be devastating." Social workers recognize that if they recommend returning a child to a deadly home "it will be a career ender," he said. "It will sully their reputations forever." They may choose a knowable tragedy, the separation of a parent and child, in order to prevent an unknowable one.

At visits, Adam repeatedly expressed confusion, asking, "Are you O.K., Mama?" Sometimes he told her he loved her and curled up next to her, or tried to follow her out of the office, refusing to let go of her hand; other times, when she asked for a kiss, he would turn his face away and say, "No!" Mary noted that Niveen did not "know how to handle the child's ambivalence."

After a couple of months, Adam developed a habit of hitting himself in the forehead. "Don't do that!" Niveen said, grabbing his hand. "Where do you learn these things?" Mary pulled Niveen aside and told her that she should "redirect" Adam to another activity, like coloring. Niveen listened with a "sigh and scowl." Mary described Niveen as forgetful and

depressed and noted that there is a "dynamic of the child bossing his mother around. He would tell his mother what to do and she would do it." "Prognosis for return is poor at this point," she wrote. She referred to another social worker who had been monitoring the case and stated that "she cannot put her finger on it, but that there is something different about the mother."

To comply with her case plan, Niveen enrolled in a parenting class offered by the county called "Living Success," where she studied selections from "The Parent's Handbook," which encourages a "democratic style" of parenting that "balances freedom, or rights, and limits, or responsibilities." Niveen tried to learn to "parent American style," she said. She worked to master three concepts: "boundaries, limits, and structure."

An only child, Niveen grew up in Kuwait City with Egyptian Muslim parents who rarely disciplined her. She felt that the best way to honor her father, a professor of psychology, was to get good grades. A childhood friend, Sarah Badran, described her as a "hardworking, shy, introverted person who minds her own business." She came to America to get a master's degree in computer engineering at Manhattan College, a school that initially appealed to her because of its name. Her father encouraged her to get a Ph.D., in part because her personality wasn't well suited to office life: her patience was limited when taking orders from people she found "fatheaded or sexist," she said. She enrolled at Southern Methodist University, in Dallas, but the direction of her studies (in visual modeling) felt increasingly obscure, and she dropped out of the program. She moved to California in 1994 and got a second master's degree, at Pepperdine, in international business.

Niveen didn't feel as comfortable there as she had in New York City, which she said embodied "real freedom": eccentricity was better tolerated, and it was easy to be anonymous. She tried to meet men in bars but found that she wasn't their type. She was mystified by the way other women "seem to have it all planned out." At thirty-five, after a brief relationship with a blond cameraman, she found she was pregnant. He urged her to get an abortion, explaining that he wasn't financially prepared to be

a father. But Niveen had always wanted a child, and she didn't know if she'd have another chance.

After giving birth, in July, 2002, Niveen extended her maternity leave three times and then decided to quit her job and live off her savings. She took Adam to Egypt for several weeks to visit her parents, who had retired to Sharm el-Sheikh. They doted on Adam, playing him all the songs that their daughter had loved as a child. They tried to persuade her to stay in Egypt, but Niveen had begun to crave the stimulation of work again. "My mind needed nourishment," she said. She returned to California in 2004, and spent a year looking for a new job, but few employers offered flexible hours. It wasn't until Adam turned three and entered a Montessori preschool that she returned to an office full time, working as a computer consultant for a garment company.

She was leading a small financial-operations team, and consultants were flying in every week from Connecticut to prepare for the launch of the company's software systems. She was so busy that she skipped one or two meals a day and her weight dropped below a hundred pounds. In the evenings, she didn't have time to do anything but feed Adam, bathe him, and prepare for the next day. Then she lay in bed, unable to sleep, rehearsing all the tasks that needed to be accomplished. She didn't have the energy to take out the trash, so she let it accumulate on the kitchen floor beside the garbage can.

In early December, Adam fell at school and his tooth came loose, making it painful to chew. She kept him home from school for several days so that she could feed him herself. On December 5th, the day that Adam was taken away, Niveen was about to call her boss and tell him she couldn't come to work, but she began to worry that she was sabotaging her career. She had already missed several days, and her boss had said, "With you it's always something." She played with Adam for half an hour that morning, teaching him how to use his new Spider-Man game. Then she imagined the way her boss would look at her the next time she came in, and felt suddenly ashamed. She got up, brushed her teeth, put some snacks in a ziplock bag, gave them to Adam, and left the house. "It was mechanical—I wasn't

thinking anymore," she said. "Things were upside down, but I kept everything to myself. I was just trying to survive."

Two months after Adam entered foster care, he fell and cut his face. A doctor examined the wound and spotted four small bruises on Adam's neck that looked like finger marks. The Social Services Agency suspected that his foster home was chaotic. They began looking for a new home for Adam, who was described as a "cute, talkative pleasant little boy," who was "sweet and mellow," "has a good memory," "attaches easily," and was "very adoptable."

