

Commentary: Religiously Enlightened Consultation for Child Custody Disputes

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Dr. Goldzband has a well-earned reputation for advocating that forensic psychiatric experts who consult in child custody disputes arising during divorce proceedings do their work with unabashed allegiance to the children's welfare. This is his emphasis regardless of who has engaged the consultant, and he links it to the goal of arriving at an agreement without going to court. As his title suggests, dealing with religious issues often poses a significant challenge to success in this endeavor.¹ His experience suggests that recent cultural trends favoring the spread of religious adherence have increased the importance of being knowledgeable about the major religions to success as a child-advocating forensic expert.

Doubtless some respectable practitioners take either partial or total exception to Goldzband's child-centered approach. They would still have a need for the information he offers, since consultants are regularly expected to address in some detail the different outcomes likely for the children under alternative possible decisions; and, as he does not fail to point out, the effects of custody arrangements on the children are likely to be long-lasting.

A serious difficulty is immediately apparent, because one who has gained expertise in forensic and (usually) child psychiatry is not likely to also develop and maintain significant expertise in the beliefs of every religion encountered among the parties to very many custody disputes. Fortunately, as Goldzband suggests, there is much that one should and can

readily do to competently incorporate sufficient religious knowledge into this work. First, start with a well-chosen set of faith groups. Second, develop some understanding of issues and principles that apply across most or all religions.

Although not everyone will agree, the four religions that Goldzband selects (Catholicism, Mormonism, Judaism, Islam) do provide a reasonable starting point. He bases his choices on a combination of the relative sizes and growth rates of different groups within the United States with apparent differences among them regarding emphasis placed on divorce and custody. He also makes a reasonable effort to note when his observations have some application to groups closely related to the four he has selected. Finally, much of the discussion is by no means limited to a particular faith group.

Some Universal Issues

Among themes applying across the four religious belief groups, that of homosexuality is important enough to receive separate treatment. In a significant number of cases, there is a potential amplifying effect of homosexual issues on religious ones that may impose needless difficulty on visitation negotiations and related issues critical to the children's welfare. The psychiatric expert with some sensitivity to the religious concerns that Goldzband outlines is likely to be able to apply his or her expertise with the skill necessary to accomplish the maximum benefit, or at least to diminish some of the unavoidable suffering.

Chief among other global themes is that of pastoral counselors and clergy rushing to identify one di-

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vorcing party as wronged (in a moral sense) and to see their duty as lying exclusively or at least more heavily with supporting the "wronged" party's needs and wishes. In order to be effective on almost any terms, the psychiatric expert witness must ferret out this rather common tendency and attempt to assess its potential impact on the negotiations and legal proceedings.

With important variations, all faith groups share a strong stance against the occurrence of divorce itself. They tend to impose a requirement that spouses attempt to find remedies, including both religious and secular counseling, for their failing marriages. There are preparatory requirements and even specific calls for assessments before the ceremony of marriage is permitted. Goldzband includes fascinating descriptions of procedures for reconciliation available in Islam and Judaism. Experts can expect to be called upon at different stages of the reconciliation attempt in the evolving divorce process. Often, every opportunity for reconciliation will be exhausted. But the consultant who identifies that a possibility of reconciliation remains viable will be able to appreciate its possible covert effects, along with more obvious ones, as well as any potential for its success. Although not specifically mentioned by Goldzband, the potential value of a reconciliation attempt appears implicit in his account and worth considering, especially in cases marked by religious overtones.

Regardless of the particular denomination or sect involved, a person's religious feelings may bring out emotional vulnerabilities, with adverse impact on his or her role in the negotiation process. For example, an adult might be so guilt-ridden or a child so fearful as to compromise competency to participate appropriately for their roles in custody negotiations. Surely, a forensic psychiatric expert is particularly qualified to observe and evaluate this possibility, but only if the appropriate index of suspicion is present. When an important area of competency is found wanting, it is the duty of the expert to insure that the situation is resolved lest the outcome prove to be unjust.

Specific Suggestions

Goldzband's suggestion that the psychiatric expert witness consider what clergy have to say is certainly well taken. I would emphasize it to the point of urging that the expert explicitly undertake to identify and seek out any clergy person who may be influenc-

ing any of the parties involved, including the children. This includes clergy who are working out of church-related agencies but separately from places of worship, and may even include professional pastoral psychotherapists in solo practice or in practice with an agency outside the religious sector.² The consultant needs to understand not only what the influence of the clergy person might be on the positions the parties are taking but also the goals they are pursuing and their potential impact on outcome, broadly considered.

