

Meeting a Training Need: An Interdisciplinary Seminar of Family Law and Child Psychiatry*

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Introduction

This paper is a report of a seminar designed to provide residents and fellows with courtroom experience and a working knowledge of domestic relations legal procedures. The need for such training has been recognized for some time and is growing. For example, in a national survey, McDermott (1975) found that practicing child psychiatrists, as well as those in training, felt that their preparation for understanding both the legal system and their role in the judicial process was most limited. This lack was particularly evident in the development of skills relating to custody determination cases.

The use of psychiatrists in legal and judicial matters involving children has increased dramatically. This fact is in part due to the steady rise in divorce over the past several years, particularly in cases involving minor children. Over one million children in 1975 were estimated to be involved in divorce proceedings, in contrast to 840,000 in 1969 and 431,000 in 1960. With increasing attention being paid to the impact of divorce on children (Cohen, 1976; Freud *et al.*, 1973; Wallerstein, 1974, 1975), both judges and attorneys are using psychiatric testimony in custody cases more frequently than in the past.

In response to this training need, an interdisciplinary seminar/workshop was developed late in 1974 by a University of Oregon Health Sciences Center child psychiatry faculty member and a professor of family law and trial practice at Lewis and Clark Law School (Portland, Oregon).

Two seminars were offered, in the spring of 1975 and the winter of 1976. The first one was six weeks long; the second was expanded to nine weeks with each session being two hours long. The latter seminar is emphasized in this presentation. Nineteen participated in both seminars, including child psychiatry fellows, general psychiatry residents, pediatricians, and junior child psychiatry faculty members. This paper focuses on the residents' and fellows' responses to the seminars. Both training efforts were evaluated using

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a pre/post-testing procedure.

The remainder of this paper discusses the objectives for the seminar, its content, and the value of such training as perceived by the participating residents and fellows. The final section is a summary description of the videotape used when this paper was presented at the Annual Meeting of the Academy of Child Psychiatrists in Toronto.

The Seminar: Objectives

Training objectives focused on providing the seminar participants with a practical understanding

1. of the legal and judicial process, specifically domestic relations disputes as they relate to children;
2. of philosophical differences between law and psychiatry and the manner in which these differences emerge in the judicial process;
3. of the manner in which psychiatric testimony is used in resolving domestic relations issues specifically — child custody, foster care, termination of parental rights, adoption, and child abuse;
4. of experience as expert witnesses in a simulated court experience dealing with a domestic relations matter involving children.

Content

The training activity (Appendix A) was structured so that all the material, including the court experience, could be presented in nine two-hour sessions. The basic knowledge material (objectives 1-3) was presented first so that the trainees could use the information to prepare for their simulated court appearance (objective 4). The first six sessions were devoted to this preparation. The material was delivered in a straightforward lecture/discussion format. The lectures were augmented by a series of readings, each of which was distributed one week prior to presentation and discussion of the scheduled topic.

The sessions were organized to proceed from an overview of the judicial system down to a micro-view of courtroom behavior. For example, the first session was devoted to a discussion of the sources of law and the structure of the legal system. The last session focused on the specific questions that a child psychiatrist might be asked when testifying in a child custody dispute.

Major goals during the sessions were to demystify the legal process and to familiarize the residents with courtroom language. In effect, the “legalese” was decoded by defining and using it. The residents were asked to read articles written by lawyers and actual appellate case opinions written by judges on the issue of custody. The residents also read cases and legal treatises on the subject of the doctor-patient privilege and its application in court. These readings were discussed, analyzed and criticized in class.

The nature of the adversary model and the training of attorneys in law school were examined. Lawyers are trained in an adversary role, and taught to question and challenge. In contrast, psychiatrists are taught to sharpen their affective awareness in order to understand their patients' problems. Lawyers are hired to win — physicians to heal. Therefore, it is not enough for psychiatrists who testify to know their subject; they also must be able to acclimate to the courtroom setting without becoming overtly defensive or

hostile.

