

## The Crisis of Custody: How A Psychiatrist Can Be of Help

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The title of my presentation emphasizes the word *crisis*. And indeed, child custody problems are human crises. A family unit is breaking up and each member, in his/her individual way, feels the pain. The law attempts to solve this crisis by "making a decision." It puts an official seal on some judgment, and then will "wash its hands" of the case because "it has been decided." And who is left? Those same people, those adults and children who now must live out their crisis are now on their own. They must abide by the Court's decision and go on struggling with its decision . . . at least until the next order to show cause, and then the cycle begins again.

Actually, most families get through this crisis of custody on their own, abiding by the decision of the court, and, with time and as the kids grow up, things work out. The wise judge did a good job after all! No psychiatrist was needed. However, there are difficult crisis cases in which a behavioral scientist can be of great assistance to the court and to the members of the crumbling family.

My comments are directed at those cases, the tough ones, the families in real crisis, and to *how* a psychiatrist may be of help. These comments will be presented in two parts. First, I will outline a step-by-step process which I have found useful in gathering data from the family and in presenting my opinions to the court. Second, I will comment on some of the types of data I look for during the evaluation. First, process; second, content.

I can vividly remember the introduction to my child psychiatry rotation as a third year resident. "Remember . . . Thou shalt not get involved with any family where child custody is the issue." "Advocacy," "testimony," "deposition," were terms whispered, not spoken. And indeed, I believed that only a psychiatric fool would enter into this dreaded area. However, I had an opportunity to study and work for a year at the UCLA "Post-Divorce Clinic," under the direction of Doctor John M. Suarez. There, we lunged into these delicate and difficult problems, and I learned the step-by-step process of how to be useful to both the court and the family. Although it is hard work, I find that involvement in custody problems is not as difficult as I had believed. Here are the steps I have found useful.

### Step I: Getting Set

Before one enters the custody arena, some headwork needs to be done. A psychiatrist or any behavioral scientist not only must have an understanding of the legal machinery and the specific steps in dissolution of a marriage, but, most critically, he must have a gut level understanding of what advocacy is about. We are trained to be helpful, kind and empathetic in decision making, not to be harsh and, at times, cruel, like some individuals encountered in court. After some thinking and understanding of what advocacy is, we must decide, "Advocacy of whom?" My belief is that we can truly be effective only as an advocate of the *child* or *children* in question. I think it folly to believe that by becoming an advocate of either parent we are helping to resolve the crisis. We only fan the flames.

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Tactically, by taking the stance of child advocate we are on firm footing because no one ever questions our stance of "Well, we're here to try to find out what is really best for the child." Assuming the role of child advocate, we can support the child, become a friend of the court and stay out of siding with either parent or his/her attorney. Finally, we should set some ground rules regarding from whom we will take referrals. To maintain the child advocate stance, these referrals best come directly from the court or from *both* attorneys. They should never come via the request of one parent or one attorney.

The typical situation, however, is being called by one side to do the evaluation. When we accept such a case, although our stance is to "do what is in the best interest of the child," we are, in fact, lining up squarely on one side or the other. We are advocates of a parent and not of the child. Our report is then "used" for one side or the other, and frequently we wind up in court testifying to our findings. Again, it is my belief, and I re-emphasize this point very strongly, that the family, specifically the child or children, and the court can best be served by behavioral scientists if we insist in each case that the referral come directly from the judge or commissioner or from *both* of the attorneys who jointly ask the court to order the evaluation. If only one attorney asks for the evaluation or if the court does not order it directly, then I simply refuse the case. At times, a three-way telephone conversation with the attorneys is helpful. For example, if one attorney contacts me and asks for the examination, I state my ground rules. Then I suggest that together we discuss this with the other attorney. I present my qualifications and give a sample of how I hope to proceed, and, in the usual case, they jointly agree to continue and they ask the court's permission to do so. If our initial step or stance as psychiatrists is not one of child advocacy, then I feel that we shall lose much of our effectiveness in the eyes of the court. We thereupon set ourselves up tactically for many problems as we proceed.

## Step II: Gathering Data

Information about the family comes from several sources. Before seeing the individuals in clinical interviews, I attempt to gather ancillary materials. These include old medical and psychiatric records, pertinent legal documents, school records, and any previous psychological tests. These documents usually can be obtained from the attorneys.

The initial set of interviews is with each of the natural parents, alone. Each interview lasts 1 to 1½ hours and has two purposes. First, I must find out exactly what each parent wants, why, and what information each gives that supports his/her desire for custody. Second, I must size up each parent as an individual via a view of his/her own present and past personal history. Tactically, during these initial interviews it is important to make very explicit my role as child advocate. Certainly, the parent will try to be seen in the best of lights, and usually each either actively or passively downgrades the other contesting partner. The entire decision-making process, including who made the referral, what I know about them, and what I plan to do, is discussed openly.