As Goldzband also suggests, the consultant should delve deeply into what the parties themselves profess to believe. Varying degrees of intensity will have to be taken into account within the same faith, and content will differ both within and across denominational lines. In some situations, there may be questions about the parties' consistency over time or even of their veracity. Since control over their children is at stake, some will try to lie about various issues, including their own religious beliefs. Indeed, the combination of such a lie's potentially powerful influence and its low risk of being discovered might render this temptation quite irresistible for some individuals. Once again, Goldzband's point needs to be extended somewhat. Similarly, since decision-shaping beliefs in areas usually seen as touching only on religion (values, for example) can have a strong impact,³ I submit that the consultant needs to include them, as well, in the examination of divorcing spouses.

Another suggestion is that although he does not state it explicitly, some of the little-known aspects of Islamic religious/cultural customs that Goldzband describes are important enough to constitute warnings for the consultant to give directly to the secular divorce court. These include especially the tendency for recent women immigrants to respond with extreme isolation to their experience of being uprooted, even keeping their children home from school to assuage their own loneliness. Further, the paper includes a detailed list covering nearly four pages of Islamic legal provisions that the expert would do well to ponder, considering how they may apply to any given case. Finally, the tendency of fathers to renege on their support obligations while mothers remain silent for religious as well as psychological reasons also exists as a more universal concern to which consultants should not be blind. Recognizing that Islamic law's hidden provisions may have significant

import for all parties,⁴ the expert has the challenging task of discerning which particular details require the court's attention. A particularly striking example is that the expert may need to prompt the court to ask whether any of the children have already been promised in marriage.

Some Disagreements

Despite what Dr. Goldzband states in the course of discussing Mormon issues, it is not the case that excommunication is irreversible in other faiths. In particular, there is a set of nine provisions in Roman Catholic canon law covering the cessation of penalties, found under Title VI of Book VI, Part I. It is crucial for the consultant to explore this area diligently because of its long-term implications for all parties who may be affected by church-imposed penalties. This task may be no less difficult than it is important, requiring some scholarly research rather than reliance on the answer given by a well-meaning but potentially biased clergy member.

The reader will need to decide whether Goldzband's suggestion to explore the judge's religious affiliation or lack thereof is a wise one, and similarly, whether to explore the affiliations of the lawyers involved in a case. Any court official, after all, could perhaps show a religious bias but might just as easily tend to overcompensate in order to avoid showing it. At most, the consultant may want simply to be on the alert for any signs of religious bias, direct or reverse, and seek discretely to keep its effects to a minimum.

A few minor points should also be mentioned for clarity. The statement that the importance of church influence cannot be overestimated is itself an overestimate. Certainly, Catholics as well as non-Catholics often feel strong resentment about the declaration through annulment that a marriage did not exist. The paper also includes a potentially misleading use of the term "state of grace," which usually refers to being prepared for a happy death, rather than simply being canonically eligible to receive the sacrament of matrimony. Similarly, despite what Goldzband suggests, it remains difficult in many locales for a divorced Catholic who has not been given an annulment to receive the sacrament of communion.

Conclusion

Dr. Goldzband's paper is important for the information it provides. Once read, it can be readily con-

sulted for details as needed and for help in deciding whether to obtain yet more specialized help to deal with religious issues. It also conveys his experience of being welcomed and valued by religious officials for his expertise. This author's experience has been similar; forensic psychiatric consultants add quality to the church courts' processes and usually are appreciated for doing so.^{5,6} This experience of collegiality is an especially welcome antidote to the unavoidable displeasure associated with involvement in custody disputes.

Finally, the reader should take note of Dr. Goldzband's repeated point that he is discussing an area marked by continuing change. An informative recent European commentary on canon law, *The Canon Law Letter and Spirit*,⁷ should be mentioned, and the major commentary to which Goldzband refers has just been revised.⁸ Moreover, a new English translation of the code itself has been published, directed to American users.⁹ Two very worthwhile recent books, written by Hogan¹⁰ and Wrenn,¹¹ convey the high level of current developments in the Catholic arena. At the same time, an interesting cautionary note is being sounded.¹² By sharing his reflections so thoroughly, Dr. Goldzband has provided a significant service to colleagues who wish to alleviate serious suffering as they perform challenging and rewarding work.

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