

# Fathers and Sons: Some Effects of Prolonged Custody Litigation

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In all jurisdictions, for a variety of reasons, child custody and visitation issues may be reopened at any time. The children at issue, already likely to have been traumatized by problems in the parental marriage and subsequent separation and divorce, are affected further by still more litigation. The cases of three preadolescent boys who are the subjects of such prolonged litigation are presented. In each, the boys resided with their mothers as the primary custodial parents, the fathers having generally liberal rights of visitation. Regardless of which parent raised further court-related issues after the original agreements, the father-son relationship was most severely affected by continuing legal actions and related parental actions. Each child became increasingly fearful of the next anticipated visit by the father, who was cast into the role of villain by the child. Efforts to improve these damaged relationships through joint parent-child therapeutic attempts were largely of little avail. In spite of what may have been good experience with the person of the judge who dealt with earlier litigation, the children became fearful of what the next might be like or might do, viewing the judge as the person in power to whom parents and attorneys alike deferred. It is suggested that, wherever possible, prolonged litigation be avoided in the best interests of the child and of preserving necessary child-parent relationships.

The statement that children at issue usually end up the losers in child custody comes as no surprise to anyone working in the field. Less recognized is the possibility that, among other results of prolonged litigation, the noncustodial litigating parent may also end up the loser in psychologic if not financial fact. During the course of the past two years, I have had professional contact with three children, each involved in such prolonged litigation. Even acknowledging that three cases represents a very limited sample, the experience may be of interest to both psychiatrists and to lawyers.

Goldstein *et al.*<sup>1</sup> recommended that, because of a child's need for continuity in relationships, "As in adoption a custody decree should be final that is not subject to modification." To the best of my knowledge, no jurisdiction recognizes a custody decree as final. Given criteria appropriate for the jurisdiction, such a decree is almost always capable of being modified. This permits the possibility that questions of custody and visitation may remain open and subject to litigation until the age of the child at issue is such that his/her behavior or opinion may be determinative. Thus, although in the primary care of the custodial parent, the child may be subject to continuing day-to-day uncertainty re-

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garding his/her home, wishes, and feelings.

Each of the three cases to be described involves an only child, each a boy in late latency or early adolescence. Each has resided with his mother as the custodial parent. Each father has had visitation rights. Each family had become involved in prolonged litigation concerning custody or visitation or both over most of the years of the children's lives.

### Case 1

Alan A. was 10 when first seen in psychiatric consultation. His mother and father were of different ethnic backgrounds, a fact which would prove to be one of the sources of difficulty in their marriage: the boy's grandparents would disparage the pedigree of the mother's family consistently. As the boy grew, this occurred often in the hearing of the youngster.

This was not the only cause of the dissolution of the marriage. Alan's father became involved with another woman and flaunted that relationship before his wife. The couple divorced when Alan was young, with much ill will on both sides.

Custody arrangements did not seem to be a problem initially. The mother was the original custodial parent. The father had frequent access to his son. Parental rancor intensified as the years passed. Alan's father, according to accounts, began to use alcohol and other drugs to excess, often appearing to be intoxicated while at the home of the boy and his mother. Alan's mother would object to visitation under these circum-

stances, leading to the father's increasing rage. Mrs. A. obtained an Order of Protection from the court. Mr. A. began to demand increasing visitation privileges, litigating in attempts to modify the original arrangement.

Alan's visits with his father became more and more difficult for the boy. Alan started to complain and ask that he not be made to see his father. Mr. A. became convinced that this was at the urging of his ex-wife and again entered into litigation. By the time Alan was 9, he openly began to state his refusal to see his father under any circumstance and stated this more strongly after his father struck him. Following this, there was a series of telephone calls from Mr. A. in which the father would threaten to take Alan away from his mother, saying to the boy, "Then you'll never see her again." Alan became fearful of his father and became afraid of being kidnapped by him.