Closely following the initial interviews with the parents, I will see the child or children. I emphasize to the parents that I am not going to "grill" the kids, and usually will not even ask them what their preference is. My interview with the child is usually a half hour of talking about friends, fantasies, school, favorite stories, wishes, etc. However, we get serious at times, and we talk about difficulties children have when a family splits up. Of particular importance is the emphasis on the facts that the court will make a decision, that Mommy and Daddy will abide by it, and that someone for sure will take care of them. In families where there are several children, I usually do a joint interview. This makes for an interesting clinical look at family support systems, and I think it allows the children to discuss their thoughts and fears a bit more openly.

Perhaps the most critical element of the data collection phase comes next when I meet with the natural parents together. Typically, I will ask for two to three sessions, and in

most cases they are willing. I make certain they understand my motive, that is, "We're here to try to find out what's best for the kids." I stress, "We're *not* here to try to salvage your marriage." These sessions are frequently stormy at the outset, as many of the unresolved problems between the parents are brought out. I try to emphasize the concept of people taking the responsibility for their own lives, of making their own decisions and not simply allowing the courts to do this for them. Sometimes this works. People do come to many decisions during such sessions, at times even the basic decision of who is to get custody.

The final part of the data-gathering step is to obtain information from extended family members, and perhaps to ask for psychological testing. I may interview a new spouse of one of the parents, a school teacher, a probation officer or even a neighbor. These may be individual sessions or a group session with both parents and children present.

### **Step III: Evaluation of Data**

If the collection of the data is done by one individual, the process of evaluation is one of simply reviewing all of the data available, and coming to a decision. My preference is to do this with a team of two or three. One person might do the individual sessions and work with the parents, one might see the children, and another perhaps do psychological testing, if it is necessary. Three professional heads together, in my opinion, come to better decisions than does one.

### **Step IV: Presentation of Data**

I prepare a report addressed to the court. In it, I outline the questions initially posed to me and spell out what I actually did; that is, I relate whom and how long I interviewed. I also include a short sample of the clinical evaluations, that is, a brief mental status examination of each member. Finally, I make my recommendations to the judge as to whom I think should be given custody. I frequently determine that one or several members of the family need counseling or therapy, and I will state this, too, in a report, and include a specific referral to a therapist or to an agency able to handle the problem.

When the report is ready, I call both attorneys into my office, together, to go over the case, to go over my report, and to review my recommendations. This step I feel is critically important if one truly is to help resolve the crisis. I see the attorneys for several reasons. One is to emphasize their roles as "helping agents" in the resolution of this crisis. In my experience, attorneys do not like to see themselves as "helpers," although, in fact, what they say and do can have much therapeutic value in crisis resolution. During the interview with the attorneys, I reiterate my basic child advocate stance. I present each with a copy of the report and then proceed to go through the process I have completed, finally justifying my decision. I try to do this emphasizing that there is no need to "try the case" in my office and, as always, being very explicit about how and why I came to my decision. This step is very delicate. Perhaps it is the most difficult to learn when one starts becoming familiar with the process I have described above. Attorneys have been trained differently from psychiatrists, and their stances in custody issues are different from ours. Yet, we all have a common goal of resolving this problem at hand and doing what is in the best interest of the children. Many attorneys have little knowledge of how a psychiatric examination is done and what a behavioral scientist can do in these difficult situations. I have found it helpful to be able to sit back in my own territory and to explain what I have done and how and why I have reached my decision. The slower pace and the setting of my office are much more conducive to discussion and to understanding than is the courtroom during direct and cross-examination. The majority of the feedback that I receive from attorneys about this session is positive.

A word of warning, though, to the psychiatrists who do this work. You have to be

sharp and professional and, above all, you must have well-documented examples from your examinations to back up your decision as to who is to have custody. The attorneys will not stand for sloppy work or wishy-washy, undocumented decisions. Of special interest is the fact that I am rarely called into court to testify when I have gone through this procedure. Once the interview with the attorneys is complete, the original report is forwarded to the court.

### **Step V: Follow-Up**

Unlike the legal process, we have seen ourselves intervening in a crisis which may not end with the decision as to who is to get custody. Follow-up is very important to insure that the work we have done in crisis resolution is carried out after the legal decision has been made. This follow-up frequently is a "booster shot" session with the parents in six weeks, perhaps then repeated in six months. Follow-up also occurs by referring the individuals to other therapists or agencies and making sure that these referrals are, in fact, accomplished.

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The process has been described — the step-by-step approach. Now we must turn to some content issues.

Each family is unique in its collective personality. Thus, to generalize about what type of information should be gathered is not truly valid. Each family and each custody problem dictates what specific data are necessary. However, there are several general themes which I have observed and keep in mind during my data collection, and they follow here.

#### **(1) Anybody here have mental illness?**

Custody cases are generally easy to determine when one of the contesting parents is grossly mentally ill, that is, psychotic. However, we must be on the lookout for more insidious psychopathology, for example, the hidden alcoholic or drug abuser, or the paranoid personality. This is not to say that problems of this sort automatically mean that custody goes to the other parent. What it does mean is that we must look very closely at impaired family members and their day-by-day lifestyles, and we must determine how a particular lifestyle could relate to the child's growth and development.