At the end of March, 2006, Adam moved in with a "fost-adopt" family, which was prepared to adopt him if Niveen's rights were terminated. The couple, whom I'll call Rebecca and Steve Miller, had requested that their identities not be disclosed to Adam's birth mother. Three days passed before Niveen learned that Adam had been placed with new foster parents. The social workers seemed pleased with Adam's new placement. They noted how much better he looked with his new haircut and how "much nicer his lips appeared since they were not as chapped." He had his own room, stocked with toys and photographs, which he proudly showed the social worker, Mary. As she inspected his bedroom, Adam lay on the floor, "giggling excitedly."

Two weeks after moving in with the Millers, Adam showed up at a visit sobbing, refused to greet his mother, and threw himself on the floor. Niveen told Mary that he had never acted that way before. "He is changing," she said. At the end of the visit, he ran out of the visiting room, shouting "Mom!" as he collided with Rebecca. When Mary introduced the two women, they were silent. Eventually, Niveen said that she didn't feel comfortable that Adam was calling another woman Mom. Instead, she suggested "Auntie." Mary said that she understood the concern, but she wanted Adam to feel that he belonged in his new home.

At a visit a week later, Niveen read a picture book to Adam as he knelt on the floor beside her. He began hitting her legs and feet. "I'm mad at you," he said. Niveen asked him what he wanted, and he didn't respond. She continued reading to him, but he told her, "No, I don't want a book. . . . I'm mad at you." When she

grasped his hands and kissed him, he pulled away, hitting her legs. "I'm mad at you," he said again.

For most of the twentieth century, the primary task of the child-welfare system was to keep families intact. Policymakers assumed that parents' failures were due to social disadvantages, like poverty or lack of support, so agencies provided them with day care, counselling, and income assistance. Child abuse was rarely discussed by politicians or scholars. Then, in 1962, Henry Kempe, a pediatrician, and several colleagues published "The Battered-Child Syndrome," a paper that revealed, through the analysis of X-rays, that many young children had mysterious bone fractures and cranial injuries. The doctors wrote that "the bones tell a story the child is too young or too frightened to tell," and described the parents of these children as suffering from "some defect in character structure." The "battered child" became the subject of numerous news articles, and within a decade every state passed laws that required medical professionals to report children who showed possible signs of mistreatment.

In her history "Making an Issue of Child Abuse," Barbara Nelson, formerly the dean of the School of Public Affairs at U.C.L.A., wrote that politicians were far more willing to fund child-welfare legislation once mistreatment was seen as "a problem knowing no barriers of class, race, or culture." In the seventies, child abuse was reframed as an "all-American affliction": "individually rooted, described as an illness, and solvable by occasional doses of therapeutic conversation." The responsibility to look into all allegations of mistreatment soon overwhelmed the resources of child-welfare agencies. They largely cast aside their mission of easing child poverty and eventually began investigating the dysfunctions surrounding more than two million children a year. The interests of children were often pitted against those of their parents, who were treated as potential suspects.

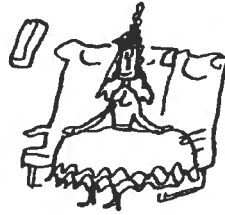
During the crack and AIDS epidemics of the eighties and nineties, around half a million children (nearly half of them black) were put in foster care, and many spent years being shuttled from one temporary home to the next. In an attempt to shorten the time they spent in limbo, the Adoption and Safe Families Act, passed

in 1997, placed strict limits on the time given to parents to prove their competence. The goal was to swiftly find new, permanent families for children whose parents were unable or unwilling to assume responsibility. The act gave financial rewards to states that raised their number of adoptions—up to six thousand dollars for every adoption that exceeded numbers from earlier years. By 2002, adoptions had increased by forty-two per cent.

In “Nobody’s Children” (1999), Elizabeth Bartholet, the director of the Child Advocacy Program at Harvard Law School, urged policymakers to “stop romanticizing ‘heritage.’” She wrote, “True parenting is defined more by social bonds than by blood.” Children who are severely neglected may experience cognitive delays and language deficits, disruptions in their body’s stress responses, and problems in their ability to interact with authorities and peers. Even the next generation may be damaged, since patterns of abuse and neglect often recur. She advocated expanding the use of adoption, even as she acknowledged that the most effective way to “stop the vicious cycle” would be social and economic reform. The role of race and class in child-welfare legislation, she wrote, is “rarely addressed honestly in a way that illuminates for onlookers their power.”

