

CHILD CUSTODY

The Ugliest Litigation

A Symposium for Attorneys and Psychiatrists

Sponsored by

The San Diego County Bar Association
The San Diego Psychiatric Society
The Department of Psychiatry, School of Medicine,
University of California, San Diego

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Editor's Foreword

During the May, 1975, APA meeting at Anaheim, California, Doctors Ames Robey and Robert Sadoff participated in a mock child custody trial. The entire presentation had originally been planned by Doctor Dennis Koson. At the time, Doctor Koson was completing his fellowship in Forensic Psychiatry at the University of Pennsylvania under Doctor Sadoff. He was to become Director of Training at the Forensic Sciences Center at Ann Arbor, where Doctor Robey was Chief. The mock trial met with considerable success at the APA annual meeting, and subsequently the three doctors met with me and discussed the possibility of presenting it again. From that informal discussion stemmed the ideas developing into the Symposium presented in San Diego, California, on January 17th, 1976, "Child Custody: The Ugliest Litigation."

Child custody is, indeed, the ugliest of litigations. It is also the litigation most likely to be handled poorly by judges, attorneys, and psychiatrists. Forensic psychiatrists have worked long and hard in dealing with the criminal law and the penal system, and they are now working hard in the area of negligence and compensation law. Family law, to use a contradiction in terms, has been a comparative orphan, although I recall the shock and dismay resulting from the appearance and review at a meeting of AAPL of Freud's and Solnit's "Beyond the Best Interests of the Child."

My research was admittedly not exhaustive, but I was unable to find that any similar symposium or teach-in had ever been held. Shortly after the announcement of this symposium appeared, an all-day child custody seminar for attorneys was held in Orange County, California, during which judges, attorneys, and probation officers spoke. However, the idea of a session on this topic in which a specified pre-mix of lawyers and psychiatrists was mandatory was nowhere previously noted.

The Department of Psychiatry at UCSD Medical School offered enthusiastic backing, as did the San Diego Psychiatric Society. The latter also offered its executive secretary, offices, and mailing addresses, for which all the participants and spectators are very grateful. Presenting concepts in the interface between law and psychiatry to mixed groups of lawyers and psychiatrists had resulted in excellent teaching discussions previously in San Diego. As Chairman of the local District Branch Task Force on Relations with the Courts, I had organized an experimental series of sessions held in the Superior Courts. The lawyers expressed greater interest in a day-long or weekend seminar than in an ongoing series of evening sessions. Their comments and suggestions led to the adopted format. It

must be assumed that their ideas were valid because of the success of this symposium. The San Diego County Bar Association also provided co-sponsorship, and this was especially appropriate because the Committee with whom I worked in order to plan the Symposium were all Bar Association members. John Lightner, a very experienced trial lawyer with a special interest in family law, and Judge Byron F. Lindsley, a Superior Court Judge who developed the conciliation court system in San Diego, not only served on the planning committee but also participated in the Symposium as speakers. The third member of the Committee, James M. Gattey, is a San Diego attorney who has worked diligently with the California Bar's *Continuing Education for the Bar* programs. I am very grateful for their help, their creative ideas and their encouragement. The response of the more than 120 attorneys and psychiatrists from all over Southern California who registered was most enthusiastic. There was considerable participation by most of them in the small group discussions following the morning talks, and the interest shown by everyone during the afternoon's mock trial was also very tightly focused.

Now, I am grateful not only to the Committee but also to Doctor Herb Thomas, the Editor of the *AAPL Bulletin*. His encouragement was also very helpful, and his agreement to provide a printed forum for the presentations of the Symposium is most appreciated. Isolated articles about specific issues relevant to custody matters have appeared in many journals, but the what-to-do-and-how-to-do-it approach characteristic of the psychiatrists' papers here appears to be unique. All of us who worked on the Symposium hope that the material presented here will provide practical guidelines so badly needed. The viewpoints of a potent advocate-attorney are also specifically helpful to any psychiatrist participating in any courtroom procedure, and Mr. Lightner's comments provide considerable education in that area.

The original stimulus for the entire Symposium, the mock trial, represents its most novel aspect, at least insofar as the psychiatrists were concerned. The transcript of the trial printed here presents a remarkable teaching instrument for any forensic psychiatrist, and for those psychiatrists who work hard at not being forensic psychiatrists. The *AAPL Bulletin* is to be especially commended for allowing its readers to peruse the mock trial. Insofar as the transcript itself is concerned, it must be pointed out that some editing was done. The editing, however, was almost exclusively restricted to the asides, those portions in which the participants addressed themselves to the audience and explained their roles or motivations at the time. The editing was done solely to make those specific teaching aids as clear as possible. Very little was done to the actual testimonial portion because the flavor of the experts and their inquisitors needed to be preserved. On occasion, however, some condensing was done, or a *little* polishing of the language. The material needed to be made as readable as possible, instead of simply listenable.

Doctor Dennis Koson privately refers to the mock trial as his "dog and pony show." Modesty, of course, is a laudable trait, but in this case is grossly misapplied. Doctor Koson and his two psychiatric colleagues, and the Messrs. Wasser and Rosten, had prepared this demonstration in considerable detail for the APA meeting in May, 1975, and they reviewed and altered some of it for this Symposium eight months later. Its success is a tribute to all of them, but especially to Doctor Koson, who was able to stick to his major purpose of illuminating the process of testifying in court. He was not specifically interested in demonstrating legal processes or tactics except insofar as they reflected upon the processes associated with the witness-stand behavior of his two experts. Likewise, the content of the testimony was seen by him to be secondary to the presentation of it. As Doctor Koson states, "... It is for this reason that I have insisted, against great pressure from attorneys, on having two psychiatrists as different as Bob and Ames. Each has a different philosophical and ethical approach to the problems surrounding being an expert witness. I intended by this mock trial to demonstrate these differences in style and philosophy, and to stimulate the kind of interest that would expose this issue to the scrutiny of others in our field..." All those who attended the

mock trial in San Diego on January 17th, 1976, would agree that Doctor Koson's direction was Oscar-worthy; he succeeded in his goals.

Judge Byron F. Lindsley's agreement to serve as the judge in the mock trial also provided a liberal education for all the psychiatrists and attorneys who attended. Unfortunately, at Anaheim, a lawyer was drafted into the role of judge, and the pace, accent, and outcome of the trial were markedly different. Judge Lindsley's contributions and remarkable comments serve well to illustrate some of the reasons that he had been chosen by the California Trial Lawyer's Association as Trial Judge of the Year for 1975. Doctor Sadoff appropriately described him as a "Judge with judgment." His presence served to cap a day-long Symposium which provided considerable knowledge and marked stimulation to those who attended and participated. The Committee for the Symposium and the three sponsoring organizations are pleased and grateful to share it with the readers of the *AAPL Bulletin*.

MELVIN G. GOLDZBAND, M.D.
Clinical Assistant Professor
Department of Psychiatry
School of Medicine, UCSD
San Diego