The court had father-child visitation supervised by a court officer in the courthouse proper. Even under these circumstances, Alan remained afraid of his father, eventually refusing to speak with him even in the presence of the court officer.

Alan, now 10, became more and more upset at the prospect of seeing his father at all. His academic work, which had been adequate, began to deteriorate. Mrs. A. sought psychiatric evaluation for him. Alan began treatment with me. He spoke in great detail of nightmares concerning his father. His appetite became impaired and he had recent weight loss. On formal examination, there was no

evidence of psychosis. During the course of once-weekly psychotherapy, his appetite returned, his nightmares disappeared, and his school work improved.

In this setting, Mr. A. again brought the custody and visitation matters before the court. By stipulation of counsel for both sides, the court arranged that I see Mr. A. and Alan individually and jointly in an effort to improve the relationship between them.

In my office, Alan remained obdurate regarding his wish that he not see his father. He refused all gifts from Mr. A. and was provocatively angry toward him, saying, "I hate you" and "I wish you would leave me alone."

Although no longer afraid of his father, he could not be budged from this stance in spite of statements made by his mother to him in Alan's presence and that of Mr. A. that she wanted the son to have a good relationship with his father.

I finally told all parties that we were making no progress and that Alan seemed to be getting still more entrenched in this position. I recommended to Mr. A. that he try to stay in touch with his son by mail, over time, with the hope that less difficult contact could develop. Mr. A. agreed. Within one year, he again brought the issue to the court.

The judge spoke with Alan, now 11, *in camera*. The result of this last attempt at litigation has been the loss of *all* visitation rights for Mr. A. In New York state, a judge may hear the preference of a child, but is not bound by the child's wishes. Apparently, the judge agreed

with Alan's belief that he would be better in not seeing his father.

## Case 2

Bob B. was referred for psychiatric evaluation following an episode of his being kidnapped from his custodial home by his father. The legal separation of his parents occurred when Bob was 2, marital difficulties having preceded Bob's birth. Visitation was part of the original separation agreement and was unchanged by the terms of the divorce. Mr. B. saw the boy at Mrs. B.'s home on weekends. When Bob was 4, his mother remarried, and Mr. B. began what was to become a thus-far endless series of litigated custody and visitation contests in two different jurisdictions. Not all of the cases were instituted by the father, some were begun by Mrs. B.

In psychiatric interview, Bob spoke of being sad at times, but he was not depressed clinically. He did speak of fear of his pet being taken away or dying, which I thought reflected some concern about his being taken away himself. This was within weeks of his return home after the kidnapping. I found no evidence of overt psychopathology in the youngster who seemed to have adapted well to the many changes in his life, and I made no recommendations for treatment.

I would see Bob from time to time at his mother's request because he became upset before each expected visit from his father. He said that he would like to see his father, but not if his father was going to take him away from home. He also wanted to be sure that he could return

home at a time of his own choosing if he became uncomfortable with Mr. B.

The court of one jurisdiction had acceded to Mr. B.'s request for modification of visitation, and this proved to be the impetus for still more litigation. Mr. B. became increasingly abusive verbally toward the former Mrs. B. and to her new husband, and asked Bob how he "could live with these people." When he said that he wanted to, his father accused the adults of "controlling" Bob. He subsequently kidnapped the boy a second time, taking him to the jurisdiction which presented the ruling most favorable to Mr. B., never allowing the boy to be alone. Bob escaped, was able to call home, and was brought back to the maternal home.

The custody and visitation disputes continued for most of Bob's life. He became upset before each anticipated battle, speaking of his fear that the court might order him to go with his father and disrupt his life. When last seen, he said that he still wanted to see his father, but not until he was much bigger so that he would be free to come and go without fear.

Attempts to have me work with Bob and Mr. B. together were rejected by the father who apparently saw me as "tainted." He did agree to see another professional in like manner, but Bob now refused.

### Case 3

Charlie C. was 9 when first seen in psychiatric consultation. Adopted, the marriage of his adoptive parents dissolved within the first year of his life.