A formal review of Niveen’s case took place in a courtroom at the Lamoreaux Justice Center, in Orange, nine months after Adam had been taken away. In California, it is illegal for child-welfare agencies and attorneys to discuss individual cases, and the agency and the lawyers involved in Niveen’s case declined to speak about it on the record. The field of family law is treated as a kind of legal backwater lacking in prestige: the cases can be judged by commissioners (civil servants who have not been elected or appointed, as judges would be), and the hearings are brief and, in many states, sealed from the public. The cases are argued by attorneys representing at least three sides: the child, the parent, and the county. Since many children are too young to articulate their wishes, their lawyers, also called guardians *ad litem*, can advocate for whatever objective they believe represents the “best interests of the child,” a phrase that all the lawyers use to advance their positions.

The county’s attorney said that Niveen did not understand the needs of her child, struggled with time management, and had an unrealistic plan for their evenings—she wished to take Adam out for dinner, rather than cooking. “That may be what she wants to do but it may not be what a four-year-old child needs to do in the evening,” the attorney said. She also complained that Niveen “talks in vagaries rather than specifics, and I think with a child



you need to be able to understand specifics.”

Niveen’s lawyer acknowledged that she had come to the attention of social services for “very legitimate reasons,” but since then it had become “a case about clashing personalities, about odd clients, about different expectations, about different views of reality.”

On the witness stand, Niveen admitted that she hadn’t been up-front at the first hearing. It was she, not Adam’s father, who had left Adam alone. She was nervous, stumbling over her words, and she still struggled to articulate why she had “put work ahead of his safety.” “I was in a state of desperation,” she said.

To determine what Niveen had learned in parenting class, the county’s lawyer asked her to describe Adam’s developmental needs.

“He needs a mother,” Niveen said.

“I’m talking about during the visits. What does he need during the visits?”

“Well, it’s the same thing. That’s how I feel. That that’s what he needs, plus somebody to play with.”

The commissioner, Gary Vincent, didn’t think she was ready for custody. “The responsibility that she articulates is so tepid in relation to the gravity of what she did,” he said. He would allow her to have visits outside the offices of the Social Services Agency, but told her, “We’ve got to start scraping away this fog that’s around you.” He explained, “Your prob-

lem is you see but you don’t see clearly. You understand but you don’t really understand in depth.”

Niveen began seeing two psychologists. The first, who was paid for by the county, reported that during therapy sessions Niveen was argumentative and resistant. The second, whom Niveen hired, was an expert in the field of child custody, and she urged Niveen to be more open to feedback. “The way to ‘lose’ your case here is to complain and complain about how unfair the system is,” the psychologist, Leslie Drozd, wrote Niveen in an e-mail. “‘Winning’ is getting your child back and to do that, the formula is simple: Comply. Comply. Comply.”

Niveen was required to provide the agency with receipts for the antidepressants she had recently begun taking, verification of her attendance at Parents Anonymous, and pay stubs proving that she could afford the new apartment she was renting, in Newport Beach. When she couldn’t find recent pay stubs, a new social worker, named Rhea, expressed concern that Niveen had a “secretive nature.” Rhea acknowledged that Niveen’s new home was spotless, but she noted that Adam’s toys were “displayed in a very ‘staged’ manner,” and that Niveen did not “utilize any of the furniture herself.” The refrigerator contained only yogurt and pudding.

Once Niveen was under increased scrutiny of Social Services, the bar for being a “good enough” parent seemed to rise. The social workers took turns monitoring Niveen’s visits, compiling lengthy accounts of blunders: Niveen offered Adam too many toys to play with; she fed him a tuna sandwich while he was bowling; she let him sit on a slippery stool without noticing that he might fall off; and she failed to assemble a telescope before presenting it to him as a gift. She didn’t carry a purse, her pants were wrinkled, her hair was uncombed, and her sweater had rust-colored stains. Another social worker, who instructed Niveen to carry a “supermom bag,” containing water bottles and sunblock, wrote that Adam “pushes limits with her constantly. . . . It’s as if he literally is screaming at her to set some boundaries for him.” She chided Niveen for allowing Adam to swing a golf club in a park where other people were too close. “I have yet to observe Niveen talk to [Adam] in any way that helps him see the

big picture and raise his level of awareness.”

Niveen’s neighbor offered to videotape Adam’s visits so that the judge could witness the strength of their bond. In one long video, Niveen and Adam sat on the floor together, playing with a train set. Adam was affectionate and engrossed, occasionally shrieking with excitement. When they took a break for a snack, Niveen, who had been reading books on children’s nutrition, encouraged Adam to eat his cheese. “It’s good for your bones,” she said, brushing a strand of hair off his face. “It’s full of calcium.”

“Nah,” he said, picking up a hard-boiled egg. She offered to help him crack it, and he looked at her smiling. “I missed you,” he told her. “And Rebecca, too. I like both of you.”

After visits with Niveen, Rebecca reported, Adam was rude and defiant. He seemed like a “different child.” The Social Services Agency provided him with play therapy, behavioral coaching, dual therapy with Rebecca, and a new social worker, who concluded that he needed more predictability and structure. He was given the diagnosis “unspecified disturbance of childhood.”