Several features distinguished this seminar from a traditional forensic psychiatry approach. First, an emphasis was placed on the process, as well as on the legal substance. Secondly, a court setting was simulated, and lastly, the course was restricted to cases involving children (custody, termination, adoption and foster care cases). In contrast, most forensic psychiatry courses focus on professional liability (not practice), criminal prosecutions, mental commitment and personal injury cases in which the state squares off against an individual adult, or an individual seeks compensation from another. Child custody cases are much more complex and less clearly understood. There are multiple interests contending against one another in a child custody case: parent vs. parent vs. child vs. the state's interest vs. third parties, *i.e.*, grandparents, foster parents or friends. The conflicts can become geometrically complex.

The judge must ultimately decide which of the competing positions is most persuasive or valid. Physicians usually are called by one of the contending parties to help persuade the judge as to the outcome. Thus, a psychiatrist's position will be subject to the test of cross-examination, and may or may not be persuasive as the judge formulates a decision.

In order to help the judge decide – or, more crassly, to be more persuasive – psychiatrists must be familiar with applicable judicial criteria or standards. They must know how the law is perceived regarding the meaning of a child's best interests, what the rights of the parents are, what the judicial test is, and how the judge views his or her role in the process. Psychiatrists must learn the difference between the therapeutic model, which necessarily focuses on the singular interests of a given patient, and the judicial model, which balances and weighs one party's needs against those of competing parties, and the present and future needs of the society as a whole. A judge's role is, in part, to effectuate long-term policy, or rules of law, as it might affect behavior of other adults toward other children and toward one another.

Finally, courtroom devices (“the tricks of the trade”) frequently used by lawyers to weaken the weight of a psychiatrist's testimony were discussed. Strategies were provided to achieve persuasive credibility without compromising the trainees' integrity when they are called upon to testify in court.

Each trainee, in the sixth session, was assigned a role as an expert in a case to be tried in a realistic mock court setting. The case selected was one ideal for teaching purposes. It was modeled on a recently completed case which the instructors had, in part, observed in the trial court. The case involved a custody dispute incident to a marital dissolution between the natural parents of a two-year-old boy.

The father, a medical intern, had physical custody following an extended hospitalization of the mother while she recovered from a suicide attempt in which she incurred head injuries. It was disputed whether the head injuries had resulted in chronic brain damage. The wife contended that the paternal grandmother was the actual custodian of the child and that the grandmother and the child's father were now obstructing and had always obstructed her maternal role with the child. It appeared that the grandparents on each side had a significant interest in the case and were financing it.

In the actual case, no less than nine psychiatrists and psychologists had been called to testify both as to the fitness of each parent and as to the psychological competence of the mother (she had been and continued to be under psychiatric care throughout the duration of the court hearing). The experts who had testified in the trial court included both local and national authorities in adult/child psychiatry and suicide. The entire proceeding had been recorded and preserved in the form of a typed transcript for use in appealing the case to the Oregon Court of Appeals and the Oregon Supreme Court.

Each trainee was given a written description of the case, along with the actual transcribed testimony of the psychiatrist or psychologist the trainee was to portray in the simulated court presentation. Testimony given on cross-examination was not distributed, so that the trainees could undergo this aspect of testifying without clues that might dilute this important part of the training experience.

To make the experience as realistic as possible, four practicing attorneys skilled in domestic relations trial work were assigned to represent the parties. The attorneys were paired to present the case in each of the two sessions devoted to the court experience. One of the attorneys had actually represented the mother in the trial and appeal of the case.

To create an appropriate atmosphere, the sessions were held in the law school's courtroom. A court reporter and a bailiff were in attendance. To further simulate the public atmosphere of courtrooms, third-year law students were invited to attend the hearings. Finally, both sessions were videotaped to allow the trainees to observe their own performances as well as those of their colleagues.

The ninth and last session was a general discussion with the attorneys, a psychiatrist experienced in giving court testimony, who had testified in the earlier case, and a third-year law student. This session was a "give and take" discussion, with the attorney and the trainees reviewing their performances and sharing their thoughts and attitudes about various aspects of the relationship between law and psychiatry. This session also was videotaped, and along with the simulated trial court tapes, was reviewed and edited.

Evaluation

The trainees were asked to complete an assessment of the seminar before and after its completion. A pre-test, given before the first session, included 20 true/false/don't know statements about basic family law, a request for information about the trainees' academic and experiential preparation for testifying in court, and a request for an estimate of what they expected to learn as a result of the seminar.

The trainees completed similar evaluations after the seminar was completed. The same 20 questions about family law were included in reverse order. An evaluation of the seminar was requested, particularly focusing on their satisfaction with the course structure, the lecture and reading material, and the court experience. In addition, suggestions for improving the seminar were requested.