The parents had separated a few years before the divorce became final. His mother was designated the custodial parent, and Mr. C. had regular visitation under both separation and divorce arrangements. While Charlie was an infant, most visits were held in the maternal home. Later, he would go with his father to the home shared by Mr. C. and the paternal grandparents.

By the time Charlie was 4, Mr. C. apparently began to ridicule the boy, referring to him as a "sissy" and expressed his opinion that Charlie not be brought up in a household of women. Charlie's mother lived with her mother. Mr. C. entered into litigation repeatedly because of his wish to revise custodial, visitation, and financial arrangements, with a general lack of success. By the time the boy was 7, Charlie began to pull away from his father. He became afraid of visits with him and started to cry before each expected visit. He did not want to go to his father's home, and again the case appeared before a court.

At 9, following an enforced visit with his father, he "passed out." General medical and neurologic examinations were negative, and he was referred to me for psychiatric evaluation. Additional history indicated that in the preceding year Charlie had begun to be irritable and angry at home and in school. He would get into fights with other children and would fall asleep during the school day.

I began working with Charlie in intensive psychotherapy. Over the course of a year all symptoms disappeared, including the fear of his father as his own

feelings of mastery and competence emerged.

I met with Mr. C. during Charlie's treatment and suggested that he not visit the boy until there was improvement in his emotional state. Mr. C. agreed, but litigated the custody and visitation again before the year was out. As in Case 1, by stipulation, I worked with Charlie and his father in an attempt to improve that relationship. There was, in fact, some improvement in this, but Charlie would go with his father only from the safety of my office and only for 20 minutes at a time. As in Case 1, I suggested that Mr. C. begin a correspondence with Charlie. This was done. The two continue to write to each other but the boy's wish is that he still not see his father. Copies of the letters forwarded to me, however, suggest that a somewhat better relationship is developing. Mr. C. called me once to ask for my psychiatric opinion about litigating once again, but accepted my view that this might be destructive to the fragile relationship that was emerging.

### Comment

In each of these three situations, the mother was the custodial parent and the fathers had access to their sons during the early years of the boys' lives. Over time, for a variety of reasons, attempts were made to modify visitation or to change the custody arrangements. These included the remarriage of the mother with a subsequent major move of the new family; increasing resentment of the ex-spouse; quarrels concerning financial

arrangements; attempts to "get even"; and the belief that the father could raise a son better than could the mother. Most often the father initiated legal action, but at times the custodial mother brought suit.

In each situation, the boys became increasingly estranged from their fathers. Each became fearful of the men. The fear focused on concerns that they would be taken away from their mothers, and, in fact, these fears reflected statements actually made by two of the three fathers. On the surface, the mothers of all three boys spoke of their wishes that their sons develop a good relationship with their fathers. Sometimes this wish was largely unmixed, but each mother said that she did not want her son afraid of his father. Of the boys, only one was openly angry and vitriolic toward his father. The other two were emotionally distant from the adult men.

Each child blamed his father for the unpleasantness of the relationship between father and son as well as that between father and mother. In spite of the knowledge that, at times, it was the mother who might initiate a court fight, the fathers were cast as the villains of the works.

Each child was concerned about the figure of the "The Judge." On occasions, they met with the judges sitting at the time and always *in camera*. None spoke of being afraid of the judges they had seen, but all expressed the fear that they did not know what the *next* judge might do. Since parents and attorneys alike spoke of the functions of the judges in terms underscoring the power of the ju-

dicial roles, the boys also saw the judges as powerful and as unpredictable.

### Discussion

In recent years, articles regarding father-child relationships have appeared with greater frequency in both the legal and the psychiatric literatures. Derdeyn<sup>2</sup> presented an overview of the history of custody contests in which he traced the primacy of the father in such contests from Roman times to the recent past, stating that, "In 18th century England, the father's right to custody was almost without limit," and "The right of the father remained superior to that of the mother throughout the last century." Derdeyn<sup>2</sup> pointed to the economic source of these views and commented on the movement toward consideration of the emotional needs of the child. This last led to the development of the "Tender Years" doctrine and other bases of awarding custody to the mother. With increasing understanding of more needs of children and the rise of the women's movements, the psychologic and emotional needs of children for fathers has received greater attention than had been the case previously.