Niveen began berating herself for her lack of judgment. “You start questioning your own reality,” she told me. Her lawyer waived the second review of her case, in February, 2007, so that she would have more time to demonstrate improvement in her parenting skills. She had recently hired a parenting coach, Valorie Christopherson, a former deputy sheriff, who shadowed her on visits. In reports submitted to the court, Christopherson discussed many of the same issues as the social workers—Niveen was too passive, deferential, and indulgent with her son—but these problems were presented as ordinary failings that could be overcome. Christopherson wrote that Adam was always excited to see Niveen and appeared to “thrive on the attention she gives him.”

When Niveen returned to court, eight months later, a new judge, James Marion, had been assigned to the case, and Adam had already been in foster care for more than eighteen months. Adam’s attorney and the county’s lawyer recommended that reunification services be discontinued, because Niveen had benefitted only minimally, and because too much time had passed—a reason commonly given as

grounds for termination of services. Three social workers said that Niveen had yet to learn to enforce limits with Adam. “The child tends to take over and wants to become the adult,” one said.

“What’s the detriment of that, besides becoming a narcissistic person?” Marion asked.

“He won’t have a concept of, of how to contain himself, how to—there’ll be poor impulse control.”

“And then?”

“Which will lead to more aggressive-type behaviors.”

“So what is going—what’s going to happen?”

“So he could become more agitated.”

Niveen, who cried through parts of the hearing, testified that she had spent months learning a more “authoritarian” method of parenting. “In the past, I used to be more of a permissive style, because, maybe, of the way I was brought up,” she said. She described her father as “very kind and gentle” and reluctant to take punitive measures. “You grow into your parents sometimes,” she said in a soft voice.

Marion acknowledged that in custody cases parents often feel as if the child-welfare agency were indiscriminately “piling on” criticisms. But he added that in this case all the social workers agreed that Niveen showed a “lack of judgment,”

which he illustrated with three incidents they had documented. First, she had allowed Adam to go alone into the men’s room of a restaurant. Second, when Adam was playing in a pool, he drifted into the deep end, and Niveen, who was sitting next to the pool fully dressed, had to ask another person to lead him to shallower water. Third, she had left him on the balcony of her apartment, which had a chair near the ledge, while she went inside to change her shoes. Although a social worker was on the balcony at the time, Niveen had failed to inform her that she was in charge of supervising Adam.

Marion said that the agency had proved that Niveen posed a risk to her son. “I’ve got to think about the little boy,” he told Niveen. “I don’t think it’s because of your lack of love. I don’t think it’s for a lack of trying. I just don’t think you can do it.”

For two years, Niveen had avoided conversations about her ethnic origins, but once her reunification services ended she petitioned the court to place Adam with a Muslim, Arabic-speaking family. Her request was supported with letters from the consulate general of Egypt in San Francisco and the civil-rights coordinator of the Council on American-Islamic Relations, who wrote that Adam’s current placement did not respect his “religion and



“Statins. I got statins. Who needs statins?”

cultural needs." At a hearing, her lawyer acknowledged that it would have been better if she had raised the issue earlier—the agency tries to make culturally sensitive placements when parents request it—but "she was concerned, I think, of some prejudice." "Imagine if we, as someone who might be Christian or Jewish, having to go to a Muslim country and then putting that out," he said. "I think we would all be afraid of some type of negative impact in a court proceeding."

The Judge denied the request, because, he said, it was not in Adam's best interests to sever his bond with the Millers. A few months later, in a long statement submitted to the court, Niveen wrote that because of her "cultural background" and "lack of likeability" she had alienated the social workers, who had expended their energy on "trying to find something strange about my behavior and lifestyle [rather] than on appreciat-

ing all the changes and progress I have made." She asked the Judge to imagine that he was Adam: "Having seen your mother's good intent, her extreme regret for what she had done, her tremendous hard work to get you back and prevent the past from repeating itself, would you want to be put up for adoption and never see your mother or feel her love again?"