Table I presents some information regarding the extent to which the trainees' basic knowledge of family law improved during the seminar. Judged

by the 20 true/false/don't know questions, participants in both seminars substantially increased their understanding of family law information presented and discussed in the lectures. Understanding was particularly improved about issues dealing with custody, no-fault divorce, foster care, adoption, and the concept of the best interest of the child. Termination of parental rights and the conflict between parental rights and children's rights appeared less clearly understood. It should be noted that those trainees taking the second seminar appeared to have a more comprehensive grasp of basic family law than those involved in the first effort.

The difference in comprehension occurred primarily because the first seminar was less firmly organized than the second and did not provide as much time for lectures and discussion of the legal framework of domestic relations disputes. The overall increase in basic knowledge about family law matters also was probably a function of the trainees' basic lack of familiarity with legal and judicial material.

The trainees' perception of their academic and experiential preparation for court involvement parallels the survey findings reported by McDermott (1975). For example, 12 of 16 trainees indicated they had taken no relevant courses, seminars and/or workshops during their residency, with one fellow having taken a forensic psychiatric rotation during his adult residency. Of the remaining three trainees, one had audited a law and psychiatry seminar offered at a law school, and the other two had been involved in brief legal workshops offered by a community mental health agency. It is interesting to note that notwithstanding minimal academic preparation for testifying in court, nine of the 12 trainees have been called to testify at least one time, with three indicating at least three court appearances.

The trainees were most interested in practical information about custody, parental rights, children's rights, and their own rights with regard to the patient/doctor relationship. The court experience was unanimously expected to be the most important and meaningful part of the training. They anticipated that the "court" experience would provide them with the best opportunity to learn how to testify in a manner that would be responsive to their obligations to the court and to the best interest of their patient(s). In addition, the trainees indicated in the pre-test that they felt the court experience would provide them with a perspective from which much of their antipathy towards the legal and judicial system could be resolved.

The post-test comments indicated much satisfaction with the training activity, particularly the comments from those who were involved in the second seminar. It should be pointed out that the first seminar was in a sense a "trial run." In fact, the comments by those involved in the first effort were used to reorganize the structure of the seminar described in this paper.

In summarizing the seminar evaluations, it was clear that the material presented to the trainees in the lectures and the opportunity to participate in a simulated court experience were perceived to be meaningful and relevant to their training as adult and child psychiatrists. All of the participants felt that such training should be an integral part of their residency curriculum. Their enthusiasm and interest was evident throughout the seminar, particularly as they prepared for their "day in court." Their comments upon and criticism of the seminar formats, particularly those responses to the first

seminar, were constructive and helpful to the instructors in formulating and improving the seminar.

Videotape Summary

Videotaping the court experience and discussion periods of the seminar has provided a graphic demonstration of the trainees' response to the course content. The tape* was edited to show two trainees testifying on opposing sides responding to both direct and cross-examination. They were examined relative to their expert opinions regarding psychiatric diagnosis and the comparative fitness of each parent as the custodial parent. Portions of the discussion seminar were included to show the interaction among the trainees, attorneys, and faculty reflective of the participants' attitudes about their experience and the value of such training for psychiatrists. In particular, the comments by the trainees on their anxiety about defending their psychiatric opinions under cross-examination illustrate the value of the simulated court appearance. The usefulness of comments by the attorneys upon the trainees' court performances as well as the importance of such an experience is presented clearly.

The response to this kind of training activity has been most favorable among the physicians and lawyers who have heard the seminar described and have seen the videotape presentation, including those in attendance at the presentation given at the 1976 Annual Meeting of the American Academy of Child Psychiatrists in Toronto.

The concept and format of this interdisciplinary seminar are straightforward and practical. It easily could be replicated and used in any psychiatric residency program. The experience of the instructors, residents and fellows who participated indicate that the seminar met an important training need.

TABLE I
IMPROVEMENT IN KNOWLEDGE ABOUT FAMILY LAW
AFTER COMPLETION OF SEMINARS

	Response to Post-Test						Total Number of Information Statements	
	Better Than Pre-Test		Same As Pre-Test		Worse Than Pre-Test		#	%
	#	%	#	%	#	%	#	%
(N=10) First Seminar	12	60.0	3	15.0	5	25.0	20	100.0
(N=6) Second Seminar	15	75.0	2	10.0	3	15.0	20	100.0

*Available upon request.