#### **(2) Wanting the children for the wrong reason**

I pay particular attention to *how* the parent speaks about the child. What is the quality of the language that the parent uses? Does he or she refer to the child as *it*, or rather in a warmer, personal, humanistic manner? Frequently I see a parent who really does not want his/her child *per se*, but who really wants something else. This may be a reduction in support payments. It might mask an attempt to regain the old house, or perhaps just to win the battle with the former spouse. I believe there are right reasons and wrong reasons for wanting custody.

#### **(3) Dumpers versus Dumpees**

When a marriage ends, the typical pattern is that one of the spouses is the dumper and one the dumpee. One wants out more than the other, and it is usually the dumper who files for the divorce. It is of particular interest that when one looks at these two, it is the dumpee who expresses the most pain verbally and non-verbally, for example, via the facial expression of hurt, slumping shoulders, or a dragging gait. Frequently children want to go with the dumpee parent to "help to ease the pain." They sometimes even verbalize, "I'm strong and I will help Mommy or Daddy to take away the hurt." Children do not see

that the dumper usually also hurts just as much, but he/she talks about it less intensely and shows it in a less hurting manner. For children to want to go with the dumpee is to go for the wrong reason, and it is not infrequent that the dumpee uses this stance either consciously or unconsciously to achieve custody.

**(4) Beware: The teenage daughter who wants to go with Daddy**

People who study and write about adolescents comment on the attachment the teenager has for the opposite parent. Many times teenage girls now “have won the battle with Mother” for Daddy, and when the split comes they may become “Daddy’s new girl.” Ah, childhood fantasies! One must be sure that this is not the primary motivating factor for the pre-adolescent or adolescent girl who expresses a strong desire to go with Dad.

Another slant to this problem is seen with the mother who wants to keep the adolescent boy “to have a man around the house,” or the father who wants his teenage daughter “for company.” Again, we must be cautious and thorough in our evaluation to make sure that the individual wants the child for the “right” reasons. Seduction *can* be subtle at times.

**(5) Get the kids out of the middle**

One of the goals of the joint interview is to point out to the parents how they get the children caught in the middle in the arguments and battles that are really their own. For example, when, during a visitation, Father tells Johnny to call Mother to tell her, “We’re going to be late,” guess who hears the angry outburst from Mother? Parents generally respond well when taught how to fight fairly, to communicate explicitly and to relieve the child of the pressure of the middle.

**(6) What do you tell the kids?**

Another goal of the joint interviews is to teach the parents how to talk to their children about the separation and divorce. This holds true for any custody battle, even if it is the fifteenth time the same parents have been back to court. Three statements by the parents to the children are helpful:

(a) “No matter what happens in court, one of us will be here to take care of you. One of us will be with you to cook for you, to take care of your clothes, to make sure that you are cared for, etc.”

(b) “It’s not your fault that we’re separating. It’s problems that we have had between us.”

(c) “We want to hear your opinions about where you would like to go. We think you have that privilege. However, it’s the court who will make the final decision, not you.” To let the children think that they are responsible for this decision is to force them to please one parent and to feel guilty about abandoning the other, a win-lose proposition. This suggestion applies especially to pre-adolescent children.

Finally, I frequently recommend to parents that they buy Dr. Richard A. Gardner’s Book, *The Boy’s and Girl’s Book About Divorce*. This will give them further clues as to how to deal with their children.

**(7) And who is going to pay the bill?**

This issue must be determined at the time of the initial referral and included in the court order. There are a variety of avenues of payment. The actual cost is determined by the complexity of the case, that is, by the total number of clinical hours spent. In private practice, the total fee typically runs between \$300.00 and \$400.00. At times, the court helps directly to pick up some of the bill, third party payments via medical insurance may help, or payment may come directly from the contesting partners. An alternative is to initiate a sliding scale for low income families, and in clinics which have grant money this

form of payment is a reality. The price may seem high to the family, but when it is presented in terms of an "insurance policy" to prevent future court and attorney fees, the individuals generally understand and agree. If it appears that collecting the fee will be a problem, some "up front" money may be asked for prior to the time that the report is sent to the court.

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In summation, the crisis of custody is a true human crisis, and we enter this arena as helpers. We help the court come to some specific decisions, and we help the family during the process of our interviews to come to a resolution of their specific problems. The process is difficult and time-consuming, but, by and large, it is very rewarding. I have outlined a step-by-step approach which includes phases of getting ready, data collecting, data evaluation, data presentation, and follow-up. I also have presented a few basic themes and concerns regarding the content of the specific data which enable me to come to some decision. It is my experience and hope that if one is willing to take the time to develop a step-by-step procedure, and if one has some general knowledge of legal procedure as well as family dynamics, involvement in custody problems need not be a "thou shalt not."