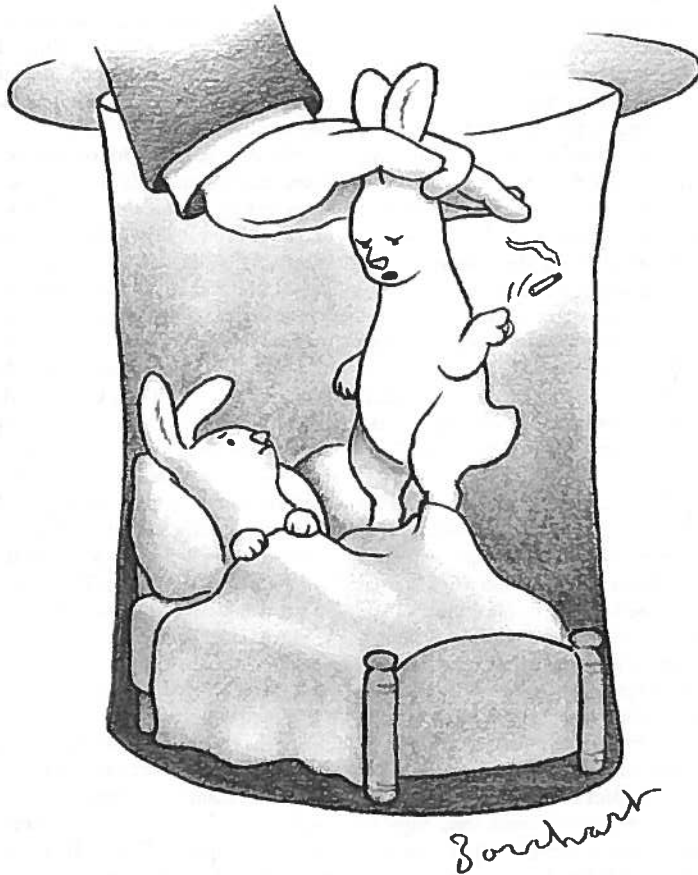
To be separated from a primary caregiver, however flawed, is a new trauma for an already vulnerable child. A study in *Development and Psychopathology*, after controlling for the effects of mistreatment, found that children in foster care have a weakened ability to regulate their emotions and impulses and to persevere when confronted with intellectual challenges; these behavioral problems were exacerbated when they were placed in a foster home with strangers rather than relatives. The adverse effects appeared to extend beyond childhood. An analysis in

the *American Economic Review* found that, when there was no significant difference in the level of neglect or abuse, children who had been placed in protective custody were more likely, later in life, to be arrested or unemployed than those who had received services in their homes.

Sacha Coupet, a professor of law at Loyola University Chicago, who used to work as a guardian *ad litem* and as a psychologist, worries that the Adoption and Safe Families Act, by promoting "adoption as the normative ideal," has made it easier to avoid "dealing with the enormously complex root causes of child neglect and abuse," which may have little to do with parenting skills. "There's this very American notion that mothers should be self-reliant, capable of taking care of their kids without any support, when that's just not the world we live in," she said. She finds that child-welfare agencies often "rush to get to the end of the story," creating a middle-class fairy tale: "a poor kid is rescued by the state, given a new mom and dad, and the slate is wiped clean."

Martin Guggenheim, a professor at New York University of Law, who represented children in court for more than a decade, believes that before long we will look back at the policy of "banishing children from their birth families" as a tragic social experiment. In a paper in the *Harvard Law Review*, he argued that "the use of coercive state power to redistribute children from their biological parents to others deemed by the state to be superior caregivers" should be restricted to rare and extreme cases, and resorted to only when less drastic measures had failed. The rights of Americans to "keep custody of children, and to control the details of raising them, are not accidentally or carelessly selected freedoms," he wrote. He said that the courts perpetuate a "legal fiction": the idea that "people in the courtroom can tell a young child, usually one of color, who he is related to and what community he belongs to."

At Niveen's final custody hearing, in July, 2008, her parental rights would be terminated unless she could meet the requirements for a "parental benefit exception": she had to prove that her bond with Adam was so strong that the advantages of continuing their relationship outweighed the benefits of his settling into a permanent home with an adoptive family.



"Sorry, angel—showtime!"

Niveen's psychologist, Leslie Drozd, submitted a letter to the Judge explaining that Niveen's social workers were suffering from a "confirmatory bias." She wrote, "The only data that has been collected and assimilated by the system has been that which confirms that a mother who could possibly abandon her child . . . is and shall permanently remain a 'bad' mother."

Jane Mak, a court-hired psychologist, performed a "bonding study" that assessed the strength of Adam's attachments. Her report drew on theories popularized by a 1973 psychoanalytic text, "Beyond the Best Interests of the Child," which, despite its narrow focus, has provided a conceptual framework for modern child-welfare legislation. The authors write that children's development is thwarted by "loyalty conflicts" and extended stretches of uncertainty. Once a child attaches to a foster caretaker, who becomes the "psychological parent," the state should be reluctant to dissolve that bond. After observing Adam in her office with both sets of parents, Mak concluded that Adam was in a "distressful limbo state." She wrote that Rebecca was his "primary psychological parent," and that their relationship was strong and healthy, but added that he was also attached to Niveen, with whom he felt the "shadow of a shared past." Mak warned that until Adam had a permanent family he would not be able to "attend to the tasks of being a child."

For the first time, Adam came to a hearing. He had just turned six and was missing a front tooth. His hair was nearly white from the sun. He spoke clearly and cheerfully, especially when describing field trips he took with his kindergarten class. His lawyer, Yana Kennedy, asked him, "If you could live anywhere in the whole wide world, where would you want to live?"