My views of some aspects of child-parent relationships in development may be seen in the following way. In the early childhood years, for both sexes, the mother is the major figure. The father fills a "buffering" function within the family, i.e., he is a second adult to whom the child may appeal if there is conflict with the mother. He may comfort the child, temper or diffuse an issue, or support the mother's views as is appropriate.

As the children reach adolescence, the father becomes the predominant figure for both boys and girls, the mother serving this buffering function in the intact family.

It is a truism to state that for optimum development a child is better off with an emotionally healthy father and mother than with any other arrangement. Fathers are clearly important in child development, but in the cases of children of divorce both psychiatry and the law must come to some determination of the "best interests of the child."

Biller<sup>3</sup> points out that, "It is important to emphasize that father absence *per se* does not necessarily lead to developmental deficits and/or render the father-absent child inferior in psychological functioning relative to a father-present child. . . . For example, there is evidence that children with competent mothers are less likely to have certain types of developmental deficits than are children with a domineering mother and a passive, ineffectual father. The father-absent child may develop a more flexible image of adult men and may attempt to seek out some type of father surrogate, whereas the child who has an ineffectual and/or rejecting father may have a very negative image of adult males and avoid interacting with them."

Nonetheless, as the child of either sex approaches adolescence, the presence of a good father is more desirable than would be his absence. One outcome of the continued litigation described here is the tragedy of the loss of the father to the adolescent-to-be as well as that of the emotional loss of the child to the parent.

Why the extended traumas of the sort that Goldzband<sup>4</sup> calls "The Ugliest Litigation?" My experience echoes that of Wallerstein and Kelly<sup>5</sup> in that "10 to 15 percent of divorcing parents [who] take their struggles over children to the court. . . . The adversary proceeding sharpens and consolidates the parents' differences, and once it was initiated, compromise, flexibility, and civilized exchange are neither valued nor possible. . . . The desperate need to salvage shattered self-esteem and wreak vengeance on the offending spouse was most often an underlying motive for such battles. . . . There is also much evidence that such custody and visitation struggles, usually requiring several years to settle in court, have no end."

For a variety of reasons, courts are unwilling or unable to implement the suggestion of Freud *et al.*<sup>1</sup> that custody be resolved once and for all in the best interests of the child. This form of litigation is often dependent on the evaluation of one parent and the children. As the authors of the APA Task Force on Clinical Assessment in Child Custody<sup>6</sup> point out, "In many instances, the most constructive role for the consultant is to help *amenable* parents come to a decision for themselves. In this process, the psychiatrist may lead the parents to a cooperative model of conflict resolution which may help smooth the future developmental path of their children." (Emphasis added.) As do others, I look upon this role as ideal, but one which is rarely possible under the circumstances of prolonged and repeated litigation. Indeed, sometimes the only way in which the psychiatrist can be of help to the

court is by the one-parent-and-children evaluation route. The Task Force Report underscores this idea in the comment that, "The one-parent consultation presents a challenge to the psychiatrist, but psychiatrists should not reject this type of consultation out of hand. An evaluation of a child and only one parent, despite its limitations, may allow the consultant to provide the court with useful information."

It is to be hoped that an end to such battles might be sought *before* endless litigation. Then, the psychiatrist or other mental health professional may lend expertise to helping the parties and their children toward preserving the needed aspects of parent-child relationships, even in the face of difficult divorces. Perhaps the awareness that with the passage of time even lengthy psychotherapeutic work with parent and child may have very limited use will be of aid in avoiding the unhappiness and emotional disorder resulting from endless, ugly litigation.

### References

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