APPENDIX A
FAMILY LAW SEMINAR OUTLINE

Wednesday 1-3 p.m.
Jay Folbert, J.D.
Stanley Cohen, Ph.D.

- 1/7/76 Overview Court System
Pre-Test
- 1/14/76 Anatomy of Family Law Dispute
Readings for 1/21/76
A. Freud, J. Goldstein & A. Solnit, BEYOND THE BEST INTERESTS OF THE CHILD (1973).
Statutory Criteria for Custody Decision, ORS 107, 137.
Tingen v. Tingen, 351 Ore. 458, 446 P.2d 185 (1968) (Child Custody in Divorce)
"Contested Divorces and Children: A Challenge for the Forensic Psychiatrist," reprinted from LEGAL MEDICINE ANNUAL (Cyril H. Wecht, Series Editor) (1973).
Freed and Foster, "The Shuffled Child and Divorce Court," 10 TRIAL MAGAZINE, May/June, 1974, at 26.
- 1/21/76 Applicable Standards for Dealing with Custody –
"Best Interests of the Child" vs. "Parental Rights"
Dissolution (Divorce)
Readings for 1/28/76
Rosenberg, "The Right to a Sound Mind," 10 TRIAL MAGAZINE, May/June, 1974, at 36.
Juvenile Court Proceedings, ORS 419.472-990.
In re Gault, 387 U.S. 1, 387 S. Ct. 1428 (1967) (Rights of Juveniles).
Geiser, "The Shuffled Child and Foster Care," 10 TRIAL MAGAZINE, May/June, 1974, at 27.
- 1/28/76 Applicable Standards for Dealing with Custody –
Foster Care, Adoption, Juvenile Court
Readings for 2/4/76
G. Haugen, THE PSYCHIATRIST AS A WITNESS, Chapter 3 (1966) (About Lawyers and Courts for Psychiatrists).
H. Liebenson & J. Wepman, THE PSYCHOLOGIST AS A WITNESS, Chapter 9 (1964) (Appearance in Court).
McCormick, ON EVIDENCE, Chapter 11 (2d ed. 1972).
State ex rel. Juv. Dept. of Clatsop County v. Martin, 19 Ore. App. 28, 526 P.2d 647 (1974) (Doctor (psychiatric) Patient Privilege in Parental Termination).
Bazelon, "Psychiatrists and the Adversary Process," 230 SCIENTIFIC AMERICAN, June, 1974, at 18.
"Qualifying a Psychiatrist to Testify" – Handout (Folberg).
- 2/4/76 Court Room Testimony – Adversary Setting
Role of Psychiatric Testimony
Qualification of "Expert Opinion"
Readings for 2/11/76
H. Liebenson & J. Wepman, THE PSYCHOLOGIST AS A WITNESS, Chapter 10 (1964) (Direct Examination).
H. Liebenson & J. Wepman, THE PSYCHOLOGIST AS A WITNESS, Chapter 11 (1964) (Cross Examination).
B. Diamond & D. Louisell, "The Psychiatrist as an Expert Witness: Some Ruminations and Speculations," 63 MICH. L. REV. 1335 (June 1965).
- 2/11/76 Court Room Testimony (continued) – Assignment to Roles in Simulated Court Experiences
Direct Examination
Cross Examination
"Tricks of the Trade"
- 2/25/76 Court Experience – Lewis & Clark College
- 3/3/76 Court Experience – Lewis & Clark College
- 3/10/76 Followup Summary with Attorneys and Psychiatrists
Post-Test

Bibliography

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- McDermott JF: Certification of the child psychiatrist: What is special about the specialist? *Journal of the American Academy of Child Psychiatry* 14:196-203, Spring 1975
- Wallerstein JS and Kelley JB: The effects of parental divorce: Experience of school child. *Journal of the American Academy of Child Psychiatry* 14:600-616, Fall 1975
- Wallerstein JS and Kelley JB: The effects of parental divorce: The adolescent experience, in Anthony EJ and Koupernik C (Eds.): *The Child and His Family at Psychiatric Risk* (Vol. 3). New York, John Wiley & Sons, 1974