Adam cringed and ducked his head.

"What are you doing down there?" Kennedy asked.

"I need to put my shoes on."

"O.K. You said you like where you live, right?"

"Yeah."

"If you could live anywhere else in the whole wide world, where would you want to live?"

"I would live somewhere else."

"Somewhere else?"

"Yeah."

"Where?"

"I don't know."

The lawyer for the county tried a different tactic. "I think I read somewhere you wanted to live in Texas, is that right?" she asked Adam.

"Yeah."

"What's in Texas?"

"There's, like—I seriously want to live there."

"You seriously want to live there?"

"There's golfing, and I want to play golfing every day I go to Texas."

"I knew there was a good reason you wanted to live in Texas."

Niveen's lawyer tried to steer Adam closer to the question at hand.

"You said you wanted to live somewhere else. Would you want to live with Mama Niveen?"

"No."

"O.K. Now, do you want to continue to see Mama Niveen?"

"Yes, yes, yes."

"And so why do you want to keep seeing Mama Niveen?"

"Because."

"Because why?"

"Just because."

After Adam's testimony, Judge Marion commended Niveen for raising a son who appeared to be a "good kid." He told her, "I think that's a reflection on you, too, Ms. Ismail. So that's a good thing. So take that with you." He went on to say that "the clock has run out on Ms. Ismail, unfortunately." Using the language in the bonding study, he said that Adam's attachment to two families with different parenting styles was damaging to his "psychological integrity." He ordered that parental rights be terminated and that Adam be placed for adoption. He told Niveen, "We're freeing him to live as a child."

The next day, Niveen was granted a thirty-minute "goodbye visit." A social worker took photographs as Adam and Niveen, standing under a tree, hugged and kissed. Adam had been told in advance that it was their final visit. When Niveen began to talk about what had happened, he looked as if he were going to cry, and she dropped the subject. "He's not confrontational—he holds things in," Niveen said later. "I think it's genetics. He gets that from my side of the family."

Niveen had no more legal right to Adam than a stranger would have, and her requests for visitation were denied. The Millers had become hostile toward

Niveen after she walked to their beach house on Balboa Island, a vacation town less than a mile from her home, and interrogated a man who worked on their boat. She was looking for incriminating anecdotes, something that might derail the adoption. Later, when the Millers saw Niveen driving on their street, they filed a restraining order, which stipulated that she could not be within a hundred yards of their family.

Niveen reached out to other mothers whose children had become wards of the state, hoping to create some sort of advocacy organization. Some of them she met through Shawn McMillan, a lawyer who had recently won a \$4.9 million verdict against the Orange County Social Services Agency after two social workers were found to have fabricated allegations against a mother and suppressed exculpatory evidence. McMillan is attempting to file a class-action suit on behalf of parents whose children have been taken away without a warrant. He said that he frequently sees cases where the mother "jumps through all the hoops," but, in the meantime, the "child bonds with the new caregiver, and the agency says it's no longer in the child's best interest to go back to Mom."

Niveen began following other custody cases, reading hundreds of appeals decisions. She recognized that her education and financial stability set her apart from most single mothers who became involved in the child-welfare system, and felt emboldened as she learned about parents who had been scrutinized as much as she had. A recent unpublished decision by a California Court of Appeals admonished the Orange County Social Services Agency for a pattern of frivolous allegations. The court wrote that this causes "parents to suspect the system is prejudiced against them, and social workers will use any excuse they can think of—whether credible or not—to deprive them of the custody of their children. *It has to stop.*"

When Niveen had exhausted her legal remedies in California, she petitioned the United States Supreme Court, asserting that the low burden of proof at California custody hearings—a preponderance of evidence—allowed "subjectivity to infest the proceedings." Her petition was denied. A month later, she met with Robert Young, a private investigator, to



request help with her “backup plan.” According to Young, she was contemplating two courses of action: Plan A was to find “dirt” on the Millers, so that Adam could be placed with a new family, one that she hoped would grant her visitation. Plan B was to abduct her son. (Niveen said that she only discussed the notion of kidnaping abstractly, to express her frustration, and that it was never a plan.)

Young informed the Newport Beach Police Department that he had met with a mother who appeared to be on the verge of criminal activity. An officer contacted an Orange County social worker who knew Niveen and predicted that she would do anything to be reunited with Adam.

On December 4, 2009, Young met with Niveen a second time, in a small conference room in her apartment complex. He brought along a man he called his partner, Neal Schuster, actually a detective from the Newport Beach Police Department. Schuster, who secretly recorded the conversation, told Niveen that one of the reasons he wanted to help her was that “I’m not a fan of Social Services,” and it “sounds like you got a raw deal.” “I know that you guys discussed in the past two options,” he continued. “Which option do you want us to go with right now?”

Niveen, who was wearing flip-flops and yoga pants, said, “I mean, I’m torn—I think I’d like to try the first one.” She added, “I don’t want to lose track of him.”

Schuster warned her that it might be hard to catch the Millers doing anything illicit. “People that are foster parents are pretty cut and dry—they have to go through a series of background checks.”

“Well, I know there is nothing,” Niveen said.

“Um, so are you ready to move with Plan B, then?”

“I was hoping for A.” She suggested that maybe they could catch Adam’s adoptive father having an extramarital affair.

Young pointed out that men cheat on their wives every day, and “nobody cares.”

Niveen said that she liked the idea of taking Adam to another country, possibly somewhere in the Middle East, but she worried that she’d set off an AMBER Alert, which informs the public of missing children.

“The F.B.I. has far bigger problems right now than going after one mother

who took her biological son overseas,” Schuster assured her. He explained that if she had a current picture of Adam he could create a fake passport that would allow them to slip past customs.

“Well, if you think you can do it, that would be great,” Niveen said. She took him into the computer lab and e-mailed him a photograph of Adam posing for the camera with a sleepy smile. As they continued to discuss the details, she changed her mind, explaining that there was still a possibility that the Supreme Court would grant her petition for a rehearing. “Try to be creative about how we are going to do A,” she repeated. “I really would like to stay in this country.”

There were six officers surrounding the apartment complex. When Niveen walked out of the meeting, she was arrested and charged with solicitation to kidnap. She was taken to the Newport Beach Police Department, where she was interviewed by an officer named Helen Freeman, who told Niveen that she was a mother, too. “I can’t even imagine what it would be like to have my child taken away from me,” Freeman said. “It would be horrible, absolutely horrible. Is that kind of how you’re feeling now? Like, desperate?”

Niveen began crying, burrowing her face in a jail blanket that was wrapped around her shoulders. “I had bad news when they denied my petition,” Niveen said. “I had hopes.”

Freeman asked her if she thought that



her appeals would be successful, and Niveen, barely able to speak, said, “Just don’t remind me.”

Niveen spent three months in the Orange County Jail, in a unit for women charged with endangering children. Niveen said that one woman was having a drink at a bar when her five-year-old ran into the street, calling for her. Others had been arrested for exposing their children to drugs or for beating

them. Niveen spent much of her time reading “The Count of Monte Cristo,” which her new criminal lawyer, Ann Cunningham, sends to all of her imprisoned clients. When Cunningham met Niveen at the jail, she was struck by her intelligence and despair. Niveen reminded her of “a little injured bird.” Then she reviewed hundreds of photographs of Niveen and Adam and saw a different woman. “She was beaming and holding that baby with a look of pride that I never saw again,” Cunningham said.

By the time of Niveen’s criminal trial, in December, 2011, Adam had been with the Millers for almost twice as long as he had lived with his birth mother. On the witness stand, Rebecca Miller described Adam as an inquisitive and articulate nine-year-old. She said that she had grown afraid of Niveen, because of the “history that we have through the whole family-court system and beyond.”

The social worker who had assisted with the adoption, Julie Fulkerson, said that over time Niveen had become “more threatening in her tone and more urgent.” Until the adoption was finalized, Fulkerson had given Niveen updates on Adam, usually brief summaries of the sports he was playing. “Whenever I made a statement to the fact that he’s happy, he’s well cared for, to try and reassure her of the situation, she would become agitated and feel insulted or have an angry comment related to the adoptive family,” Fulkerson said.

The Newport Beach Police Department had done a forensic examination of Niveen’s computer, which showed that she had searched for cheap flights to Cairo, for an application for reissuing an Egyptian passport, and for instructions on “how to hack a Facebook account.” She had also taken notes on the Millers’ Facebook friends, dates of birth, and driving directions to their house. The prosecutor, Beth Costello, described her as a “busy little bee on the computers,” and said that the Internet search history revealed how the “defendant is unravelling.” She reminded the jury that the victim in the case was not Niveen—it was her son and his new family, who had “provided him the home that he deserves.”

Cunningham acknowledged that the Millers were “lovely people” who “wanted to do a wonderful thing.” Pointing to a poster-size photograph of Adam displayed

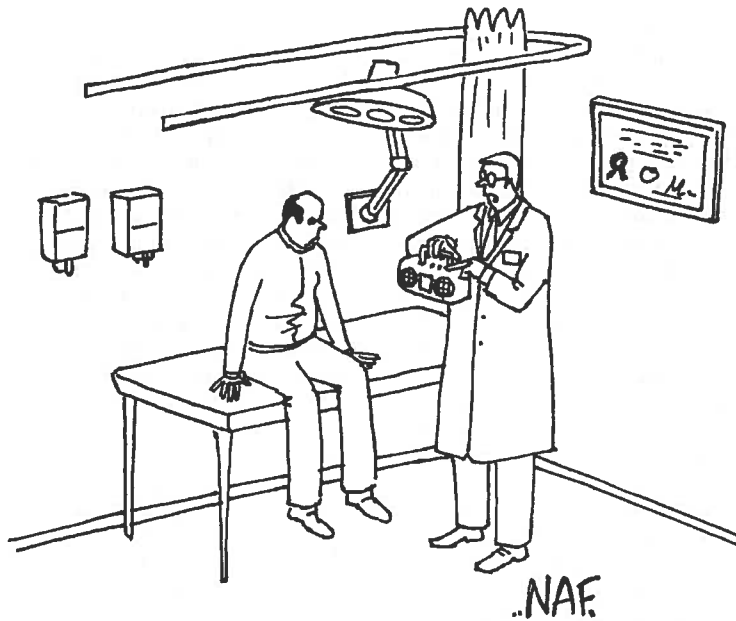
behind the witness stand, she drew attention to the manner in which the agency had determined that Adam and the Millers were a “match,” a term used frequently by the Social Services Agency. “Why was he a perfect ‘match?’” Cunningham said. “His hair matches [Rebecca Miller’s] hair. He looks very much like he could be her son.”

She told the jurors that the Newport Beach Police Department had entrapped Niveen by turning her fantasy into an actual plan. “You have a mother missing her child and these people are saying, no problem. We won’t be detected. We guarantee it. We’ll get him a passport. Clockwork. We do it all the time.” She reminded the jurors that this was Niveen’s first opportunity to have a trial with a high burden of proof. After spending six years in a court system with no jury, she said, “Niveen Ismail was tired of having the government make the decisions in her life.”

The jury found Niveen innocent. Niveen sold all her furniture and Adam’s toys and moved into an apartment near her office, where she designed software, a job she found shortly after being released from jail. The Social Services Agency asked Niveen to sign a form that would authorize the release of her contact information on Adam’s eighteenth birthday, but she refused, because she felt that it signalled acceptance. She was still working on a civil-rights suit against the agency, which asserted that a mother should have the “right to implement her own parenting style without undue influence or pressure by the government.” In an unsuccessful writ of habeas corpus, she quoted a 1996 California court decision that said, “The idea that . . . a parent who has faithfully attended required counseling and therapy sessions must still relinquish her child because she has not quite ‘internalized’ what she has been exposed to has an offensive, Orwellian odor.”

The last time Niveen saw Adam was three years ago. She was walking down an aisle at a grocery store near her house and heard her son’s voice. When she turned the corner, she saw him sitting in a shopping cart pushed by a woman she didn’t know. They were picking out refrigerated flowers. Niveen was still under a restraining order, so she quickly left the store.

A few months before, she’d had another unexpected encounter. She was standing on the boardwalk on Balboa Is-



*“Before I give you your results, I’m going to put on some very sad music.”*

land, looking out at the water, when she saw Rebecca Miller and Adam approaching. They had just got off a ferry and were coming down the boardwalk, holding hands. Niveen stood still and smiled at Adam, who appeared to be in the middle of telling a story. He was so close that she could have touched him. He looked in her direction but showed no sign of recognition. He and Rebecca kept walking, passing Niveen on their way home.

Almost five years after losing her parental rights, Niveen, who was forty-six, gave birth to a baby girl. She had been trying to get pregnant for more than a year. The child was smaller than Adam, kicked harder, and was more prone to tears. A hospital social worker came to Niveen’s bedside after being notified that she was a single mother and might need support. Niveen reluctantly answered all her questions, even those she found intrusive. She worried that she’d lose this child, too, but the social worker proved friendly and kind.

On a cool, overcast afternoon in March, a few weeks after giving birth, Niveen wrapped the baby in a blanket and took me on a tour of Balboa Island. Since moving

out of her old apartment, she rarely came back to the island. We walked around the Fun Zone, a children’s park with an arcade where she and Adam had spent hours playing video games that the social workers deemed too violent. Niveen paused periodically to tuck the blanket around her daughter’s feet or to kiss her forehead. When strangers exclaimed about the baby, Niveen, never one for small talk, smiled and kept walking.

She hadn’t spoken to Adam for almost five years. After their final visit, Adam had told his social worker that the next time he would see her was in Heaven. She pointed to the part of the beach where, years before, she had seen Adam swimming with friends. At the time, she’d informed Social Services that she saw him in the water without adult supervision. Niveen quoted the line “Coincidences are God’s way of remaining anonymous.” I asked her if it wouldn’t be easier to live somewhere else. Recently, her neighbor had suggested that she go back to Egypt to be with family. Niveen had never felt that she belonged in Orange County, but she said that she couldn’t move away now. “My life is here,” she said. “I’m not going to abandon my son.” ♦